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SENATE—*Wednesday, November 17, 1993*

(Legislative day of Tuesday, November 2, 1993)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable RUSSELL D. FEINGOLD, a Senator from the State of Wisconsin.

The PRESIDING OFFICER. Today's prayer will be offered by the guest chaplain, the Reverend Dr. M. Craig Barnes, National Presbyterian Church, Washington, DC.

PRAYER

The Reverend Dr. M. Craig Barnes, National Presbyterian Church, Washington, DC, offered the following prayer.

Let us pray;

O God, be gracious to the leadership of our land this day. Give them the wisdom of Your spirit that they may find their way through the complex issues we now confront. Give them the courage to hold to what they believe to be right, and the humility to discover more truth than they have.

Most of all, O God, we pray that You will give these leaders Your own great dreams for the future of our people, that we may participate in the kingdom You would build here.

This we pray in the name of the Lord, whose way we prepare. 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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 17, 1993.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RUSSELL D. FEINGOLD, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

HABEAS CORPUS REFORM ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1657, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1657) to reform habeas corpus procedures.

The Senate resumed consideration of the bill.

The ACTING PRESIDENT pro tempore. The time until 9:30 a.m. will be equally divided and controlled by the Senator from Delaware, Mr. BIDEN, and the Senator from Pennsylvania, Mr. SPECTER.

Mr. SPECTER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that we await the commencing of the 30-minute time period until the Senators who are involved in the presentation arrive. I think they are on their way but they are not in the Chamber at the moment.

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

Mr. GRASSLEY addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak for 12 minutes as if in morning business.

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

NAFTA AND HISTORY

Mr. GRASSLEY. Mr. President, I rise to discuss the North American Free-Trade Agreement which the other body will vote on, I believe, today. Pending the outcome, we are probably going to vote on that same item later this week.

The vote on NAFTA is clearly an agonizing and very difficult choice. Congress is as divided on this issue as any I have seen. Yesterday's Washington Post-ABC Poll shows that the public is also divided—42 percent in favor and 42 percent opposed.

Today, I will attempt to make the argument for vision and leadership, in support of NAFTA. I would suggest lessons we can learn from history, and dangers that loom if we fail to learn. I hope that my colleagues in the other body, about to vote on NAFTA, will give some weight to these thoughts.

On June 28, 1919, the Treaty of Versailles was signed in Paris, ending the alleged "war to end all wars"—the First World War.

The United States did not ratify the Treaty of Versailles, despite a fierce crusade for it by President Woodrow Wilson. Wilson criss-crossed the Nation, pitching his case to the people, urging their support. He was rebuffed by a turf-conscious U.S. Senate. In the end, America chose isolationism over involvement in the world's affairs.

The consequences of America's failure to ratify this treaty carry a profound learning experience which, in my view, should come to bear as we decide on NAFTA.

There are differences, to be sure, between circumstances surrounding the Treaty of Versailles, and those surrounding this trade agreement. But there are lessons to be learned that are parallel, Mr. President. Those lessons involve the question of American engagement and leadership in the world, versus isolationism. They also involve the issue of the vision of an American President and its political consequences.

Wilson's failed campaign for the treaty foreshadowed two fateful events—one political, one global.

Politically, many historians ascribe the beginning of the decline of the Wilson Presidency to his failed campaign for ratification of the treaty. His inability to win ratification weakened his administration in the eyes of the

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

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Nation and the world, and that had an influence on world leadership.

Globally, America's withdrawal from world affairs contributed, no doubt, to the forthcoming tragedy of the Second World War. The terms of the treaty, history shows, were harsh and humiliating for the Germans. They provided a pretext for the rise of nazism and Hitler.

President Wilson foresaw the detrimental effect the treaty would have on the balance of power in Europe. He was well aware of a need for the sober hand of American diplomacy.

Wilson fought to keep America engaged. He personally traveled to Versailles to help influence the substance of the treaty. He tried to temper the nationalist hysteria embedded in its provisions. He was unsuccessful.

Historian and diplomat George Kennan, in his book "American Diplomacy," wrote about the consequences on Europe of America's disengagement and an intemperate Treaty of Versailles.

He said:

(T)he tragedy of this outcome was not substantially mitigated by the fact that we were not signatories to the Treaty of Versailles and kept ourselves aloof from its punitive provisions. The damage had been done. The equilibrium of Europe had been shattered.

Wilson's campaign for treaty ratification had run smack into the opposition majority party in the U.S. Senate, principally from Senator Henry Cabot Lodge of Massachusetts.

Senator Lodge—the Ross Perot of that day—argued for American isolationism. He succeeded in keeping the United States disengaged from the postwar world.

And so the prestige of the Wilson Presidency faded and Europe headed toward a Second World War. America remained withdrawn, until once again forced to reenter world affairs in 1941 under equally tragic circumstances.

If there is one lesson we learned from the events of 1919 it is that the world needs America's leadership. And that America's role as a world leader is not only good for the world, but it is also good for us in the United States. This is true not only of foreign affairs but also of trade, as the two are interwoven.

I will speak about the more direct parallel of the Smoot-Hawley Act in just a moment. But in a general sense, American leadership and involvement in post-World War I Europe might have helped prevent the world's second great war.

The second lesson is that an American President is often uniquely visionary on matters of world affairs. In the case of Woodrow Wilson, he had a vision of world peace. And his 14 points laid out a structure to build and maintain peace. That was 70 years ago. Today, the structure of the so-called new world order closely parallels Wilson's.

The American people and Wilson's own party did not share his vision at that time. In retrospect, it is easy to conclude that the wiser decision in 1919 would have been to exert American leadership. Absent vision, all we can do is learn the lessons taught by history.

In the case of NAFTA, we have an opportunity to apply these lessons learned. First, the global question:

Do we withdraw from the world and maintain erected barriers to mutual prosperity and greater freedom?

Or, second, do we lead by example, paving the way toward increased world trade and cooperation?

To me, the answer is clear: We do not withdraw. We lead.

And the political question—let me ask my colleagues on the other side of the aisle:

Are you willing to risk your President—the leader of your party—suffering the same fate as President Wilson?

Are you willing to take the risk that the President's vision if flawed, that NAFTA is not good for the country?

And are you willing to risk the possible political decline of the Clinton Presidency should this agreement be defeated?

Think of the prestige of this Presidency when Mr. Clinton goes to Seattle next week to meet with the Chinese. Think of the prestige of this Presidency during the next GATT meetings. Think of the prestige of this Presidency on future free trade talks.

The world needs America's leadership in free trade. And so America needs NAFTA. Failure to enact this agreement means a failure to learn from history. And failure to learn from history means we are doomed to repeat it.

Let me discuss, now, the more direct parallel of the lessons of Smoot-Hawley, as I indicated I would.

During the 1920's, the American economy was going through a dramatic change—from an agrarian to an industrial economy. Instead of fostering the natural progression toward a wealthier economy, we chose to protect the old order. We failed to adapt to change. We raised protective tariffs by enacting Smoot-Hawley.

Many believe that Smoot-Hawley triggered the stock market crash and the Great Depression. It was the exact opposite measure of what was called for by world economic circumstances.

Britain, in fact, had faced the same problem in 1843. Its solution was to lower protective tariffs. It was then freed up to develop its intellectual capital.

Britain's prosperity continued for some time. We, on the other hand, remained in economic depression for the next 15 years.

You would not know all this happened listening to the debate on NAFTA. You would think the world's experience was a blank slate.

In my view, history is on the side of NAFTA.

Here it is, just 6 years away from the 21st century. Communism has collapsed. The post-cold war era has begun. Scores of countries once dominated by the Soviet Union are looking to rejoin the global marketplace. Other countries formerly with state-imposed protectionist systems are eager to join the 21st century as well.

Here at home, the United States is beset by large trade and Federal deficits. Our economy is in the doldrums. We are losing manufacturing jobs to our competitors. Illegal immigrants are pouring across our borders. Internationally, we are bogged down in Somalia and Bosnia and Haiti for who knows what reason, trying to promote whatever.

In my view, free trade is perhaps the best way to promote economic growth in the 21st century. And, it is the best way to promote freedom and democracy throughout the world. It certainly beats the nation-building strategies we are using in Bosnia and Somalia and Haiti.

One reason so many brush fires are ignited around the world—which we then rush to stomp out without appropriate tools—is that nations regress to centuries-old, nationalistic feuding with neighbors.

International commerce has a tendency to lift nations above parochial feuds, especially if a powerful trading partner like the U.S. can show proper leadership. A failure to pass NAFTA, therefore, can be viewed as an abrogation of our international responsibilities as the preeminent leader of the free, post-cold war world.

With NAFTA, there is clearly a right choice. To me NAFTA is a bold step toward a wealthier nation, and stable allies and neighbors.

The vote on NAFTA is a crucial issue because it could determine the direction of our country and the world in the post-cold war era. Now is the time for Congress to support vision and leadership for America, by supporting NAFTA.

I yield the floor.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. 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.

HABEAS CORPUS REFORM ACT

The Senate continued with the consideration of the bill.

Mr. SPECTER. Mr. President, I understand the regular order is 30 minutes of debate equally divided on the pending Specter amendment on habeas corpus?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. SPECTER. I yield 5 minutes to myself.

Mr. President, if I may have the attention of our colleagues who may be in their offices, we had 2½ hours of debate last night and have reserved 30 minutes this morning, 15 minutes on each side. I can put this argument in a nutshell today.

The pending amendment deals with the great writ of habeas corpus and it is an amendment which provides comprehensive protection for the defendant's constitutional rights by having a comprehensive hearing in Federal court. It establishes time limits so there can be an appropriate recognition of society's interest so that the death penalty can be imposed in the 37 States which now carry the death penalty and so that realistically the death penalty can be imposed under the provisions of the pending bill which call for the death penalty in outrageous cases, such as the assassination of an American President.

This amendment is necessary because at the present time, under the current system, we have cases like Harris in California which have gone on for some 13 years, where an offense was committed in July of 1978 and, as this chart shows, 15 years elapsed before the sentence could be carried out, with some ten petitions for State habeas corpus, five petitions for Federal habeas corpus, 11 applications to the Supreme Court of the United States in a way which absolutely decimates the impact of the death penalty.

Last night and before, there was extended discussion of the reasons why capital punishment is a deterrent, something that I strongly believe from my experience as an assistant district attorney when I prosecuted murder cases, took cases on appeal involving the death penalty. But whatever anyone may think of the deterrent effect of capital punishment, there is no doubt that a majority of the American States now have capital punishment and, under our laws, we are entitled to have this penalty carried out.

I submit that it is a very valuable tool in the arsenal of law enforcement which is totally lost. It is totally lost—and again I call on my own experience as an assistant district attorney—when cases in State habeas corpus, like Harris for 5 years and Beasley for 10 years and Lesko for 6 years, language where they bring up the same issues which have already been decided by the State supreme court.

I do not expect my colleagues who are opposed to the death penalty to vote for this amendment. What habeas corpus really does is not protect the rights of the defendant, but it defeats the purpose of the death penalty. So for people who do not want the death penalty imposed, the vote is against the Specter amendment. For those who want capital punishment carried out, as more than 70 Senators have voted in this Chamber when capital punishment has come up, and as more than 70 percent of the American people have said they want the death penalty, this should be a vote for the Specter amendment.

In our extensive debate last night, the differences between the Senator from Delaware and the Senator from Utah, Senator BIDEN and Senator HATCH, and myself were narrow, virtually to nonexistent.

The Senator from Delaware [Mr. BIDEN], made the argument that this eliminates State habeas corpus and it eliminates exhaustion. But when we took a close look at it, we had virtual agreement between Senator BIDEN and myself on the desirability of having the Federal Government, through the Congress, determine when State habeas corpus begins. It is the determination of the Congress as to the jurisdiction of the Federal court, and this amendment says that Federal habeas corpus begins as soon as the direct appeal from the State is over, once the death penalty has been imposed and cert has been denied.

This amendment provides for time limits on filing, time limits in the district court, time limits in the circuit court, so the entire process can be completed in less than 2 years instead of 15 years, or up to 18 years, as it is at the present time. And the narrow issue which separates Senator BIDEN and ARLEN SPECTER is that retroactivity ideal with fundamental——

The ACTING PRESIDENT pro tempore. The Senator has spoken for 10 minutes.

Mr. SPECTER. I ask for an additional 5 minutes on the timetable this morning, Mr. President.

The only difference between Senator BIDEN and ARLEN SPECTER on retroactivity is that I call for retroactivity on fundamental constitutional rights and Senator BIDEN calls for it on fundamental fairness. I submit, in reality, that is no difference at all.

With respect to the differences between my position and Senator HATCH's position, I point out that on the retroactive issue Senator HATCH agreed with a bill, the essence of which I am currently proposing, when it was cosponsored by Senator HATCH and Senator THURMOND and Senator SIMPSON and myself where the retroactivity reached the issue of fundamental fairness.

An eloquent spokesman for this bill, the essence of this bill, was Senator THURMOND himself who pointed out that the bill he was proposing in 1990, which passed this body by a vote of 56 to 42, "along with Senator SPECTER," was "a tough habeas corpus reform proposal which strikes at the heart of the problem, which is delay, a proposal which establishes time limits and," as Senator THURMOND put it, "would bypass State habeas corpus proceedings" which currently involve so much delay.

Senator BIDEN and Senator HATCH are candid in their continuing opposition to this amendment on the ground that they have made an arrangement not to attach habeas corpus to either the crime bill or to the Brady bill because habeas corpus would be controversial and would defeat those bills.

I submit to Members of this body that that reason is now gone because this is not an amendment to either the crime bill or the Brady bill. It is a separate amendment, freestanding. If we are to take a stand at any realistic time and deal with the problem of interminable delays in capital punishment, then the time to do it is now.

The essence of this bill was passed by an overwhelming majority, 56 to 42, on May 24, 1993. There is absolutely no reason not to pass this habeas corpus amendment today if we expect to have any relief on this issue anytime in the foreseeable future. If you are opposed to the death penalty, if you are opposed to the will of 37 of the States of the United States of America, vote "no" on the Specter amendment.

I ask for an additional 2 minutes, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator is recognized for an additional 2 minutes.

Mr. SPECTER. If the death penalty is to be retained as an important part of the criminal justice system which can work, then this circuitous, elongated process has to come to an end.

We have a realistic blueprint, Mr. President, for reducing violent crime in America by more than 50 percent. That blueprint was outlined by a national commission which functioned in 1972, a commission on which I served. That blueprint is to have realistic rehabilitation for juvenile offenders, first offenders, some second offenders; when they are career criminals, to have life sentences; to have adequate drug treatment for the addicts; to have adequate education so that you do not release a functional illiterate without a trade or skill, who is drug dependent, who obviously comes back to a life of crime.

But an indispensable ingredient in that system is to eliminate the 18-year delays on the imposition of the death penalty which tells every would-be criminal on the street that they can avoid the law; that crime does pay; that the Court system does not work; that law enforcement is not serious; that the Congress of the United States puts up with interminable delays of 18 years and thwarts the will of the American people and the will of the majority of the States in refusing to impose the death penalty when that is the law of the land and an important deterrent.

It is realistic because it structures rehabilitation where that is possible, it

structures life sentences for habitual offenders, and it realizes the importance of the death penalty as a symbol of a criminal justice system which works and as a symbol of a deterrent and as a symbol of what the American people want by more than 70 percent and by more than 70 of the Senators who have voted for the death penalty when that issue has come before the Senate.

If you are against the death penalty, again, the vote is "no" on the Specter amendment. If you want to retain a valuable tool for law enforcement, upheld by a majority of the States and an overwhelming majority of the American people and an overwhelming majority of the Senators of this body and the House, the vote is for the Specter amendment.

How much time is remaining, Mr. President, on my side?

The ACTING PRESIDENT pro tempore. The Senator has 3 minutes and 45 seconds.

Mr. SPECTER. I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. HATCH addressed the Chair.

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

Mr. HATCH. I do not want to take very long. I have such great respect for my colleague from Pennsylvania and his knowledge of this area and his experience, which is maybe even more important. I know what he is trying to do, and what he is trying to do is well intentioned and right.

As a matter of fact, I agree with much of what he is doing. But there is enough here I disagree with that I would prefer, as the distinguished Senator from Delaware has indicated, to look at this next year, have hearings, listen to all sides, and really look into this as thoroughly as we possibly can because my personal belief is that the Senator's amendment, though an improvement on the language of the bill which we are going to strike, is not an overall solution and, frankly, will be just as bad as today's system and give just as much opportunity for frivolous appeals as we have now under the habeas corpus rulings with which we are presently living.

So I am going to support Senator BIDEN's motion to table this morning, and I hope our colleagues will as well. Then what we are hoping is that we can strike this contentious issue from this crime bill because it is absolutely critical that we do so.

The crime bill is the finest crime bill in the history of this country, and I believe that when we finally get it through both Houses of Congress we are all going to be very pleased that we are going to make a dent against criminal activity in this society.

This issue has been so contentious and so frought with peril and so difficult to resolve among various idea makers in this body that we feel it deserves the effort this next year of having hearings, in which I know the distinguished Senator from Pennsylvania will play a pivotal role, and ultimately help us to resolve what really has to be resolved in the best interests of law enforcement and in the best interests of carrying out penalties and in the best interests of stopping frivolous appeals and saving billions of taxpayer dollars that are going down the drain with these frivolous appeals.

So I commend my dear friend for the very intelligent and articulate arguments that he has made, but I hope that our colleagues will support the chairman's motion to table.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. SPECTER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. When the Senator from Utah says that we should strike this contentious issue from the crime bill, it characterizes the essence of the opposing argument which is flatout wrong because this issue is not in the crime bill.

I could understand why Senator HATCH and Senator BIDEN would want to strike this from the crime bill. But it is not in the crime bill. It is a separate standing issue. I understand why they made the arrangement to eliminate habeas corpus so they could pass the crime bill and the Brady bill. But that reason no longer exists. I understand why Senator BIDEN and Senator HATCH want to live up to their spirit of the agreement by not moving forward on habeas corpus. But there is no reason why the other 98 Senators ought not to move on habeas corpus at the present time.

When the Senator from Utah says we ought to have further hearings, that is really grossly inappropriate. We have had hearings until they have come out of our ears. We have 2,490 inmates on death row. We have an important tool of law enforcement. We are not enforcing it. We know the rules. We know the law, and the time to act is now.

The Senator from Utah agreed with the essence of this bill on May 24 of 1990. Those who opposed the bill 3½ years ago said let us go back and let us have more hearings, and we will be doing that forever and forever and ever. Now is the time to act on this bill.

Last night the Senator from Utah said that the bill violated Sawyer versus Whitley. I reread the opinion last night, and it simply is not so.

Where this bill allows for an argument where no reasonable sentencing authority can impose the sentence of death, that is realistic, that is reasonable, and that is in line with the Supreme Court opinion in Sawyer.

Where we impose the death penalty, Mr. President, we have to be as sure as we can be, as sure as humanly possible that it is correct. This bill protects the rights of defendants, and constitutional liberties. In fact, it recognizes a ruling by the International Court which said it is cruel and unusual punishment to keep people in confinement for 6 to 8 years. All the interests are promoted by the adoption of this amendment.

How much time remains, Mr. President?

The ACTING PRESIDENT pro tempore. The Senator has 45 seconds.

Mr. SPECTER. I reserve the remainder of my time.

Mr. THURMOND. Mr. President, as every Member of this body knows, I have long advocated appropriate reform of the current habeas corpus procedures followed in the Federal courts. The abuse of habeas corpus litigation has undermined public confidence in our criminal justice system.

In the past, I have introduced legislation to minimize Federal judicial interference with State criminal convictions and address common abuses typical of many habeas petitions. The Senate, in 1991, adopted an amendment which Senator HATCH and I had sponsored by a vote of 58 to 40. This proposal was modeled on recommendations put forth by the Powell Committee, chaired by former Supreme Court Justice Lewis Powell. This proposal would have truly limited a petitioner to a single habeas petition in the Federal courts. Unfortunately, we were unable to have this measure agreed to during the conference on the crime bill.

Now, Mr. President, we are faced with a habeas corpus reform proposal in S. 1607, which I believe is worse than current law. Without doubt, title III of S. 1607 will actually increase the amount of unnecessary litigation and promote delay in death penalty cases. Stating their opposition to Chairman BIDEN's habeas proposal, California attorney general Daniel Lungren and the California District Attorneys Association jointly stated, and I quote:

> At a time when most recognize the habeas corpus process must be streamlined to prevent endless, piecemeal challenges, title III—would lead to more rounds of litigation and less finality and closure for victims.

My good friend from Pennsylvania, Senator SPECTER, has introduced a bill which we are now considering to address the shortcomings of Chairman BIDEN's good faith proposal on habeas corpus reform. I commend my colleague from Pennsylvania for his efforts, particularly placing time limits for consideration of habeas petitions in the Federal courts. Unfortunately, this bill contains those provisions from the Biden proposal which I believe will promote delay and prolong finality in capital and noncapital cases.

Mr. President, a majority of the attorneys general from the ninth circuit are opposed to the habeas proposal in S. 1607 which in large part is contained in the Specter bill we are now considering. This group of chief law enforcement officers within the ninth circuit made five main points in opposition to title III in S. 1607. It is their opinion that this proposal: First, significantly weakens current law; second, contains provisions which violate the tenth amendment of the Constitution by imposing new Federal regulatory schemes on State criminal justice systems; third, overturns or modifies landmark U.S. Supreme Count precedents promoting finality and curbing successive petitions; fourth, affords convicted murderers and criminals more opportunities to challenge their convictions and sentences; and fifth, inexplicably forces victims of crime to suffer through more rounds of litigation and delay. These are the concerns of attorneys general in the ninth circuit who have the responsibility for handling Federal habeas litigation in their jurisdictions.

Mr. President, I share these concerns which I have with the underlying bill, but as we are under a time agreement, I will speak to only a few.

This proposal mandates that States adopt expansive and costly appointment of counsel provisions for capital cases. If a State fails to meet the counsel certification requirements within 180 days after date of enactment, a private cause of action may be brought against that State in Federal court. Also, a private cause of action lies against a State if it fails to establish a costly schedule of hourly rates for compensation of attorneys appointed under this bill. My initial concern with these provisions is that they undermine the 11th amendment's protection for the States. This amendment, among other things, prohibits a Federal court from considering a suit brought by a citizen against his or her own State, unless the State consented to suit against it in Federal court. This legislation will unnecessarily force the States to face suits for coercive relief in the Federal courts.

The counsel provisions mandated on the States under this bill has been appropriately referred to as the Capital Defense Attorney Employment Act of 1993. The imposition of rigid and expansive Federal standards is an unprecedented and substantial intrusion into the State criminal justice system. This compulsory approach mandates the appointment of specialized counsel in the State trial and appellate process, rather than limiting it to the State postconviction stage as the optional approach under the Powell Committee report. The States are able to promulgate effective appointment of counsel procedures without being forced to adopt new Federal statutory standards which are not required under the Constitution. It is beyond our responsibility to impose congressionally enacted Federal standards on State court proceedings concerning the enforcement of State criminal law when not required by the Constitution. The Powell Committee report supports this conclusion as it stated that "it is more consistent with the Federal-State balance to give the States wide latitude to establish a mechanism" for the appointment of counsel. If there are claims of inadequacies with State procedures for the appointment of counsel, the Federal judiciary will ultimately render the final judgment.

There are additional problems with this legislation concerning the retroactive application of new rules as addressed in the Teague decision. My good friend from Utah, Senator HATCH, has spoken to this issue and I will briefly summarize. In Teague versus Lane, the Supreme Court established an essential rule of finality for all habeas cases. Under this doctrine, the court applies the law in effect at the time the conviction became final. New rules developed after the conviction became final will not be applied retroactively by the court subject to two narrow exceptions. This doctrine is crucial. Without it, there can be no closure to a case, as new rules developed after the conviction became final can furnish a basis for a new round of litigation.

I agree with the distinguished ranking member, Senator HATCH, in his conclusion that this bill will weaken the Teague doctrine and the line of cases following Teague.

Mr. President, Dan Lungren, attorney general for California, stated the following opinion on legislation which would undermine the Teague doctrine and I quote:

> The policy question is why the Congress wants to weaken the finality doctrine posited by Teague in any manner. We already know that one of the central problems with the current habeas corpus process is a lack of finality. It seems to me that the heavy burden of proof lies with those proponents who seek to modify the Teague doctrine to establish why any change from established case law is warranted and why this undermining of finality should be countenanced. The victims of crime are entitled to closure and an adequate policy explanation of why any changes should be made in this area.

Mr. President, it is my firm belief that this legislation is worse than current law and will promote more delay and more litigation. It is for these reasons that I oppose this bill.

I yield the floor.

Mr. HATCH. Mr. President, I have been a long time advocate of habeas corpus reform. Habeas corpus reform has been a priority of mine for many years and is an essential reform needed to restore credibility within our criminal justice system. Yet, in my view, no habeas corpus reform is better than title III of S. 1607. I can summarize the reason why in one sentence: the Biden habeas corpus proposal is more favorable to convicted murderers than is current law.

In an effort to address some of S. 1607's inadequacies, my colleague from Pennsylvania has offered an alternative which makes a number of changes to the Biden proposal. For example, my colleague's bill places time limits for consideration of habeas corpus petitions on Federal district courts and courts of appeals. Similar time limits are contained in my habeas corpus proposal. Yet, the core of the Specter bill contains the most troubling and disruptive aspects of the Biden proposal. It does serious damage to the Teague doctrine, it mandates costly and intrusive counsel requirements on the States, and has broad exception to the one petition limitation. For these reasons, I oppose the Specter bill.

Abusive habeas corpus litigation, particularly those cases involving State-imposed death sentences, has undermined the public's confidence in our criminal justice system by causing a lack of finality in the system. Unnecessary litigation and delay in the imposition of constitutionally imposed death sentences have taken a toll on States, victims, and law endorsement. In my State of Utah, convicted murderer William Andrews delayed the imposition of a constitutionally imposed death sentence for over 18 years.

The Dole-Hatch bill curbs the abuse of habeas corpus by state and federal prisoners. It contains a provision identical to a measure I sponsored that passed the Senate by a vote of 58 to 40 in 1991. It is modeled after a proposal for death penalty litigation developed by the Powell Committee, chaired by former Supreme Court Justice Lewis Powell. The States may opt in to the procedures. If a State opts in it must provide counsel on State collateral review. In exchange for providing counsel, the petitioner is limited to a single habeas petition. The Dole-Hatch bill improves upon the Powell proposal by including the full and fair rule of deference for State court adjudications and placing time limits upon habeas corpus petitions in Federal courts.

While the Dole-Hatch bill is in the best interests of law enforcement, the Specter bill could undermine the death penalty and promote more delay and litigation. I fear that it may well result in de facto repeal of the death penalty by making capital punishment litigation too protracted and costly.

The Specter bill does not give the States the option of opting in or out like the Dole-Hatch bill. Instead, it mandates that States adopt expansive and costly appointment of counsel provisions for capital cases. Rather than promote finality, the Specter bill requires more rounds of litigation. This will include new statutory hearings on:

First, workload of appointed counsel; second, qualifications of appointed counsel; third, competency of defendant to decline the appointment of counsel; fourth, compliance with specified counsel standards; and fifth, the competency of the petitioner. None of these new hearings are required under the Constitution .

Under the proposal, if a State fails to comply with the counsel requirements litigation may be brought in Federal court for appropriate injunctive and declaratory relief. Although the court may not overturn criminal convictions, the courts could impose sweeping stays of execution for all existing death row inmates.

In the event enumerated qualifications were not met, two unduly harsh penalties could be imposed: First, the elimination of the traditional presumption of correctness afforded to State court findings of fact; and second, the petitioner then would be given the opportunity to present new claims in Federal court in complete disregard of the exhaustion and procedural default doctrine. These windfall penalties would be applied against the States absent any showing that the attorney was ineffective or that the petitioner did not receive a fair trial. Such penalties, for failing to comply with vague and subjective counsel requirements should not apply to the States.

Further, the Specter bill overturns the landmark Teague doctrine. In *Teague* v. *Lane*, 489 U.S. 288 (1989), the U.S. Supreme Court established an essential rule of finality for all habeas cases. Under this doctrine, Federal courts must apply the law in effect at the time a State conviction became final. New rules of law prescribed by the judiciary after the conviction becomes final will not be applied retroactively nor will convicted criminals be permitted to seek the establishment of new rules via Federal habeas review. Without the Teague doctrine, there can be no closure to a case because each new rule developed by the Federal courts could provide the basis for a new challenge to a death row inmate or other criminal's conviction or sentence.

The Specter bill overturns key rules and cases in this area, weakening the Teague doctrine. It replaces the Teague doctrine with a new standard which applied fundamental rights retroactively. This will return the States and Federal courts to the confusing litigation about retroactivity that occurred prior to Teague. The courts will have to develop factors and guidelines for distinguishing between fundamental and nonfundamental rights. These factors will inevitably generate more litigation of their own. Quite simply, there will be less finality than current law if the Teague doctrine is overturned. The Supreme Court decisions on retroactivity are not unanimous decisions. They are often 6-to-3 or 5-to-4 decisions. These are matters as to which reasonable people can disagree. That is precisely why we need one Supreme Court, and not 650 Federal trial judges, deciding the fundamental question of whether the Supreme Court decisions apply retroactively or prospectively. If Federal trial judges are given discretion to not follow Supreme Court precedent on retroactivity, which is what the Specter bill does, then it is entirely foreseeable that the same proportion of trial judges, 3 out of 9, or 4 out of 9, will decide the issue differently from the majority of the Supreme Court. Those are pretty good odds for a convicted murderer facing a constitutionally imposed death sentence. Even though the Supreme Court has ruled that he cannot obtain the benefit of a new case, and that his sentence is constitutionally sound, the Specter bill will allow him to take his chances with the 650 Federal trial judges out there.

Let us take a look at who stands to benefit from having Supreme Court decisions applied retroactively. In the first instance, the most obvious beneficiaries will be prisoners who have been incarcerated for the longest times—the law has changed so much since they were imprisoned that there will be multiple opportunities for them to argue that they are being unconstitutionally confined.

One case is William Hierens in Illinois. He has been serving a life sentence for the brutal mutilation murder of a child since the late 1940's. He has filed petitions in Federal court for years. I imagine he would like nothing better than to be able to argue that the 1986 Batson versus Kentucky decision on preemptory jury strikes applies to his case and requires a new trial—a new trial after 45 years.

How would the Specter bill permit Hierens to benefit given the Supreme Court's ruling in Batson was applied prospectively? By permitting individual Federal judges—of which there are over 650—to determine whether the Batson decision constitutes "a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding." That is the test the courts would apply under new section 2257(b)(2) of the Specter bill.

Other notorious criminals who are awaiting passage of the Specter bill included Charles Manson, Sirhan Sirhan, and more. Each of these vicious killers would like to have the standards now recognized in 1993 as appropriate for reviewing their convictions from the late 1960's and early 1970's. And that is just what the Specter bill will give them. In fact, if the Specter bill was in effect at the time of the Robert Alton Harris case, which took over 13 years to complete, or William Andrews case, which took 18 years to complete, the States of California and Utah would likely still be litigating those cases in Federal court.

The Specter bill also weakens established limits on successive petitions overturning the U.S. Supreme Court decision in *Sawyer* v. *Whitley*, 112 S.Ct. 2514 (1992). This decision permits a successive petition where an actual innocence exception is established. This requires the habeas petitioner to show innocence of the crime itself or "by clear and convincing evidence that but for constitutional error, no reasonable juror would find him eligible for the death penalty." Id. at 2523. The Court's holding in Sawyer is repudiated in at least two respects. First, the "clear and convincing" showing is abandoned. Second, and most significantly, the Specter bill permits successive claims to be filed based on the "existence of additional mitigating evidence." The Supreme Court in Sawyer expressly rejected this avenue for successive petitions, recognizing that the principle of finality would be eviscerated without this limitation.

I recognize that the current habeas corpus process is not working correctly, promoting unnecessary delay and repetitious litigation and we support legitimate efforts to reform the system. Yet, both S. 1607 and the Specter bill deliberately raises the price of capital litigation and interposes new hurdles to capital punishment. In my view, it would be better for the states to litigate under current law than under the terms of the Specter bill.

For these reasons, I urge my colleagues to defeat this legislation.

RESPONSE TO SPECTER

My colleague has asked me about the standard applied in retroactivity cases prior to *Teague* v. *Lane* [489 U.S. 288 (1987)] and to demonstrate how that standard impeded the administration of justice.

The standard applied to new rule cases prior to the Teague doctrine was the Linkletter standard. Under this free flowing test, which is named for the cases of *Linkletter* v. *Walker* [381 U.S. 618 (1965)] and Stoval versus Denno (1967), the courts were required to apply a balancing test in which the interests of the accused were weighed against the effect of retroactive application on the administration of justice, the new rule's effect on the fact finding process, and the State court's reliance on the old law. This loose, amorphous standard, according to State attorneys general with whom I have consulted, gave courts broad discretion to determine on their own whether new rules established by the Supreme Court should be applied retroactively to benefit an individual case. There was much litigation over how these factors were to be applied and defined.

It is difficult to determine the number of Supreme Court cases which were determined to apply retroactively

under the old Linkletter standard. This is because each circuit, more or less, was free to decide questions of retroactivity on its own. More importantly, since the old Linkletter standard was a loose and indefinite standard, habeas petitioners were able to shoehorn themselves into stays of execution. This was done by filing habeas petitions which claimed that a new rule should be applied retroactively. The courts were required to issue a stay of execution and hear the claim. Even if the courts determined that a new rule should not be applied retroactively, the vague standard of Linkletter permitted inmates to delay the imposition of their sentences through repeated stays of executions based on these new rule claims.

In 1989, the Supreme Court decided that the loose, free-flowing standard of Linkletter was unfair and impeded the administration of justice. In two decisions, the Court established the present standard by which Federal courts will determine whether a new rule should be applied retroactively. This bright line standard is what we now generally refer to as the Teague doctrine.

First, for those cases on direct review where the conviction has not become final, the Supreme Court has held that defendant should benefit from retroactive application of new rules. This was the Supreme Court's holding in the case of Griffith versus Kentucky (1989). This decision completely favors defendants.

Second, after a petitioner's State conviction has become final, however, a new rule of criminal procedure may not be requested or applied retroactively in Federal habeas cases. This was the result of Teague and the cases that followed [Penry versus Lynaugh (1989) and Butler versus McKellar (1990)].

Senator SPECTER and Senator BIDEN have made no secret of their opposition to Teague. Yet, the Supreme Court in Teague established two exceptions to the bar against retroactive new rules in habeas litigation: First, if the new rule places a kind of conduct or class of defendants beyond the power of the criminal law making authority such as the death penalty for rapists being declared unconstitutional; or second, if the new rule addresses a bedrock procedural element of criminal procedure in a manner which so significantly changes the law that the rule is watershed—the rule must be applied retroactively.

Teague and its bookend case, Griffith, establish a bright line rule of law which ensures uniform application of new rules. Teague has improved the landscape of habeas litigation pursuant to title 28 because it reflects the appropriate reading of title 28—that habeas corpus is simply a statutory deterrent used to encourage State and Federal courts to adhere to constitutional standards. As such, a new rule should not be applied during habeas review of State convictions since State courts could only by expected to defer to rules that were in existence when their consideration became final. In other words, it is not fair to the States to change the rules of the game via habeas review when the State correctly applied the law as it existed at the time of the trial.

The fact is that since Teague, there is a clear test which applies to these cases. As such, there is less litigation in capital cases over new rules should be applied retroactively. In the year preceding Teague, only 11 executions were carried out. The Teague doctrine has limited much of the frivolous and unnecessary litigation surrounding capital cases. Yet, despite the cries of death penalty opponents, Teague has not fostered an ubridled number of executions. In 1992 there were 31 executions. There are still over 2,700 convicted murders sitting on our Nation's death rows. Yet, if we eliminate Teague, we will ensure that very few, if any, deserving murderers will have their sentences carried out.

SPECTER DIFFERENCES

S. 1657, the Specter habeas corpus reform bill is effectively the same as the Biden habeas corpus bill. In fact, in critical areas, such as the mandatory counsel requirements and the standard applied in successive petitions cases, the bill is identical to the Biden bill. The differences are as follows:

Time requirements: The bill sets time limitations for the Federal court's consideration of determinations of habeas corpus petitions. The Dole-Hatch habeas corpus proposal contains similar, although shorter, time limits. This aspect of S. 1657 is an improvement over the Biden bill.

Court of Appeals as gatekeeper: S. 1657 also proposes an innovative role for the courts of appeals to determine whether a successive petition can be heard. Rather than filing a successive petition in a Federal district court, the petitioner first go to the court of appeals seeking an order permitting district court consideration of the claim. While this is an innovative concept and role for the courts of appeals which I have previously supported, it fails to remedy the fundamental flaw of the Biden bill's successive petition proposal—the repudiation of Sawyer versus Whitley. Although the court of appeals will become a so-called gatekeeper on questions of successive petitions, their ability to dispose of frivolous or unnecessary petitions is thwarted by the fact that S. 1657, like the Biden bill, expands the types of claims which can be presented. The gatekeeper concept could work, so long as the standard for successive petitions is narrow.

Abolition of the exhaustion: The Specter bill, in an attempt to speed up the habeas review process in capital cases, abolishes the existing requirement that petitioners exhaust State remedies before filing a habeas petition. In other words, it requires that state collateral review be bypassed since the bill's 6-month statute of limitations would begin to toll once the murderer's conviction becomes final. The effect of this would be to preclude the States from having an opportunity to address constitutional errors on their own prior to Federal review. While I believe that this change will speed up the process, I am concerned the abolition of State collateral review on capital cases could have a detrimental impact on the States' administration of justice.

In the 101st Congress, I supported a habeas measure which contained a similar exhaustion provision. At the time, Senator SPECTER convinced me that it was worth considering. I still believe it is worth considering. Still, the abolition of the State exhaustion requirement, while speeding up the length of appeals, warrants study due to its effective disregard for the interest of the State courts.

The ACTING PRESIDENT pro tempore. Who yields time?

If no one yields time, it will be charged equally to both sides.

Mr. HATCH. Mr. President, just to make it clear further, I think we can agree to a habeas corpus amendment. I do not think it will be what the distinguished Senator from Pennsylvania will totally like or any of us perhaps. But the fact of the matter is that the House is not going to take it, or they would use it as a Christmas tree to hang all other things which would prevent the implementation of the penalties that are prescribed in this particular bill.

So it is better for us to face that problem in a separate way, and, frankly, to do it in an intelligent way that brings everybody together. That is really what is involved here.

So we have made a decision—the managers of the bill—that if we want a really good crime bill, we are going to have to divorce this issue from this particular crime bill or we lose all the other great provisions that we have worked so hard for over the last 2 weeks to make sure are in this bill. It is as simple as that.

The House is not going to take it without making a mess of it and making it a Christmas tree for a number of ideas that may or may not be good ideas.

This morning, we spoke with the National District Attorneys Association, and they informed us that the prosecutors do not support the Specter bill.

In addition, I have a list of numerous attorneys general and victims groups who do not support the Biden bill. I am confident that they would not support the Specter bill as well.

I ask unanimous consent that the list of supporters of the motion to strike the Biden habeas corpus, and therefore I believe the Specter habeas corpus as well, be placed in the RECORD at this point.

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

SUPPORTERS OF MOTION TO STRIKE—BIDEN HABEAS CORPUS

STATE ATTORNEYS GENERAL

1. Jan Graham, Utah (Capital).
2. Dan Lungren, California (Capital).
3. Joseph Meyer, Wyoming (Capital).
4. Don Stenberg, Nebraska (Capital).
5. Grant Woods, Arizona (Capital).
6. Frankie Sue Del Papa, Nevada (Capital).
7. Larry EchoHawk, Idaho (Capital).
8. Michael Easely, North Carolina (Capital).
9. Joseph Mazurek, Montana (Capital).
10. Gale Norton, Colorado (Capital).
11. Dan Morales, Texas (Capital).
12. Mark Barnett, South Dakota (Capital).
13. Charles Cole, Alaska (Non-Capital).
14. Jimmy Evans, Alabama (Capital).
15. Robert Marks, Hawaii (Non-Capital).
16. Heidi Heitkamp, North Dakota (Non-Capital).
17. Stephen Rosenthal, Virginia (Capital).
18. Michael Bowers, Georgia (Capital).
19. Robert Butterworth, Florida.
20. Elizabeth Barrett-Anderson, Guam.
21. Herbert Soll, Northern Marianas Islands.

OTHER STATE AND LOCAL LAW ENFORCEMENT

1. Conference of Western Attorneys General.
2. California District Attorneys' Association.
3. National Troopers Coalition.
4. Virginia Association of Commonwealth's Attorneys.
5. Florida Prosecuting Attorneys Association.
6. Idaho Prosecuting Attorneys Association.
7. Virginia Association of Chiefs of Police.
8. Tennessee District Attorneys General Conference (John Pieroti, President).
9. Arizona Prosecutor's Association.
10. William Fuller, Commonwealth's Attorney, City of Danville (Virginia).
11. John M. Mamoulides, District Attorney, Parish of Jefferson (Louisiana).
12. International Association of Chiefs of Police.
13. North Carolina Conference of District Attorneys.
14. Nevada Prosecutors.

CITIZENS' ORGANIZATIONS

1. VIGIL Coalition For Victim's Rights.
2. Citizens for Law and Order, Inc.
3. California Correctional Peace Officers Association.
4. Justice for Murder Victims (San Francisco, CA).
5. Memory Of Victims Everywhere (San Juan Capistrano, CA).
6. Crime Victims United (Sacramento, CA).
7. Leagues of Victims and Empathizers (Tarpon Springs, FL).
8. Organized Victims of Violent Crime (Madison, TN).
9. The Joey Fournier Anti-Crime Committee (Boston, MA).
10. Citizens for a Responsible Judiciary (Apopka, FL).
11. Survivors of Crime (Essex, VT).
12. Victims of Crime and Leniency (Montgomery, AL).
13. Survival, Inc. (Saltillo, MS).
14. Citizens Against Violent Crime (Charleston, SC).
15. Speak out for Stephanie (Overland Park, KS).
16. Citizens for Truth in Punishment (Willis, TX).
17. Justice for Surviving Victims (Denver, CO).
18. Advocates for Survivors of Victims of Homicide (Walls, TX).

OTHER

1. San Diego Union Tribune.
2. Letter signed by 125 former prosecutors and U.S. Attorneys believe that "important changes" need to be made to the Biden Habeas provision.

Mr. HATCH. I yield the floor.

Mr. SPECTER. Mr. President, I have a very, very brief reply to the argument of the Senator from Utah.

It simply is not so when he says this bill will be a Christmas tree; that it will defeat the crime bill. The habeas corpus is not on the crime bill. When the Senator talks about the National District Attorneys Association, he talks to somebody—I do not believe they speak for the national DA's. This bill has only been on the floor for a short time. The national DA's have not been able to convene and meet on it. If the DA's were to control what the Senate does, I would still be a State district attorney and not run for the Senate.

I understand that the managers have made an agreement that they feel bound by, to live up to the spirit of the agreement to oppose this habeas corpus bill. But I say to the other 98 Senators, if you want to carry out the rule of the American people, if you want to carry out the death penalty as provided in this bill, then the only sensible course is to strike the circuitous and the procedural nonsense of habeas corpus today and to pass the Specter amendment which will be a signal that the Senate means business.

This is not going to be done in 1993. The conferencing on the crime bill will not be done until next year. If you are opposed to the death penalty, vote "no." If you are for the death penalty, vote "yes" for the Specter amendment.

Mr. BIDEN. Mr. President, I am for the death penalty, and I am voting no on Specter because Specter will not be of any value in this debate in how to rectify habeas corpus.

I am voting "no" on Specter by shortly moving to table his amendment. I think his approach will not be helpful. It will delay.

There is a significant difference between Specter and Biden retroactivity provisions.

Mr. President, the National District Attorneys Association did endorse the Biden habeas corpus bill as did the vast majority of the attorneys general. I think there were somewhere over 24 of them who did. I think there were somewhere around half a dozen or a dozen who opposed it. But a majority supported the Biden provision.

Also, the National District Attorneys Association called me yesterday on the floor, notwithstanding the fact they did not convene to the best of my knowledge, and said I was able to go on the record indicating they opposed the Specter approach.

Obviously, that is not, nor should it be, dispositive. It is just another precinct—hearing from his former colleagues—which he belonged to. The district attorneys disagreed with his approach. That is the only point, not that we should not listen or listen. There is no uniformity in this regard on this issue. There is uniformity on this with regard to my position.

I would also like to take the time for just a moment, and then I will yield and move to table.

HABEAS CORPUS AND RETROACTIVITY

Senator SPECTER has asked that I delineate the difference between his habeas corpus provision on retroactivity and the retroactivity provision in my habeas bill.

The issue here is what law applies when courts decide habeas corpus petitions. The relevant case is Teague versus Lane.

In Teague, the Supreme Court held that Federal courts should not apply new rules of law to grant State prisoners relief.

The idea here is this: A State court can only be expected to apply the legal standards as they existed when that court reviewed a prisoner's claim.

The Federal courts, for their part, should not announce or apply new principles of Federal law on habeas corpus—and thus blindside State judges and prosecutors by upsetting State convictions that were perfectly correct when rendered.

The Court in Teague made two exceptions to its general rule of nonretroactivity: It stated that a new rule will apply retroactively if it decriminalizes certain conduct, or if it is a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding.

In retroactivity cases, prosecutors make two kinds of arguments. Sometimes they contend that the prisoner is relying on a new rule established by the Supreme Court. Here, the Spector proposal would allow relief for any fundamental right announced by the Supreme Court. That is close to one of the two exceptions already articulated by the Supreme Court.

More often, however, prosecutors argue that the district court in habeas corpus would itself have to create a new rule in order to decide for a prisoner.

In any given case, then, the question is whether the rule on which a prisoner's claim depends is settled or new. If it's settled, the Federal court can enforce it. If it's new, the Federal court cannot consider it.

The definition of what counts as a new rule, then, is critical. On this

point, the Specter provision is silent. My bill, in contrast, defines a new rule as a rule which changes the constitutional or statutory standards that prevailed when the prisoner's conviction and sentence became final.

Remember, that is what Teague stands for: The Federal courts should consider a habeas petition in light of the legal standards prevailing at the time a conviction becomes final.

So under my bill, a prisoner would be able to seek Federal habeas corpus relief if the claim relies on legal standards prevailing at the time the State acted. A prisoner would not be able to seek relief if the claim depends on a change in those standards.

The language in my bill is drawn from the words of Justice Harlan, the father of the retroactivity doctrine announced in Teague. Indeed, in a passage quoted by the Teague court, Justice Harlan wrote:

> The habeas court need only apply the constitutional standards that prevailed at the time the original proceedings took place.

Since Justice Harlan wrote that standard, the meaning of "new rule" has grown ever more clouded—and that is why it is important for a habeas provision to address this issue.

Over the years, the Supreme Court has come up with a variety of different definitions of a "new rule." These definitions have created much confusion, controversy, and conflicting interpretation—among scholars, litigators, the lower courts, and even among the Justices themselves.

And these various definitions have created another problem: if you read some of the definitions literally, they can be used to create a virtual rule of deference to State courts on questions of Federal constitutional law.

For example, in one case, the Supreme Court defined a new rule as any rule about which State court judges could reasonably disagree.

But, as we all know, lawyers—even reasonable lawyers—can disagree about anything and everything.

So if we define a rule as "new" just because there is disagreement about it, every rule is a new rule. And if every rule is a new rule, we foreclose even the one chance for Federal habeas review that should be open for claims concerning constitutional error.

In other cases, the Supreme Court has defined a new rule as one not dictated or compelled by precedent. Strictly speaking, this definition also can be read to capture virtually any rule on which a prisoner might rely.

For again, as we all know, any case can be distinguished in at least some small way from the cases that came before.

So this definition can also be used to create a rule of deference and to undermine the Federal courts' ability even to apply well-settled legal standards to the unique facts of a particular case.

That is not right. And it is not necessary to assure that State court decisions are not unreasonably overturned by the Federal courts.

The Specter bill does not address this important issue, and thus does nothing to reduce the current confusion.

The definition in my proposal embodies a mainstream view of the proper role of habeas corpus: the Federal courts should independently apply prevailing legal standards to the facts of a particular case; they should not upset State sentences based on intervening decisions that change that prevailing legal standards and they should not defer to judgments that rest on incorrect—although reasonable—interpretations of Federal law.

This definition protects State courts from being blindsided by the award of habeas relief, while at the same time ensuring that Federal habeas corpus continues to exist as a check on incorrect State decisions.

I especially want to thank the National District Attorneys Association for literally hundreds of hours over a period of months that they sat and worked with my staff and interested parties on what I believe was truly a reasonable and workable compromise, as well as with the attorneys general.

I particularly want to thank William O'Malley, Bob Macy of the National District Attorneys Association, and their staff. I want to thank the State attorneys general. I would like to thank Mike Moore of Mississippi and Scott Harshbarger of Massachusetts, Ernie Preate of Pennsylvania, Charlie Oberly of Delaware, and former Attorney General Robert Del Tufo of New Jersey—all of them—for their hard work and again hundreds of hours that we spent trying to fashion a compromise.

I will be back with a habeas corpus bill. It will not be the Specter bill. It will be the Biden bill we pulled out of here and can be amended by the Senator from Pennsylvania, if he so chooses, and that is his right. And maybe he has ways that can improve the approach we had in the underlying crime bill.

But I want to make it clear, I do not support the Specter bill on its merits because I think it lacks merit, not because of everything having to do with Christmas trees. If I thought that we could get habeas corpus passed this year, I do not think anyone in their right mind would suggest I withdraw something I worked on for a couple hundred hours to substitute it for something I think is flawed.

So my opposition to this is on the merits, and I strongly urge my colleagues when they come to the floor for reasons of procedure, reasons of merit, and reasons of facilitating moving this and the Brady bill later, to move to table the Specter bill. I so move. I make the motion, Mr. President.

The ACTING PRESIDENT pro tempore. The yeas and nays are already in order.

Mr. BIDEN. I yield my time.

The PRESIDING OFFICER (Mrs. MURRAY). The question occurs on the motion to table the bill S. 1657.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

The result was announced—yeas 65, nays 34, as follows:

[Rollcall Vote No. 374 Leg.]

YEAS—65

Akaka	Feingold	Mack
Baucus	Feinstein	Mathews
Bennett	Ford	McConnell
Biden	Glenn	Metzenbaum
Bingaman	Graham	Mikulski
Boren	Grassley	Mitchell
Boxer	Harkin	Moseley-Braun
Bradley	Hatch	Moynihan
Breaux	Hatfield	Murray
Bryan	Heflin	Nunn
Bumpers	Hollings	Pell
Campbell	Inouye	Pryor
Coats	Johnston	Riegle
Conrad	Kennedy	Robb
Coverdell	Kerrey	Roth
D'Amato	Kerry	Sarbanes
Daschle	Kohl	Sasser
DeConcini	Lautenberg	Shelby
Dodd	Leahy	Simon
Domenici	Levin	Thurmond
Durenberger	Lieberman	Wellstone
Exon	Lott	

NAYS—34

Bond	Gramm	Pressler
Brown	Gregg	Reid
Burns	Helms	Rockefeller
Byrd	Hutchison	Simpson
Chafee	Jeffords	Smith
Cochran	Kassebaum	Specter
Cohen	Kempthorne	Stevens
Craig	Lugar	Wallop
Danforth	McCain	Warner
Dole	Murkowski	Wofford
Faircloth	Nickles	
Gorton	Packwood	

NOT VOTING—1

Dorgan

So, the motion to lay on the table (S. 1657) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. ROBB. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1607, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1607) to control and prevent crime.

The Senate resumed consideration of the bill.

Pending:

(1) Levin amendment No. 1151, to improve Federal and State automated fingerprint systems to identify more criminal suspects.

(2) Feinsten amendment No. 1152 (to Amendment No. 1151), to restrict the manufacture, transfer, and possession of certain semiautomatic assault weapons and large capacity ammunition feeding devices.

(3) Dole (for Helms) amendment No. 1159, to repeal the prison caps and provide for reasonable and proper enforcement of the eighth amendment.

(4) Dole (for Smith) amendment No. 1160, to restrict Federal financial assistance to States if they do not comply with certain criminal justice programs.

(5) D'Amato/Hatch amendment No. 1199, to provide the death penalty for engaging in a continuing criminal drug enterprise involving a large quantity of drugs.

(6) Levin amendment No. 1204, to provide for the imposition of the penalty of life imprisonment without the possibility of release rather than imposition of the death penalty.

The PRESIDING OFFICER. The question occurs on amendment No. 1152, offered by the Senator from California [Mrs. FEINSTEIN]. The vote will be by voice vote.

The majority leader.

Mr. MITCHELL. 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.

VOTE ON AMENDMENT NO. 1152

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California [Mrs. FEINSTEIN]. The yeas and nays have been ordered and 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 VICE PRESIDENT. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 56, nays 43, as follows:

[Rollcall Vote No. 375 Leg.]

YEAS—56

Akaka	Feinstein	Metzenbaum
Baucus	Ford	Mikulski
Biden	Glenn	Mitchell
Boren	Graham	Moseley-Braun
Boxer	Harkin	Moynihan
Bradley	Hatfield	Murray
Brown	Inouye	Nunn
Bumpers	Jeffords	Packwood
Byrd	Kassebaum	Pell
Campbell	Kennedy	Pryor
Chafee	Kerrey	Riegle
Coats	Kerry	Robb
Conrad	Kohl	Rockefeller
Danforth	Lautenberg	Roth
Daschle	Leahy	Sarbanes
DeConcini	Levin	Simon
Dodd	Lieberman	Wellstone
Exon	Lugar	Wofford
Feingold	Mathews	

NAYS—43

Bennett	Dole	Hollings
Bingaman	Domenici	Hutchison
Bond	Durenberger	Johnston
Breaux	Faircloth	Kempthorne
Bryan	Gorton	Lott
Burns	Gramm	Mack
Cochran	Grassley	McCain
Cohen	Gregg	McConnell
Coverdell	Hatch	Murkowski
Craig	Heflin	Nickles
D'Amato	Helms	Pressler
Reid	Smith	Wallop
Sasser	Specter	Warner
Shelby	Stevens	
Simpson	Thurmond	

NOT VOTING—1

Dorgan

So the amendment (No. 1152) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table. The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 1151

The VICE PRESIDENT. The question now occurs on the underlining amendment, No. 1151, offered by the Senator from Michigan [Mr. LEVIN].

The Senator from Michigan.

Mr. LEVIN. Mr. President, this amendment says that the FBI shall report to the Congress by June, 1994, regarding how it can accelerate and improve automated fingerprint systems at the State and Federal level in order to use fingerprints found at the scene of a crime to identify more criminal suspects more quickly and effectively.

The automated fingerprint systems store the fingerprints of suspects and convicted felons in an automated file. These systems can be used to compare latent prints lifted at a crime scene against fingerprints of prior offenders already on file, and when comparing prints of a suspect against those of persons wanted, charged, or convicted for offenses committed in other jurisdictions.

The FBI is planning on fully automating its fingerprint identification and criminal history record system including implementation of a Federal-State-local partnership for maintaining and exchanging fingerprint and criminal history records.

The integrated system, known as IAFIS, permits law agencies to run far more fingerprint checks than are feasible with manual processing. Many States and the FBI have made significant progress over the last decade in automating these systems. But the extent of automation and quality of records varies widely, and significant gaps in automation and record quality exists.

IAFIS emphasizes the electronic scanning, transmission, processing, and storage of fingerprints. The full transition from paper to electronic is expected to take years. Most record activity is within the home States because most criminals commit crimes near where they live. About 20 percent of State offenders have multi-State records. States face a major challenge as it is in maintaining high-quality criminal history records on their own. For IAFIS to work, each State would have to upgrade and automate its recordkeeping system and have systems that are compatible with the FBI system.

There are examples of the potentially high success rate of automated latent searches conducted at the State-regional-local level and many States report that old and/or difficult criminal cases have been solved due to latent matches that could not have been conducted manually.

California's system is one example. California has a statewide automated fingerprint identification system which provides automated fingerprint and criminal record services to local, county, and State law enforcement agencies. It searched over 7,000 crime scene fingerprints against the database yielding positive identifications in over 600 cases.

Each State's capabilities differ. The system is a tierd system where searches are first done at the local level—police departments—since most criminals live in the same locality where they commit crimes—and unmatched prints are sent to the State level, and finally to the FBI. The latent data is collected by caseload where there could be from 1 to 100 latent prints per case.

A fairly good automated fingerprint system could match 15 to 20 percent of latent print cases at the local level leading to the identification of a suspect in the crime. The State level could match another 5 to 15 percent of the latent cases sent there. Currently, approximately 15 percent of the latent cases sent to the FBI identify a suspect. For example, in 1992, there were about 13,000 latent cases sent to the FBI. Of that, about 2,000 of the cases identified suspects. That's a 15-percent success rate. In those 2,000 cases, a total of 2,427 suspects were identified because in some cases there are multiple suspects. And currently, most of the identifications at the FBI level are not done through a modern automated system because the FBI doesn't currently have a very good automated system. That is why this system needs to be improved.

If a totally automated system were developed where the FBI can access every State system, with the most advanced equipment, we'll see an appreciable percentage of increased matches leading to the identification of additional suspects. The increase could range as high as 30 percent more matches made, depending on how good the system is to start with on the local and State level.

Using the 1991 50-State latent caseload as the base, I will give you an example of what this might mean in raw numbers. In 1991, in the 50-State latent cases, there were 113,085 total cases of which 43,038 cases were submitted to States' automated systems and of that, 6,400 suspects were identified through those systems. That is a 15-percent match rate at the State level in 1991. An improvement of 30 percent over that base would mean roughly 13,000 more suspects would be identified.

The fight on crime has many battlegrounds. We need to consider whatever

advanced technologies in fighting that battle. Improving the automated fingerprint system is one tool that we must explore. This amendment will help us do that.

Mr. President, I ask unanimous consent that an article from the New York Times dated November 12, 1993, entitled "Fingerprint System Extends Arm of the Law" be printed in the RECORD.

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

[From the New York Times, Nov. 12, 1993]

FINGERPRINT SYSTEM EXTENDS ARM OF THE LAW

(By Margot Slade)

They thought they had gotten away with murder: the intruders who shot a Houston minister in his home in 1991; the man in Miami who ambushed a police officer in 1981; the one in Los Angeles who in 1963 strangled and bludgeoned a waitress during a burglary and attempted rape.

In each case there were no witnesses and nothing to connect the killers to the victims. There were, however, fingerprints. But investigators knew that it might take days, weeks, sometimes months, to identify the prints' owner—assuming they were on file.

But now a new technology is changing that. The automated fingerprint identification system, or Afis, is tracking criminals across the United States. And years after they committed their crimes, it is catching them.

"In under two hours the computers that power Afis can do what it would take a human being 159 years to complete—quickly identify culprits by searching through thousands, sometimes hundreds of thousands, of fingerprints on file to match a latent print taken from the scene of a crime with the prints of the person who did the deed," said Douglas D. Woodlee, the chairman of the Afis committee for the International Association for Identification. The association is made up mostly of law-enforcement officers and deals with the forensic sciences.

30-YEAR-OLD MYSTERY SOLVED

Debbie L. Benningfield, a fingerprint examiner with the Houston police department who has been working with the Afis technology since its inception, said investigators "are solving cases that were previously unsolvable, and by getting bad guys off the streets we're preventing crimes from happening."

In Los Angeles, for example, the police tested their new system in 1990 by having the computer compare the fingerprints of known criminals with those taken from the scenes of the department's oldest unsolved crimes. The search matched the prints of Vernon Robinson, who had some runins with the law about 20 years ago, with those found in the Hollywood apartment of Thora Marie Rose, a waitress who had been slain 30 years ago. Mr. Robinson faces 25 years to life in prison when he is sentenced next month.

Two years ago in Houston, intruders kicked in the door of a minister's house, then shot the minister when he went to investigate. "His wife was upstairs, so there were no witnesses, and the intruders left only some plastic bags, so there were no obvious clues," Officer Benningfield said.

But the bags yielded a fingerprint, which was run through Houston's Afis system. Within 24 hours, the police had a match, and an arrest. The culprit turned in his two companions.

ALMOST SMOKING GUN TO JURIES

Fingerprints are an old-fashioned tool for prosecutors, but one with considerable power, lawyers say. "Juries can identify with fingerprints, since they know about them from watching TV," said David Gilbert, deputy chief of the major crimes division of the State Attorney's Office in Dade County, Fla. "The only thing you have to prove is that the print was left during the commission of the crime."

Scott Nelson, chief of the felony trial division of the Cook County States Attorney's Office in Illinois, said he had prosecuted cases in which a fingerprint was the only major piece of physical evidence. "Defense attorneys are often left asking juries, 'Are you willing to send this man to prison based on a few ridges?'" Mr. Nelson said. "I have found that juries have no problem answering, 'Yes.'"

Fingerprint evidence is becoming even more powerful as the systems for matching them link up with each other electronically.

Thirty-nine states and the District of Columbia, along with some 350 towns, cities and counties now use Afis technology, said Mr. Woodlee, who supervises the Tennessee Bureau of Investigation's records and identification unit. Ohio and New Hampshire are also planning to install the systems, he said. For a local or county jurisdiction, a basic system with installation and training costs $2 million to $4 million.

Over the next 10 years, the Federal Bureau of Investigation will be spending $600 million upgrading and extending its fingerprint imaging and matching system, steps in establishing a computerized national fingerprint file.

"With a database of 30 million unique cards—one for each person in our criminal files—and more than 32,000 fingerprint searches a day, we want to answer police department requests for fingerprint matching in hours, not in the two to three months it currently takes," said Peter T. Higgins, the deputy assistant director for engineering in the F.B.I.'s Criminal Justice Information Services Division.

Fingerprint search time with local and state-level Afis systems has been reduced to seconds. Although the systems differ depending on the vendor—Morpho, a French company, NEC Technologies Inc. and Printrak Inc. are the major suppliers—they work in essentially the same way.

Fingerprints, called latents, taken from a crime scene are scanned into a computer using a special magnifying camera. A fingerprint examiner then marks identifying characteristics, and the computer translates the resulting map into a digital code. With this data, the computer can quickly compare new prints with ones on file at rates faster than 1,800 prints per second.

If witnesses to the crime can describe the culprit, in terms of sex, race and age, for example, the computer can narrow the search.

Once the computer finds 20 top candidates, those prints are displayed on a screen so the examiner can conduct a side-by-side comparison.

"If they match, we go ring our cow bell," Officer Benningfield said. "Using computerized arrest records, we can attach a name and criminal history to the matching print and tell our officers who the culprit is."

The automated system can also start with known prints taken from a suspect arrested, say, for driving while intoxicated. "We scan in prints from all 10 fingers and initiate a search of other known prints to see if this person has been arrested before but under a different name," Officer Benningfield said.

She added, "You cannot imagine the pleasure it gives us to go to that person arrested on a D.W.I. and say, 'You want to tell us about that murder a few years ago?'"

ONE PRINT WAS ENOUGH

Police officers across the country say they have been experiencing that kind of pleasure with increasing frequency.

Lieut. John J. Burzinski, the Afis project manager for the Chicago police, tells of a 1991 slaying that "we never would have solved without Afis." Murderer and victim were strangers to each other. They met in a McDonald's and went to the victim's house, where the homicide occurred. "We just had a print taken from a vodka bottle," said Lieutenant Burzinski.

It was enough. "When detectives went to the guy's door," Lieutenant Burzinski said, "the man announced, 'I knew you'd get me.'"

Louis C. Davis, supervisor of the technical services detail in the City of Miami Police Department, recalls the 1981 slaying of Officer Nathaniel Broom, only three blocks from the police station. The officer had pulled over a car that was driving the wrong way down a one-way street. The driver ran; Officer Broom gave chase and was ambushed in an alley. "The car was stolen and there were no real witnesses," Mr. Davis said.

There was, however, a fingerprint lifted off the car door. "Forty-seven minutes after we ran the print through Afis, we had identified the officer's attacker," he said. "That man is now on death row."

The VICE PRESIDENT. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1151) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL addressed the Chair.

The VICE PRESIDENT. The majority leader.

Mr. MITCHELL. May we have order?

The VICE PRESIDENT. The Senate will be in order.

Mr. MITCHELL. Mr. President, there are four rollcall votes about to occur and I ask unanimous consent that these votes be limited to 10 minutes each.

The VICE PRESIDENT. Is there objection? Without objection, it is so ordered.

VOTE ON AMENDMENT NO. 1159

The VICE PRESIDENT. The question occurs on the motion to lay on the table amendment No. 1159 offered by the Senator from North Carolina [Mr. HELMS].

The yeas and nays have been ordered.

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 (Mrs. MURRAY). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 31, nays 68, as follows:

[Rollcall Vote No. 376 Leg.]

YEAS—31

Akaka	Ford	Moynihan
Biden	Harkin	Murray
Bingaman	Inouye	Pell
Boxer	Kennedy	Riegle
Bradley	Kerry	Robb
Campbell	Kohl	Rockefeller
Conrad	Leahy	Sarbanes
Daschle	Levin	Simon
DeConcini	Metzenbaum	Wellstone
Durenberger	Mitchell	
Feingold	Moseley-Braun	

NAYS—68

Baucus	Feinstein	Mathews
Bennett	Glenn	McCain
Bond	Gorton	McConnell
Boren	Graham	Mikulski
Breaux	Gramm	Murkowski
Brown	Grassley	Nickles
Bryan	Gregg	Nunn
Bumpers	Hatch	Packwood
Burns	Hatfield	Pressler
Byrd	Heflin	Pryor
Chafee	Helms	Reid
Coats	Hollings	Roth
Cochran	Hutchison	Sasser
Cohen	Jeffords	Shelby
Coverdell	Johnston	Simpson
Craig	Kassebaum	Smith
D'Amato	Kempthorne	Specter
Danforth	Kerrey	Stevens
Dodd	Lautenberg	Thurmond
Dole	Lieberman	Wallop
Domenici	Lott	Warner
Exon	Lugar	Wofford
Faircloth	Mack	

NOT VOTING—1

Dorgan

So the motion to lay on the table the amendment (No. 1159) was rejected.

Mr. HELMS. Madam President, I move to reconsider the vote.

The PRESIDING OFFICER. The question is on the underlying amendment.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I ask unanimous consent that the yeas and nays on the amendment be vitiated.

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

The question is on agreeing to the amendment.

The amendment (No. 1159) was agreed to.

VOTE ON AMENDMENT NO. 1199

The PRESIDING OFFICER. The question now is on agreeing to amendment No. 1199 offered by the Senator from New York [Mr. D'AMATO]. The yeas and nays have been ordered. 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. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 74, nays 25, as follows:

[Rollcall Vote No. 377 Leg.]

YEAS—74

Baucus	Bond	Bradley
Bennett	Boren	Breaux
Bingaman	Boxer	Brown
Bryan	Gramm	Nickles
Bumpers	Grassley	Nunn
Burns	Gregg	Packwood
Byrd	Hatch	Pressler
Campbell	Heflin	Pryor
Coats	Helms	Reid
Cochran	Hollings	Riegle
Conrad	Hutchison	Robb
Coverdell	Jeffords	Rockefeller
Craig	Johnston	Roth
D'Amato	Kassebaum	Sarbanes
Daschle	Kempthorne	Sasser
DeConcini	Kerrey	Shelby
Dodd	Lieberman	Simpson
Dole	Lott	Smith
Domenici	Lugar	Specter
Exon	Mack	Stevens
Faircloth	Mathews	Thurmond
Feinstein	McCain	Wallop
Ford	McConnell	Warner
Gorton	Mikulski	Wofford
Graham	Murkowski	

NAYS—25

Akaka	Hatfield	Mitchell
Biden	Inouye	Moseley-Braun
Chafee	Kennedy	Moynihan
Cohen	Kerry	Murray
Danforth	Kohl	Pell
Durenberger	Lautenberg	Simon
Feingold	Leahy	Wellstone
Glenn	Levin	
Harkin	Metzenbaum	

NOT VOTING—1

Dorgan

So the amendment (No. 1199) was agreed to.

Mr. D'AMATO. Madam President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Madam President, may we have order in order to hear this vote?

The PRESIDING OFFICER. The Senate will be in order.

VOTE ON AMENDMENT NO. 1160

The PRESIDING OFFICER. The question occurs on amendment No. 1160 offered by the Senator from New Hampshire [Mr. SMITH]. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from 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 26, nays 73, as follows:

[Rollcall Vote No. 378 Leg.]

YEAS—26

Bennett	Exon	Lugar
Brown	Faircloth	Mack
Byrd	Gramm	McCain
Coats	Grassley	McConnell
Conrad	Hatch	Murkowski
Craig	Helms	Sasser
Daschle	Hollings	Smith
Dole	Hutchison	Stevens
Domenici	Lott	

NAYS—73

Akaka	Bingaman	Boxer
Baucus	Bond	Bradley
Biden	Boren	Breaux
Bryan	Heflin	Nunn
Bumpers	Inouye	Packwood
Burns	Jeffords	Pell
Campbell	Johnston	Pressler
Chafee	Kassebaum	Pryor
Cochran	Kempthorne	Reid
Cohen	Kennedy	Riegle
Coverdell	Kerrey	Robb
D'Amato	Kerry	Rockefeller
Danforth	Kohl	Roth
DeConcini	Lautenberg	Sarbanes
Dodd	Leahy	Shelby
Durenberger	Levin	Simon
Feingold	Lieberman	Simpson
Feinstein	Mathews	Specter
Ford	Metzenbaum	Thurmond
Glenn	Mikulski	Wallop
Gorton	Mitchell	Warner
Graham	Moseley-Braun	Wellstone
Gregg	Moynihan	Wofford
Harkin	Murray	
Hatfield	Nickles	

NOT VOTING—1

Dorgan

So the amendment (No. 1160) was rejected.

Mr. DECONCINI. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 1204

The PRESIDING OFFICER (Mr. MATHEWS). The question is on agreeing to the amendment No. 1204 of the Senator from Michigan [Mr. LEVIN]. On this question, the yeas and nays have been ordered, and 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. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 26, nays 73, as follows:

[Rollcall Vote No. 379 Leg.]

YEAS—26

Akaka	Inouye	Mitchell
Chafee	Kennedy	Moseley-Braun
Cohen	Kerry	Moynihan
Danforth	Kohl	Murray
Durenberger	Lautenberg	Pell
Feingold	Leahy	Sarbanes
Glenn	Levin	Simon
Harkin	McCain	Wellstone
Hatfield	Metzenbaum	

NAYS—73

Baucus	Dodd	Lott
Bennett	Dole	Lugar
Biden	Domenici	Mack
Bingaman	Exon	Mathews
Bond	Faircloth	McConnell
Boren	Feinstein	Mikulski
Boxer	Ford	Murkowski
Bradley	Gorton	Nickles
Breaux	Graham	Nunn
Brown	Gramm	Packwood
Bryan	Grassley	Pressler
Bumpers	Gregg	Pryor
Burns	Hatch	Reid
Byrd	Heflin	Riegle
Campbell	Helms	Robb
Coats	Hollings	Rockefeller
Cochran	Hutchison	Roth
Conrad	Jeffords	Sasser
Coverdell	Johnston	Shelby
Craig	Kassebaum	Simpson
D'Amato	Kempthorne	Smith
Daschle	Kerrey	
DeConcini	Lieberman	

Specter	Thurmond	Warner
Stevens	Wallop	Wofford

NOT VOTING—1

Dorgan

So the amendment (No. 1204) was rejected.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. For the information of the Senate, the Chair announces that under the previous order the habeas corpus provisions have been stricken from the bill.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I now ask that the Chair lay before the Senate H.R. 2401, the Department of Defense authorization conference report.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2401) a bill to authorize appropriations for fiscal year 1994 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1994, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of November 10, 1993.)

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. NUNN. Mr. President, would the Chair please review the time allocation under the unanimous-consent agreement?

The PRESIDING OFFICER. Under the previous order, the Senator from Georgia is allocated 40 minutes; the Senator from South Carolina [Mr. THURMOND] is allocated 40 minutes; the Senator from Arizona [Mr. MCCAIN] is allocated 30 minutes; the Senator from Ohio [Mr. GLENN] is allocated 15 minutes; the Senator from Virginia [Mr. WARNER] is allocated 15 minutes; the Senator from Michigan [Mr. LEVIN] is allocated 5 minutes; and the Senator from Nebraska [Mr. EXON] is allocated 5 minutes.

Mr. NUNN. Mr. President, I thank the Chair.

Mr. President, I would ask to be noticed after I have consumed 15 minutes.

The PRESIDING OFFICER. The Chair will so notify the Senator.

Mr. NUNN. Mr. President, I am pleased to lay before the Senate the conference report on H.R. 2401, the National Defense Authorization Act for fiscal year 1994. This conference report authorizes programs for the Department of Defense, the national security programs of the Department of Energy, and civil defense for fiscal year 1994.

The conferees have worked very hard for the last month to resolve over 1,600 language and funding differences between the House and Senate versions of this bill. Since the House did not complete action on this bill until September 29, we had to finish a difficult conference in a compressed period of time for this broad bill.

I want to thank Chairman DELLUMS, Congressman SPENCE, and the other conferees from the House for their cooperation in this conference. This was Chairman DELLUMS' first conference as chairman of the House Armed Services Committee, and I believe it was also Congressman SPENCE's first conference as the ranking Republican on that committee. As chairman of the conference this year, Chairman DELLUMS did an outstanding job of keeping the conference on track and producing what I believe is a solid conference report.

I also want to thank my friend and colleague, Senator THURMOND, the ranking minority member of the Armed Services Committee, as well as all of the members of the Armed Services Committee, for their cooperation and support throughout the year and throughout the conference. Senator THURMOND has served on a lot of Armed Services conference committees in the past, but this was the first one where he served as ranking minority member of the full committee. It has been a real pleasure working with him on the conference and on the committee throughout the year and, indeed, it has been a pleasure working with him every year since I have been in the U.S. Senate.

Mr. President, under the circumstances, this is a good conference agreement that continues the process of restructuring our Defense Establishment. I say "under the circumstances" because the conferees were forced by Congressional Budget Office scorekeeping rules to make reductions to the budget request of $2 billion in operation and maintenance programs and $4 billion in research and development programs. These reductions were on top of a $9 billion reduction in the fiscal year 1994 defense budget from the fiscal year 1993 level and deeper than I believe prudent.

I am concerned about the impact of these overall reductions on our near-term readiness and on our ability to maintain our qualitative and technological edge. We will depend on these advantages around the world in any kind of confrontation we may have. With the reductions called for in the defense budget over the next several years—and with the reduction we have made this year to the President's budget in order to meet the CBO outlay target—we have to begin to be concerned about the ability of our military forces to carry out their assigned missions. The warning lights are flashing in terms of our military strategy versus our resources, and in terms of our commitments versus our capabilities. This is something we are all going to have to watch very carefully, particularly when we begin work on the fiscal year 1995 Defense budget in just a few short months. I am hoping that President Clinton, Secretary Aspin and other top administration officials in the national security field will also take a new look at our defense commitments around the world, and a new look at the defense budget that they have projected and planned over the next 5 years.

FUNDING AUTHORIZATION

This conference agreement authorizes approximately $261 billion in budget authority for the national defense function for fiscal year 1994, which is about $2.5 billion below the President's request and the budget authority level for defense agreed to in the budget resolution.

This budget authority reduction was necessary because of a scorekeeping dispute between the administration and the Congressional Budget Office concerning defense outlays. As a result of this disagreement, the Armed Services and Appropriations Committees have been required to reduce defense outlays by approximately $2 billion below the level Congress agreed to earlier this year in the budget resolution.

Budget authority represents authority to spend funds and enter into contracts, while outlays are the amounts actually spent during the fiscal year. To reduce outlays by $2 billion, it is necessary to reduce budget authority by a larger amount, since not all budget authority is actually spent during one fiscal year.

This conference report was filed on Wednesday, November 10, and it was printed in the CONGRESSIONAL RECORD of that day. It has been available for Members and staff to review. I want to take a few moments to describe for my colleagues some of the most important provisions in the conference report.

SUBCOMMITTEE ON NUCLEAR DETERRENCE, ARMS CONTROL AND DEFENSE INTELLIGENCE

First, in the areas of strategic deterrence, arms control, and defense intelligence, the conferees fully funded most major procurement and R&D programs; subjected a number of near-term ballistic missile defense programs to reviews for compliance with the

Antiballistic Missile Treaty; and reduced the space and intelligence budgets in line with declining defense resources.

The Defense Department's heavy bomber program was one of the most difficult issues in the conference. On the B-2 bomber, the conferees agreed that it has met all of the required certifications and released for obligation $2.3 billion in prior year funds that had been fenced or withhold until certain conditions had been met. For fiscal year 1994, the conference agreement fully funds the B-2 budget request for procurement and research and development.

On the country's other heavy bomber, the B-1B, the conferees authorized $273.3 million for procurement and $49 million for research and development. Most importantly, we directed the Air Force to test whether the B-1B can achieve its required operational readiness rates if a test wing of B-1B bombers is assigned its normal levels of spares, maintenance, and personnel.

Unlike previous conferences, in which the funding level for the former strategic defense initiative was a contentious difference, the two Houses were very close in their recommendations for the new Ballistic Missile Defense Organization [BMDO]. The conference agreement reduced BMDO funding from the budget request of $3.8 to $2.6 billion.

SUBCOMMITTEE ON COALITION DEFENSE AND REINFORCING FORCES

The conferees approved a series of initiatives in tactical aviation with the goals of establishing an affordable program and improving joint service cooperation. The conference agreement terminates the Navy AFX Program and the Air Force multirole fighter. With the funds saved by canceling the AFX and accelerating the retirement of Navy A-6 attack aircraft, the conferees decided to upgrade Navy F-14 fighter aircraft with bombing capabilities. The conference agreement also authorizes $400 million for 12 F-16 aircraft, which will be the final procurement of this fighter for the Air Force.

The conferees agreed that a more comprehensive approach is needed to improve the U.S. military's ability to support peacekeeping and peace enforcement operations. In the meantime, the conferees took several actions to improve U.S. peacekeeping and peace enforcement capabilities. For example, we authorized $195 million above the budget request for a second JSTARS surveillance aircraft and $5 million for the Joint Chiefs of Staff to develop doctrine for peacekeeping and peace enforcement.

SUBCOMMITTEE ON REGIONAL DEFENSE AND CONTINGENCY FORCES

In the areas of regional defense and contingency forces, the conferees created an intertheater airlift program of $2.3 billion to select competitively the most cost-effective strategy for meeting our strategic airlift requirements. This program will set up a competition between the C-17 aircraft and nondevelopmental aircraft alternatives. The conference agreement authorizes funds for the procurement of four C-17's, but permits the Defense Department to choose to buy as many as six aircraft. The conferees also directed the Defense Department to begin immediately to implement one or more of the airlift alternatives. I believe it is important to start work quickly on the alternatives so that a meaningful competition with the C-17 can be established.

We all hope the C-17 is going to meet its requirements and be able to iron out its considerable problems. But that hope has to be matched by some reality. That is what we are trying to do in this series of alternatives.

In another significant initiative, the conference agreement includes funding to assist the U.S. shipbuilding industry in competing in the world market for commercial ships. The conferees authorized $50 million for a Maritime Technology Program. Maritech, as it is known, will fund, together with matching private sector funds, better ship designs, more effective production methods, and long-range research. A second component of this shipbuilding initiative is $147 million in loan guarantees, on a one-time basis, to support the export of U.S. commercial ships. Matched on a dollar-for-dollar basis by the Transportation Department, these loan guarantees will help our shipbuilders to compete in what is expected to be a large world market for commercial shipbuilding over the next several years.

Most important, it is the hope that this program will help facilitate the kind of industrial capacity that needs to be maintained in this country in order to meet unknown and unforeseeable military shipbuilding requirements in the future.

SUBCOMMITTEE ON DEFENSE TECHNOLOGY, ACQUISITION AND INDUSTRIAL BASE

In the areas of defense technology, acquisition, and the industrial base, the conference agreement maintains the momentum of the Defense Reinvestment and conversion Program enacted last year. The conferees added $300 million to the budget request of $324 million for the industry and technology portion of the conversion program. This increase will sustain funding for this important program at the fiscal year 1993 level.

The conferees also took other significant defense technology initiatives. We approved $150 million for the Strategic Environmental Research and Development Program, an increase of $50 million to the budget request; $15 million was added to increase the capacity of historically black colleges and universities to educate scientists and engineers. Finally, we added $20 million to the Defense Department medical research budget request of $180 million for research on women's health issues that relate to service in the Armed Forces.

Mr. President, I would like to point out that the conference considered these conversion and defense technology initiatives to be important enough to fund at the same time that the research and development budget request had to be cut by about $4 billion in order to meet the outlay target of the budget resolution.

SUBCOMMITTEE ON MILITARY READINESS AND DEFENSE INFRASTRUCTURE

In the areas of military readiness and the defense infrastructure, the outlay target of the budget resolution again forced the conferees to make funding reductions—in this case, about $2 billion in operation and maintenance cuts. The conferees encouraged the Secretary of Defense to reprogram funds from other areas of the defense budget if these reductions harm training or readiness.

This is an area of great concern. We have invited reprogramming because we do believe that there is going to be a severe squeeze in this area, based on the cuts that we were required to make.

Within these tight budget constraints, the conference agreement contains an additional $300 million to reduce the backlog of equipment overdue for repair and an additional $500 million for key readiness shortfalls, such as operating and training tempo. Offsetting reductions were made in the Defense Department environmental restoration funding; counterdrug programs; inventory levels; and foreign currency costs.

The conferees also agreed to a series of provisions that will allow the Defense Department and other Federal agencies to revitalize base closure communities. These provisions build on President Clinton's five-point plan for community recovery, and will:

Allow the Secretary of Defense to transfer or lease portions of properties on closing bases at no or reduced cost to local redevelopment authorities for economic reuse;

Expedite the DOD and Federal agency property screening process at closing bases so that impacted communities can begin a timely plan for economic redevelopment;

Direct DOD to work with State and Federal regulators to speed the environmental cleanup process at closing bases and focus on those parcels that are of greatest value for reuse; and

Provide planning grants through the Office of Economic Adjustment to local communities to prepare and implement economic redevelopment plans.

SUBCOMMITTEE FOR FORCE REQUIREMENTS AND PERSONNEL

In the areas of manpower and compensation, the conference agreement

makes the prudent reductions in military personnel strengths called for in the budget request. At the same time, it protects the quality of life for service members, their families, and those who leave the military during the drawdown.

We are trying to protect the men and women in the military as much as possible under this difficult transition.

The conferees expressed their concern over the future end strength of the Army. In particular, we were not convinced that the Army's end strength can be reduced below its fiscal year 1994 level if the Army is to continue its various peacekeeping missions and maintain the capability to respond to two major regional contingencies nearly simultaneously, as called for in Secretary Aspin's Bottom-Up Review. Accordingly, the conference agreement specifies that the Army's strength may not fall below 555,000 before April 30, 1994, and thereafter only if the President certifies that Army forces can carry out their missions adequately. Furthermore, the active duty strength of the Army could not be reduced below 540,000 in fiscal year 1994, and thereafter only if the President certifies the Armed Forces can carry out their missions adequately.

Further, the active duty strengths of the Army could not be reduced below 540,000 in fiscal year 1994.

Mr. President, two significant general provisions should be mentioned. First, the conference agreement establishes a firm basis in law for the Defense Department policy on homosexuality in the Armed Forces. This provision is identical to the legislation contained in both the Senate and the House bills and is consistent with the Clinton administration's policy as set forth and articulated by Secretary Aspin and the Joint Chiefs of Staff in hearings before Congress.

A second general provision authorizes $10 million to continue an enormously important program. Speaking personally, I wish we could have put $20 million, $30 million, $40 million into this program. I urged that course but was not successful in getting more than $10 million. That is a program to continue military-to-military contacts between U.S. Armed Forces and the Armed Forces of newly democratic countries. These contacts assist the military forces of other countries in both their military role and, most important, in understanding the appropriate role of military forces in a democratic society. I consider this one of our most important opportunities and one of our most important programs. It is my hope that the Department of Defense, if they find they need more money—which I believe they will—will ask for a reprogramming in this area as well.

As the highlights of this conference agreement indicate, the conferees on the Defense authorization bill for fiscal year 1994 reached a sound compromise in very difficult circumstances. I recommend it to my colleagues for approval.

At the same time, however, I would like to reiterate my concern about the erosion in the Defense budget. The conference agreement we are considering today supports American soldiers, sailors, airmen, and marines who are operating in combat conditions over southern Iraq, off the cost of Bosnia, in Somalia, in Europe, in Korea, in Japan, and other strategic places in the world. But the readiness of these forces and the forces who are training to take their place is, I think, beginning to be threatened by disproportionate cuts in the Defense budget.

Mr. President, there has to be a wake-up call that we must either adjust our defense resources or our expectations of what our military will be able to do, because the two are going in opposite directions: One is shrinking while the other is growing. We are beginning slowly but surely to have a mismatch among our commitments and our capabilities, as well as the strategy that is supposed to link them. I hope that the administration and Congress will come to understand this fundamental problem and will work together to address it. I will be bringing it to the attention of the administration more and more. I am planning on speaking on this subject again in the near future, and I also will be communicating with the administration about some of the problems, not simply where we are but where we are going to be in 2½ or 3 years based on the budgets that are going to be coming down the line in the next year or two unless something is changed.

Mr. President, before I complete my remarks, I again want to thank Senator THURMOND and all the members of the Armed Services Committee, particularly those who have chaired the subcommittees and who have been ranking Republican members of those subcommittees, for their work on this conference report. This bill has grown so large that the vast majority of the work of the conference is done in panels made up of subcommittee memberships. Without the active participation of all the committee members, we could not have completed the conference successfully.

I also want to thank the staff of the Armed Services Committee for their hard work and outstanding help on this conference under the effective leadership of our staff director, Arnold Punaro, who is absent today, and David Lyles—these two have done a magnificent job—and Andrew Effron, who has done an outstanding job; and Dick Reynard, minority staff director. The majority and minority staffs have continued to work together under these fine leaders and have carried out the committee's tradition of bipartisanship by working closely together to carry much of the burden in this conference.

I would also like to add a special note of appreciation to Greg Scott and Charlie Armstrong of the Senate Legislative Counsel's Office, and Bob Cover, Sherry Chriss, Judy Sheon, and Greg Kostka of the House Legislative Counsel's Office for their excellent work on this bill.

One member of the majority staff deserves special commendation for the particularly heavy load he shouldered during this conference. When John Hamre left the committee staff last month to become comptroller of the Department of Defense, Creighton Greene stepped in and assumed John's responsibilities in addition to the already extensive duties he was performing. Creighton had staff responsibility for some of the most controversial issues and most important issues in the conference, such as the C–17 airlifter, the F–16 fighter, and the shipbuilding initiative. Needless to say, Creighton, as well as other staff members, worked long hours for many weeks and over almost every weekend for the last 6 weeks and handled his responsibilities extremely well.

Mr. President, too many people do not realize the amount of work that goes into this, particularly by the staff. I know I speak for my staff when I say they worked every single weekend for the last four weekends, as well as 70-hour weeks, and worked on Saturday and Sunday and many, many nights during the last 30 days. So I thank all of them for their superb work and for their sacrifice. They believe in our national security. They are dedicated to it, and that is the reason they are able to put out this kind of product and this kind of energy.

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

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina [Mr. THURMOND] is recognized.

Mr. THURMOND. I yield myself such time that may be required.

Mr. President, I join the able chairman of the Armed Services Committee, Senator NUNN, in presenting to the Senate the conference report on the fiscal year 1994 national defense authorization bill. This report is the best compromise we could achieve considering the restrictions of the budget resolution and the scorekeeping rules imposed by the Congressional Budget Office. The conference report provides the necessary funding to sustain operations and to continue critical modernization of our Armed Forces although the overall funding level is, in my judgment, the bare minimum.

Mr. President, I am especially troubled over the $2 billion in reductions

we were required to make in the operations and maintenance account to meet the outlay target of the budget resolution. This significant reduction comes at a time when our forces are still engaged in Somalia, patrolling off the coast of Bosnia, enforcing U.N. sanctions on Haiti, containing a still dangerous Saddam Hussein, and watching the activities in North Korea. I am concerned that we are walking a fine line in being able to sustain the readiness of our forces. In this regard, I am joined by many of my colleagues on both sides of the aisle in urging the administration to look more closely at the relationship between resources allocated and commitments of our forces as they develop the fiscal year 1995 defense budget. Otherwise, we face a return to the hollow force of the late 1970's and early 1980's, which may not be able to meet the security challenges of a still dangerous world.

We must also do better in reconciling the disconnect between the Office of Management and Budget and the Congressional Budget Office in scoring. Because of disagreements in accounting procedures, we are penalizing our operating forces. The budget submission is prepared based on Office of Management and Budget scoring. The Budget and Appropriations Committees make their allocations based on Congressional Budget Office scoring. When these two agencies are billions of dollars apart in their scoring, as they were this year, we find ourselves cutting essential programs to meet scoring targets. I am not attempting to address blame. I only urge that, in order to most efficiently apportion a reduced budget, the agency which guides the budget preparation and the agency which guides the congressional allocations work from a common base.

An additional concern is the $1.2 billion reduction in funding for the Ballistic Missile Defense Organization. These reductions are shortsighted in view of the continuing spread of missile technology and weapons of mass destruction. We are finding to our chagrin that mere diplomacy will not stop rogue regimes like Iraq, Iran, and North Korea from developing such weapons. We must maintain the option to render a chemical or nuclear tipped missile less threatening. In my judgment, only an effective missile defense system can do this job.

Mr. President, the distinguished chairman has provided a succinct summary of the conference report. I want to highlight those issues that I consider especially important to the Nation and our military forces.

The conference report provides for a 2.2-percent pay raise for our military personnel. Although not in the administration's request, this increase is critical to maintaining the morale and welfare of our men and women in uniform. We should all remember that at a time when we are drastically reducing our forces, we have them operating at a pace that is equal to that of the cold war. The legislation also makes into law the policy on homosexuals in the military; it supports the Senate's position on the B-2 bomber program, which is one of the more critical modernization programs for our military; it provides strong provisions to help those communities like Charleston, SC, that are being devastated by base closure; and finally, it implements a defense conversion program that is vital to maintaining the industrial base of the country.

Mr. President, I want to thank Senator NUNN, our distinguished chairman; Representative DELLUMS, the able chairman of the House Armed Services Committee; and, FLOYD SPENCE, my friend, counterpart, and fellow South Carolinian, for their cooperation and good work. It was this spirit of cooperation that made the conference agreement possible.

Mr. President, I also want to recognize the hard work of the Senate Armed Services Committee staff, the chiefs of staff, Gen. Dick Reynard and Mr. Arnold Punaro, and their House counterparts. They worked many long hours to assist us in resolving the hundreds of differences between the two bills.

I wish to pay special tribute to our able chairman, SAM NUNN, whose great ability, hard work, and dedication have contributed immeasurably to the national defense of this country and to the welfare of the men and women in uniform.

Mr. President, in closing, I urge my colleagues to join Chairman NUNN and me in supporting this conference report. Like most legislation, it is a compromise that will not please everyone. However, it does provide the essential resources our soldiers, airmen, sailors, and marines need to provide the defense capability that our citizens expect and deserve.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, while we are waiting for other Senators who are going to speak on this conference report to come to the floor, I wish to call the attention of those of us in the Senate and in the Congress to a very important matter.

There has been a lot of concern in the Congress about the possibility that our service men and women may have been exposed to hazardous chemical agents and maybe even chemical weapons during the Persian gulf war. We are all well aware of the highly publicized oil well fires that engulfed large portions of the theater of operations in which our troops maneuvered.

We are also aware of reports by Czech Republic chemical defense units serving with coalition units that they detected small quantities of chemical agents on two separate occasions.

At this time, both the Defense Department and the Department of Veterans Affairs are trying to discover the causes of the ailment that has plagued U.S. personnel who served in the Gulf war. This ailment is commonly referred to as either the mystery illness or the Persian Gulf syndrome.

The conference report we have before us today includes a provision originally proposed by the Senator from Michigan [Mr. RIEGLE] that authorizes $1.2 million for the Secretary of Defense to study, in consultation with the Secretaries of Veterans Affairs and Health and Human Services, the effects of exposure to chemical agents including chemical warfare agents on Gulf war veterans.

I wish to congratulate Senator RIEGLE for his tremendous efforts in this important area and for his leadership.

We have asked Senator SHELBY, chairman of the Subcommittee on Force Requirements and Personnel of the Armed Services Committee to undertake an intensive look in this area. Senator SHELBY has been very active in this area. He has displayed a keen interest and insight. He is going to be traveling to Europe at my request next month to take an intensive look into this matter, and certainly anyone who has any suggestions or ideas I would suggest you contact either our committee or Senator SHELBY directly.

We are enormously concerned about the men and women who serve in our military. They sacrifice; many times they even sacrifice in ways we do not even imagine. I hope we will be able to work on this intensely. I hope the Department of Defense and Veterans Affairs will intensify their efforts. Our committee is going to stay on top of this.

I want to assure all the men and women who served in the gulf we are going to do everything we can to find out what the problem is and to do everything we can to help cure that problem as soon as we possibly can.

I wanted to call that to the attention of our colleagues because it is a matter about which I am sure many people are concerned.

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

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I suggest the absence of a quorum, the time to be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. GRAHAM. Mr. President, I ask unanimous consent that there be a period for morning business in which I can deliver a statement on a subject unrelated to that which is currently under the consideration of the Senate, and that no time be charged during the pendency of the morning business session.

Mr. NUNN. Reserving the right to object, how much time?

Mr. GRAHAM. For 5 minutes.

Mr. NUNN. I have no objection.

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

NAFTA

Mr. GRAHAM. Mr. President, over the past several days, I have indicated that it is my intention to vote for the North American Free-Trade Agreement when it is presented to the Senate.

I would like to take this opportunity to briefly explain the basis of my decision.

As with most of my colleagues, I have looked at this issue both in terms of its impact on the Nation and its impact on our specific State.

In the case of the State of Florida, I have been particularly influenced by an analysis conducted by the Federal Reserve Bank of Atlanta relative to the effect of NAFTA on the State of Florida. This analysis indicated that almost every one of the major economic sectors of our State, from electronics and high technology, engineering services, transportation equipment, durable goods, tourism, and chemicals would benefit by NAFTA as it was originally written.

The one area in which the Federal Reserve study indicated the possibility of a negative effect was in agriculture. This has been an area of great concern to the Florida delegation. Over the past several weeks, the delegation has met many times with representatives of the administration to express our concerns.

As a result of that, the administration has come forward with a series of accommodations which have had the effect of softening the impact of the North American Free-Trade Agreement on some of our products which would be most vulnerable to increased competition.

The farmers of Florida are prepared to compete with any farmers anywhere as long as they are doing so under a set of parity standards of products and marketing. I believe that has been accomplished. And as a result of that, many of the major agricultural organizations in Florida, including the Florida Fresh Fruit and Vegetable Association, the Florida Citrus Mutual Sugarcane League, and others, have now indicated their support for the North American Free-Trade Agreement.

So I can say as a Floridian that the North American Free-Trade Agreement will be good for Florida, will create jobs in Florida, and will increase the economic opportunities for Floridians.

Mr. President, I believe that there is another issue that goes beyond the immediate economic calculation of the North American Free-Trade Agreement; that is, where does this decision place our generation of Americans in our national history? I believe that the North American Free-Trade Agreement has implications beyond its immediate economic considerations and goes to the question of a defining moment in terms of where we see ourselves and our Nation.

I believe that those choices that we are making in our vote on the North American Free-Trade Agreement include economic choices. Does America at the end of the 20th century see itself as a country whose future is going to be inward, protectionist, or do we see ourselves as an optimistic expansionist country which is prepared and is preparing itself to continue to be able to compete anywhere in the world?

It is also a cultural statement. Are we a nation which is now timid in the face of expanded competition, expressing that timidity in an appeal to a narrow nationalism, or are we culturally going to be a country which will grasp the opportunity that it has to lead in this post-cold-war era?

And it also is a political statement. It is a political statement in terms of where the United States priorities will be in the world.

I want to particularly, Mr. President, underscore the significance of the political statement that we are making to our nearest neighbors in the Western Hemisphere.

For most of this century, the countries of the Western Hemisphere have adopted their own form of protectionist economic policy, import subsidies, a reluctance to compete in a global marketplace. That set of practices resulted not only in authoritarian political rule, resulted in a tremendous disparity of the distribution of income between wealth and poverty, but also resulted in high levels of national debt and a backwardness to much of the economy of Latin America.

The last decade has seen a reduction of those old economic theories and a willingness for the major Latin American economies increasingly to compete, to grow, to export, and to—Mr. President, I would like to request an additional 3 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. Mr. President, reserving the right to object, I probably will not object; all Senators have very pressing schedules at this time. I certainly hope that the Senator from Florida will recognize that we are on the defense authorization bill.

So long as the time is not extended beyond 3 minutes, I will be glad to delay the people that I have waiting for me to accommodate my friend from Florida.

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

Mr. GRAHAM. Thank you, Mr. President. I appreciate the courtesy of the Senator from Nebraska.

Mr. President, all over Latin America, that development of the last 10 years is now under challenge. There will be a series of elections throughout Latin America in the next few months, and in virtually every one of those elections the central issue will be should our Nation continue on the course of free markets and free enterprise or should we revert to our previous socialist status positions?

One of the determinative factors in those elections will be what we decide to do on the North American Free-Trade Agreement. If America sends a signal that it is turning protectionist and that it is going to be closing its economic borders to our neighbors throughout the hemisphere, it will embolden those forces that want to return their nations to their previous patterns of protectionist economies.

That will be very negative for the United States. It is very much in our interest to see that the new democracies in Latin America succeed, that the roots of democratic institutions deepen, and that their commitment to a free market is sustained.

Our vote on the North American Free-Trade Agreement will have a significant impact on whether that movement is aborted or whether it goes forward and achieves its ultimate potential.

Mr. President, every generation of Americans has faced its own particular challenge. In almost every one of those instances, there has been a very strong attraction to stay with the known, to stay with the comfortable, to eschew the future. America has been asked of our generation whether we have already reached our zenith; are we in historical terms now on the downhill of American history?

I reject that definition of where we are in American history. I believe that our generation will see a further expansion of these kinds of opportunities and growth and potentials for individual freedom.

This is a defining moment for our Nation. America is at its best when we are facing the future, not attempting to recapture the past.

That is fundamentally what is at issue with the North American Free-Trade Agreement. I look forward, with enthusiasm, to the opportunity to vote for it in the U.S. Senate. I believe that the American people will look back at this moment in our history and say that we were well served by those who represented us in positions of national responsibility at this point in time and

that we grasped that opportunity to build an even greater America.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, I will not use all of my 5 minutes. I will then yield back what time I do not use to the manager of the bill, Senator NUNN from the State of Georgia.

Mr. President, first, I want to compliment, once again, our distinguished chairman of the Armed Services Committee, Senator NUNN, and his counterpart, Senator STROM THURMOND from South Carolina. I have worked with these two distinguished Members of the Senate for 15 years now on military matters, and suffice it to say I believe that it was a difficult task they had this year in coming to an agreement with the House on the different versions of the defense authorization bill, and their efforts were exemplary.

I compliment both Senator THURMOND and Senator NUNN for their tireless efforts, and I highly recommend that the Senate accept the conference report.

Having said that, Mr. President, I recognize and realize that there may be some legitimate complaints. There may be some very legitimate points about what was or was not done in this particular bill. Never have I seen a conference report on the defense authorization or other authorizations that was perfect. I simply say that this is a product of an awful lot of very difficult negotiations and hard work.

It may be true that we are cutting the defense authorization too heavily, but I believe that, collectively, on a bipartisan basis, the Senate authorizers came up with a very good plan and have maintained most of the elements of that plan to adequately protect and fund our national security as a result of the conference with the House. Once again, I say that I think they, collectively, in a bipartisan fashion, continue to be concerned about some of the earmarkings that we run into each and every year from the House of Representatives, earmarking certain funds, certain projects, certain pork barrel, certain pet schemes. We did not eliminate all of them in this particular bill, but we eliminated a great many of them.

If there is any one message, I hope that as we move forward to maintain a national security second to none in the world, we dedicate ourselves to this matter of earmarking, pork barreling that has reared its ugly head from time to time and again this year on the defense authorization bill.

Having said that, I reserve the remainder of my time and close again with a salute to the excellent efforts that have produced a good product under the leadership of Senator NUNN and Senator THURMOND.

I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

PRIVILEGE OF THE FLOOR

Mr. MCCAIN. I ask unanimous consent that one of my staff members, Susan Hall, be granted the privilege of the floor.

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

Mr. MCCAIN. Mr. President, I have addressed the Senate a number of times this year concerning the continuing decline in defense spending and its adverse impact on the readiness of U.S. military forces. In July, I published a report on this subject entitled "Going Hollow: The Warnings of Our Chiefs of Staff." My more recent comments have also focused on a serious problem in the congressional budget review process which result in the appropriation of funds for programs and projects which were not requested or authorized and which allow the Congress to earmark scarce dollars for special interest projects. I hope that my colleagues have had an opportunity to review my remarks and the information I submitted for the RECORD.

Mr. President, the importance of devoting adequate resources to national defense is heightened in the context of post-cold-war global instability and the potential threat of proliferation of weapons of mass destruction.

Today, as we consider the conference report on the fiscal year 1994 Defense Authorization Act, American soldiers are stationed in Somalia risking their lives at the request of their Nation. The Clinton administration is still considering a possible role for United States troops in the civil war in Bosnia. The possibility of United States intervention to restore the Aristide government in Haiti is still under discussion both within the administration and in the United Nations. Tens of thousands of nuclear weapons remain on the territories of Russia, Ukraine, and Kazakhstan. Regional conflicts around the world currently number almost 30, and some of these local skirmishes could escalate into a serious challenge to U.S. interests.

Countries like Iran, North Korea, and even Iraq, continue to seek the technology and materiels to develop weapons of mass destruction. Other nations remain eager to provide that technology, as well as the means to deliver these weapons against a potential enemy. Controlling the proliferation of weapons of mass destruction must remain a high priority on the national security agenda.

I am disturbed at media reports that some kind of concession is going to be made to North Korea. It is very disturbing to me and could set very dangerous precedent for the future.

I want to take this opportunity to express my serious concern about the Clinton administration's nonproliferation policies to date. The administration, while proclaiming its commitment to nonproliferation, has engaged in a large-scale relaxation of export controls on computer satellites, space launch vehicles, telecommunications technology, with potentially severe consequences to the U.S. national security.

To cite one example, the President announced a new policy on September 29 to allow U.S. computer manufacturers to freely sell, without export licenses of any sort, a powerful new generation of computers to almost any nation in the world, except those defined as "terrorist" countries, such as Libya, Iraq, and North Korea. Experts say that these computers can be linked together to perform as a supercomputer which can facilitate nuclear weapons design efforts.

This administration's justification for this new policy is that these computers are already widely available from companies in other countries and that U.S. export controls on these computers have hurt American computer firms financially. Less important to the administration, apparently, is the principle that the United States must set the example for other countries by restraining our business interests in the greater interests of national security.

By signing the Nuclear Nonproliferation Treaty, the United States promised that it would not in any way assist, encourage, or induce any nonnuclear weapon state in making a nuclear bomb. It seems to me that the President's new policy ignores our important obligations under the NPT in order to satisfy the demands of commercial competition. If we start to shirk our responsibilities, other nations will certainly feel free to do the same. I urge the President to reconsider this ill-conceived weakening of restrictions on potentially nuclear-related technology.

Mr. President, the administration is pursuing a dangerously weak policy toward North Korea. North Korea continues to stymie the efforts of the International Atomic Energy Agency to conduct inspections of its nuclear facilities. The administration responds with offers of carrots rather than sticks to induce better behavior in a renegade government that is eagerly looking for weakness in our response.

We should show North Korea that testing our resolve is not a productive exercise. We should insist that North Korea discontinue its nuclear weapons programs immediately; these efforts

are a threat to the entire Pacific region. We should insist that North Korea comply with the inspections required under the NPT, and comply immediately. Economic and trade sanctions should be considered seriously. We should not cancel planned military exercises with our South Korean allies.

The Defense authorization conference report does contain a number of provisions which seek to strengthen nonproliferation efforts. It includes a provision which I proposed expressing the sense of Congress that space launch vehicles ought to remain strictly controlled. It also contains a provision which urges the President to pursue a number of specific actions to redress the dangerous situation in North Korea. I urge the President to review these provisions carefully.

Mr. President, proliferation is far too dangerous a threat to U.S. interests to be underestimated by accommodating diplomacy and single-minded commercial pursuits. Proliferation threatens our interests, those of our allies, and those of humanity. The control of proliferation is, and will long remain, the gravest challenge to U.S. security and world stability.

Mr. President, let me now address the defense budget. The decisions the Congress makes today will determine for many years our ability to play an effective role in word affairs and to protect our own security and that of our friends and allies. I fear that this bill endorses a continuing downward trend in the defense budget that will leave this Nation with insufficient resources to ensure our own security, much less that of our allies.

We all know that economic considerations have forced us to cut the military forces of this Nation. Real defense spending has declined steadily every year since 1985. According to the Congressional Research Service, we have cut defense spending, in constant 1994 dollars, from $388 billion in 1985 to $278 billion in 1993. The budget resolution requires that we cut the defense budget to $263 billion this year. This bill cuts that level even further—to about $261 billion.

Under the Clinton administration budget submitted earlier this year, defense spending would be reduced to $234.1 billion by 1998. This is a total cut in real defense spending of roughly 43 percent—in only slightly more than a decade. This is also more than twice the defense reductions proposed by candidate Clinton during the 1992 election.

Dollars for defense are scarce and getting scarcer. Because of these huge funding cuts, we are forcing hundreds of thousands of men and women out of the military. Our defense industrial base is being cut to the bone. We are accepting compromise after compromise in our military capabilities. The United States has eliminated all programs to modernize our strategic deterrent forces, even though a great degree of uncertainty exists as to the status of such programs in the former Soviet Union. We are cutting readiness, and some aspects of our forces are rapidly becoming hollow. We must draw the line, and draw it now.

Mr. President, I trust my colleagues saw the article in the Washington Post, on Saturday, November 13, 1993, entitled "Army Challenges Clinton Defense Cuts." This article, and a similar one in the November issue of Armed Forces Journal International, refer to information in an unclassified Army memorandum approved by Army Chief of Staff Gordon Sullivan, which identifies 57 major weapons and spending programs that will be eliminated and 63 that will be scaled back if the administration follows through on its plans to cut the defense budget by $88 billion over 5 years.

I ask unanimous consent that both articles be printed in the RECORD.

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

[From the Washington Post, Nov. 13, 1993]

ARMY CHALLENGES CLINTON DEFENSE CUTS AS SECURITY THREAT

(By John Lancaster)

The Army has mounted a vigorous challenge to the Clinton administration's program of defense cuts, warning in an internal document that planned reductions will leave the service "substantially weakened" and ultimately threaten national security.

The memorandum approved by Army Chief of Staff Gordon R. Sullivan identifies 57 major weapons and spending programs that will be eliminated and 63 that will be scaled back if the administration follows through on plans to cut the defense budget by $88 billion over five years. The outcome of these reductions may be a future force which does not possess the technological superiority required to prevail over all potential conflicts arising from the changing world order," said the document, which was completed last month and forwarded to the Pentagon's civilian leaders.

The Army requires additional resources if it is to meet continual demands for a technology superior response and, at the same time maintain the ability of respond to the likely range of threats.

Although some grousing from the military is inevitable given the scope of planned defense cuts the Army document is noteworthy both for its strident tone and for its explicit warning that the reductions threaten the nation's ability to fight and win wars.

In that regard, the document is an explicit challenge to Defense Secretary Les Aspin, who recently unveiled the administration's plan for a smaller more mobile post-Cold War military of 1.4 million uniformed men and women, compared with 1.6 million under the Bush administration's proposed "base force" plan. Aspin has said repeatedly that in spite of the cuts, the nation's military will retain its "combat readiness" and ability to fight and win two nearly simultaneous regional conflicts.

Aspin has described the "bottom up" review as a collegian, "broadly collaborative" effort in which the military services had substantial say. The memorandum makes clear, however, that the Army feels slighted by the process in comparison with the other services, especially the Marine Corps, which fares better under Clinton's plan than it did under President George Bush's proposal. The internal document was included as an unclassified addendum to the Army's secret Program Objective Memorandum, which outlines the service's proposed spending plan for the years 1995 through 1999. Portions of the addendum have begun to leak out in the defense trade press, and a copy was obtained by The Washington Post.

"We're not only on the razor's edge but in danger of falling off the razor's edge," said an officer on Sullivan's staff who asked not to be named. "I think there is a lot of recognition not only within the Army but outside the Army, on [Capitol Hill], that the bottom up review is flawed, that you can't get there from here."

A senior defense official, who also spoke on condition of anonymity, disputed such claims. He suggested the Army is feeling the pain of defense cuts more acutely than other services because it has not matched their successes in paring unneeded bases and overhead.

I don't think the Army has done as much as the Navy and Air Force in looking at their infrastructure," the official said. "They haven't done as much in retooling their overhead. . . . Why does the Army still have to have 17 separate branches? . . . These are basically people who work in offices."

Most of the hard choices have been postponed. On Wednesday, Congress passed a $261 billion defense spending plan for fiscal 1994, sharing modest $2.5 billion from the administration's request but deferring serious debate on the recommendations in the bottom up review until next year. The budget is about $12 billion smaller than the 1993 spending plan.

In a statement yesterday. Aspin thanked Congress for producing a budget that "largely protects the readiness of our forces."

Pentagon officials acknowledge, however, that over the long term Aspin will have a tough time fulfilling his pledge to maintain readiness, a broad category that includes everything from steaming hours logged by Navy ships to the availability of bullets and spare parts. At a briefing yesterday on the 1994 defense budget, a senior official said continuing military operations in places such as the Persian Gulf region and Somalia are draining operating funds that normally would be used to promote readiness. As a result, he said, the administration will ask Congress for a supplemental appropriation of $900 million to cover U.S. military operations in Somalia through March 31, the planned U.S. withdrawal deadline.

"I'm going to have readiness problems if we keep having contingencies and I have to eat it out of operating funds," the official said. "I'm having to make hard choices right now which brigades go to the National Training Center" in the Mojave Desert, where the Army conducts armored warfare exercises.

"Is there a readiness problem that we have right now," the official added. "I don't think so. But I sure worry about it."

The Army is especially gloomy on the prospects for modernizing the force. "Army modernization . . . is driven by a severely constrained fiscal policy." the memo said. "It forces the soldier's war-fighting capability far below the level of the Army's technological potential."

[From Armed Forces Journal, November 1993]

"BOTTOM-UP" BLOODBATH: THE 1995 BUDGET LOOMS

(By David Silverberg)

It is that season of the year when the leaves have turned, there's a nip in the air, all the Program Objective Memorandums (POM)s should be in and acquisition decisions made, and life should be proceeding smoothly on its inexorable course.

However, 1995 promises a fiscal bloodbath. A foretaste was delivered on 1 September when the Bottom-Up Review cancelled four major aircraft programs, cut funding for an aircraft carrier and 55 ships and submarines, and reduced uniformed personnel by 160,000. But it does not end there. An early forecast of future decision-making indicates that further cuts will be extensive and deep. Memoranda finalizing DoD decisions are due early this month and the services' POMs that set out the rationales for various programs promise little good news.

For example, the FY 95–99 Army POM kills 57 programs and systems and reduces another 63. Between 1995 and 1999, the Army's research, development, and acquisition programs as a whole will decline 17 percent from $62.5 billion to $51.8 billion. Tactical research and development will fall 12.5 percent procurement will fall 22 percent, from $40.6 billion to $31.6 billion.

Though couched in careful bureaucratic language, the bitterness that underlies the 1995 POM is obvious. While some critical programs were protected, their preservation does not mean they are adequately exploited or explored, and they must be weighed against other military funding cuts, the POM document notes. "The outcome of these reductions may be a future force which does not possess the technological superiority required to prevail over all potential conflicts arising from the changing world order, as the Army's ability to execute its mission becomes substantially weakened."

Major Army programs killed by the POM include: The Line-of-Sight Anti-Tank (LOSAT) program, the Non-Line of Sight (NLOS) program, procurement of the Tri-Service Standoff Attack Missile (TSSAM), procurement of UH-60 Black Hawk helicopters after 1997, Non-Cooperative Target Recognition, and Palletized Loading Systems after 1996. Further production of Multiple Launch Rocket System (MLRS) launchers will be halted, although research on an extended-range MLRS rocket can proceed further.

Even the most highly valued Army programs took hits: the Apache Longbow AH-64 C and D models will face a 1998 funding dip that will delay the conversion rate of helicopters to the D model, and the aircraft's fielding will be delayed in later years. While M1A2 tanks will be procured at 105 per year until the year 2005, modifications bringing the M1 and M1A1 to the A2 configuration will decline by 44 percent, and modifications will not be completed until 2020.

Compounding the pain of having to make cuts is the planners' in planning them. "OSD's [Office of the Secretary of Defense] biggest problem is that while living with the realities of the budget cycle, it has injected the Bottom-Up Review into that cycle and has given a whole new set of headaches to the planners who have been thinking about this for 12 months," Dov Zakheim, a former deputy undersecretary of defense, told *AFJI*.

Pentagon budget planners were given little guidance other than the bland pronouncement that the Bottom-Up Review established the levels and direction of Defense Department spending, according to DoD sources. The result is a somewhat shell-shocked budgeting corps.

New challenges are pending. Defense analysts and executives are expressing some concern that the administration's plan for comprehensive national health care could eventually impinge on the defense budget since other sources of revenue seem inadequate. Most observers, though, say that defense, having taken heavy past hits and buttressed by the strategic considerations of the Bottom-Up Review, is relatively immune.

However, Carol Lessure, a legislative analyst and the outreach director for the Defense Budget Project in Washington, said that any impact will depend on what kind of health care program emerges. If it requires a "pay as you go" system in which recipients pay for their care, it may avoid affecting the deficit. If, however, health care adds to the deficit, savings will have to be found elsewhere and the defense budget will be a likely candidate, she pointed out.

The services' POMs are not the last word on the '95 budget—that honor falls to Congress. But companies and members of Congress hoping to save programs during the 1995 fiscal year will face a grueling uphill battle . . . to say the least.

Mr. McCAIN. Mr. President, this internal Army document, which I have not been able to obtain yet, is quoted extensively in the Washington Post article. Let me just read some of the more alarming points contained in the memo:

The Army requires additional resources if it is to meet continual demands for a technologically superior response and, at the same time, maintain the ability to respond to [the likely threats].

The outcome of these reductions may be a future force which does not possess the technological superiority required to prevail over all potential conflicts arising from the changing world order. * * *

Army modernization * * * is driven by a severely constrained fiscal policy. * * * It forces the soldier's war-fighting capability far below the level of the Army's technological potential.

Mr. President, those words are extremely alarming, extremely alarming.

These warnings by the Army echo exactly what was said earlier this year by the Chiefs of Staff of all the Services. Their comments are contained in my July 1993 report on military readiness.

Mr. President, it is not very pleasant reading, but it is a candid response on the part of the services. For example, General Mundy, the Commandant of the Marine Corps, warns that the Marine Corps is underfunded by $101 million it needs to compensate for readiness funds used to maintain peacekeeping forces and operations in Bangladesh and Somalia. Current backlogs cost $3 million. Combat training is underfunded by $7.8 million. The Marine Corps only received $115 million of $230 million in cash transfers. The Marine Corps reached a critical point in modernizing medium lift, et cetera, et cetera. It goes on and on from all of the services.

I frankly am very grateful that these men and women who serve in the military are candid enough to tell the Congress and the American people of the challenges, the difficulties, and frankly the disaster that may lay ahead of us in our military forces. That has not always been true in the history of this country, and I especially applaud those members of the military who are willing to step forward before it is too late because this time, Mr. President, we will not say in the Congress that we were not warned. We will not say that the members of the uniformed military did not tell us of the problems that lie ahead of us as we find every possible way to spend our taxpayers dollars except on this Nation's national security.

This bill, and the appropriations bill which I voted against last week, endorse a funding level which is inadequate to meet potential challenges to our future security. The cuts in operation and maintenance in this bill are over $2 billion below the request. Research and development, which ensures the future technological superiority of our forces, is cut nearly $4 billion below the request.

These cuts threaten the integrity of a necessarily smaller defense structure. Training, recruiting, spare parts, maintenance—all of these areas vital to the readiness and sustainability of our Armed Forces will suffer in the future.

These cuts threaten the long-term security of our Nation and its citizens. They drive highly skilled men and women out of the military services, including many minorities, and make it more difficult to attract capable men and women to the military as a career. They rob the men and women who work in technical and support jobs in defense industries of their livelihoods.

Mr. President, I understand that reductions of this magnitude were necessary because of an arcane scorekeeping dispute between OMB and CBO, and I share the concern and disappointment of the conferees at the unwillingness of the parties involved in scorekeeping decisions to attempt to resolve this dispute. But I cannot support these further cuts in a budget request which was already cut to the bone.

Mr. President, as my colleagues know, I stated my opposition to the appropriations bill's earmarking of scarce defense dollars for Members' special interest items. And I offered an amendment intended to start remedying the problems of earmarking. I thought that, at least, my colleagues on the Appropriations Committee, having accepted the amendment, would take to heart its intent. Unfortunately, that was not the case. My amendment to permit competitive award of contracts and grants was dropped in conference.

The Defense authorization conference report before the Senate today avoids many of these kinds of problems which

were so evident in the appropriations bill. For example, it provides $2.553 billion in defense conversion dollars, and it appears that none of these funds are earmarked for special interest items as they were in the Defense appropriations bill. This bill provides funding for manufacturing technology programs, university research projects, and technology reinvestment programs—all of which will be awarded based on competition and merit-based selection. This bill includes $20 million for a Defense Women's Health Center, but contrary to the House earmarking of these dollars, this conference agreement permits the Secretary of Defense to determine whether and where to establish such a center. And there are many other responsible decisions of the conferees contained in this measure.

However, there are also a number of highly objectionable provisions contained in the Defense authorization conference report. Because of these provisions, and because the level of funding is inadequate, I am compelled to vote against its adoption.

Mr. President, the most egregious example of a pork barrel project is the *Seawolf* submarine program—a $5.2 billion boondoggle. I argued during the floor debate on the Defense appropriations bill for a cost cap on the two submarines currently under production and a prohibition on wasting any more taxpayer dollars to build a third *Seawolf* submarine. The Senate agreed to my amendment to impose fiscal responsibility on the Navy and GE's Electric Boat Division for the first two submarines, but the conferees dropped the cost cap at the request of the Navy. So the cost of these two submarines will continue to increase above current, unacceptable overruns.

I am also disappointed that this authorization conference report contains language in section 121 which authorizes the expenditure of $540 million previously appropriated for the submarine industrial base to procure long-lead items for a third submarine or to pay the costs of canceling this very same submarine last year. So in addition to building a third submarine—for $5.2 billion—the contractors can also collect money for not building that third submarine. This is an outrageous provision, and I am amazed that the conferees included this language in the authorization bill.

Mr. President, during the conferees' deliberations on this matter, a staff member actually called this provision which I have just described a good government solution to the submarine industrial base issue. And that staff member should be ashamed. What in the world could be considered good about a decision to buy a $5.2 billion submarine which we do not need, which we cannot afford, and which sacrifices necessary defense programs and jobs in several States to satisfy constituent interests in Connecticut.

It is also a compelling reason, Mr. President, why markups and conferences should be made open to the public of America. The cold war is over. I believe it is time that the American people saw the incredible power of the staff members of the Senate Armed Services Committee and how little power the members who are elected by the people, as opposed to the unelected, have in the decisionmaking process.

In the early 1980's, the Congress raised the Federal insurance limit on individual depositor's savings and loan accounts to $100,000. This was billed as a good government, good public policy decision to guarantee that Americans' life savings would be ensured against loss. But by the end of the 1980's, American taxpayer with the $150 billion tab for these failed institutions. Why? Because, by removing all risk, the Government eliminated any incentive for these savings and loans to run efficient, well-managed operations.

Mr. President, the Congress is doing the same thing with the *Seawolf* program. Congress has signaled its unwillingness to control the costs of this program. Therefore, neither the Navy nor electric boat has any incentive to manage the costs and schedule of this program, because the Congress will continue to appropriate taxpayer dollars for every cost overrun or schedule slip, with no limit. This is not good Government. It is irresponsible Government. The *Seawolf* program should be terminated, and I intend to continue to try to do so at every opportunity in the future.

I might add, Mr. President, that I received a letter from the Secretary of the Navy saying exactly what those costs could be. I put the caps in at those costs, and the Congress cannot even agree to that.

Mr. President, I was also disappointed that the authorization conferees chose to earmark a large portion of the additional funds provided for modernization of the National Guard and Reserve. Over $990 million was added to this bill for Guard and Reserve equipment. In the Senate bill, this money was provided for general categories of equipment, and the decision on the specific items most vitally needed by Guard and Reserve units was left to the discretion of the Guard and Reserve themselves. The House, on the other hand, had identified every item that was to be procured with these dollars.

I applaud the efforts of the Senate Armed Services Committee to eliminate the pork-barrel set-asides which are usually included in the Guard and Reserve accounts. Permitting the Guard and Reserve leadership to determine their own priorities is the correct procedure, in my view, because these organizations know best what they need most, not the Congress.

However, in this conference agreement, roughly half of the nearly $1 billion in additional dollars is earmarked for specific weapons systems. I am dismayed, but sadly not surprised, that the conferees fell back on the usual pork-barrel approach to ensuring contracts for their constituents and guaranteeing equipment to their local Guard or Reserve units. I cannot support this reckless affirmation of the business-as-usual waste of scarce resources.

I want to point out, again, Mr. President, that as we are earmarking these pork-barrel projects, we are, at the same time, telling thousands of young men and women who joined the military for a career, who seek to remain as honorable members of the service, that we cannot afford to keep them.

Mr. President, the Congress' priorities are skewed and skewed very badly.

Finally, Mr. President, absent any open discussion or public hearings, the chairman of the Force Requirements and Personnel Subcommittee included in this conference report a provision to privatize service academy preparatory schools, over the objection of the service Secretaries, the superintendents of the service academies, the Department of Defense, and everyone else who was familiar with it.

Of particular concern to me is that this is a short-term, stop-gap measure intended to remedy decreasing enrollment at private preparatory schools throughout the United States. In other words, this is a special interest, pork barrel program which will, I predict, benefit a very few members of the committee at the expense of educational quality in our military preparatory schools and, consequently, the quality of our Officer Corps.

The GAO, after investigating this issue, recommends that this action not be taken.

Service academy preparatory schools, in Colorado, New Jersey, and Rhode Island, are absolutely vital in helping prepare women, enlisted personnel, and minority candidates—especially African-American males—for the service academies who otherwise would not have the opportunity. For example: at the Naval Academy, 53 percent of the African-American students went through the Naval Academy Preparatory School, at the Air Force Academy, 50 percent of the African-American students went through the Air Force Academy Preparatory School, at West Point, 34 percent of the African-American students went through the Military Academy Preparatory School.

Personally, in letters sent to me, the superintendents of the service academies have stated that the rates of minority cadets and midshipmen could not be maintained if they had to rely on private preparatory schools. These superintendents, two- and three-star general and flag officers confirmed by

the Senate as fully qualified and the best candidates for their positions, are extremely concerned about the lasting negative impact that this provision will have on minority recruitment and equal representation at the academies.

Mr. President, an issue raised by the proponents of privatizing the prep schools is cost savings. However, the GAO has stated that current cost-saving initiatives by the services will reduce costs to the preparatory schools by at least one-half of what they originally reported to Congress. In recent data provided to me, service academy preparatory school costs are right in line with private preparatory school tuition. The GAO has stated to me that they recommend delaying any test program for privatizing the preparatory schools until a revised baseline that reflects several cost-saving initiatives is completed to permit a more meaningful comparison. Furthermore, they went on to say that any such test now would be meaningless and wasteful because it would have to be repeated to obtain new cost data.

Again Mr. President, let me remind this body, this provision for a test program to privatize service academy preparatory schools as written has nothing to do with achieving cost savings or making the service-operated academy preparatory schools more efficient. It is, however, all about pork barrel spending. The effect will be to deny an equal opportunity for minority men and women who wish to serve their country and graduate from one of our Nation's prestigious military academies—an opportunity that we should do everything we can do to encourage.

Mr. President, I have served on the Armed Services Committee for nearly 7 years now. It is a committee of responsible members with an abiding interest in preserving the security of our Nation. I congratulate the chairman and the ranking member for their outstanding efforts once again to achieve some balance among the members of the committee and in deliberations with the House of Representatives.

The specific programs to which I have objected today would not, in and of themselves, cause me to oppose this measure. But a vote for this conference report is, in my view, a vote to acquiesce to a continuing decline in the defense budget. That I cannot do.

Mr. President, I must again sound a warning. We are cutting defense too quickly and too deeply. We are harming the readiness of our military forces, the men and women who today form the best and most effective fighting force in the world. We are putting in jeopardy the future security of this country and our ability to positively influence the course of world events. We must not allow ourselves to ignore the slow but steady decline in the capabilities of our Armed Forces which will occur if we continue to allow this reckless decline in the defense budget. I urge my colleagues to join me in making clear our opposition to the administration's defense budget cuts. I urge my colleagues to vote against the Defense authorization conference report.

Mr. President, I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. KERREY). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I asked for 5 minutes, and I yield myself 5 minutes.

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

The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I have voted for every Defense authorization bill that came to this Senate since the day I first arrived almost 21 years ago. I am going to vote against this one today.

Frankly, it is nothing more than a protest vote. I do not know that I could produce a better bill than the distinguished chairman and ranking member. But, frankly, I want to go on record indicating loud and clear that we are moving in the wrong direction. We are cutting defense far too fast. We are going to end up regretting it.

I would like to open by suggesting that the November 13, 1993, edition of the Washington Post has an article, "Army Challenges Clinton Defense Cuts as a Security Threat." This article goes into some detail as to how the Army thinks that is the case, from the top of the Army, General Sullivan, to those who advise him.

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

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

[From the Washington Post, Nov. 13, 1993]

ARMY CHALLENGES CLINTON DEFENSE CUTS

(By John Lancaster)

The Army has mounted a vigorous challenge to the Clinton administration's program of defense cuts, warning in an internal document that planned reductions will leave the service "substantially weakened" and ultimately threaten national security.

The memorandum approved by Army Chief of Staff Gordon R. Sullivan identifies 57 major weapons and spending programs that will be eliminated and 63 that will be scaled back if the administration follows through on plans to cut the defense budget by $88 billion over five years. "The outcome of these reductions may be a future force which does not possess the technological superiority required to prevail over all potential conflicts arising from the changing world order," said the document, which was completed last month and forwarded to the Pentagon's civilian leaders.

"The Army requires additional resources if it is to meet continual demands for a technologically superior response and, at the same time, maintain the ability to respond to" the likely range of threats.

Although some grousing from the military is inevitable given the scope of planned defense cuts, the Army document is noteworthy both for its strident tone and for its explicit warning that the reductions threaten the nation's ability to fight and win wars.

In that regard, the document is an explicit challenge to Defense Secretary Les Aspin, who recently unveiled the administration's plan for a smaller, more mobile post-Cold War military of 1.4 million uniformed men and women compared with 1.6 million under the Bush administration's proposed "base force" plan. Aspin has said repeatedly that in spite of the cuts, the nation's military will retain its "combat readiness" and ability to fight and win two nearly simultaneous regional conflicts.

Aspin has described the "bottom up" review as a collegial, "broadly collaborative" effort in which the military services had substantial say. The memorandum makes clear, however, that the Army feels slighted by the process in comparison with the other services, especially the Marine Corps, which fares better under Clinton's plan than it did under President George Bush's proposal. The internal document was included as an unclassified addendum to the Army's secret Program Objective Memorandum, which outlines the service's proposed spending plan for the years 1995 through 1999. Portions of the addendum have begun to leak out in the defense trade press, and a copy was obtained by The Washington Post.

"We're not only on the razor's edge but in danger of falling off the razor's edge," said an officer on Sullivan's staff who asked not to be named. "I think there is a lot of recognition not only within the Army but outside the Army, on [Capitol Hill], that the bottom up review is flawed, that you can't get there from here."

A senior defense official, who also spoke on condition of anonymity, disputed such claims. He suggested the Army is feeling the pain of defense cuts more acutely than other services because it has not matched their successes in paring unneeded bases and overhead.

"I don't think the Army has done as much as the Navy and Air Force in looking at their infrastructure," the official said. "They haven't done as much in retooling their overhead. * * * Why does the Army still have to have 17 separate branches? * * * These are basically people who work in offices."

Most of the hard choices, in any event, have been postponed. On Wednesday, Congress passed a $261 billion defense spending plan for fiscal 1994, shaving a modest $2.5 billion from the administration's request but deferring serious debate on the recommendations in the bottom up review until next year. The budget is about $12 billion smaller than the 1993 spending plan, Bush's last.

In a statement yesterday, Aspin thanked Congress for producing a budget that "largely protects the readiness of our forces."

Pentagon officials acknowledge, however, that over the long term Aspin will have a tough time fulfilling his pledge to maintain readiness, a broad category that includes everything from steaming hours logged by Navy ships to the availability of bullets and spare parts. At a briefing yesterday on the 1994 defense budget, a senior official said continuing military operations in places such as the Persian Gulf region and Somalia are draining operating funds that normally would be used to promote readiness. As a result, he said, the administration will ask Congress for a supplemental appropriation of $300 million to cover U.S. military operations in Somalia through March 31, the

planned withdrawal deadline for U.S. troops in that country.

"I'm going to have readiness problems if we keep having contingencies and I have to eat it out of" operating funds, the official said. "I'm having to make hard choices right now which brigades go to the National Training Center" in the Mojave Desert, where the Army conducts armored warfare exercises.

"Is there a readiness problem that we have right now?" the official added. "I don't think so. But I sure worry about it."

The Army memo is especially gloomy on the prospects for modernizing the force. "Army modernization * * * is driven by a severely constrained fiscal policy," the document said. "It forces the soldier's war-fighting capability far below the level of the Army's technological potential."

Mr. DOMENICI. Mr. President, throughout our country's history, after the battles that we fight, we find that we run hastily toward downsizing the military.

When George Washington became President of the United States, he did all that he could to talk the First Continental Congress out of dismantling the Continental Army. The Congress did not take the advice of President Washington. They dismantled the Army down to 80 people. They had 55 people at West Point and the other 25 were at Philadelphia.

The British took notice of this after a few years and they came to Washington; they burned down the White House and tried to burn the Capitol. We almost lost, because we cut too fast.

We were ill prepared for World War I. We dismantled after World War I. We were not prepared for World War II. We trained soldiers with wooden rifles and, believe it or not, the first armored battalion was paid for out of the private funds of a very wealthy general, George Patton, who bought the parts from the Sears Roebuck catalog. In fact, when he died those receipts were found among his prized possessions. The first tank battalion operated only because he bought spare parts. Otherwise it would not run. They had run out of operation and maintenance funding, just as we are heading in that direction now with the kind of dollars that are being allocated for defense.

Again, we dismantled after World War II, and we found ourselves in the middle of the Korean conflict. We all know that is sort of our unremembered war. We tend to forget it. But thousands of casualties occurred, and most experts say that at least half of those would not have lost their lives had we been prepared. We were sending untrained, underarmed, ill-prepared troops into combat. And they did not have the equipment that we should have had in their hands and at their disposal.

The Senate is well familiar with the accomplishments of the F-117 during the Persian Gulf war. It may not be known that the commander of the wing, Cornell Whitley, while trying to inspire his troops in battle told them not to worry because "we are all well equipped."

Cornell Whitley's counsel to his men runs through my mind constantly. As he indicated, "Don't worry, we are all well equipped," it brings to mind statements of another distinguished combat veteran who went on to become President. His name was Dwight David Eisenhower. He once said that one of the things he tried to do very hard as a leader of men was "to not make mistakes too quickly."

Today we find ourselves in the same position that we found ourselves during the First Continental Congress, at the end of World War I and II. I must tell you, the words of Colonel Whitley and President Eisenhower ring louder than ever. "Not to worry, we are all well equipped." "Don't rush to make mistakes too quickly."

We cannot afford to fool each other any longer. This so-called "Bottom-Up Review" is really a "Bottom-Out Review." We cannot allow the superiority of our Armed Forces, the magnificence of our military manpower, to bottom out.

The Clinton administration admits that the allocation of funding in the future years defense plan is $13 billion short of the force structure requirement over the next 5 years. This is only part of the story.

I ask if I might have 2 additional minutes?

Mr. THURMOND. Mr. President, I yield the Senator 2 additional minutes.

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

Mr. DOMENICI. The administration does not include the military pay raise in their "Bottom-Up Review." We granted it. They did not include it. That is an another very large amount of money. They do not include increased costs for CHAMPUS, the medical program for those men and women who are entitled to it because of service. The Odeen Panel Report says we are about $13 billion short of what will be necessary for the environmental cleanup Defense will have to conduct. This is not included in the "Bottom-Up Review" either.

Finally, the gap between what is assumed will be saved from the defense management review and what will actually be saved cannot even be determined at this point. This all adds up. Some estimates, and I think they may even be low, have ranged between an additional $50 to $60 billion. Where will this money come from? In other words, what allocation of funding the "Bottom-Up Review" proposes for the military of the future will be inadequate to deal with what it says is necessary in terms of force structure, and in addition those numbers are probably $50 to $60 billion short at the minimum because of the problems I outlined above.

What is going to happen? We are not going to find that money anywhere because we are too insistent on spending it for other things. We will cut the Defense Department even more.

I rise to oppose this bill, not because I believe the managers, with the money allocated, could do a better job. But I rise in protest of what I see happening to the U.S. military, to those who serve us and those of us who are proud of them and do not want to ever let them get caught short again.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 5 minutes to Mrs. HUTCHISON, the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I rise to support the conference committee report, but I am doing so with reservation that I may not support the cuts that this administration envisions in 1995, and I want to serve notice right now.

Many people say the cold war is over. "My goodness, why should we not be backing off of defense expenditures?"

Now is the most dangerous time of all to back off of defense expenditures. I saw an article in the Dallas Morning News this weekend. It was an interview with the former Prime Minister, Margaret Thatcher. She just said in answer to a question:

> Now, when something like the end of the Cold War happens—and it happens because a great evil empire collapsed—it's not a time when peace breaks out. People are mistaken if they think it is.
>
> It's a time of great danger because you had that evil empire suppressing many, many of the ordinary national feelings. And also you had several of their client states no longer under their yoke which, I'm afraid for the wrong reasons, they've become free to pursue their own ethnic or racial or cultural objectives.

In fact, as of November 12 of 1993, there were 36 armed conflicts all over the world; since World War II ended in August of 1945, there have been 3 weeks of peace in the world.

We have to look at the expenditures we are making—and all of us want to cut the budget—but we must cut defense responsibly, and I think we are cutting too far too fast. The Senator from New Mexico talked about several instances where we have gone to a hollow force. No one can forget, as recently as 1980 we could not get six helicopters to work in Iran to rescue our own hostages.

I am concerned about research and development. You remember people said at one time we should not spend any money on defense missile systems, "Why would we need defense systems? That would never be a possibility." But look at Desert Storm. We all remember watching as the Scud missiles would come, up would come the Patriots to make sure that those Scud missiles did not land.

Now, through research and development, we are making the Patriot missiles even more accurate and they are going to work even better the next time we need them. But if we do not put the resources there to make sure, they may not be there and they may not be accurate enough. And that would be unthinkable.

We have to have a military strength since we are the only superpower left in the world that is a fighting strength, not a paper strength. We have the world's best trained military, the best trained Army, Navy, Marine Corps, Air Force. But we cannot allow any diminution of that because if we do this will not be a world where there is one superpower, but this will be a world where there are several minipowers.

I do not want to be part of several minipowers. The only way we will maintain freedom throughout the world is if the United States stays strong and firm. And the only way we can stay strong and firm, to make sure we are free and so is the rest of the world, is to make sure that our defenses are strong, that our military is strong.

So I have reservations about this bill today, but I think we have done all right. I think there could have been some improvements, but we are OK. But I am not ready to say that in 1995 and 1996 and 1997 these cuts that are envisioned are in the best interests of our country. So I am going to watch very carefully how it goes this year, and how we are able to function with the cuts that we have.

I am just serving notice, along with many of my colleagues, that we cannot cut our research and development, we must have the systems, we must have the personnel; our personnel must be well paid and well trained; and only then will we remain a superpower and only then will we be sure our country will remain free.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I believe I have been allocated 5 minutes under the UC agreement.

The PRESIDING OFFICER. The Senator is correct.

Mr. LEVIN. Mr. President, first of all, let me commend Senators NUNN and THURMOND for their leadership on our committee again. They have done a bipartisan job on an important bill. I commend both of them for it. It is a pleasure working with both of them.

This conference report has many important initiatives. Some have been described already. In one area, I want to put a little more focus, and that is the effort to improve the ability of the United States to participate effectively in peacekeeping and peace enforcement missions with other nations. Section 1501 of the conference report extends through fiscal year 1994 the transfer authority which we established last year. Up to $300 million may be transferred by the Secretary of Defense for unanticipated international peacekeeping expenses that arise, if several other conditions are met. This provision is not meant to relieve the administration of its obligation to develop a comprehensive and effective financing system for these activities. The United States is not only in arrears on our general dues to the United Nations, but is lagging behind in its assessments from the United Nations to support peacekeeping missions around the globe.

We have tried for several years to elicit a long-term budget plan from the administration and to encourage a comprehensive U.S. policy on multinational peacekeeping and peace enforcement.

Section 1502 of the conference report requires that the President submit a report addressing all of these issues by April 1 of next year, so we expect to have this report in hand as Congress deliberates on next year's authorization act.

Recent events in Somalia and elsewhere have poignantly underscored the need for the United States to develop and exercise command and control procedures and doctrine for joint operations with military forces of other nations. These tools need to be developed and experimented with in advance, not tested on the ground when lives are on the line. So this bill establishes and funds Peace Enforcement Doctrine Development Center which will make use of the U.S. military's sophisticated simulation systems for working out operating concepts and procedures for integrated multinational peacekeeping and peace enforcement missions.

The House agreed to this Senate initiative which will enable our military personnel to simulate and to test doctrine, operational concepts, procedures, and command and control arrangements in a laboratory in advance of any deployment. This effort will complement the Joint Simulation Center for war-fighting concepts and doctrine development, which the conference report also authorized at the behest of the Joint Chiefs of Staff. The Chiefs, under Colin Powell, determined that they needed a simulation center to help develop doctrine for joint war-fighting operations among the services, and we are providing for that center in this bill.

We have all struggled, Mr. President, to find the appropriate response to the tragic events in the former Yugoslavia where devastation and ethnic cleansing continue to take a desperate toll. This conference report takes one important step by placing into permanent law the sanctions that the executive branch has imposed against Serbia. We intend by this action to send a signal to Serbian President Milosevic that the lifting of the sanctions against him by the United States is going to require both the Congress and the President to be satisfied that appropriate conditions for the lifting of those sanctions have been met and to pass a law lifting those sanctions.

We are going to do what we can to make sure that violations of international law are not rewarded. This additional hurdle which we are placing in the way of the lifting of those sanctions is, hopefully, going to be a strong signal to the Serbs that the international community is going to do what it can to see to it that their aggression is not rewarded.

This conference report also contains a provision designed to insure that the United States receives a fair portion of the residual value asssociated with military bases that we are closing overseas. With respect to facilities returned by the United States government to the Government of Germany, section 1432 of the conference report requires that the Secretary of Defense certify that the United States Government "has received or is scheduled to receive from the Government of Germany not less than 50 percent of the value" of those facilties. Without such a certification, the United States may not purchase or construct diplomatic facilities in Germany after January 1, 1995.

Mr. President, the negotiations with Germany over these reimbursements have not gone well. They need attention and acceleration. We invested hundreds of billions of dollars in the defense of Europe over the last 50 years, much of that building facilities for our forces. Our forces are leaving—many of the facilities improvements will remain. All we are insisting on now is that Germany pay the United States a fair percentage of the remaining value of improvements we made to military bases we are returning before we invest many more dollars moving our Embassy and related facilities from Bonn to Berlin, which is scheduled to become the new capital of Germany.

Some in the State Department opposed this provision, but they noted that "the delays in receiving monetary compensation for the facilties returned are the result of specific near-term economic problems within the German Government and not their refusal to acknowledge responsibility under the Status of Forces Agreement." Mr. President, if this is true, then there should be no difficulty complying with section 1432.

On nuclear weapons testing, the conference report contains several provisions designed to uphold the current law—section 507, Public Law 102-377. Section 261 prohibits funds from being used for preparations for nuclear weapons effects tests, including the Mighty Uncle test that previously had been scheduled. Weapons effects tests are

not allowed under current law. Section 3137 prohibits funds from being used to maintain the U.S. capability to conduct atmospheric testing of nuclear weapons, a program known as Safeguard C. Atmospheric testing has been banned by treaty since 1963, and there is no need to maintain such a capability. Section 3136 prohibits funds from being used to develop for production new very low-yield nuclear weapons. Some research on other nations' activities or possible terrorist work in this area may be conducted, but Congress has clearly indicated its intention that new warhead production be actively discouraged in other countries.

On base closures, the conference report contains a very important package of provisions designed to speed the transfer of base closure real estate and related property for reuse, and to facilitate efforts by local communities to develop new industries and uses for those bases.

The conference report also states—section 2909—that the Secretary of Defense ought to provide surplus military equipment on a priority basis to U.S. communities that have suffered economic hardship from the closure of military bases, whether or not these closures occurred in the 1988, 1991, and 1993 rounds. Formerly closed bases, like Kincheloe Air Force Base, and adjoining communities in Michigan's Upper Peninsula, could benefit even though they were closed in the 1970's and early 1980's. In the future, the conference report states (section 2925), the Secretary of Defense should consider, to the extent feasible, the direct costs of base closure and realignments on State and local government and other Federal agencies. The GAO and others have criticized DOD's failure to consider these costs in previous rounds of base closure.

Mr. President, I wish to note briefly two items that I hope we are facing for the last time, the B-2 bomber and additional F-16 procurement. On the B-2, I must register my concerns that despite our efforts to assume that we do not have a repeat of the B-1 problems, we may still end up with such problems.

Congress established a number of fences around B-2 procurement funds pending the receipt of numerous certifications and reports from DOD. The Defense Department has submitted the required materials and this Authorization Act conference report permits the release of the previously fenced funds. The General Accounting Office has reviewed these DOD certifications and reports and generally concludes that they meet the requirements of the law. This, at least, is a welcome change from previous responses on the B-2 issue, where the former Air Force Secretary did not comply with the law.

I authored several of these fencing provisions, two of which still concern me. The first related to a strengthened warranty provision that would make the contractor liable for the cost of correcting contractor-caused deficiencies, up to the level of the contractor's target profit. Last year, the Air Force capped the contractor's liability on two important types of potential deficiencies, but had no limit on the third type. This year the Air Force was told by Northrop that to change that aspect of the contract would cost the Government one dollar for every additional dollar of coverage. Although it is not clear to me that the Air Force tried very hard to negotiate the point, the Air Force decided that pursuing such a strengthened warranty was not cost-effective and signed a waiver that provides for such a determination.

Unfortunately, the end result is that we do not have the warranty provision that we should have. At least the Air Force does anticipate that it will have a higher cap on liability, but the contractor can cause serious deficiencies and still stick the taxpayer with the bill. I very much regret that this possibility remains, despite my best efforts.

The second provision that concerns me relates to the performance characteristics of the B-2. Basically the issue is whether the B-2 will perform as it was intended to, as we were told it would when we agreed to procure it, or whether we are buying an aircraft that cannot perform up to its proposed standard.

Congress authorized this aircraft because it is supposed to have extraordinary capability. The program has completed only about one-third of its flight testing. In many previous aircraft test programs plenty of problems, including serious problems, were not discovered until the test program was much further along. The GAO, having reviewed the Air Force's certifications on the performance characteristics, says the certification relative to offensive and defensive avionics of the B-2, is barely sufficient, in part because the testing was not done on the block 30 aircraft. GAO goes on to say that more testing is needed if the Air Force Secretary's high level of confidence is to be warranted.

The aircraft will be produced in three configurations: block 10, block 20, and block 30. The first of these configurations, block 10, will have extremely limited capability. It will barely be able to use one model of conventional, dumb gravity bombs. The block 20 aircraft will have more capability, but that will depend on the advanced munitions that are supposed to be available for the B-2—development of those munitions has suffered delays. Only the last two aircraft will be built in the block 30 configuration, and then all the others will be modified to that final status. The block 10 will certainly not be able to accomplish the B-2's formidable mission. The bottom line is, we ought to fly before we buy.

Finally, we do not have a definitized contract for the last five B-2 planes. I find this galling, because we are basically operating at the almost total mercy of the contractor relative to the cost of the last five planes. This conference report contains a provision that requires the Secretary of the Air Force to enter into a definitized contract or report on why such a definitization is not possible. Air Force Secretary wrote to Chairman NUNN to report on why the Air Force has not entered into a definitized contract. The bottom line is that the Air Force has completed negotiation on the final contract and intends to award the contract by the end of this year. I would encourage the Air Force to move expeditiously to award the contract, because delay costs the taxpayers extra money. The last contract took 5 months between negotiation and award. That is simply too long; the Air Force should do better this time.

On the F-16 fighter, I am sorry to report that the conferees decided to fund 12 aircraft that we do not need. Spending $400 million to buy these additional planes is a bad choice, one which I believe we should have rejected. Colin Powell, in his roles, missions, and functions report to Congress stated that we had so many of these aircraft that it had become easier and cheaper for the Air Force to not repair aircraft that developed problems, but simply to pull one of the many spare aircraft out to substitute for the broken one. That was before the Bottom-Up Review concluded that we should reduce our air craft wings from 26-plus to 20 wings.

An outrageous aspect of this issue is the Air Force's effort to change its numbers on the F-16 requirements. Shortly after the Senate acted to terminate the F-16 last year, the Air Force simply changed its assumption about how long the service life of the F-16 would be, from 8,000 to 4,000 hours. This slick move changed all the official projections of how many F-16's we need. Its totally unconvincing.

The compromise we reached this year was to buy half the F-16's requested by the President. The right thing to do would have been to terminate the program last year. The taxpayers will have real reason for anger if we do not terminate the F-16 after this final batch of 12.

Mr. President, another important provision of this conference report concerns research and development of vehicles. This provision notes that the administration has recently come forward with an innovative partnership for government-industry automotive research and development, the so-called clean car or supercar initiative. This initiative joins the Federal Government with the Big Three automotive producers to conduct joint R&D on vehicle technologies of mutual interest.

The conference report contains $30 million to support electric and hybrid vehicle R&D in support of the administration's initiative. This conference report requires that the funds be awarded competitively, and that cost-sharing should be used wherever possible. That is the best way to insure that we are serving the national interest and advancing the state of technology in support of the new coordinated Federal initiative.

Our military has a strong interest in vehicle technology and stands to gain from joint Government-industry cooperation. The Army has an automotive R&D center that does all the vehicle research, design, and engineering work for the ground vehicles of our Armed Forces. This center, the Tank Automotive Research, Design and Engineering Center [TARDEC], has worked closely with the automotive industry over the past year and has found that it shares many research areas of mutual interest with industry. TARDEC will implement this program with the Advanced Research Projects Agency in a new partnership.

Mr. President, as this conference report shows, the debate over our spending priorities in the defense area is not over. There is still a great deal of work to be done to make certain that every dollar we spend on defense is spent wisely and efficiently. The Armed Services Committee has our work cut out for us next year to continue our efforts to produce a force that is geared toward emerging threats, not toward threats of the past, and a force that—while it is smaller in size—is the best-trained, best-equipped force possible, the readiest force with the highest morale we can muster to meet the challenges of this new world. I look forward to this challenge, but I know we will need bipartisan cooperation and we will need leadership from our President and from the Secretary of Defense, to evaluate the conflicting priorities and make the tough choices. Putting off choicemaking has a high cost, both to the effectiveness of our defenses and to the taxpayers.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 1 minute.

Mr. LEVIN. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business for 2 minutes.

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

The Senator from Michigan is recognized.

Mr. LEVIN. I thank the Chair.

(The remarks of Mr. LEVIN pertaining to the introduction of S. 1663 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LEVIN. I thank the Chair and I yield the floor.

Mr. THURMOND. Mr. President, I yield 5 minutes to the distinguished Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, I thank the Senator from South Carolina.

There is no question that the changing post-cold war world has allowed us to make some reductions in our military defense spending. But I think, as others have pointed out, there is a danger that our country's abilities to defend our national interests can be seriously impaired and jeopardized by a defense budget that comes down too far too fast.

As former Secretary Cheney has said on many occasions, never in the history of this country have we successfully accomplished a builddown. By not doing so, we place our security interests in considerable jeopardy. The result from that is a threat both to the security of the United States and the security of our budget because, clearly, it requires a much more substantial input on the front end to regear our defense budget to where it needs to be than would otherwise be necessary.

In looking at the authorization bill for fiscal year 1994, many warning flags are raised by this budget, but I do not believe enough to justify voting against it. I do share the sentiments of the Senator from Arizona [Mr. MCCAIN], and his concerns about the hollow force. I think those are legitimate concerns.

But I think in analyzing what we have had to do this year, given the budget restrictions, the situation that exists around the world, and our military needs, we have, with this transitional budget, been able to maintain our essential defense posture as we sort out what our missions and roles and responsibilities are going to be in this new world.

Now, the problem has always been, of course, that none of us can say with assurance just what kind of threats we are going to face in the future. Senator MCCAIN outlined a whole list of those potential threats, and those all bear very close scrutiny and observation. We would be gravely mistaken to assume that we know what is going to happen in the world in 1996 or 1998 or 2000 or beyond; to believe that we can predict with accuracy what those threats will be and what our response will need to be.

Therefore, we must err on the side of military preparedness. We need to ensure that as we structure national defense we do it in such a way that if we err, we err on the side of the plus up, not the plus down. That is the real danger that confronts us.

While the budget before us only reflects $12 billion in cuts for fiscal year 1994 over what was projected for the budget early in the last administration, we need to understand that this is less than one-tenth of the Clinton administration's projected $127 billion of defense cuts over 5 years. So if the administration adheres to its original projection—and I hope they do not—we need to understand we are going to be required to cut $28 billion in each of the succeeding 4 years after fiscal year 1994. These are drastic cuts, and I suggest these are cuts that may very well break the force.

If these future cuts materialize, I am concerned that we will slip back into that era of the hollow force that we all remember so well and that many of us have vowed never to repeat.

During the late 1970's and very early 1980's, we observed the fatal mismatch between mission and resources. We observed the decline of morale in our armed services personnel. We observed the shortages of parts that impacted on our readiness, and we observed the impact of longer and more frequent deployments.

A number of questions arise about the President's future years' defense spending plans and they are disturbing questions.

From where will the outyear defense cuts come?

What will be their effect?

Will our technological edge be dulled?

Will the quality of life and the morale of our soldiers be undermined?

Will we compromise the speed and effectiveness with which we can respond to threats or aggression?

Mr. President, let me give you an example of the difference between 1980 and 1990. A Langley Air Force Base fighter squadron in the early 1980's flunked its readiness exam because they did not have enough spare parts. But 10 years later, after the commitment we made in the decade of the 1980's under President Reagan and President Bush to strengthen our national defense, that same squadron was called upon hours after Iraq invaded Kuwait. It was deployed and in place in the gulf less than 48 hours after the initial notification. We could never have accomplished that in the early 1980's.

Mr. President, I wonder if the Senator from South Carolina could give me an additional 5 minutes. I do not know what the time constraints are.

Mr. THURMOND. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from South Carolina has 11 minutes 50 seconds.

Mr. THURMOND. How much time does the Senator wish?

Mr. COATS. Two minutes.

Mr. THURMOND. Take 5, if the Senator wants it.

Mr. COATS. If the Senator has it, I would be glad to take 5. I thank the Senator.

It is important to understand that we already have some serious warning signs of the beginnings of a decline in

our readiness and the beginnings of a return to the hollow force. Secretary Aspin himself has declared that there is "increasing and anecdotal evidence of softness in military readiness and early warning signs that the force may be losing its combat edge."

Mr. President, we absolutely cannot allow that to happen. One of the first and primary duties each of us has as a Senator and as a Member of Congress is to provide for our national defense. It is a constitutional duty. It is a moral duty. It is an ethical duty that we have to the citizens of this Nation. With the commitment of resources, we have always been able to adequately meet our national defense needs. I hope that we will continue our commitment to that worthy goal.

The services have indicated to us difficulties in recruitment and retention of a qualified and motivated force. The Bottom-Up Review, for instance, calls for reducing the Armed Forces by 160,000 more military personnel than the 1999 drawdown baseline established by former President Bush. Yet we still do not have end strength figures for the services.

Where and when will this dramatic drop in personnel level off?

What effect will it have on morale?

What effect will it have on readiness?

We need to understand that it takes time to build a quality force. It takes over 20 years to produce the sort of officers who can effectively command a tank division. It takes 10 years to train and develop a good noncommissioned officer, the very heart of any effective military unit. It takes 4 to 6 years to build a fighter aircraft, and it takes longer to build an aircraft carrier than it did to win World War II.

So commitments made today will not necessarily be in place for 8 to 10 years to provide the effectiveness we need. That is why decisions made today, which may seem reasonable given the threat we face in 1993, may be decisions we will regret 6, 8, and 10 years from now if we do not maintain the development of our forces, the consistent training of our troops, and the procurement of equipment on a steady, regular basis. Only this consistent commitment will put us in a position later in the decade to respond to threats and emergencies.

The fiscal year 1994 Defense authorization bill envisions an America that can fight two regional wars at once, and it also hopes to maintain our ability to deploy forces for humanitarian missions. But if we cut at the rate suggested by the administration's defense budget, we will be too depleted to accomplish these missions.

It is one thing to rhetorically commit our will and our forces. It is another thing to give our military the budget it needs to accomplish those missions.

If we reduce the Defense budget irresponsibly, if we cripple our capacity to project our influence abroad, the consequences to this Nation and the world will be considerable.

We stand at a pinnacle of world influence. We must make careful decisions to maintain our position. We alone can preserve the peace only if we preserve our ability and the power to promote the peace. I say this today as someone who is going to support this budget. I do so with some reservation. It is a transitional budget.

I commend Senator NUNN and Senator THURMOND for the fine work they have done, as well as the Appropriations Committee, under the limitations that have been given them. But I wish to raise these warning signals and add my voice to the growing chorus of voices which say we better be careful; we better be certain we do not go too far too fast. We better look with care at how we are going to meet the needs of the future.

Mr. President, again I thank the Senator from South Carolina for the generous time and, if I have any remaining, I yield it back.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I suggest the absence of a quorum and it be charged equally to each 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. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. THURMOND. Mr. President, Senator WARNER of Virginia was scheduled to speak on this bill in favor of it. But he cannot be here. I ask unanimous consent that he be allowed to place a statement in the RECORD later on this subject.

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

Mr. THURMOND. Mr. President, I suggest the absence of a quorum. And I ask that it be equally charged to both sides.

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

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

Mr. NUNN. Mr. President, I ask unanimous consent I be able to proceed for 5 additional minutes.

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

The Senator from Georgia is recognized for 5 minutes.

THE ROLE AND MISSION OF UNITED STATES ARMED FORCES IN SOMALIA

Mr. NUNN. Mr. President, while we are on the floor on this bill and attention is focused on the defense and foreign policy arena, I want to note what I already discussed with Senator THURMOND, and others, on the committee for all our colleagues.

The Armed Services Committee is conducting an independent investigation into the role and mission of United States Armed Forces in Somalia, including, but not limited to, the particular circumstances surrounding the October 3–4 Ranger raid in Mogadishu where so many of our troops were casualties.

The committee has held a number of hearings on Somalia over the last year and recently held closed-door hearings to receive testimony from Lieutenant General Sheehan and Rear Admiral Cramer of the Joint Chiefs of Staff as well as from General Hoar, the Commander in Chief, United States Central Command, the commander of United States forces in Somalia and the region.

The committee has also sent a comprehensive series of questions to Secretary Aspin. The answers to those questions we have not yet received, but I have discussed it with the Secretary and urged him to do a thorough job but also an expeditious job. When we get the answers to those questions, that will provide the framework for the committee's investigation.

Senator THURMOND and I have asked Senators LEVIN and WARNER, the chairman and ranking member of the Coalition Defense and Reinforcing Forces Subcommittee to take the lead in preparing the full committee for hearings on this matter.

The committee staff will be visiting the Central Command and Special Operations Command headquarters and also will be visiting units that participated in the October 3–4 Ranger raid.

So I wanted to let all our colleagues know what the committee is doing and what we plan to do in this important area.

Mr. President, I reserve the remainder of my 5 minutes and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from South Carolina.

Mr. THURMOND. Mr. President, after we finish debating here and the time is up, I want to ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered.

Mr. THURMOND. They have been ordered.

Did the Senator from Georgia ask for them?

Mr. NUNN. I think they have already been ordered.

Mr. THURMOND. I thank the Senator.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I am very pleased to support H.R. 2401, the conference report on the National Defense Authorization Act for fiscal year 1994.

At the beginning of this year, I took over for the first time as chairman of the Subcommittee on Military Readiness and Defense Infrastructure on the Armed Services Committee.

I want to take just a few moments today to summarize for my colleagues the portions of the bill dealing with issues under the jurisdiction of this subcommittee and then offer a few observations and comments on other portions of this conference report.

The Subcommittee on Military Readiness and Defense Infrastructure has a broad charter to oversee two critical elements of our military capability: First, the ability of our military forces to carry out their assigned missions; and second, the ability further to sustain those forces in combat.

Mr. President, our military forces exist for one reason and one reason only: To protect the national security of this Nation. As we reduce the size of the military services, it is absolutely essential that our forces remain fully capable of carrying out the full range of their assigned missions at all times.

The primary focus of our subcommittee is on the combat readiness and combat capability of our military forces. We have some other very important areas under our jurisdiction also, such as base closings, environmental cleanup, and military construction, but combat readiness remains the bottom line for our work on this subcommittee.

Mr. President, I am becoming increasingly concerned that we may be, year by year, cutting the defense budget too much, too fast, and too far.

This year the full committee heard testimony from the service chiefs and from the unified combatant commanders on readiness issues. Concurrently, the Subcommittee on Military Readiness and Defense Infrastructure held a series of hearings which focused on maintaining the readiness and combat capability of our military forces as we reduce the defense budget and draw down the size of our Defense Establishment.

Mr. President, I do not know how many people are aware or have looked back and charted the defense expenditures of this country. But if you go back to the Spanish American War days, almost 100 years, and you plot the defense expenditure curve up and down and up in this country, these figures basically fit a 17-year cycle, a 7-year cycle of buildup and a 10-year cycle of drawdown, a little trough and another 7-year cycle up and 10 down, and it fits basically within a couple of years in all those swings into a 17-year pattern.

The peaks are built up. The amounts spent in gross national product, or whatever measure you want, do not always go to the same height, obviously. World War II, for instance, obviously went above the norm.

But this buildup-builddown pattern is something we followed almost on a 17-year cycle over the last century. When I hear people in a euphoric state these days about our military capability and how good it is and how we can afford to tear it all down and go to a much, much smaller force, I begin to caution that I just do not think that is the case.

Mr. President, in this year's budget, one funding area concerns me in particular. The funding in the operation and maintenance, or O&M accounts, as they are called, has an immediate and direct impact on the combat readiness of our military forces, second only to the quality of the people we recruit and retain in the military services.

The O&M accounts pay the cost of day-to-day operations of our military forces here and around the world. They pay the cost of all individual and unit training for military members, including joint exercises. O&M accounts pay for all the maintenance and support of the weapons and equipment in the military services. These accounts pay for the purchase and distribution of spare parts and supplies to support military members and their equipment wherever they are stationed or deployed. And these funds support maintenance and repair of buildings in bases throughout the Department of Defense.

Mr. President, both at full committee and subcommittee hearings this year, our witnesses, who included DOD officials, representatives of four unified combatant commanders, senior logistics commanders in each service, and each service's operation and maintenance director, all expressed the view that the overall level of O&M funding requested for fiscal 1994 was the minimum level adequate to maintain current readiness levels. Some caution that we already had gone too far and that O&M budgets were already cut too far. They also raised concerns that funding shortfalls in some O&M areas could lead to readiness problems in the near future.

For example, the operating and training tempos in all of the services remain at the high levels of the last several years, but the growing backlogs in the areas of depot maintenance and real property maintenance in each service could put these operating and training tempos in jeopardy if not corrected.

There are other pressing issues funded from the O&M accounts that we need to watch carefully including things like recruiting high quality young people to join the military services and timely environmental cleanup and restoration of military installations, particularly those scheduled for closure.

Secretary Aspin and Deputy Secretary Perry have pledged to avoid the hollow force programs of the past, and I share this commitment, but keeping that commitment is becoming more difficult as these readiness priorities compete for fewer dollars.

As has been the case in the past, the O&M accounts were one of the first targets when it came time to make cuts.

There is a reason for that. When you need cuts, O&M accounts are the target of first resort because most of those O&M budgets spend out in the current year. They are not something that you benefit from 5 years down the road in current budget concerns. And so they are the target of first resort, not last resort. The conferees were forced to cut $2 billion in critical O&M funds this year, Mr. President, in order to meet the outlay targets of the budget resolution. But, because of our commitment to readiness, O&M was not forced to take the whole cut, other areas like R&D had to take a large reduction as well.

I am still very troubled by cutting $2 billion out of O&M, Mr. President. The conferees have cut areas that Congress has been reluctant to cut in the past, things like the environmental restoration accounts, DOD counterdrug activities, and civilian personnel costs. But we just cannot keep cutting the very funds that determine our level of readiness and expect to maintain a ready force.

To mitigate these reductions, however, the conferees encouraged the Secretary of Defense to reprogram funds from other areas of the Defense budget if such reprogrammings would not harm readiness or training, but, as I said, Mr. President, we cannot continue to make these kinds of cuts from the O&M budget and expect to maintain a high degree of readiness.

Within the funding available in the O&M accounts, the conferees realigned funds to high priority readiness accounts from lower priority areas. For example, the conference report increases funding for depot maintenance activities by $300 million in an effort to bring down growing backlogs and adds $500 million to key readiness shortfalls areas like operating and training tempos.

Another positive area I would highlight, Mr. President, is a series of provisions included in the conference report aimed at helping to revitalize communities affected by base closure.

These provisions build on President Clinton's five-point plan for community recovery and will: First, expedite the property screening process; second, direct DOD to work with Federal and State regulators to speed environmental cleanup; third, provide planning grants to communities; and

fourth, allow closed bases to be transferred or leased to local redevelopment authorities at no cost or at a reduced cost for economic redevelopment.

Finally, Mr. President, while I am here speaking about the subcommittee's work this year, I again want to thank my friend and colleague, the ranking minority member of the subcommittee, Senator JOHN MCCAIN, for his cooperation and assistance.

Senator MCCAIN and I served together for 6 years on the Manpower and Personnel Subcommittee before moving over to the readiness area, and it is always a pleasure to work with him on national security issues. He has long experience and is very knowledgeable in these areas. He takes these issues very, very seriously. And I want to give him full credit for a lot of work that we have done on this subcommittee.

But, Mr. President, besides my comments on these specific readiness subcommittee issues, I wanted to make a few brief comments on a couple of other areas in the conference report.

The B-1 Lancer bomber has been designated by the U.S. Air Force to be the core of its conventional heavy bomber fleet. I believe it is a superb aircraft—it had some problems earlier—but I think it is a superb aircraft that has set over 40 world records for heavy bombers, and has demonstrated it can be a major asset to our war-fighting capability. It can carry more loads farther than any other airplane in our inventory. It performs missions high or low. It is a very flexible weapons system.

Mr. President, we have 96 B-1's in the inventory, already bought and paid for at a cost of some $28 billion in 1993 dollars. But currently the B-1 is an aircraft that can carry only Mark 82 500-pound gravity bombs, not a terribly useful weapon in modern-day warfare. That is why the B-1 was not used in Desert Storm. It really was not qualified at that time to deliver weapons. It just did not have the needed conventional weapons delivery capability.

So it is imperative that we get on with modernizing this aircraft to carry all the conventional weapons that it has the potential for delivering. Along with that modernization effort, we must ensure that we provide adequate funding for logistics support so that we avert drawing down the aircraft's operational readiness because of inadequate spare parts support.

I hold a view very strongly that modernizing and adequately supporting the B-1 is our only viable option if we are to field a modern, heavy, conventional bomber capability in the numbers that our national strategy requires. I certainly pledge today that I will continue my efforts to ensure that this challenge is met.

I also wanted to mention one other defense procurement program which I feel is especially important in ensuring that this Nation is capable of meeting its worldwide national security commitments. A number of years ago we started a program to reengine the KC-135 tanker aircraft fleet so we can meet the even heavier demands being placed on strategic air mobility by our new rapid reaction and force projection strategy. The tankers are key to implementation of that strategy.

I have worked for many years in support of the KC-135 reengining program. The original Air Force plan was to modernize every tanker in its fleet, including the Air National Guard, to help correct the critical shortfall identified in the aerial refueling capability. Currently there are 149 tankers that have not been modernized in the reserve forces, and they comprise some 27 percent of the total KC-135 tanker inventory.

I would say over the long haul, reengining these tankers more than pays for the cost of the original installation because of better fuel consumption and greater loads that can be carried with these particular engines.

If we are to get our forces to the battle area in an efficient and effective, indeed, in a life-saving manner best suited to the maintenance of our combat capability, then we must ensure that we have adequate aerial tanker support to meet our operational needs. In my view, reengining our KC-135 assets rapidly will help meet such needs.

I trust the administration's fiscal 1995 defense budget request will adequately address this issue. It is a little hard to believe that just as we finish up on this year's bill, we have a couple of months and then we will see a new one from the administration. I hope DOD focuses on both the B-1 situation and the KC-135 reengining in next year's budget.

Also, just a short word—we do so much work here that we take credit for and yet the people that do most of the work in these areas are our staff, our very good staff. On the armed services staff I particularly wanted to pay tribute to David Lyles, who works with us on the Readiness Subcommittee, Madelyn Creedon, Bob Bayer, Julie Kemp, Suzanne McKenna of my personal staff over in the office, and Phil Upschulte. All of these people work such long hours when we are involved with these issues involving national defense. They are dedicated people. They do not do it just as a job. They believe in a strong defense for this country. I just want to give them credit for the wonderful job they do, and full credit for the work we were able to accomplish this year.

In closing, I think this is a good bill this year. Obviously, as in any year, there are things we wish we had in it and some things some of us wish would be taken out. But that is the give and take of our system, and we work as hard as we can on these things and come up with compromise positions that are in the best interests of our Nation.

I will just close with one word of caution. I want to be careful we are not cutting too far too fast. We have seen the euphoria of past times. I mentioned the 17-year cycle of the rise and fall of military expenditures. It has gone on continually since the Spanish-American War. A 7-year buildup, a 10-year decline, a year or two in between there, and a 7-year buildup, a 10-year decline.

In each one of those time periods people thought we were in the midst of a period of lasting peace, the euphoria for peace. We are in such a time now. Yet we see the operations tempo of our forces around the world. It really has not diminished that much; just the focus has changed.

When we are drawing down our regular forces from about 2.1 down to about 1.6 million, and that cutdown will be completed by the end of 1995, and if you think about sustaining military operations—I ask unanimous consent for 1 more minute, please?

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

Mr. GLENN. If you are drawing down, you can normally sustain, in a sustained military operation, one-third are deployed, one-third are in training getting ready to go, and one-third are in support roles of some kind or another.

In Desert Storm we deployed close to half a million people for most of the last part of that operation. That would mean you could sustain something like Desert Storm with somewhere around 1.3 to 1.5 million final size of the force. We are beginning to cut to the point where we may be below that. So our ability to sustain a force, even the size of Desert Storm, is going to be jeopardized in the future unless we look at this very, very carefully.

So I caution that in the future we are not going to be able just to dip into this as a great big money pot here, as a cash cow to use for other purposes. We absolutely have to maintain our military forces to match our international commitments, and I think we need to be very, very careful in next year's consideration of the Defense Authorization Act that we not cut too far too fast.

Mr. President, I yield the floor.

Mr. KEMPTHORNE. Mr. President, I support this conference report authorizing spending for national defense programs. But I do so with great reluctance. Given the severe fiscal restraints contained in the budget resolution passed by the Senate, this bill does as much as is possible to preserve the readiness and high-technology advantages of our Armed Forces. Unlike the President's budget request, this bill includes a pay raise for military personnel and I fully support this pay

raise. Nonetheless, anyone who has looked at the cuts we had to make knows we cannot continue to reduce defense spending without putting the readiness and capabilities of our Armed Forces, and ultimately the security of this great Nation, at risk.

I want to praise the work of Chairman NUNN and Senator THURMOND because without their guidance and discipline this bill could have been a disaster. Chairman NUNN and Senator THURMOND are true patriots and their service on the Armed Services Committee is a vital contribution to this Nation's national security. But we can only do so much with the limited resources we have been allocated. Chairman NUNN and Senator THURMOND have expressed their own reservations about the pace and scope of these Defense cuts and they are right.

Mr. President, I reluctantly signed this conference report because of my belief that we are cutting Defense spending too fast and too deeply. Throughout our history, the United States has rushed to cut Defense spending when peace seemed on the horizon. Time and time again threats reemerged, threats that we hoped had faded away, and we paid for our rush to reduce our military with the lives and blood of young Americans. I am committed to seeing that we do not make that tragic mistake again.

The fiscal year 1994 Defense authorization bill provides $262 billion for national security activities in the Departments of Defense and Energy. This represents an $11 billion reduction from the amount spent in 1993. When inflation is factored in, the cut this year is even deeper.

Because of the way the Congressional Budget Office counts spending, the bill now before the Senate contains a reduction of $2 billion from the operations and maintenance account. These are the funds that insure the training readiness of our forces and we were forced to cut this account to meet the outlay total requested by the President.

This Defense bill also cuts $4 billion from the research and development accounts that give our forces the technological edge that allows us to save American lives while accomplishing our military objectives. These funds are our seed corn from which future technological innovations will grow and we had to cut this account to meet the budget request submitted by the President.

Throughout this year, Senator MCCAIN has sounded the warning siren about the way we are cutting the finest military force every assembled. This President inherited a formidable military capability from Presidents Reagan and Bush and now we are seeing that military cut and whittled away. I continue to support Senator MCCAIN's effort to make us realize just how severely these large defense cuts are crippling our Nation's defenses. I want to thank Senator MCCAIN for his excellent work and dedication in this effort.

Despite the end of the cold war, threats to United States interests have not ended. As we cut our defenses, North Korea continues its nuclear weapons program, China continues to sell dangerous weapons abroad and Iran continues its multi-billion-dollar military build-up. At the same time, our Nation's leaders say we need the forces to fight two nearly simultaneous major regional conflicts but anyone who has looked at our capabilities know we do not have the forces to match our strategy.

Mr. President, two recent articles make it clear that our senior military leaders openly admit that we cannot continue to cut the Defense budget without incurring the risk that we will not be able to accomplish our objectives. In the first article entitled "Bottom-Up Review Demands May Outweigh Future Air Force Assets," the chief of Staff of the Air Force, General McPeak, is quoted as saying, "We have already gone as far as we can and still do what an Air Force is asked to do—what President rely upon us to do if called on to fight and win two nearly simultaneous major regional conflicts." In the second article entitled, "Army Challenges Clinton Defense Cuts as Security Threat," a memorandum from the Army Chief of Staff, General Sullivan, states, "The outcome of these reductions may be a future force which does not possess the technological superiority required to prevail over potential conflicts arising from the changing world order." According to the Washington Post, the memorandum goes on to say, "The Army requires additional resources if it is to meet continual demands for a technologically superior response and, at the same time, maintain the ability to respond" to the likely range of conflicts. I ask unanimous consent that these two articles be made part of the RECORD and I urge my colleagues to ask our senior military leaders about the risks we are taking by making these deep cuts in defense spending.

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

BOTTOM-UP REVIEW DEMANDS MAY OUTWEIGH FUTURE AIR FORCE ASSETS

LOS ANGELES.—Air Force leaders are running out of places to cut costs and are in a quandary about how—if force structure shrinks further—they could fight and win two nearly simultaneous conflicts.

Air Force Chief of Staff Gen. Merrill McPeak, speaking at an Air Force Association symposium on Oct. 28, warned that funding will not improve and the service cannot support more cuts in force structure over and above those called for in the Bottom-Up Review.

"We have already gone down as far as we can and still do what an Air Force is asked to do—what the president will rely on us to do if called on to fight and win two nearly simultaneous major regional conflicts," McPeak said.

While McPeak traditionally has warned against cutting the service's operations and maintenance (O&M) accounts, last week he said the Air force has not done will in reducing costs.

But the service has gone far in trimming redundant organizational structure and shedding Cold War programs, he said. In terms of reforming the acquisition process, "there isn't much the Air Force, acting alone, can do to fix it," he said.

Addressing the O&M issue, McPeak said the Air Force will fly more than a million fewer hours in 1995 then in 1985, yet O&M costs will grow from 30 percent of the budget to 36 percent.

Presenting the operator's point of view at the conference Friday, Air Combat Command chief Gen. John "Mike" Loh said there already are stresses on readiness and, through it is possible at this time to fight and win two nearly simultaneous conflicts, a lot of analysis needs to be done to see how such a situation would pan out a few years from now.

While the guidance from the Bottom-Up Review "is fine," Loh said the service needs to get a better understanding of what assets will be available and how they would be utilized during two conflicts.

"It all boils down to the size of these conflicts and [the degree to which they are simultaneous] and we have to tighten the parameters around where we declare we can do this very difficult mission," Loh said.

Loh said he is "trying to do the proper modeling that puts specifics into this responsibility," and determine what forces could "swing" from one theater to another and what the impact of moving those forces would be.

Currently, he noted, there is a shortage of F100 engines and a backlog of about 1,000 in depots. While service officials are working around the shortage now, readiness could suffer in the future, he said. In addition, though the F-117 stealth bomber provides tremendous leverage, its capable rate currently "is below the ACC standard" and will continue to deteriorate, Loh added.

"If we don't address [these problems] now and just put it on autopilot today, in a few years a hollow force may ring out," he remarked.

Meanwhile, Loh also is compiling a bomber replacement strategy which would outline ways to buy replacement B-2s and continue to upgrade the B-1B and B-52 bombers. The bomber replacement strategy would be similar to the Navy's process of replacing submarines, he noted.

Explaining that any new bombers would be bought in only limited numbers, Loh said, "I don't think our budget can stand a short-term, relatively high-rate bomber program."

Air Force Secretary Sheila Widnall agreed the Air Force can meet the mission requirements of the Bottom-Up Review today, but also said "we are concerned about it not only for today, but also for tomorrow."

One major factor in being able to sustain readiness will be to make sure aircraft programs like the F-22 are continued and delivered, she said.

[From the Washington Post, Nov. 13, 1993]

ARMY CHALLENGES CLINTON DEFENSE CUTS AS SECURITY THREAT

(By John Lancaster)

The Army has mounted a vigorous challenge to the Clinton administration's program of defense cuts, warning in an internal

document that planned reductions will leave the service "substantially weakened" and ultimately threaten national security.

The memorandum approved by Army Chief of Staff Gordon R. Sullivan identifies 57 major weapons and spending programs that will be eliminated and 63 that will be scaled back if the administration follows through on plans to cut the defense budget by $88 billion five years. "The outcome of these reductions may be a future force which does not possess the technological superiority required to prevail over all potential conflicts arising from the changing world order," said the document, which was completed last month and forwarded to the Pentagon's civilian leaders.

"The Army requires additional resources if it is to meet continual demands for a technologically superior response and, at the same time, maintain the ability to respond to" the likely range of threats.

Although some grousing from the military is inevitable given the scope of planned defense cuts, the Army document is noteworthy both for its strident tone and for its explicit warning that the reductions threaten the nation's ability to right and win wars.

In that regard, the document is an explicit challenge to Defense Secretary Les Aspin, who recently unveiled the administration's plan for a smaller, more mobile post-Cold War military of 1.4 million uniformed men and women, compared with 1.6 million under the Bush administration's proposed "base force" plan. Aspin has said repeatedly that in spite of the cuts, the nation's military will retain its "combat readiness" and ability to fight and win two nearly simultaneous regional conflicts.

Aspin has described the "bottom up" review as a collegial, "broadly collaborative" effort in which the military services had substantial say. The memorandum makes clear, however, that the Army feels slighted by the process in comparison with the other services, especially the Marine Corps, which fares better under Clinton's plan than it did under President George Bush's proposal. The internal document was included as an unclassified addendum to the Army's secret Program Objective Memorandum, which outlines the service's proposed spending plan for the years 1995 through 1999. Portions of the addendum have begun to leak out in the defense trade press, and a copy was obtained by The Washington Post.

"We're not only on the razor's edge but in danger of falling off the razor's edge," said an officer on Sullivan's staff who asked not to be named. "I think there is a lot of recognition not only within the Army but outside the Army, on [Capitol Hill], that the bottom up review is flawed, that you can't get there from here."

A senior defense official, who also spoke on condition of anonymity, disputed such claims. He suggested the Army is feeling the pain of defense cuts more acutely than other services because it has not matched their successes in paring unneeded bases and overhead.

"I don't think the Army has done as much as the Navy and Air Force in looking at their infrastructure," the official said. "They haven't done as much in retooling their overhead. * * * Why does the Army still have to have 17 separate branches? * * * These are basically people who work in offices."

Most of the hard choices have been postponed. On Wednesday, Congress passed a $261 defense spending plan for fiscal 1994, shaving a modest $2.5 billion from the administration's request but deferring serious debate on the recommendations in the bottom up review until next year. The budget is about $12 billion smaller than the 1993 spending plan.

In a statement yesterday, Aspin thanked Congress for producing a budget that "largely protects the readiness of our forces."

Pentagon officials acknowledge, however, that over the long term Aspin will have a tough time fulfilling his pledge to maintain readiness, a broad category that includes everything from steaming hours logged by Navy ships to the availability of bullets and spare parts. At a briefing yesterday on the 1994 defense budget, a senior official said continuing military operations in places such as the Persian Gulf region and Somalia are draining operating funds that normally would be used to promote readiness. As a result, he said, the administration will ask Congress for a supplemental appropriation of $300 million to cover U.S. military operations in Somalia through March 31, the planned U.S. withdrawal deadline.

"I'm going to have readiness problems if we keep having contingencies and I have to eat it out of" operating funds, the official said. "I'm having to make hard choices right now which brigades go to the National Training Center" in the Mojave Desert, where the Army conducts armored warfare exercises.

"Is there a readiness problem that we have right now?" the official added. "I don't think so. But I sure worry about it."

The Army is especially gloomy on the prospects for modernizing the force. "Army modernization * * * is driven by a severely constrained fiscal policy," the memo said. "It forces the soldier's war-fighting capability far below the level of the Army's technological potential."

Mr. KEMPTHORNE. Mr. President, I came to the U.S. Senate committed to a strong national defense. After 1 year as a member of the Senate Armed Services Committee, I have seen the impact on readiness, research and development, and recruitment that result from the cuts proposed by this administration. As our military leaders have testified this year, our forces are on the razor's edge, teetering toward a hollow force, and President Clinton is asking us to cut more, cut more from defense. Well, one Senator is drawing a line in the sand. Today, I want to serve notice to the Senate that after today I will oppose every defense bill that comes before the Senate if it calls for additional cuts in defense spending. Defense spending has been cut; defense spending has made its contribution to deficit reduction; I urge my colleagues to stop this bloodletting before it is too late; I urge my colleagues, let us not waste the finest military force ever assembled and pay for this mistake with lost lives and increased risk.

I yield the floor.

DEFENSE AUTHORIZATION CONFERENCE REPORT

Mrs. KASSEBAUM. Mr. President, I want to thank our Armed Services Committee for the hard work that has gone into shaping this authorization bill. The chairman, Senator NUNN, and the ranking members, Senator THURMOND, deserve our appreciation for doing the best job possible under difficult circumstances.

However, I share some of the concerns that have been expressed by Senator NUNN and Senator THURMOND about the depth of budget cuts we are making in this bill.

With the end of the cold war and the dissolution of the Soviet Union, I think we all agree that we can and must reduce and restructure our Armed Forces. The primary threat to our national security for the past four decades has now diminished sharply. It would be foolish not to restructure our defense forces to fit this new reality and to realize budget savings that are essential for bringing down our deficit.

At the same time, I think we also agree that not all threats to our national security and our national interests have disappeared. While the primary threat is sharply reduced, the variety of other threats and potential problems seem to have multiplied in places like North Korea and others. Uncertainties about future events in Russia and other parts of the former Soviet Union remain very real and very large.

Clearly, we continue to need strong, well-trained and well-equipped defense forces to meet this verity of potential threats and others we may not now foresee.

Mr. President, throughout the 1980's, I spoke about my concern that our defense buildup was proceeding too rapidly and too broadly. I was concerned that very rapid and large increases in defense spending would lead to waste, inefficiency, and a lack of clear thinking tied to sound strategy. Unfortunately, many of those concerns eventually were borne out.

Now, I fear the pendulum is beginning to swing too far in the other direction—toward a builddown that is too rapid and too poorly thought out. There is no dispute that we should cut defense spending, but the speed and depth of those cuts is a matter of vital concern to us all. Cutting too fast and too deep could directly threaten our national security.

As the chairman and ranking member have pointed out, the bill before us cuts an additional $2 billion from the budget request for operations and maintenance and $4 billion from research and development programs. These cuts are on top of reductions planned by President Bush and made even deeper by President Clinton's budget request.

Despite the committee's effort to ease the impact of these additional cuts, these reductions may have a very real effect on training, equipment maintenance, force modernization, and the overall capabilities and readiness of our defense forces. These are not casual concerns in a world that still holds many flash points of danger.

Mr. President, with those concerns in mind, I will support this bill because I believe the committee has done the

best it could under the circumstances. However, I believe caution is in order next year when we return to the question of defense spending.

Mrs. BOXER. Mr. President, I will vote today against the conference report to H.R. 2401, the National Defense Authorization Act of 1994. Although this bill contains many positive features, I feel compelled to vote against it because it includes the codification of a grave injustice: Blatant discrimination based on sexual orientation.

However, I would like to mention several positive provisions of this conference report, which I fully support.

The conference report includes more than $5 billion for environmental cleanup activities. This is especially important to my home State of California. We are learning every day about new environmental hazards at bases marked for closure. Local communities cannot proceed with reuse plans until these hazards are cleaned up.

I am also pleased that the conferees have decided to proceed with the C–17 cargo-jet program. The C–17 provides airlift capacity unmatched by any other aircraft in our Nation's fleet. The C–17 supports the mission of our Armed Forces in the post-cold-war era, and I applaud the conferees' reaffirmation of support.

This report prohibits the use of funds for new nuclear tests. It repeals numerous restrictions on the assignment of women to combat roles, and finally, it imposes reasonable funding limits on the Ballistic Missile Defense Program. These policies are long overdue and will help bring our Armed Forces in step with the times.

Finally, Mr. President, the conferees have seriously addressed the issue of defense conversion and base reuse. The report authorizes over $600 million for badly needed economic conversion programs. I am also pleased that the conferees decided to retain many of the recommendations of the Democratic Task Force on Defense Reinvestment, which were added to the Senate bill in an amendment offered by Senator PRYOR. I was proud to cosponsor that amendment and I look forward to working with the members of the Armed Services Committee to find ways to help defense-dependent communities make the difficult transition to the civilian sector.

I also want to mention a provision of the bill which concerns me. Public Law 92–589, enacted in 1972, provides that the Presidio of San Francisco would become a unit of the National Park System when it was no longer needed by the Department of Defense. The closure of the Presidio as a military base was announced as a result of the 1988 round of base closures, and planning for its future as a national park began.

In 1993, the Base Closure Commission recommended that the Army be allowed to lease space at the Presidio from the Park Service for use as the 6th U.S. Army headquarters. In keeping with those recommendations, lease negotiations are currently underway between the Army and the Park Service. The negotiation of a lease on favorable terms is important to the financial success of the Interior Department's efforts to transform the Presidio from a military base into a national park.

As has been confirmed in two separate colloquys between House Armed Services Chairman RON DELLUMS and Congresswoman NANCY PELOSI, and between the chairman of the Senate Armed Services Subcommittee on Military Readiness and Defense Infrastructure, Senator GLENN, and my colleague, Senator FEINSTEIN, section 2856 of the conference report simply confirms Public Law 92–589.

According to Chairman DELLUMS and Chairman GLENN the language of section 2856 is intended to be in keeping with the Base Closure Commission recommendations of 1989 and 1993. The recommendations of the 1993 commission state in part:

> The Department of the Interior and the Department of the Army should negotiate a lease favorable to both departments for the current facilities occupied by 6th U.S. Army Headquarters and family housing at the Presidio of San Francisco.

REGARDING SECTION 2856

Mrs. FEINSTEIN. I would like to engage the distinguished chairman of the Armed Services Subcommittee on Military Readiness and Defense Infrastructure, Mr. GLENN, in a colloquy regarding section 2856 of the conference report on the Department of Defense Authorization Act for fiscal year 1994.

As the distinguished chairman knows, the Presidio of San Francisco is at a critical juncture in its transition from a military facility to a national park. The U.S. 6th Army has been a welcomed tenant of the Presidio for many years, and I am glad that as a result of the 1993 Defense Base Closure and Realignment Commission's recommendations, this relationship will continue. It is my understanding that section 2856(1) of the conference report is simply a confirmation of Public Law 92–589, which directs that Presidio lands excess to the needs of the Department of Defense would be transferred for management by the National park Service as part of the Golden National Recreation Area. Is this the chairman's understanding?

Mr. GLENN. That is my understanding.

Mrs. FEINSTEIN. Earlier this year the defense Base Closure and Realignment Commission recommended that the 6th Army maintain its headquarters at the Presidio following negotiations with the National Park Service. The 1993 Defense Base Closure and Realignment Commission report clearly states that the Department of the Army should retain only the essential facilities occupied by 6th U.S. Army Headquarters and family housing at the Presidio of San Francisco necessary to accommodate the headquarters and its members.

It is my further understanding that section 2856 in no way changes the intent of those recommendations. Is that the Chairman's understanding as well?

Mr. GLENN. That is also my understanding. Section 2856 should in no way delay or further complicate the reuse and redevelopment of the Presidio of San Francisco. In fact, the provision should speed the transfer of lands at the Presidio that are not essential to the mission of the 6th Army Headquarters and will not be retained by the Department of Defense for use by the 6th Army.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I believe the time expired on both sides.

The PRESIDING OFFICER. All time has expired.

Mr. THURMOND. I ask unanimous consent the distinguished Senator from Delaware [Mr. ROTH] be allowed to speak for 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. ROTH. As in morning business.

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

The Senator from Delaware is recognized.

CHILD PORNOGRAPHY

Mr. ROTH. Mr. President, there have been some important developments growing out of the Roth-Grassley amendment to the crime bill which the Senate adopted unanimously on November 4. That amendment expressed the sense of the Congress opposing the Justice Department's Supreme Court brief filed in the child pornography case of United States versus Knox.

On November 11, President Clinton publicly announced his support for the Roth-Grassley amendment. I was heartened to learn that President Clinton fully agrees with the Senate's efforts to protect our Nation's children from the scourge of child pornography. I want to commend President Clinton for his support.

The Roth-Grassley amendment, adopted by the Senate by a vote of 100–0, declared, and I am quoting from the language of the amendment, "It is the sense of the Congress that in filing its brief in United States versus Knox, * * * the Department of Justice did not accurately reflect the intent of Congress." The resolution stated that the brief had erred by failing to recognize two key points:

First, that under the 1984 Child Protection Act, the term "exhibition of the genitals" is not limited to nude exhibitions or exhibitions in which the

outline of those areas are discernible through clothing, as the Department of Justice brief argued; second, that the prohibitions in the act against depicting a minor engaged in sexually explicit conduct are violated if a person photographs a minor in such a way as to exhibit the child in a lascivious way, rather than requiring lascivious conduct by the child, as the brief also argued.

In other words, the current law prohibits lascivious exhibition of a child's genitals or pubic area, but the department sought to impose additional language: by the child. Thus, under the interpretation of the law urged by the department, child pornography that exhibits children in a lascivious manner would not be prosecuted unless the exhibition is by the child. This reinterpretation of the law would open the floodgates of child pornography.

The Senate view of the meaning of the law is also the view of the Third Circuit Court of Appeals, which affirmed the conviction in the Knox case, and the view which President Clinton's Acting Solicitor General took in the brief he filed with the Supreme Court in March 1993. It apparently is also the view of President Clinton since he agrees with the Roth-Grassley amendment. Moreover, no court, including the Supreme Court, has disagreed with that view.

In fact, the only dissenting view about the meaning of the law comes from the current Solicitor General in the brief he filed with the Supreme Court in the Knox case in September, 1993. I should add, however, that according to Attorney General Reno's testimony responding to my questions before the Senate Banking Committee on November 4, 1993, the Attorney General also agrees with the Solicitor General's narrow interpretation of the child pornography statute.

Under these circumstances, I disagree with President Clinton's call, in his letter of November 10, 1993, to the Attorney General, for new legislation "to ensure that Federal law reaches all forms of child pornography, including the kinds of child pornography at issue in the Senate resolution."

I am also puzzled by the proposed amendment to the child pornography law that Attorney General Reno recently sent to the Judiciary Committee. Attorney General Reno's proposed amendment adds nothing to the current law and, more importantly, could well undermine ongoing child pornography cases including the Knox case itself and other cases now pending.

The Attorney General may feel that we need a new law to cover cases like Knox, but I will remind my colleagues that the former Acting Solicitor General, the Third Circuit Court of Appeals, the Senate and apparently President Clinton himself all believe that the current law covers the facts in Knox. The only dissenting views are those expressed by the Solicitor General and the Attorney General.

Consequently, there is no need for any new legislation, unless the Attorney General wants to expand the child pornography statute to cover situations beyond the facts of the Knox case. If it ain't broke, don't fix it. According to Patrick Trueman, who formerly was in charge of child pornography prosecutions at the Justice Department, the legislative language proposed by the Attorney General may be a grave mistake and could even undermine the current law.

In a letter I sent to President Clinton on November 12, I suggested that he cause the September brief of the Solicitor General in the Knox case to be withdrawn either in the Supreme Court of in the Court of Appeals. That action would solve the problem without need to resort to new legislation. Moreover, there is precedent for such action. During the Bush administration, the Solicitor General, in the case of United States versus Fordice, modified his original brief in the Fordice case after receiving directions about what the President believed the government's position should be in that case.

Unless the Justice Department immediately disavows the Knox brief's narrow interpretation of the child pornography laws, I fear child pornographers and pedophiles currently under prosecution, including the defendant in the Knox case, or those under investigation for similar acts, could go free. New legislation, because it could only be applied prospectively, would not reach such cases. To prevent that result, I urge that President Clinton direct the Justice Department to immediately apply the correct interpretation of the child pornography laws intended by Congress to any and all child pornography cases currently under investigation or litigation.

Mr. President, I request unanimous consent that President Clinton's letter to the Attorney General, dated November 10, 1993, be printed in the RECORD following my statement.

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

THE WHITE HOUSE,
Washington, November 10, 1993.

Hon. JANET RENO,
Attorney General, Washington, DC.

DEAR MADAM ATTORNEY GENERAL: A dispute recently has arisen over the scope of the current federal child pornography law. This dispute impelled the Senate to adopt a "sense of the Senate" resolution expressing its view that the law reaches broadly. I fully agree with the Senate about what the proper scope of the child pornography law should be.

I find all forms of child pornography offensive and harmful, as I know you do, and I want the federal government to lead aggressively in the attack against the scourge of child pornography. It represents an unacceptable exploitation of children and contributes to the degradation of our national life and to a societal climate that appears to condone child abuse.

This Administration supports the broadest possible protections against child pornography and exploitation. I understand that the Justice Department recently filed a brief in which the Department concluded that the current child pornography law is not as broad as it could be. Accordingly, the Justice Department should promptly prepare and submit any necessary legislation to ensure that federal law reaches all forms of child pornography, including the kinds of child pornography at issue in the Senate resolution.

Sincerely,

BILL CLINTON.

OPPOSING THE CHILD PORNOGRAPHY AMENDMENT

Mr. GRASSLEY. Mr. President, the child pornography amendment offered by the administration yesterday is not necessary. There is no need, at this time, to modify the child pornography laws. Under current law, the child need not be nude for the material to be illegal. Similarly, the child need not act lasciviously under the existing legislation. Thus, current law is more than adequate to the job of protecting against the horrors of child sexual exploitation. The problem is that people in this administration will not enforce it.

When we passed the Child Protection Act of 1984, we outlawed child pornography. These materials are entitled to absolutely no constitutional protection. We passed a law that broadly bans these materials.

In fact, Congress, when it considered the forerunner to the Child Protection Act, in 1977, deleted language that would have required child nudity in order to meet the definition of child pornography. The issue was settled. The 1984 act does not require nudity. Yet, in the Knox case, the Reno Justice Department took just that view. It reversed congressional intent and longstanding DOJ interpretation of the law.

So, on November 4, over the protest of the Justice Department, the Senate voted unanimously not that the child pornography laws needed to be expanded, but rather that the law as enacted already prohibits the kinds of materials at issue in the Knox case. I was and am pleased to have played a role in the adoption of that amendment.

I am also pleased that the unanimous Senate vote caused the President to admonish Attorney General Reno to take a tougher stand on child pornography. Nonetheless, the President sidestepped the real issue. Tougher legislation is not needed. Instead, this administration needs to reverse its position, and adhere to the consistent interpretation of the statute. A President truly committed to eradicating child pornography would order his Attorney General to withdraw the brief in the Knox

case and file a new one seeking to uphold the conviction. Anything less falsely allows Janet Reno to claim that President Clinton has vindicated the Department's flagrant disregard for congressional intent.

If DOJ files a brief asserting that Knox's conduct violates the law and if the court rejects that argument, then we can consider appropriate amendments. We can have hearings. We can avoid any of the objections of overbreadth that have been raised to this proposed amendment by the ACLU, the American Library Association, and the American Booksellers Association. The current law does not implicate the first amendment concerns on materials such as underwear advertising that these groups have raised about the administration's hastily drafted amendment.

The administration's amendment to the child pornography bill is counterproductive as well as unnecessary. If this amendment were enacted into law, every pending child pornography investigation and prosecution would be affected if the child were nude or were being posed lasciviously. Each defendant would argue that Congress in 1984 obviously did not intend to ban clothed child pornography. Otherwise, there would have been no reason to adopt the amendment proposed yesterday. Similarly, each defendant would argue that if the original bill examined the intent of the pornographer in determining whether the minor was acting lasciviously, there would have been no reason to adopt the administration's amendment. Congress voted to ban these materials in 1984, and it did not make 1993 the effective date. I cannot support an amendment that would have that effect.

The fact is that I disagree with the President and the Attorney General that new legislation is needed. The administration's amendment is nothing more than political trickery. It seeks to deflect attention from the disregard of congressional intent on child pornography that was made in the Knox brief. To paraphrase Winston Churchill, the Justice Department has the tools. They should finish the job.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the conference report.

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

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The bill clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, has leader's time been reserved? I will take 5 minutes of that.

The PRESIDING OFFICER. It has been reserved.

Mr. DOLE. Mr. President, I commend my colleagues on the conference committee for their hard work in crafting this bill. They have had the difficult task of providing an adequate defense with inadequate funding.

There is much that is good in this conference report. But, as I stated last week, I am concerned about the pace and direction of our continued military build-down. And I oppose the adoption of the conference report for that reason.

If we were to stop here—take stock in where we are going—that would be one thing. But this bill codifies a defense plan that, in my view, is both inadequate and dangerous.

During last year's campaign, then candidate Clinton promised to cut defense spending by $60 billion—below the substantial cuts already made by President Bush. But President Clinton seeks to go much further—reducing our national defense by an additional $127 billion. That is too far and too fast. Especially when the administration seeks to expand America's military involvement throughout the world in these so-called "peace keeping" and "nation building" efforts.

We are now discovering that the so-called Bottom-Up Review which was supposed to restructure our forces consistent with the new threats we face is massively under funded. By as much as $40 billion by some accounts.

Before we go too far, the Congress and the administration should carefully reconcile this defense plan with both our foreign policy, our national security goals and the impact of these deep cuts will have on our economy.

If we continue down this path, our actions may be irreversible, and may jeopardize our future security. We can wring our hands and worry out loud. Or we can go on the record and call a stop to this until we have thought this out more carefully.

Over the course of the past 2 years, we have been constantly reminded that although the Soviet Union has crumbled and the Iron Curtain has been lifted—the world remains a dangerous and unpredictable place.

Regional instability, such as the ongoing crises in Somalia, Haiti, Bosnia, the Korean peninsula, and the former Soviet Union threatens the peace of the global community. Arms proliferation is on the rise. The nuclear weapons of the former Soviet Union are still deployed in Russia and Ukraine. Iran is rearmining at an alarming rate. North Korea is clearly developing nuclear weapons. And in the face of all this, the fact is future threats cannot be predicted with any level of confidence.

We must heed the harsh lessons of the 1970's. During those years the Armed Forces of this Nation were reduced to a hollow force, with readiness having deteriorated to an alarming state by the end of the decade. Remember, our Armed Forces weren't dismantled overnight, but year after year of slashing at defense spending.

Now, however, because of that experience, we can recognize the tell-tale signs of declining readiness, namely: recruiting problems, declining morale, training cutbacks, logistics and support problems, maintenance backlogs, and lack of adequate funding for force modernization. With these signs beginning to reappear today, how can the Congress continue its slash and burn policy towards our defense budgets?

Now is the time to provide the leadership necessary to ensure an adequate national defense. We cannot afford to repeat the mistakes of the late 1970's. We cannot afford to disband the Army of Desert Storm and return to the Army of Desert One.

The fact is, in the future, we may not be able to spend billions of dollars to reconstitute our forces, as we did in the 1980's.

Let us face facts. Continued defense cuts impact people—the 5½ million Americans who make their living in military service or in defense industries and related businesses. Since 1986, nearly 1.2 million Americans have lost their jobs because of defense cutbacks.

Now, the CBO estimates that as a result of the cuts in defense spending called for by the Clinton administration, another 1.4 million Americans will lose their jobs by 1998. This is half a million more than was estimated under the defense budgets of the Bush administration. The elimination of these defense jobs will have a significant impact on the economic future of the defense industry and the country as a whole.

Again, I commend the work of my colleagues for their efforts to salvage an adequate national defense from inadequate funding. But I believe that the cuts made by this bill are too deep. We are simply repeating the mistakes and failed policies of the 1970's. Policies that will cost far more to correct than what some claim to be saving. Therefore, I cannot support this conference report and will vote against its adoption.

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered. 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 result was announced—yeas 77, nays 22, as follows:

[Rollcall Vote No. 380 Leg.]

YEAS—77

Akaka	Faircloth	Mathews
Baucus	Feinstein	McConnell
Bennett	Ford	Mikulski
Biden	Glenn	Mitchell
Bingaman	Graham	Moseley-Braun
Bond	Grassley	Moynihan
Boren	Gregg	Murkowski
Bradley	Harkin	Murray
Breaux	Heflin	Nunn
Bryan	Hollings	Pell
Bumpers	Hutchison	Pryor
Burns	Inouye	Reid
Byrd	Jeffords	Riegle
Campbell	Johnston	Robb
Chafee	Kassebaum	Rockefeller
Coats	Kempthorne	Sarbanes
Cochran	Kennedy	Sasser
Cohen	Kerrey	Shelby
Conrad	Kerry	Simon
Craig	Kohl	Simpson
Danforth	Lautenberg	Smith
Daschle	Leahy	Stevens
DeConcini	Levin	Thurmond
Dodd	Lieberman	Warner
Durenberger	Lott	Wofford
Exon	Lugar	

NAYS—22

Boxer	Gramm	Packwood
Brown	Hatch	Pressler
Coverdell	Hatfield	Roth
D'Amato	Helms	Specter
Dole	Mack	Wallop
Domenici	McCain	Wellstone
Feingold	Metzenbaum	
Gorton	Nickles	

NOT VOTING—1

Dorgan

So the conference report was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INDEPENDENT COUNSEL REAUTHORIZATION ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 145, S. 24, a bill to reauthorize the independent counsel.

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

The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 24) to reauthorize the independent counsel law for an additional 5 years, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs 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 "Independent Counsel Reauthorization Act of 1993".

SEC. 2. FIVE-YEAR REAUTHORIZATION.

Section 599 of title 28, United States Code, is amended by striking "1987" and inserting "1993".

SEC. 3. ADDED CONTROLS.

(a) COST CONTROLS AND ADMINISTRATIVE SUPPORT.—Section 594 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(l) COST CONTROLS AND ADMINISTRATIVE SUPPORT.—

"(1) COST CONTROLS.—

"(A) IN GENERAL.—An independent counsel shall—

"(i) conduct all activities with due regard for expense;

"(ii) authorize only reasonable and lawful expenditures; and

"(iii) promptly, upon taking office, assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

"(B) DEPARTMENT OF JUSTICE POLICIES.—An independent counsel shall comply with the established policies of the Department of Justice respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

"(2) ADMINISTRATIVE SUPPORT.—The Administrative Office of the United States Courts shall provide administrative support and guidance to each independent counsel. The Administrative Office shall not disclose information related to an independent counsel's expenditures, personnel, or administrative acts or arrangements without the authorization of the independent counsel.

"(3) OFFICE SPACE.—The General Services Administration, in consultation with the Administrative Office, shall promptly provide appropriate office space for each independent counsel. Such office space shall be within a Federal building unless the General Services Administration determines that other arrangements would cost less. Until such office space is provided, the Administrative Office of the United States Courts shall provide newly appointed independent counsels immediately upon appointment with appropriate, temporary office space, equipment, and supplies.".

(b) INDEPENDENT COUNSEL PER DIEM EXPENSES.— Section 594(b) of title 28, United States Code, is amended—

(1) by striking "(b) COMPENSATION.—An" and inserting the following:

"(b) COMPENSATION.—

"(1) IN GENERAL.—An"; and

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

"(2) TRAVEL EXPENSES.—Except as provided in paragraph (3), an independent counsel and persons appointed under subsection (c) shall be entitled to the payment of travel expenses as provided by subchapter 1 of chapter 57 of title 5, United States Code, including travel expenses and per diem in lieu of subsistence in accordance with section 5703 of title 5.

"(3) TRAVEL TO PRIMARY OFFICE.—An independent counsel and persons appointed under subsection (c) shall not be entitled to the payment of travel and subsistence expenses under subchapter 1 of chapter 57 of title 5, United States Code, with respect to duties performed in the city in which the primary office of that independent counsel or person is located after 1 year of service under this chapter unless the employee assigned duties under subsection (l)(1)(A)(iii) certifies that the payment is in the public interest to carry out the purposes of this chapter.".

(c) INDEPENDENT COUNSEL EMPLOYEE PAY COMPARABILITY.—Section 594(c) of title 28, United States Code, is amended by striking the last sentence and inserting: "Such employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of United States Attorney for the District of Columbia under sections 548 and 550, but in no event shall any such employee be compensated at a rate greater than the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.".

(d) ETHICS ENFORCEMENT.—Section 594(j) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(5) ENFORCEMENT.—The Department of Justice and Office of Government Ethics have authority to enforce compliance with this subsection.".

(e) COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.—Section 594(f) of title 28, United States Code, is amended by—

(1) striking "shall, except where not possible, comply" and inserting "shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply";

(2) adding at the end thereof the following: "To determine these policies and policies under subsection (l)(1)(B), the independent counsel shall, to the extent possible throughout his or her term of office, consult with the Department of Justice.";

(3) striking "An independent" and inserting the following:

"(1) IN GENERAL.—An independent"; and

(4) adding at the end thereof the following new paragraph:

"(2) NATIONAL SECURITY MATTERS.—An independent counsel shall consult with the Department of Justice with respect to national security matters and shall comply with guidelines and procedures utilized by the Department for the handling and use of classified material.".

(f) PUBLICATION OF REPORTS.—Section 594(h) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(3) PUBLICATION OF REPORTS.—At the request of an independent counsel, the Public Printer shall cause to be printed any report previously released to the public under paragraph (2). The independent counsel shall certify the number of copies necessary for the public service, and the Public Printer shall place the cost of the required number to the debit of such independent counsel. Additional copies shall be made available to the public through the depository library program and Superintendent of Documents sales program pursuant to sections 1702 and 1903 of title 44.".

(g) ANNUAL REPORTS TO CONGRESS.—Section 595(a)(2) of title 28, United States Code, is amended by striking "such statements" and all that follows through "appropriate" and inserting "each quarter a report detailing all monies expended and annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. Such report may omit any matter that in the judgment of the independent counsel should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent counsel has made".

(h) PERIODIC REAPPOINTMENT OF INDEPENDENT COUNSEL.—Section 596(b)(2) of title 28, United States Code, is amended by adding at the end the following new sentence: "If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 3 years after the appointment of an independent counsel and at the end of each succeeding 3-year period.".

(i) AUDITS BY THE COMPTROLLER GENERAL.—Section 596(c) of title 28, United States Code, is amended to read as follows:

"(c) AUDITS.—By December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding September 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall

prepare a statement of expenditures by the date that is 90 days after the date on which the office is terminated. The Comptroller General shall audit each such statement and report the results of each audit to the appropriate committees of the Congress not later than March 31 of the year following the submission of any such statement.".

(j) THRESHOLD INQUIRY.—Section 591(d)(2) of title 28, United States Code, is amended by striking "15" each time it appears and inserting "30".

(k) CRIMINAL INTENT.—Section 592(a)(2)(B) of title 28, United States Code, is amended to read as follows:

"(B) After conducting an examination under section 591(d) or preliminary investigation under this subsection, the Attorney General shall not decline to proceed under this chapter based upon a lack of evidence that the subject acted with the state of mind required for a violation of criminal law, unless the Attorney General determines that, based upon the information obtained, there are no reasonable grounds to believe that the subject acted with the state of mind required for a violation of criminal law, and no reasonable possibility that further investigation would develop such evidence.".

(l) RECUSAL.—Section 591(e) of title 28, United States Code, is amended to read as follows:

"(e) RECUSAL OF ATTORNEY GENERAL.—

"(1) WHEN RECUSAL IS REQUIRED.—(A) If information received under this chapter involves the Attorney General, the next most senior official in the Department of Justice who is not also recused shall perform the duties assigned under this chapter to the Attorney General.

"(B) If information received under this chapter involves a person with whom the Attorney General has a personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior official in the Department of Justice who is not also recused to perform the duties assigned under this chapter to the Attorney General.

"(2) REQUIREMENTS FOR RECUSAL DETERMINATION.—Before personally making any other determination under this chapter with respect to a matter, the Attorney General shall determine under paragraph (1)(B) whether recusal is necessary. The Attorney General shall set forth this determination in writing, identify the facts considered by the Attorney General, and set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to the matter.".

(m) DISCLOSURE OF INFORMATION.—Section 592(e) of title 28, United States Code, is amended by inserting after "Except as otherwise provided in this chapter" the following: "or as necessary for law enforcement purposes".

(n) CLARIFY AUTHORITY TO USE JUSTICE PERSONNEL.—Section 594(d)(1) of title 28, United States Code, is amended by adding at the end thereof the following: "At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel.".

(o) ATTORNEY FEES.—Section 593(f) of title 28, United States Code, is amended—

(1) in paragraph (1), by inserting before the last sentence the following: "No award of attorneys' fees shall be made for any fees that would have been incurred by the individual if the investigation had been conducted by the Department of Justice."; and

(2) in paragraph (2), by striking everything after "subsection," and inserting the following: "addressing—

"(A) the sufficiency of the demonstration;

"(B) the need or justification for the underlying item;

"(C) whether the underlying item would have been incurred but for the requirements of this chapter; and

"(D) the reasonableness of the amount of money requested.".

SEC. 4. MEMBERS OF CONGRESS.

(a) DISCRETIONARY AUTHORITY.—Section 591(c) of title 28, United States Code, is amended to read as follows:

"(c) PRELIMINARY INVESTIGATION WITH RESPECT TO OTHER PERSONS AND MATTERS.—

"(1) IN GENERAL.—When the Attorney General determines that an investigation or prosecution of a person or matter by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person or matter in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether there may have been a violation of Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

"(2) MEMBERS OF CONGRESS.—When the Attorney General determines that it would be in the public interest, the Attorney General may conduct a preliminary investigation in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether a Member of Congress may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.".

(b) POSTEMPLOYMENT COVERAGE.—Section 591(b) of title 28, United States Code, is amended by striking paragraphs (6) and (7) and inserting the following:

"(6) any individual who held an office or position described in paragraphs (1) through (5), for 1 year after leaving the office or position or until the President under whom the individual served leaves office, whichever period expires first;

"(7) any individual who held an office or position described in paragraphs (1) through (5) during the incumbency of 1 President and who continued to hold that office or position for not more than 90 days into the term of the next President, until the individual leaves such office or position; and".

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall become effective on the date of enactment of this Act, except that the compensation restrictions added by section 3(c) of this Act shall apply only to employees appointed after the date of enactment of this Act.

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senator from Connecticut be yielded 5 minutes as in morning business.

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

The Chair recognizes the senior Senator from Connecticut for up to 5 minutes.

Mr. DODD. Mr. President, I thank the Chair.

"OUNCE OF PREVENTION" AMENDMENT TO CRIME BILL

Mr. DODD. Mr. President, I rise today to thank my colleagues for supporting an amendment I offered to the crime bill last Wednesday and to explain it briefly.

I believe this amendment, called an ounce of prevention, fills a hole that I saw in the legislation before us. For while I saw that this bill did a great deal to punish criminals after they commit their crimes, I did not believe it went far enough to support cost-effective programs to prevent children from becoming criminals in the first place.

This omission was, I think, partially a result of a frustration many of my colleagues and I have felt about crime in this country. It is all too easy to conclude that the causes leading young people into lives of crime are so complex and so foreign to each of us that there is little we can do at the Federal level to truly address this issue.

CAUSE FOR HOPE

But over the last several months, my own frustration has turned to hope. As I have spent some time grappling with the issue of youth violence, I have come to discover that there are programs, people and ideas that work well to turn kids' lives around. My message in offering this amendment to the crime bill is that there are concrete things we can do today, as part of this legislation, to help good kids stay out of trouble.

The ounce of prevention amendment is a program based upon a simple premise—namely, that if communities have the will and the resources to work together they can give kids positive alternatives to the streets.

The Federal Government can play a key role in this effort. It can use its resources to bring various groups and individuals within communities together. We can also simplify the complicated maze of programs and application systems so that communities can have one-stop shopping when looking for innovative ideas and resources at the Federal level.

I see this approach as an indispensable component of an over-all attack on crime in this country. The fact is that many kids who join gangs say they do so because they feel they have no other alternatives. My amendment would help communities provide those alternatives.

Such a program is desperately needed. The number of kids turning to gangs is growing. There are now an estimated 400,000 youth gang-members, ranging in age from 9 to 18. This is no longer a problem restricted to major urban areas: gangs have appeared in suburbs and small towns across America.

In offering this amendment, I am not suggesting that the punitive aspects of this crime bill are wrong. I have strongly supported provisions to put more police on the streets and to build more prison space. I have supported stiffer sentences and tougher laws.

CRIME PREVENTION

But I strongly believe that these measures are not enough. They must be balanced with strong measures to get at the root causes of crime.

This is the same philosophy that the President and the First Lady have

brought to the debate over health care reform. By emphasizing preventive care, they hope to save lives and save dollars. This amendment is based on the same philosophy. It is far wiser to spend several dollars to keep a community gym open at night than it is to pay the medical bills for a kid who gets shot by a stray bullet while hanging out on a street corner because there is no where else to go.

Why do we not spend a handful of dollars today on programs to give a young person an alternative to crime instead of spending thousands of dollars down the road to punish him after the crime has already taken place? More important than saving money, such an approach would save lives—both of crime victims and of countless young people whose futures can be ruined when they make the terrible mistake of taking part in criminal activity.

The ounce of prevention amendment would provide funds for communities to develop programs to give our young people an alternative to violence. Money would be available for after-school activities, summer academic and recreation programs, and programs to ease young people's transition into the labor market.

BADLY NEEDED COORDINATION

The amendment would also coordinate the youth-related efforts of the Departments of Justice, Education, Health and Human Services, Agriculture, Housing and Urban Development, and the Office of National Drug Control Policy and bring them under the umbrella of a new Ounce of Prevention Council.

This coordination is critical to our efforts. Currently the Federal Government has a patchwork of different youth programs, and there is very little connection between them. Local governments and groups are often bewildered by the bureaucratic maze and do not know where to turn. I hope the Ounce of Prevention Council will bring these programs together, cut through the redtape, and make sure the services reach the communities that need them.

BOTTOM-UP APPROACH

Another strong point of this program is its bottom-up approach to the problem. People in communities all across America have excellent ideas on how to provide their young people with alternatives to crime. The last thing they need is Washington dictating to them what they should do.

Under the Ounce of Prevention Program, local municipalities, schools, colleges, community agencies and other groups would have the opportunity to apply for funds to support programs they have created. Among the groups that might apply for funds are the YMCA and the YWCA; the Boys and Girls Clubs of America; Big Brothers/Big Sisters of America; the Boy Scouts and the Girl Scouts; and the American Red Cross.

It is groups such as these that are on the front lines in our efforts to provide kids with an alternative to gangs, and it is groups such as these we should support.

I know my colleagues join me in hoping for the day when so much of this body's discussion of children and adolescents will not come in the context of anticrime legislation. I think the Ounce of Prevention amendment will move us closer to that day, and I again thank my colleagues for supporting it.

Mr. President, I thank my colleagues here for accepting an amendment that I offered to the crime bill last Wednesday. I appreciate the support of the Senator from Delaware and the support of the Senator from Utah.

My colleague from New Mexico was just here. He and Senator DANFORTH, Senator BRADLEY, and my colleague BOB KERREY from Nebraska, and a lot of people were involved in this idea.

I am talking about the adoption of an amendment we call the ounce of prevention amendment. It came as a result of a meeting that occurred in this town about 2 weeks ago of some people that I asked to get together. They were from across the country—from Oakland, Chicago, Boston, and New York—and they were all involved in youth violence prevention at the grass roots.

Mary Edelman and her husband, Peter Edelman, hosted the dinner. We sat down together to discuss how we might combat youth violence in this country.

This is a frustrating problem. I had held countless hearings on it and I had very little idea how to come to terms with this crisis.

At the end of the discussion that evening at the Edelman home, several things emerged as major problems. One is that a lot of good people and groups at the local level were not getting the kind of support they needed. They did not belong to the political constituency of the municipality or they did not belong to that of the State. They had to go begging in many instance to get support. Yet they were getting the job done and were effective. That was the first problem.

The second problem was when these groups applied to Washington for assistance in this area they had to go through a maze of bureaucracy. Many agencies had good ideas, among them the Justice Department, Labor Department, Health and Human Services, and the Department of Education. But for a YMCA or for a boys club or a girls club to apply for grants through six or seven agencies was just overly complicated.

So we came up with an idea that evening of establishing something called an Ounce of Prevention Council to coordinate the Federal Government's efforts.

The ounce of prevention idea came out of this $23 billion for crime prevention. We felt that if we could come up with 1 ounce—or one-sixteenth—of the funds there to deal with prevention, it would be worth at least that much to try to stop these problems from happening.

I commend the Senator from Delaware, and others, who worked on this bill. They have done a great job. We had a great deal of emphasis on services, people in uniform, putting more police on the streets, and dealing with criminal elements.

At the same time, I think most of us here would like to be part of something that stops the crimes from happening in the first place.

These groups at the local level are doing a good job of crime prevention. So the ounce of prevention amendment will support these groups, and I am pleased that it was adopted by this body.

The Ounce of Prevention Council will be a council chaired by the Attorney General and made up of the Secretaries from Health and Human Services, Education, Agriculture, Housing and Urban Development, as well as the Office of National Drug Control Policy.

Local community groups will be able to apply directly to that council for financing and support for their efforts at the local level in the area of youth violence prevention. They will not have to go to six or seven or eight different agencies to get assistance. They can go right to the Ounce of Prevention Council.

If the local group meets very simple and basic standards, then they will qualify to receive direct financial assistance to help them combat youth violence in their communities—without going through the State and without going through the local municipal government.

That is what this amendment is. It does not have all the resources that we would have liked, but it does set up a structure and a framework that will allow these organizations that are doing the jobs to get some of the resources they need. The amendment will also allow a coordinated effort among the various agencies and departments at the Federal level to consolidate their efforts and provide those resources in a very efficient and expeditious way to our local communities that are really doing a remarkable job.

I would invite my colleagues during the break that we will have between the end of this session and beginning of the next to contact people in some of their home communities, large and small. I think you would be surprised at what terrific efforts are being waged by the Boys and Girls Clubs, YMCA's, YWCA's, church groups, and the like, to give kids an alternative to crime and gangs. These groups are coming up with new ideas, such as after-school programs and alternative dispute resolution efforts. They are doing terrific work. They do not get the attention

that a child being shot does, obviously, but they are doing great work. They need our help. They are confused by the bureaucracy. The Ounce of Prevention Council and the assistance we are providing in this crime bill I think can really make a difference for some of these groups and organizations at the local level to prevent crime from happening in the first place.

Mr. President, I again commend the sponsors who joined with me in this, the chairman of the Judiciary Committee, and Senator HATCH, and others for their support of this amendment.

I yield the floor.

INDEPENDENT COUNSEL REAUTHORIZATION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Chair recognizes the Senator from Michigan.

Mr. LEVIN. Mr. President, last December, the independent counsel law, which had been enacted in response to Watergate and was an important part of our criminal justice system for 14 years, expired. It has been an unfortunate lapse but one that we can correct today with passage of S. 24, the Independent Counsel Reauthorization Act.

S. 24 would put the independent counsel law back on the books for another 5 years. It is very similar to the bill that we introduced in the last Congress and which was reported out of the Governmental Affairs Committee in a bipartisan vote only to be held up on the Senate floor.

S. 24 has the strong support of both the President and the Attorney General. It also has the strong support of the public.

The independent counsel law has been reauthorized twice before with large bipartisan majorities in both Houses of Congress, once in 1983 and then again in 1987.

On both occasions, President Reagan signed the bill into law. In 1988, by a vote of 7 to 1, the Supreme Court found the independent counsel law constitutional.

During each reauthorization of the law based on the experience of the preceding years, we have seen fit to amend and improve the statute. No one has ever claimed that it is the perfect answer to a difficult problem—the conflict of interest or the appearance of a conflict of interest in the Justice Department's prosecuting persons close to the President. That is the inherent problem, and that is the problem which the independent counsel law is intended to address. How can you have public confidence in a prosecution and an investigation of persons close to the President if that investigation is being conducted by somebody who is appointed by the President and subject to the President's control?

Now, there is no perfect answer to this problem. What we have tried to do, however, is to improve the law over time. And I think we have been pretty successful at doing just that.

As in the past, this reauthorization bill offers a number of improvements based upon the experience of the 6 years since the last reauthorization in 1987. They include tighter fiscal and administrative controls on independent counsels, a stronger role for the Attorney General to ensure that only the cases that should go to an independent counsel actually get there, and explicit authority for the Attorney General to use the independent counsel process to investigate Members of Congress.

The basis for the law is the need for public trust in our criminal justice system. Twenty years ago, the public's trust was shattered when then president Nixon ordered his Attorney General, Elliott Richardson, to fire the Watergate special prosecutor, Archibald Cox, who had subpoenaed key White House tapes. Attorney General Richardson resigned instead, and so did Deputy Attorney General William Ruckelshaus. Although Solicitor General Robert Bork obeyed the President's directive and fired Special Prosecutor Archibald Cox, this interference with the Watergate criminal prosecutions left the country reeling. What followed was a constitutional crisis, the resignation of a President, the appointment of a new special prosecutor, and years of criminal investigations, prosecutions, and convictions.

As a result, the independent counsel law was considered by Congress and adopted by Congress on a bipartisan basis. Since its enactment 15 years ago, 13 independent counsels have been appointed. Eight closed their investigations without indictments—but with the public's confidence that the individuals being investigated were not being given any preferential treatment.

Four independent counsels have issued indictments. All four have obtained convictions. One independent counsel, appointed in December, has yet to reach a decision on indictment.

The longest and most complex independent counsel matter has been the Iran-Contra investigation. In December 1986, then-Attorney General Edwin Meese asked the special court to appoint an independent counsel to investigate all crimes arising out of the Iranian arms sales and diversion of profits to the Nicaraguan contras. Interestingly enough, this case was not one where use of an independent counsel was mandatory; Attorney General Meese, supported by President Reagan, chose to invoke the independent counsel process. In response to this request, the special court appointed Lawrence Walsh—a respected lawyer who was a life-long Republican, former prosecutor and Federal judge, and former head of the American Bar Association and who possessed a strong resume of professional experience and honors.

Mr. Walsh accepted the assignment and has since worked through one of the most complex criminal investigations in the history of American jurisprudence. He filed 14 indictments of top Government officials in the Defense Department, State Department and CIA. Eleven resulted in criminal convictions, either from guilty pleas or jury verdicts. One indictment was dismissed due to the Government's refusal to release relevant classified information. Two indictments never went to trial, because President Bush issued pardons for the defendants, Caspar Weinberger and Duane Clarridge. Mr. Walsh has not completed his investigation, drafted his final report, and sent it to the special court. The court has given persons named in the report the opportunity to comment, after which the court will decide whether to release the report.

The Iran-Contra investigation had just begun at the time of the last reauthorization of the law, and it has proved to be the most controversial case we have seen under this law.

Given the complexity of the facts and the political sensitivity of the issue, that controversy has been no surprise at all. But it has been a measure of public confidence in the independent counsel system that there is no charge that the investigation has been a whitewash.

S. 24—this bill—was introduced by Senator COHEN and myself earlier this year and reported by the Governmental Affairs Committee with bipartisan support in July. In general, the bill would: First, reauthorize the independent counsel law for 5 years, second, strengthen fiscal and administrative controls on independent counsels; and third, make it clear that the law applies to Members of Congress. I'd like to address the last two of these items more specifically.

A key feature of the bill is a host of tighter fiscal and administrative controls on independent counsels in response to some of the weaknesses demonstrated by the Iran-Contra matter. These weaknesses include inadequate or unclear cost controls on such matters as staff compensation, office space and travel expenses; and the need for additional accountability measures and a stronger role for the Attorney General.

In answer to these problems, the bill would require independent counsels to: comply with Justice Department spending policies; authorize only "reasonable" expenditures; and appoint a staff person to track expenditures and incur personal liability for authorizing improper expenditures.

To assist the independent counsel in these duties, the bill would clarify the responsibility of the Administrative Office of the U.S. Courts to provide administrative support and guidance.

The bill would require use of Federal office space by independent counsels, unless other arrangements are less costly. It would limit travel expenses by making it clear that Federal travel laws apply to independent counsels and, after one year in office, that independent counsels and staff are not entitled to travel or subsistence expenses when working in the city in which their primary office is located, unless the certifying official approves payment as in the public interest.

The bill would limit independent counsel staff compensation to amounts paid for comparable positions in the U.S. Attorney's Office of the District of Columbia. It would require independent counsels to file quarterly expense reports with the special court and annual progress and expense reports with Congress, and ensure public availability of their final reports. It would require annual expenditure statements by independent counsels and continuing audits by GAO.

Finally, in establishing one of the most important checks on the independent counsel system, S. 24 would require the special court to determine at least once every 3 years whether an independent counsel office should be continued. This provision would create a mandatory check-in by the special court at least once every 3 years—it could be done more often—to see if the office of an independent counsel has done what it was supposed to do and should close up shop and go home.

With respect to Members of Congress, the bill makes it explicitly clear that the Attorney General may investigate a Member of Congress using one of two approaches. She can use the independent counsel process anytime she thinks it is in the public interest to do so. Or, she can proceed to investigate Member of Congress using the Department of Justice. The law which expired a year ago, the old law, limited the Attorney General to using the independent counsel process for Members of Congress only where the Attorney General determined there was a personal, financial, or political conflict of interest. This bill removes that hurdle and gives the Attorney General the discretion needed to use an independent counsel for a Member of Congress whenever she thinks it would be appropriate.

An amendment may be offered later to require the Attorney General to use the independent counsel process exclusively for Members of Congress. We will oppose that amendment as being misguided, since the purpose of the independent counsel law is to address the inherent conflict of interest or the appearance of a conflict of interest that exists when an administration investigates itself. No such conflict of interest exists when an administration investigates a Member of Congress, at least it does not exist inherently. It does not automatically exist. There is not an automatic appearance of a conflict of interest when a Member of Congress is being investigated by the Attorney General.

The Justice Department has a long history of aggressive and successful prosecutions of Members of Congress and that is proof that there is no inherent conflict.

Just last year the Bush administration's Justice Department indicted the ranking Republican on the House Appropriations Committee despite his obvious clear influence over the Department's budget. Two former Members of Congress entered prison just this year, after Federal prosecutions resulted in convictions, and other indictments of Members of Congress are pending or at least possibly pending.

The fact is that the Attorney General is not perceived to be and is not in fact part of the U.S. Congress. There is no inherent conflict when she investigates and prosecutes individual Members in all but unusual cases. That is why the independent counsel law authorizes her to use independent counsel relative to Members of Congress when there are prosecutions being considered, but it also authorizes her to prosecute for herself. That is, relative to Members of Congress, she has two options under our bill. She can go either way without limit. We face two barrels.

On the other hand, the Attorney General is perceived to be and is part of the administration, and there is an inherent conflict of interest or appearance of conflict of interest each time she is called upon to investigate her high-level administration colleagues. That is why the law requires her to turn to an independent counsel when investigating these top executive branch officials and the investigation has reached the required threshold.

This is not just our analysis. The Attorney General herself agrees with this analysis. She testified before our committee flat out that there is an inherent conflict of interest when she investigates top administration officials but not when she investigates Members of Congress.

For that reason Attorney General Reno supports the automatic coverage of top executive branch officials but not the automatic coverage of Congress—not the mandatory coverage of Members of Congress. But she wants the authority to use the independent counsel relative to Members of Congress. And she also wants the authority to proceed on her own.

Congress is not favored as a result. We are subject to a two-barreled approach. The Attorney General wants the discretion, and we give it to her, to use the independent counsel relative to Members of Congress or to investigate us herself. She wants both options, and this bill gives her both options. But regarding the executive branch, she says, and we agree, there is an inherent conflict of interest because these are the high level officials in the same branch that she serves in, appointed by the same person that she works for. It was that conflict in the executive branch that caused, after Watergate, the public to lose its confidence in the ability of the executive branch to conduct investigations of its own top officials.

The independent counsel law has been critical to restoring public confidence in the criminal investigations of top Government officials suspected of misconduct. When it lapsed last year it left a gaping hole in our criminal justice system and it is up to us to repair it.

Finally, I thank my good friend BILL COHEN of Maine. He has worked harder on this legislation over the decades than anybody I know of. He is truly one of the godfathers of this statute. He is a walking history book, although he is not that old, relative to it. We have stood together in support of this law, working together to improve it for the past 15 years, through both Democratic and Republican administrations. That is the hallmark of this bill. Not only does it restore public confidence to the prosecution, the investigation of high level officials, but it also has been a bipartisan bill always.

Senator COHEN has been in the center of this effort. His steadfast support and his knowledgeable approach to this subject has been invaluable to its being reauthorized twice before—indeed, to its original creation. It has been a pleasure working with him, as it always is, but on this bill particularly because of the knowledge and background he brings to this bill.

I yield the floor.

The PRESIDING OFFICER (Mr. KOHL). The Chair recognizes the Senator from Maine [Mr. COHEN].

Mr. COHEN. Mr. President, first of all I thank my colleague from Michigan for those glowing remarks. I do not want to undercut the significance of what he has said. I would like to kind of bathe in the afterglow of the tribute just paid to me, but I wonder if he would tolerate perhaps a 2-minute statement on my part that might appear as in morning business.

NAFTA

Mr. COHEN. Mr. President, earlier today I issued a statement concerning the NAFTA treaty and indicated that I would not be supporting it. In my own estimation, the debate over the proposed free-trade agreement has been vigorous but, unfortunately, too often the debate has generated as much confusion as it has clarity. Exaggerated consequences of its defeat have been matched equally by the inflated benefits projected from its passage.

I will not take the time, now, to explain in its entirety the reason why I will be opposing it, but I will say some

businesses undoubtedly are going to profit from this agreement; some will lose. The net effect will not be as great as those who support it claim it will be; nor those who are opposed to it claim it will be. It will be little comfort to those who lose their jobs as a result, that overall there will be a net gain to the United States.

But my reasons go beyond that. NAFTA is basically premised upon the agreement we have with Canada. We have a free-trade agreement with Canada, one I do not support because Canada, as we all know, employs generous subsidies for its various industries that they target to compete with American competition. We did not ever undertake to negotiate those subsidies away and it puts us in a very difficult competitive position. Recently there have been actions by at least one province which has taken the tactic of adding a 12-percent provincial sales tax to goods coming back in from the State of Maine. As a result of that action, business in some areas of Maine has dropped by 50 percent.

In addition to what is clearly a violation of the Canadian Free Trade Agreement that we, the United States, has with Canada, they also have indulged in harassing activities. They have employed people at the border who have held up Canadian citizens for hours, have threatened strip searches, have basically tried to intimidate citizens from Canada coming into Maine to do their shopping.

This past week the administration sent a team to investigate the situation and publicly said that it appears to be a violation of our free-trade agreement, but that there appears to be little we can do about it.

It was my hope that the administration would vigorously protest the violation by Canada, and not only protest it but take action to see that it complies with this Agreement. If the people of Maine, and indeed this country, are going to continue to hold reverence for the rule of law, it is imperative that we not only negotiate and sign treaties but that we also abide by them and, equally important, that we insist upon their proper enforcement. It has not been done in this case and for that reason I cannot add my support, as much as I would like to, to the NAFTA agreement. I cannot add my support as long as one major party to this agreement continues to flout the current agreement, as it currently does.

I have met in Maine with those who oppose NAFTA and those who support it. I have tried to maintain an open line of communication as well as an open mind in an effort to determine where the best interests of Maine and the Nation lie.

As a general proposition I believe that free trade does produce beneficial results for nations that allow goods and services to be exchanged unimpeded by tariff and nontariff barriers. And yet, I reluctantly have concluded that I cannot support this agreement and would like to take a few minutes to explain why I have reached this decision.

Perhaps the most prominent issue of concern is that of job loss.

The logic behind the concern that NAFTA will cause a major shift of jobs from the United States to Mexico is fairly straightforward: Factories are built where costs are lowest. Mexican wages are one-seventh of those in the United States. Factories and jobs, therefore, can be expected to move to Mexico in large numbers.

The logic is initially appealing, but several counterarguments suggest otherwise.

First, it is on coincidence that Mexican wages are on average one-seventh of ours—the average productivity of Mexican workers is one-seventh of United States workers. The cheapest labor is not necessarily the most cost-effective. U.S. workers earn more because they are more productive. NAFTA will not change this.

Also, if low wages were the only criteria involved in deciding where to locate a plant, manufacturing would be done exclusively in low-wage countries. This obviously is not the case. The United States continues to be the world's largest manufacturer despite high wages. BMW and Mercedes-Benz would not be opening plants in the United States if low wages dominated the site selection process. Other factors, like transportation, communications, access to markets and support services, are just as important as wages in determining overall production costs and plant location.

Third, the average United States tariff on imports from Mexico is about 4 percent. Phasing out these relatively small tariffs are unlikely to spur job shifts that have not or would not occur anyway.

The suggestion that NAFTA will cause major job losses strikes a nervous chord in light of the slow-growing economy and a rate of unemployment which is still too high. In fact, NAFTA has become a lightning rod for the widespread anxiety over the economy. The age of anxiety aptly describes the mood of the 1990's.

Even a thankful change like the end of the cold war can cause apprehension. Despite its long-term benefits, the end of the cold war means joblessness for many defense-dependent communities in Maine and other States.

Defense workers are not alone. All workers are facing unprecedented change. The restructuring of corporate America has destroyed any notion that a college degree itself insulates one from the risks of unemployment. In fact, the number of white-collar unemployed have reached historic highs in the 1990's.

The globalization of the economy also adds to the anxiety. While expanding trade offers new opportunities for workers and businesses, it also creates risks. For every Maine business selling its goods and services in the world market, there is a foreign competitor trying to compete here in the domestic market.

As consumers, we benefit from this heightened competition. We enjoy a better and wider selection of goods and services. In our jobs as producers, however, we are continually subject to stiffer and stiffer competition. Firms that cannot adapt will be replaced. This partly explains why the frequency with which Americans change jobs is increasing.

There are economic benefits to a more flexible and fluid work force, but the anxiety and pain associated with these changes is unmistakable.

In the long run, tariffs cannot provide lasting protection for any nation's work force. Even in the face of significant import tariffs on shoes and textiles, the forces causing the loss of jobs in Maine and elsewhere were too great. A highly skilled work force is the best hope for the competitiveness of America and its workers.

Another major argument that has been raised against NAFTA is that the agreement would undermine the sovereignty of Maine and other States. This concern comes from a provision in NAFTA that assures that countries do not use environmental laws as trade barriers. This provision is designed to help the United States because Mexico on occasion has justified import bans on false environmental grounds. In fact, Maine seed potatoes have been kept out of Mexico for the past 2 years because Mexico has falsely claimed that the potatoes have plant pests. Mexico has been the only country that has made this claim. NAFTA is designed to combat precisely this type of abuse of health, safety, and environmental laws.

Since neither Maine nor the Federal Government use sham health or environmental claims as means of keeping out foreign products, it is my judgment that NAFTA will not pose a threat to our sovereignty and will not contribute to the degradation of the environment by permitting or encouraging polluting industries to operate without constraint.

But even as I find several major objections to NAFTA unpersuasive, I have come to the conclusion that I cannot support an agreement that builds upon the United States-Canada Free-Trade Agreement which, at this very moment, is being seriously violated and causing tremendous economic losses in Maine.

In 1988, I opposed the United States-Canada Free-Trade Agreement because it failed to address the generous subsidies provided by the Canadian Government to industries that compete

with ones in Maine. Workers and businesses in Maine can compete with anyone, but they should not be expected to compete with the deep pockets of the Canadian Government. Because the United States-Canada Free-Trade Agreement did not create a level playing field for Maine industries, it was not a free trade agreement in my view. It simply maintained an unfair status quo.

The proposed NAFTA essentially builds upon the United States-Canada Free-Trade Agreement. Not only do our problems with Canadian subsidies continue, but new and egregious unfair trade practices have emerged.

In July, Canada began collecting an 11-percent new Brunswick Provincial sales tax [PST] at the Maine border. This discriminatory tax is clearly designed to deter New Brunswick residents from shopping in Maine and, therefore, violates the United States-Canada Free-Trade Agreement. Shopping in Maine by Canadian residents is down by as much as 50 percent in some areas. The discriminatory border tax is forcing Maine retailers to lay off workers and could eventually force stores to close.

Last summer, I asked the administration to raise this matter with Canada. While administration officials have publicly acknowledged that the PST violates the free-trade agreement, they also suggest that there may be little that can be done about it. Negotiating and signing trade pacts are of little value if violations cannot be remedied. Yet, that seems to be the situation Maine businesses now face.

The situation is also worsened by the outrageous conduct of Canadian personnel at the border. Maine and Canadian citizens alike have been harassed by Canadian border officials. This harassment, like the border tax, is clearly designed to discourage New Brunswick residents from shopping in Maine. When faced with long delays when returning home and even the possibility strip searches, few could blame Canadian residents for choosing not to shop in Maine.

Oliver Wendell Holmes' statement that a page of history is worth more than a volume of logic applies here. If the history of the United States-Canada Free-Trade Agreement is any indication, the prospects for NAFTA providing an opportunity for free and fair trade remain in doubt. Despite the stated good intentions of the architects of the agreement, the border harassment, the Provincial sales tax, and the subsidies that Canada continues to provide its industries suggest that the United States-Canada Free-Trade Agreement still has not created a level playing field for Maine businesses and workers. Supporting NAFTA would implicitly sanction the United States-Canada Free-Trade Agreement—a step that I am not prepared to take.

I have taken the time to read and study the agreement while listening as objectively as possible to the conflicting voices in Maine throughout the country.

A number of economists and Maine businesses have indicated to me that NAFTA will create new opportunities and jobs for our citizens. I do not question the accuracy of their forecasts and enthusiasm. But is it also clear to me that a number of jobs will be lost, even though their significance may be discounted by NAFTA proponents because they are not high wage jobs.

It had been my hope that the administration would not only issue a loud protest against the activities of our Canadian neighbor but take action to enforce the treaty itself. I regret that no such action has been forthcoming.

If the people of our country are to continue to hold reverence for the rule of law, then it is imperative that the law be followed and not flaunted. Under the circumstances, I cannot lend my support to a new treaty that in essence expands an existing one that goes unenforced.

INDEPENDENT COUNSEL REAUTHORIZATION ACT

The Senate continued with the consideration of the bill.

Mr. COHEN. Mr. President, I would like to return now to the discussion that is before us and say that this legislation was born in controversy during the Watergate years. It remains controversial today.

There are arguments that are made by opponents against the statute. They are many, and they are varied. The independent counsel is said to be demagogs with unlimited staff, unlimited time, and unlimited resources. They have no meaningful oversight. They are accountable to no one. The statute is inherently flawed because it does not cover Members of Congress, and the law triggers too easily. Rather than ensure fair treatment of high-ranking executive officials accused of wrongdoing, the law operates to treat them more harshly than ordinary citizens—and the list of criticisms go on.

Basically, it is not a debate about the fine details or the modifications that have and can be made, but rather as to whether we need an independent counsel act at all.

There is a feeling, certainly within the Justice Department historically that there has been strong opposition to the need for an independent counsel statute. The reason is because career prosecutors feel that such a statute really is an insult to them. They have dedicated their lives to pursuing the rule of law; they are professional; they are not partisan; and they feel fully capable of conducting any investigation against any official within the executive branch, indeed, in the congressional branch. So they view it, and historically have viewed it, as really an insult to their own integrity.

This legislation is not intended to be an insult to their integrity. It is not really a question about their impartiality because there is another rule in our society that not only must ensure justice be done, but it must appear to be done. The appearance of justice having been done is equally important as justice having been done.

We can see this over a period of years where an investigation has been conducted by the Justice Department and a certain individual has been cleared and because of the nature of the relationship of that individual to the President or other members of the President's Cabinet, questions have remained. They say, "Well, was it really an independent investigation or was it a coverup, a whitewash?" When those questions tend to linger, they cast a cloud over that individual who has been investigated, notwithstanding the fact that the investigation was properly conducted. The cloud of doubt remains, and the cynicism remains. People, again, tend to look upon the Government with less than the highest of appeal.

So I think it is critically important that we focus upon the issue of the appearance of justice having been done.

Attorney General Reno is one of the first confirmed Attorneys General who has come out in favor of this legislation. She supported it during her confirmation hearings. I think that her own experience as an Attorney General, head of a justice department, as such, within the State of Florida, confirms her own respect of the need for this type of law.

In Florida, it was somewhat different. There, the attorney general had the power of appointment. Here, over the objections of myself, Senator LEVIN, and others, our current law, as it exists expired last December. I said at that time I felt that the Republicans were making a mistake in allowing it to expire and that we would rue the day we allowed it to expire because there would come a time when allegations would be leveled against certain high-ranking officials in the executive branch who would then be part of the Democratic Party and little would be done to really resolve those issues to our satisfaction.

Sure enough, there now are allegations pending against several high-level officials, including at least one high-level official within the Cabinet of the President. There is another one pending, of course, against a Member of Congress. There is a growing feeling—which I do not share—on the part of some Members that maybe the Attorney General is acting a bit politically. Maybe it has not been quite as aggressive an inquiry as the case warrants and maybe things are being delayed,

stalled or temporized in order to allow a number of political victories to be achieved.

Again, I do not share those particular views, but I must tell you, if they are not articulated, they are strongly felt by some Members.

I think the Attorney General recognized this. She supports this legislation strongly, and she recognizes that the independent counsel law is not the virus that has invaded the body politic, but rather it is part of the cure.

The American people recognize that those who serve in high positions are human beings subject to temptations and subtle influence and pressures, and that their judgments might be affected by those pressures. They are also concerned that the undue influence on the Government by the rich and the powerful, the well-connected, continues to exist, and they want some assurance that there is some kind of independent examination of the activities of those officials.

Senator LEVIN has pointed out this particular law created back in 1978 is not carved in marble; it is not carved in stone. It is subject to change and, indeed, we have seen it change several times. We changed it back in 1982. As I recall, Senator LEVIN was in the forefront of making the changes that were designed to ensure that Government officials would not be prosecuted in circumstances that would not apply to the average citizen. Then again, in 1987, we added new provisions to increase some of the controls on the costs involved.

We have gone further in this legislation. We have added more cost controls because of the legitimate concern on the part of many of our colleagues. They looked to Independent Counsel Walsh's activities and they said it went on too long, cost too much money, became politicized, and there were no adequate cost controls. We have tried to address that in this legislation.

There are monetary restrictions. The scope of the activities is restricted, and we have tried to address the concerns of the critics who have leveled their objections to the law itself.

I think the most serious objection comes from my colleague from Arizona—one of my closest friends—who says the law should apply to all Members of Congress. The law does apply to all Members of Congress. There was an existing law, a so-called catch-all provision that the Attorney General could invoke to apply to Members of Congress whenever he or she saw a potential conflict of interest. Senator LEVIN and I tried to be responsive saying, "Let's go further; let's explicitly provide that the Attorney General, whatever the reason, may call for the appointment of an independent counsel to investigate and prosecute Members of Congress."

But that is not sufficient to satisfy the critics of the law itself. They say it must be uniform. Every Member of Congress must be covered under each and every circumstance. I personally have no objection to Members of Congress being covered because they are already covered. The reason I have raised an objection goes to the constitutionality of the provision.

The McCain amendment basically says that under no circumstances can the Justice Department ever investigate and prosecute a Member of Congress of either party; that because of the mandate, on each and every occasion, an independent counsel must be appointed—no exceptions. I think that runs very near, if not over, the line of the separation of powers clause in the Constitution. I do not believe that Congress can constitutionally pass a law which prohibits the Justice Department from investigating and prosecuting Members of Congress. For this reason, I object to the McCain amendment.

As the statute is drafted, I believe we are covered. We provide explicit authority for the Attorney General to call for an independent counsel, whatever the reason. If he or she decides there is some potential conflict or appearance that justice will not be done, the Attorney General can call for the independent counsel. We can think of any number of cases where that may be the case.

As Senator LEVIN has pointed out, the Justice Department historically has had no hesitation to investigate and prosecute Members of Congress. So we do not find the inherent conflict there. If it exists, authority is granted to the Attorney General to use the independent counsel. But if you mandated that on each and every occasion the Justice Department automatically is excluded from ever investigating or prosecuting a Member of Congress, I think the Supreme Court would say that there is a violation of the separation of powers clause. For that reason, I oppose the McCain amendment.

Mr. President, let me conclude by saying that maybe we will come to a point in time when we will never need an Independent Counsel Act. Historically, it has been the complete province of the President of the United States to have a member he, or maybe one day she, may want. We can go back to the Kennedy years where the President appointed his brother as Attorney General. We can point to Republican Presidents who have appointed their personal counsel as their Attorney General.

Whenever you have a President appointing someone who is viewed as being either a personal attorney, political adviser, or partisan adviser, it creates doubts in the minds of the American people as to whether justice is in fact going to be carried our impartially without regard to politics.

Until we arrive at the time when Presidents will, in fact, appoint individuals who are seen across the board as being completely independent, completely uninvolved in partisan activities and not associated with one party's philosophy or the other, I think there will always be a need to have an independent counsel statute on the books. In those rare cases where complaints or allegations are made against high-level executive branch officials, questions will be raised as to whether the Attorney General or the Justice Department would carry out with the full force and effect of its resources an impartial and complete investigation. This will always remain the case as long as we appoint people who seem to be less than impartial because of their prior history and involvement in politics.

I think most people feel very comfortable, and I still do, with Attorney General Reno's impartiality, and yet, questions are subtly raised: Is she vigorous enough with certain individuals? Is there some attempt by the administration to perhaps subtly or not so subtly influence her decisionmaking? Why do you suddenly see a spate of criticism arise in some of the papers critical of the Attorney General? Is someone putting the message out that she better get in line?

All these questions are floating around. We do not talk about them publicly too much, but that in fact is taking place today. For this reason, I believe there is a need for an independent counsel statute.

When Attorney General Reno was a nominee, she indicated that she favored such legislation. I think the experience she has now enjoyed or not enjoyed—I think it is enjoyed—would bear that out. She, too, feels it is important that the public be reassured on each and every occasion that justice will not only be done but appear to be done.

From its birth in the aftermath of Watergate, the independent counsel statute, or the special prosecutor law as it was originally named, has had many detractors. These critics include many intelligent, thoughtful men and women, some of whom I know personally and professionally and for whom I have respect and admiration. On this issue, we respectfully agree to disagree.

The arguments made by opponents against the statute are many and varied. Independent counsel are said to be demigods with unlimited staff, unlimited time, and unlimited budgets. They have no meaningful oversight and are accountable to no one. The statute is inherently flawed because it does not cover Members of Congress. The law triggers too easily. Rather than ensuring fair treatment of high-ranking executive branch officials accused of wrongdoing, the law operates to treat them more harshly than ordinary citizens.

While we can and will continue to argue over the details of the independent counsel process, the bottom line is that supporters and opponents of the law have a fundamental difference of opinion on the need for a independent process outside the Department of Justice to investigate and prosecute allegations of criminal wrongdoing by high level Government officials. The debate is not about whether the independent counsel statute is the appropriate answer to the problem, but whether or not a problem exists at all.

Opponents of the law assert that the Justice Department should investigate and is perfectly capable of investigating and prosecuting criminal wrongdoing by Government officials no matter who they are. To withdraw this responsibility from the Attorney General and the Justice Department is a disservice and an insult to the Department and, by doing so, we undermine the public trust in the integrity of Government.

It may come as a surprise to some people that I, a long-time supporter and coauthor of the statute, agree that the Justice Department in perhaps all but the most extraordinary of cases is capable of meeting its responsibility to see that justice is served. The law, however, serves two ends, both equally important in our democratic society. One is that justice must be done, and the other that it must appear to be done. The appearance of justice is just as important as justice itself, in terms of maintaining public confidence in our judicial system. Such confidence is undermined when the administration of the law appears to be compromised.

As the members of the Senate are well aware, the level of cynicism and disillusionment of the American public about Government and the integrity of public officials has reached new heights. Opponents of the law may argue that the independent counsel law has contributed to the public's cynicism and the low esteem in which Government officials are held by undermining the public's faith in Government generally and the Justice Department specifically. I disagree. The independent counsel law is not the virus that has invaded the body politic but rather is part of the cure.

The American public recognizes that we live in an imperfect world and that public officials, like themselves, are subject to subtle influences and pressures that affect their judgments and decisions. The public is also concerned, too often with justification, about the undue influence on government of the rich, the powerful or the well-connected. By providing for a judicially appointed independent counsel to handle investigations and prosecutions of top-level executive branch officials, the statue helps to assure the public that criminal wrongdoing by such officials will not be buried or tolerated, and that top-level officials will not be treated as if they are above the law.

We have not professed that the statutory measure designed to meet the public's need is etched in marble or is immutable. Therefore, Senator LEVIN and I have sought ways to refine the law so that it operates fairly and effectively. Congress has attempted to do just that during each of the previous reauthorizations of the statute. In 1982, for example, Congress made changes in the law designed to ensure that government officials would not be prosecuted in circumstances where average citizens would not. In 1987, provisions were added to the law to increase controls on independent counsels.

In S. 24, Senator LEVIN and I have attempted to address problems which have arisen with the law since the last reauthorization. As Senator LEVIN has described in more detail, we have included numerous provisions in the bill to address the legitimate concerns raised with regard to the law's operation.

Most recently, significant concerns have been raised over the monetary costs of the law, in light of the unanticipated scope and cost of independent counsel investigations in the past several years. To address the cost issue, S. 24 includes several provisions to tighten fiscal controls.

Critics also decry the lack of accountability of independent counsel. The old law provides for accountability in a number of ways. Only the Attorney General can request the appointment of an independent counsel and the Attorney General has significant influence in defining the independent counsel's jurisdiction. Independent counsel must comply with Justice Department policies. They may be removed from office by the Attorney General for good cause. They are accountable to the appointing court, which defines their jurisdiction, and, like other prosecutors, they are subject to the authority of trial and appellate judges. S. 24 adds to the existing measures of accountability by requiring the special court to determine at least once every three years whether a particular independent counsel should be terminated. As one of the witnesses at last year's hearing on this issue testified, "Making the investigator independent of the executive does not make the office unaccountable."

The criticism of the law which I find least persuasive is that it does not apply to Members of Congress. Let me say that Members are already covered by the law's so-called catch-all provision. As currently written, the law gives the Attorney General the discretion to request the appointment of an independent counsel whenever he or she determines that an investigation of a Member of Congress by the Justice Department may pose a conflict of interest—either personal, financial, or political.

There is, of course, no inherent conflict of interest when the Justice Department investigates or prosecutes Members of Congress, nor is there any evidence that the Department is hesitant to investigate or prosecute Members. However, to accommodate those who believe that the law was inadequate in this respect, S. 24 would give the Attorney General the authority to seek the appointment of an independent counsel in any case involving allegations of criminal wrongdoing by Members of Congress.

This new provision would not require a finding of a conflict of interest before it can be used. Therefore, the Attorney General could choose to use an independent counsel in every case involving a Member of Congress, effectively creating mandatory coverage, or could confine its use to situations where a conflict exists as under current law. The discretionary nature of the provision would obviate any constitutional concerns raised by an absolute bar on Justice Department Investigations of Members of Congress.

Finally, I want to conclude with a point that I made during the debate on this issue last Congress. As long as Presidents continue to appoint individuals to the office of Attorney General who are seen to be political in nature, either because of their party affiliation or because of their partisan activities, we will continue to need an independent counsel law. Until such time as we have Attorneys General who are perceived to be beyond the political system, who are truly independent in terms of their background and in terms of the respect they command from both Democrats and Republicans, there will always be the perception, if not the reality, of a conflict of interest when the Attorney General is called upon to investigate allegations of wrongdoing at the highest levels of Government.

There have been some notable exceptions to this Presidential practice in the past. If and when the presidents of this country establish the practice of appointing individuals who are highly regarded within the legal profession, who have not been engaged in partisan politics and who, in fact, are a symbol of true impartiality in the administration of justice, then we may find there is no longer a need for the independent counsel law.

In the meantime, there is a compelling need for an independent process to investigate allegations of criminal wrongdoing by high-level Government officials. Justice Holmes once said that "The Life of the law has not been logic: It has been experience." In this case, both logic and experience are on the side of reauthorizing the independent counsel law.

I urge my colleagues to support this legislation.

I yield the floor.

Might I add that the Senator from Arizona has suggested the possibility

of 40 minutes on his amendment equally divided, and that would be acceptable to me.

Mr. McCAIN. Perhaps 1 hour equally divided, if that would be agreeable to the managers.

Mr. LEVIN. Either one is fine. I would ask unanimous consent that we have 1 hour equally divided on the McCain amendment.

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

Mr. LEVIN. And that no amendments to the McCain amendment be in order.

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

The Senator from Arizona.

AMENDMENT NO. 1205

(Purpose: To remove Members of Congress from the discretionary preliminary investigation provisions and to require such investigations)

Mr. McCAIN. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. McCAIN], for himself and Mr. GRASSLEY, proposes an amendment numbered 1205.

Mr. McCAIN. 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:

Strike beginning on page 18, line 14, through page 20, line 2, and insert the following:

SEC. 4. MEMBERS OF CONGRESS.

(a) MANDATORY COVERAGE OF MEMBERS AND POST EMPLOYMENT COVERAGE.—Section 591(b) of title 28, United States Code, is amended by—

(1) redesignating paragraph (8) as paragraph (9); and

(2) striking paragraphs (6) and (7) and inserting the following:

"(6) any Member of Congress;

"(7) any individual who held an office or position described in paragraphs (1) through (5), for 1 year after leaving the office or position or until the President under whom the individual served leaves office, whichever period expires first;

"(8) any individual who held an office or position described in paragraphs (1) through (5) during the incumbency of 1 President and who continued to hold that office or position for not more than 90 days into the term of the next President, until the individual leaves such office or position; and".

(b) DISCRETIONARY AUTHORITY.—Section 591(c) of title 28, United States Code, is amended to read as follows:

"(c) PRELIMINARY INVESTIGATION WITH RESPECT TO OTHER PERSONS AND MATTERS.—When the Attorney General determines that an investigation or prosecution of a person or matter by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person or matter in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether there may have been a violation of Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.".

Mr. McCAIN. Mr. President, I would, first of all, like to thank my colleagues, Senator LEVIN and Senator COHEN, for bringing this long-awaited legislation to the floor.

I should like to mention at the outset I was accused by a certain editorial writer from the New York Times of blocking this bill. I hope at the appropriate time both Senator LEVIN and Senator COHEN would rebut that allegation. I have stated that I did have this amendment, if and when the bill came to the floor I would offer it, but I have never had any intention of impeding the progress of this important legislation.

I would like to start out, Mr. President, by stating that my friend from Maine does bring up a constitutional question. If that is the case, I would point out that in section 598 of this bill, it says:

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

So if his concerns are, indeed, correct, then I believe it would not impact the remainder of the bill.

I will be glad to yield to my friend from Maine.

Mr. COHEN. If the Senator will yield, as a matter of fact, it was primarily due to the amendment of the Senator from Arizona that we insisted on that provision, that it be there as a saving grace for the legislation to prevent us from doing an unconstitutional act.

Mr. McCAIN. I would like to congratulate my colleagues for their foresight in adding that portion of the bill.

Mr. President, let me just start out by quoting from Robert Bennett. We all know that Robert Bennett is one of the most respected members of the legal profession. He has worked with the Senate Ethics Committee, and he has worked on many high visibility cases throughout Washington, DC, and dealt with the legal ramifications of laws regarding various Members of Congress and their encounters with the legal profession or possible violation of laws or ethics.

He stated very clearly, and I quote Mr. Robert Bennett:

Apply the statute to Congress. I would want this new statute to apply to certain Members of Congress. I think this is very important for two primary reasons. First, the same kind of conflict issue appears to justify appointment of independent counsel to investigate certain executive branch officials. For example, if the Senate or House leadership is important to a President to get his legislative package through Congress, is the public going to have very much confidence in the integrity of an Attorney General of that administration declining a prosecution of a Senate or House leader? Similarly, the integrity of an investigation of a political opponent raises public credibility concerns. Recent public controversies regarding cases involving Members of Congress demonstrate that these are not theoretical concerns.

Now, Mr. President, that is Mr. Robert Bennett's view. He also goes on to say:

There is another important rationale that is just a commonsense one. Suzanne Garment, who wrote a very excellent book called Scandal, noted that congressional interest has driven the initiation of many of these independent counsel investigations. If the statute applies to Members of Congress and the executive branch, more of these investigations would be instituted on a merit basis rather than a political basis.

Both Mr. Bennett and Ms. Garment are correct in my view.

Mr. President, this is a very simple amendment really. What it says is that the statute we are about to enact, which would apply to some 50 members of the executive branch, would apply to Members of Congress. Many of the Members of Congress that this might apply to are more powerful in most respects and have more effect on the daily lives of Americans than many of the 50 members of the executive branch.

Mr. President, the last approval rating I saw of Congress was around 22 percent with a 69 percent disapproval. There is a reason for that. One of the major reasons is that the American people believe there is a complete disconnect between the Congress of the United States and the American people. And by the way, Mr. President, they are correct. They want us to live under the same rules they do.

The Senate currently exempts itself from the following laws in part or whole: The Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the National Labor Relations Act, the Fair Labor Standards Act, the Equal Pay Act of 1963, the Occupational Safety and Hazard Act of 1970, the Freedom of Information Act, and the Privacy Act. In all of those laws, Mr. President, the Congress has exempted itself in whole or in part, based on the rationale of constitutional separation of powers.

The American people do not buy that old excuse anymore, Mr. President. They do not buy it. They think that if a Federal inspector comes into a workplace and finds a violation, whether it be in the Halls of Congress or whether it be in Tombstone, AZ, the same laws should apply. They do not like it that we live differently.

Many of these laws that I just quoted are very onerous and burdensome to the American people. But they are not burdensome to the Congress of the United States exempts itself.

So, Mr. President, there will be very compelling constitutional arguments raised against this amendment. But

the fact is it is a matter of reality that the American people want us to live exactly like they do. And I intend, as every bill comes up before this body that effects the American people, to offer amendments to apply whatever legislation is before us to the Congress of the United States.

One of the hot-button issues on the talk shows, by the way, is the difference in pensions tnat we have between us and the average working American. Another is the difference in health care plans.

It is time we recognize that the American people demand that we live like they do.

Opponents of this amendment will state that under the bill, an independent counsel may be appointed to investigate Members of Congress. This is true. But this legislation states that the independent counsel must be appointed to investigate the individuals I just noted.

There is a great difference between "may" and "must," just like we "may" have to comply with the National Labor Relations Act. Other people "must." We "may" have to comply with the Equal Pay Act of 1963. The American people "must." There is a very large difference.

This is yet another disturbing and egregious example of the Congress imposing one standard on the executive branch and creating a separate, lesser standard for itself. There is no justification for this unequal standard.

Opponents to mandatory coverage for the Congress base their opposition on three factors:

First, they claim there is no inherent conflict with the Justice Department investigating Members of Congress.

Nothing could be further from the truth. Mr. President, it is not at all difficult to envision a scenario whereby an Attorney General declines to investigate a member of the same party if that Member of the House or Senate plays an important role in the leadership of the Congress or whose vote is desperately needed on an important issue.

I agree that the Attorney General has successfully investigated some Members of Congress. But should the Attorney General's success in those cases be reason for the Congress to set a separate standard for itself?

Mr. President, that rationale is flawed. The executive branch needs the Congress to pass and support its agenda. It is for that reason that members of the executive branch routinely campaign on behalf of Members of Congress. I think it is obvious that a potential conflict of interest exists.

Second, individuals opposing mandatory congressional coverage claim that "including Members of Congress would increase the statute's mandatory coverage more than tenfold, from about 50 individuals to about 600 individuals."

This argument is nothing more than a red herring and presents no substitute reason to exempt Members of Congress.

The committee report states that including Members of Congress in the mandatory section would "inevitably lead to an increase in the number and expense of independent counsel proceedings." Of course this would only be true if Members engaged in conduct that merited an independent counsel investigation. Moreover, I am pleased to note that my colleagues are concerned about saving the taxpayers' money.

If Members are truly concerned about saving money, I expect they will support further amendments to the bill which will responsibly and reasonably restrain spending by independent counsels and avoid a repeat of the Walsh fiasco.

However, Mr. President, while these death bed conversions to fiscal sanity are refreshing, they hide the true motive here—in regards to the independent counsel, some in this body want a separate, lesser standard for the Congress.

Last, those who do not want this amendment to include Members state that "mandatory coverage of Members of Congress would limit the authority of the Justice Department to prosecute members of the legislative branch, thereby raising separation of powers concerns."

Mr. President, I do not believe that including Members of Congress in any way unduly or unfairly limits the authority of the Justice Department. As I previously stated, I believe that a potential political conflict of interest exists with the Justice Department investigating members. If we are going to tie DOJ's hands when it comes to investigating top Executive Branch officials, then we should apply the same restrictions when the DOJ seeks to investigate the Congress.

Some have asserted that mandatory coverage would only allow the Justice Department to investigate petty offenses and force an IC to be appointed for major offenses. I see nothing wrong with that.

Mr. President, the lead story this week in virtually every form of media is about how the President is working to convince Members of Congress to support NAFTA. It is naive to think that on such a close, important vote that no conflict of interest exists. It is simply difficult to see DOJ choosing to investigate a key or crucial Member of Congress, individuals who sometimes have considerably more power and influence than any member of the President's Cabinet.

Additionally, I disagree with the separation of powers argument. If using the independent counsel to investigate the Congress creates a separation of powers conflict, then it does so equally in the underlying legislation.

This leads us to the real issue here, the Congress all too often either establishes separate standards for itself, or in the case of the Senate on such issues as the Fair Labor Standards Act, exempts itself entirely. This is wrong. If we believe that appointing an independent counsel is necessary to maintain public confidence in the Government, then it must be tasked equally to investigate Members of Congress.

Mr. President, we must not continue to set separate standards for the Congress. The Senate currently exempts itself from the following laws in part or whole:

The Civil Rights Act of 1964;

The Americans With Disabilities Act;

The Age Discrimination in Employment Act of 1967;

The Rehabilitation Act of 1973;

The National Labor Relations Act;

The Fair Labor Standards Act;

The Equal Pay Act of 1963;

The Occupational Safety and Health Act of 1970;

The Freedom of Information Act; and

The Privacy Act.

All of these measures must be applied to the Congress. Anything less should be recognized as the Senate's stubborn insistence on keeping its status as the Nation's last plantation.

As a first step, let us now apply this statute equally to the Congress.

Robert Bennett, a respected lawyer who has worked with the Senate Ethics Committee and with whom I am sure all my colleagues are familiar, stated:

> Apply the Statute to Congress. I would want this new statute to apply to certain members of Congress. I think this is very important for two primary reasons. First, the same kind of conflict issue appear that justify appointment of Independent Counsel to investigate certain Executive Branch officials. For example, if the Senate or House leadership is important to a President to get his legislative package through Congress, is the public going to have very much confidence in the integrity of an Attorney General of that Administration declining a prosecution of a Senate or House leader? Similarly, the integrity of an investigation of a political opponent raises public credibility concerns. Recent public controversies regarding cases involving Members of Congress demonstrate that these are not theoretical concerns.
>
> There is another important rationale—that is just a common sense one. Suzanne Garment, who wrote a very excellent book called "Scandal", noted that Congressional interest has driven the initiation of many of these Independent Counsel investigations. If the statute applies to Members of Congress and the Executive Branch, more of these investigations would be instituted on a merit basis rather than a political basis.

Both Mr. Bennett and Ms. Garment are correct.

Mr. President, why would any Member not want the independent counsel law to include Members of Congress? I pose the question, and I will give the answer, because the independent counsel can destroy someone's reputation and good name.

My colleagues are correct that there is much to fear. Prosecutors have extraordinary powers. "The prosecutor" said former U.S. Attorney General Robert Jackson, "has more control over life, liberty, and reputation than any other person in America."

Justice Antonin Scalia has written:

[T]he independent counsel * * * operate[s] in an areas where so little is law and so much is discretion, [and he] is intentionally cut off from the unifying influence of the Justice Department, and from the perspective that multiple responsibilities provide. What would normally be regarded as a technical violation, there are no rules defining such things, may in his * * * small world assume the proportions of an indictable offense. What would normally be regarded as an investigation that has reached the level of pursuing such picayune matter that it should be concluded, may to him * * * be an investigation that ought to go on for another year. How frightening it must be to have your own independent counsel and staff appointed, with nothing else to do but to investigate you until investigation is no longer worthwhile.

Former independent counsel Jacob Stein said:

A one case lawyer with nobody to question [him about] what is done in the investigation is a dangerous person.

In fact, I am very concerned about the sweeping powers of the independent counsel. We should think long and hard before we give any person this kind of unfettered power. The response should not, however, be to exempt ourselves from being mandatorily covered by the independent counsel.

Be it fear of the sweeping powers of the independent counsel or simply a desire to perpetuate the Congress' standing as the Nation's last plantation, not putting Congress in the mandatory section is wrong.

Testifying before the Governmental Affairs Committee in 1975 in support of the Independent Counsel, Prof. Archibald Cox stated:

The pressures, the divided loyalty are too much for any man, and as honorable and conscientious as any individual might be, the public could never feel entirely easy about the vigor and thoroughness with which the investigation was pursued. Some outside person is absolutely essential.

Mr. President, I hope the opponents of my amendment can answer the question as to why would this hold true for the executive branch, but not for the congressional branch?

The answer is simply that if you support the underlying legislation and thus agree with Mr. Cox, then you must agree that the Congress be included in the mandatory section of the bill.

Last, in the Wall Street Journal, January 6, 1993, Mr. Theodore Boutrous, a Washington, DC attorney, stated:

Should Congress again exempt itself from the independent counsel statute it would be an implicit admission that its motives are partisan and self-interested. It would be hard proof that Congress recognizes the dangers of the broad and unfettered power of the independent counsel office it has created and fears the consequences of unleashing that power against itself. It will reinforce the view that the independent counsel law is an abusive and improper congressional tool for tormenting members of the executive branch with whom Congress disagrees.

Mr. President, as I said at the beginning of my remarks, this is a simple issue, a very simple issue. It is whether Congress intends to live under the same rules that it is imposing on the executive branch.

I believe it is appropriate. I believe that we should. I note the appearance of my good friend from Iowa, Senator GRASSLEY, who has not only fought long and hard on this issue, but has fought long and hard to make sure that Congress is not exempted from laws which it applies to the rest of the American people.

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

I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. I yield the remainder of my time to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, could I ask what the amount of time is?

The PRESIDING OFFICER. The time remaining is 15 minutes 40 seconds.

Mr. GRASSLEY. I will inform the Senator from Arizona that that is probably more time than I will need, and he can plan to use it accordingly.

Mr. President, this amendment is being offered to ensure that Congress is as accountable for ethical behavior as the executive branch is accountable. The amendment simply requires the Attorney General to appoint an independent counsel for investigations involving Members of Congress in the very same circumstances as executive branch officials. So whenever the Attorney General determines that an investigation by the Justice Department would result in any personal or any financial or any political conflict of interest, that independent counsel would have to be appointed.

Of course, it is never easy to get Congress to live by the same standards that we prescribe for others. The grassroots people know that ought to be the case, but they have a feeling it is not the case. In fact, it is not the case. I have learned this lesson in the civil rights context. It took me 3 years and it took me four amendments to get the Senate to subject itself to the civil rights laws. And the Senate still refuses, even considering the progress that has been made, to subject our membership to jury trials like every other American is subject to if civil rights laws are violated, in our case being employers of our staff.

The argument usually made by those who oppose congressional coverage is that Congress is already covered. They point to statutory provisions declaring that the legislative branch must adhere to the substantive law. What they always neglect to mention is the perverted congressional coverage never really has any teeth. For example, in the civil rights statutes, Congress would cover itself but provide injured parties no means to vindicate their rights.

I think the situation is very similar here, Mr. President. The bill's sponsors insist that Congress is covered.

Indeed, they have added a new paragraph clarifying that the Attorney General does have the discretion to appoint an independent counsel to investigate Members of Congress. Once again, we say we are covered—but we are really not. It is the difference between "may" and "shall." The Attorney General is required to seek appointment of an independent counsel to investigate executive branch officials where there is a conflict of interest. But the decision to seek an independent counsel in cases involving Members of Congress is entirely discretionary.

The sponsors are unwilling to have Members of Congress bound by the same ethical standards as the executive branch. This was made obvious by their rejection of Senator ROTH's committee amendment to require mandatory coverage of Members of Congress. The justifications given by the sponsors are tenuous, at best.

The sponsors claim that no inherent conflict of interest exists when the Justice Department investigates Members of Congress. They cite the opinion of the ABA and the long history of successful Justice Department prosecutions of Members of Congress. There is no question that the Attorney General might not have a conflict of interest regarding a particular investigation of a Member of Congress—just as the Attorney General may not have a conflict of interest regarding the investigation of another Cabinet official. But that does not mean we should not require appointment of an independent counsel when there is a conflict of interest, as we require for executive branch officials.

The appointment should be mandatory for Members of Congress for the same reason it is mandatory for executive branch officials: To ensure that a conflict of interest does not prevent appointment of an independent counsel where appointment is warranted.

There are bound to be situations where the Attorney General will have strong incentives, political or otherwise, to decline to appoint an independent counsel—even though there is a clear political conflict of interest. A

good illustration is the House Post Office investigation.

It has been widely noted in the press that the President has a strong interest in the status of that investigation—insofar as it involves the chairman of the Ways and Means Committee. The President's ability to get key elements of his domestic agenda through the Congress could be greatly affected by the status of the Ways and Means chairman. I have serious doubts about whether political considerations could be completely excluded from any important decisions involving such an investigation.

Back in March, the White House was open about the influence of politics on the investigation. In a report in the March 6 New York Times, it was explained that:

What frustrates administration officials most is that they do not have any feel for the prospects of an indictment. With no attorney general, no one can go to the prosecutor and get a rundown." While the "officials said that it would be improper for the administration to put pressure on [the U.S. Attorney Jay Stephens]" . . . They also said that "as a practical matter an attorney general might be able to get a general idea of the likelihood of an indictment." One official was quoted as saying "we need to know whether we have to have a plan B.

At her confirmation hearings, Janet Reno assured the Judiciary Committee that there would be no room for politics in DOJ's investigations. Nevertheless, the White House concedes that it has an interest in maintaining DOJ control of investigations involving key Members of Congress. It may only be in order to have a channel for checking on the status of such investigations. But even these limited inquiries have the potential to inject political considerations into criminal investigations—whether the Member under investigation is considered a political friend or a political enemy of the President.

The sponsors claim there is a difference between the branches. They contend there is an inherent conflict when the AG investigates another Cabinet official, because they are part of the same administration. But I think we all know that the political interests of the administration and congressional leaders of the same party are also generally identical. I argue that the potential for conflict, as a practical matter, is the same.

Clearly, the potential for serious conflicts of interest does exist when the Attorney General is expected to investigate and prosecute criminal conduct by Members of Congress, no less than in the case of executive branch officials. When there is such a conflict, appointment of an independent counsel should be mandatory. Our failure to do so will only further justify the public's cynicism about a Congress that exempts itself from generally applicable laws, and tries to excuse the unethical and criminal conduct of its Members on the grounds that such conduct is constitutionally immune speech or debate.

It is time for an end to the Senate's arrogance, and we should start by adopting this amendment.

I reserve the remainder of my time and yield the floor.

Mr. LEVIN. Mr. President, I yield the Senator from Pennsylvania 5 minutes.

Mr. SPECTER. I thank my friend from Michigan. Mr. President, I agree totally with my colleague from Iowa that Congress should treat itself like every other citizen. When the distinguished Senator from Iowa has offered amendments in the past on the floor of this body to include Members of the Senate and Members of the House, as all others are included under the Civil Rights Act or under labor laws or whatever laws are applicable, I have joined him in that respect.

But I disagree with his conclusion on the pending amendment, because what the pending amendment proposes is that Members of Congress, Senators and House Members, would be treated differently than any other citizen, because any other citizen is investigated by the Department of Justice if the need arises, unless there is some special reason not to do so.

There is an exception that on certain categories of executive branch officials where there is in effect a presumption of closeness to the executive branch—that is, the President or the Attorney General, or the subordinates in the Department of Justice—where there may be some reason to believe that they have a relationship or have some closeness because they interact. For example, at Cabinet meetings when the Attorney General sits with the Secretary of Defense or the Secretary of Agriculture or other ranking officials. That presumption, which this bill creates, does make some sense in what is either actual conflict or an apparent conflict of interest to warrant the appointment of independent counsel.

However, when it comes to the 535 Members of Congress, as a matter of reality, that kind of a conflict does not in fact exist. It may be that in some special cases where the Department of Justice officials and the Attorney General may have some contact with the specific Senator or Member of the House of Representatives, it might be appropriate under such cases to make an appointment of independent counsel.

I ask the chairman of the subcommittee, the distinguished Senator from Michigan, if in fact a conflict could exist because of a relationship between the Attorney General and some Member of Congress under investigation, whether there would be latitude under the present bill to have independent counsel appointed?

Mr. LEVIN. The Senator from Pennsylvania is correct.

The Attorney General under our bill has two options open to her. She has latitude which the Senator from Pennsylvania describes to use an independent counsel should the public interest in her opinion so indicate or, as the Senator from Pennsylvania very accurately points out, she could prosecute, investigate Members on her own like she can any other American. The amendment before us would actually eliminate her right to prosecute us the way she can prosecute any other American—except the named high-level executive branch officials, because of the inherent conflict.

So the Senator from Pennsylvania is correct on both counts. She has the latitude to appoint an independent counsel to investigate and prosecute a Member of Congress or she can use the other route and investigate and prosecute us herself.

Mr. SPECTER. I thank the Senator from Michigan for that clarification which I thought was the law.

I ask for an additional 2 or 3 minutes on my original 5 minutes.

Mr. LEVIN. I am happy to yield an additional 3 minutes to the Senator from Pennsylvania.

Mr. SPECTER. I thank the Senator from Michigan.

That is an important point.

The concern raised by the Senator from Iowa is recognized that if there is a reason why a Member of the Senate or a Member of the House is close to the Attorney General or there is some reason to believe there is a conflict of interest or might be a conflict of interest or apparent impropriety, the independent counsel could be appointed. But if we adopt the rationale of the Senator from Iowa that Congress, Members of the House and Senate, should be treated like every other American citizen, then you would not put them in a special category where there had to be an independent counsel. Every other American citizen would be subject to investigation and prosecution by the Department of Justice unless there was some reason to believe there was a conflict of interest.

I agree with what the Senator from Arizona has stated about the power of the prosecutor. I had occasion to be a district attorney for some 8 years, and I know that when the prosecuting attorney has the authority to convene a grand jury, conduct an investigation, to bring an indictment, to bring the prosecution, it has tremendous power. That power has to be exercised with sensitivity and with discretion.

The power of the prosecutor is subject to the control of the courts and subject to the judicial process where all defendants, those charged, are presumed innocent until proved guilty, but even a fact that an indictment is possible gives the prosecutor great power.

I believe we need an independent counsel, and I commend the Senator

from Michigan and the Senator from Maine for their leadership in bringing to the floor this independent counsel legislation.

That provision has lapsed in the law. It is very important that where there are ranking executive branch officials or ranking Members of the House or Senate, where there is an overtone of conflict or a key political leader or anyone, where there is a potential conflict or appearance of conflict an independent counsel be appointed. But we ought to limit it to the class where the real problem exists, and it may be that the present law is somewhat too broad.

It is hard to draw a line with precision, a bright line, as to where the presumption ought to apply. My sense is within reasonable bounds the current law applies.

As Senator MCCAIN, the Senator from Arizona, pointed out when you have an independent counsel and he has but one case, there is an undue focus that the independent counsel has to be vested with those powers where the conflict does exist. But to the extent possible, the Department of Justice ought to retain that responsibility.

It is a heavy responsibility. It is subject to the political process where the Department of Justice and the Attorney General are under public scrutiny and answerable to the President and answerable in the political process to the electorate.

So where an independent counsel is warranted, and I think we need the office, as I say, we ought to have it. I support this bill. But it ought to be tailored to those situations where there is either the presumption or appearance of conflict or an actual conflict exists.

I lend my support to the pending bill overall but voice my objection to the pending amendment for the reasons stated.

Mr. GRASSLEY. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER (Mr. AKAKA). The Chair recognizes the Senator from Iowa for 1 minute.

Mr. GRASSLEY. Mr. President, it boils down to just one very simple little issue, and that is whether or not Members of this body and the other body ought to have special treatment and special consideration.

I say we are not any better than anyone else. I am going to use a Democrat because we have a Democrat administration, but if we had a Republican administration you would use the same argument. But if there is a conflict of interest that involves a Democratic Cabinet member, the Attorney General must appoint an independent counsel. OK. Then it gets down to the simple fact. If you have a Democratic Member of Congress should he or she be treated any different than that Cabinet member?

I think out there at the grassroots of America it is very pure and simple, easily understood, that there should not be any special consideration for Members of Congress. In other words, when that Attorney General, because there is a conflict of interest, must appoint a special counsel, then there should not be any discretion if it involves a Member of Congress as the present bill would allow. We change that so that it is likewise mandatory.

I yield the floor.

Mr. SPECTER. Mr. President, will the distinguished Senator from Michigan yield me 3 minutes to direct a question to the Senator from Iowa if he is willing?

Mr. LEVIN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 20 minutes and 30 seconds.

Mr. LEVIN. I yield 3 additional minutes.

Mr. SPECTER. If our colleague from Iowa is willing to respond to a question, if I have his attention?

Mr. GRASSLEY. I am happy to respond. I hope the Senator realizes I am not a lawyer and I am not going to get into any hair-splitting by a Philadelphia attorney. But I will be glad to try to answer.

Mr. SPECTER. As you can see, Mr. President, there are tremendous advantages in not being a Philadelphia lawyer. For one thing, before responding to a question, you can level that accusation without even the appointment of an independent counsel and without an opportunity to defend.

The very basic matter that I would like to discuss with my colleague from Iowa, with whom I have sat on the Judiciary Committee for many years now, is, is not it really treating a Member of Congress differently from every other American citizen to say that when another American citizen is a Democrat he does not have independent counsel appointed or if the citizen is a Governor and might know the Attorney General personally or if the citizen is a political leader or the national chairman, or some other position not covered by the statute, that it is treating a Senator or Member of the House differently to put them in a category different from any other citizen where that individual, one of 535, has no special acquaintanceship, friendship or relationship to the Attorney General?

Mr. MCCAIN. Mr. President, I would like to say to my friend from Pennsylvania that I am not a lawyer from anywhere.

In response to his question, our view is that Members of Congress, the Senate and the House, are no more ordinary citizens than the 50 people who are covered under this act. In fact, some Members of Congress are more powerful than the 50 members of the executive branch who are covered under this act. These Members of Congress have extraordinary powers vested in them by the people of the United States. We believe that those extraordinary powers indicate that they should be held to the same rules under which the top 50 people in the administration are, since clearly, as Mr. ROBERT BENNETT, who is a well-respected individual, points out there are potentials for conflicts of interest.

Mr. SPECTER. Mr. President, I respond to my colleague from Arizona. I would agree with him if he were particularizing the Speaker of the House, for example, or the leadership of the party in power or maybe even the leadership of the party out of power.

But I think if you take 90 Senators, we do not know any especially in the Department of Justice, or 80 of the Senators, or 350 of the House Members.

I think I made my point, and I will accept the response from Senator MCCAIN as if offered by Senator GRASSLEY.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. LEVIN. I yield myself 3 minutes.

Mr. President, first, to my friends from Arizona and Iowa, let me say that they raised a point which I want to address precisely.

My friend from Iowa says we are not better than anyone else. I could not agree with him more. Everyone else in this country of 260 million Americans can be investigated by the Attorney General of the United States, but under the McCain amendment we cannot be.

The McCain amendment treats us better than everyone else except for about 75 members of the executive branch, and there is a reason for treating them differently from all other Americans. There is an inherent conflict of interest in the Attorney General investigating a high-level member of the executive branch appointed by the same person who is her boss.

But under the McCain amendment, although the Attorney General can investigate and prosecute every American but those 75, she will not be able to investigate us. It is the McCain amendment which gives us the better treatment than every other American, which excludes us from the investigation and the prosecution by the Attorney General, which precludes the Attorney General from having the option she wants to exercise her power under article 2 to investigate and prosecute Members of Congress which, by the way, attorneys general have done throughout history.

My friend from Arizona said the public wants us to live under the same rules they do. You bet. And I agree with both Senators when they talk about civil rights acts and a number of other provisions.

That is exactly what the public wants us to do—to live under the same rules they do. They can be investigated and prosecuted by the Attorney General of the United States. Under the McCain amendment, we cannot be.

Now, our bill provides for two options for the Attorney General: She can investigate and prosecute us the way she can 260 million other Americans, or she can select an independent counsel if there is a conflict of interest or for any other reason.

And, by the way, again, to my friend from Iowa, let me say the McCain amendment is not limited to situations where the Attorney General finds there is a conflict of interest if she would investigate and prosecute a Member of Congress. It is not limited to that. The McCain amendment says, automatically, she cannot investigate us. She cannot prosecute us the way she can everybody else in this country, except for those 75 named executive branch officials.

Now, why does the Attorney General want both options? Why does she want to be able either to investigate and prosecute us or select an independent counsel should there be a conflict of interest or for any other purpose that she deems to be in the public interest?

The reason is because the independent counsel statute is based on the premise, proven during Watergate, that the public will not have confidence in the executive branch investigating and prosecuting itself. That was the premise of the independent counsel statute; that there is an inherent conflict of interest within the executive branch—when the President picks the Attorney General, to have that same person doing the investigation of the President or persons close to the President. You have an inherent conflict of interest, an appearance of conflict of interest, a situation in which the public will have no confidence and there will be no credibility. That is the Watergate lesson.

Now the American Bar Association has written us a letter supporting this bill very strongly. And they have testified in favor of this bill very strongly. But they have also pointed out the difference between this language in our bill, which allows the Attorney General to use one of two options, either prosecute us herself or select an independent counsel. There is a big difference between that and mandating the independent counsel, which eliminates the right of the Justice Department to investigate and prosecute Members of Congress.

Here is what the American Bar Association said in its letter of November 17.

As noted above, the principle underlying statute is that an independent counsel may be needed when there may be a conflict of interest in having the Department of Justice carry out a particular investigation and possible prosecution. The Attorney General is appointed by the President and serves at his pleasure. The investigation of other officials appointed by the President—that is, high-ranking executive branch officials—places the Attorney General in the untenable position described in Humphrey's Executor, supra. No such conflict of interest, under the law, exists when the object of the investigation is an official of a separate and co-equal branch of Government. The rationale for the utilization of this extraordinary mechanism simply does not apply to investigations of Members of Congress.

The Department of Justice should continue to be the principal prosecutorial arm of the Federal Government. Should the Attorney General in a particular situation believe an independent counsel is needed, one can be appointed. Further, S. 24 makes it explicit that the Attorney General "may" utilize the independent counsel statutory mechanism with respect to allegations of criminal conduct involving Members of Congress. To require, however, the Attorney General to invoke this mechanism in all such cases would be unnecessary, undesirable and unwise.

Now that is the American Bar Association's position on it.

And I will simply add to that, it would not only be undesirable and unwise, it would raise several constitutional questions which could undermine the statute.

This statute is based on a premise that there is a conflict of interest which is inherent when the executive branch investigates its own high level appointees. It is for that reason and that reason only that the right of the executive branch to investigate and prosecute crimes under the Constitution is withdrawn from the executive branch for about 70 named high-level executive branch officials.

This was a carefully crafted statute which was upheld by the Supreme Court by a vote of 7 to 1. And the reason it was, was that the conflict of interest which exists when allegations are made against high level executive branch officials is the only justification for removing, automatically removing from the Attorney General of the United States, the right to investigate and prosecute allegations of crimes against those people. That is the reason for it.

If that reason does not exist, then the basis, the premise upon which this statute is based, is weakened. I do not want to weaken the premise of this statute. We fought too hard to keep this statute in place in order to get public confidence in Government, and that is why we are fighting hard to get it reauthorized.

This amendment attacks that premise, because what this amendment does is automatically cover an additional 500-plus people where there is no inherent conflict of interest or appearance of a conflict of interest.

In conclusion, we should not deny the Attorney General, as this amendment would, the right to investigate and prosecute Members of Congress. That is what the people will react negatively to. That is what the public will say no to. If we say we are not subject to the same investigation and prosecution by the Attorney General that every other American is, then they are going to want to ask why, and they are going to ask why.

And there is no good reason why we should not be. There is no good reason why we should not be subject to the investigation and prosecution of the Attorney General when the Attorney General of the United States has proven over, and over, and over again that he or she can investigate and prosecute Members of Congress.

This bill gives the option to the Attorney General to do either—either to prosecute us herself or to select an independent counsel. We face two barrels of a gun. It seems to me the public will support that and support the approach in this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. COHEN. How much time is remaining on our side?

The PRESIDING OFFICER. The Senator from Maine has 9 minutes and 30 seconds.

Mr. COHEN. And for the sponsors of the amendment?

The PRESIDING OFFICER. The other side has 6 minutes and 11 seconds.

Mr. COHEN. Mr. President I think the purpose is very clear from the arguments that have been advanced by my two friends from Iowa and Arizona. They do not support passage of this independent counsel statute.

What they are really, in essence, saying is: We want to make sure that every Member knows that this is going to apply with full force and effect against them. Just to show you that you are not above the law, we are going to apply the same standards to you that we do to the 50 or 60 members of the executive branch.

They went back and cited, of course, the ADA, the Civil Rights Act, the Older Americans Act, from which Congress was exempted. Of course that has been changed. These laws now apply to Congress. The Independent Counsel Act does not apply to every American. It applies only to a few select people within the executive branch.

We should put the question to the American people: Do you feel comfortable with the Attorney General, whoever that Attorney General might be—Janet Reno today, whoever tomorrow—conducting an investigation of alleged wrongdoing against the President of the United States? Alleged wrongdoing against the Vice President of the United States? Alleged wrongdoing against the Secretary of Commerce? Alleged wrongdoing against the Secretary of Defense? Do you feel comfortable that the Attorney General will be insulated from any pressure coming from within the administration to conduct a full and fair investigation into those select few?

If you say, "We do," then there is no issue. You do not need an independent counsel act. Do you feel confident that

Attorney General Reno could conduct an investigation of Senator GRASSLEY? Do you feel comfortable that she could conduct an investigation of Senators MCCAIN or COHEN or COCHRAN or LEVIN? Or do you feel she is incapable of carrying out her responsibilities?

There is, in fact, a difference. Senators are not subject to dismissal by the President of the United States. I do not serve at his pleasure. None of us serve at his pleasure. That is quite different from the individuals who have been named in the Independent Counsel Act as deserving of some special consideration.

This really is an effort to try to intimidate the Members. "See, you are trying to exempt yourself."

The law explicitly provides that we are covered. I am in fact covered by the Independent Counsel Act. Attorney General Reno at any time can choose to either prosecute me or she can refer it to an independent counsel, if she should choose to do so. We are all subject to the Independent Counsel Act. The American people are not subject to it. They are subject to the rule of law, the criminal laws, like everybody else. We are subject to them, too. But as Senator LEVIN pointed out, under the McCain amendment, we are carved out for special treatment.

Perhaps the purpose is to kill the bill by trying to intimidate us. I am not intimidated. I, frankly, do not care whether members are subject to mandatory coverage or not. That is not my objective in opposing the amendment offered by my good friend from Arizona. But, rather, if you follow the logic of his amendment, you would say that all members of the executive branch ought to be covered. If all Members of Congress are covered, why not all members of the executive branch? Why should the Supreme Court not be covered? Perhaps their clerks should be covered by this amendment. We do not want them above the law.

We have tried to target the Independent Counsel Act to deal with the real issue involved: What happens when an allegation is made against a high-level official within the executive branch, an individual who serves at the pleasure of the President of the United States? Is there an inherent conflict? Is there such an inherent conflict when Members of Congress are, likewise, the subject of allegations of criminal wrongdoing?

We expect to be treated differently in terms of our ethics. Our ethical standards are expected to be higher than that of the general population, that of the business world. We have higher standards because we are fiduciaries. Justice Cardozo said, "The morals of the marketplace are not to be applied to fiduciaries." We demand something higher from fiduciaries. So none of us are exempted from the ethical standards, nor are we seeking to escape the ethical standards of the American people. We are bound by even higher standards because we are public servants and fiduciaries.

We may not always live up to those ethical standards. It is up to Congress itself to discipline its Members—as we are doing now in some celebrated cases. The fact is, the laws involving independent counsels are criminal laws. These are allegations involving criminal misconduct. They apply to us with equal force as they do to the American people.

It may be that the objective of this amendment is to try to intimidate Members of Congress, saying, we are trying to exempt ourselves, therefore once we apply it to ourselves, we will be less inclined to apply it to the President, the Vice President, the Secretary of State, the Secretary of the Treasury, Secretary of Defense, the Attorney General himself or herself; we will not have courage enough to apply it to them because we are now covered—if that is the logic, then we ought to be very straightforward about the amendment's purpose.

But I suspect, if you put the question to the American people: Do you have confidence that the Attorney General can investigate the President of the United States, under whose aegis and at whose pleasure she serves—can she do so with the complete confidence of the American people? I tend to doubt it—no.

Let me also refer to Attorney General Meese. When allegations were made against Attorney General Meese, he specifically asked for the appointment of an independent counsel. Do you know why? He wanted his name cleared. He did not want to have to live under the cloud that would hang over him, the suspicion that the Justice Department had engaged in a whitewash. He wanted the stamp of approval coming from the independent counsel.

So the law is there for a reason, or it was there for a reason. We allowed it to expire last year. But now we are back because allegations have been made against high-level officials in this Democratic administration. And the question is: Why not have a special counsel? And Attorney General Reno has been quite proper. She said: Look, if you do not trust me to conduct the investigation impartially, why should you trust anyone I might appoint? You will level the same questions and criticisms at them.

I think we need the law. I think this amendment is designed to intimidate Members, suggesting that we are trying to exempt ourselves, we are trying to remove Congress from laws that apply to others. We are covered. We are covered just like the American people are covered by our criminal laws. This amendment would carve out an exception that we can only be investigated by an independent counsel.

It says that the Justice Department can never investigate and prosecute a Member of Congress. That, to me, violates the separation-of-powers clause in the Constitution.

For that reason I oppose the amendment and at the appropriate time will move to table it.

The PRESIDING OFFICER. Who yields time?

The Senator from Arizona.

Mr. MCCAIN. Mr. President, I yield myself such time as I may consume. I enjoy spirited debate with my friend from Maine. However, I resent it when both the position of the Senator from Iowa and my position are mischaracterized as opposing passage of the bill. In fact, if he had taken the time to look at the RECORD of November 3, 1987, when this independent counsel was last reauthorized, he would have noted that both Senator GRASSLEY and I voted in favor of it and have expressed our intentions to vote in favor of final passage this time no matter how this particular amendment stands or falls. So I would appreciate it in the future if the Senator from Maine would at least look at the RECORD before he accuses us of some subterfuge or subterranean motive: namely, that of derailing this legislation.

It is far simpler than that. It is exactly as Robert Bennett, one of the most respected men in this town, who knows a lot more than the American Bar Association does about how this town works—I will tell you again what he said:

> I would want this new statute to apply to certain members of Congress. I think it is very important for two primary reasons. First, the same kind of conflict issues appear that justify appointment of Independent Counsel to investigate certain Executive Branch officials. For example, if the Senate or House leadership is important to a President to get his legislative package through Congress, is the public going to have very much confidence in the integrity of an Attorney General of that Administration declining a prosecution of a Senate or House leader? [I don't think so.] Similarly, the integrity of an investigation of a political opponent raises public credibility concerns. Recent public controversies regarding cases involving Members of Congress demonstrate that these are not theoretical concerns.

They are not theoretical concerns. I think the American people want it. I think they need it. And I think they deserve it.

Just to make the record perfectly clear for my friend from Maine, I intend to vote for final passage of this bill, as I always have, whether this amendment rises or falls, just as I did back in 1987 when it was reauthorized, just as my friend from Iowa did in 1987.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. I am delighted to hear my friend from Arizona will support the bill whether his amendment is agreed to or fails.

I intend to do precisely the same, even assuming his amendment is

adopted; I will continue to support the legislation.

But let me clarify something else. The Senator, during his initial remarks, indicated there has been some editorial directed toward the Senator from Arizona. I would like to take to the floor to completely disagree with the thrust of that particular editorial. I, under no circumstances, have ever had any indication that the Senator from Arizona had any other motivation to stall this legislation and to prevent or to allow a statute of limitations to run in order to protect any individuals. That has never, to my knowledge, ever been part of his motivation. We may disagree on the effect of his amendment in terms of applying to 535 Members of Congress. But I would like to say for the record that under no circumstances has he ever indicated to me, or have I ever in any way determined that his motivations, in terms of bringing this amendment to the floor, were for the purpose of—in any way—delaying it beyond the statute of limitations to protect anyone or to protect any investigation into allegations in the prior administration, or anyone else.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I just would like to thank my friend from Maine for his kind remarks in clearing that up for the record. I do not know where that editorialist from the New York Times received that information, but I am glad the record is clear now on this issue. It will be irrelevant because this statute is going to be passed with or without my amendment. I have no more further use of my time.

Mr. LEVIN. Mr. President, do I have any time?

The PRESIDING OFFICER. The Senator has 3 seconds remaining.

Mr. LEVIN. In that case, I will yield back the entire remainder of my time, Mr. President.

The PRESIDING OFFICER. The Senator from Michigan yields back his time.

Mr. McCAIN. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. COHEN. I move to table the amendment, 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 is on agreeing to the motion to lay on the table amendment No. 1205. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] and the Senator from Georgia [Mr. NUNN] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 67, nays 31, as follows:

[Rollcall Vote No. 381 Leg.]

YEAS—67

Akaka	Feingold	Mikulski
Baucus	Feinstein	Mitchell
Bennett	Ford	Moseley-Braun
Biden	Glenn	Moynihan
Bingaman	Graham	Murray
Boren	Gregg	Packwood
Boxer	Harkin	Pell
Bradley	Hatfield	Pryor
Breaux	Heflin	Reid
Bryan	Hollings	Riegle
Bumpers	Inouye	Robb
Byrd	Johnston	Rockefeller
Campbell	Kennedy	Sarbanes
Chafee	Kerrey	Sasser
Cochran	Kerry	Shelby
Cohen	Kohl	Simon
Conrad	Lautenberg	Simpson
Daschle	Leahy	Specter
DeConcini	Levin	Stevens
Dodd	Lieberman	Warner
Domenici	Lott	Wofford
Durenberger	Mathews	
Exon	Metzenbaum	

NAYS—31

Bond	Gramm	McConnell
Brown	Grassley	Murkowski
Burns	Hatch	Nickles
Coats	Helms	Pressler
Coverdell	Hutchison	Roth
Craig	Jeffords	Smith
D'Amato	Kassebaum	Thurmond
Danforth	Kempthorne	Wallop
Dole	Lugar	Wellstone
Faircloth	Mack	
Gorton	McCain	

NOT VOTING—2

Dorgan	Nunn

So the motion to lay on the table the amendment (No. 1205) was agreed to.

Mr. COHEN. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

AMENDMENT NO. 1206

(Purpose: To repeal the separate independent counsel appointment process and provide for the Presidential appointment of a special counsel within the Department of Justice if necessary to avoid a conflict of interest)

Mr. COCHRAN. 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 Mississippi [Mr. COCHRAN] proposes an amendment numbered 1206.

Mr. COCHRAN. 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 language proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Department of Justice Special Counsel Act of 1993".

SEC. 2. REPEAL OF INDEPENDENT COUNSEL PROVISIONS.

(a) IN GENERAL.—Chapter 40 of title 28, United States Code, is repealed.

(b) TABLE OF CONTENTS.—The table of contents for part II of title 28, United States Code, is amended by striking the item relating to chapter 40.

SEC. 3. SPECIAL COUNSEL.

Chapter 31 of part II of title 28, United States Code, is amended by adding at the end thereof the following:

"§ 531. Special counsel

"(a) IN GENERAL.—The President, upon recommendation by the Attorney General, shall appoint, by and with the advice and consent of the Senate, a special counsel who shall serve in the place of the Attorney General as provided in this section.

"(b) APPOINTMENT OF SPECIAL COUNSEL.—If the Attorney General determines that an investigation or prosecution of a person described in subsection (c) by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may recommend to the President that a special counsel be appointed.

"(c) PERSONS TO WHOM SUBSECTION (b) APPLIES.—The persons referred to in subsection (b) are—

"(1) the President and Vice President;

"(2) any individual serving in a position listed in section 5312 of title 5;

"(3) any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5;

"(4) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5;

"(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

"(6) any individual who leaves any office or position described in any of paragraphs (1) through (5) of this subsection, during the incumbency of the President under whom such individual served in the office or position plus one year after such incumbency, but in no event longer than a period of three years after the individual leaves the office or position;

"(7) any individual who held an office or position described in any of paragraphs (1) through (5) of this subsection during the incumbency of one President and who continued to hold the office or position for not more than 90 days into the term of the next President, during the 1-year period after the individual leaves the office or position;

"(8) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President; and

"(9) any other person the investigation and prosecution of whom may result in a personal, financial, or political conflict of interest.

"(d) AUTHORITIES.—Notwithstanding any other provision of law, a special counsel appointed under this section shall have, with respect to all matters in such counsel's prosecutorial jurisdiction established by the Attorney General full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General's, and other officer or employee of the

Department of Justice, except that the Attorney General shall exercise directions or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

"(1) conducting proceedings before grand juries and other investigations;

"(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such special counsel considers necessary;

"(3) appealing any decision of a court in any case or proceeding in which such special counsel participates in official capacity;

"(4) reviewing all documentary evidence available from any source;

"(5) determining whether to contest the assertion of any testimonial privilege;

"(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

"(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General;

"(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

"(10) consulting with the United States attorney for the district in which any violation of law with respect to which the special counsel is appointed was alleged to have occurred.

"(e) COMPENSATION.—A special counsel appointed under this section shall receive compensation at the per diem rate equal to the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

"(f) PUBLIC INTEGRITY SECTION.—The special counsel shall use the staff and resources of the Public Integrity Section of the Criminal Division of the Department of Justice in conducting any investigation and prosecution under this section.

"(g) ADDITIONAL PERSONNEL.—For the purposes of carrying out the duties of an office of special counsel, such special counsel may appoint, fix the compensation, and assign the duties of such employees as such special counsel considers necessary (including investigators, attorneys, and part-time consultants) but such employees shall not exceed 50 percent of total staff of the special counsel. The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate of pay payable for GS–18 of the General Schedule under section 5332 of title 5. All employees employed by the special counsel shall be directly supervised by the special counsel.

"(h) STAFF MISCONDUCT.—If a special counsel has reasonable grounds to believe that an employee of the special counsel has or is engaging in improper conduct, the special counsel shall notify the Office of Professional Responsibility of such improper conduct and the Office shall investigate.

"(i) REMOVAL OF AN INDEPENDENT COUNSEL.—An independent counsel appointed under this section may be removed from office, other than by impeachment and conviction, if the Attorney General determines that—

"(1) the independent counsel has failed to follow Department of Justice guidelines;

"(2) the independent counsel violates the cannons of ethics; or

"(3) the investigation of the independent counsel can be conducted by the Department of Justice without a conflict of interest.".

Mr. COHEN. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I ask unanimous consent that a summary of the amendment that I just sent to the desk be printed at this point in the RECORD.

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

SUMMARY OF THE COCHRAN SUBSTITUTE AMENDMENT FOR S. 24

Coverage—Coverage would extend to the same officials and individuals as were covered under the previous Independent Counsel statute and who would be covered under the Committee's proposed reauthorization of that Act.

Process—If the Attorney General determines that an investigation or prosecution of a person covered under the statute may result in a personal, financial or political conflict of interest, the Attorney General may recommend to the President that a special counsel be appointed.

Appointment—Instead of the separate independent counsel appointment process, the substitute amendment provides that, upon the recommendation of the Attorney General, the President shall appoint a special counsel within the Department of Justice.

Qualifications—Since, the special counsel would serve in the place of the Attorney General and exercise the powers of the Attorney General for the purpose of investigating and prosecuting the covered individual, the special counsel's appointment would be subject the advice and consent of the Senate.

Authority of the Special Counsel—The special counsel provided for under the substitute amendment would have the same authority as was delegated to an Independent Counsel authorized under the previous statute and which would be provided for under S. 24.

Accountability—Unlike the scheme provided for under the previous statute and the Committee's proposal, the substitute provides for the removal of the special counsel if the Attorney General determines that—

The independent counsel has failed to follow Department of Justice Guidelines;

The independent counsel violates the cannons of ethics; or

The investigation of the independent counsel can be conducted by the Department of Justice without a conflict of interest.

Separation of Powers Maintained—Under the substitute, the investigatory and Prosecutorial powers—in effect the Attorney General's powers—that are delegated to the special counsel would remain within the Executive Branch in keeping with the intent of the framers of the constitution.

Staff Accountability—The substitute would require that the special counsel use the existing staff and resources of the Public Integrity Section of the Department of Justice in conducting any investigation and prosecution under the act.

Additional Employees and Personnel—The substitute allows the special counsel to appoint additional attorneys, investigators, and part-time consultants, but the number of such personnel could not exceed 50 percent of the total staff of the special counsel.

Supervision of Employees—The substitute requires that all employees of the special counsel shall be directly supervised by the special counsel and if the special counsel has reasonable grounds to believe that an employee is engaging in improper conduct he is required to notify the Office of Professional Responsibility and that office shall investigate.

Mr. COCHRAN. Mr. President, there has been a great deal written recently about the rampage that we see within the Congress and here in Washington involving political partisanship, unlimited spending by independent prosecutors in alleged criminal cases against high-level and some not-so-high-level Government officials. A good deal has been said about the need for reform.

One recent article in the Wall Street Journal, for example, on October 1, observed:

Partisans in both parties are using ethics as a political weapon. Even more seriously, in recent years we have witnessed the criminalization of differences over foreign policy, grandstanding arrests with bond traders carted off in handcuffs, only to have charges dismissed, the criminal pursuit of hapless savings and loan directors and accountants.

Another recent article in the Los Angeles Times dated October 1 of this year said:

This is an era that calls for independent prosecutors, not the Lawrence Walsh sort whose office, under the happily now-defunct independent counsel statute, is a grave offense to the separation of powers. No. What is needed in the Brown case—referring to the allegations against Secretary of Commerce, Ron Brown—is the more traditional sort of special prosecutor, the kind who is empowered by the Attorney General and can be reined in if he begins to abuse his office.

Mr. DOMENICI. May we have order, Mr. President?

The PRESIDING OFFICER. Will the Senator suspend? The Senate is not in order. The Senate will be in order.

The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator from New Mexico and the Chair.

What is needed in the Brown case—referring to the Secretary of Commerce Ron Brown—is the more traditional sort of special prosecutor, the kind who is empowered by the attorney general, and can be reined in if he begins to abuse his office. Special investigators of that sort can be fired. But if it is done to cover political or politicians' backsides, it usually does the cover-uppers more harm than good.

The article goes on to talk about the fact that this Attorney General, Janet

Reno, is refusing to appoint a special prosecutor. Her reasoning, they say in the article in the L.A. Times, is curious:

If there were an independent counsel law, she says she would be happy to let loose a new Mr. Walsh, but without the mechanism for a full-blown independent counsel she does not see what credibility would be gained by naming a special prosecutor.

The article writer goes on in the L.A. Times to observe:

This is an amazing admission by the attorney general. First, she has granted that the questions about Mr. Brown do call for some kind of independent inquiry—how else are we to take her statement that she would name an independent counsel if she were able to do so? And then there is the surprising acceptance that she is perceived to have a conflict of interest. If Miss Reno wanted to eradicate that impression she could still name a special prosecutor: She is wrong to think that such a move would do nothing to bolster her credibility.

Finally, as a preface to a discussion of the provisions of the amendment that has just been sent to the desk, I invite the Senate's attention to an article written by Norman Ornstein. It appears in the Monday, September 20 edition of Roll Call, the newspaper of Capitol Hill. After observing the new confrontational politics that is en vogue on the hill, the partisanship that is harsher and sometimes meaner than many of us remember when we were first elected, he states:

Over the past few years, the conflict has escalated into a kind of War of the Roses, with Members of both parties, joined by their ideological allies, intent not just on foiling but destroying their political opponents. The focus in the John Tower, Robert Bork, Clarence Thomas, and Lani Guinier nominations on personal attacks, attributes, and motives, not just views, is only one obvious example.

He goes on to observe that the results have come to be, more often than not, the criminalization of policy differences.

He says:

From muckraking Congressional investigations to the special counsel law, deep-seated differences in policy objectives have been turned into deeper attacks on individuals, often accompanied by criminal investigations. Real questions about violations of law or norms have been stretched into processes to punish transgressors for more than their legal malfeasance—to make them pay for their ideological apostasy or policy arrogance—from Hamilton Jordan to Theodore Olson to Elliot Abrams.

Prosecutorial abuse has been one major part of this. The zeal of prosecutors to bag public officials has increased logarithmically in the past decade; indictments of federal officials have gone up nearly 1,300 percent during that time.

Lawrence Walsh and other special prosecutors have not only sought indictments and pushed trials, but they have eagerly sought the airwaves and news pages to make wild or bitter allegations against their targets that have little to do with their legal cases and everything to do with either frontier justice or naked ambition.

Mr. President, these observations from these newspapers and writers set the stage for what seems to me to be an appropriate time to look more critically at the special prosecutor law that we are being asked to reauthorize by this legislation.

The managers of the bill have worked very hard, and I congratulate Senators LEVIN and COHEN for the hearings we held in the Governmental Affairs Committee to try to look at alternatives, curbs against abuses, ways to make sure that the process is fair to those who are targets of investigations and also the system of justice that the American people have come to expect would be administered in this United States—even when high-level officials of our Government may be involved in violating the criminal laws of our land.

What has come from this process, however, falls way short of what we need and what is required by the abuses, the opportunities for unlimited prosecutorial rampages that we have seen in recent years under the authority of this law we are being asked to reauthorize by this legislation. In the judgment of this Senator, more curbs, more restraints against abuse are needed, and the amendment that I have suggested, I hope, will go further to help meet the challenge that is required.

Let me simply describe quickly the principal provisions of this amendment, which is in the nature of a substitute for the reauthorization offered by the managers. We all know and appreciate the fact that the Constitution established a system of checks and balances—"balances" meaning a balance of power between and among the branches of our Government—so that no one Government official, whether it is an Attorney General, or a President, or the chairman of a powerful committee of the Congress, or a Supreme Court Justice, could exercise unrestrained power.

But, guess what? In this system of checks and balances, we have created an exception to that rule. We have created an independent counsel who is an anomaly in this process, because he or she is unrestrained. There is no balance against the power given to that person. That person is not confirmed by the Senate as an Attorney General would be. That person is not limited in the amount of money that can be used in the carrying out of the perceived responsibilities of that official. The independent counsel statute is an anomaly. It is the only exception to this central principle of our American system of government that exists.

The committee is recommending, unfortunately, that this law be reauthorized and that independent counsel in the future be given unbridled authority to investigate and prosecute other Government officials and be answerable to no one in the exercise of that unbridled power.

The independent counsel statute provides, in effect, that the counsel is above question or restraint. That is too much power, and it invites abuse. And we have a record of experience to prove it. The Congress is left completely out of the process of selection and oversight. No program authority exists to sanction an independent counsel for any abuses of the office whatsoever. The independent counsel is free under this statute to hire staff. That is, also, not subject to any control, direction, or restraint. If anything, the staff is more independent than the independent counsel. This might not be an issue if the independent counsel were exercising direct supervision over an investigation being conducted by the staff. But that is not required by the law. In fact, under this act, the independent counsel has often delegated wide-ranging power to his staff. In the Iran-Contra investigation, for example, Mr. Lawrence Walsh is reported to have said well over a year ago that he had turned over "decisional authority" to his deputy, Craig Gillen.

There was a Washington Post op-ed piece written by Richard Harwood in December of 1992 entitled "Who is Craig Gillen?" The columnist says his research of newspaper stories regarding Craig Gillen concluded that the only information given about this man is that he was referred to as Walsh's chief prosecutor, or deputy independent counsel, or associate counsel. Beyond those labels, none of which are official titles under the independent counsel statute, the only thing that is known about Craig Gillen is that he was once an assistant U.S. attorney in Georgia. But as this columnist points out, "Gillen appears to have been the de facto chief of the operation, its driving spirit, its principal strategist."

I ask to whom was Craig Gillen accountable except to Lawrence Walsh? He was not appointed by the chief executive, the President, or the Attorney General. He was not selected by a three-judge panel or a special court, as required by the independent counsel statute for the selection of an independent counsel, and yet this person exercised all of the power of an independent counsel under the statute because he was given that power by the independent counsel and nothing in the statute prohibits that.

Not only is that person not accountable, he is not even known. There is no way for public sanction, or any kind of check or balance, to restrain in any way, an abuse of power of that individual. And that is the point, Mr. President.

In the search for pure independence, based on the assumption that independence leads to fairness, competence, and good judgment, we have created an independent monster. The special division of the court of appeals for the District of Columbia is responsible under current law for appointing an independent counsel. It did not pass on

Craig Gillen's qualifications or fitness to exercise discretionary decisional authority for the independent counsel.

The statute grants limited discretion to the Attorney General to fire an independent counsel under current law, but there is no explicit authority in the law for the Attorney General to fire Craig Gillen or anyone else hired by the independent counsel.

The substitute amendment I have sent to the desk will remedy these unfair and unconstitutional flaws which would continue even under the statute as it would be amended by the committee bill. The substitute would restore to the Attorney General her responsibility as the chief law enforcement officer of the Federal Government.

The substitute also recognizes the Senate's power and responsibility under our Constitution to conduct a review of the qualifications, the background, the integrity, and fitness for office of a nominee to such an important position. In other words, the Senate is given the power and will exercise the power to confirm the appointment of an independent counsel under this substitute.

When an Attorney General has a conflict of interest or feels that an independent investigation of allegations against a high-ranking official is appropriate, an independent counsel should be named, and this substitute provides that authority.

But the law should not require that such action be taken in every case where a high-level official is simply accused of a violation of the law, nor should it limit arbitrarily any preliminary investigation to 90 days as required by this statute.

I was reviewing just recently, the annual report required by law that is submitted to the Congress by the public integrity section of the Department of Justice.

The 1991 report talks about the fact that one of the responsibilities of this section is to review, in a preliminary fashion, allegations that are made under the Independent Counsel Act to determine whether further investigation is required and make recommendations to the Attorney General about whether independent counsel requirements have been triggered. This observation says:

> Under the independent counsel provisions if specific information from a credible source is received by the Justice Department alleging that any of the certain specified high Government officials has committed a crime, the Attorney General must request that a special panel of Federal judges appoint an independent counsel unless preliminary investigation limited to 90 days establishes there are no reasonable grounds to believe that further investigation or prosecution is warranted.

The report further discusses how this is such an unusual restraint, a 90-day requirement in which a large number of people and resources are devoted to that inquiry, so that speed becomes, in effect, more important than care.

The responsibility for the full investigation and prosecution, in my judgment, and as provided by this substitute, should be returned to the Justice Department and, when necessary, when the Attorney General decides on a case-by-case basis independent counsel are necessary, then counsel may be appointed.

The Attorney General should nominate, in every case where a high ranking official is involved in allegations of criminal conduct, a special prosecutor, but under the terms of this amendment rather than current law.

If special counsel is to exercise the same kind of authority and prosecutorial power as the Attorney General and become the Nation's chief law enforcement officer in a case involving a high-level official, then that nominee ought to be subject to the confirmation processes of the U.S. Senate as provided in other cases of high-level appointments of the executive branch by the Constitution.

Senate confirmation is appropriate because the special counsel in these cases would be the surrogate for the Attorney General, and the person appointed should be held to the same high level of qualifications, integrity, and competence as an Attorney General.

The substitute amendment will change the process for conducting independent investigations and prosecutions, and it will give to the special counsel the same authority that was granted under section 594 of the independent counsel statute, which would be reauthorized under this amendment.

> Notwithstanding any other provision of law—

And I read from the amendment—

> a special counsel * * * shall have, with respect to all matters in such counsel's prosecutorial jurisdiction * * * full power and independent authority to investigate all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General's, and other officer or employee of the Department of Justice.

Such a broad grant of authority to any Government official demands that the one who possesses that authority be evaluated carefully before that authority can be exercised.

The amendment also addresses the staff problems that came to light under the Lawrence Walsh episode during his service as independent counsel. The amendment provides in the case of staff that once nominated and confirmed the special counsel would utilize the staff of the public integrity section of the criminal division of the Department of Justice.

I quoted a minute ago from the annual report the public integrity section provides to the Congress on its activities and operation. I quoted from the report for the year 1991.

In that year, the section conducted over 200 investigations of allegations of wrongdoing by officials of all three branches of the Federal Government. This office currently conducts the preliminary investigations required by the independent counsel statute to be conducted before the Attorney General asks the court for appointment of an independent counsel.

This section is also responsible for coordinating inquiries by independent counsels regarding legal issues, departmental policies, requests for documents, and interviews of departmental personnel.

So, based on the record of experience and the performance and the reputation for integrity of those who work in this section, it would seem appropriate to me for the public integrity section to conduct the entire investigation, not just the preliminary investigation. If this section is trusted under current law to do the work that is required in an expedited, rushed up, frantic search for the facts on which to base a conclusion about a continued investigation or a recommendation to the Attorney General that an independent counsel should be named, then surely it can be trusted to conduct a continuing investigation to determine if the facts are there to support a criminal conviction, or if a grand jury should be convened to receive evidence of possible violations of criminal law.

The substitute would also require the special counsel to exercise direct supervision over the investigation. If, at any point in the investigation, the special counsel suspects inappropriate actions by any person under his supervision, either within the department's public integrity section or among outside counsel that this substitute permits to be hired in cases, as needed, he would notify the Office of Professional Responsibility in the Department of Justice. That office, according to the order which created it in 1975, serves the function of ensuring that departmental employees perform their duties in accord with the professional standards expected of the Nation's principal law enforcement agency.

Under the substitute, the staff would not only be accountable to an official who is on the job, but also to the normal Justice Department scrutiny of the professional conduct of its employees.

The bill, as reported from our committee, does attempt to address the problem of inappropriate expenditures by the independent counsel which came to light very prominently during the Lawrence Walsh investigation. I commend the managers of the bill and those on the committee who worked very hard, and our staff, as well, who came up with changes that would limit and restrain the opportunity for abuse in this area.

Establishing limitations on the cost of office space and per diem expenses

and imposing a requirement that a specific individual be responsible for approving expenditures are helpful changes, but they do not go far enough. They do nothing for the underlying problem of the authority to spend an unlimited amount of taxpayer money.

We ought to recognize by now, Mr. President, that independence in a Government official does not necessarily guarantee impartiality or competence or good judgment. No law, no matter how hard we work on it, no matter how well refined, can prevent all abuses of power. History has shown that the independent counsel statute is no exception to that rule. While a conflict-free investigation and prosecution may be impossible to guarantee through the enactment of any statute, our efforts toward that end ought, at the very least, to ensure there is accountability for those officials we entrust with great power.

One of the central goals of the substitute amendment, Mr. President, is to restore accountability to the office that has the power to bring prosecutions against the highest officials in the land. More importantly, we ought not, under the guise of establishing an independent office free of outside or inside influences, upset the delicate separation of powers principle the Framers of our Constitution considered to be central to a just Government.

Mr. President, that is a summary and a description, as best I can give it, of the provisions of the substitute amendment.

Let me, before I yield the floor, ask unanimous consent that a series of articles and newspaper op-ed pieces on the subject of the independent prosecutor and some of the recent experiences, be printed in the RECORD.

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

[From the Wall Street Journal, Oct. 1, 1993]

LONE STAR JUSTICE

Texas has become a first class center for business, education and culture, but its judicial system remains a Wild West embarrassment. Business learned to be wary of Lone Star justice when Joe Jamail, "king of torts" and frequent contributor to election campaigns of Texas judges, got a $10.3 billion judgment against Texaco and in favor of Pennzoil. The system has long been seen as a profit-making and political playpen, but bills to reform it languish in a legislature dominated by trial lawyers, and voters lack the power to change it by initiative.

Public disgust seems to have reached a new peak, though, with the indictments this week of Senator Kay Bailey Hutchison, the Republican who won a landslide victory for the seat formerly held by Treasury Secretary Lloyd Bentsen. A new Dallas Morning News and Houston Chronicle poll finds that only 25% of the respondents think the charges have merit. Meanwhile 56% think they are politically motivated.

It's of course impossible to predict what a jury will ultimately decide, all the more so since the indictment is anything but specific. It consists of five counts of misusing state employees and destroying evidence in Mrs. Hutchison's previous position as Texas state treasurer. Two of the counts are felonies, and the cumulative jail sentences add up to 61 years. In trying to reconstruct these grievous sins, the Houston Chronicle reported that state records "indicated that Hutchison used state employees for non-governmental activities that ranged from coordinating her political schedule to planning her Christmas vacation in Colorado to writing thank-you notes."

The Morning News/Chronicle found that 69% of respondents believe using state employees and equipment for personal and political reasons is a common practice among politicians in Texas and no doubt elsewhere. Indeed, Democratic Land Commissioner Garry Mauro's office was found to have made 1,400 calls on state-paid telephones during the 1992 Clinton campaign, but no indictment was sought. Until last month, Governor Ann Richards kept 13 private lines in her official office, including two tied directly to her campaign office. After the media reported this, eight of the lines were suddenly removed.

The Hutchison indictment was sought by Travis County District Attorney Ronnie Earle, who had himself been interviewed for potential appointment to the Bentsen seat by Democratic Governor Ann Richards. His staff raided Mrs. Hutchison's office days after her Senate victory, carting off crates of records. The judge who empaneled the grand jury was once an aide to Mr. Earle. The grand jury turned out to include 10 members who had voted in the Democratic primaries, two non-voters and no Republicans. Senator Hutchison is pushing for an early jury trial that can end before she has to file for re-election in January, and Mr. Earle and the jury foreman are denying political motivation.

Of course no official should be above the law, and no doubt a search of extensive files would find instances in which Mrs. Hutchison exercised poor judgment. It's conceivable, of course, that at trial the murky charges may be fleshed out by more solid evidence of serious transgressions. More likely, though, what we have here is just what it looks like and what the Texas poll respondents judge it to be: A politically motivated fishing expedition intended to damage the new Senator, settle some scores and open the field for the Democratic Party.

In many ways this would be a culmination of recent trends. Partisans in both parties are using ethics as a political weapon. Even more seriously, in recent years we've witnessed the criminalization of differences over foreign policy, grandstanding arrests with bond traders carted off in handcuffs only to have charges dismissed, the criminal pursuit of hapless savings and loans directors and accountants. If Mr. Earle's indictment turns out to be the use of the legal process for partisan purposes, it will set another new low; but then, Texas is into setting records.

George Christian, a Democrat who was press secretary to President Lyndon Johnson, says it's "disturbing" that so many voters doubt the validity of the Hutchison indictment. He says it's time Texas joined most states in ending its partisan elections for judges and district attorneys. He would move to a system where judges are appointed, but voters then confirm them periodically. Clearly the courts of Texas, and some other states as well, need to be purged of a partisan flavor.

Even beyond the borders of Texas, there's plenty of reason to worry that courts are becoming tinged with purposes beyond even-handed law enforcement. There's a danger that the public will become as cynical and suspicious of the judiciary as it has become of all other political institutions.

[From the Washington Post, Dec. 31, 1992]

WHO IS CRAIG GILLEN?

(By Richard Harwood)

The Office of Independent Counsel—OIC to the in crowd—has been a great benefactor of the media as it picked through the garbage of the Iran-contra affair during the past six years. Along the way OIC and its aged leader, 80-year-old Lawrence E. Walsh, dropped many hints of great things to come: the impeachment or indictment of Ronald Reagan, the imprisonment of Cabinet officers, the slaughter of top guns in the CIA. This was the stuff of bold headlines and great expectations. It inspired millions of words of copy and countless broadcast hours.

But in the end not much has come of it. "Little Light, but Much Work * * *" is the New York Times headline. What we know today about Iran-contra is what we knew five years ago at the conclusion of congressional hearings on the affair; nothing more. Walsh and his platoons of lawyers and FBI agents have hooked and landed no big fish. Reagan, the inspirer and spiritual patron of the operation, lives out his good life on the West Coast, unindicted and unimpeached either for lack of evidence or lack of will at OIC. The convictions of Oliver North and John Poindexter were invalidated by the courts because of the use of tainted evidence, an outcome that was not inevitable, according to Sen. Warren Rudman, if Walsh had played his cards in a different way. North may wind up as Virginia's newest senator. Plea bargains on misdemeanor counts extracted modest community service time for people like Robert McFarlane and Elliott Abrams, who was also fined $50. But no one has done or will do jail time except the long-forgotten Thomas Clines, who got 16 months for income tax irregularities.

The much-heralded prosecution of Clair George, the former "CIA spymaster," was an odd and singularly unenlightening episode. It bankrupted him but left the issue in doubt. His involvement in Iran-contra was shown to be peripheral, and the case against him—lying or withholding information from Congress—was so marginal it collapsed the first time around. A majority of jurors favored his acquittal on each of the nine counts in the indictment, forcing a mistrial. The press lost interest. There was no daily coverage of the retrial by such Iran-contra junkies as the New York Times and The Post. But this time the OIC lawyers got a conviction by the skin of their teeth; George was acquitted on five of the seven counts in his indictment. Even that minor victory evaporated Christmas Eve when President Bush pardoned George and five others, including former defense secretary Caspar Weinberger, who had yet to come to trial for withholding information from Congress.

For all that, it's been a good story for a long, long time and there is a very faint possibility of a socko windup. Walsh has made the president a "subject" for investigation. That has an ominous ring to it buy may signify little more than Walsh's pique at the Bush pardons.

In the meantime, the press could clear up for the rest of us one of the mysteries of OIC:

Who is Craig Gillen? He's been a major actor for several years in the affairs of OIC. The newspapers label him as Walsh's "chief prosecutor," as the "deputy independent

counsel," as the "associate counsel"—in short, as the Number Two guy. That's all we know from the papers, except that he was once an assistant U.S. attorney in Atlanta and that a year ago Walsh told Legal Times, a Washington journal, that he had turned over to Gillen "decisional authority" in OIC.

People who attended the George trial were impressed by Gillen's technical skills. He was the architect of the case—and of its technical flaws—against Caspar Weinberger. But there are no extant profiles in the computers telling us about him—his family, his education, his career history, his talents, his ambitions, his beliefs. The Wall Street Journal claimed in an editorial—with no supporting evidence—that Gillen's aim is to be the governor of his home state, Georgia, and that OIC is merely a steppingstone for that ambition.

Nothing else is readily available except a poison portrait of Gillen contained in an interesting but maudlin and self-serving memoir by Elliott Abrams on his travails with OIC. The book makes clear that Abrams and his wife, Rachel, do not dislike Craig Gillen; they hate him. If WASPs were not supposed to be immune from bigotry, one could easily accuse them of that social sin. In a letter to a friend, reprinted in the book, Rachel Abrams refers to him as "this specimen of [expletive deleted] and compressed lips, this pretty-boy, blond, Georgia WASP, this loathsome little toady of Lawrence Walsh's." Other passages in the letter are unprintable and reflect the obsessive belief that Gillen is a grand inquisitor seeking fame and high place by pursuing "this golden man, my prize"—Elliott Abrams. (She also pays her respects to the Fourth Estate, those "carrion-eaters of the press corps, who daily take their meals at the flesh of the fallen mighty.")

If Craig Gillen can inspire such passions he must be an interesting man. He is also an important figure in these final days of OIC. Lawrence Walsh spends most of his time at home in Oklahoma City. Gillen appears to be the de facto chief of the operation now, its driving spirit, its principal strategist. He will figure in any history of the Iran-contra case and its aftermath.

It is surprising that we know so little about him, surprising that he has retained his anonymity for so long. There are a lot of stories going around about his zealotry.

The last act of the Office of Independent Counsel in this affair will be the submission of a final report. It will be an important document affecting the reputations of many individuals and affecting, perhaps, future relations between Congress and the executive branch. Gillen will be one of its principal authors. Who is he?

[From the Wall Street Journal, Feb. 4, 1993]

LAWRENCE WALSH, SCOFFLAW

(By Michael A. Ledeen)

The Ethics in Government Act—which gave us special prosecutors—has been reintroduced in the Senate, and the performance of Lawrence Walsh will provide much of the background music for the coming debate. There are many alarming aspects to Mr. Walsh's tenure, not least of which is an unchallenged power that has permitted him to ignore the laws, rules and regulations that bind most men and women engaged in the enforcement of laws at the same time that he has insisted on unprecedented standards for his intended victims.

Whenever Mr. Walsh is annoyed by official regulations, for example on things like pay and travel, he simply ignores them, since (in the words of his olympian response to a recent Government Accounting Office inquiry into the operations of his office) "he does not believe that these requirements apply to independent counsels as a matter of law."

As of last March, about 30 of his employees had run up more than 5,000 hours of unjustified excess leave, and to date Mr. Walsh has paid himself about $78,000 above the authorized rate for per diem expenses. These expenses were themselves suspect because he had declared his "work station" to be Oklahoma City rather than Washington (where he spent the bulk of his working hours). This maneuver let him charge the government for his (unauthorized, first class) travel between Oklahoma and Washington, and temporarily let him neatly circumvent the District of Columbia's income taxes. He paid the taxes—along with a fine—only after his circumvention was uncovered by a congressional inquiry and reported in the newspapers.

Thus, the same special prosecutor who so excorsiates his victims for placing themselves "above the law" has not applied the same standards to himself. Indeed, when he was involved in U.S. foreign policy, Mr. Walsh sounded very much like the Iran-Contra players he later prosecuted.

Back in 1960, as acting attorney general in the Eisenhower administration, Mr. Walsh met with Secretary of State Christian Herter and CIA Director Allen Dulles to discuss how best to monitor and control travelers between the U.S. and Cuba. Mr. Herter suggested that it might be desirable to pass some new laws to strengthen U.S. control over the travelers, but Mr. Walsh dismissed such legal niceties. According to "Foreign Relations of the United States (1958-1960)," Vol. VI, "Cuba" (State Department), "Walsh pointed out that there was some point at which you simply had to circumvent the law and that what was important was the INS be given a plausible basis for doing so."

Back then, Mr. Walsh was willing to circumvent the rules on behalf of national security; more recently, he has simply trashed national security regulations. His disdain for proper procedures has produced a substantial hemorrhage of classified information (which Mr. Walsh often refers to as "phony secrets"):

CIA cables, complete with highly sensitive markings (invaluable for anyone who wishes to forge such documents), were publicly released as "Exhibits" during trials, in violation of security requirements.

During a discussion of a motion to quash a subpoena, the Walsh team identified a covert agent by name.

So-called redacted pleadings from Mr. Walsh contained classified information that should have been deleted. On occasion, classified material was included in Mr. Walsh's official letters, which subsequently had to be retrieved and then classified or redacted.

Highly sensitive documents were delivered to receptionists at defense counsels' offices instead of being placed in special secure facilities.

This last item is of a piece with the most spectacular example of Mr. Walsh's cavalier treatment of government secrets. Last July, when he traveled to California to interview former President Reagan, Mr. Walsh carried a satchel of classified documents. Having completed the interview, Mr. Walsh gave his luggage (including the satchel) to his staffers, instructing them to check the bags onto his flight back to Washington. The bags were checked in at curbside at Los Angeles International Airport, but the satchel never arrived at its destination.

The dramatic disappearance of such sensitive material must have shaken even the special prosecutor, but he failed to report the event for several weeks—and when he did, he suggested to the amazed security officers at the Justice Department that the entire procedure had been approved by his security personnel. This was denied by a Walsh security officer, who took a polygraph test on the matter and passed it. The case is still under investigation at the Justice Department, and Bush Deputy Attorney General George Terwilliger has termed Mr. Walsh's behavior a "flagrant violation" of security regulations.

If any normal official of the executive branch behaved in this manner, he would find himself in deep trouble. Quite aside from the casual disclosure of government secrets in court, regulations require a security escort when transporting classified documents and the immediate reporting of any loss. Anyone circumventing such strictures would, at an absolute minimum, have his security clearances suspended, and might very well be placed on extended leave pending the outcome of the investigation. Nothing has been done to Mr. Walsh.

That Mr. Walsh has remained immune from even the slightest official reprimand testifies to the immense power of his office. As former independent counsel Jacob Stein remarked recently, if you've got an unlimited budget and unlimited staff, "you can overpower anyone. * * * Nobody can compete with you, especially an individual." When such awesome power is in the hands of someone like Mr. Walsh, it is a guarantee for disaster.

The Ethics in Government Act should have a stake driven through its heart and be buried in a lead casket. In the meantime, those who care about abuses of prosecutorial power should conduct a thorough investigation of the activities of Lawrence Walsh and his crew.

[From the Wall Street Journal, Mar. 15, 1993]

A PARDON FOR WALSH

Seems like only yesterday that Judge Lawrence Walsh was all over the networks denouncing George Bush's "outrageous" pardon of Caspar Weinbergr. Well, it now turns out that the Government Accounting Office, also an arm of Congress, has just given Judge Walsh a pardon of his own for extensive violations of federal pay and procurement rules by his office. Better yet, the government will look the other way if some of the violations continue.

Last year, it was discovered that because of an "oversight" at the GAO, popularly known as Congress's watchdog agency, there hadn't been an audit of Mr. Walsh's office as the law required, since his prove began in 1987. So they scoured all the independent counsel, and discovered that Mr. Walsh's problems were the most severe. No wonder: His empire accounts for an astounding 90 percent of the $43 million directly spent by all independent counsel since 1978.

Among other things, the GAO audit found that Mr. Walsh and his top deputy, Craig Gillen, had been reimbursed improperly by taxpayers for as much as $78,000 in food and lodging. Other violations of government rules included using a government-leased vehicle and flying first class. And Messrs. Walsh and Gillen failed to pay required Washington, D.C., income taxes, despite living in the city during most of this period. They've since paid the taxes and a penalty.

Mr. Walsh bitterly disputed the GAO's findings. Then, in an October 5, 1992, letter to

the Comptroller General he asked for a "waiver" of all overpayments and irregularities "made in the past and similar future disbursements for the limited period prior to the completion of our remaining activities." In short, Judge Walsh wanted a pardon—both past and future.

He got it. Last month Deputy Comptroller General Milton Socolar sent letters to Judge Walsh and to the other independent counsel waiving the government's right to collect money for any violations. Mr. Socolar told us that the waiver "amounts to a forgiveness of legal obligations because there was no evidence of fraud or misrepresentation." He asked for an end to all unautorized payments, but granted a waiver in the case of Judge Walsh's travel and lodging expenses and for future violations. The justification for this extraordinary dispensation is that since Congress had not provided for the reimbursement of expenses for an independent counsel who worked away from home, the government should pay for them anyway.

Now, when a citizens group called Americans for a Balanced Budget filed a Freedom of Information Act request for the financial records, of Mr. Walsh's office, they were turned down. A January 21 letter said this "would be an unwarranted administrative burden." But that reason isn't one of the exemptions allowed under FOIA and is ludicrous given that the financial records were recently handed over to GAO auditors. Judge Walsh was informed that he was clearly violating FOIA rules, and last week his lawyers agreed to surrender the documents.

Having fought for and won his pardon, Judge Walsh could still run afoul of other ethics laws. There are questions about his hiring of a firm to stage a mock trial before 36 Washington, D.C., residents to test his prosecutorial case against Mr. Weinberger. Such a trial could have cost as much as $50,000 and there are reports the contract was given to a San Francisco firm without taking any other bids. If so, that would be a clear violation of federal contract law. The prosecutor's office says it believes it has complied with federal regulations. The biannual GAO audit of Mr. Walsh's office is due out shortly.

So Judge Walsh's legion of crusading attorneys keeps ticking, running the taxpayers' meter while it prepares its "final" (promise?) report on the Iran-Contra affair. The law that authorizes independent counsel expired last December 15, and it has yet to be renewed. Justice Department officials say they have "no jurisdiction" over Judge Walsh. Congress's watchdogs have just given his operation a blanket pardon for noncompliance with government rules.

Gosh, isn't there anyone out there other than us interested and getting some accountability into this unsupervised, uncontrolled creature of the '80s? How about the Reno Justice Department? How about the White House's ethicists?

[From the Washington Post, Feb. 2, 1993]

NO MORE INDEPENDENT COUNSEL

(By Nicholas de B. Katzenbach)

The Independent Counsel Act expired in December, and Congress will consider its reenactment early this session. I hope it will give the next attorney general a chance to prove that he or she can faithfully and impartially enforce the laws of the United States without the appointment of outside counsel the attorney general does not believe necessary. After all, we got along without the need for legislatively prescribed "independent counsel" for almost two centuries.

As part of a larger effort "to preserve and promote public confidence in the integrity of the federal government" the act seeks "to insure fair and impartial criminal proceedings when an administration attempts the delicate task of investigating its own top officials." No one can quarrel with those objectives. What one can question is whether confidence in the integrity of government is in fact promoted by a conclusive presumption that the nation's top law enforcement official cannot enforce the laws impartially in difficult circumstances. And, it seems to me, the controversy which has accompanied the act has often turned it into a political football, which has served to undermine rather than promote public confidence in the integrity of law enforcement.

Ironically, the law was first enacted in response to President Nixon's "Saturday Night Massacre," which led to the resignation of Attorney General Elliot Richardson and the dismissal of special Watergate prosecutor Archibald Cox. Richardson had appointed Cox and assured him he would be dismissed only for cause. When Nixon insisted Cox be fired willy-nilly, Richardson resigned. So did his deputy, William Ruckelshaus, and if Solicitor General Robert Bork had not reluctantly complied with Nixon's demand, I think the whole leadership of the department would have followed Richardson's example. The firing was followed by such a public outcry that Nixon was forced to permit the appointment of another special prosecutor, Leon Jaworski, with results that led to several convictions and the resignation of the president himself.

To my mind those facts established the integrity of the existing system—given only an attorney general of Richardson's ability and character. The independent counsel statute assumes that there are no more Richardsons and that future attorneys general cannot be trusted to live up to their oath of office. Does that promote public confidence in government?

Surely what we want to achieve is an administration that will not tolerate sleaze and, more important, one that has respect for its constitutional responsibilities and those of the other branches of government. Occasional prosecutions of high government officials are almost certainly going to occur. Whether for abuse of office, lying to Congress or offenses unconnected with their public office such as failure to pay income taxes, such conduct should not be tolerated by any president or attorney general.

Public confidence in the integrity of government may be enhanced by the prosecution of such crimes, but only if those charged with law enforcement to their duty. The attorney general may disqualify himself and leave the job to his subordinates, as Bobby Kennedy did in the prosecution of James Landis. He may feel it necessary or politic to appoint a special prosecutor, as did Richardson with Cox. But I do not believe confidence is enhanced if someone else does that job for the attorney general because we assume he lacks the integrity or will to do it himself. The political effort should be directed at ensuring that the president and his administration faithfully execute the laws, that conflicts of interest or lack of candor do not occur and, if they do, are appropriately punished.

Obviously we have had problems in recent years. Some of those stem from the growth of presidential power, particularly in foreign affairs, which unfortunately has led to an even greater growth in presidential self-esteem. President Nixon felt he was above the law and found he was not. President Reagan and Bush were convinced that they had a far greater understanding of foreign affairs than Congress and resented efforts by Congress to limit in any way the exercise of claimed presidential power.

Their views understandably were shared by their followers, particularly those closest and most loyal in the White House. But evading legislative restrictions—even those one regards as misguided and unwise—is not an answer. Misleading Congress undermines our system of government, which depends on respect for law—not on efforts to avoid its consequences. Evasion should be punished. Actually, it should never occur at all.

We are not going to successfully preserve the separation of powers or rid ourselves of corruption in government simply by making conduct criminal and prosecuting the wayward. Yet that is the premise of the Independent Counsel Act. It may serve in some circumstances to ensure prosecution and, to the extent punishment deters, serves these larger purposes in a limited way. But if what we wish to achieve is not simply the punishment of a few but the vindication of the political system itself, that is best accomplished by political sanctions against an administration that tries to deny or excuse unacceptable official conduct, whether criminal or not.

Leaving prosecution of high officials to judicially chosen independent counsel, whatever their personal distinction, does not promote the larger purpose of governmental accountability. It may even promote avoidance, since prosecution is no longer the executive's responsibility. Independent prosecutors are essentially unsupervised and may seek to promote their own reputational ends, and not the public welfare by too vigorous a prosecutorial stance over too long a period of time. Perhaps because they are perceived in this way, perhaps for less worthy motives, they have sometimes been frustrated in their efforts to secure necessary evidence by an unsympathetic attorney general, and confrontation has developed. This exacerbates the problem of public distrust in government. An administration should be required to clean without delay its own Augean stables.

Congress is not without fault when it comes to questions of public accountability. It has made no serious effort to deal with its own problems of sleaze and corruption, with the inherent dangers of costly campaigns and political contributions by those who stand to profit through legislative or executive actions. A democratic majority has used the Independent Counsel Act for what appear to be partisan political purposes, thus avoiding Congress's own oversight responsibilities.

Its failure to act in any serious way about its own conflicts of interest have raised questions about the objective nature of its demands for independent counsel to investigate alleged shortcomings of officials of different political persuasion in the executive branch. And it has confirmed persons of little professional distinction and clear political priorities to man the Department of Justice. To confirm such persons does a disservice to impartial law enforcement and public confidence.

I hope the tradition of congressional acquiescence in the nomination of executive branch appointees in the future will not prevent a hard look at the competence and professionalism of the nominee for attorney general. I hope, too, presidents themselves understand the responsibilities of that office

and the necessity, despite occasional embarrassment and pain, of preserving a government of law. This means not only an attorney general with credentials of excellence but staffing the department with persons of similar qualifications and forgoing the temptation to find more attractive legal advice within the White House.

Perhaps the potential enactment of an Independent Counsel Act can help to remind a president of the importance of fair and impartial law enforcement and his own constitutional obligation to faithfully execute the laws of the United States. But its enactment in its present form would almost certainly defeat those purposes.

[From the Washington Times, Mar. 4, 1993]

COST ESTIMATES SOAR TO $100 MILLION FOR IRAN-CONTRA PROBE

(By Michael Hedges)

A congressional hearing on the independent counsel law yesterday quickly became a referendum on the Iran-Contra probe of Lawrence Walsh, with one witness estimating it had cost taxpayers $100 million.

Terrence O'Donnell, a lawyer with the Washington firm of Williams and Connelly who was part of Iran-Contra figure Oliver North's defense team, said the Walsh investigation of the arms-for-hostages scheme was an example of "enormous power run amok."

Even strong supporters for the measure, such as Rep. Barney Frank, Massachusetts Democrat, made transparent references to Mr. Walsh in saying that the law should be refined.

After a discussion of a General Accounting Office report that criticized Mr. Walsh and his staff for lavish spending on first-class air travel, long-term housing in the Watergate Hotel and questionable daily expense charges, Mr. Frank said: "They forgot they were moving into the public sector. . . . They made some mistakes there."

Mr. Walsh has said his direct costs were $35 million for prosecuting a number of Reagan and Bush administration officials, most often for lying to Congress or making false statements to investigators.

But Mr. O'Donnell said, "If the hidden costs are considered, such as the cost of the legions of government officials at [the Defense Department], CIA, [the National Security Agency] and State to respond to independent counsel's insatiable appetite for documents, $100 million is closer to the mark."

That cost figure for the six-year probe was supported yesterday by congressional lawyers and law professors who have examined the prosecution.

Sam Dash, Georgetown University law professor, spoke on behalf of the American Bar Association and "strongly supported" the independent counsel law, saying that most of the special prosecutions undertaken since it was enacted in 1978 have taken a fairly short time and have resulted in a determination that no prosecution was warranted.

And while no member of the Clinton administration appeared at the hearing. Mr. Dash, who served as chief counsel and staff director of the Senate Watergate Committee, said he had assurances from the president that he supported the measure.

But five other witnesses, including two who had represented clients extensively investigated by Mr. Walsh's staff, said they believed the law should either be scrapped or rewritten to tightly restrict the scope of such investigations.

Thomas Wilson, who represented former CIA station chief Joseph Fernandez, described that case as a "tragedy." In written remarks, he said Mr. Fernandez, whose indictment was dismissed by a federal judge, had rolled up a $1.7 million legal bill defending himself against Mr. Walsh. "No professional prosecutor would have prosecuted Fernandez," he said.

Mr. Wilson said if the law is reauthorized, constraints on the special counsel's term and power are needed. "Once you name one, if you have someone who is not doing his job properly, you have created a monster," he said.

Yesterday's hearing before a subcommittee of the House Judiciary Committee was to focus on whether the independent counsel law should be reauthorized for five years. The law expired in December.

Both Democrats and Republicans on the subcommittee said they would back the bill to keep the law—with modifications.

There is strong Democratic support in Congress for keeping the independent counsel law in some form. Some individual Republicans have called for its death, but others see it as a weapon that might one day be turned on Democrats.

"The feeling is, if the Democratic Congress is going to be closely aligned with the administration, having the option of a special counsel might be one way to keep some accountability," said one Republican staff member.

No member of Mr. Walsh's staff appeared as a witness yesterday, and the hearing quickly zeroed in on Mr. Walsh's investigation, despite the efforts of subcommittee Chairman John Bryant, Texas Democrat, who asked witnesses not to "re-litigate" cases or make "reference to previous special counsels except when necessary."

Richard Hibey, who represented former CIA official Clair George on charges of lying to Congress and obstructing the Walsh investigation, said if the law is enacted again it should be written to allow for a permanent office of professional prosecutors to handle independent investigations and prosecutions.

He said such an office would avoid the "unwholesome injection of partisan politics," which he said tainted the Iran-Contra probe.

Among other suggestions backed by some or all of the witnesses and members of the subcommittee:

Limit the term of the special counsel, with cases unfinished after a set time to be referred to the Justice Department for completion.

Limit the cost of prosecutions. Mr. O'Donnell said a standard federal prosecution costs an average of $10,000, compared with $2.5 million for each of Mr. Walsh's targets.

Allow targets of special prosecutions who are not convicted to reclaim legal fees.

Select special counsels from the ranks of current prosecutors or defense lawyers, rather than choosing retired judges as is commonly done now.

Require special counsels to adhere to Justice Department guidelines in determining whether it is in the public interest to pursue a target.

Expand the law to cover investigations of members of Congress.

Mr. Walsh's Iran-Contra probe began in December 1986. At its peak, Mr. Walsh employed 32 lawyers and more than 50 investigators, according to yesterday's testimony.

A congressional aide said an independent review of the process by House experts arrived at the same cost estimate of $100 million.

[From the Wall Street Journal, Apr. 28, 1993]

HOW TO AVOID ANOTHER LAWRENCE WALSH

(By Robert S. Bennett)

Despite Lawrence Walsh's misdirected zeal in his unjustified prosecution of Caspar Weinberger, I nevertheless believe that the use of an independent counsel may be appropriate in certain rare cases. For example, appointment of an independent counsel might be necessary for public acceptability of an investigation of a president, where there is a rational basis to believe he has committed a crime.

That said, the independent counsel law that just expired presents serious problems—problems that were reflected in Mr. Walsh's prosecution of Mr. Weinberger, whom I represented. The legislation reauthorizing the independent counsel statute that appears headed for passage in Congress this spring makes only cosmetic changes and does not address the fundamental problems: the failure to select qualified individuals as independent counsel and staff, and the unaccountable power exercised by the independent counsel.

Mr. Walsh and some members of his staff were inexperienced in complex white-collar matters and, consequently, exercised poor judgment as prosecutors. Mr. Walsh made the Weinberger case his flagship case not because it was his most important case on the merits but because he intended to use it to rehabilitate his office after all its significant convictions were reversed and to prove his unshakable belief that there was a conspiracy at the highest levels of government to cover up the Iran-Contra matter.

Excessive zeal and lack of perspective warped Mr. Walsh's judgment. If he truly believed that the former secretary of defense committed serious crimes, perjured himself, entered into a conspiracy, lied to Congress and lied to the independent counsel, how in good conscience could he have offered a misdemeanor plea? When I told Mr. Walsh that Mr. Weinberger would not admit wrongdoing, he said "we can work out the language," and, to encourage a disposition, indicated he had no desire to see Mr. Weinberger go to jail. Of course, he made it clear that if no such deal were accepted Mr. Weinberger would be indicted for several felonies.

In the Weinberger case, Mr. Walsh's lack of prosecutorial judgment was exacerbated by his staff's inexperience, resulting in legally defective charges. Thus, for example, we were able to obtain dismissal of the principal count in the first indictment against Mr. Weinberger—obstruction of Congress. The infamous second indictment, returned only a few days before the presidential election, was defective on statute of limitations grounds.

The second major failing of the independent counsel statute is that it gives the individual who occupies the position tremendous unaccountable power. Mr. Walsh had authority to investigate whether "any government official" violated "any federal criminal law relating * * * in any way" to the sale of arms to Iran or the provision of support for the Contras since 1984. Under this exceedingly broad jurisdiction, Mr. Walsh continued his investigation for more than six years, longer than all but one or two attorneys general have served. Neither the Justice Department nor any U.S. attorney would have authorized anything like the expenditure of resources—more than $40 million in direct costs, and millions more in support—in cases so lacking in prosecutorial merit. For Mr. Walsh there was simply no

point of diminishing returns where the rehabilitation of his office's reputation was concerned.

The lack of accountability, lack of prosecutorial perspective, and virtually unlimited jurisdiction and resources created an arrogance that bred contempt for the rules. The General Accounting Office concluded that Mr. Walsh's office violated numerous regulations on government spending and travel allowances. All these errors and abuses contributed greatly to the pardon effort. Make no mistake about it—the person most responsible for Mr. Weinberger's pardon was not President Bush but Mr. Walsh.

Yes, the independent counsel statute should be reauthorized. But the appointment of an independent counsel must be the exception, not the rule; and his power must be limited.

Before a case even exists, a roster of attorneys with substantial experience as prosecutors, defense lawyers and public defenders should be established from which the independent counsel will be chosen. The appellate and trial judges from each judicial circuit should nominate attorneys. The criteria should be designed to lead to the selection of people of experience in complex criminal matters.

In addition, at least half of an independent counsel's office should be selected from the Justice Department, U.S. Attorney's Office or public defenders. These professionals would have little difficulty investigating a high-level official. In addition to saving money by detailing government employees from their positions, there would be some assurance that prosecutorial guidelines would be followed and that people who understand the limits of the criminal process will be involved in the decision making.

The group in the executive branch to which the statute applies should be narrowed to cover only the president, vice president, cabinet and highest-level White House officials. But the statute should also cover certain members of Congress because investigations of an administration's friends or foes in Congress could raise the same public credibility concerns that justify appointment of independent counsel for executive-branch officials.

An independent counsel should be appointed only if the attorney general determines that "a rational basis exists to believe that a crime was committed," not that there "are reasonable grounds to believe further investigation is warranted," as was the case under the old statute. The duration of an independent counsel's appointment should be limited to the term of a grand jury—18 months. The subject matter over which the independent counsel has jurisdiction must also be limited. The subject matter and potential violations of law should be specified in the attorney general's request for appointment of an independent counsel.

The authority of the independent counsel to issue public reports during his investigation or after it is concluded must be eliminated. Prosecutors do not use their offices as a forum to proclaim their views on history or to pass personal judgment on individuals' conduct, and independent counsel should be no different.

Finally, the "good cause" standard by which the attorney general may terminate an independent counsel should be defined to include failure of an independent counsel to follow Justice Department guidelines, violations of canons of ethics, or a determination by the attorney general that any remaining investigation can be conducted by the Justice Department.

With such safeguards in place, we should be able to avoid another debacle like the Iran-Contra investigation.

(Mr. CONRAD assumed the Chair.)

Mr. COCHRAN. Mr. President, I also want to invite the attention of the Senate to a recent book written by Suzanne Garment, entitled "Scandal: The Culture of Mistrust in American Politics."

I am just going to read one little piece from this review. This is not the whole book, but this is a review of the book that appeared in The American Spectator in January 1992. The author reviews several of the experiences of those who have been charged with crimes and ended up being targets of independent counsel investigations. The reviewer, Steve Munson, calls our attention to one of these stories of former Assistant Attorney General Theodore Olsen.

In 1985, Olsen was accused of having lied 2½ years earlier when he testified before a congressional subcommittee investigating the Environmental Protection Agency. At the insistence of the subcommittee chairman, Democrat Peter Rodino, Attorney General Edwin Meese asked for an independent counsel to investigate. The investigation was requested, even though by 1985 Olsen had already left the Government. Within 6 months, the independent counsel, Alexia Morrison, announced that Olsen's testimony probably did not constitute a prosecutable offense because it was literally true, even if potentially misleading in certain respects. But with that, the Olsen case did not end; it was only just beginning. Morrison was apparently determined to find some evidence of criminality and, unlike ordinary prosecutors, as an independent counsel she was unhampered by time, money, or any other constraint. So she pressed on, at one point threatening to indict Olsen if he refused to waive his rights under the statute of limitations law. Her search took 4 more years and, predictably, she came up empty. Olsen wound up with legal bills in excess of $1 million.

The author of the book writes that the Olsen case showed how an independent counsel could use the office's vast discretionary power to visit harshly discriminatory law enforcement on individual Government officials.

Mr. President, I ask unanimous consent that a copy of that book review also be printed in the RECORD.

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

SCANDAL: THE CULTURE OF MISTRUST IN AMERICAN POLITICS

(By Suzanne Garment, Reviewed by Steve Munson)

Once upon a time, a politician or government official risked scandal if he did something illegal, like take a bribe, or morally improper, like have an affair. If exposed, he faced censure, or ruin, or jail, depending on the nature and seriousness of the offense. More importantly, whatever his transgression, and whatever the penalty, neither he nor the public at large would have had any doubts as to why what he had done was scandalous.

But times have changed. Today a political figure can end up impugned, impoverished, or imprisoned simply for doing his job. As Suzanne Garment writes in her compelling new book, "When we look down the list of recent political scandals that have embroiled executive branch officials, we quickly see that many of them involved offenses that would never have become known at any other time in our political history or would not have been considered worthy of serious sustained attention."

How has this situation come about? According to Garment, the roots of today's scandal politics lie in the 1960s. That era, she argues, ushered in a radicalism that has since come to pervade our national life, including the political life of Washington, D.C. At the heart of this radicalism was "the conviction that the people governing this country were fundamentally illegitimate in their claims to authority and criminal in their behavior. It followed that the job of driving out the menace posed by such officials could not be done through conventional American politics, because the old political system entailed too much ordinary electoral activity, endless negotiation, and vitiating compromise." Instead, to achieve their goals the Vietnam-era radicals and their spiritual descendants created what now amounts to a parallel political structure composed of ideologically motivated interest groups, friendly congressional staffs, activist lawyers, and willing journalists.

It is this informal structure that undergirds what Garment calls "our modern scandal production machine." Her book is a systematic attempt to explain how each element of this machine—from "ethics" laws and congressional hearings to the office of the independent counsel and the mass media—operates, and she recounts with riveting clarity the major and minor political scandals of the past decade.

One of these is the story of former assistant attorney general Theodore Olsen. In 1985 Olsen was accused of having lied two and a half years earlier when he testified before a congressional subcommittee investigating the Environmental Protection Agency. At the insistence of the subcommittee chairman, Democrat Peter Rodino, Attorney General Edwin Meese asked for an independent counsel to investigate. The investigation was requested even though by 1985 Olsen had already left the government. Within six months, the independent counsel, Alexia Morrison, announced that Olsen's testimony "probably did not constitute a prosecutable offense because it was literally true, even if potentially misleading in certain respects." But with that the Olsen case did not end; it was only just beginning. Morrison was apparently determined to find some evidence of criminality and, unlike ordinary prosecutors, as an independent counsel she was unhampered by time, money, or any other constraint. So she pressed on, at one point threatening to indict Olsen if he refused to waive his rights under the statute of limitations law. Her search took four more years and, predictably, she came up empty. Olsen wound up with legal bills in excess of $1 million.

Garment writes that the Olsen case showed how "an independent counsel could use the office's vast discretionary power to visit harshly discriminatory law enforcement on individual government officials." Indeed, in reading Scandal one cannot help feeling that, in these matters, the rule of law has been thoroughly corrupted. Those involved in the pursuit of Reagan Administration officials showed few if any qualms about what

they were doing, even after it became clear that the only criminal activity they were investigating was that which they themselves had concocted. As Garment puts it:

Today's ethics police practice scorched-earth warfare of a sort readily recognizable from Vietnam days. . . . They display impressive inventiveness in not simply catching criminals but trying to ensure that what is offensive or imprudent behavior today can be treated as scandalous or even criminal behavior tomorrow. They display the same awesome skill as the most radical antiwar activists did in ignoring the question of whether the pain they cause in individual cases is worth the good they do.

The good they do is, in fact, nil. As Garment's book makes clear, the record is replete with cases that never gets into court, that get thrown out of court, that end up in coerced little plea bargains, and that serve only to damage decent and dedicated men, while promoting the careers of unscrupulous Washington lawyers, nihilistic journalists, and publicity-seeking congressmen.

The fact that so many of the "scandals" examined by Garment should never have been investigated to begin with reminds us that, although the law is the instrument of their resolution, these cases have nothing to do with criminal behavior by people in high places. Some, like the prosecution of Raymond Donovan, President Reagan's first secretary of labor, and the Wedtech-related indictments of Lyn Nofziger and E. Robert Wallach, were inspired by standard partisan motives. Others, however, were outright ideological vendettas. As Garment points out, the Theodore Olsen case began as a battle between Reagan and Congress over environmental policy. Likewise, when Edwin Meese was nominated for attorney general, he was immediately targeted by Democratic senators opposed to Reagan's civil rights policies. Foreshadowing the tactics they would later use against Supreme Court nominees Robert Bork and Clarence Thomas, they sent their staffs looking for dirt and within days produced a Meese scandal involving allegations of cronyism and questionable loans.

And then there is the Iran-contra affair. So far, the investigation by independent counsel Lawrence Walsh has taken five years and has cost, according to the Wall Street Journal, more than $100 million—all to investigate and prosecute men who did nothing really wrong. For as everyone in the world—including Lawrence Walsh, his staff, and their cheerleaders in the press—knows, it was not withholding information from Congress, or taking an illegal gratuity, or any of the other trumped-up charges against them that brought down Oliver North and John Poindexter and Elliott Abrams and Alan Fiers and Claire George et al. Their crime was to refuse to allow congressional Democrats sympathetic to the Sandinistas to dictate United States policy toward Nicaragua.

Garment notes that the Iran-contra case exemplifies the post-Watergate habit of turning fundamental disputes over policy into matters for criminal adjudication. (And, of course, in the eyes of those under the sway of the kind of ideas about America and its foreign policy that took root in the 1960s, the Reagan Administration was no less criminal in supporting the anti-Communist struggle in Nicaragua than the Johnson or Nixon Administration had been in fighting the Vietnam war.)

As Scandal suggests, this development is a response to the inability of the radicalized left—whose point of view remains influential in Congress, the media and elsewhere—to win power in presidential elections through the Democratic party. Thwarted by the electorate, the left has turned to destroying its executive branch adversaries through the misuse of our legal institutions. In illuminating the true character of these modern political scandals, Suzanne Garment has made an invaluable contribution to our understanding of the current scene.

Mr. COCHRAN. Mr. President, recently, I read a book written by Terry Eastland entitled "Energy in the Executive." In chapter 5 of that book, he describes what he calls "The Independent Counsel Mess." It begins on page 79 and goes through page 95; a fairly short treatment. But for the RECORD I would like Senators to have the benefit of the observations that he makes on this subject, and I ask unanimous consent that chapter 5 of this book be printed in the RECORD.

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

(See exhibit 2.)

Mr. COCHRAN. Mr. President, I have one other reference to make—simply a suggestion. The author of that book has also written a publication that was printed by the National Legal Center for the Public Interest entitled "Ethics, Politics, and the Independent Counsel." It is good reading and offers a lot of suggestions, some of which are included in the changes in the legislation that the committee is reporting today. But, as suggested by my amendment, those changes do not go far enough. I invite the attention of the Senate to that book.

I further ask unanimous consent that an article on the same subject, the independent prosecutor law, by Terry Eastland, be printed at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. COCHRAN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan [Mr. LEVIN].

Mr. LEVIN. Mr. President, first let me say to my friend from Mississippi that this law is a carefully balanced law that is aimed at providing the kind of protections which he alludes to while retaining the independence of the independent counsel. That is the key to this whole effort, is to retain an independent counsel. Not a counsel who is a surrogate for the Attorney General, as the Senator from Mississippi indicates his own substitute would create, but an independent person whose appointment would be triggered by the existence of certain facts, the passing of certain thresholds, and then when an independent counsel is appointed by a court, subject to certain constraints.

This person is not without constraints. This person does not have unbridled authority. The independent counsel, under the previous law which expired, had certain restrictions—subject to removal by the Attorney General for cause and other restrictions. And we have added some additional restrictions to try to address the kinds of concerns which my friend from Mississippi makes reference to, while retaining the independence of the independent counsel. Without that independent aspect, without that feature, there is no point in reauthorizing the statute.

The lesson of Watergate is you need someone who is independent to investigate and prosecute persons who are close to the President. That is the lesson of Watergate. To adopt this substitute would be to unlearn that lesson and to ignore that lesson.

But my friend from Mississippi is correct in pointing out that it is important to put some restraints on the independent counsel and we have attempted to do so. I will list those restraints in a moment. It is a balance. You want independence but you do not want it untrammeled; you want some restrictions. Someone should have the power to remove under some circumstances, and that has always been provided for—the Attorney General could remove for cause. You want some restraints on expenditures and we build in those kinds of restraints, and we need to. I think there have been some excesses, by the way, which we correct in this statute.

But before I get into the kinds of restraints that are built in to show that this is not untrammeled, that we do retain the critical independence of the office while not providing unlimited power, I want to just quote a few observers of how this statute has worked. This is some testimony that we received at our hearings in 1992 and 1993, first from the Attorney General, Janet Reno:

> It is my firm conviction that the law has been a good one, helping to restore public confidence in our system's ability to investigate wrongdoing by high-level executive branch officials. The Iran-Contra investigation, [she said] far from providing support for doing away with the independent counsel proves its necessity. I believe this investigation could not have been conducted under the supervision of the Attorney General and concluded with any public confidence in its thoroughness and impartiality. The reason I support the concept of an independent counsel with statutory independence is that there is an inherent conflict whenever senior executive branch officials are to be investigated by the Attorney General.

Again, this is the Attorney General speaking.

> It is a measured, appropriate response to a limited but serious problem. The administration, therefore, supports the Independent Counsel Act's reenactment.

The American Bar Association testified, based on 15 years of research and careful study of this issue, as follows:

> We believe the historical record provides ample evidence of both the need for the independent counsel mechanism and the effective role the statute has played in assuring Government's accountability to the American

people and their confidence in the even-handed administration of justice.

Archibald Cox, the former Watergate prosecutor, was quoted as follows:

The pressures, the tensions of divided loyalty are too much for any man and, as honorable and conscientious as any individual might be, the public could never feel entirely easy about the vigor and thoroughness with which the investigation was pursued. Some outside person is absolutely essential.

Mr. President, we have built in a number of restrictions while retaining that critical independence.

First. Under the law that expired, these restrictions would be continued. No independent counsel can be appointed without a specific request by the Attorney General.

Second. The independent counsel must comply with the court-defined area of inquiry.

Third. The independent counsel must comply with the Department of Justice's prosecutorial guidelines.

Next. The independent counsel must file semiannual expense reports with the court.

The independent counsel must undergo a GAO audit semiannually, and after leaving office.

The independent counsel must comply with special standards of conduct in statute and other professional ethics codes.

Next. The independent counsel must comply with court orders and act under court scrutiny.

The independent counsel may be challenged in any proceeding by the Department of Justice through an amicus brief, which the Justice Department has filed many times.

And the independent counsel can be removed from office at any time by the Attorney General for good cause.

Our bill imposes additional controls because of some of the same reasons that our friend from Mississippi gave. And his purpose in offering his substitute, it seems to me, is a good purpose. We do not want someone with untrammeled discretion. I think he goes way too far because he destroys the independence of the independent counsel statute but, nonetheless, his purpose in providing some controls on the independent counsel seems to me to be a laudatory purpose. And I commend him for that purpose.

But here are some additional controls we impose in our bill: We have a 3-year review provision. The court would have to review each independent counsel case at least once every 3 years to determine whether it should be terminated because the work is substantially complete.

Next, we have a stronger role for the Attorney General. We increase the time to determine the need for preliminary investigation, from 15 to 30 days.

We ease the standard for the Attorney General to close a case before an independent counsel is selected, based on a lack of criminal intent.

We require quarterly expense reports through the court. We require annual progress and expense reports to Congress, and annual financial statements to the General Accounting Office. We have stronger cost controls in our bill.

The independent counsel must act with due regard for expense, must comply with the Department of Justice spending policies, including staff compensation, travel, investigation, and prosecution expenses. The independent counsel must follow Federal travel regulations, must use office space of the Federal Government, unless it is cheaper to use other space, and other administrative requirements in our bill to tighten the cost limits and the expenditures of the independent counsel.

We also clarify the authority that the Department of Justice and the Office of Government Ethics to enforce statutory standards of conduct for the independent counsels and their staffs.

The facts are that we have had 13 independent counsels that have been selected under this law. Eight of the thirteen never sought an indictment. So already we have responsibility and balance. The majority of independent counsel—majority—selected under law did not indict. That seems to me to be the most direct answer to the argument that these are all runaway trains that have been selected here. They have not been. Of the four independent counsels who filed indictments, all four got convictions through juries and guilty pleas.

Some of the convictions were reversed on appeal, always for technical grounds, by the way. But nonetheless, all the independent counsels got convictions through either jury findings or through guilty pleas. That is pretty good evidence, it seems to me, that these independent counsels have acted responsibly. Whether you agree with everyone and every case is not the point. That is what their independence is all about.

There has been a lot of criticism of Judge Walsh. I am not planning, unless others want to go into great detail on this matter, to get into his particular area of inquiry, but he did obtain 11 convictions out of the 14 indictments that he filed. No jury has acquitted any person who has ever been indicted and, it seems to me, that at least in terms of convictions, that there is evidence that Judge Walsh also has acted in a way which is consistent with the independent counsel statute. Again, the key word here is "independence," and it is that word which does not apply to the substitute for a number of reasons.

The substitute, first of all, would have the independent counsel selected by the President of the United States. Under the substitute, instead of having the independent counsel selected by a court, it is no longer an independent counsel; it is instead a special counsel, and the person who is selected to be that special counsel under the Cochran substitute is picked by the President of the United States, which removes the independence. Mind you, it is the President or someone close to the President, an appointee of the President, who is being investigated. It is because of that connection that we created the Independent Counsel Office to begin with because you cannot have credibility if the executive branch is investigating itself. That is what the Watergate lesson was.

Under the Cochran substitute, the very person who is selected to be the "special counsel," no longer independent counsel, is picked by the very person who has appointed the people or the person who is presumably under investigation and about to be prosecuted. So much for credibility of this process, so much for public confidence in this process.

So you lose the independence on one end of the Cochran amendment; on the other end, you inject politics in another way because, under the Cochran amendment, that appointment of the special counsel is subject to confirmation by the Senate of the United States. So now we are plunged into the process of having to confirm or not confirm someone who is picked by the President to investigate someone who the President had picked to be a Cabinet officer or another high-level executive official. That is the worst of all worlds, it seems to me. We do not have the independence, and we get all the politics in the Senate confirmation process. We should not be involved in confirming the person who is picked by a President to investigate the President or someone close to the President. That surely is a major additional flaw in the approach of the Senator from Mississippi.

The Senator is very open and very candid about his approach, as he always is. He has said that this person, this special counsel, is the surrogate for the Attorney General. That is exactly what the independent counsel should not be when investigating a high-level executive branch person.

The law is not worth having if it is not going to be an independent person who is selected to investigate and prosecute under the circumstances set forth in this statute. That is what it really comes down to. This law is worth having and it is worth continuing if we continue the independence of the independent counsel. If the public knows that the person who is investigating and prosecuting high-level executive branch officials is not under the control of the head of the executive branch, this law is worth having, it is worth fighting for. We have fought for it, we have reauthorized it twice. It has lapsed and there is a gap. We should fill that gap, but we have to fill it with the reauthorization of a statute which preserves the independence of the independent counsel. That is the fundamental aspect of this law, and it is that fundamental component which is removed by the Cochran substitute.

So I hope that we will defeat that substitute, retain the independence and

the word "independent" in the independent counsel statute.

I yield the floor.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine [Mr. COHEN], is recognized.

Mr. COHEN. Mr. President, I will only offer a few comments. I noticed in Senator COCHRAN's presentation and in his separate views that he filed with the committee, he said:

> Independence doesn't guarantee impartiality or competence.

Again, we would be the first to agree on that point.

He also said:

> There is no perfect solution. The perfect balance of accountability and independence will never be guaranteed by a statute.

Once again, I think Senator LEVIN and I would completely agree; there is no law we can fashion that can guarantee the perfect solution.

My friend from Mississippi goes on to say:

> It is time to steer another course in pursuit of a better alternative.

The real question is: Is this, in fact, a better alternative? On the one hand, as Senator LEVIN has pointed out, we have historically insisted upon independence. That is the only way in which we can hope to gain or regain public confidence that the system is working as it should. But as Senator COCHRAN has also pointed out, that independence, unless it is checked in some fashion, can lead to excess, to abuse, and to unrestrained or untrammeled power.

What we have attempted to do over the years is to find out how the law is working, to see if there have been excesses and abuses either in expenditures or in lack of accountability, and to make changes in the law as it has evolved. That is precisely what we have done here.

I think the Senator from Mississippi makes some valid points. There have been examples of neglect about costs, length of investigations, travel, living conditions, and other types of things which have taken place that have given the impression that we have created a permanent Independent Counsel Office that simply will go on and on and on for the sake of its own existence. We do not want to see that take place, and so we have tried to modify the act to take into account the need for accountability. Senator LEVIN has outlined that in some degree.

The Senator from Mississippi has said it is time we correct the unconstitutional flaws in this particular act. The Supreme Court has already ruled on a 7-to-1 basis in favor of its constitutionality. Thus, while there may be flaws, I do not believe they are unconstitutional flaws. They are flaws which can and should be corrected, and I believe that we have taken measures to do that.

I raise the fundamental question: Why would we want to have a situation where the President would be called upon to pick an independent counsel who would then have to go before the Senate for advice and consent, the entire process of confirmation when we have already gone through the process with the Attorney General.

The President of the United States has picked an Attorney General and submitted the name to the Senate. The Senate has held hearings. We have given advice and consent and approved, saying we trust this person to carry out the mandate of the Attorney General of the United States to seek justice, to fulfill the rule of law, to carry out the ends of justice. We have put our stamp of approval on that nominee.

Now, if we do not have confidence that the Attorney General can carry out the mission of the office because of the closeness of the relationship to the person being investigated, why would we have any more confidence that the President would pick another substitute Attorney General who would then go through the confirmation process, which might take weeks or longer?

It seems to me to put the responsibility or the accountability back on the very person who appointed the Attorney General in the first place, and would raise the same issues of doubt. That is why over the years we have stressed independence—and, yes, we want accountability but primarily we want independence—to reassure the American people that no favoritism is being given to anyone charged with wrongdoing within that circle of high-level officials.

I think the fatal flaw, if we talk about flaws in laws, is that here we put the responsibility back on the President to give us a substitute Attorney General.

For these reasons and those outlined by my colleague from Michigan, we would have to express opposition to the amendment, saying that it frustrates and overturns the very essence of the entire Independent Counsel Act. It puts the balance in favor of accountability versus independence. Whereas, if the charge here has been too much independence and not enough accountability, we can make changes in the law, as we provided here, to correct that as best we can, again agreeing it is not a perfect solution.

Nothing we do will arrive at a perfect result. But we believe the balance should be in favor of the independence with sufficient safeguards for accountability. We think we have achieved that in our own proposal.

But I thank the Senator from Mississippi. He has been a very thoughtful advocate for his position. He has made his point on many occasions to us both formally in committee and informally in various meetings. I think he has contributed enormously to the debate.

I inquire as to whether the Senator would like to continue further on his amendment or whether we could move to a tabling motion.

Mr. COCHRAN. Mr. President, I would be happy to respond to the Senator.

I have no intention of prolonging the debate. I know there are other amendments Senators would like to offer to this bill. Before completing the debate, however, I would like to thank Senators STEVENS and MCCAIN who, in the Committee on Governmental Affairs, joined with me in writing additional views that are made a part of the committee report at page 45.

I can tell from the lack of attendance of other Senators in the Chamber that there is not a great interest in debating this issue. It is what I guess politicians sometimes call a hot potato. You do not want to get too close or hold on to this hot potato. You might get burned. You might make somebody mad. You might create suspicion about your own motives.

But, frankly, I feel so strongly about some of the tragedies that have occurred under the authorities created in the law we are being asked to reauthorize that I believe reform is really needed. It is needed now.

As I prepared to draft an amendment to try to seek some alternative to the process we have observed for the past several years, it struck me as ironic that here we were with a new administration in office now, a Democrat administration for the first time since the Carter administration, when the law was first enacted. Most of the bodies around town and the families that have been destroyed and people who have been left destitute because of abuses under this office, in many cases unfairly, are Republicans.

It seemed to me it might be appropriate for a Republican now to say, even though it is maybe the Democrats' turn to reap the whirlwind, it is time for us all to take a more careful look and say it is time for this nonsense to stop. It is time for these tragedies to stop. I am not talking about zealous, tough, aggressive prosecutions of wrongdoing. I am talking about political witch hunts. I am talking about the unabashed abuse of unrestrained power for political purposes that we have observed under this independent counsel statute.

You all know the examples. I predict there will be others if the Senate reauthorizes this law. Even though there are new restraints, there are new safeguards—and I applaud the managers for their efforts to put those in this bill. But the same basic problem will continue to exist; that is, unlimited, unfettered, unbalanced power in the hands of a few—staff members of independent counsel and an independent counsel—who can spend any amount of money, take any amount of time they

want, go after those who started out as targets and then expand to include those who never should have been targets, on and on and on and on. This process continues beyond the statute of limitations, without apology. An absolute tragedy will be unleashed again by the reauthorization of this law.

I do not have any way of counting the votes. We have not done a whip check on this amendment. I know that two other Senators support it, Senator STEVENS and Senator MCCAIN, because they joined in signing my additional views. I have had a couple other Senators ask if I was soliciting cosponsors for the amendment that I was offering, and I said no, I really had not.

I suppose the reason I am offering the amendment is that I feel so strongly about the demerits of the law, and the fact that we need a better alternative. It is sort of like put up or shut up. If you do not like the law, you should suggest something in its place. This is my suggestion. I am willing to stick my neck out and say we need to do it in a different way. We need to guarantee that there is an opportunity for the appointment of independent counsel, but we do not need the unbridled, unlimited authority, and opportunities for the abuse of power that we have seen in recent years.

Maybe the Democrats who are in office now in the executive branch will get a better deal because of the restraints and safeguards that are now being put in this law. It will do nothing for those who have already been victims, real victims of the independent prosecutor law of the past.

I hope there will not be any abuses of power. I do not have any illusions that this amendment will pass.

For the purpose of completing the record, Mr. President, I would like to invite the attention of the Senate to an article in Commentary Magazine that was written in February of this year, ironically by Robert H. Bork. It is one of the best historical analyses of the independent prosecutor law. Interestingly enough, he was the person in the Nixon administration who carried out the independent prosecution and made it possible for the Watergate cases to be brought. He is the guy who did that. After the midnight massacre, and all the rest, he was the guy left standing.

We did not have an independent prosecutor law then and people were prosecuted. People were convicted all over the place in this town. I remember it very well. I was a brand new Member of Congress. It was stunning. My friend, BILL COHEN, who is the manager of this bill, was on the Judiciary Committee. He remembers it all. It was something to see. Elected officials, appointed officials, and staff people were prosecuted and sent to jail. I do not know how many. But there were a lot.

There was no independent prosecutor law on the books. There was no independent counsel law. But there were people with integrity like Robert H. Bork in the Department of Justice who carried out the law.

They did not have unlimited budgets. But there was the political pressure to do what was right. There was political pressure on Congress, on the House Judiciary Committee, to report out articles of impeachment. There were some tough decisions made by politicians. Guess what? They were made by politicians and Members of Congress, who some now say ought to be the victims also of this independent statute. Maybe so.

But you reach a point in all of this where you have to come down to the basic premise of our system of government as just and fair, and that those who serve in it have in their hearts a determination to do what they say they are going to do when they raise their hand and swear to faithfully uphold the Constitution and the laws of the United States, "so help me God." Executive branch officials from the President to the Attorney General say that. And if they do not do that, they ought to be impeached. That is what the Constitution provides for.

Why do we shrink back from that challenge? If the Attorney General that we have right now decides that she is unwilling to prosecute someone who should be prosecuted, then we have recourses. The law and the Constitution provide us opportunities to right those wrongs and those transgressions, if there are any. I am not suggesting there have been any. But we do not need this law to prosecute wrongdoing among the highest level officials in this Government, this new Government. We do not have to have it.

I am carrying out the debate longer than I meant to. But I really think it is a big mistake to reauthorize this law, which has proven to have been one of the greatest disasters this Congress has every visited upon our Government and our American people who, of course, are horrified by the process, and would like to expect more—and better—from our Congress and from the executive branch than they are getting.

I ask unanimous consent, Mr. President, that a copy of the article I referred to by Robert H. Bork be printed at this point in the RECORD.

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

[From Commentary magazine, February 1993]

AGAINST THE INDEPENDENT COUNSEL

(By Robert H. Bork)

For almost fifteen years America has experimented with a second and separate system of criminal-law enforcement. The Ethics in Government Act of 1978 created court-appointed independent counsels, placed outside the control of the President and the Attorney General, to investigate and, where possible, prosecute certain high-ranking executive-branch officials. Members of Congress and the judiciary were exempted. The statutory authorization for the Office of Independent Counsel expired this past December, but as a result of the pardons George Bush extended on Christmas Eve to six former officials involved in the Iran-contra affair, the chances that Congress and President Bill Clinton will revive the law seem to have increased. They should first study the record, which has been abominable.

The conventional wisdom, echoed on almost all editorial pages, holds that an independent counsel is essential because the Department of Justice cannot be trusted to prosecute miscreants in the executive branch. The conventional wisdom is wrong. The real effort and, to a large extent, the purpose of a special-prosecutor law has little to do with Department of Justice cover-ups.

"If the institution of the American presidency has grown enfeebled over the past two decades, Suzanne Garment of the American Enterprise Institute writes, it is not only because of battles with its opponents over policies or institutional prerogatives. Its adversaries have also waged a crucial and more or less continuous attack on the underlying moral legitimacy of the office, its occupants, and the President's allies in the executive branch.

A spearhead in the assault on the moral legitimacy, and hence the effectiveness, of the presidency has been the independent-counsel statute. The statute has helped tilt the balance between the executive and legislative branches and has, as a result of the prosecutorial incentives it created, produced savage injustices to individuals. All of this to cure a problem that does not exist.

Two instances routinely cited as showing the need for an independent prosecutor are the Department of Justice's handling of the cases of Spiro Agnew and Richard Nixon. If those two examples do not withstand scrutiny, the argument for a new statute collapses, because there could hardly be greater tests of the Department's capacity than its handling of the wrongdoing of a President and a Vice President. As Solicitor General at the time, I participated in both matters and claim some knowledge of what took place.

In the summer of 1973, George Beall, the United States Attorney for Maryland, discovered that Spiro Agnew had taken bribes when Governor of Maryland and had continued to receive payments while Vice President Beall informed Attorney General Elliot Richardson. There can be few more startling and unhappy messages for an Attorney General to receive, but Richardson informed President Nixon, had a grand jury investigate Agnew, and ultimately indicted him. After Agnew's attorney and I exchanged briefs on the constitutionality of indicting him before he was removed from office by conviction on impeachment, he plea-bargained, confessed his guilt, and resigned the vice presidency.

Though the Department of Justice thus demonstrated that it could remove an incumbent Vice President, some critics apparently believe that Agnew was treated too leniently, that he should have been sent to prison. That option, however, was not available. The Watergate investigation was closing in on Richard Nixon, and Richardson thought it would be devastating to the nation if the President were defending an impeachment trial while the Vice President was a criminal defendant. Agnew used that as a bargaining chip and the deal was struck

to be rid of him so that a new Vice President could be in office if Nixon should be impeached. That seemed to me then, and seems to me now, the only responsible course for Richardson to have taken.

The prime exhibit in the argument of those who want an independent counsel, however, is Watergate and what came to be called the Saturday Night Massacre. In fact, those episodes have been thoroughly misunderstood.

The initial investigation of the break-in at the Watergate complex was conducted by Earl Silbert and his colleagues in the Office of the U.S. Attorney for the District of Columbia. The facts unearthed caused Silbert to order research on the constitutionality of indicting the President before he was removed from office by conviction on impeachment. He also issued a wide-ranging subpoena for White House documents. Silbert and his colleagues were ready to make the case against Nixon and his aides, but Elliot Richardson had just been nominated by Nixon for the post of Attorney General, and the Senate Judiciary Committee conditioned confirmation on Richardson's agreement to appoint a special prosecutor. Richardson chose his old law-school professor, Archibald Cox. Silbert gave Cox about 90 type-written pages outlining the conspiracy and the evidence. More work remained to be done, but the essential outline of the case was there. Watergate would have played out about the way it did had the U.S. Attorney's Office been allowed to continue.

Though there was no need for a special prosecutor to deal with Watergate, it was politically inevitable that one would be named. But there might not have been a further demand for a special prosecutor removed from all executive-branch control had it not been for the Saturday Night Massacre (that is, Nixon's firing of Cox, together with the resignations it triggered). For almost 200 years, the public and Congress had been satisfied with what Terry Eastland of the Ethics and Public Policy Center calls the "politics of ethics."[1] The instruments of those politics included investigation and prosecution by the Department of Justice or by special prosecutors brought in for single occasions; congressional investigation; impeachment; clamor in the press; and, most effective, public reaction that determined the political future of those involved in wrongdoing.

The Cox firing changed all that. Although Cox was a man of integrity and ability, Richardson made a mistake in naming him special prosecutor. Nixon was immediately convinced that the investigation would be partisan because Cox was a long-time ally of Nixon's despised and feared political enemy, Senator Edward Kennedy. To compound matters, Cox made the politically maladroit move of taking the oath of office with the Kennedy family in attendance. The newspaper accounts and photographs of that event magnified White House paranoia.

Actually, Cox's behavior as special prosecutor did not warrant distrust. Any prosecutor, on learning of the existence of the tapes Nixon had secretly made, was bound to seek them, by subpoena if necessary. Cox did just that, and panic rolled over the White House. Richardson and the President's top defense lawyers attended a meeting in the office of Alexander Haig, Nixon's chief of staff, to decide what to do about the subpoena. The answer was in two parts. The first was to offer the "Stennis compromise." Senator John Stennis would listen to the subpoenaed tapes and produce a transcript from which national-security matters were deleted. The second part was to give Cox an order to seek no further tapes.

It is surprising that no one at the meeting realized this was a prescription for disaster. It should have been obvious that Cox could not accept either the compromise or the order. To do so would have been to betray his responsibilities. It should also have been clear that Richardson, given his commitment to the Senate Judiciary Committee, could not fire Cox for refusing the order. Apparently neither of these things was thought through, and once the order was given, the Saturday Night Massacre became inevitable.

Cox predictably refused and explained his decision on national television. Though Cox's decision was correct, Nixon now had to fire him: no President can afford to be faced down in public by a subordinate member of the executive branch. Richardson and the Deputy Attorney General would not carry out the firing and departed. I was the third and last in the line of succession established by Department regulations, and I discharged Cox. Had I not done so, the President would have named an Acting Attorney General from outside the Department who would have discharged Cox and perhaps his entire staff. That would have caused mass resignations in the Department of Justice. As it was, I explained the situation to the top officers of the Department and no one resigned.

Whatever the motivation behind the order to Cox, his firing had nothing to do with any attempt to stop the investigation. No one at the White House suggested that I interfere with the investigation in any way. When I met with Nixon after signing the letter removing Cox from office, the President understood that the investigation would continue and said only that he wanted "a prosecution, not a persecution." Cox's deputies and staff remained in place and, as they noted in their final report, did not miss a day's work.

It is partly my fault that the "firestorm," and hence the demand for a court-appointed prosecutor, followed. When I left the White House that night, I should have held a press conference to explain that only Cox was going and his staff would continue as before. That would have countered the impression that a coup was being attempted. I was new to Washington, however, and a press conference never crossed my mind, nor did anyone suggest the idea. That mistake aside, however, the Department of Justice had nothing to apologize for in its handling of Watergate or the Saturday Night Massacre.

In the Nixon and Agnew cases, no one at the main Department of Justice or in the United States Attorneys' Offices was tempted to ignore the evidence in order to protect the President or the Vice President. It may be objected that the nation cannot rely upon always having persons of integrity in those positions. But anyone familiar with institutions such as the Department of Justice or a U.S. Attorney's office will realize that there are other safeguards.

Let us suppose that in the Nixon or the Agnew affair either or both the U.S. Attorney and the Attorney General had been men of less exacting ethical standards. They would have found it impossible to suppress the evidence. High-ranking law-enforcement officials do not go about detecting crime on their own. Evidence is brought to them by others. The facts are known to lower-level prosecutors, FBI agents, often to a grand jury. These are people of professional integrity who also posses keen instincts of self-preservation. They will not be associated with a cover-up, and cannot afford to be. Nor need they have the courage to go public. They have connections with Congress, the press, and public-interest organizations. If an Attorney General had tried to protect Nixon or Agnew, that fact would have been leaked at once. The more spectacular a case is, the higher it reaches into the executive branch, the less willing is anybody to be connected in any way with a cover-up or even the suspicion of one.

Richard Nixon's presidency was doomed from the moment the investigation started, and it really did not matter whether the U.S. Attorney's Office, Cox, or his successor, Leon Jaworski, was in charge. The Watergate investigation could not have been avoided, and once started, it could not have been stopped. There is simply no danger that any criminal violation by a high-ranking official in the executive branch will be hidden by the Department of Justice. Though the fact has been overwhelmed by the mythology of Watergate and the Saturday Night Massacre, there is no case in our history in which the Department failed in its duty to prosecute executive-branch wrongdoing.[2]

That is one reason I testified to both the Senate and House Judiciary Committees in 1973, very shortly after the firing of Cox, that a mechanism for obtaining court-appointed special prosecutors was unnecessary as well as unconstitutional, and that I would therefore recommend to the President that he veto any bill seeking to establish such an office.

No bill was passed, and we escaped the predictable horrors of the institution, until Jimmy Carter became President and supported such a measure. Carter's Attorney General, Griffin Bell, understood the evil of the scheme but loyally backed his President. Since Carter left office, Bell, freed of his commitment, has consistently argued against the legislation.

The independent-counsel statute went through several versions but all versions displayed the features that make the law a recipe for irresponsibility, injustice, and the deformation of the constitutional balance between the legislative and executive branches.

In the Office of the Independent Counsel, Congress created, for the first time in our history, a federal prosecutor who is not really responsible to anyone. Under this statute, when the Attorney General receives allegations of criminal behavior by a high-ranking executive-branch official he must make an inquiry, but he is now deprived of most means of investigation. Unless, thus handicapped by the statute, he can determine that there are no reasonable grounds to believe that further investigation is warranted, he must ask the court to appoint an independent counsel. If a designated number of members of the Judiciary Committee of either House requests an independent counsel, the Attorney General must either agree or submit a report to Congress explaining his negative decision. In short, despite the Constitution's commitment of law enforcement to the President, he and his Attorney General are effectively stripped of that function in cases covered by the statute.

To make matters worse, when an independent counsel finishes his assignment, he must

[1] Ethics, Politics, and the Independent Counsel: Executive Power, Executive Vice 1789–1989, National Legal Center for the Public Interest (1989). This is the best scholarly analysis I know of concerning the great deficiencies of the independent-counsel system.

[2] Charges are being made that an exception to this rule is the BNL case. As yet, however, these charges are unproven.

file a report with the court "setting forth fully and completely" a description of his work, the disposition of all cases brought, and his reasons for *not* prosecuting any matter. The court may then release the report, or such portions of it as it deems appropriate. No regular prosecutor would make public his reasons for not indicting, but the release of the special counsel's report can result in considerable embarrassment to the persons involved.

It is hardly surprising that such a statute is subject to abuse and that lawyers of great distinction have thought it unconstitutional. Thus, in the case of *Morrison* v. *Olson*, former Attorneys General Edward Levi, Griffin Bell, and William French Smith, who served, respectively, under Presidents Gerald Ford, Jimmy Carter, and Ronald Reagan, submitted a brief *amicus curiae* asking the Supreme Court to invalidate the law. It is a great pity that the Court did not follow their recommendation.

Morrison v. *Olson* was a classic use of the independent-counsel statute to weaken the presidency by punishing an executive-branch official for carrying out his duties. A committee of the House demanded files of cases the Department of Justice and the Environmental Protection Agency were investigating or prosecuting. No law-enforcement officer could properly reveal that information. On the advice of the Department of Justice, President Reagan refused disclosure. The committee, enraged at this display of responsibility, asked the House Judiciary Committee to investigate the role of the Department in advising the President.

The Judiciary Committee subpoenaed all the memoranda prepared by Justice in advising the President and called Theodore Olson, the Assistant Attorney General responsible for giving legal advice to the Attorney General and the President. Some materials had been produced and a file search was continuing. Olson said he did not recall whether certain documents existed. Later they were found and produced to the committee.

Still, the committee was angered by Olson's forthright defense of the President's law-enforcement powers. On one occasion, the committee demanded any handwritten notes the Department's lawyers might have made in preparing their advice. Olson replied that he was sure the committee could arrange an exchange of those notes for the handwritten notes of the committee's staffers. One member rose, slammed the file down, and said that was the most outrageous remark he had ever heard.

The hearings were so inconsequential that they were not even published. But over two years later, the committee delivered a 3,100-page report accusing Olson of making false statements to Congress when—to cite one instance—he said he could not recall documents that were later produced. Alexia Morrison was appointed independent counsel and Olson's travails began.

Within six months, in seeking unsuccessfully to expand her jurisdiction to others, Morrison stated that, standing alone, Olson's testimony probably did not violate any criminal statute. Nevertheless, she took almost three years before she announced that there was no case against him.

In the course of these proceedings, Olson challenged a subpoena on the grounds that the independent-counsel statute was unconstitutional. He lost, but in upholding the constitutionality of the law, the Supreme Court created a number of constitutional anomalies that the Founders certainly never contemplated.

One of the most serious is to involve Congress in law enforcement directed at the executive branch. The Constitution protects members of Congress from executive-branch prosecution through the Speech and Debate Clause which makes them legally immune for anything said or written in the course of their duties. No such constitutional protection was thought necessary for the executive branch because it was given control of prosecutions. But now the Court has allowed prosecutions of the executive branch that are effectively initiated by Congress. That is not quite a bill of attainder, but it is a lot closer than the Constitution, properly interpreted, allows. The unfortunate outcome of *Morrison* v. *Olson* leaves the executive branch largely defenseless against this sort of assault. The power to pardon is one of the few shields the President has left.

Though Chief Justice Rehenquist's *Morrison* opinion was unpersuasive, only Justice Scalia dissented, so it is clear that hopes for the law's permanent demise rest not with the Court but with the wisdom and good will of Congress. Given the use Congress has made of the law in the past, the prospect is bleak.

In addition to everything else that is wrong with it, the institution of the independent counsel damages lives and reputations in ways that few regular prosecutors ever could or would. The human as well as the institutional costs are described rivetingly by Elliott Abrams in *Undue Process: A Story of How Political Differences Are Turned Into Crimes.*[3]

When he left the State Department in 1989 after serving there in a variety of positions since 1981, Abrams intended to write a book, but this is not the one he planned. Abrams's last job at State was Assistant Secretary for Inter-American Affairs. Among his many duties was carrying out Ronald Reagan's policy of keeping the Nicaraguan *contras* a viable force against the Sandinistas. That involved him in two wars: a guerrilla war in Central America, and an almost equally violent political war about Central America between the Reagan administration and the Democratic-controlled Congress.

In the fall of 1986, the Iran-*contra* affair exploded and Abrams was called to testify before Congress, the Tower Commission, and a grand jury about the nature of U.S. support for *contras*. An independent counsel, Lawrence Walsh, had also been appointed to investigate Iran-*contra*. He and his staff interviewed Abrams endlessly and took him before the grand jury three times. In early 1988, he was told that the Office of the Independent Counsel believed his statements, and he heard no more about the matter.

Until 1991. Taking into account everything else we now know about that Office, it seems too much of a coincidence that the prosecutors' interest in Abrams should have reawakened right after they lost the case against their most famous target, Oliver North, and when all indications were that they would also lose their other most important case—the one against John Poindexter. After all, they had no information about Abrams they had not had three-and-one-half years earlier.

The supposition that Walsh and his staff went after Abrams because they badly needed trophies to justify their existence is strengthened by the absurdity of the misdemeanor charges they leveled against him. The first was that he knew North had been encouraging a private supply network to support the contras when he, Abrams, had testified to the Senate Foreign Relations Committee that the United States government was not involved with that network. But there was never any secret about the fact of encouragement. Abrams thought he was talking about illegal operational involvement.

The second charge was that when asked by a House committee whether any foreign government was helping the contras, Abrams had said none was, although he knew that funds not yet delivered had been promised by the Sultan of Brunei (who had asked for, and received, pledges of absolute secrecy from our government). Subsequently he made the same denial to a Senate committee, but ten days later, feeling that the denial, while literally true, might have been a bit too close to the line, he went back and informed the Senate committee. The independent counsel charged him with withholding evidence from the House committee.

The answers Abrams gave were not prepared in advance; they were spontaneous responses to hostile questioning. Five years later, equally hostile prosecutors scrutinized every nuance, like lawyers examining a stock prospectus, to see if something, anything, could be said to have been withhold. They had picked their man and had only to imagine a crime. Indeed, a former member of Walsh's team, Jeffrey Toobin, wrote a book disclosing the team's eagerness to prosecute Abrams and their disappointment that they had not found sufficient evidence. Walsh rejoined: "He [Toobin] missed his target. He was supposed to get Abrams. We hit the target after he left."

If the charges were based on prosecutorial hair-splitting, why did Abrams plead guilty to these two misdemeanor counts? There was the prospect of another two years of agony or himself, his wife, and his children and of an estimated $1 million in legal fees that would have drained his and his relatives' savings and left him in debt. But the greatest pressure was the threat that the independent counsel would file an indictment charging multiple felonies in the expectation that the jury would compromise by acquitting him of most but convicting him of one or two. That would mean time in prison as well as disbarment as an attorney.

Abrams was right to fear that outcome. Judge Learned Hand once said that above almost all things, he would dread having his fate in the hands of a jury. The misdemeanor pleas allowed Abrams and his family to resume their lives. It was an eminently sensible decision. Walsh's office offered Clair George, a high CIA officer, the misdemeanor route, George rejected it, was then indicted on seven felony counts, and ultimately convicted of two of them. Later, Walsh's office offered former Secretary of Defense Caspar Weinberger the chance to plead guilty to a misdemeanor with no jail time, in return, according to Weinberger, for implicating Ronald Reagan. Weinberger rejected the offer and Walsh indicted him on five felony charges.

Of course, it is clear that Walsh and his staff wanted bigger game than Elliott Abrams. They repeatedly tried to get him to implicate an aide to George Bush, "trying [to] start something up that would end in impeaching the President." They were also eager to get former Secretary of State George Shultz. Walsh has now made it clear that his office is still trying to get Bush.

Weinberger's case was awaiting trial when Bush pardoned him, as well as George, Abrams, and three other former officials involved in Iran-contra. Angered at the escape

[3] Free Press, 243 pp., $22.95.

of his prey, Walsh accused Bush of a "cover-up" and stated that the lame-duck President was a "subject" of investigation. These are remarks that would be highly inappropriate, and perhaps punishable under the code of professional ethics, if made by a regular prosecutor. They are no less so when flung out by an independent counsel.

Walsh's fury is not hard to understand. For, having set out to uncover a conspiracy, and to prosecute for real crimes, his office has ended up—after spending six years and $35 million—with a record that ranges from poor to disastrous, prosecuting people for not being sufficiently forthcoming. If they could add a former President or Secretary of State to their game bag, they seem to feel, at least something might be retrieved.

In the process, Walsh's prosecutorial team has behaved in ways more morally questionable than did their victims. Walsh's chief deputy, Craig Gillen, in writing to the probation officer who was preparing a recommendation to the judge who would sentence Abrams, both withheld information and made an allegation the prosecutors knew to be false. Not only did the letter give the impression that Abrams had initiated the idea of soliciting third countries for contra support—ignoring that President Reagan had made that decision and that Secretary Shultz had authorized every action taken; Gillen also said that Abrams went to London under an assumed name to meet the Sultan of Brunei's representative, when the prosecutors had numerous documents that showed he had traveled under his own name. As meticulous as Gillen and the others had been in analyzing every detail to "get" Abrams, it passes belief that this letter, designed to influence the sentence, could have been the result of an oversight.

The lessons of Elliott Abram's book are several. Some independent counsels have performed their tasks admirably. But the incentives the statute creates ensure that others will bring prosecutions that no regular prosecutor would bring, and that never should be brought. The independent counsel is set up with an unlimited budget to investigate one person or a small group of persons. The job, moreover, offers the chance to become a national figure, but only if scalps are taken. The independent-counsel statute, therefore, has built into it the certainty of pain and injustice to many innocent people. Abrams and his family are only one example.

The main problem, however, is that the independent counsel is accountable to no one. Four days before the 1992 presidential election, Walsh filed a second indictment of former Secretary of Defense Caspar Weinberger, which included a note suggesting that George Bush knew more about Iran-contra than he had admitted. The judge dismissed the new count as barred by the statute of limitations. The point of the charge was that Weinberger had kept notes he did not disclose and so it was wholly unnecessary to include that particular note. Moreover, the prosecutors can count as well as the judge, and their theory of why the new count was timely was implausible, so they must have known when they filed the indictment that the charge would likely be dismissed. Any regular prosecutor, accountable to a superior, would undoubtedly be called on the carpet, and probably discharged, for what looks remarkably like a partisan attempt to influence the outcome of a presidential election. So far as is known, no action is being taken against Walsh.

The independent-counsel law, however, has achieved its main objective: undermining the legitimacy and efficiency of the executive branch. Abrams, for example, advises officials of that branch to take no notes. Years later, you may not remember what certain phrases in your notes meant, but the independent counsel will be able to suggest sinister implications. Caspar Weinberger would probably give the same advice. Officials will undoubtedly be less energetic in asserting the President's interests and powers before Congress, even when they would be absolutely correct to do so. One wonders how resolute the next Theodore Olson will be.

Except for George Bush's pardons, Presidents themselves have been loath to stand up to the independent-counsel system. Abrams felt he was abandoned by Ronald Reagan and his administration. The State Department's lawyers may assist an official in an investigation of his official conduct until it is clear that he is targeted for indictment, but, at Walsh's insistence, those lawyers were ordered not to assist Abrams in connection with the independent counsel's inquiries even while Abrams was an Assistant Secretary and not targeted. It is not surprising that he speaks contemptuously of "Reagan-administration officials who had gone on to their glory and had left me and a few others out there on the beach to take the incoming fire." It has been observed before that the Reagan administration demanded loyalty up but did not practice loyalty down. The question is not merely one of loyalty to subordinates and behaving honorably oneself; by cutting the lifelines to people like Abrams, the Reagan administration made it likely that future Presidents will get less loyalty up and more subordinates whose primary concern is their own skins.

The subtitle of Abram's book alleges that political differences were turned into crimes. It is difficult to disagree. The charges against him were for statements of a kind that had never before been made criminal. Abrams's real offense was battling for Reagan's policies against a Congress that kept changing its attitudes but often favored the Sandinistas over the contras. Worse, he was intelligent, tough, and self-confident—qualities which, though they annoy some Congressmen, are not usually regarded as criminal. As the Abrams, Olson, and Weinberger cases show, in operation the independent-counsel statute has criminalized political differences, but the only "criminals" it has turned up have been, as Congress intended, in the executive branch. If the law is reenacted, that will not be because Congress has not understood what it has seen; it will be because Congress likes what it has seen.

EXHIBIT 2

SELF-DEFENSE, PLEASE: THE INDEPENDENT COUNSEL MESS

During the Reagan presidency, the future of the special-prosecutor law, originally enacted in 1978 as part of the Ethics in Government Act, was in doubt. Scheduled by its own terms to expire in 1983, the statute, which establishes a system of court-appointed counsels to investigate charges of malfeasance on the part of the President, the Vice President, and other top executive officers, was reauthorized by Congress in January 1983 and extended five years. In December 1987, it was reauthorized a second time and given another five years of life in the U.S. Code. Neither time did President Reagan cast a veto. He should have, on the high ground of self-defense. While seemingly well-intentioned, a product of the "government ethics" ideology that pervaded Washington in the wake of Watergate, the law threatened—and will threaten, as long as it is still on the books—what Alexander Hamilton called "the constitutional rights of the executive."

The Reagan administration did offer some opposition to the law through its congressional testimony during the respective reauthorization processes. And it argued, albeit unsuccessfully, against the statute on constitutional grounds in the landmark case of *Morrison* v. *Olson*. President Reagan himself was correct to speak out against this law. Congress was "apparently convinced that it is empowered to divest the President of his constitutional authority to enforce our nation's laws," he said on December 15, 1987—in a statement made, alas, while signing the second reauthorization bill. Reagan's words did not have the impact a veto could and probably would have had: initiating an interbranch fight over the law and its future. The veto power can do at least this much, and when the presidency itself is threatened, this much can be very important.

The special prosecutor law stemmed from an infamous presidential action that itself weakened the office—President Nixon's firing of Archibald Cox in the middle of his investigation of Watergate. Past Presidents either on their own motion or through their Attorneys General had named outside special prosecutors; such was the case in Cox's appointment. But because of the Cox firing, Congress decided that in the future leaving such arrangements to executive discretion gave no assurance that special prosecutors would be able to conduct their inquiries free of executive-branch interference. For Congress, the only way to guarantee that outside counsels were truly "independent" of the executive was to change the method of a special prosecutor's appointment and limit the President's power to remove him.

Title VI of the Ethics in Government Act of 1978 filled the bill. It created a special panel—sitting on it would be judges from the federal court of appeals in the District of Columbia—and lodged in the panel the power to appoint a special prosecutor. For his part, the Attorney General was required to open "a preliminary investigation" whenever he received "specific information" that certain high-ranking officials—the President, the Vice President, all cabinet officers—had violated federal criminal laws. During the preliminary investigation, lasting no more than ninety days, the Attorney General could not use the compulsory powers ordinarily available to him—that is, he could not convene a grand jury, subpoena witnesses, grant immunity, or enter into plea-bargaining agreements. The law thus reduced his discretion—and therefore the President's—in this special class of cases. Under the law, the Attorney General could close the investigation if he found that the allegation in question was—as the statute put it—"so unsubstantiated that no further investigation or prosecution is warranted." Otherwise, he had apply to the court for appointment of a special prosecutor. The "so unsubstantiated" standards was a very low one, but it fit the statutory aim of sharply reducing the ability of the Justice Department to make traditional low enforcement judgments when reviewing allegations involving officials covered by the law.

Once the special court named a special prosecutor, he wore the shoes of the Attorney General insofar as his case was concerned. In fact, he had more power than the Attorney General. Special prosecutors were empowered, as Attorneys General were not, to contest in court any claim of privilege or attempt to withhold evidence on grounds of

national security. And special prosecutors were required to comply with Justice Department policies only to the extent they thought appropriate. In other words, they were on their own. The statute required that the Attorney General could not remove a special prosecutor unless he committed some "extraordinary impropriety."

As originally enacted, the special prosecutor law was unprecedented in the annals of federal law enforcement, not to mention the presidency itself. Never before had the President been excluded from the process of appointing a government prosecutor. And as for the removal provision in Title VII, the Reconstruction Congress, the most anti-executive Congress in U.S. history, had passed the Tenure of Office Act of 1867, which restricted the President's power to remove key cabinet officers, including the Attorney General. The special prosecutor law was the first since that discredited statute to restrict the President's authority to remove for any reason individuals wielding powers that reasonably could be described as purely executive in nature.

Significantly, the method of appointment and the restriction of the President's removal power meant that federal criminal law enforcement authority could be given to individuals who were not clearly in the executive chain of command that finds the President at the top. Special prosecutors would be largely independent of the President. For all practical purposes, they were not answerable to him for their exercise of the law enforcement power.

The statutory reduction in the Attorney General's—and therefore the President's—traditional law enforcement discretion was unprecedented. The law obligated the Attorney General to conduct preliminary investigations even of allegations from unreliable sources and to refer them to the special court for appointment of a special prosecutor unless he could conclude that they were "so unsubstantiated" that they did not merit further investigation.

In sum, the special prosecutor law was the product of a startling new idea: that criminal investigation of the executive branch should have some independent place in a government of three separated powers. This idea does not fit easily within the framer's original design, nor is it commendable today. The framers did not design a government blind to the possibility of malfeasance in the executive branch (or the other branches). They provided not only for impeachment of the President and top executive officers through a constitutional process, but they also expected that these officials would be, as Hamilton put it, "liable to prosecution and punishment in the ordinary course of law." The framers, however, made impeachment so difficult that it would be an extraordinary event, and they did not make prosecution of executive officers any easier than it is in all other cases. The special prosecutor law altered these arrangements in such a way as to encourage a very aggressive pursuit of alleged executive malfeasance. Whatever its consequences in terms of indictments and convictions, the statute thus promised as no "ethics" law ever had before to weaken the executive branch.

Those who had prophesied that the new law would require investigations that ordinarily would not occur were quickly proved right. In the late 1970s, theory became fact as a special prosecutor investigated Hamilton Jordan, Jimmy Carter's former chief of staff, for allegedly using cocaine. Another special prosecutor named under the new law investigated a different Carter aide, Tim Kraft, on similar charges. Costing the taxpayers some $200,000 for their labors, both outside attorneys declined to prosecute; one later said that if he had been a regular prosecutor, he would have thrown his case out. But for the law, neither case would have been regarded as worth even the slightest investigation. At that time the Justice Department seldom, if ever, investigated or prosecuted cases of personal drug use unless they also involved large-scale drug trafficking—as neither the Jordan nor Kraft case did.

Notwithstanding the anti-executive character of the law, and its outrageous first applications, the Reagan administration did not attempt a frontal assault on the statute. During the twenty months in which Congress worked on reauthorization legislation, the Justice Department tried to persuade Congress to return to the Attorney General the prosecutorial function the statute had carved out for special prosecutors. The Department's chief spokesman on the issue, Rudolph Giuliani, the associate attorney general, did urge Congress to consider repeal, declaring that Justice could not support an extension of the law. But—the first sign that the executive would not use available power to defend itself—Giuliani did not promise or even raise the possibility of a presidential veto. Congress eventually revised the law in ways that somewhat increased the Attorney General's discretion at the initial screening stage and recognized more of the President's constitutional power to remove an independent counsel. But, the law's infirmities were such that it still constituted an invasion of executive prerogative. When the bill was presented to the President for his signature, Justice held back from counseling a veto.

From early 1983 through early 1987 the Justice Department reviewed more and more allegations against high-ranking administration officials—thirty-eight in all. More cases went to the court for appointment of independent counsels. In early 1984, Attorney General William French Smith, having announced his resignation, found himself instead having to refer the man nominated to succeed him, Edwin Meese III, the White House Counselor, for investigation by an independent counsel. Precisely because he had been the subject of such an inquiry, Meese was hardly a credible figure to enlist in any effective fight against a statute aimed at the President's "constitutional rights." That Reagan picked Meese to be his Attorney General, and stuck with that choice despite the independence counsel inquiry, was an indication of his lack of any strategy to oppose the law.

A central theme of Meese's tenure as Attorney General concerned independent counsels. In early 1986 he asked the special court to appoint an independent counsel to investigate a first-term Reagan Justice Department official, Theodore B. Olson, on charges that Olson had obstructed justice and given false testimony to Congress. Later that year came the appointment of an independent counsel to look into charges that former Reagan aide Michael K. Deaver had violated post-government lobbying restrictions. And at the end of 1986 came the appointment of an independent counsel to investigate the Iran-contra affair. In early 1987, another independent counsel was named to investigate allegedly illegal lobbying by another former Reagan aide, Franklyn C. Nofziger. Soon thereafter yet another individual was referred for independent counsel investigation—Meese himself, this time on charges involving the scandal-ridden Wedtech Corporation. This investigation forced Meese to remove himself from all issues involving the independent counsel statute. These included the legislative reauthorization as well as implementations of the current statute and litigation based on it. Ultimate authority for these matters fell to the next in rank, Deputy Attorney General Arnold I. Burns.

On Capitol Hill, the Justice Department took a more forceful position against the law than it had in 1981 and 1982. The Department had previously argued that "extraordinary circumstances" might justify a restriction on the President's removal power of an independent counsel; now it maintained that nothing could. As before, Justice objected to the method of appointment as an unconstitutional usurpation of presidential prerogative. The Department also raised other constitutional concerns (such as the judiciary's involvement in appointing independent counsels and carrying out other non-judicial functions under the law), and various policy concerns (such as the sheer cost of independent counsels, which had sharply increased). But Justice mainly stressed the law's infringement on presidential authority and the resulting lack of accountability on the part of independent counsels. Justice urged Congress to make the law constitutional by vesting the appointment power in the executive branch and dropping the limitation on the President's power to remove a counsel.

But the reauthorization legislation changed neither the method of appointment nor the limitation on the removal power, and it reduced the Attorney General's already limited discretion in the initial screening period. Having joined a constitutional challenge to the statute in the U.S. Court of Appeals for the D.C. Circuit (the *Morrison* case), Justice counseled the President to veto the bill on both policy and constitutional grounds. Declining the advice, Reagan signed the bill in order, as he put it in his December 16 signing statement, "to ensure that public confidence in government not be eroded while the courts are in the process of deciding these questions." The Supreme Court upheld the statute by a seven-to-one vote, with Chief Justice William Rehnquist writing the Court's opinion, and Associate Justice Antonin Scalia alone in dissent. No, said the Court, the independent counsel statute does not violate the Appointments Clause; no, it does not give a federal court duties it shouldn't have under the Constitution; and no, the limitation on the removal power does not violate executive prerogative or the principle of separated powers. In effect, Reagan had relied upon the Court to protect the office; he should have relied upon himself.

Reagan should have vetoed the legislation, although this was not the only avenue of self-defense available to him. After all, upon taking office in 1981, the President could have instructed his Attorney General not to enforce the statute. That is, he could have told the Attorney General not to refer individuals for investigation by special prosecutors. Such an action, premised as it would have been upon the President's constitutional duty to take care that the laws are faithfully executed, would have required a willingness to engage the issue politically. As Paul W. Kahn of the Yale Law School has imagined the scenario, "[Reagan] could have gone before Congress and the nation and said that his oath of office required him to obey the Constitution as he understood it." This would have been an extraordinary executive exertion, but not an impermissible one. President Thomas Jefferson refused to enforce the infamous Alien and Sedition acts,

duly enacted in 1798 (and thus before he took office). Those laws did not deny the constitutional rights of the executive, but Jefferson thought they were unconstitutional for First Amendment reasons. There are those who dispute the validity of Jefferson's right to do as he did, but far less disputable is the decision by a President to refuse to enforce a law he believes infringes on presidential prerogative, especially if he has inherited the law and not been a party to its enactment. Had Reagan pondered such a nonenforcement strategy, the important considerations would have been practical ones. While a successful lawsuit against the President would have been most unlikely, a political battle between the elective branches might well have erupted, harming the President's ability to win legislative approval for his economic package. Prudence thus would have counseled against a strategy of nonenforcement, especially since the statute was scheduled to expire, had to be reauthorized, and therefore had to be presented to him—at which point the veto power could have been brought into powerful play.

Simple arithmetic demonstrates the importance of the veto. While a President who will not veto a bill he opposes in its current form must hope that majorities in both houses of Congress will accept his legislative views, a President who does veto such a bill needs one third of a quorum of a single chamber to defeat an override attempt. As we saw in Chapter 4, that is a steep hill for Congress to climb; only a very small percentage of vetoes have ever been overridden.

A successful veto strategy would have required a President willing to make a public case—a President willing to twin appropriate rhetoric and action. In 1983, such a case could have put to effective use the discredited Jordan and Kraft cases, the only special prosecutor cases then concluded. And such a case would have been heard by a Republican-controlled Senate and presented by a Republican President who had seen only one of his subordinates—Labor Secretary Ray Donovan—become the subject of a special prosecutor investigation (which focused on activities occurring before Donovan joined the administration). Had Reagan mustered the votes necessary to sustain a veto, as seems likely, the law probably would have been changed to fit his views. Possibly it might have been allowed to expire. In either event, there would not have been a *Morrison* case, and so there would not be the *Morrison* jurisprudence, which provides a basis for future Congresses to attack the rights of Presidents.

Neither a nonenforcement nor a veto strategy was contemplated in 1981–82. During the transition in 1980–81 no one close to Reagan raised a concern about the special prosecutor law or about protecting presidential prerogatives in general. Preoccupying the President-elect and his transition team was the substantive political agenda that focused on reviving the economy and rebuilding the national defense. The White House left separation of powers concerns to the Justice Department, then focused on other matters—staffing, reforming immigration policy, reviewing policy toward violent crimes.

Attorney General Smith was as aware of executive power issues as anyone in the administration. Indeed, it was Smith who took on a different threat to presidential authority. A suit had been brought by an alien threatened with deportation as a result of a so-called legislative veto; the question for the Supreme Court in *INS* v. *Chadha* was the constitutionality of such measures, which date to the 1930s. The legislative veto was a product of the executive's desire to have broad discretionary authority and Congress's insistence on some means of control—short of having to enact new law—over the exercise of the granted discretion. The executive thus could make policy subject to a simple resolution of either House (a one-House legislative veto) or by concurrent resolution (a two-House veto). A one-House veto was specifically at issue in *Chadha*. Smith thought legislative vetoes were unconstitutional, but the President himself had supported them on the campaign trail, on the political ground—for many conservatives the correct political ground—that the "liberal" executive must be reined in by the branch closest to the people. Smith not only won the President's approval for the position he advanced in the Supreme Court, but in the process helped educate conservatives to the more correct view of the presidency within the constitutional order. The Court adopted the administration's argument in *Chadha*, ruling that the legislative veto at issue violated the Presentment Clause of the Constitution as well as the requirement of "bicameralism" (found in the Presentment Clause).

Smith also counseled the President to veto bills including legislative-veto devices. And the President in fact vetoed H.R. 7336, a package of education amendments. "The Attorney General has advised me, and I agree," said Reagan in his memorandum disapproving H.R. 7336, "that two Houses of Congress cannot bind the Executive branch by passing a concurrent resolution that is not presented to me for approval or veto." The President successfully vetoed this bill containing a two-house legislative veto—just nine days after he signed the independent counsel reauthorization. So there was a defense of the presidency here—but it was not part of any grand design. Such defenses proved ad hoc. As Smith observed in his memoir, "If there was one area in which the White House was deficient during my years in office, it was in the protection of presidential power. Decisions there were made on the basis of the substance of individual issues. There was no effective concern or review of the impact that issue or the position taken with respect to it would have on presidential power. Nor was there any effort to identify governmental activities elsewhere that, if developed, would adversely affect the province of the executive. Nor, to be candid, was the bully pulpit used to provide leadership or defense of that vital institution."

In retrospect it is clear that 1983 provided Reagan his better opportunity to veto the statute. To be sure, Reagan could have vetoed the second reauthorization bill even though he had signed the first one. That previous signature did not require him to accept the law a second time. And the fact that a case challenging the statute's constitutionally was in the courts did not constrain him either. Reagan was free to veto. But the politics would have been difficult. The Senate was now controlled by Democrats. Congress was more willing to take on Reagan than at any previous time in the 1980s. Iran-contra, under investigation by an independent counsel, had politically weakened Reagan both in Congress and at the bar of public opinion. So had other independent counsel investigations, including the inquiry into Edwin Meese's involvement with the Wedtech Corporation. It would have taken a very strong effort on Reagan's part to win the needed votes to defeat an override attempt.

Still, if Reagan had been truly serious about protecting his office, he would have used the veto power. After all, the experience under the independent counsel law since 1983 had provided more damning evidence against the law. Estranged from the institutional environment that constrains all other criminal prosecutors, who, working with limited resources, have not one but many possible cases to consider, independent counsels had acted unreasonably. In his investigation of former Reagan aide Michael Deaver, for example, Whitney North Seymour tried to subpoena the Canadian ambassador to the United States, injuring relations with Canada. (A federal district court rules that the subpoenas violated diplomatic immunity.) A lawyer representing Lawrence Walsh, the Iran-contra independent counsel, told a federal appeals court that not the President but the independent counsel would have the last word in case of a disagreement over foreign policy and its implications for prosecution. Walsh himself told the America Bar Association in 1987 that if an investigation finds "probable cause that a crime has been committed, it is the duty of the independent counsel to prosecute"—a statement expressing a lower standard than that found in the prosecution manual of the Justice Department, which says that fundamental fairness requires that an indictment be issued only if the prosecutor believes that an unbiased jury would convict. Alexia Morrison, the independent counsel named to investigate Ted Olson, worked a deed against him that no ordinary prosecutor would have: Upon finding that he probably had not violated the law, she nonetheless sought to expand her jurisdiction in order to see whether he might be implicated in a conspiracy with others—even though she had no evidence of that.

Meanwhile, the independent counsels had worked a negative effect within the executive branch. Olson, who headed the Office of Legal Counsel in the Smith Justice Department, was investigated for actions that did not involve any element of personal gain or which went beyond the scope of duty. In fact, he was investigated for work that prior to the 1980s would never have been "criminalized." Early in the first Reagan term, House committees headed by two influential Democrats—Peter Rodino and John Dingell—objected to the Environmental Protection Agency's enforcement of environmental laws. When certain documents regarding open criminal investigations were sought, EPA Administrator Anne Burford claimed executive privilege, as directed by the President, who had been duly advised by Justice's Olson. Rodino and Dingell were upset that Olson had asked (unsuccessfully; the issue wasn't ripe) a federal court to put its imprimatur on this claim of privilege, thus heading off a contempt citation against Burford. Olson was summoned to Congress to testify, and there made statements regarding the advice he had given the President. Led by Rodino, the Democratic majority of the House Judiciary Committee used certain provisions in the independent counsel statute to force the appointment of a counsel to investigate Olson for misleading Congress. Thus Olson, departed from Justice in 1984, became in 1986 a defendant, not because the President or his aides thought his investigation was a justified use of scarce prosecutorial resources, worth the cost in money and in possible damage to other governmental interests, but merely because the Attorney General was unable to disprove the allegations made against him by House Democrats. It appeared that Democrats wanted a prosecutor who would investigate not a crime but a man, and to find some offense to pin on him; this is manifestly not

what our criminal justice system is supposed to be about. The Olson case, eventually lasting three years, sent a message of caution to high-ranking executive officers. The thought that "this could happen to you, too" drained energy from the executive.

Having observed these cases, Deputy Attorney general Burns urged the President to veto the 1987 reauthorization. And this time William French Smith, now retired to Los Angeles, also advised the President to cast a veto. In his signing statement, Reagan said the law was unconstitutional. So why didn't he veto it? A veto would not have disrupted independent counsel investigations already in progress. And leaving the issue of constitutionality to the courts was dubious; few observers thought the Court would strike down the law. The most plausible explanation for the veto not cast is this: that Reagan shrank from the task for short-term political reasons, that he was unwilling to take action that would have provoked negative political and media reactions. In sum, Reagan lacked the courage of his stated conviction that the law was unconstitutional. On a matter of fundamental principle, he was unable to take a stand.

The veto statement recommended by the Department of Justice in 1987 closed on this note: "In fulfillment of my own solemn obligation to uphold the Constitution, I believe I have no choice but to disapprove this legislation. I understand that this action may not be politically popular, but in carrying out my constitutional duty I simply cannot be moved by popular sentiment or considerations of political expediency. In this the Justice Department was echoing essential Hamiltonian wisdom, worth quoting at length:

"When occasions present themselves in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be the guardians of those interests to withstand the temporary delusion in order to give them time and opportunity for more cool and sedate reflection. * * * [A] conduct of this kind has saved the people from very fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men who had courage and magnanimity enough to serve them at the peril of their displeasure."

James Madison once observed that the constitutional powers of Congress were such that it could "with the greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments." The independent counsel statute represented, and still represents, a complicated but perhaps not so indirect measure. Prosecution of crime is and should remain an executive branch function, in the final analysis under presidential control. When, as here through the independent counsel law, Congress takes part of the President's authority away and locates it elsewhere, it increases the number of executive entities that it can effectively control. This is a recipe for the reduction of the President to, as Charles Fried has stated so well, "a ceremonial head of state." It is the route to a government without energy.

The Reagan failure to veto independent counsel legislation invites future Presidents to absorb a basic lesson: Although the occasions for a "self-defense" veto may be few, they are most important; for it was precisely with these situations in mind that the framers, as Hamilton put it, "chiefly designed" the veto power. A President who undestands this lesson will not rely, as Reagan in effect did in the independent counsel case, exclusively upon Justice Department argument either in Congress or in the Supreme Court in order to protect his office. In vain did the President hope for an antiindependent counsel majority to form in those quarters; and in the Court Reagan risked what he got—jurisprudence that may tempt Congress further to splinter the executive and usurp its authority. (In this regard it is remarkable that Stephen Ross, the General Counsel for the House of Representatives, told a federal court reviewing the constitutionality of the independent counsel statute in 1987 that it would be constitutional for Congress to vest in the Attorney General the appointment of the Solicitor General; such are the antiexecutive ideas found in today's Congress.)

A President who understands he should not rely on the Court to protect the office he holds must be as willing as any Justice to address questions of constitutionality. The Court is not the only arbiter of disputes involving the Constitution. The Constitution vests in the judiciary the power to decide "cases and controversies." The power to interpret the Constitution is a consequence of that power. Similarly, the other two branches of government have their respective jobs to do, and in doing them, they also interpret the Constitution. Or at least they should. Unfortunately, legislators today often abdicate their responsibility to think about the Constitution as they draft legislation; too often their attitude is, "we'll let the Supreme Court decide." The same is true of the executive branch. During the first reauthorization process, for example, Associate Attorney General Giuliani said that the constitutional questions involved "are difficult and not readily answered, given the lack of authoritative Supreme Court rulings on the relevant points." While it is one thing—a proper thing—for the executive branch to review Court rulings in order to reach its own determination of constitutionality, it is quite another effectively to cede to the Court the executive's duty to interpret the Constitution. On important occasions, Giuliani's testimony seemed such an act of cession. "Only a ruling by the Supreme Court would definitely resolve the constitutional issues," he said at one point, notwithstanding that the President himself could have moved toward resolving the constitutional issues in his favor by vetoing the law. The President did not have to wait for "authoritative" or "definitive" rulings from the Supreme Court.

Nor do future Presidents. Indeed, even when the Court has spoken, they still may act. Neither George Bush nor any of his successors is bound by the Court's decision in *Morrison* to sign legislation reauthorizing the independent counsel statute. Presidents worried about such judicial precedent should ponder the presidential precedent—handed down by Andrew Jackson. In 1819, in *McCulloch* v. *Maryland*, the Court upheld the constitutionality of a national bank. One could say *McCulloch* "settled" the issue. But in 1832 President Jackson reopened the question when he voted legislation rechartering the bank. In his veto statement, he discounted the significance of *McCulloch* by arguing that the political branches were not bound by the judiciary's reading of the Constitution. "The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges," said Jackson in his veto message, "and on that point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve." Jackson prevailed in his fight with Congress; the idea of a national bank died. And, thus, by the way, did a strong presidency defeat bigger government.

Andrew Jackson was in many ways an undistinguished President. But to his credit he vetoed the infamous Tenure of Office Act, precisely because it infringed on the rights of the executive. In part because of that act of self-defense, Johnson was impeached in the House and missed by a single vote being convicted by the Senate. But in casting that veto Johnson showed courage.

Having the courage to take responsibility for the office as Johnson did will be especially difficult in our time. Indeed, it is hard to overstate just how difficult. Multiple presidential primaries, incessant opinion polling, and insistent media attention upon the presidency have worked to encourage Presidents to be "men of the people" more than occupants of a constitutional office. (The very democratization of the presidency begun by Jackson in the 1830s and hastened in our century has, as Joseph Bessette observes, reshaped the "calculus of presidential ambition" in such a way that few Presidents will battle for the rights of office, unless their position is also the popular one, as was Jackson's, in opposition to the national bank. The desire to maintain popularity, and the belief that presidential power is simply a function of popularity, as measured in polling data, are attitudes found not only on the part of would-be Presidents but also their cadres of advisors. For a President to resist the counsel of the moment that cites opinion polls and to take what might be an unpopular action, such as a veto cast in defense of his own powers, thus may become an undertaking of enormous proportion. But in the long run the office of the President will not be worth having if Presidents and their advisers are not prepared to act in its defense.

This chapter has examined the self-defense veto in a particular governing context. But as indicated by the brief discussion in this chapter of a nonenforcement strategy, the veto is not the only means of self-defense. Consider also that a President who had administered the executive branch in a way that successfully discouraged criminal or unethical or imprudent behavior would have been better situated politically than Reagan was to cast a veto in 1987; this is a subject I discuss in Chapter 14. Here it is worth noting that, perversely, the independent counsel law encourages presidential irresponsibility. For instead of taking it upon himself to inquire into alleged misconduct of aides and deal with it accordingly—which might include standing behind an aide, or prosecuting and removing him—the President, as Reagan routinely did, can slough off his obligation onto the all-too-willing shoulders of an independent counsel. A President who does not assume the responsibility for office by using available power to defend it may find at the end of the day, as Reagan did, that he and his successors possess fewer rights.

In its origins as well as its persistence through the years, the independent counsel statute is a monument to executive weakness. And that weakness has proved costly to our politics generally. The independent counsel law is a central piece of a post-Watergate Washington culture that has elevated the pursuit of malfeasance to such a high priority that the whole point of our political system, it sometimes seems, is to root

out official wrongdoing, even to turn innocence into sin. Scandal substitutes for, and crowds out, ordinary politics. If this is one reason Americans hate politics, to borrow from the title of E.J. Dionne's 1991 book, it is also a reason more and more politicians hate politics, as witness the large number of retirements of incumbent Congressmen in recent years. The messy ethics environment is not likely to change until a strong President, who insists on his constitutional rights and on high standards of conduct as well, determines that it should.

[From the Public Interest, summer 1990]

EXHIBIT 3

THE INDEPENDENT-COUNSEL REGIME

(By Terry Eastland)

It is a venerable legal maxim that hard cases make bad laws. So it happened in Watergate: the hard, indeed the aberrant, case of Watergate made the bad law of the independent-counsel statute, first enacted as Title VI of the Ethics in Government Act of 1978 and twice reauthorized during the eighties. Scheduled by its own terms to expire in 1992, the statute, which applies only to certain high-ranking members of the executive branch, deserves to go gentle into that good night reserved for bad legislation.

Of course, whether that will happen is a much different question. The Framers of the Constitution viewed the legislative branch as the strongest of the three, and in *Federalist* 48, James Madison wrote (with only slight exaggeration) that the legislature "is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex." The independent-counsel statute represents an unprecedented extension of congressional power that has unjustifiably weakened the executive branch. So long as Congress is controlled by Democrats, and the presidency by Republicans, the safe betting is that the statute will be extended in something close to its current form—unless a determined president skillfully opposes it. If George Bush undertakes and succeeds at that task, not only will the executive branch recover its proper strength but our politics generally will also be free of the debilitating influence of the independent-counsel regime.

WATERGATE AND THE ORIGINS OF THE LAW

By constitutional design, the president is responsible for his own conduct in office and for that of his aides. Yet the president has a conflict of interest when he undertakes to discharge that responsibility by investigating criminal allegations against his own appointees, not to mention himself. This conflict, like those that arise when judges decide disputes involving judges' pay or when Congress exempts itself from laws that it makes, was not forbidden by the Constitution. Until the era of the independent counsel, our political system had lived with the conflict by balancing it in various ways, such as by giving Congress the power to impeach executive officers (through explicit constitutional provision) or by allowing Congress to hold oversight hearings. On certain occasions our system had lived with the conflict simply by trying to minimize it through the executive's appointment of outside or special prosecutors to handle specific cases. The Grant, Theodore Roosevelt, Coolidge, and Truman administrations resorted to special prosecutors.

This, of course, is what happened in Watergate, as Attorney General Elliot Richardson named Archibald Cox, a Harvard law professor and former Solicitor General, to handle the investigation. Richardson promised the Senate that Cox would be independent and truly free to pursue the investigation wherever it might lead. But when Nixon abruptly removed the special prosecutor in a dispute over access to White House tapes, something unprecedented happened. For the first time in American political history Congress considered calling for a court-appointed special prosecutor whom the President would have no ability to control. In the view of many in Congress, the only way to minimize the President's conflict of interest so as effectively to overcome it, and thus the only way to guarantee prosecutorial independence from the executive branch, was to divest the executive of his power to appoint and remove the Watergate special prosecutor.

Congress did not enact either H.R. 11401 or S. 2611, the two leading proposals calling for a court-appointed Watergate special prosecutor. President Nixon, who apparently wanted to abolish the special prosecutor's office, changed his mind when the invariably negative reaction to the Cox firing included persistent calls for his impeachment or resignation. Leon Jaworski was quickly appointed by the Justice Department to succeed Cox, and Jaworski labored without administration interference. Jaworski's effort combined with the congressional investigation to effect a result consistent with public opinion—Nixon's resignation.

Our political system thus could be said to have worked well enough in the exceptional case of Watergate. But the new culture that Watergate helped to create concluded that the system was deficient. As early as 1974—the year Nixon resigned—Congress began searching for a way of establishing a system of special prosecutors on a permanent basis. This search for law culminated in the 1978 passage of Title VI.

Supporters of the new approach made much of the need to overcome the president's conflict of interest. The "special prosecutor" law, as it was first called upon enactment, was billed as a "recusal" statute. For many politicians, this proved an appealing way to think of the law at a time when avoiding even the appearance of a conflict of interest had become a dominant value in our politics. Yet it is doubtful that the 1978 law would have been enacted without the influence of two other political forces.

One was distrust of the presidency as an institution. The conventional wisdom in liberal circles in the mid-seventies was that the presidency had been expanding its power since the time of the New Deal, and that while some of this power was doubtless needed in the modern world, it had been abused by Lyndon Johnson in conducting the war in Vietnam and then by Richard Nixon. Watergate was seen as the inevitable product of an increasingly "imperial" institution, not the result of one man's shortcomings. The worry about the "imperial presidency" was so pronounced in Congress that in 1974 Sen. Sam Ervin introduced legislation, almost surely unconstitutional, that would have made the Department of Justice an independent agency. That same year Sen. Alan Cranston, sponsoring special-prosecutor legislation, argued the need for "an independent guardian to keep the Executive Branch honest"—as though the executive branch were inherently and perpetually prone to dishonesty.

The other influential idea concerned the investigation and prosecution of criminal allegations involving top executive officers. Whereas such investigation and prosecution was previously understood to be important but hardly compulsory, something subject to the discretion of the executive branch, now it was reckoned as so important as to be an almost absolute good. It was an activity to be relentlessy pursued, virtually without regard to financial or other costs. *Fiat justitia, ruat coelum*: Let justice be done, though the heavens may fall.

As the search for law proceeded during the mid-seventies, congressmen attempted to bolster their case for a permanent special-prosecutor mechanism by contending, in committee hearings and bill reports, that throughout history administrations had often looked the other way, neglecting to investigate allegations of executive wrongdoing. Whatever the elusive truth of that proposition, the presumption behind it was that no executive wrongdoing should go unpunished.

Watergate had an impact upon the elite culture of the nation's capital, an impact that is still evident today. The scandal obsessed Washington for two years; never before had a "crime" story so displaced normal political life. The heroes of the story were fearless reporters, fearless prosecutors, fearless members of Congress, and fearless members of the executive branch willing to "leak" information about their "bad" colleagues. The fearless were celebrated in print and celluloid. Role models were established for aspiring reporters, prosecutors, congressmen, and even members of the executive branch. The prosecutorial style was "in," with the questions—"What did you know and when did you know it?"—becoming among the most important in our politics.

With the dynamics of the political culture working so powerfully against the executive branch during Watergate, Congress necessarily benefited, its image rising especially among a media now blatantly hostile to the presidency. Many years later. Richard Harwood, the *Washington Post* ombudsman, observed that in the early to middle seventies the media "drifted into a relentlessly adversarial and hostile posture toward the presidency," while "the image of Congress . . . underwent a rehabilitation." Through "its role in opposing the war, in forcing the resignation of Richard Nixon and in other crusades and endeavors, [Congress] became in the minds of many journalists the White Knight of Washington, the last, best bulwark of democracy."

It was in this, the most anti-executive political culture in our history, that the most anti-presidential Congress since Reconstruction labored and brought forth the special-prosecutor law of Title VI.

THE STATUTE AND ITS CONSEQUENCES

Title VI was passed with the support of President Carter and his attorney general, Griffin Bell, who has since recanted his position. Under the new law, the attorney general was required to conduct a "preliminary investigation" whenever he received "specific information" alleging that certain high-ranking administration officials—about 120 in all, including the president—had violated any federal criminal law other than by committing a petty offense. According to the legislative history, "specific information" meant all allegations of wrongdoing save generalized ones having no basis in fact. The law provided that the attorney general must take no more than 90 days (or 120 in case of an extension) to conduct a preliminary investigation, and it precluded his use of the compulsory tools normally at hand—grand juries, subpoenas, plea bargains. The law also provided a formal means by which members of Congress could attempt to initiate an investigation, with the burden resting on the attorney general to explain to Congress a decision *against* applying for a special prosecutor.

Under the law, the attorney general could close his inquiry if he found that the allegation was "so unsubstantiated that no further investigation or prosecution is warranted." If he found that "the matter warrants further investigation or prosecution," he was required to apply to a special division of the federal court of appeals in Washington, D.C., which was created for the purpose of naming special prosecutors. If the attorney general was unable to reach a conclusion within the time allotted for the preliminary investigation, he was required to apply for a special prosecutor to be appointed anyway. Title VI gave the special division of the court no discretion in the matter of appointment; when the attorney general requested a special prosecutor, it was compelled to name one.

As for the special prosecutor himself, he was given the "full power and independent authority" to exercise all investigative and prosecutorial functions of the attorney general. He was to wear the shoes of the attorney general in almost every respect, though he could stray from Justice Department policies. He was merely required to comply,"to the extent [he] deems appropriate," with the department's written policies regarding the enforcement of criminal law. The legislative history shows that the special prosecutor retained the discretion to decide when to follow Justice policy. No other federal prosecutor has ever had such freedom. The law protected the prosecutor's autonomy by making it almost impossible for the president to remove him. Finally, the law required the special prosecutor to file a final report with the special court once he concluded his inquiry. The prosecutor was obliged to describe his effort, including the disposition of all cases brought and his reasons for any decisions not to prosecute. The court was given authority to make sure reports public—a course followed in virtually every case.

In these ways the framers of Title VI established a new institutional framework for exercising part of the criminal law-enforcement power, which had traditionally belonged entirely to the president. In these ways conflict of interest was to be overcome, independence ensured, and justice pursued.

Or so it was supposed. Soon enough the law had unintended consequences. In 1978 and 1980 the attorney general could not do what the law effectively required: he could not *disprove* allegations of cocaine use levelled against two of President Carter's highest-ranking aides, Hamilton Jordan and Tim Kraft. So special prosecutors were named. There were no indictments, but the investigations symbolized the unfairness that the system could generate. It was not Justice Department policy at that time to prosecute cocaine-use charges, and yet the defendants endured the usual stigma and hardships—including legal bills—of individuals under criminal investigation. One of the special prosecutors later observed that had he been a regular prosecutor, he would have exercised discretion and thrown the case out immediately.

Instead of judging Title VI by these negative results and letting the law expire on its five-year timetable in 1983, Congress reauthorized it for another five years. Thinking that it could mitigate the inequities, Congress added amendments designed to increase the attorney general's discretion during preliminary investigations and to tie special prosecutors more closely to Justice Department policy. One amendment even changed the name "special prosecutor" to "independent counsel" on the ground that the old name unfairly stigmatized individuals under investigation, since they might not actually be prosecuted. The argument that ultimately sustained reauthorization was that the new system of independent counsels provided the best way of overcoming apparent conflicts of interest. Congress rejected the view of Associate Attorney General Rudolph Giuliani, representing the Justice Department's position on Capitol Hill, who called the law an effort to govern "by appearance."

During the balance of the eighties, the independent-counsel law, as it was now called, came to symbolize the partisan interbranch conflict that marked the later Reagan years. In February 1984, shortly after President Reagan nominated White House Counselor Edwin Meese III to succeed Attorney General William French Smith, multiple allegations against Meese arose during his confirmation hearings. Meese's nomination was put on hold while the independent counsel, Jacob Stein, sorted through various charges, including alleged omissions on financial-disclosure forms. In late 1985 the Democratic majority on the House Judiciary Committee, on the basis of a 3,000-page document prepared by committee staff, formally asked Meese, now the attorney general, to seek an independent counsel to investigate former Justice official Theodore Olson for making false statements to Congress on a matter relating to a contentious dispute between the president and Congress over EPA law enforcement. Alexia Morrison handled the case, and Olson's constitutional challenge to Title VI eventually led to the Supreme Court's 1988 decision upholding the law in Morrison v. Olson.

In 1986 Whitney North Seymour was named to investigate charges that former Reagan aide Michael K. Deaver had violated restrictions on the lobbying efforts of former government employees. A year later, another counsel, James McKay, was named to investigate similar charges made against former Reagan aide Lyn Nofziger. Nofziger was convicted, but on appeal his conviction was voided on the ground that the law he was accused of violating was too vague. Interestingly, that law was part of the Ethics in Government Act of 1978, which also included Title VI. And just like Title VI, the anti-lobbying law was written to apply only to executive-branch officials. As for Deaver, he was convicted on charges of perjury arising from Seymour's investigation—the original premise of which was undercut by the Nofziger appeal.

In late 1986, Lawrence Walsh was named to investigate charges stemming from the Iran-contra affair. At the heart of these allegations lay a political dispute between the two elective branches, and the two political parties, over foreign policy in Central America.

The 1987 reauthorization hearings themselves illustrated the sharp conflict between the two branches. By then, both houses were controlled by Democrats, and the Democratic Congress sharply disagreed with the Justice Department's implementation of the law. Although eight cases were referred to independent counsels between 1983 and 1987, Congress thought that there should have been more. The report on the Senate reauthorization bill by the Governmental Affairs Committee noted with evident alarm that "only 8 cases, or less than one-fourth of the total caseload [of preliminary investigations], resulted in the Department of Justice's request for the appointment of an independent counsel." During 1987 Attorney General Meese became the subject of another independent-counsel investigation, this one stemming from allegations of wrongdoing involving the scandal-ridden Wedtech Corporation.

The reauthorization bill enacted late in 1987 included amendments designed to reduce the attorney general's discretion in implementing the law and to ensure his accountability to the special division of the court and to Congress. This time around, there was hardly any concern about the law's fairness. During the 1988 presidential campaign, the Democratic Party tried to make an issue of what was called "the sleaze factor" of the Reagan administration, citing the various independent-counsel investigations as evidence. Finally free of his second independent-counsel investigation in July 1988, when McKay decided not to prosecute, Meese (in his last act as attorney general) signed an order subjecting members of Congress to the independent-counsel process. Although his successor, Richard Thornburgh, rescinded the order in 1989, Meese's action was a valediction in keeping with the spirit of the times.

It was also during the latter half of the eighties that independent counsels began behaving in unreasonable ways. Whitney North Seymour, for instance, tried to subpoena the Canadian ambassador to the United States while prosecuting Michael Deaver; a federal court ultimately held that diplomatic immunity blocked his effort, but not before U.S.-Canadian relations had been damaged. For his part, James McKay, the independent counsel in the second Meese case, wrote in his final report that Meese had probably committed crimes—something that no ordinary prosecutor who had declined to prosecute would say publicly, for reasons of simple fairness. Most recently, Lawrence Walsh prosecuted John Poindexter on the basis of a law that had rarely, if ever, been applied to statements made to Congress by members of the executive branch. Walsh, moreover, maintains that if an investigation finds "probable cause that a crime has been committed, it is the duty of the independent counsel to prosecute"—a policy at odds with the prevailing Justice Department standard, which holds that fundamental fairness requires an indictment only if the prosecutor believes that an unbiased jury would convict.

THE PROBLEMS WITH THE LAW

Public records indicate that during the Bush years two more independent counsels have been appointed. One found no basis for prosecuting a minor White House official on charges involving his financial affairs. The other is investigating corruption charges involving former HUD Secretary Samuel Pierce. The Iran-contra investigation is still ongoing from the Reagan years. In all, then, since the enactment of Title VI in 1978, there have been at least a dozen different investigations conducted by eleven independent counsel—about one per year, on average.

In one respect Title VI has been an undeniable success. The many court-appointed counsels have indeed been "independent" of the executive branch; they have been free of any real or apparent conflict of interest. And the very existence of the law may have deterred executive-branch wrongdoing, although no one can say this with certainty.

But the record of the past dozen years shows that disastrous results are incurred by a prosecutorial system in which independent counsels, accountable to no one in the executive branch, have unlimited resources to investigate criminal charges of dubious importance, along with vast discretion to choose investigative procedures.

The law has led to far more investigations than ordinarily would have occurred, including those of a "preliminary" nature at the

Justice Department. Even those inquiries, however serious, that might have been justified have tended to be lengthier and more costly, both to the taxpayers and the defendants, than they would have been had they been handled through the regular process.

"Nothing is too trivial for [independent counsels] to investigate," commented a Justice Department official in 1987. And so it has been. While indictments and prosecutions have been rare—thus demonstrating that judges and juries are the ultimate (and, by the way, the only) constraints upon independent counsels—the counsels' investigations have tended to be multiple and exhaustive, and to delve into matters both beyond the counsels' original jurisdiction and of little interest to regular prosecutors constrained by a larger justice system in which law-enforcement priorities must be set.

This is how the post-Watergate value of making sure that no executive-branch employee is above the law has worked itself out in practical terms. Of course, it has also worked itself out in some (very few) actual convictions. Yet these almost surely would not have occurred had the cases been handled normally. The Justice Department probably would not have prosecuted Deaver or Nofziger, precisely because of the vagueness of the law that they were alleged to have violated; and it is doubtful that the Justice Department would have prosecuted Oliver North or John Poindexter on charges of lying to Congress, because the statutes under which they were charged had not typically been applied in similar situations. After Poindexter's conviction, Independent Counsel Walsh publicly stated that he had been "preoccupied with establishing a legal principle," and he was exactly right; the principle had not previously existed. When it is said that the Iran-contra prosecutions teach that no man is above the law, this means in practical terms that criminal laws seldom if ever applied to executive-branch officials in the representations to Congress will now be enforced. Independent counsels thus have registered their disproportionate influence in act of quite new law enforcement, not traditional ones. No independent counsel has investigated a murder, a robbery, or a stolen vehicle. At least in Watergate there was a hotel break-in.

Whatever else may be said about the executive branch over the past dozen years, it has not experienced a crime wave on any conventional reckoning. What it has experienced is an exhaustive effort to criminalize once-legal activities, many involving politics. While this effort has failed more often than not, those investigated have been the guinea pigs of this post-Watergate experiment. Their fates are worthy of sober reflection.

Still, the fate of the executive branch and our system of government is even more important in the grand scheme of things. The Framers of the Constitution placed a high premium on the need for "energy in the executive." But the independent-counsel law, precisely because its procedures can lead to a formal criminal investigation more quickly and on the basis of less-certain evidence than in the ordinary case, has tended to create unjustified caution and timidity within the executive branch. The Olson case is most illustrative. Theodore Olson was the Justice Department official charged with giving legal opinions and advice to the President and his administration. As a result of congressional testimony related to advice he gave the President regarding an assertion of executive privilege, Olson was accused of misleading Congress and forced to endure an independent-counsel investigation that lasted three years—at great expense, and to no effect. Those who serve in sensitive positions like Olson's must worry that what once was regarded as ordinary public service may now appear to members of Congress (or to some in the media) as criminal behavior that independent counsels must investigate. This kind or worry produces timid tenures in office and indeed the "feeble executive" feared by Hamilton and the Framers. It is not a recipe for good government.

Perversely, the "ethics law" that is the independent-counsel statute creates and breeds irresponsibility. The law invites presidents to hand off to independent counsels their traditional responsibility for investigating and dealing with charges of misconduct on the part of top aides; President Reagan was quite willing to do that, and often. The law also allows Congress to shirk its responsibility to investigate allegations of executive wrongdoing, through the impeachment process if necessary; indeed, the law is an effort to impeach by other means. Congress may delight in an institution that batters (and impeaches) the executive branch, especially when Congress and the presidency are controlled by different parties, but it does not have to be responsible for what happens.

The statute, it is true, contains explicit provision for congressional oversight of independent counsels, something not usually included in a law of Congress. But I am not aware of a single oversight hearing ever being convened to address the work of a sitting independent counsel in those areas, such as expenditures, that appropriately can be opened to public scrutiny. In late 1987 Rep. Clay Shaw, Jr., asked then-chairman of the House Judiciary Committee Peter Rodino to hold a hearing focusing on "the financial accountability of the currently appointed Independent Counsels." Rodino rejected the request, observing: "I am concerned that such hearings would have a chilling effect on the independence of these investigations and would provide a forum for inquiries into the details of the individual ongoing investigations."

If Congress will not oversee the guardians of the executive branch, who will? In our system, in which all power derives from the people, the question is hardly an idle one. The disturbing fact is that independent counsels are effectively accountable to no one. They can make new law, as Lawrence Walsh is doing in the Iran-Contra investigation, and they need not explain why they are doing so.

BACK TO WATERGATE

The independent-counsel law has had perverse and unintended consequences, not least of which has been to wire the Washington political culture in such a way as to make it think that another Watergate might be around the corner whenever there is some allegation of misconduct involving the executive branch. The statute has helped to elevate the pursuit of misconduct to such a high priority that elites in Washington seem to believe, perhaps unconsciously, that the whole point of our political system is to root out official wrongdoing. That, of course, is preposterous. The ultimate issue is not whether public officials guilty of wrongdoing get the punishment that they deserve, but whether the American people get the good government that they deserve. There will be occasions when the pursuit of executive malfeasance must yield to greater concerns that also happen to lie within the president's responsibility. Our politics would be saner without the independent-counsel statute.

And what would happen if the law expired on schedule in 1992? There seems little question that responsibility would be refocused where it should be—in Congress and the president. Presidents would be pressed to confront allegations of wrongdoing, and Congress to investigate and even to commence impeachment proceedings. Both branches could be held accountable for their actions—or lack thereof. The result would be a gain in political perspective and constitutional purpose. The investigation and prosecution of executive malfeasance would cease to have the disproportionate influence upon our politics that they now have. Ordinary politics could be practiced without fear that political disputes would be criminalized and turned over to independent counsels. And the political culture would be freed of the temptation created by the statute to frame allegations of malfeasance in exclusively criminal terms. The president would lose his excuse to postpone, if not to forgo altogether, assessments of the behavior in question in broader terms of ethics and political damage. And resignation would become more viable for those who have engaged in dubious conduct; as it is, individuals use the statute to stay in office while an investigation proceeds, arguing that to leave is to admit the allegations against them.

Of course, presidents or their attorneys general could exercise their discretionary authority to name Watergate-type prosecutors in cases of obvious conflicts of interest. Fewer such prosecutors would be appointed than would be named under the independent-counsel law, but this consequence is hardly undesirable. The decision to name an outside counsel ought to reflect a more balanced judgment than now occurs under the statute, which weights the legal and political scales in favor of a court appointment. In the most serious cases, it is likely that the president would name a special prosecutor.

Supporters of the current system will resist a return to the pre-Watergate system; they will argue that the public cannot have confidence in the work of a special prosecutor named by the president or the attorney general. But they should bear in mind that the old system did work in Watergate. And future presidents no doubt would remember the Nixon example, the prospect of embarrassment and obloquy, and ultimately the prospect of impeachment, should work to prevent a Cox-like firing. Yet even if a special prosecutor is fired, a replacement is likely; after all, Jaworski did succeed Cox.

Watergate remains a seminal event in our recent political history. The lesson it teaches is not the need for the current system of independent counsels, but the viability of our political system. If necessary, ordinary special prosecutors, appointed as they were in Watergate, can investigate charges of misconduct. But the permanent system of court-appointed prosecutors has proved not a remedy but a disease that weakens and impoverishes our political life.

Mr. COHEN. Mr. President, if there is no further debate on this, let me respond just briefly.

I think that Senator COCHRAN has in fact framed the issue properly. He and several colleagues are of the opinion there should be no independent counsel law. And if you have that opinion, then we should not take any action. We should just defeat the bill that Senator LEVIN and I have sponsored. There is no need to have a substitute offered by the Senator from Mississippi.

If you really feel strongly that there is no question about the ability of the Justice Department or Attorney General to carry out his or her mission without the public having some doubt as to whether it was carried out impartially, then we do not need an Independent Counsel Act. You should simply vote against the measure coming before the Senate tonight.

But there is no need for a substitute, if that is what you really believe. What the Cochran amendment does is to simply say, in these cases where there is a cloud of doubt hanging over the Attorney General that she cannot be trusted to carry out an investigation or prosecution, then the President will pick a substitute Attorney General and we will just confirm that Attorney General and have that Attorney General carry out the investigation.

It seems to me it really misses the point. The point is that the President has appointed that individual. That individual is in fact accountable to the President, serves at his pleasure, as the Attorney General does. So we have a principal Attorney General and a substitute Attorney General. Both serve at the pleasure of the President.

So we do not need the Cochran amendment. If you believe we do not need an independent counsel act, let us just vote the bill down tonight and not undertake to restructure it in a way that sets up a redundant process of confirming two Attorneys General.

I suggest the absence of a quorum.

Mr. LEVIN. If the Senator will withhold, I have one additional minute.

The PRESIDING OFFICER. Does the Senator withhold?

Mr. COHEN. I withhold.

Mr. LEVIN. I think the majority leader has indicated we are ready to go to a vote now.

The PRESIDING OFFICER. The Senator from Michigan is recognized, Senator LEVIN.

Mr. LEVIN. Mr. President, let me just say that this law is based on having independent counsel. It is not worth having if we are not going to have an independent counsel. Under the COCHRAN substitute, we do not have an independent counsel. That is what it all comes down to.

I would only repeat two lines, one from our own Attorney General, the current Attorney General, who supports this strongly, and says that there is an inherent—this is our own Attorney General—inherent conflict whenever senior executive branch officials are to be investigated by the Attorney General, and that this bill is a measured, appropriate response to a limited but serious problem, and the administration therefore supports the Independent Counsel Act's reenactment.

Finally, the American Bar Association, which is known for protecting individuals—surely it cares, and we all do, about protecting individuals who are being investigated. We all must. That is why you have to have a balancing such as we have in this bill.

But the American Bar Association, based on a 15-year research analysis, says that this statute has played an effective role in assuring Government's accountability to the American people, and their confidence in the even-handed administration of justice.

Without the independence, you lose the confidence of the American people. That is important, too. Yes, anyone under investigation has rights. Every American has rights, if being investigated, to have some protection. But the American public has a right to have confidence in their Government, and in the ability of their Government to develop and prosecute high-level Government officials.

That is what the Independent Counsel Act is all about. And that is why I hope the Cochran amendment is defeated.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COHEN. 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. COHEN. Mr. President, I move to table the pending 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 question is on the motion to table the amendment.

The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] and the Senator from Georgia [Mr. NUNN] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Texas [Mr. GRAMM] is necessarily absent.

The PRESIDING OFFICER (Mr. WOFFORD). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 68, nays 29, as follows:

[Rollcall Vote No. 382 Leg.]

YEAS—68

Akaka	Cohen	Harkin
Baucus	Conrad	Hatch
Bennett	D'Amato	Heflin
Biden	Daschle	Hollings
Bingaman	DeConcini	Hutchison
Boren	Dodd	Inouye
Boxer	Durenberger	Johnston
Bradley	Exon	Kassebaum
Breaux	Feingold	Kennedy
Brown	Feinstein	Kerrey
Bryan	Ford	Kerry
Bumpers	Glenn	Kohl
Burns	Gorton	Lautenberg
Byrd	Graham	Leahy
Chafee	Grassley	Levin
Lieberman	Packwood	Sasser
Mathews	Pell	Simon
Metzenbaum	Pryor	Simpson
Mikulski	Riegle	Specter
Mitchell	Robb	Thurmond
Moseley-Braun	Rockefeller	Wellstone
Moynihan	Roth	Wofford
Murray	Sarbanes	

NAYS—29

Bond	Gregg	Murkowski
Campbell	Hatfield	Nickles
Coats	Helms	Pressler
Cochran	Jeffords	Reid
Coverdell	Kempthorne	Shelby
Craig	Lott	Smith
Danforth	Lugar	Stevens
Dole	Mack	Wallop
Domenici	McCain	Warner
Faircloth	McConnell	

NOT VOTING—3

Dorgan	Gramm	Nunn

So the motion to table the amendment (No. 1206) was agreed to.

Mr. COHEN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DOLE. 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 New Jersey.

Mr. MCCAIN. Will the Senator from New Jersey yield to me for 15 seconds?

Mr. BRADLEY. I am pleased to yield to the Senator from Arizona.

CHANGE OF VOTE

Mr. MCCAIN. Mr. President, earlier today the Senate considered an amendment offered by Senator LEVIN to the crime bill regarding life imprisonment in lieu of parole. On that vote, No. 379, I voted "yea." I had intended to vote "nay." The final vote was 26–73.

Mr. President, I therefore ask unanimous consent that my vote be changed in the RECORD to reflect a "nay" vote. This request will in no way change the outcome of the vote.

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

Mr. LEVIN. Will the Senator from New Jersey yield to the Senator from Delaware so he can offer an amendment that requires voice vote?

Mr. BRADLEY. I am pleased to yield 5 minutes to the distinguished Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

AMENDMENT NO. 1207

Mr. ROTH. Mr. President, the independent counsel law needs to be reformed before it is reauthorized. I recognize that there are some thoughtful Members of this body who believe that this has been a bad law, both in its theory and its practice, and should not be revived. However, for my part, I continue to believe that this legislation has merit.

The bottom line is there is always the possibility that circumstances will arise—circumstances like Watergate—where the appointment of an independent counsel is absolutely necessary to assure the public of the impartial administration of justice. This fundamental point too easily becomes obscured

in heated debate about the alleged abuses of independent counsels and others involved in implementing the law.

No, the controversy as I see it is not whether the independent counsel law should be reauthorized but how it should be reformed. Experience under the act shows that we must make some changes. We need to address the nature of the prosecution as well as who is to be prosecuted.

The issue that I will address is equally important. Experience under the independent counsel law has taught me that it is very difficult to forecast by a frozen legislative formula precisely which individuals should trigger the invocation of an independent counsel. The reported legislation embraces the cast of characters from Watergate. The list of mandatory coverage includes over 50 persons, perhaps up to 75, and even reaches outside of government to embrace private individuals such as officers of national campaign committees. All individuals not on the mandatory list may nevertheless be subject to an independent counsel investigation at the option of the Attorney General.

The mandatory coverage list is generally defended by proponents of the legislation as articulating a separation-of-powers rationale. But the inclusion of private individuals provides the clue that the rationale ought to be individuals who are politically important to the administration. It is often said that the purpose of independent counsel legislation is to assure a skeptical public that Washington insiders are not getting special treatment. But such skepticism knows no separations-of-powers limits. The public may wonder whether special treatment is being given to a politically well-connected individual whether or not he is employed in the executive or the legislative branch.

As I have reflected on the mandatory coverage issue over the years, I have come to the conclusion that the list is both too broad and too narrow. What I propose as a solution is to refine the bill's mandatory optional dichotomy to include three categories: First, mandatory coverage that includes only the President, the Vice President, and the Attorney General on the basis that no one can credibly prosecute himself or his superiors; second, mandatory review and certification for individuals in the politically well-connected category in which would fall Cabinet officers, senior White House staff, senior Justice Department officials below the Attorney General, and also Members of Congress; and third, optional coverage for everyone else.

The second category is the new category and thus bears further discussion. My proposal would treat individuals in the second category like those in the first category unless the Attorney General certified that the appointment of an independent counsel was not necessary, in view of the particular circumstances, to assure the public that the covered individual was not receiving favorable treatment because of the individual's status. The second category would include Members of Congress because there are, indeed, occasions where the efforts or the vote of a given Member may be critical to the President in getting his program through Congress.

In such circumstances the public may wonder about favorable treatment of that Member. My proposal would not require that an independent counsel be appointed for any individual in the second category, only that the Attorney General review and explain the decision whether or not to seek appointment on a case-by-case basis.

It is true that my proposal would substantially shrink the first category, those mandatorily covered, from over 50 to just 3 individuals. But they stand alone in my view as the only individuals for whom coverage is necessary in each and every case, regardless of circumstances. Other individuals may warrant coverage, but for everyone other than the President, the Vice President, and the Attorney General, coverage depends on the circumstances.

Therefore, my amendment would reserve mandatory coverage only for those who, by their status, will always require it. For other high level officials in the political branches, my amendment would rebuttably presume coverage, leaving it open to the Attorney General to explain why an independent counsel is unnecessary in any case where such appointment is not sought. For those remaining—friends, heavy contributors, or whoever, I would preserve the option of the Attorney General to invoke an independent counsel where a personal, financial, or political conflict of interest exists.

Experience has shown that we are not clairvoyant enough to write into statute a formula for determining the exact cases where an independent counsel would be reassuring. Admitting that, one must then conclude that it is futile to try to predict in statute. If we continue to try, mandatory coverage will be overly broad while still missing cases that merit the appointment of an independent counsel. That is much as we have had it in the past. That the coverage of the HUD scandal was mandatory and that the coverage of Iran-Contra was optional are striking examples of our previous futile efforts to get it right.

Since the excessively wide mandatory coverage of the legislation has not proved itself useful, I believe it would be preferable to narrow the mandatory coverage and provide greater discretion to the Attorney General in invoking an independent counsel. With over 3,000 political appointees in the administration and with 535 Members of Congress there are many possibilities for the appropriate use of an independent counsel. But not every possibility should be mandatorily covered. Whether we like it or not, we must trust the Attorney General. Mandatory coverage should be reserved only for those individuals whose alleged criminal violations will always necessitate an independent counsel. In my opinion, only the President, the Vice President, and the Attorney General meet that test.

Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Delaware [Mr. ROTH] proposes an amendment numbered 1207.

Mr. ROTH. 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 18, line 13, strike all after the period down through page 20, line 2, and insert in lieu thereof the following:

SEC. 4. APPLICABILITY OF INDEPENDENT COUNSEL PROVISIONS.

Section 591(b) of title 28, United States Code, is amended to read as follows:

(b) PERSONS TO WHOM SUBSECTION (a) APPLIES.—

(1) Subsection (a) shall apply to each of the following persons in all circumstances:

(A) the President;

(B) the Vice President; and

(C) the Attorney General.

(2) Subsection (a) shall apply to each of the following persons, unless the Attorney General certifies that in the circumstances presented the preliminary investigation and any subsequent investigation of such person by the Attorney General pose no personal financial, or political conflict of interest and that the possible appointment of an independent counsel would not be necessary to assure the public of the impartial administration of justice:

(A) any Member of Congress;

(B) any individual serving in a position listed in section 5312 of title 5;

(C) any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5;

(D) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5;

(E) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

(F) any individual who held an office or position described in paragraph 1 or in subparagraphs (B) through (E) of paragraph (2), for 1 year after leaving the office or position or until the President under whom the individual served leaves office, whichever period expires first;

(G) any individual who held an office or position described in paragraph 1 or in subparagraphs (B) through (E) of paragraph (2) during the incumbency of 1 President and who

continued to hold that office or position for not more than 90 days into the term of the next President, until the individual leaves such office or position; and

(H) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of the committee exercising authority at the national level, during the incumbency of the President.

Mr. LEVIN. Mr. President, the Roth amendment would limit mandatory coverage to the President, Vice President and Attorney General.

It would provide presumptive coverage for Members of Congress and others now subject to mandatory coverage.

Reducing mandatory coverage to just three people does not make sense. Reducing mandatory coverage to 3 people and enlarging presumptive coverage by 535 makes even less sense.

The point of the independent counsel law is to deal with inherent conflicts of interest when an administration investigates itself. The Roth amendment essentially says there is no inherent conflict for anyone but the top three officials in the executive branch. Attorney General Reno herself admits that the inherent conflicts go much further. She testified that there is an inherent conflict of interest in investigating the top officials in the administration currently named in the statute.

Mandatory coverage is key to independent council law, because if Justice can choose not to use independent council process, it often will. For executive branch top officials, there should not be that choice, because there is an inherent conflict of interest, and the public has no confidence in an administration investigating itself.

The Roth amendment is a bad idea for the executive branch and unappropriated for the legislative branch.

Mr. ROTH. Mr. President, S. 24, as reported from the Committee on Governmental Affairs, provides mandatory coverage of the independent counsel law to a career civil servant—the Assistant Attorney General for Administration—and to persons not even employed by the Federal Government, such as the chairman, the treasurer, and other officers of the national campaign committees of the President. While it provides mandatory coverage for people like that, it does not provide mandatory coverage for a single Member of Congress.

How did we end up with such a silly result? Basically, the original drafters in 1978 looked at the Watergate cast of characters and tried to create general categories out of the individual circumstances presented. Had Iran-Contra or Travelgate rather than Watergate been the defining moment for this legislation, the mandatory coverage provision might have been rather different.

Resistance to including Members of Congress has been predicated on self interest glorified as constitutional principle. Those opposed to including Members of Congress argue that separation of powers is the rationale for this legislation, that the public cannot trust someone in the executive branch to prosecute someone else in the executive branch whereas the public has no reason to doubt the integrity of a prosecution directed at a Member of Congress. The gist of the argument is that the executive branch is one big team of which no Member of Congress is ever a member.

The problem with the argument that Members of Congress are just friends of the administration but not family is that favoritism is not necessarily limited to family. Yes, there is distinction between the branches. Yes, there is a distinction between family and friends. But those distinctions are irrelevant to the concerns that the American people have with what they perceive to be a buddy system in Washington, DC. Favoritism is not limited to the executive family. That is the view of the American people. They are correct. We are deluding ourselves if we continue to shield ourselves from mandatory coverage of the law under the banner of the separation of powers doctrine.

Members of Congress do not, of course, pose the same problems for an Attorney General as do the President, the Vice President, or the Attorney General himself or herself. However, there is no question in my mind that there are indeed situations where the investigation or prosecution of a Member of Congress may strain the credibility of the Justice Department. We may be witnessing such a situation now.

But it is equally true that not every allegation against a Member of Congress or a Cabinet officer merits calling into play the magnum force and extraordinary expense of an independent counsel. The only accurate prediction is that the appropriateness of an independent counsel will depend on the circumstances. Our past effort at fixing a formula in statute to predict situations where an independent counsel would be necessary to assure the public have proved to be hit-and-miss.

So I have come to conclude that the frozen formulation of statute cannot predict with precision and that as a consequence, discretion must be reposed in the Attorney General except in the three instances where no Attorney General should be asked to prosecute—where the alleged wrongdoer is the President, the Vice President, or the Attorney General. Discretion must be reposed somewhere. Someone must be trusted. I am confident that the judgment of Attorneys General in invoking independent counsels under my amendment would provide more accurate over time than any fixed statutory formula, which will undoubtedly prove—like those in the past—to be either too broad or too narrow, or perhaps both.

My amendment would provide mandatory coverage for all those previously covered in that manner but it would also include Members of Congress. For all these covered persons—except the President, the Vice President, and the Attorney General—the Attorney General could, in effect, waive mandatory coverage in the particular circumstances by certifying two things: First, that the investigation of the person covered would not pose a personal, financial, or political conflict of interest, and second, that the possible appointment of an independent counsel would not be necessary to assure the public of the impartial administration of justice.

This certification process makes the Attorney General accountable for the invocation of independent counsels. If and when the Attorney General makes a judgment with which we disagree, we have the right to sear the Attorney General's conscience with our loud protests. That is how it should be.

My amendment is the only feasible solution to the central question that grips this Chamber: how can we cover Members of Congress as equally as senior members of the executive branch without significantly increasing costs and without significantly diluting the specialness of an independent counsel? My colleagues will recall that in earlier versions of the law, independent counsel were known as special prosecutors.

I suppose someone might suggest that we go all the way and provide mandatory coverage for Members of Congress as well as the 3,000 political appointees in the executive branch. That way no one escapes the net of the independent counsels. But such an approach would be costly, would lose the special quality of independent counsels, and would impliedly show unwarranted distrust in the Justice Department.

But my amendment does not go to such extremes. It provides a middle ground in the debate whether Members of Congress should be mandatorily covered. It would treat Members of Congress the same as executive branch officials with just three individual exceptions noted before. And it would provide for an independent counsel where there is a conflict of interest and where needed to assure the public of the impartial administration of justice.

I believe that this amendment is the answer to the question that has troubled us so long. As with any new idea, I would hope that Members would put aside their preconceived opinions and give this issue the thought it deserves.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1207) was rejected.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. COHEN. Will the Senator from New Jersey yield for a clarification?

Mr. BRADLEY. I am pleased to yield to the Senator from Maine.

Mr. COHEN. Mr. President, for the benefit of our colleagues who may wish to depart the Hill for a period of time, it is the anticipation of Senator LEVIN and myself that we would not have another rollcall vote prior to 7:30. There has been no determination made as of yet as to whether there will a rollcall vote at 7:30, but we do not anticipate any rollcall votes between now and 7:30.

Mr. LEVIN. Mr. President, I do concur in that.

It is my understanding that the Senator from New Jersey has the floor and is going to speak for approximately 30 minutes, but not on an amendment relative to this bill. It is our intention that if rollcalls are needed on amendments relative to this bill, they not occur before 7:30.

The PRESIDING OFFICER. The Senator from New Jersey.

THE NORTH AMERICAN FREE-TRADE AGREEMENT

Mr. BRADLEY. Mr. President, later this evening, the U.S. House of Representatives will vote on the North American Free-Trade Agreement. As a prelude to the Senate's consideration of the North American Free-Trade Agreement in the upcoming days, if it is passed by the House of Representatives, I have come to the floor today to talk about our general economic circumstance in the country and to try to locate it in the lives of several individual Americans and make some specific recommendations as to how we should see the NAFTA debate, as well as our current economic predicament.

Mr. President, George Fatemi went to work for a major U.S. steel company when he was 19. He lost that job when big steel could not compete with new technology from Japan during the 1970s. He got another job with a glass company, but they laid him off during the 1982 recession. In both cases, he could not take his pension benefits with him because he had not worked long enough to vest. George then hooked up with a defense contractor making missiles until 1992, when the defense cutbacks axed him. Three jobs and three layoffs. George was left with a minuscule pension and payments of $460 a month if he wants to continue health coverage for his family.

Five years ago, Mary and Charles Jones lived the American dream in New Jersey. Mary did marketing for AT&T; Charles was a lawyer with IBM. They had a house in the suburbs, two children, and a 3-week family vacation every August. Then both of them lost their jobs. Today Charles works for a small business selling computer software, and Mary consults, but not often. No more vacations, no health benefits from the jobs. The two kids are now in high school, and the oldest wants to go to MIT, but the family cannot afford it.

Louise Pearl is a single mother who works as a secretary to the president of a construction firm. The office construction boom of the early 1980's has turned into a construction depression in the 1990's, and in the last 18 months, the firm has shrunk from 46 workers to 15. If the company goes under, Louise will need training to get a new job, but she will not have the money to pay for it.

These composite portraits of Louise Pearl, George Fatemi, and the Joneses are not unusual. There are millions of Americans who find economic security an unattainable dream. It is as if Americans are adrift on a gigantic river of economic transformation that carries away everything that resists its swirling currents. Americans are being buffeted by new economic forces as surely as the communities along the Mississippi last summer were being hit by a 100-year flood. Not since the age of democratic revolution coincided with the industrial revolution, over 200 years ago, has the river of economic change flowed so powerfully. What makes the experience so hard is that we have to cope with four fundamental transformations taking place in the world simultaneously.

The 1st is the end of the age of ideology. With the fall of Marxist-Leninist communism and the triumph of democratic liberalism, the content of the United States-Russian conflict disappears.

With superpower peace breaking out, people feel more secure, and the arsenals of the United States and Russia can be dramatically reduced. But for millions of people who work in the defense sector, peace has an even more personal consequence than freedom from first strike. It has cost them their jobs. In 1987, there were 7.2 million people working in what President Eisenhower called the military-industrial complex. In 1992, it was 6.3 million, and in 1997, it will be 4.4 million—almost 3 million job losses. The economic impact of the West's triumph is the downsizing of an entire sector of our economy.

The second transformation is the explosion of world markets. There are 3 billion more people in the world market today than just 10 years ago, and most of them can become our customers by the turn of the century.

During the last decade, not only have Communist societies crumbled and their replacements opened up to the world, but authoritarian and protectionist regimes in Latin America and Asia have also fallen. Instead of billions of people living in closed economies, unwilling to trade and bent on producing everything they need domestically, with a politics that consists of arguing over which subsidies go to which monopolists, country after country—Poland, Mexico, Argentina, India, Vietnam—has liberalized economically. They are encouraging exports, accepting imports, and seeking capital worldwide.

A market of three billion more people represents billions of potential sales of computers, cars, Coca-colas, and CDs, as well as capital goods to electrify a continent, to build more ports and highways, to equip new hospitals, and to build new homes. It also means a billion more workers ready to challenge our own workers in the production of tradeable goods. Clearly, some American workers will lose their jobs. To take advantage of the new markets will demand greater efficiency from our own companies, more complex skills from our work force, and a better corporate strategy for exports. But the result of increased competition will be higher quality and lower prices for our consumers and thousands and thousands of new higher-paying jobs for our workers.

Not since the end of the 19th century has the world economy been as open or the potential for worldwide human betterment through open markets been as great. Since political openness usually follows economic openness, democracy's roots are extending deeper and deeper into more societies than ever before. And yet there are dangers, too.

In the early 20th century, ethnic tension and nationalist fervor snuffed out the flame of hope represented by open trade. Both irrational impulses remain alive today. Ethnic tension threatens to engulf more and more nations in costly conflict: witness Bosnia. Nationalistic fervor in its Ross Perot-Pat Buchanan form calls for protection from international competition and advocates trade only with developed countries like us. Witness the debate over NAFTA.

It is possible that we will close off to this wider market and not accept the challenge, but to do so has consequences, and make no mistake, it means a lower standard of living, a fraying social fabric, and a refusal to lead in a new world.

The third transformation is driven by man's advancing ability to shape his world. It is the knowledge revolution. Through knowledge applied to telecommunications, we communicate without travel. Through knowledge we combine elements in new ways to make materials that do not exist in nature to do jobs with less energy and less assembly. Through knowledge we transform genetic material and worry less about pest control.

For centuries, the determinants of national wealth have been capital, natural resources, and an abundance of labor. Today none of them is as important as knowledge, which has changed the production process and multiplied

the types of services available. Applied knowledge can make society cleaner, wealthier, and more humane.

Manual labor serving a machine, whether it is in Detroit or Kuala Lumpur can never produce as efficiently as a computer serving man. It is just that simple. That is why in the future the countries with the most unskilled workers will have the biggest economic problems. Let me repeat. The countries with the most unskilled workers will have the biggest economic problems.

America is further through that revolution than most people imagine. Manufacturing remains essential to our economy. We continue to make things, but we do it with fewer people. When George Fatemi lost his job at the steel company, there were 721,000 steel workers in America, and today there are only 374,000. But those 374,000 are highly efficient. Partly as a result, imports today supply only 15 percent of the U.S. market. This story is being told over and over again in our economy as companies in order to compete become leaner, producing more with less.

To resist the trend toward knowledge-based production is to give the future to those in other countries who capitalize on the inexorable transformation. Yet the challenge to our economy is clear. If we produce the same product with less labor, then there have to be more, not fewer, jobs, producing more new products or serving more new needs.

An exploding knowledge sector built on a sound economic foundation can create these jobs, but the skill requirements will be higher. A worker tomorrow will require a substantial amount of formal knowledge and the capacity and opportunity for continuous learning. Successful work careers will exist only for those who can match what they know to what needs to be done. The days of the 40-year career on the assembly line of one company making one product, quite frankly, are over. Sequential jobs with different companies, even sequential careers, will be the norm.

The fourth transformation has to do with the connection between economic growth and debt. America is mired in a 5-year period of low growth. After the collapse of 1980's false optimism, people are reluctant to spend or to invest. Usually, a government would jump start an economy out of recession either by lowering interest rates, or by giving a tax cut or spending more money on government projects. But interest rates are at a 30-year low, and increasing the deficit to stimulate the economy risks a no-confidence vote from millions of worldwide investors. In short, the gigantic national debt has robbed us of savings just when we need them most for new investment and new training.

America got hooked on the narcotic of debt in the 1980's. It become our worst addiction. Between 1980 and 1987 consumer credit increased 95 percent. Government debt went from $800 billion in 1980 to $4 trillion in 1992. Personal debt began to decrease in the early 1990's as companies and individuals slammed on the brakes. Government kept spending. As 1993 began, the debt over the next 5 years was expected to go from $4 trillion to $5.4 trillion, and even after the 1993 Clinton budget, it will go to $4.9 trillion. The thing that most appalls me is the public and social policy consequences that these numbers imply. The General Accounting Office told me that if nothing were done about the debt, by 2020 every American's income—all of our income—would be 40 percent less than it overwise would be. We will get poorer as we send more and more of our tax dollars to creditors and invest less and less in job-creating, wealth-producing assets. The existence of the debt literally transforms our prospects. It mortgages our children's future and robs them of the expectation that hard work usually yields reward.

So there they are: The end of the ideological cold war, the explosion of world markets, the knowledge revolution, and the gigantic debt. We feel so unprepared, even disoriented, by these four transformations, because no one predicted their cascading impacts on our prospects.

No one told us, not even the best of our intelligence analysts, that the Soviet Union would disappear without a whisper and leave us little need for a vast military machine. No one told us that Adam Smith would replace Marx on the Third World's best-seller list. No one told us that companies resisting change would stumble even if their names were AT&T or IBM. No one told us that gigantic American budget deficits would be financed gladly by the rich of the world and that Americans would continue merrily and irresponsibly consuming our future. No one told us that we could spend more than anyone else in the world on health care and still have millions with no coverage. No one told us that just as we educated more Americans to college level than any other country, the mediocre quality of many American elementary and high schools would be apparent to all. No one told us that the Japanese would be accepted into ASEAN or that China would be burgeoning forward to become an economic superpower. No one told us that the Europeans of Brussels could not displace the French of Paris, the British of London, and the Germans of Berlin as the centers of tribal action, political, and economic drama.

Each of these events has shaped what we produce, how we trade, and pushed us further into uncharted economic waters, with more workers anxious that it will be their job that the swirling river of economic transformation will sweep away next. To survive, we must lighten our load, fix our steering wheel, and get used to living without the certainties of another time. General Motors, General Electric, Dupont no longer assure lifetime jobs. Natural resources will not be decisive in the coming economic competition. Workers cannot be seen as simply discardable cogs in a machine. The cheap labor of larger and larger numbers of unskilled workers will not produce economic growth or generate higher productivity any place in the world for long. Military might will not provide substantial benefits for an economy. A democracy in time of peace and in absence of clear threat will not ever spend $310 billion on defense again. Ethnic and racial tension cannot be viewed as irrelevant to the economic potential of our workers or the collective capacity of our citizens.

What we have always assumed about each generation of Americans having a higher standard of living is not guaranteed. New realities can prevail. Our leaders must be honest with us, and we have to be honest with ourselves. Above all, we have to resist the temptation to believe that the only course is to hold on to what we have and how we do things now.

Mr. President, the fundamental insight to hold on means to lose, as individuals, as companies, and as a nation. No matter how good a worker George Fatemi was in his third career, when the missile orders stopped, so did his job. The Joneses who worked for IBM and AT&T could not have secure employment when IBM failed to see the technology shift, and AT&T, with deregulation, stood unprepared for worldwide competition. To believe that a labor-intensive apparel shop can compete with a modernized factory is, however well-intentioned, a delusion. The idea that we should trade only with countries like us of equivalent living standards ignores that other nations "like us" have absolutely no intention of limiting their trade and economic interaction to us. Underfunded pensions; deficits that can only be financed abroad; educational concepts that presume formal learning ends at 24; personal behavior that leads to skyrocketing health care costs: All of these cannot continue. If we hold onto these misconceptions and destructive patterns, we risk awaking one morning like a town after the river's flood recedes to find our communities broken and the health of our families failing.

For those in the midst of the turmoil, our heart must go out to them. They are not interested in theories. They have to worry about putting food on the table and a roof over the heads of their families. For too long policymakers have ignored their needs and mistaken their loyalty for indifference.

But the morning after, when the tears of compassion dry up, what people want most is a direction to follow that makes sense, a path to take that leads to a job. We must get about the business of dealing with our reality, not hiding from it or denying it or cursing it.

Without minimizing the difficulty, we need to see these transformations as part of a consistent and continuing American saga. We always were a nation suspicious of ideology, as Alexis de Tocqueville said. We always did seek competition to protect liberty, as James Madison stressed. We have always sought to be recognized not for our muscle, but for our wit and agility and values, as Thomas Jefferson argued. We hate being in debt and desperately want to pay our own way, as Andrew Jackson demanded. These transformations are then in character for America, as they are not for much of the world. They are fundamental to the American crisis and at the same time a key to America's renewal. We simply have to know where we want to go and to build a platform that can allow us successfully to navigate the currents of our present economic waters.

I believe Government has a role in this time of transformation. I believe that role is that Government must assure all Americans access to an economic security platform. Given our gigantic national debt, we must build this platform with precision and hardheadedness, conserving our resources at every juncture. As platform designers, we must not respond to the siren calls of political expediency or short-term palliatives; we must steer between too many Government interventions, subsidies, and entitlements to keep the market dynamic and too few to rescue Americans from feeling so vulnerable and paralyzed. We must establish a set of initiatives that does not hobble the efficiency of market forces, but liberates our workers so they can realize their potential.

Who among us does not believe that Mary and Charles Jones have a lot more to contribute to our economy than their current employment would allow? Can we afford to let a worker like George Fatemi not work? Does anyone of us believe that our economy should be deprived of Louise Pearl's talents just because she cannot afford to update her 1970's skills for a 1990's job?

What specifically do I mean by an economic security platform? My economic security platform has three planks. It consists of, and is limited to, a guarantee of basic health coverage, an opportunity for lifetime education, and a guarantee of pension security.

First is health care. It should be available to all Americans. If any American loses a job, changes a job, grows old, experiences a serious illness or a difficult childbirth, confronts an injury to a spouse, or needs regular checkups, that American should be guaranteed access to quality health care. And we simply must control its costs. We cannot compete economically if we pay a health "tariff" of 4 to 7 percent more of our GNP for health care than any other developed country. This premium amounts to a giant health tax on all our goods. So the first is health care.

Second is lifetime education. We cannot survive with 40 percent of Americans with high wages, 40 percent with low wages, and 20 percent unemployable. The only sure way that America will guarantee its workers higher wages is if they have higher skills. The more American workers with superior talents, the higher productivity will be, and the higher worker productivity, the faster the economy will grow. It is that simple.

Given the demands of a knowledgeable economy, the opportunity to advance and learn anew must be available for workers at every stage of a career. Lifetime education means counseling, training, and relocation. Counseling means making it clear that sequential careers will be the norm; that changing a job usually will not be the worker's fault and might not even be the company's; that is just in the nature of things in an economy that rewards innovation during a time of rapid change.

Counseling also means deciding on the skill to be obtained and determining where to get it. Training means actually learning a new skill and using government financial assistance to help pay for it. Relocation means finding a new job that employs the newly acquired skills. Access to lifetime education can be assured with income contingent self-reliance loans, which allow any American to get a loan if he or she agrees to pay a small percentage of future income to the government until it is repaid. Part of access amounts simply to coordinating the 123 existing education programs so that people know how to apply for them.

So the second plank in the platform is lifetime education.

The third plank is pension security. One hallmark of the new age must be labor mobility. That means that when someone works and gets pension benefits, they should be portable. The worker should have his or her benefits guaranteed, companies should fund their pensions adequately, and government should assure that promises of income security for the aged are kept. The trends toward defined contribution plans and stagnating participation levels challenge this promise, as does the state of the Pension Benefit Guarantee Corporation. Greater participation in the system would provide more security and increase our private savings rate.

Our current patchwork pension system is failing large numbers of our workers. Too many are facing uncertainty in their later years. One sharp correction in the stock market, and our current Federal insurance program would be in grave danger and the Federal budget deficit would skyrocket. With the lessons of the S&L debacle in mind, we need to strengthen the pension system today rather than wait for it to falter tomorrow. It starts with candor. It may take public funds; it will at least require Government ingenuity. But we must begin.

Mr. President, that is it.

With an economic security platform, people can live with less anxiety because job loss will not be fraught with the danger of catastrophic health costs or lost pensions, and lifetime education will offer the chance to start anew if you want to work for it. The economic security platform is individual and family focused. It deals with issues that erupt in people's faces. It assumes that failure has some limits and bad luck can't run its full course. It gives the middle class, as well as working people who are poor, a place to stand—a foundation from which they can regroup and then move forward on their own behalf.

But the economic security platform is limited. It is not a slippery slope back to expanded Government entitlements. It is not an attempt to avoid all risks. It does not guarantee income or prevent failure or oversee how people live. The next level of both security and opportunity must come from building strong communities where people live and work.

Government programs do not create self-worth; that's what families, neighbors, and communities do. That is why neighborhood leadership and community structures are so important and should be encouraged. This is as true for the problems of rebuilding urban America as it is for the problems of small towns whose factories have closed. Communities are to humane living what markets are to international competition; both work optimally when given the freedom and the incentives to find their own paths to meet specific needs bests.

In this sense, the economic security platform is different from a social safety net. The safety net of government subsidies is where you end up if everything is falling out from under you and you are about to hit bottom. The economic security platform is wnere you rest before you advance. It gives reassurance before a continued pursuit of success within our national community.

Health care, lifetime education, and pension security. "Is that it?" one asks. "Aren't there hundreds of anecdotes about failed lives that, if only there had been this or that government program, someone could have pursued happiness or someone else could have avoided tragedy?" Perhaps. But the

economic security platform is strictly and intentionally limited because of resources—we have a gigantic debt—and because of theory—the market's dynamism must not be lost. I have tried only to build a platform on which a nation can steer through troubled waters. To add a house of additional new programs, mandates, and work rules would create a structure that would not be seaworthy.

What America should not do is emulate Europe. In America, overall wages have been stagnant since 1973, 1974, and 1975. During the 1980's, the knowledge superstars arrived. Vast salaries went to the brightest, and no raises went to the unskilled. In Europe, it is not a problem of stagnating wages. In Europe, unemployment has been high. Today it is 11 percent, going higher. The joblessness in Europe is caused in part because European governments have created a rigid labor market that discourages the hiring of new workers and prevents the shedding of incompetent workers, while at the same time it burdens business with cumbersome work rules even to the point of determining the required number of vacation days in any firm of virtually any size. In addition, income-support payments go on forever and fearsome restrictions confront anyone who wants to start a new business. Such overregulation stifles an economy's ability to adjust to new circumstances. America's challenge is to raise take-home pay and to reduce the disparity of income without creating the disincentives to job creation that exist in Europe. Only a healthy economy that creates jobs will dampen people's worries. Only an economy that creates new businesses will create new jobs.

Beyond finding a balance between encouraging business and job creation, and providing every American some security in times of transformation, Government needs to get its own fundamentals correct.

Government needs to spend less money overall with more of the money it does spend going to public investment in infrastructure, education, and R&D, which stagnated even as our population grew over the last two decades. Less money should go to transfers from one group to taxpayers to another, particularly if those transfers are unrelated to need.

Taxes should not penalize job creation, but rather hit consumption. Payroll taxes should be replaced by consumption taxes. With less tax penalty for hiring, more workers can be hired and wages can rise too.

All Government spending programs should be sunsetted—presumed to expire unless reauthorized. The President should have a line-item veto both for appropriations and for special interest tax loopholes, both of which increase the debt.

International markets should stay open and competition fierce so that the highest quality and lowest price can be assured and export jobs can grow. That means assigning absolute priority to approving the North American Free-Trade Agreement and completing the GATT round, which reduces barriers to worldwide trade.

Mr. President, as I speak, the House is debating the North American Free-Trade Agreement. There will be a vote within the next couple of hours.

I cannot help but see NAFTA as the test case of whether we hold on and lose, or transform and win. To defeat NAFTA will solve none of the problems generated by the four transformations, the end of the cold war, the knowledge revolution, explosion of world markets, the gigantic Federal debt. To defeat NAFTA will solve none of the problems that flow from those transformations.

To pass NAFTA will improve the chances for more jobs in America and a stronger economy to deal with the real threats to American jobs coming from Europe, Japan, and China. To defeat NAFTA will darken the chances for GATT, and the defeat of both will deny America its major source of job creation during the next few years—export jobs. Ultimately, if world trade expands, everyone can win. To pass NAFTA is to take the challenge headon.

People such as Louise Pearl, George Fatemi, and the Joneses will be helped by the economic security platform. Their children will be helped by keeping the market open and businesses unburdened by excessive regulation. Their children will be helped by more public investment and fewer transfers. Their children will be helped by reducing payroll taxes and increasing taxes on consumption. Their children will be helped by a major reduction of the national debt.

With an economic security platform to help us navigate the surging river of economic change and a healthy, dynamic market awaiting us at our destination, we all have reason to hope. America is better off than our competition. We have turned transformations to our advantage before. Remember the ages of industrialization and automation. We are more flexible than the rigidified economies of Europe and more ethnically diverse than the economies of Asia. Because of those strengths, we are better able to penetrate markets worldwide with goods that are high quality and reasonably priced. What is needed for us to catch the next wave of growth is national leadership that levels with the people, that tells the hard truths as well as the good news, that guides as well as empathizes, and that sees our path clearly and shows the energy to persevere.

One final image. The mythical Ulysses, when he was sailing where the siren songs were sure to be too seductive, plugged the ears of his sailors and had them tie him to the mast so that neither they nor he would plunge into the water and drown. I have painted a picture of turbulent waters where many people on their own, without a security platform, will in fact drown. I have suggested that we cannot fail to get into the middle of this new world of international competition or knowledge production because each promises hope as well as anxiety. I have said that if we heed the siren song of every new idea of what government should do, what government should spend money on, we will never navigate these waters. If we tie ourselves to the mast of efficient government, which does what has to be done and jettisons the rest, we will not need to plug our ears in order to survive and prosper.

I continue to believe in a strong, intelligent, and caring America—one that sets its compass and pursues a course that can provide leadership by example to the world as well as sustenance and security to ourselves. A national economy free of the burden of debt, populated by educated citizens ready to work and to care for their neighbors must be our goal. A dynamic, market-driven economy that remains open to the world must be our destination. A transformed and transforming America can get beyond the river's turbulent waters with our optimism intact and our future prospects bright.

I yield the floor.

[Applause in the galleries.]

The PRESIDING OFFICER (Mrs. BOXER). The galleries will please come to order.

Mr. BRADLEY. 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. DOMENICI. 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. DOMENICI. Madam President, I ask unanimous consent that I be permitted to proceed for up to 7 minutes as in morning business.

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

GOVERNMENT REFORM AND SAVINGS ACT

Mr. DOMENICI. Madam President, today in the Washington Post on the Federal Page there is a very interesting article. It says: "Budget Office Punches Holes in Reform Package Projections."

The subheading is: "Congressional Budget Office Letter Says That the Gore Proposal Would Save Millions, Not Billions."

It was not too long ago when our President suggested to all of us assembled in a joint session that the time

had come to use the Congressional Budget Office as the authentic source of budget information. I believe the sense of the discussion was that the time had passed for smoke and mirrors and that the time had arrived to put the plain truth on the table; and that when we needed a real referee—and I am paraphrasing—that we ought to use the Congressional Budget Office because they were neutral and expert.

I would like tonight just to take a few minutes, building on this article that I just commented on.

I ask unanimous consent that the entire article written by Eric Pianin and Stephen Barr be printed in the RECORD.

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

[From the Washington Post, Nov. 17, 1993]

BUDGET OFFICE PUNCHES HOLES IN REFORM PACKAGE PROJECTIONS

(By Eric Pianin and Stephen Barr)

The Congressional Budget Office yesterday punctured White House projections that the first installment of the administration's "reinventing government" plan would save billions of dollars over the next five years, calculating the savings at only $305 million.

When the administration unveiled its package to implement 40 recommendations made by Vice President Gore's National Performance Review on Oct. 26, the White House said the proposals would save $9.1 billion over six years and $5.9 billion over five years.

However, CBO Director Robert D. Reischauer said in a letter to congressional leaders that the proposed Government Reform and Savings Act would generate a mere $170 million in new receipts and revenue and would reduce Social Security spending by $150 million.

When taken together with the $15 million in increased spending that would be required under the proposed legislation, net savings would total only $305 million from 1994 to 1998, according to CBO.

Leon E. Panetta, director of the Office of Management and Budget, said the administration believes "our estimates are solid and we stand by them."

In his statement, Panetta said, "Given the nature of the reforms the administration is performing, I am not surprised that CBO's technical rules cause significant scoring differences on this legislation."

While disputes over how to calculate the budget impact of proposals or program changes are almost routine between OMB and CBO, the CBO report is something of an embarrassment for an administration that has touted the cost-saving virtues of "reinventing government."

Congressional budget experts, dubious of the administration's savings claims, said last week that Gore's proposals are not likely to produce even one-third of the $108 billion of projected overall long-term savings.

Yesterday's findings might also provide some ammunition for conservative Democrats and Republicans who are pressing for approval of a $103 billion package of spending cuts in the face of stiff White House and congressional leadership opposition.

"I think it makes it very clear that you can't simply vote for [the reform and savings legislation] and pretend we've done anything about the deficit," said Rep. Timothy J. Penny (D-Minn.), who along with Rep. John R. Kasich (R-Ohio) is sponsoring a bipartisan deficit-reduction plan. "That, alone, is less than peanuts."

A senior aide to the House Republican leadership said the Penny-Kasich proposal "becomes the only game in town in terms of true deficit reduction" in light of the CBO report.

Congress approved a $496 billion package of tax increases and spending cuts in August, but conservative Democrats and Republicans have called for more far-ranging savings.

The House is scheduled to vote this weekend on a number of proposals for further deficit reduction, including an administration proposal to trim $1.9 billion from fiscal 1994 spending bills, a proposal offered by Reps. Barney Frank (D-Mass.) and Christopher Shays (R-Conn.) to save $21.2 billion over five years, and the more ambitious Penny-Kasich plan.

The administration has warned that adoption of the Penny-Kasich deficit-reduction plan might derail the economic recovery and undermine President Clinton's health care reforms by earmarking for deficit reduction Medicare savings that would otherwise go for universal health care.

Penny and Kasich yesterday ruled out any compromise that would dedicate future Medicare savings in their plan for Clinton's health care reforms. However, they indicated they were exploring a number of changes to their proposals, including those raising the minimum retirement age for federal workers and deferring cost-of-living adjustments for retired military personnel under the age of 62.

Those proposals have drawn fire from federal employee unions and from some House Republicans and Democrats who have warned that they would oppose the package unless they were altered or dropped.

The Government Reform and Savings Act analyzed by CBO would allow the administration, among other things, to reorganize the Agriculture and Housing and Urban Development departments and close field offices, shut down the Pentagon's Uniformed Services University of the Health Sciences, end the Government Printing Office's monopoly status, consolidate U.S. Information Agency activities and eliminate grant funding for Federal Aviation Administration higher education programs.

The administration bill was split into parts for 17 House committees to consider. The package will be reassembled by the Rules Committee this week, indicating just how much of the original bill survived.

One of the major differences between the administration and CBO was over how to calculate the cost of "buyouts" proposed for federal workers. The administration hopes to offer up to $25,000 to employees who resign or retire early as a way of speeding its planned work force reduction of 252,000 workers.

CBO estimated benefits paid to the new retirees would cost $519 million over five years and projected that the proposed buyouts would consume about $2 billion of the funding that agencies receive in appropriations over the five-year period.

Panetta, however, said the administration would force agencies to reduce other spending to accommodate the buyouts. "Thus, the ultimate cost would be zero," he said.

In objecting to how CBO figured the costs of the buyouts and other provisions, Panetta said the administration initiatives "should be adopted because they will make government work better. The exact amount of money they will save is not nearly as important as the improvements they will bring about in the operation of government."

Mr. DOMENICI. Madam President, what I thought I would do is recap what the Congressional Budget Office is saying. The encapsulation of the first phase of the reinventing of Government is found in a House bill called H.R. 3400, which incorporates 48 of the recommendations from the National Performance Review.

At the time that this legislation was transmitted, the administration claimed it would reduce the deficit, I say to my friend from Alaska, by $10 billion over 5 years.

Frankly, if you are going to streamline and make Government better, I am not suggesting that is not a good purpose unto itself. It may very well be. We ought to get the very best Government for our people, and if it does not save money but makes it better, that might be all right. But in this case, the reinventing was to save $10 billion over 5 years.

I must say that as I looked at that plan, I had very serious doubts about whether it would save $10 billion or $9 billion or very much at all. Last Monday, rather than the Senator from New Mexico coming to the floor and saying I wonder about its authenticity in terms of savings, we now have a November 15 Congressional Budget Office release that was in response to a number of Senators who inquired, and they reestimate for budget purposes the proposal; that is, the first phase of the reinvention of Government. To no one's surprise, the Congressional Budget Office reestimate showed a much lower reduction, about $300 million over the same period, not $10 billion.

In addition, if you look carefully at what the Congressional Budget Office is saying, a net of $500 million must be found within the discretionary caps for spending increases to implement the reinvention of Government phase I. If you do the arithmetic, which I will put in the RECORD, essentially the net effect of the first phase is that it will cost the taxpayers a little over $200 million. It will save them nothing.

I repeat, if the purpose is to make Government better, more efficient, maybe one need not demand savings in the Federal budgetary sense. But I believe that when we tell the American people that we are reinventing Government and at the same time remind them that we are going to get them more Government or better Government for less money, we ought to be able to show that that is the case.

OMB, which did the estimating, did not count the implementation costs in several instances, and now we find that to be the case. The OMB counted savings from congressional proposals which were basically already accomplished, such as the termination of the mohair subsidy and a few others. The Congressional Budget Office was unable to estimate savings due to lack of specificity in the legislative language.

For example, one sentence said: "* * * authority to reorganize the Corps of Engineers." The Congressional Budget Office cannot score that very much, and I think they are right.

On the other hand, the administration would say that has a very large savings.

The Congressional Budget Office estimate revealed some interesting points about the deficit reduction that could be achieved by this legislation. Of the $300 million in deficit reduction, about $250 million is classified as off budget, resulting from changes to Social Security and asset sales that do not affect the annual deficit, might affect the cumulative budget deficit; $50 million that would be scored under the pay-as-you-go. That is part of our process now; if you are going to increase things, you must pay for them. So under that provision, the $50 million that would be scored is a net of about $60 million in revenue increases and $10 million in direct spending increases.

I want to emphasize at this point, in the area of entitlement and mandatory spending, the fastest growing portion of the budget spending, we would actually increase over the next 5 years in this new reinvention of Government proposal.

I do not mean to be critical of the general thrust of this legislation. We do need to streamline the way Government operates. We owe it to the American taxpayers to give them the most for their tax dollars.

However, I do object to calling H.R. 3400 deficit reduction legislation.

I know that the executive branch promised many Members that they would get another chance at cutting spending this fall. H.R. 3400 does not fulfill that promise. In fact, the administration has announced its opposition to proposals that would actually reduce spending such as the plan offered by colleagues from the House, PENNY and KASICH, and I am not at this point endorsing their proposals.

For my colleagues in the Senate, I would only suggest that the next time we get promises we ought to get it in writing and get it notarized.

Mr. DOMENICI. Let me summarize. The Congressional Budget Office has summarized that the total deficit reduction of this package which has at various times been said to reduce the deficit by $9.2 billion up to $10 billion, it says that the total deficit reduction is $304 million. It also says that we will have to spend new discretionary appropriations amounting to $495 million. I have not yet done the arithmetic. But let me suggest that if it was 300 and 500, it would be that this package will cost us $200 million, not save us $10 billion.

I yield the floor.

INDEPENDENT COUNSEL REAUTHORIZATION ACT

The Senate continued with the consideration of the bill.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

AMENDMENT NO. 1208

(Purpose: To assure appropriate disclosure of information.)

AMENDMENT NO. 1209

(Purpose: To change the provisions regarding travel to primary office.)

AMENDMENT NO. 1210

(Purpose: To provide that the President shall submit a list to Congress of personnel in the White House Office, and for other purposes.)

Mr. COHEN. Madam President, I have three amendments which I am going to send to the desk on behalf of Senator MCCAIN and ask that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendments.

The bill clerk read as follows:

The Senator from Maine [Mr. COHEN], for Mr. MCCAIN, proposes amendments numbered 1208 through 1210.

Mr. COHEN. Madam President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 1208

At the end of Section 3(a)(2), strike the word "counsel." and insert in lieu thereof the following: "counsel, which shall not be withheld unless the Independent Counsel determines that such information would interfere with a pending investigation or prosecution."

AMENDMENT NO. 1209

On page 11, line 21, beginning with the word "chapter" strike all through line 24 and insert in lieu thereof the following: "chapter. The one-year period may be extended by 3 months if the employee assigned duties under subsection (e)(1)(A)(iii) certifies that the investigation will likely be concluded within that time period."

AMENDMENT NO. 1210

At the appropriate place in the bill, insert the following new section:

SEC. . REPORT ON WHITE HOUSE OFFICE PERSONNEL.

(a) SUBMISSION OF REPORT.—Beginning on January 1, 1994, and again each 6 months thereafter, the President shall submit a report described under subsection (b) to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(b) CONTENTS.—The report under subsection (a) shall include—

(1) a list of each individual—

(A) employed by the White House Office; or

(B) detailed to the White House Office; and

(2) with regard to each individual described under paragraph (1), such individual's—

(A) name;

(B) position and title;

(C) annual rate of pay; and

(D) amount of Federal pay received in the 3-month period immediately preceding the date of the submission of the applicable report required by this section.

Mr. MCCAIN. Mr. President, the Washington Post, on November 1, 1993, listed on the "Federal Page" the names and salaries of all individuals it could determine were employed by, or detailed to, the White House. The amendment at the desk would mandate by law that the White House compile and make public a similar list semiannually.

Mr. President, this is a simple amendment mandating public disclosure.

The precedent for this action comes from rules that govern public disclosure of expenditures in the Senate and the House of Representatives.

Public Law 88–454, approved August 20, 1964, states:

(a) commencing with the semiannual period beginning on July 1, 1964, and ending on December 31, 1964, and for each semiannual period thereafter, the Secretary of the Senate and the Clerk of the House shall compile, and not later than sixty days following the close of the semiannual period, submit to the Senate and the House of Representatives, respectively, and make available to the public * * * a detailed statement, by items, of the manner in which appropriations and other funds available for disbursement by the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, have been expended during the semiannual period covered by the report, including (1) the name of every person to whom any part of such appropriation has been paid, (2) if for anything furnished, the quantity and price thereof, and (3) if for services rendered, the nature of the services, the time employed, and the name, time, and specific amount paid to each person. * * *

Mr. President, it was a good idea in 1964 for the Congress to disclose the names and titles of, and amount paid to, its employees. Almost 20 years later, it is time the White House do the same.

There is no justification for this kind of disclosure not to be made.

According to the Washington Post:

Despite repeated request for a list of who works at the White House and how much each one earns, the White House declines to say. Requests for salary lists from members of a congressional committee that oversees the White House budget also have been turned down. Last week, Patsy L. Thomasson, director of the White House Office of Administration, said that information is private, even though taxpayers foot the bill.

Mr. President, the taxpayers are indeed footing the bill and have every right to know who they are paying and how much.

The Post additionally states:

One senior official cited privacy concerns and how much angst it might cause if everyone at the White House knew how much everyone else made.

Certainly, Mr. President, I understand the privacy issue. Young people who work very hard and labor long hours should not have their privacy invaded. That is a compelling argument.

However, there are just as many such individuals working in the Congress for Members of Congress who have been subject to the same kind of disclosure requirements.

Additionally, disclosure of salaries and titles has not in any way effected the caliber of individuals seeking employment on the Hill nor lessened their numbers.

I am sure that every member of this body can attest to the fact that we receive thousands of resumes each year from people seeking employment. Disclosure of salaries has not dampened their zeal to work in the Congress.

This amendment is not intended in any way to reflect on the honesty, personal integrity, or the lack of any proper action taken by White House staff. The White House is currently not required to compile this information in this manner. The effect of this amendment will be to mandate disclosure, which I believe will encourage greater public trust in the White House and its very capable staff.

Mr. President, disclosure leads to a better, more ethical government. Members of Congress must disclose their financial statements. We publish, as dictated by law, a book, referred to as the green book, which lists our staffs, their salaries, and titles. The green book also lists other items on which we spend the taxpayers' money.

Mr. President, it is time for the White House to do the same. The taxpayers have a right to know the facts.

Mr. COHEN. These 3 amendments would substitute a 3-month limit for the period of time beyond the 1 year established in the bill during which the independent counsels and their staffs may qualify for travel and subsistence expenses when traveling to and from the city of their primary residence.

Mr. LEVIN. In which their primary office is located.

Mr. COHEN. In which their primary office is located. It would require the independent counsel to permit the Administrative Office of the U.S. Courts to disclose requested information about the independent counsel's proceedings in the jurisdiction of the office unless such disclosure would interfere with the pending investigation or prosecution and require the White House to disclose information about the compensation of its employees.

My understanding is that there is no objection on the part of the majority to the amendments, and I urge their adoption.

Mr. LEVIN. We have no objection, Madam President.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendments.

The amendments (No. 1208, 1209, and 1210) were agreed to.

Mr. COHEN. Madam President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1211

(Purpose: To require that at least 50 percent of the independent counsel's staff shall be comprised of Department of Justice personnel)

AMENDMENT NO. 1212

AMENDMENT NO. 1213

(Purpose: To clarify and strengthen the power of the Attorney General to remove an independent counsel for good cause)

AMENDMENT NO. 1214

(Purpose: To eliminate the final report requirement)

Mr. COHEN. Madam President, I send to the desk four amendments on behalf of Senator DOLE and ask for their immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Maine [Mr. COHEN], for Mr. DOLE, proposes amendments numbered 1211 through 1214.

Mr. COHEN. Madam President, I ask that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 1211

On page 17, strike lines 14 through 20 and insert the following:

(n) REQUIREMENT TO USE DEPARTMENT OF JUSTICE PERSONNEL.—Section 594(d)(1) of title 28, United States Code, is amended to read as follows:

"(1) REQUIRED USE.—An independent counsel shall request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties.".

AMENDMENT NO. 1212

On page 14, lines 23–25, strike "3" to the end of the sentence and insert the following: "2 years after the appointment of an independent counsel or the reported expenditures by such independent counsel have reached $2 million, whichever occurs first, and at the end of each succeeding 1-year period.".

AMENDMENT NO. 1213

On page 20, between lines 2 and 3, insert the following:

SEC. 5. REMOVAL OF INDEPENDENT COUNSEL FOR GOOD CAUSE.

Section 596(a)(1) of title 28, United States Code, is amended by adding at the end thereof the following: "For purposes of this paragraph, the term 'good cause' includes, but is not limited to, (A) the failure of an independent counsel to follow written Department of Justice guidelines, subject to the limitations of 594(f)(1) and 594(l)(1)(B), respecting enforcement of the criminal laws, and (B) violations of canons of ethics governing the independent counsel and Federal prosecutors.".

AMENDMENT NO. 1214

On page 18, between lines 13 and 14, insert the following:

(p) FINAL REPORT.—Section 594(h)(1)(B) of title 28, United States Code, is amended—

(1) by striking "fully and completely"; and

(2) by striking ", and the reasons" through the period and inserting a period.

Mr. COHEN. Madam President, the four amendments by Senator DOLE would increase the periodic review of an independent counsel by the special court. It would provide guidance on what could constitute grounds to remove independent counsel from office. It would require independent counsel to seek assistance from the Justice Department and to require the Department to provide such assistance. Then restrict the scope of the final report filed by the independent counsel.

On this last point, Senator LEVIN and I would like to clarify something for the record so there will be a proper legislative history to this particular amendment.

Senator DOLE I think is rightly concerned about an independent counsel at the conclusion of an investigation filing a report and taking the opportunity in that report to level charges or complaints about the people under investigation, subject to investigation.

Both Senator LEVIN and I feel that Senator DOLE has raised a valid point. We believe that that final report should be a simple declaration of the work of the independent counsel, obviously pertaining to those cases in which he or she has sought indictments but with respect to cases in which the independent counsel had determined that no such indictment should be brought, to preclude that independent counsel from expressing an opinion or conclusion as to the culpability of any of the individuals involved.

We think that is an unfair opportunity given to independent counsel if he or she should choose to use it, and we would like to see that precluded in the future.

So the purpose of the amendment is quite clear, to restrict the nature of the report to the facts without engaging in either speculation or expressions of opinion as to the culpability of individuals unless that culpability or those activities rise to a level of an indictable offense, in which case the independent counsel would be duty bound to seek an indictment.

I think that is the purpose of what Senator DOLE is striving to achieve, and it is a goal with which Senator LEVIN and I agree.

Mr. LEVIN. Madam President, the purpose of the amendment which we are accepting relative to the final report is, indeed, to try to avoid having independent counsel state conclusory opinions that the subject of an investigation engaged in criminal wrongdoing in the absence of bringing an indictment against that person.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendments.

The amendments (No. 1211, 1212, 1213, and 1214) were agreed to.

Mr. COHEN. Mr. President, I move to reconsider the vote.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Madam President, I do not know of any additional amendments that anyone has to this bill. We have been here for a few hours. We do not have any word through our cloakrooms of additional amendments to the bill.

Mr. BROWN. Mr. President, I rise to ask the Senator from Michigan a question regarding the independent counsel law. This bill changes the law as it applies to the awarding of attorneys' fees in title 28 of the United States Code, section 593(f). The amendment on its face appears to limit the awarding of attorneys' fees in the case of malicious prosecution or in the case of politically motivated investigations and prosecutions. In our discussions, the Senator has explained that he is attempting to clarify current law to be certain that individuals, who are subject to independent counsel investigations, are treated the same as other citizens investigated by the Justice Department. I agree with the Senator on that point. Is it his intent with the change to section 593(f) that attorneys' fees may be awarded by the division of the court where the person was subjected to malicious prosecution, a politically motivated prosecution, or he or she was investigated by an independent counsel where there were no reasonable grounds to believe that the investigation was warranted?

Mr. LEVIN. The Senator is correct that it is our intent that in the event of a malicious or abusive prosecution by an independent counsel, a subject would be able to obtain attorney fees under this bill.

Mr. COHEN. I agree with the Senator from Michigan.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Madam President, I ask unanimous consent that at 9:30 a.m. on Thursday, November 18, without intervening action or debate, the Senate vote on passage of S. 24, the Independent Counsel Reauthorization Act.

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

Mr. MITCHELL. Madam President, I ask for the yeas and nays on that passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Madam President, will the majority leader yield?

It is my understanding that following disposition of this bill, there may be requests for 15 or 20 minutes of debate, then we go to final passage on the crime bill, followed by the Brady bill.

Mr. MITCHELL. That is correct.

Madam President, my hope is that we can advance the crime bill tonight, following further discussion on the pending bill, to the point where we can get another agreement that will govern that. We would have a limited time—whatever is agreeable to the Republican leader and the Republican managers of the bill.

So I expect we would be voting final passage on the crime bill within less than an hour after we vote on final passage on the independent counsel bill, which is now set at 9:30 tomorrow morning.

Mr. DOLE. It is our hope that we can come together on some agreement on the Brady bill so that we can probably dispose of it one way or the other within 3 hours, maybe.

Mr. MITCHELL. That is my hope, as well.

As the Republican leaders knows, we have had private conversations during the day, up to and including a short time ago, and our staffers have been working long and diligently. I hope, if it is possible, we can get an agreement tonight that locks in the procedure with respect to that. That remains to be seen. But I think the staffs are ready to go do their work on that.

Mr. DOLE. Madam President, I thank the majority leader.

My view is that—we have discussed it here for couple of days—we would not include the Brady bill as part of the crime bill, but have it freestanding. There has been some division of opinion on both sides, but it is my view we are so near an agreement. I guess there is no way to achieve an agreement on that particular—with the exception of one provision, I think everybody in the Chamber is for the bill. We are not quite certain how to resolve that. We still have overnight. But I doubt that can be resolved.

So if we work out some procedure, there would be a vote on that provision, and then I assume the question would be whether or not, depending on what happens to that particular freestanding amendment—I guess we could agree on a cloture vote or two votes. I am not certain. Whatever the majority leader wishes.

If cloture is obtained, then we would have final passage. If it is not obtained, we would have an additional cloture vote; whatever the majority leader decides to do.

Mr. MITCHELL. Madam President, that is my understanding of the status of the discussions now. My hope is, as I just stated, that we can bring those discussions to a conclusion this evening so that before we leave we will know precisely the time and process tomorrow.

If we cannot reach an agreement on the process, obviously we will get to that in the morning. But at the very least, we can now anticipate a vote on final passage of the independent counsel bill at 9:30. Although we do not yet have an agreement finalized, I anticipate a vote shortly thereafter on the crime bill, and then hopefully proceeding to the Brady bill, as the Republican leader and I have just discussed.

Mr. DOLE. Madam President, I want to thank the managers of the independent counsel bill. As I indicated some weeks ago, I thought once we got to the floor, it would move very quickly. The managers have done an outstanding job in expediting the process—we did not need a time agreement—to bring the bill up.

I appreciate the fact that they have been able to accommodate this Senator on four different areas, because there are some areas that I think particularly go to Lawrence Walsh tenure that needed to be addressed. Those amendments have been addressed, and I will include in the RECORD more extensively what those particular amendments will do.

I thank both the Senator from Michigan and the Senator from Maine for their consideration.

I did want to indicate that I think we can all have different views on the independent counsel. I guess some would say, if there was ever a need for it, it ought to be when one party controls everything—the White House, the House, the Senate—because the minority party really has no recourse. We cannot have hearings. We cannot subpoena anybody. We are sort of helpless. If something happens, we just have to write letters to the Attorney General or hold up nominations or hold up legislation.

So I would guess if there is any time it might be worth having independent counsel, it would be where one party, the Republicans or Democrats, controls the White House and the Congress.

That is the case now. We have requested certain investigations and have been turned down by the Attorney General. But I am still of the opinion that there are members in this administration, and any administration, men and women of integrity, who will act in accordance with the law if someone files a complaint or somebody has a question.

So I still oppose the independent counsel. It will pass, the House bill.

Unless the House decides to take the Senate bill, it would not become law this year.

But this Senator has watched Lawrence Walsh in action for the past 7 years, and counting, you can put me down as a skeptic of any bill that would reauthorize the independent counsel statute. I think he has given it a bad name.

Since December 1986, Mr. Walsh and his army of lawyers have destroyed reputations, harassed families, run up a tab of more than $40 million billed directly to the taxpayers, even left top-secret documents behind at an airport taxi stand. And now, 7 years later, can any objective observer look at what Walsh has wrought and say "congratulations on a job well done?"

Obviously, I am no fan of Lawrence Walsh, and I'm no fan of the independent counsel statute either. In my view, we ought to have confidence in our Nation's Attorney General, confidence that she can conduct criminal investigations with independence and without the intrusion of politics.

Unfortunately, in case after case—Travelgate, the State Department file search, to name just two—Attorney General Reno has declined to take decisive action, claiming that her hands are tied because the independent counsel statute has not been reauthorized.

What Attorney General Reno fails to say is that she has the statutory authority to appoint special counsels in cases that merit an independent review. This authority exists, with or without an independent counsel statute, and it has been invoked by past attorneys general, including Bush administration A.G. William Barr who appointed special counsels to investigate the House bank scandal and the inslaw case.

With that said, Madam President, I will be offering a series of amendments designed to ensure that some of the abuses of the Lawrence Walsh 7-year witch hunt aren't repeated by future independent counsels.

It seems to me that we have modified this final report language, because Lawrence Walsh could not indict you or could not convict you, he would try to do it in the court of public opinion by filing some report, in effect venting all of his spleen on somebody he was not able to convict along the way.

This first amendment would eliminate the independent counsel final report requirement.

Quite simply, this final report requirement is unnecessary and it is expensive. And I am pleased that the managers of the bill, Senators COHEN and LEVIN, have accepted my amendment limiting the report's permissible scope.

Since last December, when President Bush pardoned former Defense Secretary Cap Weinberger, Lawrence Walsh spent nearly 8 months drafting his so-called final report, which admittedly is mandated by the independent counsel statute. This report has now been filed with the court of appeals here in Washington.

Although the Walsh report is supposed to be protected under a shroud of court-ordered secrecy, portions of the report have been leaked to the press and judging by news reports, it appears that the report is a self-serving testimonial to the heroics of the Independent Counsel's Office. And even worse, it is paid for by the American taxpayer.

Over and over again, Lawrence Walsh has failed in the courtroom of law. And now, desperate to revive his own sullied reputation, he is apparently seeking success in another venue—the courtroom of public opinion.

Madam President, it is never easy for a prosecutor when he loses a case. But when the not guilty verdict is read, a prosecutor normally picks up his briefcase, hopefully learns from his mistakes, and moves on to the next file.

He does not spend 8 months, at taxpayer expense, writing a report, memorializing his efforts and blasting the very people he failed to convict, an approach I suspect Mr. Walsh takes in his still-secret final report.

Madam President, it is my hope that the amendments accepted by the managers, including the amendment limiting the permissible scope of the final report, will help inject some safeguards into the independent counsel statute so that future abuses can be avoided.

Madam President, we hope we have been able to make the changes there, maybe state some facts, but not opinions, not editorialize.

So again, after months at the taxpayers' expense, writing a report—he has been in office 7½ years. There ought to be term limits on independent counsel. Talk about term limits for Members of Congress. And there is no supervision, no authority. And we believe the managers have done a lot on their own to tighten up the process, and maybe we will not have repeated efforts by anyone who comes along with the "Lawrence Walsh attitude."

Mr. President, for all of the reasons stated, I cannot support the independent counsel bill. I do hope that it will serve the public interest if it is passed and signed into law.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER (Mr. CAMPBELL). The majority leader is recognized.

Mr. MITCHELL. Mr. President, I support S. 24, the third reauthorization of the provisions of the Ethics in Government Act, which provide for the Independent Counsel Office to investigate criminal charges at the highest levels of Government.

I commend Senator LEVIN and Senator COHEN for their leadership in this area, for the persistence with which they have pressed the case for this legislation and have now brought it to the brink of enactment.

The need for such an office first became evident in 1973, when President Nixon, in the throes of the Watergate scandal, successfully fired an independent investigator to whom he had given assurances of complete independence of action in fact as well as appearance.

Only the unprecedented public outrage that followed the Saturday Night Massacre, as the firing of Archibald Cox became known, ensured the continuity of the Office of the Independent Counsel. No law then existed to create such an office.

The political realities of the time forced the President to appoint a new Special Prosecutor, Leon Jaworski, who saw the investigation and subsequent prosecutions through to conclusion. But the conclusion of the Watergate affair left no authority for such an appointment in law.

Two events, which flowed from the Watergate experience led to the enactment of the independent counsel law 5 years later.

The first was the unanimous Supreme Court finding that in America nobody, including the President of the United States, is or can be above the law.

As part of its finding in U.S. versus Nixon, the Supreme Court emphatically upheld the conclusion, earlier reached by the district court in Nader versus Bork, that so long as the regulation appointing the special prosecutor was in effect, nobody has the right to discharge him from his duties. The Supreme Court said the discharge "was in clear violation of an existing Justice Department regulation having the force of law."

The second event was the unprecedented public outcry over the appearance of an effort to evade the law. Congress recognized that the American people would not tolerate the appearance that there are two kinds of criminal law in our country: One for ordinary citizens and one for high Government officials.

Nothing in our national experience, before or since, has so emphatically demonstrated the fundamental American belief in the concept of equal justice under law.

It is to that fundamental American public demand that the Independent Counsel law is directed. It was enacted in 1978, reauthorized in 1982 and 1987, and is before us again for a further extension because it is the one safeguard we have that nobody, under our system, regardless how high in Government, can be above the law.

In 1982, when my colleague, the senior Senator from Maine, chaired the Subcommittee on Government Oversight, the law was reauthorized with virtually no dissent.

Its provisions were modified to correct shortcomings that has become apparent over the preceding 5 years, such

as a too-easy triggering mechanism and the costs to innocent parties of an expensive legal investigation. But its core purpose was retained: To ensure that nobody, high official or not, was beyond the reach of the law.

In December 1987 President Reagan signed the second authorization of the law with a signing statement that declared his unequivocal support for its purpose:

I fully endorse the goal manifested in the Independent Counsel Act of ensuring public confidence in the impartiality and integrity of criminal law investigations of high-level Executive Branch officials. * * *

President Reagan's endorsement of the act was followed by a 7–1 Supreme Court ruling in the case of Morisson versus Olson the following year, in which the Chief Justice wrote that the law was carefully crafted and did no injury to either the President's law enforcement authority or to the principle of the separation of powers.

Despite that strong support, along with the overwhelming bipartisan support of the Congress in the 1987 debate, opposition based on the work of one of the independent counsels, Lawrence Walsh, prevented the majority of the Senate from moving to take up last year's bill and reauthorize the law before it expired last December.

It is ironic that it was largely opposition to the outcome in one particular case that triggered the opposition which has delayed reconsideration of the independent counsel law.

It is especially ironic that those who most strongly criticized the law under which Lawrence Walsh conducted his investigation have been among the loudest in demanding that the present administration appoint an independent counsel in other instances.

The opposition and the subsequent calls for independent counsel appointments also highlight the importance of true independence in this office.

Any special prosecutor appointed by the Attorney General—no matter who the Attorney General is—may be dismissed by the Attorney General. Any special prosecutor appointed as a result of a partisan demand from the Congress will therefore produce a work product whose impartiality is open to question. A special prosecutor has no independence of authority. What legal authority a special prosecutor has is derived entirely from the authority of the Attorney General.

The independent counsel statute, by contrast, allows the Attorney General to request the appointment of a counsel but leaves the decision to do so and the identity of the individual to the judgment of a special panel of the Court of Appeals.

Likewise, although a special prosecutor appointed by an Attorney General may be encouraged to tailor the length and timing of an investigation to the preferences and needs of the Justice Department, a properly appointed and properly independent counsel cannot be forced to comply with anyone's timetable when he or she is pursuing an investigation.

The arguments against a truly independent appointment all rest on the claim that the prosecutorial function of that executive branch is necessarily so exclusive that not even the slightest deviation from executive branch discretion in this area can be tolerated.

This extreme view is said to be essential to preserving the separation of powers doctrine.

But the separation of powers doctrine exists for a purpose, not as an end in itself. The powers of government are separated in our system to prevent the concentration of power in any one branch, not to hermetically seal off each arm of government from the others.

That fact is evident from the structure of the Constitution itself. The veto power gives the President the right to intervene and redirect the legislative branch.

Treaty ratification, declaration of war and confirmation powers all give Congress a role in the functions of the executive branch. And in article II, Congress is given explicit additional authority to "vest the Appointment of such inferior officers, as they think proper * * * in the Courts of Law. * * *"

Since the nineteenth century, the Supreme Court has recognized exceptions to the general appointments rule: In ex parte Siebold, in 1879 the Court found that while "it is no doubt usual and proper to vest the appointment of inferior officers in that department of the Government to which the duties of such officers appertain * * * there is no absolute requirement to this effect."

In that case, the Court asked whether the grant of appointive power—for Federal election overseers—to circuit courts was "incongruous, improper or inconvenient"—and concluded that where that was not the case, such appointments did not intolerably burden the separation of powers.

The decision quoted above was most recently and strongly restated by the Court's 7–1 ruling in Morrison versus Olson, the case which tested the constitutionality of the independent counsel law itself.

There is no doubt that the Congress has the authority to provide for the independent prosecution of investigations and of justice where no existing arm of the government can have the independence or authority to do so.

And, in a nation which exists under the rule of law, no principle is more vital to maintain than the equal treatment of all under the law. High office, close relationships with national leaders, influential past associations are all factors that, fairly or not, can give the impression that some Americans are above the law.

Congress must reassert and reconfirm the fundamental expectation of our people that this is not the case. No American, regardless how high a grant of power he or she has enjoyed is or can ever be, above the law. Our democracy rests on that assumption.

The grants of power that any democracy gives to the few are temporary, limited, and revocable. That is how democratic government is preserved.

And nothing is more important in this structure than the assurance that nothing insulates high officials, elected or appointed, from the full force of the law.

Arguments have been raised here to the effect that we should specifically include Members of Congress as covered persons within the reach of the independent counsel law. It is significant that the managers have written the bill in such a way that Members of Congress are subject to it at the discretion of the Attorney General. The argument has been made that it should be mandatory, that to do otherwise treats the Congress different from the handful of officials in the executive branch. Those arguments are without logical basis.

The Congress is a separate branch of government. Nothing now prevents this Attorney General or any other from investigating and prosecuting any Member of Congress where any infraction of a law is suspected. The House Bank scandal demonstrated very clearly that an administration found little difficulty in pursuing an investigation where the evidence of actual criminality was minimal or nonexistent.

Nothing stops a President from making a special appointment of an independent counsel in such a case or any other, should a President wish to do so.

Moreover, both this bill and current law permit an Attorney General to request an independent counsel for cases involving Members of Congress where a conflict of interest may arise. This bill makes that authority explicit, although it always existed. There is no point to be served by making the authority mandatory, thus effectively preventing the Justice Department from pursuing evidence of criminal conduct by a Member of Congress.

The Attorney General has full discretion to use the Independent Counsel Office in any case that could arise.

The only effect of mandating the inclusion of Members of Congress would be to curtail the Attorney General's discretion and force her to recuse herself in any case involving Members of Congress.

It would, in fact, create a constitutional problem, because it would have the effect of preventing the executive branch from investigating any Member of Congress wherever potential criminal liability might exist, because it

would require the Attorney General to appoint an independent counsel.

Such an incursion into the prerogatives of the executive would, in fact, have all the faults that some now see in the much more limited legislation that this bill represents.

On the face of it, no conflict of interest arises if the Attorney General seeks to indict a Member of Congress on a criminal charge.

The current law and the bill before us cover fewer than 100 members of the executive branch.

To expand this coverage to take in all 535 Members of the legislative branch with no coherent rationale would not only intrude into the prosecutorial discretion of the executive branch to a much broader degree, it would do so with respect to an entire branch of Government.

Nobody has as yet suggested that investigations of judicial branch members be similarly insulated, for the obvious reason that no coherent reason to do so exists.

That, quite simply, is exactly the case with respect to Members of Congress.

The unstated but obvious political effort here is to create the impression that Congress is seeking to insulate itself from an onerous liability which is being imposed on the executive.

But that is an impression that cannot be sustained by any examination of the facts. It is rhetoric and nothing more.

The underlying reality is that this is not an onerous burden placed on the executive branch. It is a simple and necessary means by which our Government can investigate itself when the need arises to maintain public confidence in the integrity of both the Government and the administration of the laws.

The fact is that high officials, elected or appointed, are held to a higher standard than private persons. That is an elementary fact of public service in a democracy, and those who wish to enter public service must recognize it.

High officials are required to be more forthcoming and more public in their financial dealings than private persons. Public officials are required to be more careful in their business relationships. And they are expected to be more circumspect in their use of personal influence.

That is because they are trustees of the public trust. Whether public officials disburse Government contracts, Federal grants or write regulations, they are discharging a public trust.

Public office is not a perquisite. It is an honor. It is not a right. It is a privilege.

And so long as there are individuals who fail to recognize that, and improperly attempt to turn the public trust to personal advantage, the public should and must have an iron-clad assurance that public officials, just like private citizens, are accountable under the law on the same terms as everyone else.

That assurance is what the bill before us seeks to provide. It deserves the strong support and the affirmative vote of every Senator.

Mr. President, I conclude by again thanking and congratulating the managers, and I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan [Mr. LEVIN] is recognized.

Mr. LEVIN. Mr. President, first, let me thank the majority leader for his extraordinarily strong statement and his great support of this process. We could not be on the floor here without his support and his persistence. I am confident that tomorrow we will vote to reauthorize the independent counsel and we will do so in large measure because the majority leader is determined to keep this before this body.

Mr. President, there are a number of reasons that I think we will vote tomorrow to reauthorize this statute and fill a gap of about 1 year.

As the Chair knows, we have reauthorized this independent counsel twice before in the Congress and this will be the third reauthorization. It is a 5-year reauthorization. The reason we are going to do so is we want the public to have confidence that investigations of high-level executive branch officials and their prosecutions are being carried out independently and not under the control of the very people who are being investigated.

That is the basic problem that this statute seeks to address. It is that the President and persons close to the President cannot, with public confidence at least, investigate and prosecute themselves. That is the reason this bill was passed to begin with, and that is the reason I am confident that this bill will be given a very strong vote of approval tomorrow.

The Republican leader offered a number of amendments here tonight which address legitimate concerns. I know the Senator from Maine and I were both pleased to work with him to craft and recraft these amendments in a way that they do strengthen this statute. We are grateful for his work on those amendments. We think that they do strengthen the statute.

Relative to his comments about the Iran-Contra investigation, tonight I will briefly say only this. The Attorney General very succinctly, it seems to me, addressed the point of the Republican leader when she testified before our committee as follows:

> That the Iran-Contra investigation far from providing support for doing away with the independent counsel act proves its necessity.

She further said:

> I believe that this investigation—

That is the Iran-Contra investigation—

> could not have been conducted under the supervision of the Attorney General and concluded with any public confidence in its thoroughness or impartiality.

The person who is selected to be the independent counsel, Mr. President, is a life-long Republican, a former Federal judge, and former President of the American Bar Association. He filed 14 indictments, obtained 11 convictions. Of the other three where he did not obtain convictions, two were pardoned before trial, including Caspar Weinberger, and one of the cases was dismissed before trial because the Attorney General refused, understandably, but refused nonetheless, to release classified material.

Of the 11 convictions, 2 were reversed on appeal for technical reasons due to the congressional grant of immunity which had been given, which grant the independent counsel had opposed.

Looking at that entire record, it does not support the conclusion of the Republican leader that the Iran-Contra independent counsel's activity is reason not to renew the independent counsel law.

Mr. President, let me close by again thanking my good friend and colleague from Maine. He is more than perhaps anyone in this Chamber the custodian of the independent counsel law. All of us have a fiduciary duty of making sure that the prosecution laws in this country, particularly against high-level officials, are carried out with independence and credibility so that there is public confidence in Government.

He is an institutional member relative to this law. He helped to create it. His bipartisan support, his tenacity, his persistence has made it possible to reauthorize this law twice before and is the reason, at least one of the important reasons, that we will be reauthorizing it hopefully again tomorrow morning.

I also want to thank Linda Gustitus and Elise Bean of my staff, who have done extraordinary service year after year for the reauthorization of the independent counsel law, and Kim Corthell of Senator COHEN's staff, who has worked so well on this statute and who has worked with my staff in making it possible for us to get to this point.

So I close with the hope that we will give a resounding vote tomorrow morning to reauthorize this statute and to fill a gap of 1 year in its presence on the law books of this country.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine [Mr. COHEN] is recognized.

Mr. COHEN. Mr. President, unaccustomed as we are in the minority to having the final word on legislation, let me just take a moment to thank my colleague from Michigan for his very generous comments.

I must say that I did get a bit apprehensive when the Senator referred to me as having an institutional memory. As the years have ticked off, I like less and less to be referred to as one who is the custodian of this particular piece of legislation when it dates back into the late 1970's. But, nonetheless, I do thank him for his comments.

And let me turn for a moment at least to send some praise in his direction.

Late this afternoon, there was a good deal of discussion about ethics and that the American people felt that we were trying to carve out some special exception for Members of the Senate or the House from ethical considerations and ethical standards. I think the debate has been quite complete on that particular subject matter. But let me say on behalf of Senator LEVIN, I do not know of any Member of the Senate who has been more persistent and I must say more persuasive on the issue of the need for maintaining high ethical standards not only in the Congress but also in the executive branch.

I quoted earlier from Benjamin Nathan Cardozo, who said:

> A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.

That is what is demanded of each of us. The Senator from Michigan, to his lasting credit, I believe, has been in the forefront of insisting that we measure up to those high standards. We do not always do so, but we must remain accountable to the American people to that standard.

Mr. President, I think it was important that the majority leader made the statements that he did. He is someone I have had the pleasure of serving with for, well, 13 years now. He and I served on the Iran-Contra investigation joint committee. And I must say that while many statements have been made in recent years about the entire Iran-Contra affair simply being an attempt on the part of some to politicize or to criminalize foreign policy decisions, I must just take one moment to offer a brief refutation.

The decision to sell weapons to Iran may or may not have involved criminal activity. It did in fact contravene our publicly stated policy that we had adopted, a public policy that discouraged other nations from supplying weapons to a nation that we believed to be engaged in terrorist activities, that was high on top of our list of terrorist sponsoring nations. So we had a private policy that contravened our public policy that would have been an embarrassment to say the least.

But the issue of then taking the profits from that sale and then diverting them to another purpose—namely, the support of the Contras in Nicaragua—involves something quite different.

Many people will recall Colonel North's testimony before the Iran-Contra committee that the whole purposes of inflating the price of those weapons that were being sold to Iran was to set up what he called an off-the-shelf, self-sustaining, stand-alone, covert capability.

And what that really meant was that we were selling the property that belongs to the American people at inflated prices, taking that profit, putting it over into a private slush fund, and then using that fund to carry out future cover actions that may or may not have been disclosed to the President of the United States but surely would not have been disclosed to the Congress and ultimately to the American people.

That action, or purported action, struck at the very heart of our democratic system. The congressional investigation involved more than simply a politicization of our foreign policy decision or indeed the attempt to criminalize our foreign policy decisions. Those events went to the very heart of the democratic system which calls upon us to formulate public policy, indeed, carry out even private activities in a way that is consistent with the rule of law and with the expectation of the American people.

So I mention this only in passing, that Iran-Contra was important. It was important to have an independent counsel to investigate these charges of criminal wrongdoing. I must say that I did not necessarily agree with either the theories pursued by Judge Walsh or indeed even some of the tactics employed by Judge Walsh. But, nonetheless, in retrospect, I think it was important that we had an independent investigation and history will have to judge whether he was successful or not or whether it was worth the effort or the money to really find out whether the ideals of this country, indeed, the laws of this country, were being quietly and subtly subverted.

So I conclude my remarks this evening after a long day of debating this particular issue to thank Senator LEVIN and to thank Senator MITCHELL. And my thanks to Senator DOLE. A lot of criticism has been directed toward Senator DOLE, that he was somehow interested in blocking this legislation from coming forward. I had a talk with him on many, many occasions, and while he indicated to me he was not going to be supportive of the legislation itself, he believed it was important to bring it forward. He indicated he thought we could pass this without any time agreement; that we could pass it within a day's debate. And, indeed, as a result of the amendments that he offered, I think he improved it to the point where it will enjoy wide support.

So I thank him for his contribution, as well.

And let me again thank Kim Corthell of my staff and the work of Senator LEVIN's staff, as well, for a job well done.

Mr. DURENBERGER. Mr. President, I rise in support of the independent counsel reauthorization.

Nothing is more crucial to the political process than public faith in our system of government. Nothing is more damaging than the impression that certain powerful Government officials are above the law.

For the past 15 years, the independent counsel law has helped to ensure that executive branch officials are not above the law. There is an inherent conflict of interest in having one section of the executive branch—the Justice Department—investigating another member of the executive branch. The independent counsel law provides for the appointment of an outside counsel who will conduct the investigation and prosecution of top-level officials who are close to the President.

I believe that the 5-year reauthorization we are considering strikes an appropriate balance between maintaining the independence of the counsel, while maintaining a certain amount of accountability in the expenses and scope of the investigation.

Mr. President, the independent counsel law expired in December of 1992, and I urge my colleagues to adopt this reauthorization without delay.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I ask unanimous consent to proceed for 5 minutes as if in morning business.

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

Mr. GORTON. Mr. President, I ask unanimous consent to proceed for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from the State of Washington is recognized.

Mr. GORTON. I thank the Chair.

(The remarks of Mr. GORTON pertaining to the introduction of S. 1666 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COHEN. 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. COHEN. I ask unanimous consent consent I be allowed to proceed as in morning business.

I realize the focus of press attention this evening and well into tomorrow and perhaps days thereafter will be upon the NAFTA debate.

Nonetheless, I do want to take a few moments this evening to raise an issue which I think is of critical importance to the American people, indeed to security of the free world itself.

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

CRISIS ON THE KOREAN PENINSULA

Mr. COHEN. Mr. President, press reports indicate that the Clinton administration is moving toward a decision to offer significant concessions in exchange for North Korean actions that Pyongyang is already required to take under international law.

Specifically, Secretaries Christopher and Aspin are reportedly recommending that the United States agree to cancel next year's Team Spirit exercise in exchange for Pyongyang allowing the IAEA to resume its inspections of North Korea's declared nuclear sites. The word "declared" is a critical modifier, since it refers only to those nuclear facilities that North Korea has decided to let the IAEA inspect, which is to say those that Pyongyang thought would yield no evidence of its nuclear weapon program.

It does not include other facilities that informed specialists are persuaded are critical to Pyongyang's bomb program. In order to gain access for inspectors to two suspect sites, the Clinton administration is reportedly considering granting economic concessions and the prospect of diplomatic recognition.

And, it should be noted, the Clinton administration has already made a significant concession by giving North Korea high-level talks. In exchange for this concession, North Korea has become more recalcitrant: halting IAEA inspections of declared sites; threatening to withdraw from the Nuclear Nonproliferation Treaty; and demanding more concessions just to go back to square one.

In a paper issued over the weekend by the Forum for International Policy, the situation was summarized as follows:

> In a reversal of longstanding U.S. policy, senior Administration officials have held at least two rounds of negotiations with their North Korean counterparts over the past several months. These talks, however, have produced little more than backsliding as Pyongyang introduces new problems and attempts to extract new concessions as its price just for returning to the point at which the current crisis began.

This last point is crucial. We are giving ground just to keep North Korea from backsliding. Yet our experience to date has been that preemptive concessions produce more backsliding, not progress.

Some might dismiss the Forum's views as mere partisan pot-shots, since it is led by two high-ranking Bush administration officials, Brent Scowcroft and Larry Eagleburger. I would point out, however, that the Forum is a bipartisan group whose leadership also includes such prominent Democrats as Lloyd Cutler, Dante Fascell, and Robert Strauss. And one of the principal authors of this paper on the Korean nuclear crisis, Arnold Kanter, served not only in the Bush and Reagan administrations, but in the Carter administration, as well.

I think the Forum's paper, entitled "North Korea: The Clock is Ticking" is a sound analysis of the risks associated with the policy toward which the administration is apparently moving. I will submit the entire paper for the RECORD, but would like to summarize some of its key points and recommendations.

The United States, it argues, must present North Korea with a clear choice between the status quo ante, in which there was the prospect that North Korea could begin to integrate itself into the family of nations and address its economic failure, and the alternative of increasing isolation, pressure, and pain.

"It is inconceivable," the authors argue, that the process of integration "could be resumed unless and until North Korea has acted to end the current crisis. We must not suggest to other would-be proliferators that the treat of an indigenous weapons program is the key that unlocks the treasure trove of economic and political benefits." Yet that appears to be exactly the approach the administration is pursuing.

The authors recommend diplomatic efforts to persuade China and Russia to support this strategy and inform Pyongyang that they will not veto a Security Council resolution imposing economic sanctions. The administration should begin now to design a package of sanctions centered on halting Pyongyang's imports of oil, which are critical to North Korea's military and key sectors of its economy. Since China now supplies two-thirds of those imports and could supply all of them, we should urge China to join an effort to steadily reduce Phongyang's oil imports—at the very least, not to replace oil imports cut by other suppliers.

Such a strategic dialogue about mutual security concerns, not the current agenda of bilateral issues and irritants, should be the centerpiece of President Clinton's meeting with Chinese President Jiang Zemin later this week, they argue. This should be accompanied, they propose, by a serious intelligence exchange in which we explain to Chinese officials why the North Korean nuclear issue requires urgent action.

They also urge diplomatic efforts to pursuade Seoul and Tokyo that this approach will not provoke Pyongyang, but provides it will a peaceful way out of the crisis.

The authors also offer three military recommendations:

Do not treat Team Spirit as merely a bargaining chip to be used in an effort to affect the tactical state of play.

Conduct a multilateral naval exercise off North Korea's coast to demonstrate the capability and will to enforce economic sanctions, should they be imposed. Seek to persuade as many countries as possible to participate, particularly South Korea, Japan, Russia, and China.

Conduct a joint United States-South Korean exercise to strengthen the defense of Seoul, emphasizing capabilities such as air defense that Pyongyang should not consider provocative.

These exercises, they argue, should not be "tied to or conditioned on near-term North Korean actions." They should instead be conducted "as soon as possible and without reference to the State of play on the nuclear issue." At the same time, we should make clear that the need for such exercises in the future would depend on increasing stability on the peninsula and reducing threats to peace in the region.

Mr. President, while these recommendations will raise questions, particularly regarding how our allies in Seoul and Tokyo would respond to them, I believe they deserve serious and immediate consideration before any more concessions are made, particularly concessions on the 1994 Team Spirit exercise.

Unfortunately, it does appear that some in the administration are treating Team Spirit as merely a bargaining chip, something we can easily give up in order to send a political signal.

TEAM SPIRIT REQUIRED FOR READINESS

Mr. President, conducting or canceling Team Spirit is not just a political signal to the North. This exercise is critical to maintaining Allied readiness on the Korean peninsula. Readiness is not something that can be stored on the shelf indefinitely. It decays with time:

There is a constant turnover of personnel in both United States forces in South Korea and South Korea's own forces, and the performance of those assuming new assignments on the peninsula is highly dependent on realistic exercises.

Even for those soldiers in Korea with significant experience in their current assignment, performance erodes as more time elapses after the last realistic exercise. And, in general, the rate of erosion accelerates with time, so that if a major annual exercise is skipped, it does not just double the erosion of readiness. If the administration decides to skip Team Spirit in 1994, the degradation of readiness in the coming year can be expected to be much greater than that experienced since Team Spirit was last conducted in early 1993.

This is especially true given the introduction this year of new plans, procedures, and organizations that must be exercised.

On this last point, Mr. President, I would draw your attention to recent press reports that, in response to a report by the Pentagon's Inspector General, our commanders in South Korea have made numerous changes in procedures related to United States reinforcement of South Korea. According to the lead story in the current issue of Defense Week, the IG identified a wide variety of deficiencies in plans for "the reception, staging and onward movement of forces scheduled to deploy" to Korea. According to the IG, "As a result [of these deficiencies] the ability to provide forces as needed to execute the warfighting plan to defend Korea was substantially weakened." Among the deficiencies cited were a lack of docks, aircraft hangars and parking areas, unloading areas, railroad facilities, trucks, billeting and storage structures.

In response to these criticisms, with which United States commanders in Korea officially concurred, numerous changes in plans have been made. To cite a few examples:

The theater commander is updating his "time-phased force deployment data" plan, which details landing sequences so that reinforcements do not overload limited facilities.

Alternative ports and airfields have been identified and integrated into war plans.

Updates are being made in bridge, tunnel, and rail data.

All in-place and reinforcing aircraft have been assigned designated parking spaces.

And numerous other changes have been made related to nitty-gritty details that are essential to a complex military operation being successful.

These changes will undoubtedly raise readiness in the long run. Initially, however, they could actually decrease readiness until they are exercised and the inevitable kinks are worked out. Any time changes are made to a complex system, glitches are to be expected.

And if we learned anything from Operation Desert Shield, it should have been that moving military forces around the world ready to fight is a highly complex process and that it takes time to improvise around the glitches that arise. We were fortunate to have the time in Desert Shield because Saddam stopped at the Saudi border.

We do not have that luxury on the Korean peninsula. Seoul is within artillery range of North Korean forces. As recent press reports have highlighted, North Korea has been steadily moving forces forward in recent years so that some 70 percent are now within 60 miles of the border.

We simply would not have the time to improvise around very many glitches and kinks once hostilities became inevitable or started. Our plans must work the first time with a minimum of glitches. An enormous number of lives would hang in the balance.

Many who are not overly supportive of defense had a clear understanding of this type of problem when the issue was the computer software to command a star wars missile defense. I can only hope they will be as perceptive when it comes to this equally complex system to defend the Korean peninsula. The bottom line is that the only way to have confidence that this system will work satisfactorily is to exercise it.

Contrary to the implications of statements of anonymous administration sources, foregoing Team Spirit '94 would be a major decision since it would result in a degradation of Allied readiness at precisely the time when maintaining and, indeed, enhancing that readiness may be crucial to deter and, if necessary, defeat aggression from the North.

Finally, Mr. President, I must rebut a seriously erroneous assertion being made by anonymous administration officials. Numerous recent press reports have suggested that giving up Team Spirit '94 would not constitute a concession because Congress failed to fund this exercise in the recently adopted defense appropriations bill.

I have checked with the Appropriations Committee and can confirm that the bill did not in limit the administration's ability to conduct Team Spirit. There may be a question of whether the administration's budget request was originally intended to support Team Spirit, but administration officials have told the media that the Pentagon will be allowed to continue preparations for the exercise, indicating that it intended and is able to pay for Team Spirit out of the requested funds, which Congress has approved.

Mr. President, there seems to be no way to interpret this erroneous, anonymous assertion as anything other than an effort to escape political responsibility for the consequences of a decision to cancel Team Spirit. This plunge for political cover is particularly deplorable since it undermines our leverage with North Korea. At the same time as it prepares to make a very major concession to Pyongyang by treating Team Spirit as a bargaining chip, the administration seems to be deliberately cheapening the value of that currency, thereby diminishing the gains we can hope to obtain in exchange.

Far from protecting the administration from political criticism, such amateurish poker playing can only increase the already significant doubts that exist regarding this administration's ability to manage international affairs.

It inevitably raises comparison to a previous Democratic administration. Sixteen years ago, a relatively inexperienced team of policymakers proposed a Korean policy that undermined allied confidence in America and could have led Seoul to question its commitment to forego nuclear weapons.

Today a new team of relatively inexperienced policymakers is crafting another dubious Korean policy that has the potential for undermining Allied confidence in America and could lead Tokyo and Seoul to pursue nuclear weapons programs.

The parallels are inexact, but the risks today are at least as severe.

President Clinton does deserve credit for taking a personal interest in this deepening crisis. He has gone to Korea. He has been briefed by our military commanders there. He has continued President Bush's policy of freezing United States troop reductions in Korea so long as the current crisis remains unresolved. He has used firm rhetoric in describing American weapons capability.

But it is not clear if these commendable steps are being translated into a workable policy that will defend American and allied interests.

President Carter at the urging of Members of Congress, including Senator NUNN, Senator GLENN, myself, and others decided to reverse a disastrous course of action. I recall this history well since one of the first actions I took after joining the Senate was to travel to South Korea and other East Asian capitals in January 1979 to investigate the consequences of the Carter administration's proposed withdrawal of the 2d Infantry Division.

It is my hope that President Clinton will not need congressional intervention to rescue him from this Korean crisis. But this requires that he not proceed down the mistaken path his advisers seem to be mapping for him.

I ask unanimous consent to print in the RECORD the two documents I mentioned earlier.

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

[From the Forum for International Policy, November 1993]

NORTH KOREA: THE CLOCK IS TICKING

The North Korean nuclear problem has finally made the front page. There is a growing awareness both that it is deadly serious and that it may be about to get even worse. In brief, the North Korean nuclear problem could easily—and abruptly—become a genuine crisis, a real question of war and peace. We now need to move beyond expressions of concern about the seriousness of the problem to a clear strategy and a concrete program of action.

The stakes are enormous. Both South Korea and Japan face growing pressure to counter a suspected North Korean nuclear weapons program with nuclear weapons programs of their own. Even if those two countries continue to resist the nuclear temptation, however, the entire global non-proliferation regime could unravel if countries from Ukraine to Pakistan conclude that the international community is prepared to

stand by while North Korea defies its mandates or pursues a nuclear weapons program.

In a reversal of longstanding U.S. policy, senior Administration officials have held at least two rounds of negotiations with their North Korean counterparts over the past several months. These talks, however, have produced little more than further North Korean backsliding as Pyongyang introduces new problems and attempts to extract new concessions as its price just for returning to the point at which the current crisis began. They also have created at least the appearance that their stonewalling, far from imposing a cost or penalty, is being rewarded by continued American eagerness to negotiate further.

Time is not on our side: doubts among key regional states about U.S. purposes and priorities are growing, and the issue is becoming ever more urgent.

THE PROBLEM

We do not know for certain whether the North Koreans removed spent fuel from their nuclear reactors for reprocessing into weapons-grade material before the International Atomic Energy Agency (IAEA) began its monitoring of the nuclear facilities at Yongbyon. Some experts estimate that they may already have stockpiled enough material to produce as many as three to five nuclear weapons, and may be at work on building the weapons themselves. Inspections of "suspect sites" at Yongbyon could clarify this uncertainty. But not only has North Korea blocked these so-called "special" inspections, it is also steadily increasing its defiance of the IAEA.

When North Korea finally ratified the Nuclear Nonproliferation Treaty in 1991, the IAEA installed seals, monitoring cameras, and other devices at declared North Korean nuclear facilities as part of a "safeguards" program to help determine whether weapons-related activities were taking place. Pyongyang now refuses to permit the IAEA to conduct even the "routine and ad hoc" inspections it previously had allowed. With these inspections blocked, the IAEA's cameras are ceasing to function as their film and batteries run out. The seals and other monitoring devices need to be inspected to ensure that they remain intact and have not been tampered with.

This North Korean defiance means that the "continuity of safeguards" will continue to degrade and soon will break down with the result that the international community will not be able to determine whether Pyongyang has removed additional spent fuel from its Yongbyon reactors. At that point, uncertainty about how many "bombs worth" of nuclear material North Korea may have would increase substantially. The result of all this is growing uncertainty, suspicion and instability.

A STRATEGY

Faced with this urgent situation, the United States needs a strategy that combines boldness with subtlety. It should have three immediate objectives:

Preserving the continuity of IAEA safeguards so that the current uncertainties about the North Korean nuclear program do not worsen;

Effective international inspections both of the declared facilities and "suspect sites" at Yongbyon to help learn whether and how much plutonium may already have been diverted; and

Putting in place a continuing regime of effective inspections to block North Korea from developing a nuclear weapon.

Our goal is to achieve real, near-term results. How these are achieved—under the auspices of the IAEA, as part of the North-South denuclearization agreement, or in some other way—is of secondary importance.

CRYSTALLIZING PYONGYANG'S CHOICES

The strategy must also present the North Koreans with a clear choice. On the one hand, it can return to the status quo ante. The period that preceded this crisis held some promise of a process that could begin to integrate North Korea into the family of nations. North Korea seemed to appreciate the difficulties of its own isolation and its need for economic and diplomatic ties to the West. South Korea, Japan, and the United States had been prepared to move in this direction. The way was open for an evolution leading to the establishment of normal diplomatic relations, access to trade and investment, and assurances that peaceful North Korea has nothing to fear from its neighbors.

This process was interrupted, however, by the current nuclear crisis. It is inconceivable that it could be resumed unless and until North Korea has acted to end the current crisis, without precondition or reward. We must not suggest to other would-be proliferators that the threat of an indigenous nuclear weapons program is the key that unlocks the treasure trove of economic and political benefits. But we will offer North Korea the chance to see and rectify its mistake.

The nuclear program is hardly the only serious issue we have with North Korea. But these other issues can be addressed as part of our overall relationship once North Korea has returned to the status quo ante. For that to happen, the nuclear crisis must be resolved.

The other choice for North Korea must be isolation, pressure, and pain that will mount the longer it defies the international community and pursues its nuclear ambitions.

NEXT STEPS

The international community or the United States alone, if necessary, must be willing to take every step necessary to dissuade North Korea from continuing its present course, beginning with the following:

Political Actions: Diplomatically, we need to demonstrate to North Korea its diplomatic isolation on this issue. The November 1 United Nations resolution was a good start. By vote of 140 to 1 North Korea, the U.N. General Assembly explicitly rejected Pyongyang's claim of IAEA bias, and called on North Korea to "cooperate fully with the agency in the full implementation of the safeguards agreement."

We also need to target key regional actors. We need to persuade Russia and especially China to make clear to North Korea—privately but unmistakably—that they will not veto a UN Security Council resolution to impose economic sanctions. We also need to persuade South Korea and Japan that our approach, while determined, is not provocative and offers the North Koreans a peaceful way out. But it does reflect our firm view that a nuclear-armed North Korea would be an intolerable threat to the security of Asia and beyond. Firm action now by these and other concerned nations can avoid two worse choices: a nuclear-armed North Korea or drastic actions to prevent it.

Military Actions: We should look for steps that make clear our determination to deny North Korea a nuclear weapons capability. We also should look for measures that reassure Seoul we have no intention of provoking a North Korean military response, while at the same time making clear our unshakable commitment to the successful defense of South Korea, starting with Seoul. Finally, we should not treat decisions about near-term military steps—including Exercise Team Spirit—simply as bargaining chips to be played or traded in an effort to affect the tactical state of play.

We should implement promptly two military actions which are specifically designed to support the strategy outlined above. One would be a multilateral naval exercise off the coast of North Korea to signal to Pyongyang a capability and determination to enforce economic sanctions should they be imposed. To underscore that this is an international effort to stop the North Korean nuclear program, as many countries as possible should be encouraged to participate—particularly South Korea, Japan, Russia and China—A second would be a joint United States ROK exercise to strengthen the defense of Seoul, emphasing capabilities such as ground-based air defenses that Pyongyang should not regard as provocative.

Exercises such as these would be intended to signal the international community's willingness to move from talk to action while consideration of economic sanctions continues, as well as its resolve to respond to any North Korean military provocation. To make clear that they are not simply bargaining chips, neither exercise should be tied to or conditioned on near-term North Korean actions. Both instead should be conducted as soon as possible and without reference to the state of play on the nuclear issue. At the same time, we should make clear that the need for such exercises, including Exercise Team Spirit and other military deployments in the future would depend on progress in strengthening stability on the Korean peninsula and reducing threats to peace and security in Northeast Asia.

Economic Actions: Surrounded by the Asian economic miracle. North Korea is steadily descending into economic crisis. At least some elements of the leadership understand that the worsening domestic situation and the accelerating gap between North and South increasingly will threaten Pyongyang's political and economic survival. We should use the leverage provided by its desperate straits to help persuade Pyongyang to abandon its nuclear program.

Specifically, we should begin now to design a package of sanctions centered on cutting off North Korean imports of oil. Although oil makes up only about 10 percent of total North Korean energy consumption, it is critical to its military forces, to its coal mining industry (which in turn provides about 75 percent of North Korea's energy needs), and other key sectors of the economy. Oil imports already are down by about one-third to one-half from the mid-1980s. As the regime surely must understand, further significant reductions in oil imports would cripple, if not strangle, the already faltering North Korean economy, with unpredictable, but surely serious, political consequences.

If the prospect of an oil cutoff is to be truly credible, however, Chinese cooperation would be indispensable. Beijing accounts for about two-thirds of North Korea's current oil imports, most of which are delivered via pipeline. Should it so decide, Beijing could easily provide all of North Korea's current oil needs, even if a naval blockade cuts off tankers delivering oil from other suppliers.

We should urge China to join in an international effort steadily to reduce North Korea's oil imports. At a minimum, we should ask China not to replace oil imports from

other suppliers that were cut off by a naval blockade or other actions. Put simply, with Beijing's support, manipulation of oil imports could prove to be an important source of leverage. Without that cooperation, economic measures virtually are certain to be ineffective and to leave more forceful actions as the only alternative.

A PROPITIOUS TIME TO ACT

The Chinese do not need to be convinced that a North Korean nuclear capability would be a serious threat to their interests. They do remain to be persuaded, however, that the North Korean nuclear problem requires urgent action rather than what the Chinese call "patient talk;" that we have in mind a strategy that can succeed with their active involvement but will fail without it—leaving only worse and starker alternatives; and that their cooperation will redound to their benefit rather than to their detriment. As the UN resolution suggests, this will be an uphill effort: China was one of only nine countries which abstained on the UN resolution. The seriously strained relations between the United States and China is an added complication.

At the same time, however, U.S.-PRC cooperation on this issue could add a strategic dimension—grounded in a serious dialogue about mutual security interests and concerns—that would benefit the U.S.-Chinese relationship more generally. Framing a discussion of the North Korean issue, this strategic dialogue—rather than the current agenda of bilateral issues and irritants—should be the centerpiece of the meeting between President Clinton and Chinese President Jiang Zemin scheduled for later this month in Seattle. The Seattle meeting should be preceded by a serious intelligonce exchange in which the U.S. side undertakes to explain all the reasons why we are convinced that the North Korean nuclear problem not only is serious, but requires urgent action.

The objective in Seattle is not to ignore our bilateral differences with China but to find common ground on an issue of mutual importance that transcends the bilateral issues. If this goal can be achieved, it would hold the promise of reversing North Korea's march toward nuclear weapons, of putting a key bilateral relationship on a new, stronger footing, and of providing a more constructive framework for tackling bilateral problems.

The importance of dealing firmly with the North Korean issue is profound. The Cold War may be over but, as North Korea demonstrates, we continue to live in an age that poses real questions of nuclear war and peace. The United States must lead the international community's response to this crisis. For its approach to succeed, it must have the clear support of Congress and the American people. The President therefore needs to explain to the American people—promptly and persistently—what is at stake and what the United States must and will do.

Principal Authors: Arnold Kanter is a Senior Associate with the Forum for International Policy. During the Bush Administration, he was Under Secretary of State for Political Affairs and Senior Director for Defense Policy at the National Security Council. Stephen Hadley is a Senior Associate with the Forum for International Policy. He has served as Assistant Secretary of Defense for International Security Policy and has also served on the National Security Council staff. He is currently a partner of the law firm Shea and Gardner.

[From Defense Week, Nov. 15, 1993]

SUBSTANTIAL WEAKNESSES MAR REINFORCEMENT OF KOREA: IG

(By Andrew Weinschenk)

Inadequate contingency planning by U.S. commanders has "substantially weakened" South Korea's defense against an onslaught from the North, according to a classified report by the Pentagon Inspector General.

Declassified excerpts were obtained by Defense Week. News of the heretofore unpublicized assessment comes as tensions with North Korea escalate over its nuclear weapons program.

According to one excerpt, the U.S. has not "adequately planned for the reception, staging and onward movement of forces scheduled to deploy" to the Korean peninsula.

The report outlined a laundry list of logistical shortfalls that are somewhat surprising given the 40-year standoff with North Korea. The deficiencies include a lack of docks, aircraft hangars and parking areas, unloading areas, railroad facilities, trucks, billeting and storage structures.

"As a result, the ability to provide forces as needed to execute the warfighting plan to defend Korea was substantially weakened," it said.

The reinforcement issue takes on heightened significance as the tense standoff with North Korea continues over nuclear inspections. U.N.-imposed sanctions designed to force North Korean acceptance of International Atomic Energy Agency inspections could spark a violent North Korean reaction, senior Pentagon officials have warned.

The IG's report paints a picture of serious planning shortfalls on numerous fronts—deficiencies which U.S. Forces in Korea claim to have vigorously attacked.

To shore up the South's defenses, the IG recommended "development of alternative planning" for reinforcements and "identification of solutions to space shortages for arriving aircraft and personnel."

In particular, the report cited the need to ensure that alternative ports are available to receive reinforcements. It also called for additional cargo handling equipment and stevedores.

"We recommend that the commander, 7th U.S. Air Force, identify solutions to alleviate shortages of facilities and real estate for aircraft and personnel."

In addition, the IG recommended purchasing equipment and supplies, including such basics as uniforms, needed by the Korean Service Corps. The corps is a para-military labor force dating to the Korean War, when laborers provided support service to U.S. military forces.

Fully implementing the recommendations would "help ensure that sufficient personnel and resources will be available for arriving forces to be integrated with Combined [U.S. and Korean] Forces in the defense of South Korea," added the report.

The IG noted that, "Reinforcement of warfighting units requires a coordinated effort on the part of all forces involved: those already in Korea and those scheduled to deploy in the event of hostilities."

The North Korean Army fields 1.1 million troops against 700,000 South Korean and 37,000 U.S. troops. About 70 percent of the North's troops are within about 60 miles of the border, meaning there would be little warning of an attack.

Given the small number forward deployed U.S. forces, reinforcements would be "particularly vital" to South Korea's defense, said the IG. The Aspin Pentagon's "bottom-up" review envisions massive deployments from U.S.-based forces to reinforce such a contingency.

PENTAGON MOVING TO PLUG GAPS

According to management comments in the IG's report, U.S. Forces in Korea, or USFK, officially concurred with the IG's findings. It has launched an extensive revamping of its reinforcing and logistics capabilities.

Many improvements took place after the IG concluded its investigation.

Although most of the report is classified, the extent of improvements indicates the scope of deficiencies.

Management said it worked with the South Korean government to update a port study and is negotiating an agreement for more materiel handling equipment. The USFK has also bought and tested 40 additional heavy equipment railcars and updated its bridge, tunnel and rail data.

To reduce space shortfalls, the 7th Air Force has retained exclusive use of some facilities at joint U.S./Korean bases, improving its "beddown" capability. Many U.S. facilities at joint bases were scheduled to revert to South Korea.

To improve wartime host-nation support, the USFK has completed staffing of eight support agreements where just one such agreement existed at the IG investigation's conclusion.

The USFK has also submitted 35 additional "memorandum of agreements," or MOAs, to the South Korean defense ministry for more host-nation support.

In moves specifically related to the IG's conclusion, USFK identified alternative ports and incorporated them into a revised operational plan. The command also is negotiating separate agreements providing enough materiel handling equipment and stevedores.

After a review of the USFK wartime transportation requirements the South Korean defense ministry concluded "assets have been determined to be adequate to satisfy deployment requirements," said the management comments.

The 7th Air Force established a "supportability team" to survey its capacity to absorb reinforcements and transmitted its recommendations to Pacific Air Forces for approval.

To improve host-nation support, USFK and the South Korean government will establish a special steering committee. The charter has been initialed by both sides and "negotiations for final conclusion are currently progressing."

The USFK also said that reinforcement logistics materiel and doctrine were "exercised to the extent possible considering funding constraints" during Team Spirit '93.

Validation of available ramp space at joint U.S./Korean air bases and at U.S.-only installations completed in April 1993 "resulted in designated parking for all inplace and augmenting aircraft," the comments added.

Air base facilities shortages are being addressed through potential construction projects and by updating the theater commander's so-called "time-phased force deployment data" plan. That plan details landing sequences so that reinforcements don't overload limited facilities.

A feasibility study for using offbase hotels to board incoming troops was slated for completion last month. It may lead to another MOA.

The South Koreans have designated a secondary air base to "alleviate congestion" at Kimhae, the primary air field slated to receive U.S. reinforcement, the USFK wrote.

"Discussions are in progress for U.S. use of the newly constructed air freight terminal at this secondary" base.

Recommendations for beefing up "operational project stocks" used to support reinforcing forces are slated for submission to Army headquarters this month. Commercial leasing agreements with Korean companies for additional wartime vehicles should be completed in December.

KOREA SHORTFALLS MAY BE NOTHING NEW

According to Bob Gaskin, the ex-assistant director of the Pentagon's Net Assessment Office until 1992, problems with reinforcing Korea have long been well-known. And they are still enormous. USFK' efforts to plug the shortfalls are "like taking an ice pick to a mountain," he said.

Gaskin said if war comes, Pusan port and Kimhae airfield will be subjected to constant North Korean terrorist, commando and Scud attacks. "They're not going to leave them alone."

Panicky refugees will clog severely limited transportation arteries, complicating the rapid deployment of reinforcements, said Gaskin, now with Business Executives for National Security.

A Pentagon official intimately familiar with the U.S. Korean campaign plan defended it last week. "The fact is that you could look at any plan that has not yet been executed and say that it will . . . or won't work. You can make that statement on any plan that has not been executed." But he admitted that "you can always make [the plan] better."

Gaskin said the number of troops slated to reinforce Korea had not changed much with new planning. The recent "bottom-up" review kept reinforcements at roughly Cold War levels, he said.

But that review did call for "increased early-arriving land-based and carrier aircraft and long-range bombers." It also called for airlift and sealift upgrades to support "rapid closure of heavy forces."

Gaskin also blamed the South Koreans for failing to make sure their logistics capabilities were up to snuff. Unlike Saudi Arabia where the royal family "put its money where it's concerns are," the Koreans haven't spent "the money that is needed."

Gaskin said he submitted a "very disturbing" 1991 report laying out the full scope of problems with U.S. reinforcing plans but charged it was "blocked" from getting to then-Defense Secretary Dick Cheney.

"Many of these problems were addressed in the report two years ago. The report is explosive and detailed, point, chapter and verse."

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business.

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

TRIBUTE TO N.H. "HAPPY" BERRY

Mr. DOLE. Mr. President, I rise today to honor the late N.H. "Happy" Berry of Lenora, KS.

"Hap" was a family man, a farmer, a devoted public servant, and a good friend.

He served as master of the Lenora Masonic Lodge, a Shriner, and a trustee of Lenora township. He was a director of the Lenoral Mercantile Association and a director of the Norton County Farm Bureau.

Born in a log cabin in Tennessee, he came to western Kansas in 1920 during the wheat harvest. Subsequently, he and his wife Fern became a part of the Norton county community where "Hap" farmed for over 60 years.

I remember "Hap" for his longtime support and friendship and the legacy he leaves as a Kansan.

With the passing of Fern in 1988, "Hap" is survived by a sister, Mary; three sons, Hardy, Delbert, and Joseph; six grandchildren and six great grandchildren.

IRRESPONSIBLE CONGRESS? HERE'S TODAY'S BOXSCORE

Mr. HELMS. Mr. President, as of the close of business yesterday, November 16, the Federal debt stood at $4,461,657,354,035.12, meaning that on a per capita basis, every man, woman, and child in America owes $17,370.06 as his or her share of that debt.

THE 1994 DEFENSE AUTHORIZATION BILL

Mr. WARNER. Mr. President, I would like to take this opportunity to commend the chairman of the Armed Services Committee, Senator NUNN and the ranking Member, Senator THURMOND for their outstanding leadership throughout this difficult year. The Armed Services Committee, in my opinion, has produced a bill which optimizes the use of relatively scarce resources and provides the strongest defense possible within tight budget constraints.

I am concerned, however, that we may be moving dangerously close to a hollow force. This budget for fiscal year 1994 is $12 billion below what President Bush's defense budget would have been. If President Clinton's administration sticks with his current plan, we will have to cut an additional $28 billion per year each year for the next 4 years. I believe this cuts far too deeply.

If we cut our defense budgets by that much, we will cause hollow forces. We will require the military services to involuntarily separate thousands of qualified volunteers who planned to serve for a career. Additionally, we will curtail essential flying and steaming hours, training ammunition and training opportunities. Our forces cannot remain ready if they cannot train.

Mr. President, I am concerned that we have cut our Ballistic Missile Defense programs too deeply. We have all but dismissed any possibility of a missile defense for the people of the United States. We have substantially slowed the progress toward improvements in theater missile defenses.

I believe this is unwise in a world where North Korea may be well along toward producing nuclear weapons and already has ambitious ballistic missile programs—and where there is still the possibility that former Soviet Union nuclear weapons might fall into the wrong hands or be accidentally launched. Or, where nuclear or ballistic missile technologies, so eagerly sought by third world despots, may not be under positive control in countries of the former Soviet Union. I hope, Mr. President, that next year we find the resources to revitalize our ballistic missile defense programs.

I am pleased that the fiscal year 1994 Defense appropriations bill supported the construction of the Navy's next nuclear-powered aircraft carrier, CVN–76 by providing $1.2 billion for use toward the construction of the carrier when the carrier is authorized. I am confident, Mr. President, that that authorization will be forthcoming next year.

Mr. President, I remain concerned about the balance between reserve component force structure and active component force structure. I understand why it is difficult for the Congress to support major reductions in the reserve components, but we simply cannot maintain force structure in the reserves at the expense of required active component force structure when we have already made major reductions in the active components.

It is essential that we maintain only those forces which are critical in both the active and reserve components—and the total force must be properly balanced. I intend to continue to examine this situation in more depth next year.

Mr. President, I thank the chair, the distinguished floor managers and I yield the floor.

NOMINATION OF MARK L. SCHNEIDER TO BE ASSISTANT ADMINISTRATOR FOR LATIN AMERICA AND THE CARIBBEAN OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. DODD. Mr. President, I rise today to share with my colleagues a recent statement made by Mark L. Schneider, President Clinton's nominee to be Assistant Administrator for Latin America and the Caribbean of the Agency for International Development.

On November 9, I had the privilege of chairing a hearing of the Committee on

Foreign Relations to consider Mr. Schneider's nomination.

Mr. Schneider's qualifications for this position are clear. He has served as a Peace Corps volunteer in El Salvador; as executive director of the city of Pittsburgh's human relations commission; as a legislative assistant to our colleague, Senator KENNEDY; as deputy assistant secretary of state for human rights; and as senior adviser to the director of the Pan American Health Organization.

Mr. Schneider's achievements were recognized earlier this year when the Government of Chile awarded him the Bernardo O'Higgins Medal for human rights work.

I would like to bring to my colleagues' attention Mr. Schneider's testimony from last week. I think it was a significant statement on United States aid policy toward Latin America, and it deserves careful and thoughtful consideration. I ask unanimous consent that the statement be entered into the RECORD at this point.

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

STATEMENT OF MARK L. SCHNEIDER BEFORE THE COMMITTEE ON FOREIGN RELATIONS, NOVEMBER 9, 1993

I want to thank the Chairman and the Members of the Senate Foreign Relations Committee for the opportunity to appear before you today as President Clinton's nominee for the position of Assistant Administrator for Latin America and the Caribbean of the Agency for International Development (USAID). If confirmed in this post, I assure you of my desire and my determination to work very closely with the Members and Staff of this Committee and of other Committees. I am a product of and believe deeply in the importance of the Congressional role in foreign policy and in the value of bipartisan collaboration.

I am proud that USAID Administrator Brian Atwood has asked me to join him in redefining our foreign assistance program, particularly in Latin America and the Caribbean. I obviously am honored that President Clinton accepted the Administrator's recommendation to nominate me for this position.

In some ways, the various strands of my professional career stretching back nearly three decades come together in this position. My first direct involvement in Latin America and in development took place in 1966 when my wife and I lived in El Salvador as Peace Corps volunteers. We worked in a poor barrio in San Salvador with that city's community service agency.

For more than two years, we saw the obstacles to expanding access to education and to health and the realities of uncollected garbage, of cardboard and bamboo shacks, and of untreated sewage. We saw men and women up at 5 a.m. to begin searching for a day of unskilled labor.

We saw poverty in its cruelest form, in the funeral processions that passed through our community to the paupers' cemetery just beyond. They bore tiny wooden coffins with infants who had died from the diseases that could have been prevented by immunization or by the simplest form of medical treatment.

We came to appreciate and marvel at the undaunted spirit of the people of these communities to secure better lives for themselves and for their children.

I spent much of the next decade with the legislative and executive branches of the U.S. government in positions which involved examining U.S. policy and programs affecting Latin America and the Caribbean. My responsibilities on Senator Edward M. Kennedy's staff for the next six years included working closely with the Senate Refugee Subcommittee on humanitarian issues affecting Latin America. On behalf of the Senate Judiciary Committee, I traveled to Chile and Guatemala, the former trip focussing on human rights conditions and the latter exploring the U.S. response to natural disasters.

My next government responsibility was in the Department of State's Human Rights Bureau in the Carter Administration. Despite the global nature of that office, it afforded me another opportunity to think about U.S. development policy toward Latin America.

For the past 12 years, I have had a different perspective on Latin American development issues as a senior policy advisor of the Pan American Health Organization.

The PAHO experience spanned strategic planning, programming, monitoring and evaluation responsibilities for an Organization with a structure very similar to that of USAID. I should add that I also saw USAID from the side of a grantee.

It is essential for USAID to be clear about what it can and cannot do, to do it at the least possible cost and with the least amount of paperwork. Redefining government means defining policy and program objectives in clear and measurable ways, managing for results and changing or ending programs if they fail to produce those results. It means becoming more innovative in the way USAID uses resources. It also means building coalitions with other bilateral and multilateral development institutions. It means defining priorities and concentrating the resources of the international community on those priorities.

The PAHO years also reinforced by awareness of the integrated nature of development, in Latin America and elsewhere. It taught me much about the precise linkages between health and education; between human capital investment and economic growth; between protecting the environment and protecting our health and our future economic base; and between democracy and development.

Therefore, it was particularly exciting to see the strategy of sustainable development which the USAID Administrator set forth when he appeared before this Committee last July.

That strategy was a response to the question of how to recast U.S. development policy in the post Cold War era. It asserts that the new strategy threats increasingly are related to the failures of development: the continuation and exacerbation of poverty, social and economic inequities, environmental abuse, rapid population growth, oppression, and the absence or weakness of democratic institutions. The consequences of those failures are conflict and the collapse of civil society, population dislocation, and stagnant or deteriorating economic and social conditions

The strategic response which the Administrator described is a policy of promoting sustainable development. Sustainable development aims at securing a broadly-based economic growth that reduces poverty; at protecting the environment so that natural resources are there for the next generation; at stabilizing population growth and protecting human health for their own value and because of the contribution they make to economic well-being; and at building democratic institutions which guarantee political freedom and shore up the rule of law.

In Latin America, a renewed USAID, focussed on these priorities, can help a region of direct and continuing importance to the prosperity and security of the United States overcome the threats to development not merely from one year to the next, but from one generation to another.

Secretary of State Warren Christopher's speech to the Council of the Americas contained this assurance: "President Clinton is committed to forging a true partnership of the Americas—a Western Hemisphere Community of Democracies—to strengthen democratic institutions, defend human rights, fight for social justice, support economic reform and free markets and protect the environment."

This commitment recognizes that our ties to Latin America are enduring ones. Each era inevitably presents new threats and new opportunities. Today we face one such moment, able, for the first time in more than 40 years, to help the nations of the Western Hemisphere see the challenges of development without the distorting prism of the Cold War.

The first fundamental challenge is political—the reinforcement of the region's fragile democracies. We have a chance to consolidate a democratic movement which began its march toward freedom long before the fall of the Berlin wall. Now, as President Clinton stated at the United Nations, "We will support the consolidation of market democracy where it is taking new root, as in the states of the former Soviet Union and all over Latin America. And we seek to foster the practices of good government that distribute the benefits of democracy and economic growth fairly to all people."

Part of that consolidation must come in Central America where the transition to democracy remains unsettled. It is vital to complete the Esquipulas peace process, assuring open and democratic systems, respect for the rule of law, and economic growth with equity. Reconciliation and reconstruction will never be fully achieved until the two thirds of the Central American population living in poverty gain access to health care and to education and to the tools to enter the mainstream economies. The next five years will be crucial to the outcome of that transition.

Invigorating democratic institutions and expanding economic opportunities as part of a sustainable development strategy also comprise key components of a revised Andean counter narcotics initiative. USAID has a continuing role in helping those nations to combat the threat of the drug lords.

Also, in Haiti, we see perhaps the region's most glaring example of the costs of failing to address over time the underlying political and economic threats to development. USAID is providing humanitarian food and medical relief as diplomatic efforts attempt to restore the constitutional government of President Aristide.

In Latin America and the Caribbean, after the "lost decade of development," the second challenge is economic.

The 1980s economic crisis brought unprecedented stabilization and structural adjustment. Reforms included trade liberalization, privatization and a market-oriented approach to economic growth. Fiscal deficits

began to decline, hyperinflation was curtailed and trade barriers were removed. Nevertheless overall per capita income declined by 9% during the decade; social sector investments plunged; and the percentage of the population living in poverty rose by nearly a third, to 46%, according to the United Nations Economic Commission for Latin America and the Caribbean (ECLAC). Two hundred million people live in poverty today, 60 million more than in 1981.

The test ahead will be how these countries open their economies to the participation of the majority of their citizens even as they maintain and deepen the past decade's market reforms.

Our nation must invest in people here and abroad. Investments in human capital have been shown to have a direct impact on increased productivity, on obtaining better employment opportunities and higher family income, and on opening opportunities for greater participation in the democratic process.

Hopefully, we are seeing the dawning of a new period of economic advancement. Last year, nearly every country in the region experienced positive real growth; but that growth was barely sufficient to match the burgeoning population. The ECLAC reports for 1993 are more promising with estimates of 3.6% growth in GDP per capita.

The relationship to our own economy of restored economic vigor in the region is unquestioned. Latin America constitutes the fastest growing and largest market within the developing world for our products. This year, more than $80 billion in U.S. goods and services will be exported to Latin America. Those figures translate into 1.6 million jobs for American workers. Mexico alone purchases $42 billion in U.S. exports, and is our third largest market, after Canada and Japan.

Not only trade binds our economic futures to the region's development. More than 19 million U.S. citizens travel each year to the region as tourists or on business and more than 11 million Latin Americans will visit this nation. In addition, more than two million legal and illegal migrants will pass across our border to search for work and for brighter futures. We have compelling interests in assisting those nations in improving the health of their citizens, in educating their children and in providing a social infrastructure which will offer them hope in their own countries.

The Administrator has noted that the USAID strategy of sustainable development will seek to strengthen market-oriented economies in the region, to urge sectoral policy reform that emphasizes participation and decentralization, to encourage involvement of non-governmental organizations and microenterprises, to promote greater respect for labor rights and to seek removal of the constraints to broad-based participation in economic development.

Population and health problems constitute the third challenge confronting the region. The hemisphere's population today stands at 725 million with some 450 million living in Latin America and the Caribbean. In less than a generation, the total population will pass the billion mark. The industrial nations will see our population grow by 23%; while the population of Latin America and the Caribbean will grow by 60%. Without sustained development, those demographic pressures inevitably will shake every institution is society.

With respect to health, Latin American's infant mortality rate continues to be nearly six times that of North America, and maternal mortality rates are nearly 40 times higher in several countries than in industrial nations. PAHO has estimated that as many as 500,000 children under age 5 die needlessly each year from diseases which are preventable with known and inexpensive technology. Unfortunately, these traditional diseases now are being paralleled by the AIDS epidemic.

It was in this context that population and health concerns were targeted by the USAID Administrator as priorities to be addressed within the strategy of sustainable development.

There is another hemispheric challenge which frequently has been overlooked in the past. The air and waters and land mass of our neighbors affect our own environment directly and indirectly. Latin America and the Caribbean contain more than half of the world's remaining tropical forest and probably the most diverse and irreplaceable natural storehouse of biodiversity.

The environmental challenge has two parts, and the Administrator has emphasized that USAID will pursue both the preservation of natural resources and the prevention of environmental contamination. In Latin America, the environmental challenge can be measured by the 130 million people who do not have access to safe drinking water and by the 220 million who do not have adequate sanitation and by the fact that barely 10 percent of all sewage collected is treated before being dumped into the common waters of the hemisphere. Or it can be measured by nearly one million cases of cholera which have spread through the region as that disease has reappeared for the first time in a century.

I believe that we share a common destiny with the nations of this hemisphere. This is a moment when the linkages between our economic and political security have never been greater. Helping the nations of the region achieve sustainable development is the best form of preventive diplomacy and the least costly. It is in our national interest to be a full partner in the region's social, economic and political development.

I hope to have the opportunity to help USAID and our country meet these challenges.

S. 1657, HABEAS CORPUS REFORM

Mr. DURENBERGER. Mr. President, I rise to explain the reasons I will vote to table S. 1657, Senator SPECTOR's bill regarding habeas corpus reform.

Among other things, the 14th amendment to our Constitution prohibits States from violating the rights of Americans that are guaranteed by the Constitution. The Habeas Corpus Act of 1867 was enacted to ensure that State courts do not violate the 14th amendment or Bill of Rights when they punish the criminally accused. Since that time, State prisoners have been able to challenge the constitutionality of their conviction or sentence in Federal court by filing a petition for a writ of habeas corpus.

Everyone agrees that it is tragic when an individual commits a crime against another individual. But it is particularly frightening when the State commits a crime by violating constitutional rights in its zeal to punish crime. That kind of misbehavior by the State threatens the liberty of all Americans. That is why I believe that constitutional rights should be zealously protected in our criminal justice system, and the writ of habeas corpus is an important component of that protection.

Those who want to further limit access to habeas corpus maintain that claims are filed frivolously, particularly by prisoners on death row who want to delay their execution. But the fact is, constitutional error is found in 40 percent of the death penalty cases reviewed by Federal courts under habeas corpus.

The Supreme Court has acted recently to significantly limit access to habeas corpus review, and I believe the Congress should proceed with extreme caution before enacting further restrictions on habeas.

I have particular concerns about this bill, such as the elimination of the exhaustion of remedies in State court. Under this bill, petitioners must file a petition for a writ of habeas corpus in Federal court within 6 months of a conviction becoming final, without an adequate opportunity to pursue a writ of habeas corpus in State court.

I am also concerned about the 6-month limit placed on district courts and the 4-month limit placed on courts of appeal for reviewing habeas corpus cases. Federal antitrust or securities cases drag on in Federal courts for years. In death penalty cases—where life rather than money is at stake—we should be at least as willing to commit court resources to ensure fundamental fairness.

I understand that we may take up habeas corpus reform in the next session if this bill is tabled, and I hope that we will have time to consider reform rationally and thoughtfully at that time.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Edwin R. Thomas, 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

ENROLLED JOINT RESOLUTION SIGNED

At 1:17 p.m., a message from the House of Representatives, delivered Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 129. Joint Resolution to authorize the placement of a memorial cairn in Arlington National Cemetery, Arlington, Virginia, to honor the 270 victims of the terrorist bombing of Pan Am Flight 103.

At 3:40 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1025. An act to provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm.

H.R. 2884. An act to establish a national framework for the development of School-to-Work Opportunities systems in all States, and for other purposes.

H.R. 3000. An act for reform in emerging new democracies and support and help for improved partnership with Russia, Ukraine, and other new independent states of the former Soviet Union.

MEASURES REFERRED

The following measure, previously received from the House of Representatives, was read the first and second times by unanimous consent, and referred as indicated:

H.R. 1137. An act to amend the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1027), and for other purposes; to the Committee on Energy and Natural Resources.

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, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3286. An act to authorize the Secretary of the Interior to lease certain properties at the Presidio of San Francisco, California; to the Committee on Energy and Natural Resources.

MEASURES PLACED ON THE CALENDAR

The following measure was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2884. An act to establish a national framework for the development of School-to-Work Opportunities systems in all States, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were held laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–313. A joint resolution adopted by the Legislature of the State of Oregon; to the Committee on Appropriations.

"HOUSE JOINT MEMORIAL 5

"Whereas the Congress in 1992 enacted the Mammography Quality Standards Act to provide for the accreditation and inspection of medical clinics and facilities engaged in the early detection of breast cancer by means of mammography technology; and

"Whereas the Act also requires a study to determine whether the imposition of strict standards for clinic and facility certification results in a reduction of poor quality mammography and a consequent improvement in the diagnosis and early treatment of breast cancer, now, therefore,

"Be It Resolved by the Legislative Assembly of the State of Oregon:

"(1) The Congress is urged to appropriate to the Department of Health and Human Services the funds necessary to expedite and implement the provisions of the Mammography Quality Standards Act so that thousands of women may be spared the tragic consequences of breast cancer detected too late or not at all.

"(2) Copies of this memorial shall be sent to the President of the Senate, to the Speaker of the House of Representatives and to each member of the Oregon Congressional Delegation."

POM–314. A resolution adopted by the Reformed Church in America, New York, New York relative to greenhouse gases; to the Committee on Energy and Natural Resources.

POM–315. A resolution adopted by the Reformed Church in America, New York, New York relative to fossil fuel consumption; to the Committee on Energy and Natural Resources.

POM–316. A resolution adopted by the Western Legislative Conference of the Council of State Governments relative to Pacific Islands commercial ports; to the Committee on Energy and Natural Resources.

POM–317. A resolution adopted by the Western Legislative Conference of the Council of State Governments relative to the Island of Tinian; to the Committee on Energy and Natural Resources.

POM–318. A resolution adopted by the Association of American State Geologists relative mining law reform legislation; to the Committee on Energy and Natural Resources.

POM–319. A communication from the City Council of Loveland, Ohio relative to the Kings Mills military reservation; to the Committee on Environment and Public Works.

POM–320. A resolution adopted by the Reformed Church in America, New York, New York relative to tobacco products; to the Committee on Finance.

POM–321. A resolution adopted by the Western Legislative Conference of the Council of State Governments relative to coordination of guidance and prevention services for families; to the Committee on Finance.

POM–322. A resolution adopted by the Western Legislative Conference of the Council of State Governments relative to Supplemental Security Income; to the Committee on Finance.

POM–323. A resolution adopted by the Western Legislative Conference of the Council of State Governments relative to the North American Free Trade Agreement; to the Committee on Finance.

POM–324. A resolution adopted by the Western Legislative Conference of the Council of State Governments relative to a U.S.–Mexico Border Health Commission; to the Committee on Foreign Relations.

POM–325. A resolution adopted by the Town of Oliver Springs, Tennessee relative to Federal mandates; to the Committee on Governmental Affairs.

POM–326. A resolution adopted by the Town of Mexico, Maine relative to Federal mandates; to the Committee on Governmental Affairs.

POM–327. A resolution adopted by the Town of Orrington, Maine relative to Federal mandates; to the Committee on Governmental Affairs.

POM–328. A resolution adopted by the Western Legislative Conference of the Council of State Governments relative to reducing demand for illegal drugs; to the Committee on Labor and Human Resources.

POM–329. A resolution adopted by the Western Legislative Conference of the Council of State Governments relative to youth violence; to the Committee on Labor and Human Resources.

POM–330. A resolution adopted by the Legislature of the State of Oregon; to the Committee on Labor and Human Resources.

"HOUSE JOINT MEMORIAL 6

"Whereas breast cancer continues to claim the lives of thousands of women, despite significant scientific advances in detection and treatment; and

"Whereas federal agencies, projects and initiatives play a vital role in our national will to combat and conquer disease; and

"Whereas a coordinated and focused effort often proves to be the key element of victory in battles against disease; now, therefore,

"Be It Resolved by the Legislative Assembly of the State of Oregon:

"(1) The Congress of the United States is respectfully requested to establish an Office of Breast Cancer Coordination to provide a cohesive agenda for breast cancer research through such agencies as the National Institutes of health, the National Cancer Institute and the Centers for Disease Control, and to ensure the elimination of redundancy and the fostering of an integrated approach to the eradication of breast cancer.

"(2) Copies of this memorial shall be sent to the President of the Senate, the Speaker of the House of Representatives and to each member of the Oregon Congressional Delegation."

POM–331. A joint resolution adopted by the Legislature of the State of Oregon; to the Committee on Labor and Human Resources.

"HOUSE JOINT MEMORIAL 17

"Whereas Chronic Fatigue Immune Dysfunction Syndrome, also known as Chronic Fatigue Syndrome and Myalgic Encephalomyelitis, is a serious multisystem disease for which there is no known cure or effective treatment; and

"Whereas the national Centers for Disease Control, which in 1988 established scientific criteria for diagnosing this disease, has called CFIDS an emerging epidemic; and

"Whereas estimates of the afflicted range as high as one and one-half percent of the populace, or approximately 3,750,000 individuals including adults, adolescents and children as young as five years of age; and

"Whereas recent biomedical research has shown that Chronic Fatigue Immune Dysfunction Syndrome attacks a number of systems of the human body resulting in chronic debilitating fatigue, many influenza-like symptoms, and neurological, neuromuscular, immunological and cognitive impairments; and

"Whereas the disease can cause extreme debilitation, in some cases in excess of five years, and can prevent sufferers from working and performing normal daily activities; and

"Whereas victims of Chronic Fatigue Immune Dysfunction Syndrome face misunderstanding and a lack of acceptance by providers of social services and public assistance programs despite experiencing symptoms of

sufficient severity to legally qualify them for disability coverage under the federal Social Security Act; and

"Whereas because so little is known about the disease, sufferers are often misdiagnosed and receive inadequate medical treatment, prolonging their period of disability and loss of productivity in the workplace; and

"Whereas the mode of transmission of the disease and its natural history are unknown at present, making all segments of the population at risk; and

"Whereas there is great need for education and training of health professionals regarding Chronic Fatigue Immune Dysfunction Syndrome and for increased public awareness of the disease; and

"Whereas there is an urgent need to expand the public health response to this disease, which has been identified in every state; now, therefore,

"Be It Resolved by the Legislative Assembly of the State of Oregon:

"(1) The Oregon Legislative Assembly respectfully memorializes the President and the Congress of the United States to direct increased and specific funding to research Chronic Fatigue Immune Dysfunction Syndrome and to develop effective treatments and a cure for this disease.

"(2) Copies of this memorial shall be sent to the President and Vice President of the United States, to Hillary Rodham Clinton, chairperson of the Health Care Task Force, and to the Speaker of the House of Representatives, and to each member of the Oregon Congressional Delegation."

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on November 17, 1993 he had presented to the President of the United States, 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 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.

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.

S.J. Res. 129. Joint Resolution to authorize the placement of a memorial cairn in Arlington National Cemetery, Arlington, Virginia, to honor the 270 victims of the terrorist bombing of Pan Am Flight 103.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of November 11, 1993, the following reports of committees were submitted on November 12, 1993:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 1491: A bill to amend the Airport and Airway Improvement Act of 1982 to authorize appropriations, and for other purposes (Rept. No. 103-181).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 1218: A bill to authorize appropriations for fiscal years 1994 and 1995 to carry out the National Foundation on the Arts and the Humanities Act of 1965, and the Museum Services Act, and for other purposes (Rept. No. 103-182).

The following reports of committees were submitted on November 17, 1993:

By Mr. INOUYE, from the Committee on Indian Affairs, with an amendment:

S. 1059. A bill to include Alaska Natives in a program for Native culture and arts development (Rept. No. 103-184).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1588. A bill to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1994, 1995, and 1996 (Rept. No. 103-185).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 698. A bill to protect Lechuguilla Cave and other resources and values in and adjacent to Carlsbad Caverns National Park.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

H.R. 914. A bill to amend the Wild and Scenic Rivers Act to designate certain segments of the Red River in Kentucky as components of the National Wild and Scenic Rivers System, and for other purposes.

H.R. 2650. A bill to designate portions of the Maurice River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment:

S. 297. A bill to authorize the Air Force Memorial Foundation to establish a memorial in the District of Columbia or its environs.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 986. A bill to provide for an interpretive center at the Civil War Battlefield of Corinth, Mississippi, and for other purposes.

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

S. 1574. A bill to authorize appropriations for the Coastal Heritage Trail Route in the State of New Jersey, and for other purposes.

By Mr. MOYNIHAN, from the Committee on Finance, without amendment:

S. 1668. An original bill to amend the Social Security Act and related Acts to make miscellaneous and technical amendments, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. Kennedy, from the Committee on Labor and Human Resources:

Magdalena G. Jacobsen, of Oregon, to be a Member of the National Mediation Board for the term expiring July 1, 1996;

Preston M. Taylor, Jr., of New Jersey, to be Assistant Secretary of Labor for Veterans' Employment and Training; and

Oliva A. Golden, of the District of Columbia, to be Commissioner on Children, Youth, and Families, Department of Health and human Services.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs:

Dwight P. Robinson, of Michigan, to be President, Government National Mortgage Association;

Sue E. Ecker, of Rhode Island, to be an Assistant Secretary of Commerce;

Norman E. D'Amours, of New Hampshire, to be a Member of the National Credit Union Administration Board for the term of six years expiring August 2, 1999; and

Martin A. Kamarch, of Massachusetts, to the First Vice President of the Export-Import Bank of the United States for a term of four years expiring January 20, 1997.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. LEVIN (for himself, Mr. RIEGLE, Mr. FEINGOLD, and Mr. KOHL):

S. 1663. A bill to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to control the diversion of certain chemicals used in illicit production of controlled substances such as methcathinone and methamphetamine, and for other purposes; to the Committee on the Judiciary.

By Mr. BRYAN (for himself, Mr. BOND, and Mr. RIEGLE):

S. 1664. A bill to amend subchapter II of chapter 53 of title 31, United States Code, to improve enforcement of anti-money laundering laws, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. PELL (by request):

S. 1665. A bill to authorize the Librarian of Congress to retain the proceeds of certain sales, payments or restitution; to the Committee on Rules and Administration.

By Mr. GORTON (for himself, Mr. STEVENS, Mr. MACK, Mr. PRESSLER, and Mrs. HUTCHISON):

S. 1666. A bill to amend the Internal Revenue Code of 1986 to allow a taxpayer to elect to deduct either State and local income taxes or State and local sales taxes; to the Committee on Finance.

By Mr. PELL:

S. 1667. A bill to extend authorities under the Middle East Peace Facilitation Act of 1993 by six months; considered and passed.

By Mr. MOYNIHAN:

S. 1668. An original bill to amend the Social Security Act and related Acts to make miscellaneous and technical amendments, and for other purposes; from the Committee on Finance; placed on the calendar.

By Mrs. HUTCHISON (for herself, Ms. MIKULSKI, and Mrs. FEINSTEIN):

S. 1669. A bill to amend the Internal Revenue Code of 1986 to allow homemakers to get a full IRA deduction; to the Committee on Finance.

By Mrs. FEINSTEIN:

S.J. Res. 152. A joint resolution to designate the visitors center at the Channel Islands National Park, California, as the "Robert J. Lagomarsino Visitors Center"; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

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

S. Con. Res. 52. A 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 Relations.

By Mr. MOYNIHAN (for himself and Mr. PELL):

S. Res. 167. A resolution expressing the sense of the Senate concerning the Iraqi Government's campaign against the Marsh Arabs of Southern Iraq; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEVIN (for himself, Mr. RIEGLE, Mr. FEINGOLD, and Mr. KOHL):

S. 1663. A bill to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to control the diversion of certain chemicals used in illicit production of controlled substances such as methcathinone and methamphetamine, and for other purposes; to the Committee on the Judiciary.

DOMESTIC CHEMICAL DIVERSIONS CONTROL ACT OF 1993

Mr. LEVIN. Mr. President, today I am introducing legislation that is aimed at stopping a new illegal drug sweeping across the Upper Peninsula of my home State of Michigan. The drug is called Methcathinone, commonly referred to as CAT.

CAT is a highly addictive drug and is a more potent stimulant than cocaine. CAT is made in illegal drug laboratories from ephedrine, an asthma medication that is available as a nonprescription, over the counter drug. Other easily obtainable chemicals such as epsom salts, paint thinner, battery acid, and drain cleaner are part of the CAT production process.

The legislation I am introducing today, cosponsored by my colleague from Michigan, Senator RIEGLE and Senators FEINGOLD and KOHL from Wisconsin, will stop the illegal use of ephedrine tablets in the production of CAT. It is important to note that this legislation has nationwide significance because ephedrine is also the primary drug used to produce methamphetamine, another potent illegal stimulant which is causing nationwide problems. Representative STUPAK recently introduced similar legislation in the House. The House is expected to pass this bill as a suspension bill before Thanksgiving.

Let me give you a little background on the problem. Michigan law enforcement officials believe the production of CAT first began in 1991. Since then, the problem has grown and is highly concentrated in the Upper Peninsula. Seventy-five percent of the ephedrine sold in my home State goes to the sparsely populated Upper Peninsula. Since June 1991, 28 methcathinone laboratories have been seized. These labs were located in Michigan, Illinois, Washington, and Wisconsin. The Upper Peninsula Substance Enforcement Team [UPSET], a special unit which handles drug trafficking, has established a five-member unit which is solely dealing with the CAT problem. But even with this focused effort, CAT has begun to spread to Wisconsin and other States.

The Drug Enforcement Administration [DEA] is afraid CAT will spread like wildfire to other States since it is so easy to make and so addicting. We need to stop this drug before it spreads any further.

The main purpose of the legislation I am introducing is to reverse the legal drug exemption for ephedrine tablets. Because of a loophole in the Chemical Diversion and Trafficking Act of 1988, ephedrine tablets are exempt because they are an approved drug product under the Federal Food, Drug, and Cosmetic Act. Ironically, ephedrine in powder form is not exempt from legal drug exemption and as a result is tightly regulated. My bill will mean ephedrine tablets will be treated in the same way ephedrine powder is treated.

My bill removes ephedrine products from the exemption and grants DEA the authority to remove the legal drug exemption from any other drug products which are diverted to use in the illicit production of controlled drugs. While ephedrine is the only current example of a legal drug being diverted for illicit purposes, if the bill only restricted ephedrine, drug manufacturers could simply combine ephedrine with other products to side step the new restrictions. To avoid additional future loopholes, this bill goes beyond restricting ephedrine and ephedrine combination products to ensure that other listed drugs contained in over-the-counter products do not quickly surface as a substitute for ephedrine to make the same type of illicit drug.

The bill also establishes a registration system for firms in the legal distribution chain for ephedrine and other listed chemicals that could be used in the production of illicit drugs to aid in the tracking of the sale of these products. The legislation establishes a registration system for distributors, importers, and exporters of listed chemicals, which are being diverted in the United States for the production of illicit drugs. Currently, there is a registration for firms distributing ephedrine powder over a certain threshold. Again, my bill aims to treat ephedrine tablets as ephedrine powder is treated. The registration system is modeled after the system that has been in use to register handlers of controlled substances for 20 years.

It is the DEA's position, with which I fully concur, that the Chemical Division and Trafficking Act of 1988 has demonstrated that chemical control and prevention are extremely effective methods of controlling illegal drugs in this country. This is why we must close the loophole for ephedrine tablets and modify the legal drug exemption of the Chemical Diversion and Trafficking Act which allows ephedrine tablets to be sold legally over the counter.

Although this type of prevention seems so simple, Congress has let a version of this bill die in the past because it was part of the larger crime bill that failed to pass last year. This year, Senator GORTON, of Washington, again introduced the Chemical Control Amendments Act, a more comprehensive bill that would control the diversion of a number of chemicals used in the illicit production of controlled substances, including ephedrine. Mr. President, as you know, it was again included as part of this year's crime bill.

The broader chemical control bill may again be delayed as part of the crime bill. But we cannot wait to deal with the CAT problem which is upon us now. We must pass this provision this year, as the House is doing, to move toward solving the ephedrine drug problem. I am introducing this stand-alone bill to close the legal drug exemption loophole as it pertains to ephedrine tablets specifically—as well as other drugs which are illegally diverted for the illicit production of contraband—because of the immediacy and urgency of the CAT problem.

I have a letter from the Administrator of the Drug Enforcement Administration supporting this legislation. It says, "The Department [of Justice] and the DEA fully support your effort and will work with you to secure swift passage of this critical legislation during this Congress." I ask unanimous consent to print the letter in the RECORD.

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

DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
Washington, DC, October 14, 1993.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: I am aware of your concern about the illicit manufacture of methcathinone, ("cat" as it called on the street), and the severe health consequences

resulting from its abuse. Nowhere is this more true than in Michigan, especially on the Upper Peninsula.

Members of your staff have discussed how to address the "cat" problem with the Drug Enforcement Administration (DEA). The most effective method to lessen the supply of methcathinone is to sharply curtail the availability of ephedrine, a key chemical ingredient needed to manufacture the drug.

I understand that you will be proposing legislation that will address this issue. As you know, the Department of Justice supported a provision to this effect that was included in the Violent Crime Control and Law Enforcement Act of 1991. The Department and DEA fully support your efforts and will work with you to secure swift passage of this critical legislation during this Congress. I can also assure you that DEA will be working with the appropriate agencies to educate the public about the severe health effects caused by the abuse of methcathinone. Hopefully these efforts will reduce the demand for this illicit substance and will impact positively on the supply.

I look forward to working with you on this matter. I am confident that our efforts can successfully reduce the availability and abuse of methcathinone.

Very truly yours,

ROBERT C. BONNER,
Administrator of Drug Enforcement.

Mr. LEVIN. Mr. President, we cannot stand idly by and let the restriction of ephedrine become bogged down in the debate over the crime bill. We must act quickly and address this problem head on. I am introducing this legislation in the hope that speedy passage will result in the cessation of the production of cat which is particularly claiming victims in the Upper Peninsula of my home State of Michigan. Its poisonous effects will be felt throughout the country unless stopped now.

It is a growing menace. The Drug Enforcement Administration recognizes it, and they have asked us to adopt this provision. I hope that we will pass this law, along with the House of Representatives, before our Thanksgiving recess.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1663

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 "Domestic Chemical Diversion Control Act of 1993".

SEC. 2. DEFINITION AMENDMENTS.

(a) DEFINITIONS.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (33), by striking "any listed precursor chemical or listed essential chemical" and inserting "any list I chemical or any list II chemical";

(2) in paragraph (34)—

(A) by striking "listed precursor chemical" and inserting "list I chemical"; and

(B) by striking "critical to the creation" and inserting "important to the manufacture";

(3) in paragraph (34)(A), (F), and (H), by inserting ", its esters," before "and";

(4) in paragraph (35)—

(A) by striking "listed essential chemical" and inserting "list II chemical";

(B) by inserting "(other than a list I chemical)" before "specified"; and

(C) by striking "as a solvent, reagent, or catalyst"; and

(5) in paragraph (38), by inserting "or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine" before the period;

(6) in paragraph (39)(A)—

(A) by striking "importation or exportation of" and inserting "importation, or exportation of, or an international transaction involving shipment of,";

(B) in clause (iii) by inserting "or any category of transaction for a specific listed chemical or chemicals" after "transaction";

(C) by amending clause (iv) to read as follows:

"(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) unless—

"(I)(aa) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient; or

"(bb) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

"(II) the quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General."; and

(D) in clause (v), by striking the semicolon and inserting "which the Attorney General has by regulation designated as exempt from the application of this title and title II based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered;";

(7) in paragraph (40), by striking "listed precursor chemical or a listed essential chemical" each place it appears and inserting "list I chemical or a list II chemical"; and

(8) by adding at the end the following new paragraphs:

"(42) The term 'international transaction' means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

"(43) The terms 'broker' and 'trader' mean a person that assists in arranging an international transaction in a listed chemical by—

"(A) negotiating contracts;

"(B) serving as an agent or intermediary; or

"(C) bringing together a buyer and seller, a buyer and transporter, or a seller and transporter.".

(b) REMOVAL OF EXEMPTION OF CERTAIN DRUGS.—

(1) PROCEDURE.—Part B of the Controlled Substances Act (21 U.S.C. 811 et seq.) is amended by adding at the end the following new section:

"REMOVAL OF EXEMPTION OF CERTAIN DRUGS

"SEC. 204. (a) REMOVAL OF EXEMPTION.—The Attorney General shall by regulation remove from exemption under section 102(39)(A)(iv) a drug or group of drugs that the Attorney General finds is being diverted to obtain a listed chemical for use in the illicit production of a controlled substance.

"(b) FACTORS TO BE CONSIDERED.—In removing a drug or group of drugs from exemption under subsection (a), the Attorney General shall consider, with respect to a drug or group of drugs that is proposed to be removed from exemption—

"(1) the scope, duration, and significance of the diversion;

"(2) whether the drug or group of drugs is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and

"(3) whether the listed chemical can be readily recovered from the drug or group of drugs.

"(c) SPECIFICITY OF DESIGNATION.—The Attorney General shall limit the designation of a drug or a group of drugs removed from exemption under subsection (a) to the most particularly identifiable type of drug or group of drugs for which evidence of diversion exists unless there is evidence, based on the pattern of diversion and other relevant factors, that the diversion will not be limited to that particular drug or group of drugs.

"(d) REINSTATEMENT OF EXEMPTION WITH RESPECT TO PARTICULAR DRUG PRODUCTS.—

"(1) REINSTATEMENT.—On application by a manufacturer of a particular drug product that has been removed from exemption under subsection (a), the Attorney General shall by regulation reinstate the exemption with respect to that particular drug product if the Attorney General determines that the particular drug product is manufactured and distributed in a manner that prevents diversion.

"(2) FACTORS TO BE CONSIDERED.—In deciding whether to reinstate the exemption with respect to a particular drug product under paragraph (1), the Attorney General shall consider—

"(A) the package sizes and manner of packaging of the drug product;

"(B) the manner of distribution and advertising of the drug product;

"(C) evidence of diversion of the drug product;

"(D) any actions taken by the manufacturer to prevent diversion of the drug product; and

"(E) such other factors as are relevant to and consistent with the public health and safety, including the factors described in subsection (b) as applied to the drug product.

"(3) STATUS PENDING APPLICATION FOR REINSTATEMENT.—A transaction involving a particular drug product that is the subject of a bona fide pending application for reinstatement of exemption filed with the Attorney General not later than 60 days after a regulation removing the exemption is issued pursuant to subsection (a) shall not be considered to be a regulated transaction if the transaction occurs during the pendency of the application and, if the Attorney General denies the application, during the period of 60 days following the date on which the Attorney General denies the application, unless—

"(A) the Attorney General has evidence that, applying the factors described in subsection (b) to the drug product, the drug product is being diverted; and

"(B) the Attorney General so notifies the applicant.

"(4) AMENDMENT AND MODIFICATION.—A regulation reinstating an exemption under paragraph (1) may be modified or revoked with respect to a particular drug product upon a finding that—

"(A) applying the factors described in subsection (b) to the drug product, the drug product is being diverted; or

"(B) there is a significant change in the data that led to the issuance of the regulation.".

(2) CLERICAL AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236) is amended by adding at the end of that portion relating to part B of title II the following new item:

"Sec. 204. Removal of exemption of certain drugs.".

(c) REGULATION OF LISTED CHEMICALS.—Section 310 of the Controlled Substances Act (21 U.S.C. 830) is amended—

(1) in subsection (a)(1)—

(A) by striking "precursor chemical" and inserting "list I chemical"; and

(B) in subparagraph (B), by striking "an essential chemical" and inserting "a list II chemical"; and

(2) in subsection (c)(2)(D), by striking "precursor chemical" and inserting "chemical control".

SEC. 3. REGISTRATION REQUIREMENTS.

(a) RULES AND REGULATIONS.—Section 301 of the Controlled Substances Act (21 U.S.C. 821) is amended by striking the period and inserting "and to the registration and control of regulated persons and of regulated transactions.".

(b) PERSONS REQUIRED TO REGISTER UNDER SECTION 302.—Section 302 of the Controlled Substances Act (21 U.S.C. 822) is amended—

(1) in subsection (a)(1), by inserting "or list I chemical" after "controlled substance" each place it appears;

(2) in subsection (b)—

(A) by inserting "or list I chemicals" after "controlled substances"; and

(B) by inserting "or chemicals" after "such substances";

(3) in subsection (c), by inserting "or list I chemical" after "controlled substance" each place it appears; and

(4) in subsection (e), by inserting "or list I chemicals" after "controlled substances".

(c) REGISTRATION REQUIREMENTS UNDER SECTION 303.—Section 303 of the Controlled Substances Act (21 U.S.C. 823) is amended by adding at the end the following new subsection:

"(h) The Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the distribution of a drug product that is exempted under section 102(39)(A)(iv). In determining the public interest for the purposes of this subsection, the Attorney General shall consider—

"(1) maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

"(2) compliance by the applicant with applicable Federal, State, and local law;

"(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

"(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

"(5) such other factors as are relevant to and consistent with the public health and safety.".

(d) DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION.—Section 304 of the Controlled Substances Act (21 U.S.C. 824) is amended—

(1) in subsection (a)—

(A) by inserting "or a list I chemical" after "controlled substance" each place it appears; and

(B) by inserting "or list I chemicals" after "controlled substances";

(2) in subsection (b), by inserting "or list I chemical" after "controlled substance";

(3) in subsection (f), by inserting "or list I chemicals" after "controlled substances" each place it appears; and

(4) in subsection (g)—

(A) by inserting "or list I chemicals" after "controlled substances" each place it appears; and

(B) by inserting "or list I chemical" after "controlled substance" each place it appears.

(e) PERSONS REQUIRED TO REGISTER UNDER SECTION 1007.—Section 1007 of the Controlled Substances Import and Export Act (21 U.S.C. 957) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting "or list I chemical" after "controlled substance"; and

(B) in paragraph (2), by striking "in schedule I, II, III, IV, or V," and inserting "or list I chemical,"; and

(2) in subsection (b)—

(A) in paragraph (1), by inserting "or list I chemical" after "controlled substance" each place it appears; and

(B) in paragraph (2), by inserting "or list I chemicals" after "controlled substances".

(f) REGISTRATION REQUIREMENTS UNDER SECTION 1008.—Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958) is amended—

(1) in subsection (c)—

(A) by inserting "(1)" after "(c)"; and

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

"(2)(A) The Attorney General shall register an applicant to import or export a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the import or export of a drug product that is exempted under section 102(39)(A)(iv).

"(B) In determining the public interest for the purposes of subparagraph (A), the Attorney General shall consider the factors specified in section 303(h).";

(2) in subsection (d)—

(A) in paragraph (3), by inserting "or list I chemical or chemicals," after "substances,"; and

(B) in paragraph (6), by inserting "or list I chemicals" after "controlled substances" each place it appears;

(3) in subsection (e), by striking "and 307" and inserting "307, and 310"; and

(4) in subsections (f), (g), and (h), by inserting "or list I chemicals" after "controlled substances" each place it appears.

(g) PROHIBITED ACTS C.—Section 403(a) of the Controlled Substances Act (21 U.S.C. 843(a)) is amended—

(1) by amending paragraphs (6) and (7) to read as follows:

"(6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical in violation of this title or title II;

"(7) to manufacture, distribute, export, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical in violation of this title or title II or, in the case of an exportation, in violation of this title or title II or of the laws of the country to which it is exported;";

(2) by striking the period at the end of paragraph (8) and inserting "; or"; and

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

"(9) if the person is a regulated person, to distribute, import, or export a list I chemical without the registration required by this Act.".

SEC. 4. ANTI-SMUGGLING PROVISION.

Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)) is amended—

(1) by striking "or" at the end of paragraph (1); and

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

"(3) imports or exports a listed chemical in violation of section 1007 or 1018,".

SEC. 5. ADMINISTRATIVE INSPECTIONS AND AUTHORITY.

Section 510 of the Controlled Substances Act (21 U.S.C. 880) is amended—

(1) by amending subsection (a)(2) to read as follows:

"(2) places, including factories, warehouses, and other establishments, and conveyances, where persons registered under section 303 (or exempt from registration under section 302(d) or by regulation of the Attorney General) or regulated persons may lawfully hold, manufacture, distribute, dispense, administer, or otherwise dispose of controlled substances or listed chemicals or where records relating to those activities are maintained."; and

(2) in subsection (b)(3)—

(A) in subparagraph (B), by inserting ", listed chemicals," after "unfinished drugs"; and

(B) in subparagraph (C), by inserting "or listed chemical" after "controlled substance" and inserting "or chemical" after "such substance".

SEC. 6. FORFEITURE EXPANSION.

Section 511(a)(6) of the Controlled Substances Act (21 U.S.C. 881(a)(6)) is amended by inserting "or listed chemical" after "controlled substance".

SEC. 7. THRESHOLD AMOUNTS.

Section 102(39)(A) of the Controlled Substances Act (21 U.S.C. 802(39)(A)), as amended by section 2, is amended by inserting "a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical," before "a threshold amount, including a cumulative threshold amount for multiple transactions".

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date that is 120 days after the date of enactment of this Act.

By Mr. BRYAN (for himself, Mr. BOND, and Mr. RIEGLE):

S. 1664. A bill to amend subchapter II of chapter 53 of title 31, United States

Code, to improve enforcement of anti-money-laundering laws, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

ANTI-MONEY-LAUNDERING ACT OF 1993

Mr. BRYAN. Mr. President, Senator BOND, Senator RIEGLE, and I are introducing today, legislation which will greatly improve our efforts to combat money laundering, the Anti-Money-Laundering Act of 1993. This legislation is a companion bill to a bill (H.R. 3235) introduced by Congressman GONZALEZ. I want to commend Congressman GONZALEZ for his leadership in this area.

In 1970, the first Bank Secrecy Act was signed into law. Its purpose was to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. In the years since 1970, Federal Bank Secrecy Act requirements have grown in both scope and complexity, and now require financial institutions, as well as many other types of businesses, to file reports on nearly all types of large cash transactions.

The Bank Secrecy Act is widely viewed as an important part of the Federal Government's efforts against money laundering, particularly as it relates to the drug trade. In theory, Federal investigators use currency transaction reports [CTR's] to identify large cash transactions which are the results of illegal activity.

While Federal anti-money-laundering enforcement has had some successes, there are serious problems with the current system. One of the major problems investigators face is the sheer volume of CTR's filed—more than they could ever hope to have the resources to investigate fully.

A study conducted on behalf of the Independent Bankers Association of America [IBAA] found that community bank employees spent over 2 million hours each year complying with the Bank Secrecy Act. The study calculated the compliance costs at nearly $60 million.

The excessive number of reports filed, many of which clearly have no bearing on Federal money laundering enforcement, place a great strain on both Federal investigators and the business which must file the CTR's. Filing CTR's consumes many hours of valuable employee time and requires substantial investments in equipment and tracking systems. Generally, financial institutions and other businesses subject to the Bank Secrecy Act willingly absorb the expense of filing CTR's as part of the cost of doing business, and part of their responsibility in controlling money laundering.

There is, however, a limit to the burden that these private businesses can be expected to bear. In addition, the Federal Government has a responsibility to ensure that the efforts of the businesses filing CTR's are not wasted, and that the requirements of the Bank Secrecy Act produce useful information which can lead to tangible results in money-laundering enforcement.

The legislation we are introducing today will both increase the effectiveness of the Bank Secrecy Act and reduce its burden on private businesses. Our legislation establishes a system of exemptions under which transactions that are clearly of no interest for law enforcement purposes, such as transactions between banks, or between a bank and a government agency, do not trigger CTR's. It also provides institutions the option of developing a list of regular business customers who, with the approval of the Treasury Department, would also be exempt from CTR's. The legislation requires the Secretary to implement rule changes which will reduce the volume of CTR's filed by depository institutions by at least 30 percent—a goal which we believe could be easily met by careful implementation of the new system of exemptions.

In addition to reducing the overall volume of unnecessary CTR's, the legislation we are introducing today makes significant changes to streamline the CTR process and to increase law enforcement agencies' ability to make use of CTR's in criminal investigations.

Mr. President, the Bank Secrecy Act has a laudable goal: to fight money laundering. Unfortunately, the current regulations for reporting cash transactions are a bureaucratic maze, creating confusion and inefficiency in both financial institutions and law enforcement agencies. The reforms we aim proposing in this legislation will go a long way to both reducing unnecessary paperwork, while at the same time, expanding the effectiveness of our Federal money laundering enforcement efforts.

Mr. BOND. Mr. President, I rise today, with my colleague Senator BRYAN, to introduce the Anti-Money-Laundering Act of 1993, a bill to reduce the number of currency transaction reports which banks have to file under the Bank Secrecy Act. I believe that this bill will help relieve bank regulatory burden, improve compliance under the Bank Secrecy Act and better money laundering deterrence efforts.

Action must be taken to relieve the banking industry of the burden of unreasonable regulatory requirements it now faces. The bank regulators currently require all kinds of burdensome compliance reports, activities and documents that cost significant amounts of time and resources. Consequently, banks are generating too many reports and other paperwork of questionable value, instead of making loans.

In particular, to help combat money laundering, banks have to file a currency transaction report [CTR] for all currency transactions over $10,000. The American Bankers Association estimates that it cost banks almost $130 million to file 9.2 million CTR's with the Internal Revenue Service in 1992. The utility to the Government of this massive number of reports has yet to be proven.

This bill will help to reduce drastically the number of useless CTR's which are filed with the Government, thus reducing, in part, bank regulatory burden. The Anti-Money-Laundering Act of 1993 would create mandatory exemptions for transactions between depository institutions, transactions with any U.S. Government or agency, and transactions with any business or category of business where CTR's have little or no value for law enforcement purposes. In addition, Treasury would have the discretion to exempt transactions between a depository institution and its qualified business customers who most frequently engage in transactions which are subject to reporting requirements under the Bank Secrecy Act. I also look forward to identifying and making additional reforms to CTR requirements where the regulatory burdens on depository institutions are unreasonable and the usefulness to the Federal Government is not evident.

I am well aware of the serious problem this situation has created for the banking industry and have been in consultation with my colleagues on the Senate Banking Committee to find solutions. Bank regulatory reform is one of my highest priorities. I also consider it a key to economic growth.

A companion bill, H.R. 3235, has already been introduced in the House. I hope I can work with my colleagues in both the Senate and the House and with the new administration on this bipartisan measure to relieve bank regulatory burden.

By Mr. PELL (by request):

S. 1665. A bill to authorize the Librarian of Congress to retain the proceeds of certain sales, payments or restitution; to the Committee on Rules and Administration.

LIBRARY OF CONGRESS RETENTION OF PROCEEDS ACT

Mr. PELL. Mr. President, in my capacity as vice chairman of the Joint Committee on the Library of Congress and at the request of the Librarian of Congress, I introduce legislation to authorize the Librarian to retain the proceeds of certain sales, payments or restitution.

The Library of Congress, within the past 2 years, has collected over $22,000 in library fines from its patrons, and the Department of Justice has received over $65,000 in restitution due to theft or destruction of the Library's collections. The Library of Congress, unfortunately, does not have the legal authority to retain these sums, which if left in the Library's hands could help

replenish the Library's collections. Instead, all such monies must be turned over directly to the U.S. Treasury.

In addition, under present law, the Library is unable to realize any proceeds from commercial disposition of surplus items left after free distribution is made to other libraries and public institutions. These surplus items are made available for disposal according to Library regulations which give other libraries and research institutions first priority for free acquisition, followed by Federal agencies and institutions. Next, educational institutions and other nonprofit tax-exempt organizations can select surplus items. Lastly, under current procedures, commercial book dealers may acquire surplus items from the Library in exchange for other material the Library may wish to obtain from the dealers. The remaining material is transferred to the General Services Administration for final disposal.

This labor-intensive Surplus Book Program costs the Library approximately $50,000 annually. The Library's Acquisitions Program would be strengthened if the Library had the authority to sell to the commercial dealers and retain the proceeds rather than continuing the present practice of exchanging items.

This legislation has five simple purposes: First, it grants the Librarian of Congress the authority to accept restitution—payment and/or fines collected—for lost, stolen, damaged, or destroyed items from its collections; second, it also permits the Librarian to sell certain surplus Library collection materials in accordance with General Services Administration's regulations, providing the items to be sold have been offered to and rejected by other libraries and other institutions, as described above; third, it authorizes the Librarian of Congress to retain the proceeds received as a result of the aforementioned actions and use the funds for the acquisition of Library materials and the administering of the Surplus Program; fourth, it establishes a proceeds account at the U.S. Treasury; and fifth, it mandates that the Librarian report these activities and financial transactions annually to Congress.

Mr. President, this bill contains no request for new funding and will in no way increase legislative appropriations. I believe it is not controversial, and I hope that it will be favorably considered in the next session.

By Mr. GORTON (for himself, Mr. STEVENS, Mr. MACK, Mr. PRESSLER, and Mrs. HUTCHISON):

S. 1666. A bill to amend the Internal Revenue Code of 1986 to allow a taxpayer to elect to deduct either State and local income taxes or State and local sales taxes; to the Committee on Finance.

SALES TAX DEDUCTION LEGISLATION

Mr. GORTON. Mr. President, today I join with Senators STEVENS, PRESSLER, MACK, and HUTCHISON in introducing legislation to correct the single worst error of the 1986 Tax Reform Act—the elimination of the State and local sales tax deduction. The bill we are introducing today will restore a measure of fairness to our Tax Code by giving the taxpayer the choice of deducting either State and local sales taxes or State and local income taxes.

In 1986 when Congress considered the Tax Reform Act, I joined several other Senators and pushed hard for a reasonable and just compromise with respect to sales and income tax deductions. We fought for a compromise that would treat the residents of our States in an equitable and decent manner. The Senate bill did so but, unfortunately, did not prevail in conference and our goal was left unattained. What remained was a bill that eliminated the sales tax deduction but kept the State income tax deduction intact. It was a bill which unfairly burdens taxpayers in numerous States around the Nation.

Under the provisions of the 1986 act, taxpayers living in States with income taxes can deduct these taxes from their Federal tax returns. For these individuals, nothing changed. However, for taxpayers residing in a State like my home State of Washington which has no income tax, the law denies them the ability to deduct sales taxes.

The ability to deduct sales taxes is important to the working families of my home State. For instance, using 1986 IRS tax tables, a family of five earning just over $25,000 per year could deduct almost $500 from their Federal returns. This is no small amount, and the savings could be used for paying the mortgage, putting food on the table, or helping to finance the dream of higher education.

Mr. President, there is no fairness in arbitrary tax treatment. There is no fairness in punishing residents in States like Washington—a State which has decided to raise revenue through sales taxes rather than through income taxes. People are denied this tax deduction simply because they reside within certain geographic boundaries. People in Washington State are rightfully outraged by the unjust provision.

Mr. President, I have heard from people across my State that our present system of allowing one type of deduction while disallowing the other is patently unfair. I share their frustration and believe the Internal Revenue Code needs to be amended to restore a sense of equity. That is why I am introducing this bill today.

After passage of the 1986 tax reform bill, a whole host of bills were introduced to reinstate the deduction. Unfortunately, none were enacted into law. While the number of bills introduced in each session of Congress has dwindled, the anger of the taxpayers of Washington and the pressing need to correct this injustice have not.

Mr. President, this legislation is simple. It will allow taxpayers to decide, for themselves, whether to deduct their State and local income taxes or their State and local sales taxes. For the residents of Washington, and States with similar taxation policies, the sales tax deduction will be allowed for the first time since 1985.

It is past time to correct this inequity and allow citizens to deduct either their State income tax or their State sales tax. I urge my colleagues to cosponsor this bill and bring a measure of fairness back to our tax system.

Mr. President, I ask unanimous consent that a copy of the bill, a letter from Ralph Munro, the secretary of state for Washington, and House Joint Memorial 4008, which calls for a full deduction for sales taxes on Federal returns be printed in the RECORD.

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

S. 1666

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

SECTION 1. ELECTION TO DEDUCT STATE AND LOCAL INCOME TAX OR STATE AND LOCAL SALES TAX.

(a) IN GENERAL.—Section 164(a) of the Internal Revenue Code of 1986 (relating to deduction for taxes) is amended by adding after paragraph (5) the following new paragraph:

"(6) At the election of the taxpayer, either—

"(A) State and local income taxes, or

"(B) State and local general sales taxes."

(b) GENERAL SALES TAXES.—Section 164(b) of such Code (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(5) GENERAL SALES TAXES.—

"(A) IN GENERAL.—The term 'general sales tax' means a tax imposed at one rate in respect of the sale at retail of a broad range of classes of items.

"(B) SPECIAL RULES FOR FOOD, ETC.—In the case of items of food, clothing, medical supplies, and motor vehicles—

"(i) the fact that the tax does not apply in respect of some or all of such items shall not be taken into account in determining whether the tax applies in respect of a broad range of classes of items, and

"(ii) the fact that the rate of tax applicable in respect of some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

"(C) ITEMS TAXED AT DIFFERENT RATES.—Except in the case of a lower rate of tax applicable in respect of an item described in subparagraph (B), no deduction shall be allowed under this section for any general sales tax imposed in respect of an item at a rate other than the general rate of tax.

"(D) COMPENSATING USE TAXES.—A compensating use tax in respect of an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term 'compensating use tax' means, in respect of any item, a tax which—

"(i) is imposed on the use, storage, or consumption of such item, and

"(ii) is complementary to a general sales tax, but only if a deduction is allowable under subsection (a)(6) in respect of items sold at retail in the taxing jurisdiction which are similar to such item.

"(E) SPECIAL RULE FOR MOTOR VEHICLES.—In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

"(F) SEPARATELY STATED GENERAL SALES TAXES.—If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his seller, such amount shall be treated as a tax imposed on, and paid by, such consumer."

(c) CONFORMING AMENDMENT.—Paragraph (3) of section 164(a) of such Code is amended by striking out "State and local, and foreign," and inserting in lieu thereof "Foreign".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SECRETARY OF STATE,
STATE OF WASHINGTON,
Olympia, WA, April 20, 1993.

Hon. SLADE GORTON,
U.S. Senator, Washington, DC.

DEAR SENATOR GORTON: I herewith respectfully transmit for your attention a copy of House Joint Memorial No. 4008, which was recently adopted by the Senate and the House of Representatives of the state of Washington.

This Memorial requests a full deduction for sales taxes on federal tax returns.

Sincerely,

RALPH MUNRO,
Secretary of State.

HOUSE JOINT MEMORIAL 4008

Whereas, The federal tax reform act of 1986 put additional financial stress on the taxpayers of the state of Washington by phasing out the retail sales tax deduction; and

Whereas, Taxpayers in other states may deduct major state taxes in determining federal income tax; and

Whereas, Congress could easily relieve this situation by restoring the full deduction;

Now, Therefore, Your Memorialists respectfully pray that the United States Congress amend the federal tax reform act of 1986 to restore the deduction of retail sales tax under the federal income tax.

Be it resolved, That copies of this Memorial be immediately transmitted to the Honorable Bill Clinton, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

By Mr. MOYNIHAN:

S. 1668. An original bill to amend the Social Security Act and related acts to make miscellaneous and technical amendments, and for other purposes; from the Committee on Finance; placed on the calendar.

SOCIAL SECURITY ACT AMENDMENTS OF 1993

• Mr. MOYNIHAN. Mr. President, during the conference earlier this year on the reconciliation bill, the Senate had to wrestle with what had become known as the Byrd rule. This is the stricture authored by our esteemed President pro tempore which provides, among other things, that budget reconciliation bills should not include policy changes having no budgetary effect or merely incidental budgetary effect. The House, which has no such rule, included a number of such propositions in its bill, and all of these had to be stricken from the compromise package worked out in conference. Also, Senators who wanted to include such provisions in the reconciliation bill were prevented from doing so. At that time, I assured Senators, along with my House counterpart, Chairman ROSTENKOWSKI of the Ways and Means Committee, that we would try to find a vehicle for considering these no-cost proposals as soon as possible.

That, essentially, is how we got to where we are now. Legislation reported Wednesday morning by a voice vote in the Finance Committee includes numerous items that had to be dropped from the reconciliation bill, as well as a number of technical corrections to our earlier work. In a handful of cases, we included new provisions that were noncontroversial and that were agreed to by all sides. Our bill is the result of several weeks of work by the majority and minority staffs of the Senate Finance Committee as well as the House Ways and Means and Energy and Commerce Committees. My understanding is that the provisions are agreeable to all of these parties. The Congressional Budget Office has indicated that the bill does not increase expenditures.

Mr. President, many of the provisions in our bill have been around for several years, waiting for a vehicle that could carry them to enactment. Many have passed one or both Houses as part of H.R. 11. Given their relatively noncontroversial nature, and the fact that an agreement has been worked out on a bipartisan basis with all the relevant committees in both the House and the Senate, we would hope that this proposal can be considered under an expedited process, and without amendment.

Mr. President, I ask unanimous consent that the text of the Finance Committee bill, along with a short section-by-section and savings, be printed in the RECORD.

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

S. 1668

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 "Social Security Act Amendments of 1993".

SEC. 2. REFERENCES IN ACT; TABLE OF CONTENTS.

(a) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(b) REFERENCES TO OBRA.—In this Act, the terms "OBRA-1986", "OBRA-1987", "OBRA-1989", "OBRA-1990", and "OBRA-1993" refer to the Omnibus Budget Reconciliation Act of 1986 (Public Law 99-509), the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203), the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239), the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), respectively.

(c) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title.
Sec. 2. References in Act; table of contents.

TITLE I—MEDICARE PROVISIONS

Subtitle A—Provisions Relating to Part A

Sec. 101. Provisions relating to adjustments to standardized amounts for wages and wage-related costs.
Sec. 102. Essential access community hospital (EACH) amendments.
Sec. 103. Provisions relating to rural health transition grant program.
Sec. 104. Psychology services in hospitals.
Sec. 105. Medicare-dependent, small rural hospitals and sole community hospitals.
Sec. 106. Skilled nursing facilities.
Sec. 107. Notification of availability of hospice benefit.
Sec. 108. Clarifying expertise of individuals to serve on the Prospective Payment Assessment Commission.
Sec. 109. Authority for budget neutral adjustments for changes in payment amounts for transfer cases.
Sec. 110. Clarification of DRG payment window expansion; miscellaneous and technical corrections.

Subtitle B—Provisions Relating to Part B

PART I—PHYSICIANS' SERVICES

Sec. 121. Development and implementation of resource-based methodology for practice expenses.
Sec. 122. Geographic cost of practice index refinements.
Sec. 123. Extra-billing limits.
Sec. 124. Relative values for pediatric services.
Sec. 125. Administration of claims relating to physicians' services.
Sec. 126. Miscellaneous and technical corrections.

PART II—DURABLE MEDICAL EQUIPMENT

Sec. 131. Certification of suppliers.
Sec. 132. Prohibition against carrier forum shopping.
Sec. 133. Restrictions on certain marketing and sales activities.
Sec. 134. Kickback clarification.
Sec. 135. Beneficiary liability for noncovered services.
Sec. 136. Adjustments for inherent reasonableness.
Sec. 137. Miscellaneous and technical corrections.

PART III—OTHER ITEMS AND SERVICES

Sec. 141. Ambulatory surgical center services.
Sec. 142. Study of medicare coverage of patient care costs associated with clinical trials of new cancer therapies.
Sec. 143. Study of annual cap on amount of medicare payment for outpatient physical therapy and occupational therapy services.
Sec. 144. Payment of part B premium late enrollment penalties by States.

Sec. 145. Treatment of inpatients and provision of diagnostic x-ray services by rural health clinics and federally qualified health centers.
Sec. 146. Application of mammography certification requirements.
Sec. 147. Coverage of services of speech-language pathologists and audiologists.
Sec. 148. Miscellaneous and technical corrections.

Subtitle C—Provisions Relating to Parts A and B

Sec. 151. Medicare secondary payer reforms.
Sec. 152. Physician ownership and referral.
Sec. 153. Definition of FMGEMS examination for payment of direct graduate medical education.
Sec. 154. Qualified medicare beneficiary outreach.
Sec. 155. Hospital agreements with organ procurement organizations.
Sec. 156. Peer review organizations.
Sec. 157. Health maintenance organizations.
Sec. 158. Home health agencies.
Sec. 159. Permanent extension of authority to contract with fiscal intermediaries and carriers on other than a cost basis.
Sec. 160. Miscellaneous and technical corrections.

Subtitle D—Provisions Relating to Medicare Supplemental Insurance Policies

Sec. 171. Standards for medicare supplemental insurance policies.

TITLE II—MEDICAID PROVISIONS

Subtitle A—Substantive Provisions

PART I—MANAGED CARE PROVISIONS

Sec. 201. Medicaid managed care antifraud provisions.
Sec. 202. Extension of medicaid waiver for Tennessee Primary Care Network.
Sec. 203. Waiver of application of medicaid enrollment mix requirement to District of Columbia Chartered Health Plan, Inc.
Sec. 204. Waiver of application of medicaid enrollment mix requirement to Managed Health Services Insurance Corporation of Milwaukee, Wisconsin.
Sec. 205. Extension of Minnesota prepaid medicaid demonstration project.

PART II—HOME AND COMMUNITY-BASED SERVICES WAIVER PROVISIONS

Sec. 211. Elimination of requirement of prior institutionalization with respect to habilitation services furnished under a waiver for home or community-based services.
Sec. 212. Relief from third party liability requirements when cost-effective.
Sec. 213. State expenditures for medical assistance with respect to home and community-based services provided under a waiver.

PART III—OTHER PROVISIONS

Sec. 221. Presumptive eligibility for pregnant women.
Sec. 222. Criteria for determining the amount of disallowances.
Sec. 223. Intermediate sanctions for kickback violations.
Sec. 224. Technical amendment related to taxes on certain health care items and services.
Sec. 225. Application of mammography certification requirements under the medicaid program.
Sec. 226. Nursing home reform.
Sec. 227. Increase in authorization of appropriations for the maternal and child health services block grant program.

Subtitle B—Miscellaneous and Technical Corrections Relating to OBRA-1990

Sec. 241. Effective date.
Sec. 242. Corrections relating to section 4401 (drug rebate program).
Sec. 243. Corrections relating to section 4402 (enrollment under group health plans).
Sec. 244. Corrections relating to section 4501 (low-income medicare beneficiaries).
Sec. 245. Corrections relating to section 4601 (child health).
Sec. 246. Corrections relating to section 4602 (outreach locations).
Sec. 247. Corrections relating to section 4604 (payment for hospital services for children under 6 years of age).
Sec. 248. Corrections relating to section 4703 (payment adjustments for disproportionate share hospitals).
Sec. 249. Corrections relating to section 4704 (Federally-qualified health centers).
Sec. 250. Corrections relating to section 4708 (substitute physicians).
Sec. 251. Corrections relating to section 4711 (home and community care for frail elderly).
Sec. 252. Corrections relating to section 4712 (community supported living arrangements).
Sec. 253. Correction relating to section 4713 (COBRA continuation coverage).
Sec. 254. Correction relating to section 4716 (medicaid transition for family assistance).
Sec. 255. Corrections relating to section 4718 (medically needy income levels for certain 1-member families).
Sec. 256. Corrections relating to section 4723 (medicaid spend-down option).
Sec. 257. Corrections relating to section 4724 (optional State disability determinations).
Sec. 258. Correction relating to section 4732 (special rules for health maintenance organizations).
Sec. 259. Corrections relating to section 4747 (coverage of HIV-positive individuals).
Sec. 260. Correction relating to section 4751 (advanced directives).
Sec. 261. Corrections relating to section 4752 (physicians' services).
Sec. 262. Corrections relating to section 4801 (nursing home reform).
Sec. 263. Other technical corrections.

Subtitle C—Miscellaneous and Technical Corrections Relating to OBRA-1993

Sec. 271. Effective date.
Sec. 272. Corrections relating to section 13601 (personal care services).
Sec. 273. Corrections relating to section 13604 (emergency services for aliens).
Sec. 274. Corrections relating to section 13611 (transfers of assets; treatment of certain trusts).
Sec. 275. Corrections relating to section 13612 (medicaid estate recoveries).
Sec. 276. Corrections relating to section 13622 (liability of third parties to pay for care and services).
Sec. 277. Corrections relating to section 13623 (medical child support).
Sec. 278. Corrections relating to section 13624 (physician referrals).
Sec. 279. Corrections relating to section 13631 (medicaid pediatric immunization provisions).
Sec. 280. Corrections relating to section 13643 (demonstration projects).

TITLE III—INCOME SECURITY, HUMAN RESOURCES, AND RELATED PROGRAMS

Subtitle A—Child Welfare, Foster Care, Adoption

Sec. 301. Required protections for foster children.
Sec. 302. Conformity reviews.
Sec. 303. States required to report on measures taken to comply with the Indian Child Welfare Act.
Sec. 304. Child welfare traineeships.
Sec. 305. Dispositional hearing.
Sec. 306. Elimination of foster care ceilings and of authority to transfer unused foster care funds to child welfare services programs.
Sec. 307. Demonstration projects.
Sec. 308. Placement accountability.
Sec. 309. Payments of State claims for foster care and adoption assistance.
Sec. 310. Effect of failure to carry out State plan.

Subtitle B—Child Support Enforcement

Sec. 311. Reports to credit bureaus on persons delinquent in child support payments.
Sec. 312. Technical amendments to provision on State paternity establishment programs.
Sec. 313. Agreement to assist in locating missing children under the parent locator service.

Subtitle C—Supplemental Security Income

Sec. 321. Definition of disability for children under age 18 applied to all individuals under age 18.
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Sec. 331. Simplification of income and eligibility verification system.
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Subtitle E—JOBS Program

Sec. 341. Expansion of coverage for Indian tribes.
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Sec. 351. Extension of reporting date for advisory council.
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Sec. 361. Extension of demonstration to expand job opportunities.
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Sec. 363. Reallocation of funds under title XX for empowerment and enterprise grants.

Sec. 364. Corrections related to the income security and human resources provisions of OBRA-1990.
Sec. 365. Technical corrections related to the human resource and income security provisions of OBRA-1989.
Sec. 366. Technical correction related to the human resource and income security provisions of OBRA-1993.
Sec. 367. Elimination of obsolete provisions relating to treatment of the earned income tax credit.
Sec. 368. Redesignation of certain provisions.

TITLE I—MEDICARE PROVISIONS

Subtitle A—Provisions Relating to Part A

SEC. 101. PROVISIONS RELATING TO ADJUSTMENTS TO STANDARDIZED AMOUNTS FOR WAGES AND WAGE-RELATED COSTS.

(a) USE OF OCCUPATIONAL MIX IN GUIDELINES FOR DETERMINATION OF AREA WAGE INDEX.—

(1) IN GENERAL.—Section 1886(d)(10)(D)(i)(I) (42 U.S.C. 1395ww(d)(10)(D)(i)(I)) is amended by inserting "(to the extent the Secretary determines appropriate)" after "taking into account".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of OBRA-1989.

(b) CONFORMING AMENDMENTS RELATING TO GEOGRAPHIC AREA USED TO DETERMINE WAGE INDEX APPLICABLE TO HOSPITAL.—(1) Section 1886(d)(8)(C) (42 U.S.C. 1395ww(d)(8)(C)), as amended by section 13501(b)(1) of OBRA-1993, is amended—

(A) in clause (iv), by striking "paragraph (1)" and inserting "paragraph (10)"; and

(B) by adding at the end the following new clause:

"(v) This subparagraph shall apply with respect to discharges occurring in a fiscal year only if the Secretary uses a method for making adjustments to the DRG prospective payment rate for area differences in hospital wage levels under paragraph (3)(E) for the fiscal year that is based on the use of Metropolitan Statistical Area classifications.".

(2) Section 1886(d)(10) (42 U.S.C. 1395ww(d)(10)) is amended—

(A) in subparagraph (C)(i)(II), by striking "the area wage index applicable" and inserting "the factor used to adjust the DRG prospective payment rate for area differences in hospital wage levels that applies"; and

(B) in subparagraph (D)—

(i) by redesignating clause (ii) as clause (iii), and

(ii) by inserting after clause (i) the following new clause:

"(ii) Notwithstanding clause (i), if the Secretary uses a method for making adjustments to the DRG prospective payment rate for area differences in hospital wage levels under paragraph (3)(E) that is not based on the use of Metropolitan Statistical Area classifications, the Secretary may revise the guidelines published under clause (i) to the extent such guidelines are used to determine the appropriateness of the geographic area in which the hospital is determined to be located for purposes of making such adjustments.".

(c) ADJUSTMENT OF LABOR AND NON-LABOR PORTIONS OF STANDARDIZED AMOUNTS.—Section 1886(d)(3)(A)(iii) (42 U.S.C. 1395ww(d)(3)(A)(iii)) is amended by adding at the end the following: "For discharges occurring on or after October 1, 1994, the Secretary shall adjust the ratio of the labor portion to non-labor portion of each average standardized amount to equal such ratio for the national average of all standardized amounts.".

SEC. 102. ESSENTIAL ACCESS COMMUNITY HOSPITAL (EACH) AMENDMENTS.

(a) INCREASING NUMBER OF PARTICIPATING STATES.—Section 1820(a)(1) (42 U.S.C. 1395i-4(a)(1)) is amended by striking "7" and inserting "9".

(b) TREATMENT OF INPATIENT HOSPITAL SERVICES PROVIDED IN RURAL PRIMARY CARE HOSPITALS.—

(1) IN GENERAL.—Section 1820(f)(1)(F) (42 U.S.C. 1395i-4(f)(1)(F)) is amended to read as follows:

"(F) subject to paragraph (4), provides not more than 6 inpatient beds (meeting such conditions as the Secretary may establish) for providing inpatient care to patients requiring stabilization before discharge or transfer to a hospital, except that the facility may not provide any inpatient hospital services—

"(i) to any patient whose attending physician does not certify that the patient may reasonably be expected to be discharged or transferred to a hospital within 72 hours of admission to the facility; or

"(ii) consisting of surgery or any other service requiring the use of general anesthesia (other than surgical procedures specified by the Secretary under section 1833(i)(1)(A)), unless the attending physician certifies that the risk associated with transferring the patient to a hospital for such services outweighs the benefits of transferring the patient to a hospital for such services.".

(2) LIMITATION ON AVERAGE LENGTH OF STAY.—Section 1820(f) (42 U.S.C. 1395i-4(f)) is amended by adding at the end the following new paragraph:

"(4) LIMITATION ON AVERAGE LENGTH OF INPATIENT STAYS.—The Secretary may terminate a designation of a rural primary care hospital under paragraph (1) if the Secretary finds that the average length of stay for inpatients at the facility during the previous year in which the designation was in effect exceeded 72 hours. In determining the compliance of a facility with the requirement of the previous sentence, there shall not be taken into account periods of stay of inpatients in excess of 72 hours to the extent such periods exceed 72 hours because transfer to a hospital is precluded because of inclement weather or other emergency conditions.".

(3) CONFORMING AMENDMENT.—Section 1814(a)(8) (42 U.S.C. 1395f(a)(8)) is amended by striking "such services" and all that follows and inserting "the individual may reasonably be expected to be discharged or transferred to a hospital within 72 hours after admission to the rural primary care hospital.".

(4) GAO REPORTS.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit reports to Congress on—

(A) the application of the requirements under section 1820(f) of the Social Security Act (as amended by this subsection) that rural primary care hospitals provide inpatient care only to those individuals whose attending physicians certify may reasonably be expected to be discharged within 72 hours after admission and maintain an average length of inpatient stay during a year that does not exceed 72 hours; and

(B) the extent to which such requirements have resulted in such hospitals providing inpatient care beyond their capabilities or have limited the ability of such hospitals to provide needed services.

(c) DESIGNATION OF HOSPITALS.—

(1) PERMITTING DESIGNATION OF HOSPITALS LOCATED IN URBAN AREAS.—

(A) IN GENERAL.—Section 1820 (42 U.S.C. 1395i-4) is amended—

(i) by striking paragraph (1) of subsection (e) and redesignating paragraphs (2) through (6) as paragraphs (1) through (5);

(ii) in subsection (e)(1)(A) (as redesignated by subparagraph (A))—

(I) by striking "is located" and inserting "except in the case of a hospital located in an urban area, is located",

(II) by striking ", (ii)" and inserting "or (ii)", and

(III) by striking "or (iii)" and all that follows through "section,"; and

(iii) in subsection (i)(1)(B), by striking "paragraph (3)" and inserting "paragraph (2)".

(B) NO CHANGE IN MEDICARE PROSPECTIVE PAYMENT.—Section 1886(d)(5)(D) (42 U.S.C. 1395ww(d)(5)(D)) is amended—

(i) in clause (iii)(III), by inserting "located in a rural area and" after "that is", and

(ii) in clause (v), by inserting "located in a rural area and" after "in the case of a hospital".

(2) PERMITTING HOSPITALS LOCATED IN ADJOINING STATES TO PARTICIPATE IN STATE PROGRAM.—

(A) IN GENERAL.—Section 1820 (42 U.S.C. 1395i-4) is amended—

(i) by redesignating subsection (k) as subsection (l); and

(ii) by inserting after subsection (j) the following new subsection:

"(k) ELIGIBILITY OF HOSPITALS NOT LOCATED IN PARTICIPATING STATES.—Notwithstanding any other provision of this section—

"(1) for purposes of including a hospital or facility as a member institution of a rural health network, a State may designate a hospital or facility that is not located in the State as an essential access community hospital or a rural primary care hospital if the hospital or facility is located in an adjoining State and is otherwise eligible for designation as such a hospital;

"(2) the Secretary may designate a hospital or facility that is not located in a State receiving a grant under subsection (a)(1) as an essential access community hospital or a rural primary care hospital if the hospital or facility is a member institution of a rural health network of a State receiving a grant under such subsection; and

"(3) a hospital or facility designated pursuant to this subsection shall be eligible to receive a grant under subsection (a)(2).".

(B) CONFORMING AMENDMENTS.—(i) Section 1820(c)(1) (42 U.S.C. 1395i-4(c)(1)) is amended by striking "paragraph (3)" and inserting "paragraph (3) or subsection (k)".

(ii) Paragraphs (1)(A) and (2)(A) of section 1820(i) (42 U.S.C. 1395i-4(i)) are each amended—

(I) in clause (i), by striking "(a)(1)" and inserting "(a)(1) (except as provided in subsection (k))", and

(II) in clause (ii), by striking "subparagraph (B)" and inserting "subparagraph (B) or subsection (k)".

(d) SKILLED NURSING SERVICES IN RURAL PRIMARY CARE HOSPITALS.—Section 1820(f)(3) (42 U.S.C. 1395i-4(f)(3)) is amended by striking "because the facility" and all that follows and inserting the following: "because, at the time the facility applies to the State for designation as a rural primary care hospital, there is in effect an agreement between the facility and the Secretary under section 1883 under which the facility's inpatient hospital facilities are used for the furnishing of extended care services, except that the number of beds used for the furnishing of such services may not exceed the total number of licensed inpatient beds at the

time the facility applies to the State for such designation (minus the number of inpatient beds used for providing inpatient care pursuant to paragraph (1)(F)). For purposes of the previous sentence, the number of beds of the facility used for the furnishing of extended care services shall not include any beds of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a rural primary care hospital.".

(e) DEADLINE FOR DEVELOPMENT OF PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT RURAL PRIMARY CARE HOSPITAL SERVICES.—Section 1814(l)(2) (42 U.S.C. 1395f(l)(2)) is amended by striking "January 1, 1993" and inserting "January 1, 1996".

(f) PAYMENT FOR OUTPATIENT RURAL PRIMARY CARE HOSPITAL SERVICES.—

(1) IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.—Section 1834(g) (42 U.S.C. 1395m(g)) is amended—

(A) in paragraph (1), by striking "during a year before 1993" and inserting "during a year before the prospective payment system described in paragraph (2) is in effect"; and

(B) in paragraph (2), by striking "January 1, 1993," and inserting "January 1, 1996,".

(2) NO USE OF CUSTOMARY CHARGE IN DETERMINING PAYMENT.—Section 1834(g)(1) (42 U.S.C. 1395m(g)(1)) is amended by adding at the end the following new flush sentence:

"The amount of payment shall be determined under either method without regard to the amount of the customary or other charge.".

(g) CLARIFICATION OF PHYSICIAN STAFFING REQUIREMENT FOR RURAL PRIMARY CARE HOSPITALS.—Section 1820(f)(1)(H) (42 U.S.C. 1395i-4(f)(1)(H)) is amended by striking the period and inserting the following: ", except that in determining whether a facility meets the requirements of this subparagraph, subparagraphs (E) and (F) of that paragraph shall be applied as if any reference to a 'physician' is a reference to a physician as defined in section 1861(r)(1).".

(h) TECHNICAL AMENDMENTS RELATING TO PART A DEDUCTIBLE, COINSURANCE, AND SPELL OF ILLNESS.—(1) Section 1812(a)(1) (42 U.S.C. 1395d(a)(1)) is amended—

(A) by striking "inpatient hospital services" the first place it appears and inserting "inpatient hospital services or inpatient rural primary care hospital services";

(B) by striking "inpatient hospital services" the second place it appears and inserting "such services"; and

(C) by striking "and inpatient rural primary care hospital services".

(2) Sections 1813(a) and 1813(b)(3)(A) (42 U.S.C. 1395e(a), 1395e(b)(3)(A)) are each amended by striking "inpatient hospital services" each place it appears and inserting "inpatient hospital services or inpatient rural primary care hospital services".

(3) Section 1813(b)(3)(B) (42 U.S.C. 1395e(b)(3)(B)) is amended by striking "inpatient hospital services" and inserting "inpatient hospital services, inpatient rural primary care hospital services".

(4) Section 1861(a) (42 U.S.C. 1395x(a)) is amended—

(A) in paragraph (1), by striking "inpatient hospital services" and inserting "inpatient hospital services, inpatient rural primary care hospital services"; and

(B) in paragraph (2), by striking "hospital" and inserting "hospital or rural primary care hospital".

(i) AUTHORIZATION OF APPROPRIATIONS.—Section 1820(l) (42 U.S.C. 1395i-4(l)), as redesignated by subsection (c)(2)(A), is amended by striking "1990, 1991, and 1992" and inserting "1990 through 1995".

(j) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 103. PROVISIONS RELATING TO RURAL HEALTH TRANSITION GRANT PROGRAM.

(a) ELIGIBILITY OF RURAL PRIMARY CARE HOSPITALS FOR GRANTS.—

(1) IN GENERAL.—Section 4005(e)(2) of OBRA-1987 is amended in the matter preceding subparagraph (A) by inserting "any rural primary care hospital designated by the Secretary under section 1820(i)(2) of the Social Security Act, or" after "means".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to grants made on or after October 1, 1993.

(b) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—Section 4005(e)(9) of OBRA-1987 is amended—

(1) by striking "1989 and" and inserting "1989,"; and

(2) by striking "1992" and inserting "1992 and $30,000,000 for each of fiscal years 1993 through 1997".

(c) FREQUENCY OF REQUIRED REPORTS.—Section 4008(e)(8)(B) of OBRA-1987 is amended by striking "every 6 months" and inserting "every 12 months".

SEC. 104. PSYCHOLOGY SERVICES IN HOSPITALS.

Section 1861(e)(4) (42 U.S.C. 1395x(e)(4)) is amended by striking "physician;" and inserting "physician, except that a patient receiving qualified psychologist services (as defined in subsection (ii)) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law;".

SEC. 105. MEDICARE-DEPENDENT, SMALL RURAL HOSPITALS AND SOLE COMMUNITY HOSPITALS.

(a) MEDICARE DEPENDENT, SMALL RURAL HOSPITALS.—

(1) CLARIFICATION OF ADDITIONAL PAYMENT.—Section 1886(d)(5)(G)(ii)(I) (42 U.S.C. 1395ww(d)(5)(G)(ii)(I)), as amended by section 13501(e)(1) of OBRA-1993, is amended by striking "the first 3-12-month cost reporting periods that begin" and inserting "the 36-month period beginning with the first day of the cost reporting period that begins".

(2) CONFORMING TARGET AMOUNTS TO EXTENSION OF ADDITIONAL PAYMENTS.—Section 1886(b)(3)(D) (42 U.S.C. 1395ww(b)(3)(D)) is amended in the matter preceding clause (i) by striking "March 31, 1993" and inserting "September 30, 1994".

(b) CLARIFICATION OF UPDATES.—Section 1886(b)(3)(B)(iv)(II) (42 U.S.C. 1395ww(b)(3)(B)(iv)(II)), as added by section 13501(a)(2) of OBRA-1993, is amended by striking "(taking into account" and all that follows through "1994)" and inserting "(adjusted to exclude any portion of a cost reporting period beginning during fiscal year 1993 for which the applicable percentage increase is determined under subparagraph (I))".

SEC. 106. SKILLED NURSING FACILITIES.

(a) CONSTRUCTION OF WAGE INDEX.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall begin to collect data on employee compensation and paid hours of employment in skilled nursing facilities for the purpose of constructing a skilled nursing facility wage index adjustment to the routine service cost limits required under section 1888(a)(4) of the Social Security Act.

(b) CLARIFICATION OF REPEAL OF UTILIZATION REVIEW REQUIREMENTS.—

(1) IN GENERAL.—(A) Section 1814(a)(5) (42 U.S.C. 1395f(a)(5)) is amended—

(i) by striking "and with respect" and all that follows through "regulations";

(ii) by striking "or skilled nursing facility, as the case may be"; and

(iii) by striking "or facility".

(B) Section 1866(d) (42 U.S.C. 1395cc(d)) is amended—

(i) by striking "or skilled nursing facility";

(ii) by striking "or facility" each place it appears;

(iii) by striking "or for post-hospital" and all that follows through "the case may be"; and

(iv) by striking ", or (in the case of" and all that follows through "transfer agreement,".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the enactment of OBRA-1987.

(c) CONFORMING AMENDMENTS TO NURSING HOME REFORM.—

(1) SUSPENSION OF DECERTIFICATION OF NURSES AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS BASED ON EXTENDED SURVEYS.—

(A) IN GENERAL.—Section 1819(f)(2)(B)(iii)(I)(b) (42 U.S.C. 1395i-3(f)(2)(B)(iii)(I)(b)) is amended by striking the semicolon and inserting the following: ", unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section;".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the enactment of OBRA-1990.

(2) REQUIREMENTS FOR CONSULTANTS CONDUCTING REVIEWS ON USE OF DRUGS.—

(A) IN GENERAL.—Section 1819(c)(1)(D) (42 U.S.C. 1395i-3(c)(1)(D)) is amended by adding at the end the following sentence: "In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this title to have access to the services of such a consultant on a timely basis.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the enactment of OBRA-1987.

(3) INCREASE IN MINIMUM AMOUNT REQUIRED FOR SEPARATE DEPOSIT OF PERSONAL FUNDS.—

(A) IN GENERAL.—Section 1819(c)(6)(B)(i) (42 U.S.C. 1395i-3(c)(6)(B)(i)) is amended by striking "$50" and inserting "$100".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect January 1, 1994.

(4) DUE PROCESS PROTECTIONS FOR NURSE AIDES.—

(A) PROHIBITING STATE FROM INCLUDING UNDOCUMENTED ALLEGATIONS IN NURSES AIDE REGISTRY.—Section 1819(e)(2)(B) (42 U.S.C. 1395i-3(e)(2)(B)) is amended by striking the period at the end of the first sentence and inserting the following: ", but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection.".

(B) DUE PROCESS REQUIREMENTS FOR REBUTTING ALLEGATIONS.—Section 1819(g)(1)(C) (42 U.S.C. 1395i-3(g)(1)(C)) is amended by striking the second sentence and inserting the following: "The State shall, after providing the individual involved with a written notice of the allegations (including a statement of the availability of a hearing for the individual to rebut the allegations) and the opportunity for a hearing on the record, make a

written finding as to the accuracy of the allegations.".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect January 1, 1994.

(d) CORRECTIONS RELATING TO SECTION 4008.—

(1) Section 1819(b)(5)(D) (42 U.S.C. 1395i-3(b)(5)(D)), as amended by section 4008(h)(1)(D) of OBRA-1990, is amended by striking the comma before "or a new competency evaluation program.".

(2) Section 1819(b)(5)(G) (42 U.S.C. 1395i-3(b)(5)(G)) is amended by striking "or licensed or certified social worker" and inserting "licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician".

(3) Section 1819(f)(2)(B)(i) (42 U.S.C. 1395i-3(f)(2)(B)(i)) is amended by striking "facilities," and inserting "facilities (subject to clause (iii)),".

(4) Section 1819(f)(2)(B)(iii)(I)(c) (42 U.S.C. 1395i-3(f)(2)(B)(iii)(I)(c)) is amended by striking "clauses" each place it appears and inserting "clause".

(5) Section 1819(g)(5)(B) (42 U.S.C. 1395i-3(g)(5)(B)) is amended by striking "paragraphs" and inserting "paragraph".

(6) Section 4008(h)(1)(F)(ii) of OBRA-1990 is amended—

(A) by striking "The amendments" and inserting "(I) The amendments";

(B) by striking "nursing facility" each place it appears and inserting "skilled nursing facility";

(C) by redesignating subclauses (I) through (V) as items (aa) through (ee); and

(D) by adding at the end the following new subclause:

"(II) Notwithstanding subclause (I) and subject to section 1819(f)(2)(B)(iii)(I) of the Social Security Act (as amended by clause (i)), a State may approve a training and competency evaluation program or a competency evaluation program offered by or in a skilled nursing facility described in subclause (I) if, during the previous 2 years, item (aa), (bb), (cc), (dd), or (ee) of subclause (I) did not apply to the facility.".

(7) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the enactment of OBRA-1990.

SEC. 107. NOTIFICATION OF AVAILABILITY OF HOSPICE BENEFIT.

(a) IN GENERAL.—Section 1861(ee)(2)(D) (42 U.S.C. 1395x(ee)(2)(D)) is amended by inserting ", including hospice services," after "post-hospital services".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after the first day of the first month beginning more than one year after the date of the enactment of this Act.

SEC. 108. CLARIFYING EXPERTISE OF INDIVIDUALS TO SERVE ON THE PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.

Section 1886(e)(6)(B) (42 U.S.C. 1395ww(e)(6)(B)) is amended by striking "hospital reimbursement, hospital financial management" and inserting "health facility management, reimbursement of health facilities or other providers of services which reflect the scope of the Commission's responsibilities".

SEC. 109. AUTHORITY FOR BUDGET NEUTRAL ADJUSTMENTS FOR CHANGES IN PAYMENT AMOUNTS FOR TRANSFER CASES.

Section 1886(d)(5)(I) (42 U.S.C. 1395ww(d)(5)) is amended—

(1) by inserting "(i)" after "(I)"; and

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

"(ii) In making adjustments under clause (i) for transfer cases (as defined by the Secretary) in a fiscal year, the Secretary may make adjustments to each of the average standardized amounts determined under paragraph (3) to assure that the aggregate payments made under this subsection for such fiscal year are not greater or lesser than those that would have otherwise been made in such fiscal year.".

SEC. 110. CLARIFICATION OF DRG PAYMENT WINDOW EXPANSION; MISCELLANEOUS AND TECHNICAL CORRECTIONS.

(a) CLARIFICATION OF DRG PAYMENT WINDOW EXPANSION.—The first sentence of section 1886(a)(4) (42 U.S.C. 1395ww(a)(4)) is amended by inserting "(or, in the case of a hospital that is not a subsection (d) hospital, during the 1 day)" after "3 days".

(b) TECHNICAL CORRECTION RELATING TO RESIDENT ASSESSMENT IN NURSING HOMES.—Section 1819(b)(3)(C)(i)(I) (42 U.S.C. 1395i-3(b)(3)(C)(i)(I)) is amended by striking "not later than" before "14 days".

(c) TECHNICAL CORRECTION RELATING TO APPLICABLE ADJUSTMENT FACTOR FOR INDIRECT MEDICAL EDUCATION ADJUSTMENT.—Section 1886(d)(5)(B)(ii) (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended by striking "May 1, 1986," and inserting "October 1, 1988,".

(d) CLERICAL CORRECTIONS.—(1) Section 1814(i)(1)(C)(i) (42 U.S.C. 1395f(i)(1)(C)(i)) is amended by striking "1990,," and inserting "1990,".

(2) Section 1816(f)(2)(A)(ii) (42 U.S.C. 1396h(f)(2)(A)(ii)) is amended by striking "such agency" and inserting "such agency's".

Subtitle B—Provisions Relating to Part B

PART I—PHYSICIANS' SERVICES

SEC. 121. DEVELOPMENT AND IMPLEMENTATION OF RESOURCE-BASED METHODOLOGY FOR PRACTICE EXPENSES.

(a) DEVELOPMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a methodology for implementing in 1997 a resource-based system for determining practice expense relative value units for each physicians' service. The methodology utilized shall recognize the staff, equipment, and supplies used in the provision of various medical and surgical services in various settings.

(2) REPORT.—The Secretary shall transmit a report by June 30, 1995, on the methodology developed under paragraph (1) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate. The report shall include a presentation of data utilized in developing the methodology and an explanation of the methodology.

(b) IMPLEMENTATION.—

(1) IN GENERAL.—Section 1848(c)(2)(C)(ii) (42 U.S.C. 1395w-4(c)(2)(C)(ii)) is amended—

(A) by inserting "for the service for years before 1997" before "equal to",

(B) by striking the period at the end of subclause (II) and inserting a comma, and

(C) by adding after and below subclause (II) the following:

"and for years beginning with 1997 based on the relative practice expense resources involved in furnishing the service.".

(2) CONFORMING AMENDMENT.—Section 1848(c)(3)(C)(ii) (42 U.S.C. 1395w-4(c)(3)(C)(ii)) is amended by striking "The practice" and inserting "For years before 1997, the practice".

(3) APPLICATION OF CERTAIN PROVISIONS.—In implementing the amendment made by paragraph (1)(C), the provisions of clauses (ii)(II) and (iii) of section 1848(c)(2)(B) of the Social Security Act shall apply in the same manner as they apply to adjustments under clause (ii)(I) of such section.

SEC. 122. GEOGRAPHIC COST OF PRACTICE INDEX REFINEMENTS.

(a) REQUIRING CONSULTATION WITH REPRESENTATIVES OF PHYSICIANS IN REVIEWING GEOGRAPHIC ADJUSTMENT FACTORS.—Section 1848(e)(1)(C) (42 U.S.C. 1395w-4(e)(1)(C)) is amended by striking "shall review" and inserting "shall, in consultation with appropriate representatives of physicians, review".

(b) USE OF MOST RECENT DATA IN GEOGRAPHIC ADJUSTMENT.—Section 1848(e)(1) (42 U.S.C. 1395w-4(e)(1)) is amended by adding at the end the following new subparagraph:

"(D) USE OF RECENT DATA.—In establishing indices and index values under this paragraph, the Secretary shall use the most recent data available relating to practice expenses, malpractice expenses, and physician work effort in different fee schedule areas.".

(c) DEADLINE FOR INITIAL REVIEW AND REVISION.—The Secretary of Health and Human Services shall first review and revise geographic adjustment factors under section 1848(e)(1)(C) of the Social Security Act by not later than January 1, 1995. Not later than April 1, 1994, the Secretary shall study and report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives on the construction of the geographic cost of practice index under section 1848(e)(1)(A)(i) of such Act.

(d) REPORT ON REVIEW PROCESS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall study and report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives on—

(1) the data necessary to review and revise the indices established under section 1848(e)(1)(A) of the Social Security Act, including—

(A) the shares allocated to physicians' work effort, practice expenses (other than malpractice expenses), and malpractice expenses;

(B) the weights assigned to the input components of such shares; and

(C) the index values assigned to such components;

(2) any limitations on the availability of data necessary to review and revise such indices at least every three years;

(3) ways of addressing such limitations, with particular attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every three years; and

(4) the costs of developing more accurate and timely data.

SEC. 123. EXTRA-BILLING LIMITS.

(a) ENFORCEMENT OF LIMITS.—Section 1848(g) (42 U.S.C. 1395w-4(g)), as amended by section 13517(a) of OBRA-1993, is amended—

(1) by amending paragraph (1) to read as follows:

"(1) LIMITATION ON ACTUAL CHARGES.—

"(A) IN GENERAL.—In the case of a nonparticipating physician or nonpar- ticipating supplier or other person (as defined in section 1842(i)(2)) who does not accept payment on an assignment-related basis for a physician's service furnished with respect to an individual enrolled under this part, the following rules apply:

"(i) APPLICATION OF LIMITING CHARGE.—No person may bill or collect an actual charge

for the service in excess of the limiting charge described in paragraph (2) for such service.

"(ii) NO LIABILITY FOR EXCESS CHARGES.—No person is liable for payment of any amounts billed for the service in excess of such limiting charge.

"(iii) CORRECTION OF EXCESS CHARGES.—If such a physician, supplier, or other person bills, but does not collect, an actual charge for a service in violation of clause (i), the physician, supplier, or other person shall reduce on a timely basis the actual charge billed for the service to an amount not to exceed the limiting charge for the service.

"(iv) REFUND OF EXCESS COLLECTIONS.—If such a physician, supplier, or other person collects an actual charge for a service in violation of clause (i), the physician, supplier, or other person shall provide on a timely basis a refund to the individual charged in the amount by which the amount collected exceeded the limiting charge for the service. The amount of such a refund shall be reduced to the extent the individual has an outstanding balance owed by the individual to the physician.

"(B) SANCTIONS.—If a physician, supplier, or other person—

"(i) knowingly and willfully bills or collects for services in violation of subparagraph (A)(i) on a repeated basis, or

"(ii) fails to comply with clause (iii) or (iv) of subparagraph (A) on a timely basis,

the Secretary may apply sanctions against the physician, supplier, or other person in accordance with paragraph (2) of section 1842(j). In applying this subparagraph, paragraph (4) of such section applies in the same manner as such paragraph applies to such section and any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.

"(C) TIMELY BASIS.—For purposes of this paragraph, a correction of a bill for an excess charge or refund of an amount with respect to a violation of subparagraph (A)(i) in the case of a service is considered to be provided 'on a timely basis', if the reduction or refund is made not later than 30 days after the date the physician, supplier, or other person is notified by the carrier under this part of such violation and of the requirements of subparagraph (A).'"; and

(2) in paragraph (3)(B)—

(A) by inserting after the first sentence the following: "No person is liable for payment of any amounts billed for such a service in violation of the previous sentence.", and

(B) in the last sentence, by striking "previous sentence" and inserting "first sentence".

(b) CLARIFICATION OF MANDATORY ASSIGNMENT RULES FOR CERTAIN PRACTITIONERS.—

(1) IN GENERAL.—Section 1842(b) (42 U.S.C. 1395u(b)), as amended by section 126(e), is amended by adding at the end the following new paragraph:

"(18)(A) Payment for any service furnished by a practitioner described in subparagraph (C) and for which payment may be made under this part on a reasonable charge or fee schedule basis may only be made under this part on an assignment-related basis.

"(B) A practitioner described in subparagraph (C) or other person may not bill (or collect any amount from) the individual or another person for any service described in subparagraph (A), except for deductible and coinsurance amounts applicable under this part. No person is liable for payment of any amounts billed for such a service in violation of the previous sentence. If a practitioner or other person knowingly and willfully bills (or collects an amount) for such a service in violation of such sentence, the Secretary may apply sanctions against the practitioner or other person in the same manner as the Secretary may apply sanctions against a physician in accordance with subsection (j)(2) in the same manner as such section applies with respect to a physician. Paragraph (4) of subsection (j) shall apply in this subparagraph in the same manner as such paragraph applies to such section.

"(C) A practitioner described in this subparagraph is any of the following:

"(i) A physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa)(5)).

"(ii) A certified registered nurse anesthetist (as defined in section 1861(bb)(2)).

"(iii) A certified nurse-midwife (as defined in section 1861(gg)(2)).

"(iv) A clinical social worker (as defined in section 1861(hh)(1)).

"(v) A clinical psychologist (as defined by the Secretary for purposes of section 1861(ii)).

"(D) For purposes of this paragraph, a service furnished by a practitioner described in subparagraph (C) includes any services and supplies furnished as incident to the service as would otherwise be covered under this part if furnished by a physician or as incident to a physician's service.".

(2) CONFORMING AMENDMENTS.—

(A) Section 1833 (42 U.S.C. 1395l) is amended—

(i) in subsection (l)(5), by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B);

(ii) by striking subsection (p); and

(iii) in subsection (r), by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(B) Section 1842(b)(12) (42 U.S.C. 1395u(b)(12)) is amended by striking subparagraph (C).

(c) INFORMATION ON EXTRA-BILLING LIMITS.—

(1) PART OF EXPLANATION OF MEDICARE BENEFITS.—Section 1842(h)(7) (42 U.S.C. 1395u(h)(7)) is amended—

(A) by striking "and" at the end of subparagraph (B),

(B) in subparagraph (C), by striking "shall include",

(C) in subparagraph (C), by striking the period at the end and inserting ", and", and

(D) by adding at the end the following new subparagraph:

"(D) in the case of services for which the billed amount exceeds the limiting charge imposed under section 1848(g), information regarding such applicable limiting charge (including information concerning the right to a refund under section 1848(g)(1)(A)(iv)).".

(2) DETERMINATIONS BY CARRIERS.—Subparagraph (G) of section 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended to read as follows:

"(G) will, for a service that is furnished with respect to an individual enrolled under this part, that is not paid on an assignment-related basis, and that is subject to a limiting charge under section 1848(g)—

"(i) determine, prior to making payment, whether the amount billed for such service exceeds the limiting charge applicable under section 1848(g)(2);

"(ii) notify the physician, supplier, or other person periodically (but not less often than once every 30 days) of determinations that amounts billed exceeded such applicable limiting charges; and

"(iii) provide for prompt response to inquiries of physicians, suppliers, and other persons concerning the accuracy of such limiting charges for their services;".

(d) REPORT ON CHARGES IN EXCESS OF LIMITING CHARGE.—Section 1848(g)(6)(B) (42 U.S.C. 1395w-4(g)(6)(B)) is amended by inserting "information on the extent to which actual charges exceed limiting charges, the number and types of services involved, and the average amount of excess charges and information" after "report to the Congress".

(e) MISCELLANEOUS AND TECHNICAL AMENDMENTS.—Section 1833(h)(5)(D) (42 U.S.C. 1395l(h)(5)(D)) is amended—

(1) by striking "paragraphs (2) and (3)" and by inserting "paragraph (2)"; and

(2) by adding at the end the following: "Paragraph (4) of such section shall apply in this subparagraph in the same manner as such paragraph applies to such section.".

(f) EFFECTIVE DATES.—

(1) ENFORCEMENT; MISCELLANEOUS AND TECHNICAL AMENDMENTS.—The amendments made by subsections (a) and (e) shall apply to services furnished on or after the date of the enactment of this Act; except that the amendments made by subsection (a) shall not apply to services of a nonparticipating supplier or other person furnished before January 1, 1994.

(2) PRACTITIONERS.—The amendments made by subsection (b) shall apply to services furnished on or after January 1, 1994.

(3) EOMBS.—The amendments made by subsection (c)(1) shall apply to explanations of benefits provided on or after July 1, 1994.

(4) CARRIER DETERMINATIONS.—The amendments made by subsection (c)(2) shall apply to contracts as of January 1, 1994.

(5) REPORT.—The amendment made by subsection (d) shall apply to reports for years beginning with 1994.

SEC. 124. RELATIVE VALUES FOR PEDIATRIC SERVICES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall fully develop, by not later than October 1, 1994, relative values for the full range of pediatric physicians' services which are consistent with the relative values developed for other physicians' services under section 1848(c) of the Social Security Act. In developing such values, the Secretary shall conduct such refinements as may be necessary to produce appropriate estimates for such relative values.

(b) STUDY.—

(1) IN GENERAL.—The Secretary shall conduct a study of the relative values for pediatric and other services to determine whether there are significant variations in the resources used in providing similar services to different populations. In conducting such study, the Secretary shall consult with appropriate organizations representing pediatricians and other physicians and physical and occupational therapists.

(2) REPORT.—Not later than July 1, 1995, the Secretary shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include any appropriate recommendations regarding needed changes in coding or other payment policies to ensure that payments for pediatric services appropriately reflect the resources required to provide these services.

SEC. 125. ADMINISTRATION OF CLAIMS RELATING TO PHYSICIANS' SERVICES.

(a) LIMITATION ON CARRIER USER FEES.—Section 1842(c) (42 U.S.C. 1395u(c)) is amended by adding at the end the following new paragraph:

"(4) Neither a carrier nor the Secretary may impose a fee under this title—

"(A) for the filing of claims related to physicians' services,

"(B) for an error in filing a claim relating to physicians' services or for such a claim which is denied,

"(C) for any appeal under this title with respect to physicians' services,

"(D) for applying for (or obtaining) a unique identifier under subsection (r), or

"(E) for responding to inquiries respecting physicians' services or for providing information with respect to medical review of such services.".

(b) CLARIFICATION OF PERMISSIBLE SUBSTITUTE BILLING ARRANGEMENTS.—

(1) IN GENERAL.—Clause (D) of section 1842(b)(6) (42 U.S.C. 1395u(b)(6)) is amended to read as follows: "(D) payment may be made to a physician for physicians' services (and services furnished incident to such services) furnished by a second physician to patients of the first physician if (i) the first physician is unavailable to provide the services; (ii) the services are furnished pursuant to an arrangement between the two physicians that (I) is informal and reciprocal, or (II) involves per diem or other fee-for-time compensation for such services; (iii) the services are not provided by the second physician over a continuous period of more than 60 days; and (iv) the claim form submitted to the carrier for such services includes the second physician's unique identifier (provided under the system established under subsection (r)) and indicates that the claim meets the requirements of this subparagraph for payment to the first physician".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

SEC. 126. MISCELLANEOUS AND TECHNICAL CORRECTIONS.

(a) OVERVALUED PROCEDURES.—(1) Section 1842(b)(16)(B)(iii) (42 U.S.C. 1395u(b)(16)(B)(iii)) is amended—

(A) by striking ", simple and subcutaneous",

(B) by striking "; small" and inserting "and small",

(C) by striking "treatments;" the first place it appears and inserting "and",

(D) by striking "lobectomy;",

(E) by striking "enterectomy; colectomy; cholecystectomy;",

(F) by striking "; transurerethral resection" and inserting "and resection", and

(G) by striking "sacral laminectomy;".

(2) Section 4101(b)(2) of OBRA-1990 is amended—

(A) in the matter before subparagraph (A), by striking "1842(b)(16)" and inserting "1842(b)(16)(B)", and

(B) in subparagraph (B)—

(i) by striking ", simple and subcutaneous",

(ii) by striking "(HCPCS codes 19160 and 19162)" and inserting "(HCPCS code 19160)", and

(iii) by striking all that follows "(HCPCS codes 92250" and inserting "and 92260).".

(b) RADIOLOGY SERVICES.—(1) Section 1834(b)(4) (42 U.S.C. 1395m(b)(4)) is amended by redesignating the subparagraphs (E) and (F) redesignated by section 4102(a)(1) of OBRA-1990 as subparagraphs (F) and (G), respectively.

(2) Section 1834(b)(4)(D) (42 U.S.C. 1395m(b)(4)(D)) is amended—

(A) in the matter before clause (i), by striking "shall be determined as follows:" and inserting "shall, subject to clause (vii), be reduced to the adjusted conversion factor for the locality determined as follows:",

(B) in clause (iv), by striking "LOCAL ADJUSTMENT.—Subject to clause (vii), the conversion factor to be applied to" and inserting "ADJUSTED CONVERSION FACTOR.—The adjusted conversion factor for",

(C) in clause (vii), by striking "under this subparagraph", and

(D) in clause (vii), by inserting "reduced under this subparagraph by" after "shall not be".

(3) Section 4102(c)(2) of OBRA-1990 is amended by striking "radiology services" and all that follows and inserting "nuclear medicine services.".

(4) Section 4102(d) of OBRA-1990 is amended by striking "new paragraph" and inserting "new subparagraph".

(5) Section 1834(b)(4)(E) (42 U.S.C. 1395m(b)(4)(E)) is amended by inserting "RULE FOR CERTAIN SCANNING SERVICES.—" after "(E)".

(6) Section 1848(a)(2)(D)(iii) (42 U.S.C. 1395w-4(a)(2)(D)(iii)) is amended by striking "that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989" and by striking "provided under such section" and inserting "provided under section 6105(b) of the Omnibus Budget Reconciliation Act of 1989".

(c) ANESTHESIA SERVICES.—(1) Section 4103(a) of OBRA-1990 is amended by striking "REDUCTION IN FEE SCHEDULE" and inserting "REDUCTION IN PREVAILING CHARGES".

(2) Section 1842(q)(1)(B) (42 U.S.C. 1395u(q)(1)(B)) is amended—

(A) in the matter before clause (i), by striking "shall be determined as follows:" and inserting "shall, subject to clause (iv), be reduced to the adjusted prevailing charge conversion factor for the locality determined as follows:", and

(B) in clause (iii), by striking "Subject to clause (iv), the prevailing charge conversion factor to be applied in" and inserting "The adjusted prevailing charge conversion factor for".

(d) ASSISTANTS AT SURGERY.—(1) Section 4107(c) of OBRA-1990 is amended by inserting "(a)(1)" after "subsection".

(2) Section 4107(a)(2) of OBRA-1990 is amended by adding at the end the following: "In applying section 1848(g)(2)(D) of the Social Security Act for services of an assistant-at-surgery furnished during 1991, the recognized payment amount shall not exceed the maximum amount specified under section 1848(i)(2)(A) of such Act (as applied under this paragraph in such year).".

(e) TECHNICAL COMPONENTS OF DIAGNOSTIC SERVICES.—Section 1842(b) (42 U.S.C. 1395u(b)) is amended by redesignating paragraph (18), as added by section 4108(a) of OBRA-1990, as paragraph (17) and, in such paragraph, by inserting ", tests specified in paragraph (14)(C)(i)," after "diagnostic laboratory tests".

(f) STATEWIDE FEE SCHEDULES.—Section 4117 of OBRA-1990 is amended—

(1) in subsection (a)—

(A) by striking "(a) IN GENERAL.—", and

(B) by striking ", if the" and all that follows through "1991, "; and

(2) by striking subsections (b), (c), and (d).

(g) STUDY OF AGGREGATION RULE FOR CLAIMS OF SIMILAR PHYSICIAN SERVICES.—Section 4113 of OBRA-1990 is amended—

(1) by inserting "of the Social Security Act" after "1869(b)(2)"; and

(2) by striking "December 31, 1992" and inserting "December 31, 1993".

(h) OTHER MISCELLANEOUS AND TECHNICAL AMENDMENTS.—(1) The heading of section 1834(f) (42 U.S.C. 1395m(f)) is amended by striking "FISCAL YEAR".

(2)(A) Section 4105(b) of OBRA-1990 is amended—

(i) in paragraph (2), by striking "amendments" and inserting "amendment", and

(ii) in paragraph (3), by striking "amendments made by paragraphs (1) and (2)" and inserting "amendment made by paragraph (1)".

(B) Section 1848(f)(2)(C) (42 U.S.C. 1395w-4(f)(2)(C)) is amended by inserting "PERFORMANCE STANDARD RATES OF INCREASE FOR FISCAL YEAR 1991.—" after "(C)".

(C) Section 4105(d) of OBRA-1990 is amended by inserting "PUBLICATION OF PERFORMANCE STANDARD RATES.—" after "(d)".

(3) Section 4106(c) of OBRA-1990 is amended by inserting "of the Social Security Act" after "1848(d)(1)(B)".

(4) Section 4114 of OBRA-1990 is amended by striking "patients" the second place it appears.

(5) Section 1848(e)(1)(C) (42 U.S.C. 1395w-4(e)(1)(C)) is amended by inserting "date of the" after "since the".

(6) Section 4118(f)(1)(D) of OBRA-1990 is amended by striking "is amended".

(7) Section 4118(f)(1)(N)(ii) of OBRA-1990 is amended by striking "subsection (f)(5)(A)" and inserting "subsection (f)(5)(A))".

(8) Section 1845(e) (42 U.S.C. 1395w-1(e)) is amended—

(A) by striking paragraph (2); and

(B) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4).

(9) Section 4118(j)(2) of OBRA-1990 is amended by striking "In section" and inserting "Section".

(10)(A) Section 1848(i)(3) (42 U.S.C. 1395w-4(i)(3)) is amended by striking the space before the period at the end.

(B) Section 1834(a)(10)(B) (42 U.S.C. 1395m(a)(10)(B)) is amended—

(i) by striking "apply to" and inserting "would otherwise apply to", and

(ii) by inserting before the period at the end "but for the application of section 1848(i)(3)".

(i) OTHER CORRECTIONS.—(1) Effective on the date of the enactment of this Act, section 6102(d)(4) of OBRA-1989 is amended by striking all that follows the first sentence.

(2) Effective for payments for fiscal years beginning with fiscal year 1994, section 1842(c)(1) (42 U.S.C. 1395u(c)(1)) is amended—

(A) in subparagraph (A), by striking "(A) Any contract" and inserting "Any contract"; and

(B) by striking subparagraph (B).

(j) EFFECTIVE DATE.—Except as provided in subsection (i), the amendments made by this section and the provisions of this section shall take effect as if included in the enactment of OBRA-1990.

PART II—DURABLE MEDICAL EQUIPMENT

SEC. 131. CERTIFICATION OF SUPPLIERS.

(a) REQUIREMENTS.—

(1) IN GENERAL.—Section 1834 (42 U.S.C. 1395m), as amended by section 13544(b)(1) of OBRA-1993, is amended by adding at the end the following new subsection:

"(j) REQUIREMENTS FOR SUPPLIERS OF MEDICAL EQUIPMENT AND SUPPLIES.—

"(1) ISSUANCE AND RENEWAL OF SUPPLIER NUMBER.—

"(A) PAYMENT.—Except as provided in subparagraph (C), no payment may be made under this part after May 1, 1994, for items furnished by a supplier of medical equipment and supplies unless such supplier obtains (and renews at such intervals as the Secretary may require) a supplier number.

"(B) STANDARDS FOR POSSESSING A SUPPLIER NUMBER.—A supplier may not obtain a supplier number unless—

"(i) for medical equipment and supplies furnished on or after May 1, 1994, and before

January 1, 1996, the supplier meets standards prescribed by the Secretary in regulations issued on June 18, 1992; and

"(ii) for medical equipment and supplies furnished on or after January 1, 1996, the supplier meets revised standards prescribed by the Secretary (in consultation with representatives of suppliers of medical equipment and supplies, carriers, and consumers) that shall include requirements that the supplier—

"(I) comply with all applicable State and Federal licensure and regulatory requirements;

"(II) maintain a physical facility on an appropriate site;

"(III) have proof of appropriate liability insurance; and

"(IV) meet such other requirements as the Secretary may specify.

"(C) EXCEPTION FOR ITEMS FURNISHED AS INCIDENT TO A PHYSICIAN'S SERVICE.—Subparagraph (A) shall not apply with respect to medical equipment and supplies furnished incident to a physician's service.

"(D) PROHIBITION AGAINST MULTIPLE SUPPLIER NUMBERS.—The Secretary may not issue more than one supplier number to any supplier of medical equipment and supplies unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

"(E) PROHIBITION AGAINST DELEGATION OF SUPPLIER DETERMINATIONS.—The Secretary may not delegate (other than by contract under section 1842) the responsibility to determine whether suppliers meet the standards necessary to obtain a supplier number.

"(2) CERTIFICATES OF MEDICAL NECESSITY.—

"(A) STANDARDIZED CERTIFICATES.—Not later than October 1, 1994, the Secretary shall, in consultation with carriers under this part, develop one or more standardized certificates of medical necessity (as defined in subparagraph (C)) for medical equipment and supplies for which the Secretary determines that such a certificate is necessary.

"(B) LIMITATION ON INFORMATION PROVIDED BY SUPPLIERS ON CERTIFICATES OF MEDICAL NECESSITY.—

"(i) IN GENERAL.—Effective May 1, 1994, a supplier of medical equipment and supplies may distribute to physicians, or to individuals entitled to benefits under this part, a certificate of medical necessity for commercial purposes which contains no more than the following information completed by the supplier:

"(I) An identification of the supplier and the beneficiary to whom such medical equipment and supplies are furnished.

"(II) A description of such medical equipment and supplies.

"(III) Any product code identifying such medical equipment and supplies.

"(IV) Any other administrative information (other than information relating to the beneficiary's medical condition) identified by the Secretary.

"(ii) INFORMATION ON PAYMENT AMOUNT AND CHARGES.—If a supplier distributes a certificate of medical necessity containing any of the information permitted to be supplied under clause (i), the supplier shall also list on the certificate of medical necessity the fee schedule amount and the supplier's charge for the medical equipment or supplies being furnished prior to distribution of such certificate to the physician.

"(iii) PENALTY.—Any supplier of medical equipment and supplies who knowingly and willfully distributes a certificate of medical necessity in violation of clause (i) or fails to provide the information required under clause (ii) is subject to a civil money penalty in an amount not to exceed $1,000 for each such certificate of medical necessity so distributed. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1128A(a).

"(C) DEFINITION.—For purposes of this paragraph, the term 'certificate of medical necessity' means a form or other document containing information required by the carrier to be submitted to show that an item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

"(3) COVERAGE AND REVIEW CRITERIA.—

"(A) DEVELOPMENT AND ESTABLISHMENT.—Not later than January 1, 1996, the Secretary, in consultation with representatives of suppliers of medical equipment and supplies, individuals enrolled under this part, and appropriate medical specialty societies, shall develop and establish coverage and utilization review criteria for 100 items of medical equipment and supplies selected in accordance with the standards described in subparagraph (B). The Secretary shall publish the criteria as part of the instructions available to suppliers under this part and no further publication, including publication in the Federal Register, shall be required.

"(B) STANDARDS FOR SELECTING ITEMS SUBJECT TO CRITERIA.—The Secretary may select an item for coverage under the criteria developed and established under subparagraph (A) if the Secretary finds that—

"(i) the item is frequently purchased or rented by beneficiaries;

"(ii) the item is frequently subject to a determination that such item is not medically necessary; or

"(iii) a wide variation in the coverage or utilization criteria applied to the item exists among carriers (as of the date of the enactment of this subsection).

"(C) ANNUAL REVIEW AND EXPANSION OF ITEMS SUBJECT TO CRITERIA.—The Secretary shall annually review the coverage and utilization of items of medical equipment and supplies to determine whether items not included among the items selected under subparagraph (A) should be made subject to coverage and utilization review criteria, and, if appropriate, shall develop and apply such criteria to such additional items.

"(4) DEFINITION.—The term 'medical equipment and supplies' means—

"(A) durable medical equipment (as defined in section 1861(n));

"(B) prosthetic devices (as described in section 1861(s)(8));

"(C) orthotics and prosthetics (as described in section 1861(s)(9));

"(D) surgical dressings (as described in section 1861(s)(5));

"(E) such other items as the Secretary may determine; and

"(F) for purposes of paragraphs (1) and (3)—

"(i) home dialysis supplies and equipment (as described in section 1861(s)(2)(F)),

"(ii) immunosuppressive drugs (as described in section 1861(s)(2)(J)),

"(iii) therapeutic shoes for diabetics (as described in section 1861(s)(12)),

"(iv) oral drugs prescribed for use as an anticancer therapeutic agent (as described in section 1861(s)(2)(Q)), and

"(v) self-administered erythropoetin (as described in section 1861(s)(2)(P)).".

(2) CONFORMING AMENDMENT.—Effective October 1, 1994, paragraph (16) of section 1834(a) (42 U.S.C. 1395m(a)) is repealed.

(b) USE OF COVERED ITEMS BY DISABLED BENEFICIARIES.—

(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with representatives of suppliers of durable medical equipment under part B of the medicare program and individuals entitled to benefits under such program on the basis of disability, shall conduct a study of the effects of the methodology for determining payments for items of such equipment under such part on the ability of such individuals to obtain items of such equipment, including customized items.

(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report such recommendations as the Secretary considers appropriate to assure that disabled medicare beneficiaries have access to items of durable medical equipment.

(c) CRITERIA FOR TREATMENT OF ITEMS AS PROSTHETIC DEVICES OR ORTHOTICS AND PROSTHETICS.—Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate describing prosthetic devices or orthotics and prosthetics covered under part B of the medicare program that do not require individualized or custom fitting and adjustment to be used by a patient. Such report shall include recommendations for an appropriate methodology for determining the amount of payment for such items under such program.

SEC. 132. PROHIBITION AGAINST CARRIER FORUM SHOPPING.

(a) IN GENERAL.—

(1) PROHIBITION DESCRIBED.—Section 1834(a)(12) (42 U.S.C. 1395m(a)(12)) is amended to read as follows:

"(12) USE OF CARRIERS TO PROCESS CLAIMS.—

"(A) DESIGNATION OF REGIONAL CARRIERS.—The Secretary may designate, one carrier for one or more entire regions to process all claims within the region for covered items under this section.

"(B) PROHIBITION AGAINST CARRIER SHOPPING.—(i) Unless permitted by the Secretary, no supplier of a covered item may present or cause to be presented a claim for payment under this part unless such claim is presented to the appropriate regional carrier (as designated by the Secretary).

"(ii) For purposes of clause (i), the term 'appropriate regional carrier' means the carrier having jurisdiction over the geographic area that includes the permanent residence of the patient to whom the item is furnished.".

(2) CLARIFICATION OF AUTHORITY TO DESIGNATE CARRIERS FOR OTHER ITEMS AND SERVICES.—Nothing in the amendment made by paragraph (1) may be construed to restrict the authority of the Secretary of Health and Human Services to designate regional carriers or modify claims jurisdiction rules with respect to items or services under part B of the medicare program that are not covered items under section 1834(a) of the Social Security Act or prosthetic devices or orthotics and prosthetics under section 1834(h) of such Act.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to claims processed on or after May 1, 1994.

SEC. 133. RESTRICTIONS ON CERTAIN MARKETING AND SALES ACTIVITIES.

(a) PROHIBITING UNSOLICITED TELEPHONE CONTACTS FROM SUPPLIERS OF DURABLE MEDICAL EQUIPMENT TO MEDICARE BENEFICIARIES.—

(1) IN GENERAL.—Section 1834(a) (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

"(17) PROHIBITION AGAINST UNSOLICITED TELEPHONE CONTACTS BY SUPPLIERS.—

"(A) IN GENERAL.—A supplier of a covered item under this subsection may not contact an individual enrolled under this part by telephone regarding the furnishing of a covered item to the individual unless 1 of the following applies:

"(i) The individual has given written permission to the supplier to make contact by telephone regarding the furnishing of a covered item.

"(ii) The supplier has furnished a covered item to the individual and the supplier is contacting the individual only regarding the furnishing of such covered item.

"(iii) If the contact is regarding the furnishing of a covered item other than a covered item already furnished to the individual, the supplier has furnished at least 1 covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

"(B) PROHIBITING PAYMENT FOR ITEMS FURNISHED SUBSEQUENT TO UNSOLICITED CONTACTS.—If a supplier knowingly contacts an individual in violation of subparagraph (A), no payment may be made under this part for any item subsequently furnished to the individual by the supplier.

"(C) EXCLUSION FROM PROGRAM FOR SUPPLIERS ENGAGING IN PATTERN OF UNSOLICITED CONTACTS.—If a supplier knowingly contacts individuals in violation of subparagraph (A) to such an extent that the supplier's conduct establishes a pattern of contacts in violation of such subparagraph, the Secretary shall exclude the supplier from participation in the programs under this Act, in accordance with the procedures set forth in subsections (c), (f), and (g) of section 1128.".

(2) REQUIRING REFUND OF AMOUNTS COLLECTED FOR DISALLOWED ITEMS.—Section 1834(a) (42 U.S.C. 1395m(a)), as amended by paragraph (1), is amended by adding at the end the following new paragraph:

"(18) REFUND OF AMOUNTS COLLECTED FOR CERTAIN DISALLOWED ITEMS.—

"(A) IN GENERAL.—If a nonparticipating supplier furnishes to an individual enrolled under this part a covered item for which no payment may be made under this part by reason of paragraph (17)(B), the supplier shall refund on a timely basis to the patient (and shall be liable to the patient for) any amounts collected from the patient for the item, unless—

"(i) the supplier establishes that the supplier did not know and could not reasonably have been expected to know that payment may not be made for the item by reason of paragraph (17)(B), or

"(ii) before the item was furnished, the patient was informed that payment under this part may not be made for that item and the patient has agreed to pay for that item.

"(B) SANCTIONS.—If a supplier knowingly and willfully fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against the supplier in accordance with section 1842(j)(2).

"(C) NOTICE.—Each carrier with a contract in effect under this part with respect to suppliers of covered items shall send any notice of denial of payment for covered items by reason of paragraph (17)(B) and for which payment is not requested on an assignment-related basis to the supplier and the patient involved.

"(D) TIMELY BASIS DEFINED.—A refund under subparagraph (A) is considered to be on a timely basis only if—

"(i) in the case of a supplier who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the supplier receives a denial notice under subparagraph (C), or

"(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the supplier receives notice of an adverse determination on reconsideration or appeal.".

(b) CONFORMING AMENDMENT.—Section 1834(h)(3) (42 U.S.C. 1395m(h)(3)) is amended by striking "Paragraph (12)" and inserting "Paragraphs (12) and (17)".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to items furnished after the expiration of the 60-day period that begins on the date of the enactment of this Act.

SEC. 134. KICKBACK CLARIFICATION.

(a) IN GENERAL.—Section 1128B(b)(3)(B) (42 U.S.C. 1320a–7b(b)(3)(B)) is amended by inserting before the semicolon the following: "(except that in the case of a contract supply arrangement between any entity and a supplier of medical supplies and equipment (as defined in section 1834(j)(4), but not including items described in subparagraph (F) of such section), such employment shall not be considered bona fide to the extent that it includes tasks of a clerical and cataloging nature in transmitting to suppliers assignment rights of individuals eligible for benefits under part B of title XVIII, or performance of warehousing or stock inventory functions)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to services furnished on or after the first day of the first month that begins after the expiration of the 60-day period beginning on the date of the enactment of this Act.

SEC. 135. BENEFICIARY LIABILITY FOR NONCOVERED SERVICES.

(a) UNASSIGNED CLAIMS.—

(1) IN GENERAL.—Section 1834(j) (42 U.S.C. 1395m(i)), as added by section 131(a)(1), is amended—

(A) by redesignating paragraph (4) as paragraph (5), and

(B) by inserting after paragraph (3) the following new paragraph:

"(4) LIMITATION ON PATIENT LIABILITY.—If a supplier of medical equipment and supplies (as defined in paragraph (5))—

"(A) furnishes an item or service to a beneficiary for which no payment may be made by reason of paragraph (1);

"(B) furnishes an item or service to a beneficiary for which payment is denied in advance under subsection (a)(15); or

"(C) furnishes an item or service to a beneficiary for which payment is denied under section 1862(a)(1);

any expenses incurred for items and services furnished to an individual by such a supplier not on an assigned basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services. The provisions of subsection (a)(18) shall apply to refunds required under the previous sentence in the same manner as such provisions apply to refunds under such subsection.".

(2) CONFORMING AMENDMENT.—Section 1128B(b)(3)(B) (42 U.S.C. 1320a–7b(b)(3)(B)), as amended by section 134(a), is amended by striking "1834(j)(4)" and inserting "1834(j)(5)".

(b) ASSIGNED CLAIMS.—Section 1879 (42 U.S.C. 1395pp) is amended by adding at the end the following new subsection:

"(h) If a supplier of medical equipment and supplies (as defined in section 1834(j)(5))—

"(1) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1834(j)(1);

"(2) furnishes an item or service to a beneficiary for which payment is denied in advance under section 1834(a)(15); or

"(3) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1834(a)(17)(B),

any expenses incurred for items and services furnished to an individual by such a supplier on an assignment-related basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services. The provisions of section 1834(a)(18) shall apply to refunds required under the previous sentence in the same manner as such provisions apply to refunds under such section.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items or services furnished on or after October 1, 1994.

SEC. 136. ADJUSTMENTS FOR INHERENT REASONABLENESS.

(a) ADJUSTMENTS MADE TO FINAL PAYMENT AMOUNTS.—

(1) IN GENERAL.—Section 1834(a)(10)(B) (42 U.S.C. 1395m(a)(10)(B)) is amended by adding at the end the following: "In applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines (in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(b) ADJUSTMENT REQUIRED FOR CERTAIN ITEMS.—

(1) IN GENERAL.—In accordance with section 1834(a)(10)(B) of the Social Security Act (as amended by subsection (a)), the Secretary of Health and Human Services shall determine whether the payment amounts for the items described in paragraph (2) are not inherently reasonable, and shall adjust such amounts in accordance with such section if the amounts are not inherently reasonable.

(2) ITEMS DESCRIBED.—The items referred to in paragraph (1) are decubitus care equipment, transcutaneous electrical nerve stimulators, and any other items considered appropriate by the Secretary.

SEC. 137. MISCELLANEOUS AND TECHNICAL CORRECTIONS.

(a) UPDATES TO PAYMENT AMOUNTS.—(1) Subparagraph (A) of section 1834(a)(14) (42 U.S.C. 1395m(a)(14)) is amended to read as follows:

"(A) for 1991 and 1992, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced by 1 percentage point; and".

(2) The amendment made by paragraph (1) shall be effective on the date of the enactment of this Act.

(b) ADVANCE DETERMINATIONS OF COVERAGE.—(1) Effective on the date of the enactment of this Act, section 1834(a)(15) (42 U.S.C. 1395m(a)(15)) is amended to read as follows:

"(15) ADVANCE DETERMINATIONS OF COVERAGE FOR CERTAIN ITEMS.—

"(A) DEVELOPMENT OF LISTS OF ITEMS BY SECRETARY.—The Secretary may develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization throughout a carrier's entire service area or a portion of such area.

"(B) DEVELOPMENT OF LISTS OF SUPPLIERS BY SECRETARY.—The Secretary may develop and periodically update a list of suppliers of items for which payment may be made under this subsection with respect to whom—

"(i) the Secretary has found that a substantial number of claims for payment under this part for items furnished by the supplier have been denied on the basis of the application of section 1862(a)(1); or

"(ii) the Secretary has identified a pattern of overutilization resulting from the business practice of the supplier.

"(C) DETERMINATIONS OF COVERAGE IN ADVANCE.—A carrier shall determine in advance of delivery of an item whether payment for the item may not be made because the item is not covered or because of the application of section 1862(a)(1) if—

"(i) the item is included on the list developed by the Secretary under subparagraph (A);

"(ii) the item is furnished by a supplier included on the list developed by the Secretary under subparagraph (B); or

"(iii) the item is a customized item (other than inexpensive items specified by the Secretary) and the patient to whom the item is to be furnished or the supplier requests that such advance determination be made.".

(2) Effective for standards applied for contract years beginning after the date of the enactment of this Act, section 1842(c) (42 U.S.C. 1395u(c)), as amended by section 125(a), is amended by adding at the end the following new paragraph:

"(5) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall require the carrier to meet criteria developed by the Secretary to measure the timeliness of carrier responses to requests for payment of items described in section 1834(a)(15)(C).".

(3) Effective on the date of the enactment of this Act, section 1834(h)(3) (42 U.S.C. 1395m(h)(3)), as amended by section 133(b), is amended by striking "(12) and (17)" and inserting "(12), (15), and (17)".

(c) STUDY OF VARIATIONS IN DURABLE MEDICAL EQUIPMENT SUPPLIER COSTS.—

(1) COLLECTION AND ANALYSIS OF SUPPLIER COST DATA.—The Administrator of the Health Care Financing Administration shall, in consultation with appropriate organizations, collect data on supplier costs of durable medical equipment for which payment may be made under part B of the medicare program, and shall analyze such data to determine the proportions of such costs attributable to the service and product components of furnishing such equipment and the extent to which such proportions vary by type of equipment and by the geographic region in which the supplier is located.

(2) DEVELOPMENT OF GEOGRAPHIC ADJUSTMENT INDEX; REPORTS.—Not later than January 1, 1995—

(A) the Administrator shall submit a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the data collected and the analysis conducted under paragraph (1), and shall include in such report the Administrator's recommendations for a geographic cost adjustment index for suppliers of durable medical equipment under the medicare program and an analysis of the impact of such proposed index on payments under the medicare program; and

(B) the Comptroller General shall submit a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate analyzing on a geographic basis the supplier costs of durable medical equipment under the medicare program.

(d) OXYGEN RETESTING.—(1) Section 1834(a)(5)(E) (42 U.S.C. 1395m(a)(5)(E)) is amended by striking "55" and inserting "56".

(2) The amendment made by paragraph (1) shall be effective on the date of the enactment of this Act.

(e) OTHER MISCELLANEOUS AND TECHNICAL AMENDMENTS.—(1) Section 4152(a)(3) of OBRA-1990 is amended by striking "amendment made by subsection (a)" and inserting "amendments made by this subsection".

(2) Section 4152(c)(2) of OBRA-1990 is amended by striking "1395m(a)(7)(A)" and inserting "1395m(a)(7)".

(3) Section 1834(a)(7)(A)(iii)(II) (42 U.S.C. 1395m(a)(7)(A)(iii)(II)) is amended by striking "clause (v)" and inserting "clause (vi)".

(4) Section 1834(a)(7)(C)(i) (42 U.S.C. 1395m(a)(7)(C)(i)) is amended by striking "or paragraph (3)".

(5) Section 1834(a)(3) (42 U.S.C. 1395m(a)(3)) is amended by striking subparagraph (D).

(6) Section 4153(c)(1) of OBRA-1990 is amended by striking "1834(a)" and inserting "1834(h)".

(7) Section 4153(d)(2) of OBRA-1990 is amended by striking "Reconiliation" and inserting "Reconciliation".

(8)(A) Section 1834(a) (42 U.S.C. 1395m(a)) is amended by striking paragraph (6).

(B) Section 1834(a) (42 U.S.C. 1395m(a)) is amended—

(i) in subparagraphs (A) and (B) of paragraph (1), by striking "(2) through (7)" each place it appears and inserting "(2) through (5) and (7)";

(ii) in paragraph (7), by striking "(2) through (6)" and inserting "(2) through (5)";

(iii) in paragraph (8), by striking "paragraphs (6) and (7)" each place it appears in the matter preceding subparagraph (A) and in subparagraph (C) and inserting "paragraph (7)"; and

(iv) in paragraph (8)(A)(i), by striking "described—" and all that follows and inserting "described in paragraph (7) equal to the average of the purchase prices on the claims submitted on an assignment-related basis for the unused item supplied during the 6-month period ending with December 1986.".

(9) The amendments made by this subsection shall take effect as if included in the enactment of OBRA-1990.

PART III—OTHER ITEMS AND SERVICES

SEC. 141. AMBULATORY SURGICAL CENTER SERVICES.

(a) PAYMENT AMOUNTS FOR SERVICES FURNISHED IN AMBULATORY SURGICAL CENTERS.—

(1) USE OF SURVEY TO DETERMINE INCURRED COSTS.—Section 1833(i)(2)(A)(i) (42 U.S.C. 1395l(i)(2)(A)(i)) is amended by striking the comma at the end and inserting the following: ", as determined in accordance with a survey (based upon a representative sample of procedures and facilities) taken not later than January 1, 1995, and every 5 years thereafter, of the actual audited costs incurred by such centers in providing such services,".

(2) AUTOMATIC APPLICATION OF INFLATION ADJUSTMENT.—Section 1833(i)(2) (42 U.S.C. 1395l(i)(2)) is amended—

(A) in the second sentence of subparagraph (A) and the second sentence of subparagraph (B), by striking "and may be adjusted by the Secretary, when appropriate,"; and

(B) by adding at the end the following new subparagraph:

"(C) Notwithstanding the second sentence of subparagraph (A) or the second sentence of subparagraph (B), if the Secretary has not updated amounts established under such subparagraphs with respect to facility services furnished during a fiscal year (beginning with fiscal year 1996), such amounts shall be increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved.".

(3) CONSULTATION REQUIREMENT.—The second sentence of section 1833(i)(1) (42 U.S.C. 1395l(i)(1)) is amended by striking the period and inserting the following: ", in consultation with appropriate trade and professional organizations.".

(b) ADJUSTMENTS TO PAYMENT AMOUNTS FOR NEW TECHNOLOGY INTRAOCULAR LENSES.—

(1) ESTABLISHMENT OF PROCESS FOR REVIEW OF AMOUNTS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall develop and implement a process under which interested parties may request review by the Secretary of the appropriateness of the reimbursement amount provided under section 1833(i)(2)(A)(iii) of the Social Security Act with respect to a class of new technology intraocular lenses. For purposes of the preceding sentence, an intraocular lens may not be treated as a new technology lens unless it has been approved by the Food and Drug Administration.

(2) FACTORS CONSIDERED.—In determining whether to provide an adjustment of payment with respect to a particular lens under paragraph (1), the Secretary shall take into account whether use of the lens is likely to result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

(3) NOTICE AND COMMENT.—The Secretary shall publish notice in the Federal Register from time to time (but no less often than once each year) of a list of the requests that the Secretary has received for review under this subsection, and shall provide for a 30-day comment period on the lenses that are the subjects of the requests contained in such notice. The Secretary shall publish a notice of the Secretary's determinations with respect to intraocular lenses listed in the notice within 90 days after the close of the comment period.

(4) EFFECTIVE DATE OF ADJUSTMENT.—Any adjustment of a payment amount (or payment limit) made under this subsection shall become effective not later than 30 days after the date on which the notice with respect to

the adjustment is published under paragraph (3).

(c) TECHNICAL CORRECTION RELATING TO BLEND AMOUNTS FOR AMBULATORY SURGICAL CENTER PAYMENTS.—

(1) IN GENERAL.—Subclauses (I) and (II) of section 1833(i)(3)(B)(ii) (42 U.S.C. 1395l(i)(3)(B)(ii)) are each amended—

(A) by striking "for reporting" and inserting "for portions of cost reporting"; and

(B) by striking "and on or before" and inserting "and ending on or before".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the enactment of OBRA-1990.

(d) TECHNICAL CORRECTION RELATED TO CATARACT SURGERY.—Effective as if included in the enactment of OBRA-1990, section 4151(c)(3) of such Act is amended by striking "for the insertion of an intraocular lens" and inserting "for an intraocular lens inserted".

SEC. 142. STUDY OF MEDICARE COVERAGE OF PATIENT CARE COSTS ASSOCIATED WITH CLINICAL TRIALS OF NEW CANCER THERAPIES.

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of the effects of expressly covering under the medicare program the patient care costs for beneficiaries enrolled in clinical trials of new cancer therapies, where the protocol for the trial has been approved by the National Cancer Institute or meets similar scientific and ethical standards, including approval by an institutional review board. The study shall include—

(1) an estimate of the cost of such coverage, taking into account the extent to which medicare currently pays for such patient care costs in practice;

(2) an assessment of the extent to which such clinical trials represent the best available treatment for the patients involved and of the effects of participation in the trials on the health of such patients;

(3) an assessment of whether progress in developing new anticancer therapies would be assisted by medicare coverage of such patient care costs; and

(4) an evaluation of whether there should be special criteria for the admission of medicare beneficiaries (on account of their age or physical condition) to clinical trials for which medicare would pay the patient care costs.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit a report on the study conducted under subsection (a) to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate. Such report shall include recommendations as to the coverage under the medicare program of patient care costs of beneficiaries enrolled in clinical trials of new cancer therapies.

SEC. 143. STUDY OF ANNUAL CAP ON AMOUNT OF MEDICARE PAYMENT FOR OUTPATIENT PHYSICAL THERAPY AND OCCUPATIONAL THERAPY SERVICES.

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of the appropriateness of continuing an annual limitation on the amount of payment for outpatient services of independently practicing physical and occupational therapists under the medicare program.

(b) REPORT.—By not later than January 1, 1995, the Secretary shall submit to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a). Such report shall include such recommendations for changes in such annual limitation as the Secretary finds appropriate.

SEC. 144. PAYMENT OF PART B PREMIUM LATE ENROLLMENT PENALTIES BY STATES.

Section 1839 (42 U.S.C. 1395r) is amended by adding at the end the following new subsection:

"(g)(1) Upon the request of a State, the Secretary may enter into an agreement with the State under which the State agrees to pay on a quarterly or other periodic basis to the Secretary (to be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund) an amount equal to the amount of the part B late enrollment premium increases with respect to the premiums for eligible individuals (as defined in paragraph (3)(A)).

"(2) No part B late enrollment premium increase shall apply to an eligible individual for premiums for months for which the amount of such an increase is payable under an agreement under paragraph (1).

"(3) In this subsection:

"(A) The term 'eligible individual' means an individual who is enrolled under this part B and who is within a class of individuals specified in the agreement under paragraph (1).

"(B) The term 'part B late enrollment premium increase' means any increase in a premium as a result of the application of subsection (b).".

SEC. 145. TREATMENT OF INPATIENTS AND PROVISION OF DIAGNOSTIC X-RAY SERVICES BY RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS.

(a) TREATMENT OF INPATIENTS.—Section 1861(aa) (42 U.S.C. 1395x(aa)) is amended—

(1) in paragraph (1), in the matter following subparagraph (C), by striking "as an outpatient" and inserting "as a patient";

(2) in paragraph (2)(A), by striking "furnishing to outpatients" and inserting "furnishing to patients"; and

(3) in paragraph (3), in the matter following subparagraph (B), by striking "as an outpatient" and inserting "as a patient".

(b) TREATMENT OF DIAGNOSTIC X-RAY SERVICES.—Section 1861(aa) (42 U.S.C. 1395x(aa)) is further amended—

(1) in paragraph (1)(A), by inserting "(i)" after "(A)" and by adding at the end the following: "and (ii) diagnostic x-ray services,", and

(2) in paragraph (2)(A), by striking "(A)" and inserting "(A)(i)".

(c) CONFORMING AMENDMENT.—Section 1862(a)(14) (42 U.S.C. 1395y(a)(14)) is amended by striking "and services of a certified registered nurse anesthetist" and inserting "services of a certified registered nurse anesthetist, rural health clinic services, and Federally-qualified health center services".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1994, and shall apply to services furnished on or after such date.

SEC. 146. APPLICATION OF MAMMOGRAPHY CERTIFICATION REQUIREMENTS.

(a) SCREENING MAMMOGRAPHY.—Section 1834(c) (42 U.S.C. 1395m(c)) is amended—

(1) in paragraph (1)(B), by striking "meets the quality standards established under paragraph (3)" and inserting "is conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act";

(2) in paragraph (1)(C)(iii), by striking "paragraph (4)" and inserting "paragraph (3)";

(3) by striking paragraph (3); and

(4) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4).

(b) DIAGNOSTIC MAMMOGRAPHY.—Section 1861(s)(3) (42 U.S.C. 1395x(s)(3)) is amended by inserting "and including diagnostic mammography if conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act" after "necessary".

(c) CONFORMING AMENDMENTS.—(1) Section 1862(a)(1)(F) (42 U.S.C. 1395y(a)(1)(F)) is amended by striking "or which does not meet the standards established under section 1834(c)(3)" and inserting "or which is not conducted by a facility described in section 1834(c)(1)(B)".

(2) Section 1863 (42 U.S.C. 1395z) is amended by striking "or whether screening mammography meets the standards established under section 1834(c)(3),".

(3) The first sentence of section 1864(a) (42 U.S.C. 1395aa(a)) is amended by striking ", or whether screening mammography meets the standards established under section 1834(c)(3)".

(4) The third sentence of section 1865(a) (42 U.S.C. 1395bb(a)) is amended by striking "1834(c)(3),".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to mammography furnished by a facility on and after the first date that the certificate requirements of section 354(b) of the Public Health Service Act apply to such mammography conducted by such facility.

SEC. 147. COVERAGE OF SERVICES OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

(a) SERVICES DEFINED.—Section 1861 (42 U.S.C. 1395x), as amended by section 148(f)(6)(E), is amended by inserting after subsection (kk) the following new subsection:

"Speech-Language Pathology Services; Audiology Services

"(ll)(1) The term 'speech-language pathology services' means such speech, language, and related function assessment and rehabilitation services furnished by a qualified speech-language pathologist as the speech-language pathologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician.

"(2) The term 'audiology services' means such hearing and balance assessment services furnished by a qualified audiologist as the audiologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), as would otherwise be covered if furnished by a physician.

"(3) In this subsection:

"(A) The term 'qualified speech-language pathologist' means an individual with a master's or doctoral degree in speech-language pathology who—

"(i) is licensed as a speech-language pathologist by the State in which the individual furnishes such services, or

"(ii) in the case of an individual who furnishes services in a State which does not license speech-language pathologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 1 month of supervised full-time speech-language pathology services after obtaining a master's or

doctoral degree in speech-language pathology or a related field, and successfully completed a national examination in speech-language pathology approved by the Secretary.

"(B) The term 'qualified audiologist' means an individual with a master's or doctoral degree in audiology who—

"(i) is licensed as a speech-language pathologist by the State in which the individual furnishes such services, or

"(ii) in the case of an individual who furnishes services in a State which does not license speech-language pathologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 1 month of supervised full-time speech-language pathology services after obtaining a master's or doctoral degree in speech-language pathology or a related field, and successfully completed a national examination in speech-language pathology approved by the Secretary.".

(b) CONFORMING AMENDMENTS RELATING TO MEDICARE TREATMENT OF SPEECH AND LANGUAGE SERVICES.—

(1) EXTENDED CARE SERVICES.—Section 1861(h)(3) (42 U.S.C. 1395x(h)(3)) is amended by striking ", occupational, or speech therapy" and inserting "or occupational therapy or speech-language pathology services".

(2) HOME HEALTH SERVICES.—Section 1861(m)(2) (42 U.S.C. 1395x(m)(2)) is amended by striking ", occupational, or speech therapy" and inserting "or occupational therapy or speech-language pathology services".

(3) OUTPATIENT PHYSICAL THERAPY SERVICES.—The fourth sentence of section 1861(p) (42 U.S.C. 1395x(p)) is amended by striking "speech pathology services" and inserting "speech-language pathology services".

(4) COMPREHENSIVE OUTPATIENT REHABILITATION FACILITY SERVICES.—Section 1861(cc)(1)(B) (42 U.S.C. 1395x(cc)(1)(B)) is amended by striking "speech pathology services" and inserting "speech-language pathology services".

(5) HOSPICE CARE.—Section 1861(dd)(1)(B) (42 U.S.C. 1395x(dd)(1)(B)) is amended by striking "therapy or speech-language pathology" and inserting "therapy, or speech-language pathology services".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1994.

SEC. 148. MISCELLANEOUS AND TECHNICAL CORRECTIONS.

(a) REVISION OF INFORMATION ON PART B CLAIMS FORMS.—Section 1833(q)(1) (42 U.S.C. 1395l(q)(1)) is amended—

(1) by striking "provider number" and inserting "unique physician identification number"; and

(2) by striking "and indicate whether or not the referring physician is an interested investor (within the meaning of section 1877(h)(5))".

(b) CONSULTATION FOR SOCIAL WORKERS.—Effective with respect to services furnished on or after January 1, 1991, section 6113(c) of OBRA-1989 is amended—

(1) by inserting "and clinical social worker services" after "psychologist services"; and

(2) by striking "psychologist" the second and third place it appears and inserting "psychologist or clinical social worker".

(c) REPORTS ON HOSPITAL OUTPATIENT PAYMENT.—(1) OBRA-1989 is amended by striking section 6137.

(2) Section 1135(d) (42 U.S.C. 1320b-5(d)) is amended—

(A) by striking paragraph (6); and

(B) in paragraph (7)—

(i) by striking "systems" each place it appears and inserting "system"; and

(ii) by striking "paragraphs (1) and (6)" and inserting "paragraph (1)".

(d) RADIOLOGY AND DIAGNOSTIC SERVICES PROVIDED IN HOSPITAL OUTPATIENT DEPARTMENTS.—(1) Effective as if included in the enactment of OBRA-1989, section 1833(n)(1)(B)(i)(II) (42 U.S.C. 1395l(n)(1)(B)(i)(II)) is amended—

(A) by inserting "and for services described in subsection (a)(2)(E)(ii) furnished on or after January 1, 1992" after "1989"; and

(B) by striking "1842(b)" and inserting "1842(b) (or, in the case of services furnished on or after January 1, 1992, under section 1848)".

(2) Effective as if included in the enactment of OBRA-1989, section 1833(n)(1)(B)(i)(II) (42 U.S.C. 1395l(n)(1)(B)(i)(II)) is amended by striking "January 1, 1989" and inserting "April 1, 1989".

(e) PAYMENTS TO NURSE PRACTITIONERS IN RURAL AREAS (SECTION 4155 OF OBRA-1990).—(1) Section 1861(s)(2)(K)(iii) (42 U.S.C. 1395x(s)(2)(K)(iii)) is amended—

(A) by striking "subsection (aa)(3)" and inserting "subsection (aa)(5)"; and

(B) by striking "subsection (aa)(4)" and inserting "subsection (aa)(6)".

(2) Section 1833(r)(1) (42 U.S.C. 1395l(r)(1)) is amended—

(A) by striking "ambulatory" each place it appears and inserting "or ambulatory"; and

(B) by striking "center," and inserting "center".

(3) Section 1833(r)(2)(A) (42 U.S.C. 1395l(r)(2)(A)) is amended by striking "subsection (a)(1)(M)" and inserting "subsection (a)(1)(O)".

(4) Section 1861(b)(4) (42 U.S.C. 1395x(b)(4)) is amended by striking "subsection (s)(2)(K)(i)" and inserting "clauses (i) or (iii) of subsection (s)(2)(K)".

(5) Section 1861(aa)(5) (42 U.S.C. 1395x(aa)(5)) is amended by striking "this Act" and inserting "this title".

(6) Section 1862(a)(14) (42 U.S.C. 1395y(a)(14)) is amended by striking "1861(s)(2)(K)(i)" and inserting "1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii)".

(7) Section 1866(a)(1)(H) (42 U.S.C. 1395cc(a)(1)(H)) is amended by striking "1861(s)(2)(K)(i)" and inserting "1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii)".

(f) OTHER MISCELLANEOUS AND TECHNICAL AMENDMENTS.—

(1) IMMEDIATE ENROLLMENT IN PART B BY INDIVIDUALS COVERED BY AN EMPLOYMENT-BASED PLAN.—(A) Subparagraphs (A) and (B) of section 1837(i)(3) (42 U.S.C. 1395p(i)(3)) are each amended—

(i) by striking "beginning with the first day of the first month in which the individual is no longer enrolled" and inserting "including each month during any part of which the individual is enrolled"; and

(ii) by striking "and ending seven months later" and inserting "ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled".

(B) Paragraphs (1) and (2) of section 1838(e) (42 U.S.C. 1395q(e)) are amended to read as follows:

"(1) in any month of the special enrollment period in which the individual is at any time enrolled in a plan (specified in subparagraph (A) or (B), as applicable, of section 1837(i)(3)) or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

"(2) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.".

(C) The amendments made by subparagraphs (A) and (B) shall take effect on the first day of the first month that begins after the expiration of the 120-day period that begins on the date of the enactment of this Act.

(2) CLINICAL DIAGNOSTIC LABORATORY TESTS.—Section 4154(e)(5) of OBRA-1990 is amended by striking "(1)(A)" and inserting "(1)(A),".

(3) SEPARATE PAYMENT UNDER PART B FOR CERTAIN SERVICES.—Section 4157(a) of OBRA-1990 is amended by striking "(a) SERVICES OF" and all that follows through "Section" and inserting "(a) TREATMENT OF SERVICES OF CERTAIN HEALTH PRACTITIONERS.—Section".

(4) COMMUNITY HEALTH CENTERS AND RURAL HEALTH CLINICS.—(A) The fourth sentence of section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) is amended—

(i) by striking "certification" the first place it appears and inserting "approval"; and

(ii) by striking "the Secretary's approval or disapproval of the certification" and inserting "Secretary's approval or disapproval".

(B) Section 4161(a)(7)(B) of OBRA-1990 is amended by inserting "and to the Committee on Finance of the Senate" after "Representatives".

(5) SCREENING MAMMOGRAPHY.—Section 4163 of OBRA-1990 is amended—

(A) by adding at the end of subsection (d) the following new paragraph:

"(3) The amendment made by paragraph (2)(A)(iv) shall apply to screening pap smears performed on or after July 1, 1990."; and

(B) in subsection (e), by striking "The amendments" and inserting "Except as provided in subsection (d)(3), the amendments".

(6) INJECTABLE DRUGS FOR TREATMENT OF OSTEOPOROSIS.—

(A) CLARIFICATION OF DRUGS COVERED.—The section 1861(jj) (42 U.S.C. 1395x(jj)) inserted by section 4156(a)(2) of OBRA-1990 is amended—

(i) in the matter preceding paragraph (1), by striking "a bone fracture related to"; and

(ii) in paragraph (1), by striking "patient" and inserting "individual has suffered a bone fracture related to post-menopausal osteoporosis and that the individual".

(B) LIMITING COVERAGE TO DRUGS PROVIDED BY HOME HEALTH AGENCIES.—(i) The section 1861(jj) (42 U.S.C. 1395x(jj)) inserted by section 4156(a)(2) of OBRA-1990 is amended by striking "if" and inserting "by a home health agency if".

(ii) Section 1861(m)(5) (42 U.S.C. 1395x(m)(5)) is amended by striking "but excluding" and inserting "and a covered osteoporosis drug (as defined in subsection (kk), but excluding other".

(iii) Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) is amended—

(I) by adding "and" at the end of subparagraph (N), and

(II) by striking subparagraph (O) and redesignating subparagraph (P) as subparagraph (O).

(C) PAYMENT BASED ON REASONABLE COST.—Section 1833(a)(2) (42 U.S.C. 1395l(a)(2)) is amended—

(i) in subparagraph (A), by striking "health services" and inserting "health services

(other than a covered osteoporosis drug (as defined in section 1861(kk)))";

(ii) by striking "and" at the end of subparagraph (D);

(iii) by striking the semicolon at the end of subparagraph (E) and inserting "; and"; and

(iv) by adding at the end the following new subparagraph:

"(F) with respect to a covered osteoporosis drug (as defined in section 1861(kk)) furnished by a home health agency, 80 percent of the reasonable cost of such service, as determined under section 1861(v);".

(D) APPLICATION OF PART B DEDUCTIBLE.—Section 1833(b)(2) (42 U.S.C. 1395l(b)(2)) is amended by striking "services" and inserting "services (other than a covered osteoporosis drug (as defined in section 1861(kk)))".

(E) COVERED OSTEOPOROSIS DRUG (SECTION 4156 OF OBRA-1990).—Section 1861 (42 U.S.C. 1395x) is amended, in the subsection (jj) inserted by section 4156(a)(2) of OBRA-1990, by striking "(jj) The term" and inserting "(kk) The term".

(7) OTHER MISCELLANEOUS AND TECHNICAL CORRECTIONS.—

(A) OWNERSHIP DISCLOSURE REQUIREMENTS.—(i) Section 1124A(a)(2)(A) (42 U.S.C. 1320a-3a(a)(2)(A)) is amended by striking "of the Social Security Act".

(ii) Section 4164(b)(4) of OBRA-1990 is amended by striking "paragraph" and inserting "paragraphs".

(B) DIRECTORY OF UNIQUE PHYSICIAN IDENTIFIER NUMBERS.—Section 4164(c) of OBRA-1990 is amended by striking "publish" and inserting "publish, and shall periodically update,".

(g) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall take effect as if included in the enactment of OBRA-1990.

Subtitle C—Provisions Relating to Parts A and B

SEC. 151. MEDICARE SECONDARY PAYER REFORMS.

(a) IMPROVING IDENTIFICATION OF MEDICARE SECONDARY PAYER SITUATIONS.—

(1) SURVEY OF BENEFICIARIES.—

(A) IN GENERAL.—Section 1862(b)(5) (42 U.S.C. 1395y(b)(5)) is amended by adding at the end the following new subparagraph:

"(D) OBTAINING INFORMATION FROM BENEFICIARIES.—Before an individual applies for benefits under part A or enrolls under part B, the Administrator shall mail the individual a questionnaire to obtain information on whether the individual is covered under a primary plan and the nature of the coverage provided under the plan, including the name, address, and identifying number of the plan.".

(B) DISTRIBUTION OF QUESTIONNAIRE BY CONTRACTOR.—The Secretary of Health and Human Services shall enter into an agreement with an entity not later than July 1, 1994, to distribute the questionnaire described in section 1862(b)(5)(D) of the Social Security Act (as added by subparagraph (A)).

(C) NO MEDICARE SECONDARY PAYER DENIAL BASED ON FAILURE TO COMPLETE QUESTIONNAIRE.—Section 1862(b)(2) (42 U.S.C. 1395y(b)(2)) is amended by adding at the end the following new subparagraph:

"(C) TREATMENT OF QUESTIONNAIRES.—The Secretary may not fail to make payment under subparagraph (A) solely on the ground that an individual failed to complete a questionnaire concerning the existence of a primary plan.".

(2) MANDATORY SCREENING BY PROVIDERS AND SUPPLIERS UNDER PART B.—

(A) IN GENERAL.—Section 1862(b) (42 U.S.C. 1395y(b)) is amended by adding at the end the following new paragraph:

"(6) SCREENING REQUIREMENTS FOR PROVIDERS AND SUPPLIERS.—

"(A) IN GENERAL.—Notwithstanding any other provision of this title, no payment may be made for any item or service furnished under part B unless the entity furnishing such item or service completes (to the best of its knowledge and on the basis of information obtained from the individual to whom the item or service is furnished) the portion of the claim form relating to the availability of other health benefit plans.

"(B) PENALTIES.—An entity that knowingly, willfully, and repeatedly fails to complete a claim form in accordance with subparagraph (A) or provides inaccurate information relating to the availability of other health benefit plans on a claim form under such subparagraph shall be subject to a civil money penalty of not to exceed $2,000 for each such incident. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply with respect to items and services furnished on or after January 1, 1994.

(b) IMPROVEMENTS IN RECOVERY OF PAYMENTS FROM PRIMARY PAYERS.—

(1) SUBMISSION OF REPORTS ON EFFORTS TO RECOVER ERRONEOUS PAYMENTS.—

(A) FISCAL INTERMEDIARIES UNDER PART A.—Section 1816 (42 U.S.C. 1396h) is amended by adding at the end the following new subsection:

"(k) An agreement with an agency or organization under this section shall require that such agency or organization submit an annual report to the Secretary describing the steps taken to recover payments made for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)).".

(B) CARRIERS UNDER PART B.—Section 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended—

(i) by striking "and" at the end of subparagraph (G);

(ii) by striking "and" at the end of subparagraph (H); and

(iii) by inserting after subparagraph (H) the following new subparagraph:

"(I) will submit annual reports to the Secretary describing the steps taken to recover payments made under this part for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)); and".

(2) REQUIREMENTS UNDER CARRIER PERFORMANCE EVALUATION PROGRAM.—

(A) FISCAL INTERMEDIARIES UNDER PART A.—Section 1816(f)(1)(A) (42 U.S.C. 1396h(f)(1)(A)) is amended by striking "processing" and inserting "processing (including the agency's or organization's success in recovering payments made under this title for services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)))".

(B) CARRIERS UNDER PART B.—Section 1842(b)(2) (42 U.S.C. 1395u(b)(2)) is amended by adding at the end the following new subparagraph:

"(D) In addition to any other standards and criteria established by the Secretary for evaluating carrier performance under this paragraph relating to avoiding erroneous payments, the carrier shall be subject to standards and criteria relating to the carrier's success in recovering payments made under this part for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)).".

(3) DEADLINE FOR REIMBURSEMENT BY PRIMARY PLANS.—

(A) IN GENERAL.—Section 1862(b)(2)(B)(i) (42 U.S.C. 1395y(b)(2)(B)(i)) is amended by adding at the end the following sentence: "If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date such notice or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).".

(B) CONFORMING AMENDMENT.—The heading of clause (i) of section 1862(b)(2)(B) is amended to read as follows: "REPAYMENT REQUIRED.—".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to payments for items and services furnished on or after the date of the enactment of this Act.

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to contracts with fiscal intermediaries and carriers under title XVIII of the Social Security Act for years beginning with 1994.

(c) MISCELLANEOUS AND TECHNICAL CORRECTIONS.—

(1) Effective as if included in the enactment of OBRA-1993, section 1862(b)(1)(A) (42 U.S.C. 1395y(b)(1)(A)), as amended by section 13561(e)(1) of OBRA-1993, is amended—

(A) in clause (i)(II), by striking "over (and the individual's spouse age 65 or older) who is covered under the plan by virtue of the individual's current employment status with an employer" and inserting "older (and the spouse age 65 or older of any individual) who has current employment status with an employer"; and

(B) in clause (ii), by striking "or employee organization that has 20 or more individuals in current employment status" and inserting "that has 20 or more employees".

(2) Effective as if included in the enactment of OBRA-1993, section 1837(i) (42 U.S.C. 1395p(i)) is amended—

(A) by striking "as an active individual (as those terms are defined in section 1862(b)(1)(B)(iv))" each place it appears in the second sentence of paragraph (1), and the second sentence of paragraph (2) and inserting "(as that term is defined in section 1862(b)(1)(B)(iv)) by reason of the individual's current employment status (or the current employment status of a family member of the individual)";

(B) in paragraph (3)(B), by striking "as an active individual in a large group health plan (as such terms are defined in section 1862(b)(1)(B)(iv))" and inserting "in a large group health plan (as that term is defined in section 1862(b)(1)(B)(iv)) by reason of the individual's current employment status (or the current employment status of a family member of the individual)";

(C) in the second sentence of paragraph (2) (as amended by subparagraph (A)), by striking "as an active individual" and inserting "by reason of the individual's current employment status (or the current employment status of a family member of the individual)"; and

(D) by inserting "status" after "current employment" each place it appears in paragraphs (1)(A), (2)(B), (2)(C), and (3)(A).

(3) Effective as if included in the enactment of OBRA-1993, the second sentence of section 1839(b) (42 U.S.C. 1395r(b)) is amended—

(A) by inserting "status" after "current employment", and

(B) by striking "as an active individual (as those terms are defined in section 1862(b)(1)(B)(iv))" and inserting "(as that term is defined in section 1862(b)(1)(B)(iv)) by reason of the individual's current employment status (or the current employment status of a family member of the individual)".

(4) Effective as if included in the enactment of OBRA-1990, the sentence in section 1862(b)(1)(C) added by section 4203(c)(1)(B) of OBRA-1990 is amended by striking "clauses (i) and (ii)" and inserting "this subparagraph".

(5) Effective as if included in the enactment of OBRA-1989, section 1862(b)(1)(C) is amended in the matter after clause (ii), by striking "taking into account that" and inserting "paying benefits secondary to this title when".

(6) Effective as if included in the enactment of OBRA-1989, section 1862(b)(5)(C)(i) (42 U.S.C. 1395y(b)(5)(C)(i)) is amended by striking "6103(l)(12)(D)(iii)" and inserting "6103(l)(12)(E)(iii)".

(7) Effective as if included in the enactment of OBRA-1990, section 4203(c)(2) of such Act is amended—

(A) by striking "the application of clause (iii)" and inserting "the second sentence";

(B) by striking "on individuals" and all that follows through "section 226A of such Act";

(C) in clause (ii), by striking "clause" and inserting "sentence";

(D) in clause (v), by adding "and" at the end; and

(E) in clause (vi)—

(i) by inserting "of such Act" after "1862(b)(1)(C)", and

(ii) by striking the period at the end and inserting the following: ", without regard to the number of employees covered by such plans.".

(8) Effective as if included in the enactment of OBRA-1990, section 4203(d) of OBRA-1990 is amended by striking "this subsection" and inserting "this section".

(9) Effective as if included in the enactment of OBRA-1993, section 13561(e)(1)(D) of OBRA-1993 is amended—

(A) by inserting "effective as if included in the enactment of OBRA-1989," after "(D)", and

(B) by striking "of each subparagraph".

(10) The amendment made by section 13561(e)(1)(G) of OBRA-1993, to the extent it relates to the definition of large group health plan, shall be effective as if included in the enactment of OBRA-1989.

SEC. 152. PHYSICIAN OWNERSHIP AND REFERRAL.

(a) IN GENERAL.—Section 1877(f) (42 U.S.C. 1395nn) is amended—

(1) in the matter before paragraph (1), by inserting ", investment, and compensation" after "ownership";

(2) in paragraph (2), by inserting ", or with a compensation arrangement (as described in subsection (a)(2)(B))," after "investment interest (as described in subsection (a)(2)(A))";

(3) in paragraph (2), by inserting "interest or who have such a compensation relationship with the entity" before the period at the end;

(4) in the fourth sentence, by striking "covered items and" and inserting "designated health"; and

(5) by striking the third and fifth sentences.

(b) RADIOLOGY SERVICES.—Section 1877(h)(6) (42 U.S.C. 1395nn(h)(6)), as amended by section 13562(a)(2) of OBRA-1993, is amended—

(1) in subparagraph (D), by striking "or other diagnostic services" and inserting "services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services"; and

(2) in subparagraphs (E), (F), and (H), by inserting "and supplies" before the period at the end.

(c) REVISION OF EFFECTIVE DATE EXCEPTION PROVISION.—Section 13562(b)(2) of OBRA-1993 is amended by striking subparagraphs (A) and (B) and inserting the following:

"(A) the second sentence of subsection (a)(2), and subsections (b)(2)(B) and (d)(2), of section 1877 of the Social Security Act (as in effect on the day before the date of the enactment of this Act) shall apply instead of the corresponding provisions in section 1877 (as amended by this Act);

"(B) section 1877(b)(4) of the Social Security Act (as in effect on the day before the date of the enactment of this Act) shall apply;

"(C) the requirements of section 1877(c)(2) of the Social Security Act (as amended by this Act) shall not apply to any securities of a corporation that meets the requirements of section 1877(c)(2) of the Social Security Act (as in effect on the day before the date of the enactment of this Act);

"(D) section 1877(e)(3) of the Social Security Act (as amended by this Act) shall apply, except that it shall not apply to any arrangement that meets the requirements of subsection (e)(2) or subsection (e)(3) of section 1877 of the Social Security Act (as in effect on the day before the date of the enactment of this Act);

"(E) the requirements of clauses (iv) and (v) of section 1877(h)(4)(A), and of clause (i) of section 1877(h)(4)(B), of the Social Security Act (as amended by this Act) shall not apply; and

"(F) section 1877(h)(4)(B) of the Social Security Act (as in effect on the day before the date of the enactment of this Act) shall apply instead of section 1877(h)(4)(A)(ii) of such Act (as amended by this Act).".

(d) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (b) shall apply to referrals made on or after January 1, 1995.

(2) The amendment made by subsection (c) shall apply as if included in the enactment of OBRA-1993.

SEC. 153. DEFINITION OF FMGEMS EXAMINATION FOR PAYMENT OF DIRECT GRADUATE MEDICAL EDUCATION.

(a) IN GENERAL.—Section 1886(h)(5)(E) (42 U.S.C. 1395ww(h)(5)(E)) is amended by inserting "or any successor examination" after "Medical Sciences".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272).

SEC. 154. QUALIFIED MEDICARE BENEFICIARY OUTREACH.

Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish and implement a method for obtaining information from newly eligible medicare beneficiaries that may be used to determine whether such beneficiaries may be eligible for medical assistance for medicare cost-sharing under State medicaid plans as qualified medicare beneficiaries, and for transmitting such information to the State in which such a beneficiary resides.

SEC. 155. HOSPITAL AGREEMENTS WITH ORGAN PROCUREMENT ORGANIZATIONS.

(a) HOSPITAL AGREEMENTS.—

(1) IN GENERAL.—

(A) IDENTIFICATION OF ORGAN DONORS.—Section 1138(a)(1)(A)(iii) (42 U.S.C. 1320b-8(a)(1)(A)(iii)) is amended to read as follows:

"(iii) require that such hospital's designated organ procurement agency (as defined in paragraph (3)(B)) is notified of potential organ donors;".

(B) AGREEMENTS WITH DESIGNATED ORGAN PROCUREMENT AGENCIES.—Section 1138(a)(1) (42 U.S.C. 1320b-8(a)(1)) is amended—

(i) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(ii) by adding at the end the following new subparagraph:

"(C) the hospital or rural primary care hospital has an agreement (as defined in paragraph (3)(A)) only with such hospital's designated organ procurement agency.".

(C) WAIVER OF REQUIREMENTS RELATED TO AGREEMENTS.—Section 1138(a) (42 U.S.C. 1320b-8(a)) is amended—

(i) by redesignating paragraph (2) as paragraph (3); and

(ii) by inserting after paragraph (1) the following new paragraph:

"(2)(A) The Secretary shall grant a waiver of the requirements under subparagraphs (A)(iii) and (C) of paragraph (1) to a hospital or rural primary care hospital desiring to enter into an agreement with an organ procurement agency other than such hospital's designated organ procurement agency if the Secretary determines that—

"(i) the waiver is expected to increase organ donation; and

"(ii) the waiver will assure equitable treatment of patients referred for transplants within the service area served by such hospital's designated organ procurement agency and within the service area served by the organ procurement agency with which the hospital seeks to enter into an agreement under the waiver.

"(B) In making a determination under subparagraph (A), the Secretary may consider factors that would include, but not be limited to—

"(i) cost effectiveness;

"(ii) improvements in quality;

"(iii) whether there has been any change in a hospital's designated organ procurement agency due to a change made on or after December 28, 1992, in the definitions for metropolitan statistical areas (as established by the Office of Management and Budget); and

"(iv) the length and continuity of a hospital's relationship with an organ procurement agency other than the hospital's designated organ procurement agency;

except that nothing in this subparagraph shall be construed to permit the Secretary to grant a waiver that does not meet the requirements of subparagraph (A).

"(C) Any hospital or rural primary care hospital seeking a waiver under subparagraph (A) shall submit an application to the Secretary containing such information as the Secretary determines appropriate.

"(D) The Secretary shall—

"(i) publish a public notice of any waiver application received from a hospital or rural primary care hospital under this paragraph within 30 days of receiving such application; and

"(ii) prior to making a final determination on such application under subparagraph (A), offer interested parties the opportunity to submit written comments to the Secretary during the 60-day period beginning on the date such notice is published.".

(D) DEFINITIONS.—Section 1138(a)(3) (42 U.S.C. 1320b-8(a)(3)), as redesignated by subparagraph (C), is amended to read as follows:

"(3) For purposes of this subsection—

"(A) the term 'agreement' means an agreement described in section 371(b)(3)(A) of the Public Health Service Act;

"(B) the term 'designated organ procurement agency' means, with respect to a hospital or rural primary care hospital, the organ procurement agency designated pursuant to subsection (b) for the service area in which such hospital is located; and

"(C) the term 'organ' means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.".

(2) EXISTING AGREEMENTS.—Any hospital or rural primary care hospital which has an agreement (as defined in section 1138(a)(3)(A) of the Social Security Act) with an organ procurement agency other than such hospital's designated organ procurement agency (as defined in section 1138(a)(3)(B) of such Act) on the date of the enactment of this section shall, if such hospital desires to continue such agreement on and after the effective date of the amendments made by paragraph (1), submit an application to the Secretary for a waiver under section 1138(a)(2) of such Act not later than January 1, 1995, and such agreement may continue in effect pending the Secretary's determination with respect to such application.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to hospitals and rural primary care hospitals participating in the programs under titles XVIII and XIX of the Social Security Act beginning January 1, 1995.

(b) STUDY ON HOSPITAL AGREEMENTS WITH ORGAN PROCUREMENT AGENCIES.—

(1) IN GENERAL.—The Office of Technology Assessment (referred to in this section as the "OTA") shall, pursuant to the approval of the Technology Assessment Board of the OTA, conduct a study to determine the efficacy and fairness of requiring a hospital to enter into an agreement under section 371(b)(3)(A) of the Public Health Service Act with the organ procurement agency designated pursuant to section 1138(b) of the Social Security Act for the service area in which such hospital is located and the impact of such requirement on the efficacy and fairness of organ procurement and distribution.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the OTA shall complete the study required under paragraph (1) and prepare and submit to the Committee on Finance and the Committee on Labor and Human Resources of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report containing the findings of such study and the implications of such findings with respect to policies affecting organ procurement and distribution.

SEC. 156. PEER REVIEW ORGANIZATIONS.

(a) REPEAL OF PRO PRECERTIFICATION REQUIREMENT FOR CERTAIN SURGICAL PROCEDURES.—

(1) IN GENERAL.—Section 1164 (42 U.S.C. 1320c-13) is repealed.

(2) CONFORMING AMENDMENTS.—

(A) Section 1154 (42 U.S.C. 1320c-3) is amended—

(i) in subsection (a), by striking paragraph (12), and

(ii) in subsection (d), by striking "(and except as provided in section 1164)".

(B) Section 1833 (42 U.S.C. 1395l) is amended—

(i) in subsection (a)(1)(D)(i), by striking ", or for tests furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion)";

(ii) in subsection (a)(1), by striking subparagraph (G);

(iii) in subsection (a)(2)(A), by striking ", to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion),";

(iv) in subsection (a)(2)(D)(i)—

(I) by striking "basis," and inserting "basis or", and

(II) by striking ", or for tests furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion)";

(v) in subsection (a)(3), by striking "and for items and services furnished in connection with obtaining a second opinion required under section 1164(c)(2), or a third opinion, if the second opinion was in disagreement with the first opinion"; and

(vi) in the first sentence of subsection (b), by striking "(4)" and all that follows through "and (5)" and inserting "and (4)".

(C) Section 1834(g)(1)(B) (42 U.S.C. 1395m(g)(1)(B)) is amended by striking "and for items and services furnished in connection with obtaining a second opinion required under section 1164(c)(2), or a third opinion, if the second opinion was in disagreement with the first opinion".

(D) Section 1862(a) (42 U.S.C. 1395y(a)) is amended—

(i) by adding "or" at the end of paragraph (14),

(ii) by striking "; or" at the end of paragraph (15) and inserting a period, and

(iii) by striking paragraph (16).

(E) The third sentence of section 1866(a)(2)(A) (42 U.S.C. 1395w(a)(2)(A)) is amended by striking ", with respect to items and services furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion),".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services provided on or after the date of the enactment of this Act.

(b) MISCELLANEOUS AND TECHNICAL CORRECTIONS.—(1) The third sentence of section 1156(b)(1) (42 U.S.C. 1320c-5(b)(1)) is amended by striking "whehter" and inserting "whether".

(2)(A) Section 1154(a)(9)(B) (42 U.S.C. 1320c-3(a)(9)(B)) is amended to read as follows:

"(B) If the organization finds, after reasonable notice to and opportunity for discussion with the physician or practitioner concerned, that the physician or practitioner has furnished services in violation of section 1156(a) and the organization determines that the physician or practitioner should enter into a corrective action plan under section 1156(b)(1), the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician or practitioner of its finding and of any action taken as a result of the finding.".

(B) Subparagraph (D) of section 1160(b)(1) (42 U.S.C. 1320c-9(b)(1)) is amended to read as follows:

"(D) to provide notice in accordance with section 1154(a)(9)(B);".

(3) Section 4205(d)(2)(B) of OBRA-1990 is amended by striking "amendments" and inserting "amendment".

(4) Section 1160(d) (42 U.S.C. 1320c-9(d)) is amended by striking "subpena" and inserting "subpoena".

(5) Section 4205(e)(2) of OBRA-1990 is amended by striking "amendments" and inserting "amendment" and by striking "all".

(6)(A) Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if included in the enactment of OBRA-1990.

(B) The amendments made by paragraph (2) (relating to the requirement on reporting of information to State boards) shall take effect on the date of the enactment of this Act.

SEC. 157. HEALTH MAINTENANCE ORGANIZATIONS.

(a) ADJUSTMENT IN MEDICARE CAPITATION PAYMENTS TO TAKE INTO ACCOUNT SECONDARY PAYER STATUS.—

(1) IN GENERAL.—In defining the classes to be used in determining the annual per capita rate of payment under section 1876(a)(1)(B) of the Social Security Act to an eligible organization with a risk-sharing contract under such section (for months beginning after June 1994), the Secretary of Health and Human Services shall treat as a separate class individuals entitled to benefits under title XVIII of such Act with respect to whom there is a group health plan that is a primary plan (within the meaning of section 1862(b)(2)(A) of such Act).

(2) DEADLINE FOR ANNOUNCEMENT OF RATES.—Not later than May 15, 1994, the Secretary shall announce annual per capita rates of payment for eligible organizations described in paragraph (1) that take into account the separate treatment of individuals with respect to whom there is a group health plan that is a primary plan.

(b) REVISIONS IN THE PAYMENT METHODOLOGY FOR RISK CONTRACTORS.—Section 4204(b) of OBRA-1990 is amended to read as follows:

"(b) REVISIONS IN THE PAYMENT METHODOLOGY FOR RISK CONTRACTORS.—(1)(A) Not later than October 1, 1994, the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall submit a proposal to the Congress that provides for revisions to the payment method to be applied in years beginning with 1996 for organizations with a risk-sharing contract under section 1876(g) of the Social Security Act.

"(B) In proposing the revisions required under subparagraph (A), the Secretary shall consider—

"(i) the difference in costs associated with medicare beneficiaries with differing health status and demographic characteristics; and

"(ii) the effects of using alternative geographic classifications on the determinations of costs associated with beneficiaries residing in different areas.

"(2) Not later than 3 months after the date of submittal of the proposal under paragraph (1), the Comptroller General shall review the proposal and shall report to Congress on the appropriateness of the proposed modifications.".

(c) MISCELLANEOUS AND TECHNICAL CORRECTIONS.—(1) Section 1876(a)(3) (42 U.S.C. 1395mm(a)(3)) is amended by striking "subsection (c)(7)" and inserting "subsections (c)(2)(B)(ii) and (c)(7)".

(2) Section 4204(c)(3) of OBRA-1990 is amended by striking "for 1991" and inserting "for years beginning with 1991".

(3) Section 4204(d)(2) of OBRA-1990 is amended by striking "amendment" and inserting "amendments".

(4) Section 1876(a)(1)(E)(ii)(I) (42 U.S.C. 1395mm(a)(1)(E)(ii)(I)) is amended by striking the comma after "contributed to".

(5) Section 4204(e)(2) of OBRA-1990 is amended by striking "(which has a risk-sharing contract under section 1876 of the Social Security Act)".

(6) Section 4204(f)(4) of OBRA-1990 is amended by striking "final".

(7) Section 1862(b)(3)(C) (42 U.S.C. 1395y(b)(3)(C)) is amended—

(A) in the heading, by striking "PLAN" and inserting "PLAN OR A LARGE GROUP HEALTH PLAN";

(B) by striking "group health plan" and inserting "group health plan or a large group health plan";

(C) by striking ", unless such incentive is also offered to all individuals who are eligible for coverage under the plan"; and

(D) by striking "the first sentence of subsection (a) and other than subsection (b)" and inserting "subsections (a) and (b)".

(8) The amendments made by this subsection shall take effect as if included in the enactment of OBRA-1990.

SEC. 158. HOME HEALTH AGENCIES.

(a) USE OF MOST CURRENT DATA IN DETERMINING WAGE INDEX.—

(1) IN GENERAL.—Section 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by striking "as of such date to" and inserting "and determined using the survey of the most recent available wages and wage-related costs of".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to cost reporting periods beginning on or after July 1, 1996.

(b) CLARIFICATION OF EXTENSION OF WAIVER OF LIABILITY.—

(1) IN GENERAL.—The second sentence of section 9205 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "November 1, 1990" and inserting "December 31, 1995".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of OBRA-1990.

SEC. 159. PERMANENT EXTENSION OF AUTHORITY TO CONTRACT WITH FISCAL INTERMEDIARIES AND CARRIERS ON OTHER THAN A COST BASIS.

(a) IN GENERAL.—Section 2326(a) of the Deficit Reduction Act of 1984, as amended by section 6215 of OBRA-1989, is amended in the third sentence by striking "during such period" and inserting "beginning with fiscal year 1990 and any subsequent fiscal year".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply beginning with fiscal year 1994.

SEC. 160. MISCELLANEOUS AND TECHNICAL CORRECTIONS.

(a) SURVEY AND CERTIFICATION REQUIREMENTS.—(1) Section 1864 (42 U.S.C. 1395aa) is amended—

(A) in subsection (e), by striking "title" and inserting "title (other than any fee relating to section 353 of the Public Health Service Act)"; and

(B) in the first sentence of subsection (a), by striking "1861(s) or" and all that follows through "Service Act," and inserting "1861(s),".

(2) An agreement made by the Secretary of Health and Human Services with a State under section 1864(a) of the Social Security Act may include an agreement that the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by the Secretary for the purpose of determining whether a laboratory meets the requirements of section 353 of the Public Health Service Act.

(b) HOME DIALYSIS DEMONSTRATION TECHNICAL CORRECTIONS.—Section 4202 of OBRA-1990 is amended—

(1) in subsection (b)(1)(A), by striking "home hemodialysis staff assistant" and inserting "qualified home hemodialysis staff assistant (as described in subsection (d))";

(2) in subsection (b)(2)(B)(ii)(I), by striking "(as adjusted to reflect differences in area wage levels)";

(3) in subsection (c)(1)(A), by striking "skilled"; and

(4) in subsection (c)(1)(E), by striking "(b)(4)" and inserting "(b)(2)".

(c) TECHNICAL CORRECTION TO REVISIONS OF COVERAGE FOR IMMUNOSUPPRESSIVE DRUG THERAPY.—Section 1861(s)(2)(J) (42 U.S.C. 1395x(s)(2)(J)), as amended by section 13565 of OBRA-1993, is amended—

(1) by redesignating clauses (ii) through (v) as clauses (iii) through (vi); and

(2) by striking clause (i) and inserting the following:

"(i) before 1994, within 12 months after the date of the transplant procedure,

"(ii) to an individual who receives a transplant during 1994, within 487 days after the date of the transplant procedure,".

(d) OTHER MISCELLANEOUS AND TECHNICAL PROVISIONS.—(1) Section 1833 (42 U.S.C. 1395l) is amended by redesignating the subsection (r) added by section 4206(b)(2) of OBRA-1990 as subsection (s).

(2) Section 1866(f)(1) (42 U.S.C. 1395cc(f)(1)) is amended by striking "1833(r)" and inserting "1833(s)".

(3) Section 4201(d)(2) of OBRA-1990 is amended by striking "(B) by striking", "(C) by striking", and "(3) by adding" and inserting "(i) by striking", "(ii) by striking", and "(B) by adding", respectively.

(4) The section following section 4206 of OBRA-1990 is amended by striking "SEC. 4027." and inserting "SEC. 4207.", and in this subtitle is referred to as section 4207 of OBRA-1990.

(5)(A) Section 4207(a)(1) of OBRA-1990 is amended by adding closing quotation marks and a period after "such review.".

(B) Section 4207(a)(4) of OBRA-1990 is amended by striking "this subsection" and inserting "paragraphs (2) and (3)".

(C) Section 4207(b)(1) of OBRA-1990 is amended by striking "section 3(7)" and inserting "section 601(a)(1)".

(6) Section 2355(b)(1)(B) of the Deficit Reduction Act of 1984, as amended by section 4207(b)(4)(B)(ii) of OBRA-1990, is amended—

(A) by striking "12907(c)(4)(A)" and inserting "4207(b)(4)(B)(i)", and

(B) by striking "feasibilitly" and inserting "feasibility".

(7) Section 4207(b)(4)(B)(iii)(III) of OBRA-1990 is amended by striking the period at the end and inserting a semicolon.

(8) Subsections (c)(3) and (e) of section 2355 of the Deficit Reduction Act of 1984, as amended by section 4207(b)(4)(B) of OBRA-1990, are each amended by striking "12907(c)(4)(A)" each place it appears and inserting "4207(b)(4)(B)".

(9) Section 4207(c)(2) of OBRA-1990 is amended by striking "the Committee on Ways and Means" each place it appears and inserting "the Committees on Ways and Means and Energy and Commerce".

(10) Section 4207(d) of OBRA-1990 is amended by redesignating the second paragraph (3) (relating to effective date) as paragraph (4).

(11) Section 4207(i)(2) of OBRA-1990 is amended—

(A) by striking the period at the end of clause (iii) and inserting a semicolon, and

(B) in clause (v), by striking "residents" and inserting "patients".

(12) Section 4207(j) of OBRA-1990 is amended by striking "title" each place it appears and inserting "subtitle".

Subtitle D—Provisions Relating to Medicare Supplemental Insurance Policies

SEC. 171. STANDARDS FOR MEDICARE SUPPLEMENTAL INSURANCE POLICIES.

(a) SIMPLIFICATION OF MEDICARE SUPPLEMENTAL POLICIES.—

(1) Section 4351 of OBRA-1990 is amended by striking "(a) IN GENERAL.—".

(2) Section 1882(p) (42 U.S.C. 1395ss(p)) is amended—

(A) in paragraph (1)(A)—

(i) by striking "promulgates" and inserting "changes the revised NAIC Model Regulation (described in subsection (m)) to incorporate",

(ii) by striking "(such limitations, language, definitions, format, and standards referred to collectively in this subsection as 'NAIC standards'),", and

(iii) by striking "included a reference to the NAIC standards" and inserting "were a reference to the revised NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the '1991 NAIC Model Regulation')";

(B) in paragraph (1)(B)—

(i) by striking "promulgate NAIC standards" and inserting "make the changes in the revised NAIC Model Regulation",

(ii) by striking "limitations, language, definitions, format, and standards described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as 'Federal standards')" and inserting "a regulation", and

(iii) by striking "included a reference to the Federal standards" and inserting "were a reference to the revised NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the '1991 Federal Regulation')";

(C) in paragraph (1)(C)(i), by striking "NAIC standards or the Federal standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation";

(D) in paragraphs (1)(C)(ii)(I), (1)(E), (2), and (9)(B), by striking "NAIC or Federal standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation";

(E) in paragraph (2)(C), by striking "(5)(B)" and inserting "(4)(B)";

(F) in paragraph (4)(A)(i), by inserting "or paragraph (6)" after "(B)";

(G) in paragraph (4), by striking "applicable standards" each place it appears and inserting "applicable 1991 NAIC Model Regulation or 1991 Federal Regulation";

(H) in paragraph (6), by striking "in regard to the limitation of benefits described in paragraph (4)" and inserting "described in clauses (i) through (iii) of paragraph (1)(A)";

(I) in paragraph (7), by striking "policyholder" and inserting "policyholders";

(J) in paragraph (8), by striking "after the effective date of the NAIC or Federal standards with respect to the policy, in violation of the previous requirements of this subsection" and inserting "on and after the effective date specified in paragraph (1)(C) (but subject to paragraph (10)), in violation of the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation insofar as such regulation relates to the requirements of subsection (o) or (q) or clause (i), (ii), or (iii) of paragraph (1)(A)";

(K) in paragraph (9), by adding at the end the following new subparagraph:

"(D) Subject to paragraph (10), this paragraph shall apply to sales of policies occurring on or after the effective date specified in paragraph (1)(C).";" and

(L) in paragraph (10), by striking "this subsection" and inserting "paragraph (1)(A)(i)".

(b) GUARANTEED RENEWABILITY.—Section 1882(q) (42 U.S.C. 1395ss(q)) is amended—

(1) in paragraph (2), by striking "paragraph (2)" and inserting "paragraph (4)", and

(2) in paragraph (4), by striking "the succeeding issuer" and inserting "issuer of the replacement policy".

(c) ENFORCEMENT OF STANDARDS.—

(1) Section 1882(a)(2) (42 U.S.C. 1395ss(a)(2)) is amended—

(A) in subparagraph (A), by striking "NAIC standards or the Federal standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation", and

(B) by striking "after the effective date of the NAIC or Federal standards with respect to the policy" and inserting "on and after the effective date specified in subsection (p)(1)(C)".

(2) The sentence in section 1882(b)(1) added by section 4353(c)(5) of OBRA-1990 is amended—

(A) by striking "The report" and inserting "Each report",

(B) by inserting "and requirements" after "standards",

(C) by striking "and" after "compliance,", and

(D) by striking the comma after "Commissioners".

(3) Section 1882(g)(2)(B) (42 U.S.C. 1395ss(g)(2)(B)) is amended by striking "Panel" and inserting "Secretary".

(4) Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is amended by striking "the the Secretary" and inserting "the Secretary".

(d) PREVENTING DUPLICATION.—

(1) Section 1882(d)(3)(A) (42 U.S.C. 1395ss(d)(3)(A)) is amended—

(A) by amending the first sentence to read as follows:

"(i) It is unlawful for a person to sell or issue to an individual entitled to benefits under part A or enrolled under part B of this title—

"(I) a health insurance policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under this title or title XIX,

"(II) a medicare supplemental policy with knowledge that the individual is entitled to benefits under another medicare supplemental policy, or

"(III) a health insurance policy (other than a medicare supplemental policy) with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled, other than benefits to which the individual is entitled under a requirement of State or Federal law.";

(B) by designating the second sentence as clause (ii) and, in such clause, by striking "the previous sentence" and inserting "clause (i)";

(C) by designating the third sentence as clause (iii) and, in such clause—

(i) by striking "the previous sentence" and inserting "clause (i) with respect to the sale of a medicare supplemental policy", and

(ii) by striking "and the statement" and all that follows up to the period at the end; and

(D) by striking the last sentence.

(2) Section 1882(d)(3)(B) (42 U.S.C. 1395ss(d)(3)(B)) is amended—

(A) in clause (ii)(II), by striking "65 years of age or older",

(B) in clause (iii)(I), by striking "another medicare" and inserting "a medicare",

(C) in clause (iii)(I), by striking "such a policy" and inserting "a medicare supplemental policy",

(D) in clause (iii)(II), by striking "another policy" and inserting "a medicare supplemental policy", and

(E) by amending subclause (III) of clause (iii) to read as follows:

"(III) If the statement required by clause (i) is obtained and indicates that the individual is entitled to any medical assistance under title XIX, the sale of the policy is not in violation of clause (i) (insofar as such clause relates to such medical assistance), if (aa) a State medicaid plan under such title pays the premiums for the policy, (bb) in the case of a qualified medicare beneficiary described in section 1905(p)(1), the policy provides for coverage of outpatient prescription drugs, or (cc) the only medical assistance to which the individual is entitled under the State plan is medicare cost sharing described in section 1905(p)(3)(A)(ii).".

(3)(A) Section 1882(d)(3)(C) (42 U.S.C. 1395ss(d)(3)(C)) is amended—

(i) by striking "the selling" and inserting "(i) the sale or issuance", and

(ii) by inserting before the period at the end the following: ", (ii) the sale or issuance of a policy or plan described in subparagraph (A)(i)(I) (other than a medicare supplemental policy to an individual entitled to any medical assistance under title XIX) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual but only if (for policies sold or issued more than 60 days after the date the statements are published or promulgated under subparagraph (D)) there is disclosed in a prominent manner as part of (or together with) the application the applicable statement (specified under subparagraph (D)) of the extent to which benefits payable under the policy or plan duplicate benefits under this title, or (iii) the sale or issuance of a policy or plan described in subparagraph (A)(i)(III) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual".

(B) Section 1882(d)(3) (42 U.S.C. 1395ss(d)(3)) is amended by adding at the end the following:

"(D)(i) If—

"(I) within the 90-day period beginning on the date of the enactment of this subparagraph, the National Association of Insurance Commissioners develops (after consultation with consumer and insurance industry representatives) and submits to the Secretary a statement for each of the types of health insurance policies (other than medicare supplemental policies and including, but not limited to, as separate types of policies, policies paying directly to the beneficiary fixed, cash benefits, and policies that limit benefit payments to specific diseases) which are sold or issued to persons entitled to health benefits under this title, of the extent to which benefits payable under the policy or plan duplicate benefits under this title, and

"(II) the Secretary approves all the statements submitted as meeting the requirements of subclause (I),

each such statement shall be (for purposes of subparagraph (C)) the statement specified under this subparagraph for the type of policy involved. The Secretary shall review and approve (or disapprove) all the statements submitted under subclause (I) within 30 days after the date of their submittal. Upon approval of such statements, the Secretary shall publish such statements.

"(ii) If the Secretary does not approve the statements under clause (i) or the statements are not submitted within the 90-day period specified in such clause, the Secretary shall promulgate (after consultation with consumer and insurance industry representatives and not later than 90 days after the date of disapproval or the end of such 90-day period (as the case may be)) a statement for each of the types of health insurance policies (other than medicare supplemental policies and including, but not limited to, as separate types of policies, policies paying directly to the beneficiary fixed, cash benefits, and policies that limit benefit payments to specific diseases) which are sold or issued to persons entitled to health benefits under this title, of the extent to which benefits payable under the policy or plan duplicate benefits under this title, and each such statement shall be (for purposes of subparagraph (C)) the statement specified under this subparagraph for the type of policy involved.".

(C) The requirement of a disclosure under section 1882(d)(3)(C)(ii) of the Social Security Act shall not apply to an application made for a policy or plan before 60 days after the date the Secretary of Health and Human Services publishes or promulgates all the statements under section 1882(d)(3)(D) of such Act.

(4) Subparagraphs (A) and (B) of section 1882(q)(5) are amended by striking "of the Social Security Act".

(e) LOSS RATIOS AND REFUNDS OF PREMIUMS.—

(1) Section 1882(r) (42 U.S.C. 1395ss(r)) is amended—

(A) in paragraph (1), by striking "or sold" and inserting "or renewed (or otherwise provide coverage after the date described in subsection (p)(1)(C))";

(B) in paragraph (1)(A), by inserting "for periods after the effective date of these provisions" after "the policy can be expected";

(C) in paragraph (1)(A), by striking "Commissioners," and inserting "Commissioners)";

(D) in paragraph (1)(B), by inserting before the period at the end the following: ", treating policies of the same type as a single policy for each standard package";

(E) by adding at the end of paragraph (1) the following: "For the purpose of calculating the refund or credit required under paragraph (1)(B) for a policy issued before the date specified in subsection (p)(1)(C), the refund or credit calculation shall be based on the aggregate benefits provided and premiums collected under all such policies issued by an insurer in a State (separated as to individual and group policies) and shall be based only on aggregate benefits provided and premiums collected under such policies after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1993.";

(F) in the first sentence of paragraph (2)(A), by striking "by policy number" and inserting "by standard package";

(G) by striking the second sentence of paragraph (2)(A) and inserting the following: "Paragraph (1)(B) shall not apply to a policy until 12 months following issue.";

(H) in the last sentence of paragraph (2)(A), by striking "in order" and all that follows through "are effective";

(I) by adding at the end of paragraph (2)(A), the following new sentence: "In the case of a policy issued before the date specified in subsection (p)(1)(C), paragraph (1)(B) shall not apply until 1 year after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1993.";

(J) in paragraph (2), by striking "policy year" each place it appears and inserting "calendar year";

(K) in paragraph (4), by striking "February", "disallowance", "loss-ratios" each

place it appears, and "loss-ratio" and inserting "October", "disallowance", "loss ratios", and "loss ratio", respectively;

(L) in paragraph (6)(A), by striking "issues a policy in violation of the loss ratio requirements of this subsection" and "such violation" and inserting "fails to provide refunds or credits as required in paragraph (1)(B)" and "policy issued for which such failure occurred", respectively; and

(M) in paragraph (6)(B), by striking "to policyholders" and inserting "to the policyholder or, in the case of a group policy, to the certificate holder".

(2) Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is amended, in the matter after subparagraph (H), by striking "subsection (F)" and inserting "subparagraph (F)".

(3) Section 4355(d) of OBRA-1990 is amended by striking "sold or issued" and all that follows and inserting "issued or renewed (or otherwise providing coverage after the date described in section 1882(p)(1)(C) of the Social Security Act) on or after the date specified in section 1882(p)(1)(C) of the Social Security Act.".

(f) TREATMENT OF HMO'S.—

(1) Section 1882(g)(1) (42 U.S.C. 1395ss(g)(1)) is amended by striking "a health maintenance organization or other direct service organization" and all that follows through "1833" and inserting "an eligible organization (as defined in section 1876(b)) if the policy or plan provides benefits pursuant to a contract under section 1876 or an approved demonstration project described in section 603(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, or, during the period beginning on the date specified in subsection (p)(1)(C) and ending on December 31, 1994, a policy or plan of an organization if the policy or plan provides benefits pursuant to an agreement under section 1833(a)(1)(A)".

(2) Section 4356(b) of OBRA-1990 is amended by striking "on the date of the enactment of this Act" and inserting "on the date specified in section 1882(p)(1)(C) of the Social Security Act".

(g) PRE-EXISTING CONDITION LIMITATIONS.—Section 1882(s) (42 U.S.C. 1395ss(s)) is amended—

(1) in paragraph (2)(A), by striking "for which an application is submitted" and inserting "in the case of an individual for whom an application is submitted prior to or",

(2) in paragraph (2)(A), by striking "in which the individual (who is 65 years of age or older) first is enrolled for benefits under part B" and inserting "as of the first day on which the individual is 65 years of age or older and is enrolled for benefits under part B", and

(3) in paragraph (2)(B), by striking "before it" and inserting "before the policy".

(h) MEDICARE SELECT POLICIES.—

(1) Section 1882(t) (42 U.S.C. 1395ss(t)) is amended—

(A) in paragraph (1), by inserting "medicare supplemental" after "If a",

(B) in paragraph (1), by striking "NAIC Model Standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation",

(C) in paragraph (1)(A), by inserting "or agreements" after "contracts",

(D) in subparagraphs (E)(i) and (F) of paragraph (1), by striking "NAIC standards" and inserting "standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation", and

(E) in paragraph (2), by inserting "the issuer" before "is subject to a civil money penalty".

(2) Section 1154(a)(4)(B) (42 U.S.C. 1320c-3(a)(4)(B)) is amended—

(A) by inserting "that is" after "(or", and

(B) by striking "1882(t)" and inserting "1882(t)(3)".

(i) HEALTH INSURANCE COUNSELING.—Section 4360 of OBRA-1990 is amended—

(1) in subsection (b)(2)(A)(ii), by striking "Act" and inserting "Act)";

(2) in subsection (b)(2)(D), by striking "services" and inserting "counseling";

(3) in subsection (b)(2)(I), by striking "assistance" and inserting "referrals";

(4) in subsection (c)(1), by striking "and that such activities will continue to be maintained at such level";

(5) in subsection (d)(3), by striking "to the rural areas" and inserting "eligible individuals residing in rural areas";

(6) in subsection (e)—

(A) by striking "subsection (c) or (d)" and inserting "this section",

(B) by striking "and annually thereafter, issue an annual report" and inserting "and annually thereafter during the period of the grant, issue a report", and

(C) in paragraph (1), by striking "Statewide";

(7) in subsection (f), by striking paragraph (2) and by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively; and

(8) in the second subsection (f) (relating to authorization of appropriations for grants)—

(A) by striking "and 1993" and inserting "1993, 1994, 1995, and 1996"; and

(B) by redesignating such subsection as subsection (g).

(j) TELEPHONE INFORMATION SYSTEM.—

(1) Section 1804 (42 U.S.C. 1395b-2) is amended—

(A) by adding at the end of the heading the following: "; MEDICARE AND MEDIGAP INFORMATION",

(B) by inserting "(a)" after "1804.", and

(C) by adding at the end the following new subsection:

"(b) The Secretary shall provide information via a toll-free telephone number on the programs under this title.".

(2) Section 1882(f) (42 U.S.C. 1395ss(f)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall provide information via a toll-free telephone number on medicare supplemental policies (including the relationship of State programs under title XIX to such policies).".

(3) Section 1889 is repealed.

(k) MAILING OF POLICIES.—Section 1882(d)(4) (42 U.S.C. 1395ss(d)(4)) is amended—

(1) in subparagraph (D), by striking ", if such policy" and all that follows up to the period at the end, and

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

"(E) Subparagraph (A) shall not apply in the case of an issuer who mails or causes to be mailed a policy, certificate, or other matter solely to comply with the requirements of subsection (q).".

(l) EFFECTIVE DATE.—The amendments made by this section shall be effective as if included in the enactment of OBRA-1990; except that—

(1) the amendments made by subsection (d)(1) shall take effect on the date of the enactment of this Act, but no penalty shall be imposed under section 1882(d)(3)(A) of the Social Security Act (for an action occurring after the effective date of the amendments made by section 4354 of OBRA-1990 and before the date of the enactment of this Act) with respect to the sale or issuance of a policy which is not unlawful under section 1882(d)(3)(A)(i)(II) of the Social Security Act (as amended by this section);

(2) the amendments made by subsection (d)(2)(A) and by subparagraphs (A), (B), and (E) of subsection (e)(1) shall be effective on the date specified in subsection (m)(4); and

(3) the amendment made by subsection (g)(2) shall take effect on July 1, 1994, and shall apply to individuals who attain 65 years of age or older on or after the effective date of section 1882(s)(2) of the Social Security Act (and, in the case of individuals who attained 65 years of age after such effective date and before July 1, 1994, and who were not covered under such section before July 1, 1994, the 6-month period specified in that section shall begin July 1, 1994).

(m) TRANSITION PROVISIONS.—

(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due solely to failure to make such change until the date specified in paragraph (4).

(2) NAIC STANDARDS.—If, within 6 months after the date of the enactment of this Act, the National Association of Insurance Commissioners (in this subsection referred to as the "NAIC") modifies its 1991 NAIC Model Regulation (adopted in July 1991) to conform to the amendments made by this section and to delete from section 15C the exception which begins with "unless", such revised regulation incorporating the modifications shall be considered to be the 1991 Regulation for the purposes of section 1882 of the Social Security Act.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the 1991 Regulation for the purposes of section 1882 of the Social Security Act.

(4) DATE SPECIFIED.—

(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

(ii) 1 year after the date the NAIC or the Secretary first makes the modifications under paragraph (2) or (3), respectively.

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

(ii) having a legislature which is not scheduled to meet in 1994 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1994. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

TITLE II—MEDICAID PROVISIONS

Subtitle A—Substantive Provisions

PART I—MANAGED CARE PROVISIONS

SEC. 201. MEDICAID MANAGED CARE ANTIFRAUD PROVISIONS.

(a) PROHIBITING AFFILIATIONS WITH INDIVIDUALS DEBARRED BY FEDERAL AGENCIES.—

(1) IN GENERAL.—Section 1903(m) (42 U.S.C. 1396b(m)) is amended—

(A) in paragraph (2)(A)—

(i) by striking "and" at the end of clause (x),

(ii) by striking the period at the end of clause (xi) and inserting "; and", and

(iii) by adding at the end the following new clause:

"(xii) the entity complies with the requirements of paragraph (3) (relating to certain protections against fraud and abuse).";

(B) in paragraph (2)(B), as amended by section 249, by striking "clause (ix)" and inserting "clauses (ix) and (xii)"; and

(C) by inserting after paragraph (2) the following new paragraph:

"(3)(A)(i) An entity with a contract under this subsection may not have a person described in clause (iv) as a director, officer, partner, or person with beneficial ownership of more than 5 percent of the entity's equity.

"(ii) An entity with a contract under this subsection may not have an employment, consulting, or other agreement with a person described in clause (iv) for the provision of goods and services that are significant and material to the entity's obligations under its contract with the State described in paragraph (2)(A)(iii).

"(iii) If an entity with a contract under this subsection is not in compliance with clause (i) or (ii)—

"(I) a State may continue an existing agreement with the entity unless the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) directs otherwise; and

"(II) a State may not renew or otherwise extend the duration of an existing agreement with the entity unless the State provides a written statement to the Secretary describing compelling reasons that exist for renewing or extending the agreement and the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) approves such statement.

"(iv) A person described in this clause is a person that—

"(I) is debarred or suspended by the Federal Government, pursuant to the Federal acquisition regulation, from Government contracting and subcontracting, or

"(II) is an affiliate (within the meaning of the Federal acquisition regulation) of a person described in subclause (I).".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to agreements between a State and an entity under section 1903(m) of the Social Security Act entered into or renewed on or after January 1, 1994, without regard to whether regulations to carry out such amendments are promulgated by such date.

(b) REQUIREMENT FOR STATE CONFLICT-OF-INTEREST SAFEGUARDS IN MEDICAID RISK CONTRACTING.—

(1) IN GENERAL.—Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)), as amended by subsection (a)(1)(A), is amended—

(A) by striking "and" at the end of clause (xi),

(B) by striking the period at the end of clause (xii) and inserting "; and", and

(C) by adding at the end the following new clause:

"(xiii) the State certifies to the Secretary and the Secretary finds that the State has in effect conflict-of-interest safeguards with respect to officers and employees of the State who have responsibilities with respect to contracts with organizations under this subsection that are at least as effective as the Federal conflicts-of-interest safeguards provided under section 27 of the Office of Federal Procurement Policy Act that apply with respect to Federal procurement officials who have comparable responsibilities with respect to such contracts.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply as of July 1, 1994, without regard to whether regulations to carry out such amendments are promulgated by such date.

(c) REQUIRING DISCLOSURE OF FINANCIAL INFORMATION.—

(1) IN GENERAL.—Section 1903(m)(3), as inserted by subsection (a)(1)(C), is amended by adding at the end the following new subparagraph:

"(B) The contract between the State and an entity referred to in paragraph (2)(A)(iii) shall provide that—

"(i) the entity agrees to report to the State such financial information as the Secretary or the State may require to demonstrate that the entity has a fiscally sound operation; and

"(ii) the entity agrees to make available to its enrollees upon reasonable request—

"(I) the information reported under clause (i),

"(II) the information required to be disclosed under sections 1124 and 1126, and

"(III) a description of each transaction, described in subparagraphs (A) through (C) of section 1318(a)(3) of the Public Health Service Act, between the entity and a party in interest (as defined in section 1318(b) of such Act).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contract years beginning on or after April 1, 1994, without regard to whether regulations to carry out such amendments are promulgated by such date, with respect to information reported or required to be disclosed, or transactions occurring, before, on, or after such date.

(d) PROHIBITING MARKETING FRAUD.—

(1) IN GENERAL.—Section 1903(m)(3), as inserted by subsection (a)(1) and as amended by subsection (c)(1), is amended by adding at the end the following new subparagraph:

"(C) The contract between the State and an entity referred to in paragraph (2)(A)(iii) shall provide that the entity agrees to comply with such procedures and conditions as the Secretary prescribes in order to ensure that, before an individual is enrolled or reenrolled with the entity, the individual is provided accurate and sufficient information to make an informed decision whether or not to enroll or reenroll.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contract years that begin on or after April 1, 1994.

(e) REQUIRING ADEQUATE PROVISION AGAINST RISK OF INSOLVENCY.—

(1) IN GENERAL.—Section 1903(m)(1)(A)(ii) (42 U.S.C. 1396b(m)(1)(A)(ii)) is amended by inserting ", which meets such standards as the Secretary shall prescribe," after "satisfactory to the State".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contract years beginning on or after January 1, 1995.

(f) REQUIRING REPORT ON NET EARNINGS AND ADDITIONAL BENEFITS.—

(1) IN GENERAL.—Section 1903(m)(3), as inserted by subsection (a)(1) and as amended by subsections (c)(1) and (d)(1) is amended by adding at the end the following new subparagraph:

"(D) The contract between the State and an entity referred to in paragraph (2)(A)(iii) shall provide that the entity shall submit a report to the State and the Secretary not later than 12 months after the close of a contract year containing—

"(i) a financial statement of the entity's net earnings under the contract during the contract year, which statement has been audited using auditing standards established by the Secretary in consultation with the States; and

"(ii) a description of any benefits that are in addition to the benefits required to be provided under the contract that were provided during the contract year to members enrolled with the entity and entitled to medical assistance under the plan.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contract years beginning on or after January 1, 1994.

SEC. 202. EXTENSION OF MEDICAID WAIVER FOR TENNESSEE PRIMARY CARE NETWORK.

Section 6411(f) of OBRA-1989, as amended by section 1 of Public Law 102-317, is amended by striking "January 31, 1994" and inserting "December 31, 1995".

SEC. 203. WAIVER OF APPLICATION OF MEDICAID ENROLLMENT MIX REQUIREMENT TO DISTRICT OF COLUMBIA CHARTERED HEALTH PLAN, INC.

(a) IN GENERAL.—The Secretary of Health and Human Services shall waive the application of the requirement described in section 1903(m)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)(ii)) to the entity known as the District of Columbia Chartered Health Plan, Inc., for the period described in subsection (b), if the Secretary determines that the entity is making continuous efforts and progress toward achieving compliance with such requirement.

(b) PERIOD OF APPLICABILITY.—The period referred to in subsection (a) is the period that begins on October 1, 1992, and ends on December 31, 1995.

SEC. 204. WAIVER OF APPLICATION OF MEDICAID ENROLLMENT MIX REQUIREMENT TO MANAGED HEALTH SERVICES INSURANCE CORPORATION OF MILWAUKEE, WISCONSIN.

The Secretary of Health and Human Services shall waive the application of the requirement described in section 1903(m)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)(ii)) to the entity known as the Managed Health Services Insurance Corporation of Milwaukee, Wisconsin until December 31, 1995, if the Secretary determines that the entity is making continuous efforts and progress toward achieving compliance with such requirement.

SEC. 205. EXTENSION OF MINNESOTA PREPAID MEDICAID DEMONSTRATION PROJECT.

(a) IN GENERAL.—Section 507 of the Family Support Act of 1988 (Public Law 100-485), as amended by section 6411(j) of OBRA-1989 and by section 4733 of OBRA-1990, is amended by striking "1996" and inserting "1998".

(b) AUTHORITY TO IMPOSE PREMIUM.—

(1) IN GENERAL.—Notwithstanding section 1916 of the Social Security Act and subject to paragraph (2), the State of Minnesota may impose a premium on individuals receiving medical assistance under the Minnesota Prepaid Demonstration Project operated under a waiver granted by the Secretary of Health and Human Services under section 1115(a) of

the Social Security Act and other individuals eligible under the State's plan for medical assistance under title XIX of such Act.

(2) LIMITATION ON AMOUNT OF PREMIUM.—In no case may the amount of any premium imposed on an individual receiving medical assistance under the State plan or under the Demonstration Project described in paragraph (1) exceed 10 percent of the amount by which the family income (less expenses for the care of a dependent child) of the individual exceeds 110 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

PART II—HOME AND COMMUNITY-BASED SERVICES WAIVER PROVISIONS

SEC. 211. ELIMINATION OF REQUIREMENT OF PRIOR INSTITUTIONALIZATION WITH RESPECT TO HABILITATION SERVICES FURNISHED UNDER A WAIVER FOR HOME OR COMMUNITY-BASED SERVICES.

(a) IN GENERAL.—Section 1915(c)(5) (42 U.S.C. 1396n(c)(5)) is amended in the matter preceding subparagraph (A) by striking ", with respect to individuals who receive such services after discharge from a nursing facility or intermediate care facility for the mentally retarded".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1994.

SEC. 212. RELIEF FROM THIRD PARTY LIABILITY REQUIREMENTS WHEN COST-EFFECTIVE.

(a) IN GENERAL.—Section 1902(a)(25)(B) (42 U.S.C. 1396a(a)(25)(B)) is amended to read as follows—

"(B) that in any case where such a legal liability is found to exist after medical assistance has been made available, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability, unless—

"(i) the amount of reimbursement the State can reasonably expect to recover for medical assistance furnished to an individual does not exceed the costs of such recovery, or

"(ii) with respect to case management services (as defined in section 1915(g)(2)), the State demonstrates to the satisfaction of the Secretary that it is not cost-effective in the aggregate to seek such recovery with respect to such services furnished to individuals covered under the State plan, using methods specified by the Secretary which may include a demonstration that such services are not generally covered by health insurers in the State;".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on January 1, 1994.

SEC. 213. STATE EXPENDITURES FOR MEDICAL ASSISTANCE WITH RESPECT TO HOME AND COMMUNITY-BASED SERVICES PROVIDED UNDER A WAIVER.

(a) IN GENERAL.—Section 1915(d)(5)(B) (42 U.S.C. 1396n(d)(5)(B)) is amended—

(1) in clause (i), by striking "times the number of years" and inserting "compounded annually for years";

(2) in clause (ii), by striking "times the number of years" and inserting "compounded annually for years"; and

(3) in clause (iv), by striking "December 22, 1987" and inserting "the date of the enactment of the Omnibus Budget Reconciliation Act of 1986".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the enactment of OBRA-1987.

PART III—OTHER PROVISIONS

SEC. 221. PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN.

(a) QUALIFIED PROVIDER.—Section 1920(b)(2) (42 U.S.C. 1396r-1(b)(2)) is amended to read as follows:

"(2) the term 'qualified provider' means—

"(A) any provider that—

"(i) is eligible for payments under a State plan approved under this title;

"(ii) provides services of the type described in subparagraph (A) or (B) of section 1905(a)(2) or in section 1905(a)(9);

"(iii) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A); and

"(iv)(I) receives funds under section 329, 330, 340, or 340A of the Public Health Service Act, title V of this Act, or title V of the Indian Health Care Improvement Act;

"(II) participates in a program established under section 17 of the Child Nutrition Act of 1966 or section 4(a) of the Agriculture and Consumer Protection Act of 1973;

"(III) participates in a State perinatal program; or

"(IV) is the Indian Health Service or is a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93-638); and

"(B) at the option of the State, any individual who is employed by the State and who is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1994.

SEC. 222. CRITERIA FOR DETERMINING THE AMOUNT OF DISALLOWANCES.

(a) IN GENERAL.—

(1) CRITERIA FOR INITIAL DETERMINATIONS.—Section 1903 (42 U.S.C. 1396b) is amended by adding at the end the following new subsection:

"(x) If the Secretary determines that a disallowance of Federal financial participation should be made under this title with respect to any item or class of items, the Secretary shall, in making a determination with respect to the amount of such disallowance, take into account (to the extent the State makes a showing) factors which shall include—

"(1) whether the amount of the disallowance is reasonably related to the act or omission by the State which is the basis for the disallowance; and

"(2) whether the act or omission by the State which is the basis for the disallowance was based on a reasonable interpretation of Federal statutes, Federal regulations, or any written guidance provided by the Secretary.".

(2) CRITERIA FOR REDETERMINATIONS.—Section 1116(d) (42 U.S.C. 1316(d)) is amended—

(A) by striking "(d)" and inserting "(d)(1)"; and

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

"(2) In conducting any reconsideration of a disallowance of Federal financial participation by the Secretary under title XIX, the Departmental Appeals Board of the Department of Health and Human Services (or another entity designated by the Secretary), shall, if such Board or entity upholds the basis for the disallowance, determine whether the amount of the disallowance properly takes into account the factors listed in section 1903(x). If the amount of the disallowance does not properly take into account such factors, the Board shall adjust such amount in accordance with such factors.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to disallowances made after the date of the enactment of this Act and shall take effect without regard to the promulgation of implementing regulations.

SEC. 223. INTERMEDIATE SANCTIONS FOR KICKBACK VIOLATIONS.

(a) PENALTY FOR KICKBACK VIOLATIONS.—Section 1128A(a) (42 U.S.C. 1320a-7a(a)) is amended—

(1) by striking "or" at the end of paragraphs (1) and (2);

(2) by adding "or" at the end of paragraph (3);

(3) by inserting after paragraph (3) the following new paragraph:

"(4) carries out any activity in violation of paragraph (1) or (2) of section 1128B(b) with respect to remuneration relating to a State health care program;";

(4) by striking "given)." at the end of the first sentence and inserting "given or, in cases under paragraph (4), $10,000 for each such violation).";

(5) in the second sentence, by inserting "in cases under paragraphs (1), (2), and (3)," after "In addition,"; and

(6) by inserting after the second sentence the following new sentence: "In cases under paragraph (4), such a person shall be subject to an assessment of not more than twice the total amount of the remuneration offered, paid, solicited, or received in violation of section 1128B(b), determined without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose.".

(b) AUTHORIZATION TO ACT.—The first sentence of section 1128A(c)(1) (42 U.S.C. 1320a-7a(c)(1)) is amended by striking the period at the end and inserting ", except that with respect to a proceeding relating to a State health program, the Secretary may initiate such a proceeding at such time and under such procedures as the Secretary determines appropriate unless, within 1 year after the date the Secretary presents a case to the Attorney General for consideration, the Attorney General brings an action in a district court of the United States.".

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall apply to remuneration offered, paid, solicited, or received before, on, or after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to cases presented by the Secretary of Health and Human Services for consideration on or after the date of the enactment of this Act.

SEC. 224. TECHNICAL AMENDMENT RELATED TO TAXES ON CERTAIN HEALTH CARE ITEMS AND SERVICES.

(a) IN GENERAL.—Section 1903(w)(7)(A)(viii) (42 U.S.C. 1396b(w)(7)(A)(viii)) is amended by striking the period at the end and inserting "not otherwise subject to a tax described in this subsection.".

(b) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall be effective January 1, 1994.

(2) In the case of a State which the Secretary of Health and Human Services determines requires State legislation in order to avoid a reduction in Federal financial participation under section 1903(a) of the Social Security Act as a result of the amendment made by subsection (a), the State shall not be subject to such a reduction before the

first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 225. APPLICATION OF MAMMOGRAPHY CERTIFICATION REQUIREMENTS UNDER THE MEDICAID PROGRAM.

(a) IN GENERAL.—Section 1902(a)(9) (42 U.S.C. 1396a(a)(9)) is amended—

(1) by striking "and" at the end of subparagraph (B),

(2) by striking the semicolon at the end of subparagraph (C) and inserting ", and", and

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

"(D) that any mammography paid for under such plan must be conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act;".

(b) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsection (a) shall apply to mammography furnished by a facility during calendar quarters beginning on or after the first date that the certificate requirements of section 354(b) of the Public Health Service Act apply to such mammography conducted by such facility, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a)(3), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 226. NURSING HOME REFORM.

(a) SUSPENSION OF DECERTIFICATION OF NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS BASED ON EXTENDED SURVEYS.—

(1) IN GENERAL.—Section 1919(f)(2)(B)(iii)(I)(b) (42 U.S.C. 1396r(f)(2)(B)(iii)(I)(b)) is amended by striking the semicolon and inserting the following: ", unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section;".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of OBRA-1990.

(b) REQUIREMENTS FOR CONSULTANTS CONDUCTING REVIEWS ON USE OF DRUGS.—

(1) IN GENERAL.—Section 1919(c)(1)(D) (42 U.S.C. 1396r(c)(1)(D)) is amended by adding at the end the following sentence: "In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this title to have access to the services of such a consultant on a timely basis.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of OBRA-1987.

(c) INCREASE IN MINIMUM AMOUNT REQUIRED FOR SEPARATE DEPOSIT OF PERSONAL FUNDS.—

(1) IN GENERAL.—Section 1919(c)(6)(B)(i) (42 U.S.C. 1396r(c)(6)(B)(i)) is amended by striking "$50" and inserting "$100".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect January 1, 1994.

(d) DUE PROCESS PROTECTIONS FOR NURSE AIDES.—

(1) PROHIBITING STATE FROM INCLUDING UNDOCUMENTED ALLEGATIONS IN NURSE AIDE REGISTRY.—Section 1919(e)(2)(B) (42 U.S.C. 1396r(e)(2)(B)) is amended by striking the period at the end of the first sentence and inserting the following: ", but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection.".

(2) DUE PROCESS REQUIREMENTS FOR REBUTTING ALLEGATIONS.—Section 1919(g)(1)(C) (42 U.S.C. 1396r(g)(1)(C)) is amended by striking the second sentence and inserting the following: "The State shall, after providing the individual involved with a written notice of the allegations (including a statement of the availability of a hearing for the individual to rebut the allegations) and the opportunity for a hearing on the record, make a written finding as to the accuracy of the allegations.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect January 1, 1994.

SEC. 227. INCREASE IN AUTHORIZATION OF APPROPRIATIONS FOR THE MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT PROGRAM.

Section 501(a) (42 U.S.C. 701(a)) is amended by striking "$686,000,000 for fiscal year 1990" and inserting "$705,000,000 for fiscal year 1994".

Subtitle B—Miscellaneous and Technical Corrections Relating to OBRA-1990

SEC. 241. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall take effect as if included in the enactment of OBRA-1990.

SEC. 242. CORRECTIONS RELATING TO SECTION 4401 (DRUG REBATE PROGRAM).

(a) SECTION 1927.—(1) Section 1927(a) (42 U.S.C. 1396r-8(a)), as inserted by section 4401(a)(3) of OBRA-1990, is amended—

(A) in paragraph (1)—

(i) by amending the second sentence to read as follows: "Any such agreement entered into prior to May 1, 1991, shall be deemed to have been entered into on January 1, 1991, and the amount of the rebate to be paid by the manufacturer under such agreement shall be calculated as if the agreement had been entered into on January 1, 1991.", and

(ii) in the third sentence, by striking "March" and inserting "May";

(B) in paragraph (2)—

(i) by striking "first", and

(ii) by striking the period at the end and inserting the following: ", except that such paragraph (and section 1903(i)(10)(A)) shall not apply to drugs dispensed before May 1, 1991, if the Secretary determines that there were extenuating circumstances with respect to the first calendar quarter of 1991.";

(C) by amending paragraph (3) to read as follows:

"(3) AUTHORIZING PAYMENT FOR DRUGS NOT COVERED UNDER REBATE AGREEMENTS.—Paragraph (1) and section 1903(i)(10) shall not apply to the dispensing of a covered outpatient drug if—

"(A) the State has made a determination that the availability of such drug is essential to the health of beneficiaries under the State plan;

"(B) the drug has been given a rating of 1-A or 1-P by the Food and Drug Administration; and

"(C)(i) the physician has obtained approval for the use of the drug in advance of dispensing such drug in accordance with a prior authorization program described in subsection (d)(5), or

"(ii) the Secretary has reviewed and approved the State's determination under subparagraph (A).'"; and

(D) in paragraph (4)—

(i) by striking "In the case" and inserting "(A) In the case",

(ii) by striking "in compliance with" and inserting "in effect under",

(iii) by striking "such agreement provides for a minimum aggregate rebate of 10 percent of the State's total expenditures under the State plan for coverage of the manufacturer's drugs under this title" and inserting "such agreement provides for a minimum aggregate rebate of 10 percent of the sum of the amounts determined under subparagraph (B) for all of the manufacturer's drugs paid for by the State under the agreement", and

(iv) by adding at the end the following new subparagraph:

"(B) The amount determined under this subparagraph with respect to a manufacturer's drug paid for by a State under an agreement described in the first sentence of subparagraph (A) is an amount equal to the product of—

"(i) the average manufacturer's price for such drug; and

"(ii) the number of dosage units of such drug paid for by the State under such agreement.".

(2) Section 1927(b) (42 U.S.C. 1396r-8(b)), as inserted by section 4401(a)(3) of OBRA-1990, is amended—

(A) in paragraph (2)(A), by striking "during" and inserting "for";

(B) in paragraph (3)(A)—

(i) in clause (i), by striking the open parenthesis before "for" and the close parenthesis after "drugs",

(ii) in clause (i), by striking "subsection (c)(2)(B)) for covered outpatient drugs" and inserting "subsection (c)(1)(C)) for each covered outpatient drug", and

(iii) in clause (ii), by inserting a comma after "this section" and after "1990";

(C) in paragraph (3)(B)—

(i) by striking "$100,000" and inserting "$10,000",

(ii) by striking "about charges or prices", and

(iii) by striking "or knowingly provides false information";

(D) in paragraph (3)(C)—

(i) in clause (i)—

(I) by striking "increased by", and

(II) by striking ", and, if" and inserting ". If",

(ii) in clause (ii), by striking "under this section" and inserting "under this section, or a wholesaler or direct seller,",

(iii) in clause (ii), by inserting "under subparagraph (A) or (B)" after "provides false information", and

(iv) in clause (ii), by striking "Such civil money penalties are" and inserting "Any such civil money penalty shall be";

(E) in paragraph (3)(D), by striking "wholesaler," the first time it appears and inserting "wholesaler or the"; and

(F) in paragraph (4)(B)(i), by adding at the end the following new sentence: "Failure of a State to provide any advance notice of such a termination as required by regulation shall not affect the State's right to terminate coverage of the drugs affected by such termination as of the effective date of such termination.".

(3) Section 1927(d)(3) (42 U.S.C. 1396r-8(d)(3)), as inserted by section 4401(a)(3) of OBRA-1990 and as amended by section 13602 of OBRA-1993, is amended to read as follows:

"(3) ADDITIONS TO DRUG LISTINGS.—The Secretary shall, by regulation, periodically update the list of drugs or classes of drugs described in paragraph (2), or their medical uses, which the Secretary has determined to be subject to clinical abuse or inappropriate use.".

(4) Section 1927(h)(2)(A) (42 U.S.C. 1396r-8(h)(2)(A)), as inserted by section 4401(a)(3) of OBRA-1990, is amended by inserting "develops or" before "acquires".

(5) Section 1927(i) (42 U.S.C. 1396r-8(i)), as inserted by section 4401(a)(3) of OBRA-1990, is amended—

(A) in paragraph (1), by striking "the the operation" and inserting "the operation"; and

(B) in paragraph (2),

(i) by striking subparagraph (C); and

(ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively.

(6) Section 1927(j) (42 U.S.C. 1396r-8(j)), as inserted by section 4401(a)(3) of OBRA-1990, is amended to read as follows:

"(j) EXEMPTION FOR CERTAIN HEALTH MAINTENANCE ORGANIZATIONS AND HOSPITALS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the requirements of this section shall not apply with respect to covered outpatient drugs dispensed by—

"(A) a health maintenance organization; or

"(B) a hospital that dispenses covered outpatient drugs using a drug formulary system and bills the State no more than the hospital's purchasing costs for covered outpatient drugs.

"(2) CONSTRUCTION IN DETERMINING BEST PRICE.—Nothing in paragraph (1) shall be construed as excluding amounts paid by the entities described in such paragraph for covered outpatient drugs from the determination of the best price (as defined in subsection (c)(1)(C)) for such drugs.".

(7) Section 1927(k) (42 U.S.C. 1396r-8(k)), as inserted by section 4401(a)(3) of OBRA-1990, is amended—

(A) in paragraph (2)—

(i) in the matter preceding clause (i) of subparagraph (A), by striking "paragraph (5)" and inserting "subparagraph (D)";

(ii) in subparagraph (A)—

(I) in clause (i), by striking "for safety and effectiveness" and by striking "or which is approved under section 505(j) of such Act"; and

(II) by striking "and" at the end;

(iii) in subparagraph (B)—

(I) in clause (i), by striking "prescription," and inserting "prescription;";

(II) in clause (ii), by striking ", and" and inserting "; and"; and

(III) by striking "and" at the end;

(iv) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(v) by adding at the end the following new subparagraph:

"(D) a drug which may be sold without a prescription (commonly referred to as an 'over-the-counter drug'), if the drug is prescribed by a physician (or other person authorized to prescribe under State law).";

(B) in subparagraph (H) of paragraph (3), by inserting "services" after "dialysis";

(C) by striking paragraph (4) and redesignating paragraphs (5), (6), (7), (8), and (9) as paragraphs (4), (5), (6), (7), and (8), respectively;

(D) by amending paragraph (4), as so redesignated, to read as follows:

"(4) MANUFACTURER.—The term 'manufacturer' means, with respect to a covered outpatient drug, the entity holding legal title to or possession of the National Drug Code number for such drug."; and

(E) in paragraph (6), as so redesignated—

(i) in subparagraph (A)(i), by striking "paragraph (5)" and inserting "paragraph (2)(D)",

(ii) in subparagraph (A)(ii), by inserting "or product licensing application" after "application",

(iii) in subparagraph (A)(iv), by inserting "or product licensing application" after "application",

(iv) in subparagraph (A)(iv), by striking "distributers" and inserting "distributors",

(v) in subparagraph (C)(i), by striking "pharmaceuutically" and inserting "pharmaceutically", and

(vi) in subparagraph (C)(iii), by striking ", provided that" and inserting "if".

(b) SECTION 1903.—

(1) ENHANCED MATCH.—Section 1903(a) (42 U.S.C. 1396b(a)) is amended—

(A) by striking the period at the end of paragraph (7) and inserting "; plus"; and

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

"(8) 75 per centum of so much of the sums expended under the State plan during calendar years 1991 through 1993 as the Secretary determines attributable to the statewide adoption of a drug use review program which conforms to the requirements of section 1927(g).".

(2) CONFORMING AMENDMENTS.—Section 1903(a)(3) (42 U.S.C. 1396b(a)(3)) is amended—

(A) by striking "and" at the end of subparagraph (C) and inserting "plus"; and

(B) by striking subparagraph (D).

(c) FUNDING.—Section 4401(b)(2) of OBRA-1990 is amended by striking the semicolon and all that follows and inserting a period.

(d) DEMONSTRATION PROJECTS.—Section 4401(c)(1) of OBRA-1990 is amended—

(1) in subparagraph (A), by striking "1992" and inserting "1993";

(2) in subparagraph (A), by striking "10" and inserting "5";

(3) in subparagraph (C), by striking "regiment" and inserting "regimen"; and

(4) in subparagraph (D), by striking "1994" and inserting "1995".

(e) STUDIES.—Section 4401(d) of OBRA-1990 is amended—

(1) in paragraph (1)(A), by striking "other institutional facilities," and inserting "nursing facilities, intermediate care facilities for the mentally retarded,";

(2) in paragraph (1)(B), by striking "under this subsection" and inserting "under this paragraph";

(3) in paragraph (1)(B)(i), by striking "under this section" and inserting "under section 1927 of the Social Security Act";

(4) in paragraph (1)(B)(ii)—

(A) by striking "drug use review" the second time it appears and inserting "the type of drug use review that is"; and

(B) by striking "under this section" and inserting "under such section";

(5) in paragraph (1)(B)(iii), by striking "under this title" and inserting "under title XIX of the Social Security Act";

(6) in paragraph (1)(C)—

(A) by striking "May 1, 1991" and inserting "May 1, 1992", and

(B) by striking "Committees on Aging of the Senate and the House of Representatives" and inserting "Committee on Aging of the Senate";

(7) in paragraph (2)—

(A) by striking "By not later than May 1 of each year, the Comptroller" and inserting "The Comptroller";

(B) by striking "Committees on Aging of the Senate and House of Representatives" and inserting "Committee on Aging of the Senate";

(C) by striking "an annual report" and inserting "a report"; and

(D) by striking "retail and";

(8) in paragraph (3)—

(A) in subparagraph (A), by striking ", acting in consultation with the Comptroller General,",

(B) by indenting subparagraph (B) an additional 2 ems;

(C) in subparagraph (B), by striking "December 31, 1991, the Secretary and the Comptroller General" and inserting "June 1, 1993, the Secretary"; and

(D) by striking "Committees on Aging of the Senate and the House of Representatives" and inserting "Committee on Aging of the Senate";

(9) in paragraph (4)—

(A) in subparagraph (A), by striking "each" and by striking the semicolon and inserting a comma;

(B) in subparagraph (B), by striking "December 31, 1991" and inserting "January 1, 1993"; and

(C) in subparagraph (B), by striking "Committees on Aging of the Senate and the House of Representatives" and inserting "Committee on Aging of the Senate";

(10) in paragraph (5)—

(A) by striking "Secretary of Health and Human Services" and inserting "Comptroller General",

(B) by striking "under this title" and inserting "under State medicaid programs", and

(C) by striking the second sentence and inserting the following new sentence: "The Comptroller General shall report to the Congress on the study not later than January 1, 1993."; and

(11) by striking paragraph (6).

SEC. 243. CORRECTIONS RELATING TO SECTION 4402 (ENROLLMENT UNDER GROUP HEALTH PLANS).

Section 4402(b) of OBRA-1990 is amended by striking "1903(u)(1)(C)(iv) (42 U.S.C. 1396b(u)(1)(C)(iv))" and inserting "1903(u)(1)(D)(iv) (42 U.S.C. 1396b(u)(1)(D)(iv))".

SEC. 244. CORRECTIONS RELATING TO SECTION 4501 (LOW-INCOME MEDICARE BENEFICIARIES).

(a) Section 1902(a)(10)(E)(iii) (42 U.S.C. 1396a(a)(10)(E)(iii)), as added by section 4501(b)(3) of OBRA-1990, is amended by striking "cost sharing" and inserting "cost-sharing".

(b) Section 1905(p)(4)(B) (42 U.S.C. 1396d(p)(4)(B)), as amended by section 4501(c)(1) of OBRA-1990, is amended by striking "1902(a)(10)(E)(iii)" and inserting "section 1902(a)(10)(E)(iii)".

SEC. 245. CORRECTIONS RELATING TO SECTION 4601 (CHILD HEALTH).

(a) Section 1902(a)(10)(A)(i)(VII) (42 U.S.C. 1396a(a)(10)(A)(i)(VII)), as added by section 4601(a)(10)(A)(iii) of OBRA-1990, is amended by striking "family;" and inserting "family; and".

(b) Section 1902(l) (42 U.S.C. 1396a(l)), as amended by section 4601(a)(1)(C) of OBRA-1990, is amended—

(1) in paragraph (1)(C), by striking "children" after "(C)";

(2) in paragraph (3), by striking "(a)(10)(A)(i)(VII),," and inserting "(a)(10)(A)(i)(VII),"; and

(3) in paragraph (4)(B), by inserting a comma before "(a)(10)(A)(i)(VI),".

(c) Section 1925 (42 U.S.C. 1396r-6), as amended by section 4601(a) of OBRA-1990, is amended—

(1) in subsection (a)(3)(C), by striking "(i)(VI)" and inserting "(i)(VI),", and

(2) in subsection (b)(3)(C)(i), by striking "(i)(IV) (i)(VI) (i)(VII), ," and inserting "(i)(IV), (i)(VI), (i)(VII),".

SEC. 246. CORRECTIONS RELATING TO SECTION 4602 (OUTREACH LOCATIONS).

(a) Section 1902(a)(55) (42 U.S.C. 1396a(a)(55)), as added by section 4602(a)(3) of OBRA-1990, is amended—

(1) in the matter preceding subparagraph (A)—

(A) by striking "subsection" and inserting "paragraph", and

(B) by striking "(a)" each place it appears; and

(2) in subparagraph (A), by striking "1905(1)(2)(B)" and inserting "1905(l)(2)(B)".

(b) Section 1902(l)(1) (42 U.S.C. 1396a(l)(1)) is amended by striking "who are not described in any of subclauses (I) through (III) of subsection (a)(10)(A)(i) and".

SEC. 247. CORRECTIONS RELATING TO SECTION 4604 (PAYMENT FOR HOSPITAL SERVICES FOR CHILDREN UNDER 6 YEARS OF AGE).

(a) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended in clause (X) in the matter following subparagraph (F) by striking "under one year of age" and inserting "under 6 years of age".

(b) Section 1902(s) (42 U.S.C. 1396a(s)), as added by section 4604(a) of OBRA-1990, is amended to read as follows:

"(s) In order to meet the requirements of subsection (a)(56), the State plan must provide that payments to hospitals under the plan for inpatient services furnished to infants who have not attained the age of 1 year (or, in the case of such an individual who is an inpatient on his first birthday, until such individual is discharged) shall—

"(1) if made on a prospective basis (whether per diem, per case, or otherwise), provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay;

"(2) not be limited by the imposition of day limits; and

"(3) not be limited by the imposition of dollar limits (other than dollar limits resulting from prospective payments as adjusted pursuant to paragraph (1)).".

(c) Section 1923(a)(2)(C) (42 U.S.C. 1396r-4(a)(2)(C)) is amended by striking "provided on or after July 1, 1989," and all that follows and inserting the following: "involving exceptionally high costs or exceptionally long lengths of stay—

"(i) for individuals under 1 year of age, in the case of services provided on or after July 1, 1989, and on or before June 30, 1991; and

"(ii) for individuals under 6 years of age, in the case of services provided on or after July 1, 1991.".

SEC. 248. CORRECTIONS RELATING TO SECTION 4703 (PAYMENT ADJUSTMENTS FOR DISPROPORTIONATE SHARE HOSPITALS).

(a) Section 1923(c) (42 U.S.C. 1396r-4(c)) is amended—

(1) in paragraph (2), by striking "paragraph (b)(3)" and inserting "subsection (b)(3)";

(2) by striking the period at the end of paragraph (3)(B) and inserting a comma; and

(3) in the third sentence, by striking "the payment adjustment described in paragraph (2)" and inserting "a payment adjustment described in paragraph (2) or (3)".

(b) Effective December 22, 1987, section 1923(d)(2)(A)(ii) (42 U.S.C. 1396r-4(d)(2)(A)(ii)) is amended by striking "the date of the enactment of this Act" and inserting "December 22, 1987".

(c) Section 4703(d) of OBRA-1990 is amended by striking "412(a)(2)" and inserting "4112(a)(2)".

SEC. 249. CORRECTIONS RELATING TO SECTION 4704 (FEDERALLY-QUALIFIED HEALTH CENTERS).

(a) Clause (ix) of section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)), as added by section 4704(b)(1)(C) of OBRA-1990, is amended—

(1) by striking "of such center" the first place it appears;

(2) by striking "federally qualified" and inserting "Federally-qualified";

(3) by inserting "section" before "1905(a)(2)(C)"; and

(4) by moving such clause 2 ems to the left.

(b) Section 1903(m)(2)(B) (42 U.S.C. 1396b(m)(2)(B)), as amended by section 4704(b)(2) of OBRA-1990, is amended in the matter preceding clause (i) by striking "except with respect to clause (ix) of subparagraph (A)," and inserting "(except with respect to clause (ix) of such subparagraph)".

(c) Section 1905(l)(2) (42 U.S.C. 1396d(l)(2)), as amended by section 4704(c) of OBRA-1990 and sections 13606(a) and 13631(f)(2)(B) of OBRA-1993, is amended—

(1) in subparagraph (A)—

(A) by striking "Federally-qualififed" and inserting "Federally-qualified", and

(B) by striking "an patient" and inserting "a patient", and

(2) in subparagraph (B)—

(A) in the matter preceding clause (i), by striking "a entity" and inserting "an entity",

(B) by striking "or" at the end of clause (iii),

(C) by striking the semicolon at the end of clause (iv) and inserting ", or", and

(D) by striking "and includes an outpatient health program" and all that follows through "for good cause shown." and inserting the following:

"(v) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93-638) or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act for the provision of primary health services.

In applying clause (ii), the Secretary may waive any requirement referred to in such clause for up to 2 years for good cause shown.".

SEC. 250. CORRECTIONS RELATING TO SECTION 4708 (SUBSTITUTE PHYSICIANS).

(a) Section 1902(a)(32) (42 U.S.C. 1396a(a)(32)), as added by section 4708(a)(3) of OBRA-1990 and as amended by section 13631(e)(1) of OBRA-1993, is amended—

(1) in the matter preceding subparagraph (A), by striking "except that" and inserting "except that (subject to section 1903(i)(12))"; and

(2) by amending subparagraph (C) to read as follows:

"(C) payment may be made to a physician for physicians' services (and services furnished incident to such services) furnished by a second physician to patients of the first physician if (i) the first physician is unavailable to provide the services; (ii) the services are furnished pursuant to an arrangement between the two physicians that (I) is informal and reciprocal, or (II) involves per diem or other fee-for-time compensation for such services; (iii) the services are not provided by the second physician over a continuous period of more than 60 days; and (iv) the claim form submitted to the State for such services includes the second physician's unique identifier (provided under the system established under subsection (x)) and indicates that the claim meets the requirements of this subparagraph for payment to the first physician; and".

(b) The amendments made by subsection (a) shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

SEC. 251. CORRECTIONS RELATING TO SECTION 4711 (HOME AND COMMUNITY CARE FOR FRAIL ELDERLY).

(a) Section 1929 (42 U.S.C. 1396t), as added by section 4711(b) of OBRA-1990, is amended—

(1) in subsection (c)(2)(F), by moving the second sentence 2 ems to the right;

(2) in subsection (d)(2)(F)(ii), by striking "they manage" and inserting "it manages";

(3) in subsection (d)(2)(F)(iii), by inserting "the agency or organization" after "(iii)";

(4) in subsection (e)(2)(B), by striking "fiscal year 1989" and inserting "fiscal year 1990";

(5) in subsection (f)(1), by striking "Community care" and inserting "community care";

(6) in subsection (g)(1)—

(A) by striking "SETTINGS" and inserting "SETTING"; and

(B) in subparagraph (B), by striking "setting." and inserting "setting in which home and community care under this section is provided.";

(7) in subsection (g)(2), by striking "community care" the second, third, and fourth place it appears and inserting "home and community care";

(8) in subsection (h)(1)—

(A) by amending subparagraph (A) to read as follows:

"(A) a nonresidential setting that serves 8 or more individuals; or"; and

(B) in subparagraph (B)—

(i) by striking "more than 8" and inserting "8 or more"; and

(ii) by inserting "(other than merely board)" after "personal services";

(9) in subsection (h)(2), by striking "community care" the second and third place it appears and inserting "home and community care";

(10) in the first sentence of subsection (j)(1)(A), by striking "the State may terminate the provider's participation under the State plan and may provide in addition for a civil money penalty" and inserting "the State may provide for a civil money penalty and, in addition, may terminate the provider's participation under the State plan";

(11) in the first sentence of subsection (j)(2)(B), by striking "the Secretary may terminate the provider's participation under the State plan and may provide, in addition, for a civil money penalty under subparagraph (C)" and inserting "the Secretary may provide for a civil money penalty under subparagraph (C) and, in addition, terminate the provider's participation under the State plan";

(12) in subsection (k)(1)(A)(i)—

(A) by striking "(d)(2)(E)" and inserting "(d)(2)", and

(B) by striking "settings," and inserting "settings),";

(13) in subsection (l), by striking "State wideness" and inserting "Statewideness";

(14) in paragraph (2) of subsection (m) by striking "Individual Community Care Plan" and inserting "individual community care plan"; and

(15) by adding at the end the following new subsection:

"(n) COMMUNITY CARE SETTING DEFINED.—In this section, the term 'community care setting' means a small community care setting (as defined in subsection (g)(1)) or a large community care setting (as defined in subsection (h)(1)).".

(b) Section 1905(r)(5) (42 U.S.C. 1396d(r)(5)) is amended by striking "section 1905(a)" and inserting "subsection (a) (other than services described in paragraph (22) or (23) of such subsection)".

(c) Section 4711(f) of OBRA-1990 is amended by striking "Act" each place it appears and inserting "section".

SEC. 252. CORRECTIONS RELATING TO SECTION 4712 (COMMUNITY SUPPORTED LIVING ARRANGEMENTS).

(a) Section 1930 (42 U.S.C. 1396u), as added by section 4712(b)(2) of OBRA-1990, is amended—

(1) in subsection (b)—

(A) by striking "title the term," and inserting "title, the term",

(B) by striking "guardian" and inserting "guardian or", and

(C) by striking "3 other" and inserting "3";

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking "program," and inserting "program", and

(B) in the second sentence, by striking "plan" each place it appears and inserting "program"; and

(3) in subsection (i), by striking "FUNDS" and inserting "FUNDS".

(b) Section 4712(c) of OBRA-1990 is amended—

(1) in paragraph (1), by inserting "of section 1930 of the Social Security Act" after "subsection (h)"; and

(2) in paragraph (2), by striking "this section" and inserting "such section".

SEC. 253. CORRECTION RELATING TO SECTION 4713 (COBRA CONTINUATION COVERAGE).

(a) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (F) by striking "COBRA continuation premiums" and inserting "COBRA premiums".

(b) Section 1902(u)(3) (42 U.S.C. 1396a(u)(3)), as added by section 4713(a)(2) of OBRA-1990, is amended by striking "title VI" and inserting "part 6 of subtitle B of title I".

SEC. 254. CORRECTION RELATING TO SECTION 4716 (MEDICAID TRANSITION FOR FAMILY ASSISTANCE).

Section 4716(a) of OBRA-1990 is amended by striking "AMENDMENTS.—Subsection (f) of section" and inserting "IN GENERAL.—Section".

SEC. 255. CORRECTIONS RELATING TO SECTION 4718 (MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES).

Section 4718(b) of OBRA-1990 is amended by striking "June 1, 1989" and inserting "July 1, 1989".

SEC. 256. CORRECTIONS RELATING TO SECTION 4723 (MEDICAID SPEND-DOWN OPTION).

Section 1903(f)(2) (42 U.S.C. 1396b(f)(2)), as amended by section 4723(a) of OBRA-1990, is amended by striking "to the State, provided that" and inserting "to the State if".

SEC. 257. CORRECTIONS RELATING TO SECTION 4724 (OPTIONAL STATE DISABILITY DETERMINATIONS).

Section 1902(v) (42 U.S.C. 1396a(v)), as added by section 4724 of OBRA-1990, is amended—

(1) by striking "(v)(1)" and inserting "(v)"; and

(2) by striking "of the Social Security Act".

SEC. 258. CORRECTION RELATING TO SECTION 4732 (SPECIAL RULES FOR HEALTH MAINTENANCE ORGANIZATIONS).

Section 1903(m)(2)(F)(i) (42 U.S.C. 1396b(m)(2)(F)(i)), as amended by section 4732(b)(2)(B) of OBRA-1990, is amended by striking "or" before "with an eligible organization".

SEC. 259. CORRECTIONS RELATING TO SECTION 4747 (COVERAGE OF HIV-POSITIVE INDIVIDUALS).

Section 4747 of OBRA-1990 is amended—

(1) in subsection (a)—

(A) by striking "services described in subsection (c)" and inserting "services described in subsection (b)(1) (and may provide coverage for services described in subsection (b)(2))", and

(B) by striking "to individuals" and inserting "to individuals who are not otherwise eligible for medical assistance under such title,";

(2) by amending subsection (b) to read as follows:

"(b) SERVICES AVAILABLE UNDER A DEMONSTRATION PROJECT.—

"(1) REQUIRED SERVICES.—

"(A) IN GENERAL.—Services described in this paragraph are the following:

"(i) General and preventive medical care services, including outpatient care, physician visits, and clinic visits.

"(ii) Other laboratory and X-ray services.

"(iii) Prescription drugs (including costs associated with the intravenous administration of prescription drugs).

"(iv) Case management services.

"(B) SCOPE OF SERVICES.—The services described in subparagraph (A) may be limited under a demonstration project only on the basis of medical necessity or the appropriateness of such services.

"(2) OPTIONAL SERVICES.—

"(A) IN GENERAL.—Services described in this paragraph are the following:

"(i) Counseling and social services.

"(ii) Substance abuse treatment.

"(iii) Health education services.

"(iv) Dental services.

"(B) SCOPE OF SERVICES.—A demonstration project may limit the amount, duration, or scope of services described in subparagraph (A).";

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by striking "with a hospital" and all that follows through "other entity have" and inserting "with an entity which has", and

(ii) by striking "and have access" and all that follows through the end and inserting "and has access to data on comparable patients who have so tested and who are not participating in the demonstration project.", and

(B) by striking paragraphs (2) and (3) and redesignating paragraph (4) as paragraph (2);

(4) in subsection (d), by striking "paragraph (3)" and "paragraph (1)" and inserting "subsection (b)" and "subsection (a)", respectively; and

(5) in subsection (f), by adding at the end the following new sentence: "Such sums as may be available under the limitation set forth in this paragraph for fiscal year 1993 shall be available until expended.".

SEC. 260. CORRECTION RELATING TO SECTION 4751 (ADVANCED DIRECTIVES).

Section 1903(m)(1)(A) (42 U.S.C. 1396b(m)(1)(A)), as amended by section 4751(b)(1) of OBRA-1990, is amended—

(1) by striking "1902(w)" and inserting "1902(w) and"; and

(2) by striking "1902(a)" and inserting "1902(w)".

SEC. 261. CORRECTIONS RELATING TO SECTION 4752 (PHYSICIANS' SERVICES).

(a) Paragraph (59) of section 1902(a) (42 U.S.C. 1396a(a)), as added by section 4752(c)(1)(C) of OBRA-1990 and as redesignated by section 13623(a)(6) of OBRA-1993, is amended by striking "subsection (v)" and inserting "subsection (x)".

(b) Section 1903(i)(12) (42 U.S.C. 1396b(i)(12)), as inserted by section 4752(e) of OBRA-1990 and as redesignated by section 13631(c)(3) of OBRA-1993, is amended—

(1) by amending clause (i) of subparagraph (A) to read as follows:

"(i) is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics or is certified in general practice or pediatrics by the medical specialty board recognized by the American Osteopathic Association,";

(2) by amending clause (i) of subparagraph (B) to read as follows:

"(i) is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics or is certified in general practice or obstetrics by the Medical Specialty Board recognized by the American Osteopathic Association,"; and

(3) in subparagraphs (A) and (B)—

(A) by striking "or" at the end of clause (v);

(B) by redesignating clause (vi) as clause (vii); and

(C) by inserting after clause (v) the following new clause:

"(vi) delivers such services in the emergency department of a hospital participating in the State plan approved under this title, or".

SEC. 262. CORRECTIONS RELATING TO SECTION 4801 (NURSING HOME REFORM).

(a) Section 1919(b)(3)(C)(i)(I) (42 U.S.C. 1396r(b)(3)(C)(i)(I)), as amended by section 4801(e)(3) of OBRA-1990, is amended by striking "not to exceed" before "14 days".

(b) Section 1919(b)(5)(D) (42 U.S.C. 1396r(b)(5)(D)), as amended by section 4801(a)(4) of OBRA-1990, is amended by striking the comma before "or a new competency evaluation program.".

(c) Section 1919(b)(5)(G) (42 U.S.C. 1396r(b)(5)(G)) is amended by striking "or licensed or certified social worker" and inserting "licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician".

(d) Section 1919(f)(2)(B)(i) (42 U.S.C. 1396r(f)(2)(B)(i)) is amended by striking "facilities," and inserting "facilities (subject to clause (iii)),".

(e) Section 1919(f)(2)(B)(iii)(I)(c) (42 U.S.C. 1396r(f)(2)(B)(iii)(I)(c)) is amended by striking "clauses" each place it appears and inserting "clause".

(f) Section 1919(g)(5)(B) (42 U.S.C. 1396r(g)(5)(B)) is amended by striking "paragraphs" and inserting "paragraph".

(g) Section 4801(a)(6)(B) of OBRA-1990 is amended—

(1) by striking "The amendments" and inserting "(i) The amendments";

(2) by redesignating clauses (i) through (v) as subclauses (I) through (V); and

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

"(ii) Notwithstanding clause (i) and subject to section 1919(f)(2)(B)(iii)(I) of the Social Security Act (as amended by subparagraph (A)), a State may approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility described in clause (i) if, during the previous 2 years, none of the subclauses of clause (i) applied to the facility.".

SEC. 263. OTHER TECHNICAL CORRECTIONS.

(a) Section 1905(o)(1)(A) (42 U.S.C. 1396d(o)(1)(A)) is amended—

(1) in the first sentence, by striking "intermediate care facility services" and inserting "for nursing facility services or intermediate care facility services for the mentally retarded"; and

(2) in the second sentence, by striking "or intermediate care facility" and inserting "(for purposes of title XVIII), a nursing facility, or an intermediate care facility for the mentally retarded".

(b) Section 1915(d) (42 U.S.C. 1396n(d)) is amended—

(1) by striking "skilled nursing facility or intermediate care facility" each place it appears in paragraphs (1), (2)(B), and (2)(C) and inserting "nursing facility";

(2) in paragraph (2)(B)(i), by striking "skilled nursing or intermediate care facility" and inserting "nursing facility";

(3) in paragraph (5)(A), by striking "under" the second place it appears and inserting "(or, in the case of waiver years beginning on or after October 1, 1990, with respect to nursing facility services and home and community-based services) under"; and

(4) in paragraph (5)(B)—

(A) in clause (i), by striking "furnished" and inserting "(or, with respect to waiver years beginning on or after October 1, 1990, for nursing facility services) furnished"; and

(B) in clause (iii)(I), by striking "(regardless" and inserting "(or, with respect to waiver years beginning on or after October 1, 1990, which comprise nursing facility services) (regardless".

(c)(1) Section 1924(h)(1)(A) (42 U.S.C. 1396r-5(h)(1)(A)) is amended to read as follows:

"(A)(i) is in a medical institution or nursing facility; or

"(ii) is described in section 1902(a)(10)(A)(ii)(VI) (except that for purposes of subsection (d), such term shall include such individual only if the State elects to apply such subsection to the individual); and".

(2) The amendments made by this subsection shall apply to home or community-based services furnished on or after January 1, 1994.

Subtitle C—Miscellaneous and Technical Corrections Relating to OBRA-1993

SEC. 271. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this part shall take effect as if included in the enactment of OBRA-1993.

SEC. 272. CORRECTIONS RELATING TO SECTION 13601 (PERSONAL CARE SERVICES).

Section 13601(a)(3) of OBRA-1993 is amended by striking "comma" and inserting "period".

SEC. 273. CORRECTIONS RELATING TO SECTION 13604 (EMERGENCY SERVICES FOR ALIENS).

Section 13604(b)(2) of OBRA-1993 is amended to read as follows:

"(2) The Secretary of Health and Human Services shall not disallow expenditures made under section 1903(v)(2) of the Social Security Act for care and services relating to organ transplant procedures furnished before the date of the enactment of this Act.".

SEC. 274. CORRECTIONS RELATING TO SECTION 13611 (TRANSFERS OF ASSETS; TREATMENT OF CERTAIN TRUSTS).

(a) Section 1917(c)(2)(C)(iii) (42 U.S.C. 1396p(c)(2)(C)(iii)), as added by section 13611(a)(2)(C)(iv) of OBRA-1993, is amended by striking "all".

(b) Section 1917(c)(4) (42 U.S.C. 1396p(c)(4)), as amended by section 13611(a)(2)(F), is amended by striking "resources" and inserting "assets".

(c) Section 13611(e)(3) of OBRA-1993 is amended—

(1) by striking "amendment made by subsection (b)" and inserting "amendments made by subsections (a) and (b)"; and

(2) by striking "such amendment" and inserting "such amendments".

SEC. 275. CORRECTIONS RELATING TO SECTION 13612 (MEDICAID ESTATE RECOVERIES).

Section 1917(b)(1) (42 U.S.C 1396p(b)(1)), as amended by section 13612(a) of OBRA-1993, is amended—

(1) by amending the matter preceding subparagraph (A) to read as follows:

"(b)(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except that the State shall comply with the following:";

(2) by amending subparagraph (A) to read as follows:

"(A) In the case of an individual described in subsection (a)(1)(B), the State—

"(i) shall seek adjustment or recovery upon the sale of property subject to a lien imposed on account of medical assistance paid on behalf of the individual, and

"(ii) may seek adjustment or recovery from the individual's estate."; and

(3) in subparagraph (B)—

(A) in clause (i), by striking "or" at the end and inserting "and"; and

(B) in clause (ii), by inserting "additional" after "any".

SEC. 276. CORRECTIONS RELATING TO SECTION 13622 (LIABILITY OF THIRD PARTIES TO PAY FOR CARE AND SERVICES).

(a) Section 1902(a)(25)(A) (42 U.S.C. 1396a(a)(25)(A)), as amended by section 13622(a) of OBRA-1993, is amended by striking "(as defined in section 607(1)" and inserting "(including any such plan meeting the definition of section 607(1)".

(b) Section 1902(a)(25)(I) (42 U.S.C. 1396a(a)(25)(I)), as added by section 13622(c) of OBRA-1993, is amended to read as follows:

"(I) assurances satisfactory to the Secretary that the State has in effect laws providing that, to the extent that payment has been made under the State plan of that or any other State for medical assistance for health care items or services furnished to an individual, the State paying such medical assistance is considered to have acquired the rights of such individual to payment by any third party legally liable to pay for such items or services;".

SEC. 277. CORRECTIONS RELATING TO SECTION 13623 (MEDICAL CHILD SUPPORT).

(a)(1) Title XIX (42 U.S.C. 1396 et seq.) is amended by redesignating section 1908, as added by section 13623(b) of OBRA-1993, as section 1909.

(2) Paragraph (60) of section 1902(a) (42 U.S.C. 1396a(a)), as added by section 13623(a) of OBRA-1993, is amended by striking "section 1908" and inserting "section 1909".

(b) Subsection (b) of section 1909, as redesignated by subsection (a), is amended by striking "as defined in section 607(1)" and inserting "including any such plan meeting the definition of section 607(1)".

SEC. 278. CORRECTIONS RELATING TO SECTION 13624 (PHYSICIAN REFERRALS).

Section 13624(b) of OBRA-1993 is amended by striking "on or".

SEC. 279. CORRECTIONS RELATING TO SECTION 13631 (MEDICAID PEDIATRIC IMMUNIZATION PROVISIONS).

(a) Section 1902(a)(32)(D) (42 U.S.C. 1396(a)(32)(D)), as added by section 13631(e)(1) of OBRA-1993, is amended by striking "(which price includes a reasonable amount to cover shipping and the handling of returns)" and inserting "plus a reasonable amount to cover shipping and the handling of returns".

(b) Section 1928(d)(3)(B) (42 U.S.C. 1396s(d)(3)(B)), as added by section 13631(b)(2) of OBRA-1993, is amended by striking "and any applicable excise tax established under section 4131 of the Internal Revenue Code of 1986".

SEC. 280. CORRECTIONS RELATING TO SECTION 13643 (DEMONSTRATION PROJECTS).

Effective as if included in the enactment of OBRA-1990, section 4745 of such Act is amended in subsection (d) by striking "shall commence not later than July 1, 1991 and".

TITLE III—INCOME SECURITY, HUMAN RESOURCES, AND RELATED PROGRAMS

Subtitle A—Child Welfare, Foster Care, Adoption

SEC. 301. REQUIRED PROTECTIONS FOR FOSTER CHILDREN.

(a) IN GENERAL.—Section 422(b) (42 U.S.C. 622(b)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following:

"(9) provide assurances that the State—

"(A) since June 17, 1980, has completed an inventory of all children who, before the inventory, had been in foster care under the responsibility of the State for 6 months or more, which determined—

"(i) the appropriateness of, and necessity for, the foster care placement;

"(ii) whether the child could or should be returned to the parents of the child or should be freed for adoption or other permanent placement; and

"(iii) the services necessary to facilitate the return of the child or the placement of the child for adoption or legal guardianship;

"(B) is operating, to the satisfaction of the Secretary—

"(i) a statewide information system from which can be readily determined the status, demographic characteristics, location, and goals for the placement of every child who is (or, within the immediately preceding 12 months, has been) in foster care;

"(ii) a case review system (as defined in section 475(5)) for each child receiving foster care under the supervision of the State;

"(iii) a service program designed to help children—

"(I) where appropriate, return to families from which they have been removed; or

"(II) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement; and

"(iv) a preplacement preventive services program designed to help children at risk of foster care placement remain with their families; and

"(C)(i) has reviewed (or within 12 months after the date of the enactment of this paragraph will review) State policies and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of such children); and

"(ii) is implementing (or within 24 months after the date of the enactment of this paragraph will implement) such policies and procedures as the State determines, on the basis of the review described in clause (i), to be necessary to enable permanent decisions to be made expeditiously with respect to the placement of such children.".

(b) RESTRICTION ON REALLOTMENT.—Section 424 (42 U.S.C. 624) is amended—

(1) in the first sentence, by striking "The amount" and inserting the following:

"(a) IN GENERAL.—Subject to subsection (b), the amount"; and

(2) by adding at the end the following:

"(b) EXCEPTION RELATING TO FOSTER CHILD PROTECTIONS.—The Secretary shall not reallot under subsection (a) of this section any amount that is withheld or recovered from a State due to the failure of the State to meet the requirements of section 422(b)(9).".

(c) REPEAL.—Section 427 (42 U.S.C. 627) is hereby repealed.

(d) CONFORMING AMENDMENTS.—

(1) Section 423(a) (42 U.S.C. 623(a)) is amended by striking "and in section 427".

(2) Section 425(a)(2) (42 U.S.C. 625(a)(2)) is amended by striking "the statistical report required by section" and inserting "section 422(b)(9) or".

(3) Section 472(d) (42 U.S.C. 672(d)) is amended by striking "427(b)" and inserting "422(b)(9)".

(e) EFFECTIVE DATE.—The amendments and repeal made by this section shall be effective with respect to fiscal years beginning on or after October 1, 1995.

SEC. 302. CONFORMITY REVIEWS.

(a) IN GENERAL.—Part A of title XI (42 U.S.C. 1301–1320b–13) is amended by inserting after section 1122 the following:

"REVIEWS OF CHILD AND FAMILY SERVICES PROGRAMS, AND OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS, FOR CONFORMITY WITH STATE PLAN REQUIREMENTS

"SEC. 1123. (a) IN GENERAL.—The Secretary, in consultation with the State agencies administering the State programs under parts B and E of title IV, shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity with—

"(1) State plan requirements under such parts B and E,

"(2) implementing regulations promulgated by the Secretary, and

"(3) the relevant approved State plans.

"(b) ELEMENTS OF REVIEW SYSTEM.—The regulations referred to in subsection (a) shall—

"(1) specify the timetable for conformity reviews of State programs, including—

"(A) an initial review of each State program;

"(B) a timely review of a State program following a review in which such program was found not to be in substantial conformity; and

"(C) less frequent reviews of State programs which have been found to be in substantial conformity, but such regulations shall permit the Secretary to reinstate more frequent reviews based on information which indicates that a State program may not be in conformity;

"(2) specify the requirements subject to review, and the criteria to be used to measure conformity with such requirements and to determine whether there is a substantial failure to so conform;

"(3) specify the method to be used to determine the amount of any Federal matching funds to be withheld (subject to paragraph (4)) due to the State program's failure to so conform, which ensures that—

"(A) such funds will not be withheld with respect to a program, unless it is determined that the program fails substantially to so conform;

"(B) such funds will not be withheld for a failure to so conform resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary; and

"(C) the amount of such funds withheld is related to the extent of the failure to so conform; and

"(4) require the Secretary, with respect to any State program found to have failed substantially to so conform—

"(A) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to so conform;

"(B) to make technical assistance available to the State to the extent feasible to enable the State to develop and implement such a corrective action plan;

"(C) to suspend the withholding of any Federal matching funds under this section while such a corrective action plan is in effect; and

"(D) to rescind any such withholding if the failure to so conform is ended by successful completion of such a corrective action plan.

"(c) PROVISIONS FOR ADMINISTRATIVE AND JUDICIAL REVIEW.—The regulations referred to in subsection (a) shall—

"(1) require the Secretary, not later than 10 days after a final determination that a program of the State is not in conformity, to notify the State of—

"(A) the basis for the determination; and

"(B) the amount of the Federal matching funds (if any) to be withheld from the State;

"(2) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days after receipt of the notice described in paragraph (1) (or, if later, after failure to continue or to complete a corrective action plan); and

"(3) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, within 60 days after the State receives notice of the decision of the Board, by appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.".

(b) CONFORMING AMENDMENT.—Section 471(b) (42 U.S.C. 671(b)) is amended by striking all that follows the first sentence.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) CONFORMING AMENDMENT.—The amendment made by subsection (b) shall take effect on October 1, 1995.

(3) REGULATIONS.—The Secretary shall promulgate the regulations referred to in section 1123(a) of the Social Security Act (as added by this section) not later than January 1, 1995, to take effect on October 1, 1995.

SEC. 303. STATES REQUIRED TO REPORT ON MEASURES TAKEN TO COMPLY WITH THE INDIAN CHILD WELFARE ACT.

(a) STATE PLAN REQUIREMENT.—Section 422(b) (42 U.S.C. 622(b)), as amended by section 301(a), is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting "; and"; and

(3) by adding at the end the following:

"(10) contain a description, developed after consultation with tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act) in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective with respect to fiscal years beginning on or after October 1, 1994.

SEC. 304. CHILD WELFARE TRAINEESHIPS.

(a) IN GENERAL.—Subpart 1 of part B of title IV (42 U.S.C. 620–628) is amended by inserting after section 428 the following:

"CHILD WELFARE TRAINEESHIPS

"SEC. 429. The Secretary may approve an application for a grant to a public or nonprofit institution for higher learning to provide traineeships with stipends under section 426(a)(1)(C) only if the application—

"(1) provides assurances that each individual who receives a stipend with such traineeship (in this section referred to as a 'recipient') will enter into an agreement with the institution under which the recipient agrees—

"(A) to participate in training at a public or private nonprofit child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship;

"(B) to be employed for a period of years equivalent to the period of the traineeship, in a public or private nonprofit child welfare agency in any State, within a period of time (determined by the Secretary in accordance with regulations) after completing the postsecondary education for which the traineeship was awarded;

"(C) to furnish to the institution and the Secretary evidence of compliance with subparagraphs (A) and (B); and

"(D) if the recipient fails to comply with subparagraph (A) or (B) and does not qualify for any exception to this subparagraph which the Secretary may prescribe in regulations, to repay to the Secretary all (or an appropriately prorated part) of the amount of the stipend, plus interest, and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary);

"(2) provides assurances that the institution will—

"(A) enter into agreements with child welfare agencies for onsite training of recipients;

"(B) permit an individual who is employed in the field of child welfare services to apply for a traineeship with a stipend if the traineeship furthers the progress of the individual toward the completion of degree requirements; and

"(C) develop and implement a system that, for the 3-year period that begins on the date any recipient completes a child welfare services program of study, tracks the employment record of the recipient, for the purpose of determining the percentage of recipients who secure employment in the field of child welfare services and remain employed in the field.".

(b) CONFORMING AMENDMENT.—Section 426(a)(1)(C) (42 U.S.C. 626(a)(1)(C)) is amended

by inserting "described in section 429" after "including traineeships".

(c) APPLICABILITY.—The amendments made by this section shall apply to grants awarded on or after October 1, 1994.

SEC. 305. DISPOSITIONAL HEARING.

(a) MOST APPROPRIATE SETTING.—Section 475(5)(A) (42 U.S.C. 675(5)(A)) is amended by inserting "and most appropriate" after "(most family like)".

(b) TIMING OF SUBSEQUENT REVIEW.—Section 475(5)(C) (42 U.S.C. 675(5)(C)) is amended by striking "periodically" and inserting "not less frequently than every 12 months".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1994.

SEC. 306. ELIMINATION OF FOSTER CARE CEILINGS AND OF AUTHORITY TO TRANSFER UNUSED FOSTER CARE FUNDS TO CHILD WELFARE SERVICES PROGRAMS.

(a) REPEAL.—Subsections (b) and (c) of section 474 (42 U.S.C. 674 (b) and (c)) are hereby repealed.

(b) CONFORMING AMENDMENTS.—Section 474 (42 U.S.C. 674) is amended—

(1) in subsection (d)(1)—

(A) by striking "subsections (a), (b), and (c)" and inserting "subsection (a)"; and

(B) by striking "the provisions of such subsections" and inserting "subsection (a)"; and

(2) by redesignating subsection (d) as subsection (b).

(c) EFFECTIVE DATE.—The amendments and repeals made by this section shall apply to payments for calendar quarters beginning on or after October 1, 1993.

SEC. 307. DEMONSTRATION PROJECTS.

Part A of title XI (42 U.S.C. 1301–1320b–13) is amended by inserting after section 1128B the following:

"DEMONSTRATION PROJECTS

"SEC. 1129. (a) IN GENERAL.—The Secretary may authorize not more than 10 States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of title IV.

"(b) WAIVER AUTHORITY.—The Secretary may waive compliance with any requirement of part B or E of title IV which (if applied) would prevent a State from carrying out a demonstration project under this section or prevent the State from effectively achieving the purpose of such a project, except that the Secretary may not waive—

"(1) any provision of section 427 (as in effect before October 1, 1995), section 422(b)(9) (as in effect after such date), or section 479; or

"(2) any provision of such part E, to the extent that the waiver would impair the entitlement of any qualified child or family to benefits under a State plan approved under such part E.

"(c) TREATMENT AS PROGRAM EXPENDITURES.—For purposes of parts B and E of title IV, the Secretary shall consider the expenditures of any State to conduct a demonstration project under this section to be expenditures under subpart 1 or 2 of such part B, or under such part E, as the State may elect.

"(d) DURATION OF DEMONSTRATION.—A demonstration project under this section may be conducted for not more than 5 years.

"(e) APPLICATION.—Any State seeking to conduct a demonstration project under this section shall submit to the Secretary an application, in such form as the Secretary may require, which includes—

"(1) a description of the proposed project, the geographic area in which the proposed project would be conducted, the children or families who would be served by the proposed project, and the services which would be provided by the proposed project (which shall provide, where appropriate, for random assignment of children and families to groups served under the project and to control groups);

"(2) a statement of the period during which the proposed project would be conducted;

"(3) a discussion of the benefits that are expected from the proposed project (compared to a continuation of activities under the approved plan or plans of the State);

"(4) an estimate of the costs or savings of the proposed project;

"(5) a statement of program requirements for which waivers would be needed to permit the proposed project to be conducted;

"(6) a description of the proposed evaluation design; and

"(7) such additional information as the Secretary may require.

"(f) EVALUATIONS; REPORT.—Each State authorized to conduct a demonstration project under this section shall—

"(1) obtain an evaluation by an independent contractor of the effectiveness of the project, using an evaluation design approved by the Secretary which provides for—

"(A) comparison of methods of service delivery under the project, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management;

"(B) comparison of outcomes for children and families (and groups of children and families) under the project, and such outcomes under a State plan or plans, for purposes of assessing the effectiveness of the project in achieving program goals; and

"(C) any other information that the Secretary may require; and

"(2) provide interim and final evaluation reports to the Secretary, at such times and in such manner as the Secretary may require.

"(g) COST NEUTRALITY.—The Secretary may not authorize a State to conduct a demonstration project under this section unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the project over its approved term (or such portion thereof or other period as the Secretary may find appropriate) will not exceed the amount of such funds that would be expended by the State under the State plans approved under parts B and E of title IV if the project were not conducted.".

SEC. 308. PLACEMENT ACCOUNTABILITY.

(a) CASE PLAN REQUIREMENTS.—Section 475(5)(A) (42 U.S.C. 675(5)(A)), as amended by section 305(a), is amended by adding at the end the following: "which—

"(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and

"(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 12 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, or of the State in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,".

(b) DISPOSITIONAL HEARING.—Section 475(5)(C) (42 U.S.C. 675(5)(C)), as amended by section 305(b), is amended by inserting "and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child," after "long-term basis)".

(c) DATA COLLECTION.—Section 479(c)(3)(C) (42 U.S.C. 679(c)(3)(C)) is amended—

(1) by striking "and" at the end of clause (i); and

(2) by adding at the end the following:

"(iii) children placed in foster care outside the State which has placement and care responsibility, and".

(d) EFFECTIVE DATES.—The amendments made by this section shall be effective with respect to fiscal years beginning on or after October 1, 1994.

SEC. 309. PAYMENTS OF STATE CLAIMS FOR FOSTER CARE AND ADOPTION ASSISTANCE.

(a) IN GENERAL.—Section 474(b) (42 U.S.C. 674(b)), as redesignated by section 306(b)(2), is amended by adding at the end the following:

"(4)(A) Within 60 days after receipt of a State claim for expenditures pursuant to subsection (a), the Secretary shall allow, disallow, or defer such claim.

"(B) Within 15 days after a decision to defer such a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional information necessary to determine the allowability of the claim.

"(C) Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall—

"(i) disallow the claim, if able to complete the review and determine that the claim is not allowable, or

"(ii) in any other case, allow the claim, subject to disallowance (as necessary)—

"(I) upon completion of the review, if it is determined that the claim is not allowable; or

"(II) on the basis of findings of an audit or financial management review.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective with respect to claims made on or after the date of the enactment of this Act.

SEC. 310. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

(a) IN GENERAL.—Part A of title XI (42 U.S.C. 1301–1320b–13), as amended by section 307, is amended by inserting after section 1129 the following:

"EFFECT OF FAILURE TO CARRY OUT STATE PLAN

"SEC. 1130. In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability: *Provided, however*, That this section is not intended to alter the holding in Suter v. Artist M. that section 471(a)(15) of the Act is not enforceable in a private right of action.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to actions pending on the date of the enactment of this Act and to actions brought on or after such date of enactment.

Subtitle B—Child Support Enforcement

SEC. 311. REPORTS TO CREDIT BUREAUS ON PERSONS DELINQUENT IN CHILD SUPPORT PAYMENTS.

(a) IN GENERAL.—Section 466(a)(7) (42 U.S.C. 666(a)(7)) is amended—

(1) by striking "Procedures" and all that follows through "request of such agency" and inserting "Procedures which require the State to periodically report to consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) the name of any parent residing in the State who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency unless the agency requests not to receive such information"; and

(2) by striking "(C) a fee" and all that follows through "by the State" and inserting "(C) such information shall not be made available to (i) a consumer reporting agency which the State determines does not have sufficient capability to systematically and timely make accurate use of such information, or (ii) an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1995.

SEC. 312. TECHNICAL AMENDMENTS TO PROVISION ON STATE PATERNITY ESTABLISHMENT PROGRAMS.

Section 452(g)(2)(A) (42 U.S.C. 652(g)(2)(A)), as amended by section 13721(a) of OBRA-1993, is amended—

(1) in clause (i), by striking "during the fiscal year";

(2) in subclause (I) of clause (ii), by striking "as of the end of the fiscal year" and inserting "in the fiscal year or, at the option of the State, as of the end of such year";

(3) in subclause (II) of clause (ii), by striking "or (E) as of the end of the fiscal year" and inserting "in the fiscal year or, at the option of the State, as of the end of such year";

(4) in clause (iii), by striking "during the fiscal year"; and

(5) in the matter following clause (iii)—

(A) by striking "who were born out of wedlock during the immediately preceding fiscal year" and inserting "born out of wedlock";

(B) by striking "such preceding fiscal year" both places it appears and inserting "the preceding fiscal year"; and

(C) by striking "or E" the second place it appears.

SEC. 313. AGREEMENT TO ASSIST IN LOCATING MISSING CHILDREN UNDER THE PARENT LOCATOR SERVICE.

(a) IN GENERAL.—Section 463 (42 U.S.C. 663) is amended by adding at the end the following new subsection:

"(f) The Secretary shall enter into an agreement with the Attorney General of the United States, under which the services of the Parent Locator Service established under section 453 shall be made available to the Office of Juvenile Justice and Delinquency Prevention upon its request to locate any parent or child on behalf of such Office for the purpose of—

"(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child, or

"(2) making or enforcing a child custody determination.

The Parent Locator Service shall charge no fees for services requested pursuant to this subsection.".

(b) CONFORMING AMENDMENT.—Section 463(c) (42 U.S.C. 663(c)) is amended by striking "(a), (b), or (e)" and inserting "(a), (b), (e), or (f)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1994.

Subtitle C—Supplemental Security Income

SEC. 321. DEFINITION OF DISABILITY FOR CHILDREN UNDER AGE 18 APPLIED TO ALL INDIVIDUALS UNDER AGE 18.

(a) IN GENERAL.—Section 1614(a)(3) (42 U.S.C. 1382c(a)(3)) is amended—

(1) in subparagraphs (A) and (H), by striking "a child" each place it appears and inserting "an individual"; and

(2) in subparagraph (H), by striking "child" the second and third place it appears and inserting "individual".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to determinations made on or after the date of the enactment of this Act.

SEC. 322. COMMISSION ON CHILDHOOD DISABILITY.

(a) ESTABLISHMENT OF COMMISSION.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall appoint a Commission on the Evaluation of Disability in Children (in this section referred to as the "Commission").

(b) APPOINTMENT OF MEMBERS.—(1) The Secretary shall appoint not less than 9 but not more than 15 members to the Commission, including—

(A) recognized experts in the field of medicine, whose work involves—

(i) the evaluation and treatment of disability in children,

(ii) the study of congenital, genetic, or perinatal disorders in children, or

(iii) the measurement of developmental milestones and developmental deficits in children; and

(B) recognized experts in the fields of—

(i) psychology,

(ii) education and rehabilitation,

(iii) law,

(iv) the administration of disability programs,

(v) social insurance (including health insurance), and

(vi) other fields of expertise that the Secretary determines to be appropriate.

(2) Members shall be appointed within 90 days after the date of the enactment of this Act, without regard to the provisions of title 5, United States Code, governing appointments to competitive service.

(3) Members appointed under this subsection shall serve for a term equivalent to the duration of the Commission.

(4) The Secretary shall designate a member of the Commission to serve as Chair of the Commission for a term equivalent to the duration of the Commission.

(c) ADMINISTRATIVE PROVISIONS.—(1) Service as a member of the Commission by an individual who is not otherwise a Federal employee shall not be considered service in an appointive or elective position in the Federal Government for the purposes of any provision of title 5, United States Code.

(2) Each member of the Commission who is not a full-time Federal employee shall be paid compensation at a rate equal to the daily equivalent of the rate of basic pay in effect for Level IV of the Executive Schedule for each day (including travel time) the member attends meetings or otherwise performs the duties of the Commission.

(3) While away from their homes or regular places of business on the business of the Commission, each member who is not a full-time Federal employee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(d) ASSISTANCE TO COMMISSION.—The Commission may engage such technical assistance from individuals skilled in medical and other aspects of childhood disability as may be necessary to carry out the functions of the Commission. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance as the Commission may require to carry out the functions of the Commission.

(e) STUDY BY THE COMMISSION.—(1) The Commission shall conduct a study, in consultation with the National Academy of Sciences, of the effects of the definition of "disability" under title XVI of the Social Security Act (42 U.S.C. 1382 et seq.) in effect on the date of enactment of this Act, as such definition applies to determining whether a child under the age of 18 is eligible to receive benefits under such title, the appropriateness of such definition, and the advantages and disadvantages of using any alternative definition of disability in determining whether a child under age 18 is eligible to receive benefits under such title.

(2) The study described in paragraph (1) shall include issues of—

(A) whether the need by families for assistance in meeting high costs of medical care for children with serious physical or mental impairments, whether or not they are eligible for disability benefits under title XVI of the Social Security Act, might appropriately be met through expansion of Federal health assistance programs (including the program of medical assistance under title XIX of such Act); and

(B) such other issues that the Secretary determines to be appropriate.

(f) REPORT.—Not later than September 1, 1995, the Commission shall prepare a report and submit such report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate which shall summarize the results of the study described in subsection (e) and include any recommendations that the Commission determines to be appropriate.

(g) TERMINATION OF COMMISSION.—The Commission shall terminate on September 30, 1995.

SEC. 323. EXEMPTION FROM PASS-ALONG REQUIREMENTS.

(a) IN GENERAL.—Section 1618 (42 U.S.C. 1382g) is amended by adding at the end the following new subsection:

"(h) For purposes of determining under subsection (b) of this section whether a State's expenditures for supplementary payments in the twelve-month period beginning on the effective date of any increase in the level of supplemental security income benefits are not less than its expenditures for such payments in the preceding twelve-month period, the Secretary, in computing the State's expenditures, shall disregard, pursuant to the one-time election of such State, all expenditures by such State for retroactive supplementary payments that are required to be made in connection with the retroactive supplemental security income benefits referred to in section 5041 of the Omnibus Budget Reconciliation Act of 1990.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective on, before, and after the date of the enactment of this Act.

Subtitle D—Aid to Families With Dependent Children

SEC. 331. SIMPLIFICATION OF INCOME AND ELIGIBILITY VERIFICATION SYSTEM.

Paragraph (1)(A) of section 1137(d) (42 U.S.C. 1320b-7(d)) is amended to read as follows:

"(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under a program listed in subsection (b), a declaration in writing, under penalty of perjury—

"(i) by the individual,

"(ii) in the case in which eligibility for program benefits is determined on a family or household basis, by any adult member of such individual's family or household (as applicable), or

"(iii) in the case of an individual born into a family or household receiving benefits under such program, by any adult member of such family or household no later than the next redetermination of eligibility of such family or household following the birth of such individual,

stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.".

SEC. 332. MEASUREMENT AND REPORTING OF WELFARE RECEIPT.

(a) CONGRESSIONAL POLICY.—The Congress hereby declares that—

(1) it is the policy and responsibility of the Federal Government to reduce the rate at which and the degree to which families depend on income from welfare programs and the duration of welfare receipt, consistent with other essential national goals;

(2) it is the policy of the United States to strengthen families, to ensure that children grow up in families that are economically self-sufficient and that the life prospects of children are improved, and to underscore the responsibility of parents to support their children;

(3) the Federal Government should help welfare recipients as well as individuals at risk of welfare receipt to improve their education and job skills, to obtain child care and other necessary support services, and to take such other steps as may be necessary to assist them to become financially independent; and

(4) it is the purpose of this section to provide the public with generally accepted measures of welfare receipt so that it can track such receipt over time and determine whether progress is being made in reducing the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt.

(b) DEVELOPMENT OF WELFARE INDICATORS AND PREDICTORS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") in consultation with the Secretary of Agriculture shall—

(1) develop—

(A) indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt; and

(B) predictors of welfare receipt;

(2) assess the data needed to report annually on the indicators and predictors, including the ability of existing data collection efforts to provide such data and any additional data collection needs; and

(3) not later than 2 years after the date of the enactment of this section, provide an interim report containing conclusions resulting from the development and assessment described in paragraphs (1) and (2), to—

(A) the Committee on Ways and Means of the House of Representatives;

(B) the Committee on Education and Labor of the House of Representatives;

(C) the Committee on Agriculture of the House of Representatives;

(D) the Committee on Energy and Commerce of the House of Representatives;

(E) the Committee on Finance of the Senate;

(F) the Committee on Labor and Human Resources of the Senate; and

(G) the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(c) ADVISORY BOARD ON WELFARE INDICATORS.—

(1) ESTABLISHMENT.—There is established an Advisory Board on Welfare Indicators (in this subsection referred to as the "Board").

(2) COMPOSITION.—The Board shall be composed of 12 members with equal numbers to be appointed by the House of Representatives, the Senate, and the President. The Board shall be composed of experts in the fields of welfare research and welfare statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues.

(3) VACANCIES.—Any vacancy occurring in the membership of the Board shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(4) DUTIES.—Duties of the Board shall include—

(A) providing advice and recommendations to the Secretary on the development of indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt; and

(B) providing advice on the development and presentation of annual reports required under subsection (d).

(5) TRAVEL EXPENSES.—Members of the Board shall not be compensated, but shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(6) DETAIL OF FEDERAL EMPLOYEES.—The Secretary shall detail, without reimbursement, any of the personnel of the Department of Health and Human Services to the Board to assist the Board in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(7) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the Board may accept the voluntary services provided by a member of the Board.

(8) TERMINATION OF BOARD.—The Board shall be terminated at such time as the Secretary determines the duties described in paragraph (4) have been completed, but in any case prior to the submission of the first report required under subsection (d).

(d) ANNUAL WELFARE INDICATORS REPORT.—

(1) PREPARATION.—The Secretary shall prepare annual reports on welfare receipt in the United States.

(2) COVERAGE.—The report shall include analysis of families and individuals receiving assistance under means-tested benefit programs, including the program of aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), and the Supplemental Security Income program under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), or as general assistance under programs administered by State and local governments.

(3) CONTENTS.—Each report shall set forth for each of the means-tested benefit programs described in paragraph (2)—

(A) indicators of—

(i) the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs, and

(ii) the duration of welfare receipt;

(B) trends in indicators;

(C) predictors of welfare receipt;

(D) the causes of welfare receipt;

(E) patterns of multiple program receipt;

(F) such other information as the Secretary deems relevant; and

(G) such recommendations for legislation, which shall not include proposals to reduce eligibility levels or impose barriers to program access, as the Secretary may determine to be necessary or desirable to reduce—

(i) the rate at which and the degree to which families depend on income from welfare programs, and

(ii) the duration of welfare receipt.

(4) SUBMISSION.—The Secretary shall submit such a report not later than 3 years after the date of the enactment of this section and annually thereafter, to the committees specified in subsection (b)(3)(C). Each such report shall be transmitted during the first 60 days of each regular session of Congress.

(e) SHORT TITLE.—This section may be cited as the "Welfare Indicators Act of 1993".

SEC. 333. NEW HOPE DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall provide for a demonstration project for a qualified program to be conducted in Milwaukee, Wisconsin, in accordance with this section.

(b) PAYMENTS.—For each calendar quarter in which there is a qualified program approved under this subsection, the Secretary shall pay to the operator of the qualified program, for no more than 20 calendar quarters, an amount equal to the aggregate amount that would otherwise have been payable to the State with respect to participants in the program for such calendar quarter, in the absence of the program, for cash assistance and child care under part A of title IV of the Social Security Act, for medical assistance under title XIX of such Act, and for administrative expenses related to such assistance. The amount payable to the operator of the program under this section shall not include the costs of evaluating the effects of the program.

(c) DEMONSTRATION PROJECT DESCRIBED.—For purposes of this section, the term "qualified program" means a program operated—

(1) by The New Hope Project, Inc., a private, not-for-profit corporation incorporated under the laws of the State of Wisconsin (in this section referred to as the "operator"), which offers low-income residents of Milwaukee, Wisconsin, employment, wage supplements, child care, health care, and counseling and training for job retention or advancement; and

(2) in accordance with an application submitted by the operator of the program and approved by the Secretary based on the Secretary's determination that the application satisfies the requirements of subsection (d).

(d) CONTENTS OF APPLICATION.—The operator of the qualified program shall provide, in its application to conduct a demonstration project for the program, that the following terms and conditions will be met:

(1) The operator will develop and implement an evaluation plan designed to provide valid and reliable information on the impact and implementation of the program. The evaluation plan will include adequately sized groups of project participants and control groups assigned at random.

(2) The operator will develop and implement a plan addressing the services and assistance to be provided by the program, the timing and determination of payments from the Secretary to the operator of the program, and the roles and responsibilities of the Secretary and the operator with respect to meeting the requirements of this paragraph.

(3) The operator will specify a reliable methodology for determining expenditures to be paid to the operator by the Secretary, with assistance from the Secretary in calculating the amount that would otherwise have been payable to the State in the absence of the program, pursuant to subsection (b).

(4) The operator will issue an interim and final report on the results of the evaluation described in paragraph (1) to the Secretary at such times as required by the Secretary.

(e) EFFECTIVE DATE.—This section shall take effect on the first day of the first calendar quarter that begins after the date of the enactment of this Act.

SEC. 334. DELAY IN REQUIREMENT THAT OUTLYING AREAS OPERATE AN AFDC-UP PROGRAM.

(a) IN GENERAL.—Section 401(g)(2) of the Family Support Act of 1988 (42 U.S.C. 602 note; 102 Stat. 2396) is amended by striking "October 1, 1992" and inserting "the date of the repeal of the limitations contained in section 1108(a) of the Social Security Act on payments to such jurisdictions for purposes of making maintenance payments under parts A and E of title IV of such Act".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the provision of the Family Support Act of 1988 to which the amendment relates at the time such provision became law.

SEC. 335. NEW YORK STATE CHILD SUPPORT DEMONSTRATION PROGRAM.

(a) EXTENSION.—Section 9122(g)(1) of OBRA-1987 is amended by striking "five" and inserting "10".

(b) PAYMENT OF EVALUATION COSTS.—Section 9122(b) of OBRA-1987 is amended by adding at the end the following new flush sentence: "Payment to the State under this section shall not include the costs of evaluating the effects of the program.".

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) PAYMENT.—The amendment made by subsection (b) shall take effect on April 1, 1994.

SEC. 336. STATE OPTION TO USE RETROSPECTIVE BUDGETING WITHOUT MONTHLY REPORTING.

(a) IN GENERAL.—Section 402(a)(13) (42 U.S.C. 602(a)(13)) is amended—

(1) by striking all that precedes subparagraph (A) and inserting the following:

"(13) provide, at the option of the State and with respect to such category or categories as the State may select and identify in the State plan, that—"; and

(2) in each of subparagraphs (A) and (B), by striking ", in the case of families who are required to report monthly to the State agency pursuant to paragraph (14)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1993, and shall apply to payments under part A of title IV of the Social Security Act for fiscal year 1993 and such payments for succeeding fiscal years.

Subtitle E—JOBS Program

SEC. 341. EXPANSION OF COVERAGE FOR INDIAN TRIBES.

(a) IN GENERAL.—Section 482(i)(2)(A) (42 U.S.C. 682(i)(2)(A)) is amended by striking "members of such Indian tribe receiving aid to families with dependent children" and inserting "Indians receiving aid to families with dependent children who reside on the reservation or within the designated service area".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1994.

SEC. 342. REPORT TO THE CONGRESS WITH RESPECT TO PERFORMANCE STANDARDS IN THE JOBS PROGRAM.

Section 487(a) (42 U.S.C. 687(a)) is amended—

(1) by striking "3" and inserting "4";

(2) in paragraph (1), by inserting "criteria for" after "develop";

(3) in paragraph (2), by striking "for" and inserting "with respect to"; and

(4) in the second sentence, by striking "under this subsection" and inserting "with respect to the program under this part".

Subtitle F—Unemployment Insurance

SEC. 351. EXTENSION OF REPORTING DATE FOR ADVISORY COUNCIL.

In the case of the first Advisory Council on Unemployment Compensation established under section 908 of the Social Security Act (42 U.S.C. 1108), subsection (f) of such section 908 shall be applied—

(1) by substituting "3rd year" for "second year" in paragraph (1), and

(2) by substituting "February 1, 1995" for "February 1, 1994" in paragraph (2).

SEC. 352. TECHNICAL AMENDMENT TO UNEMPLOYMENT TRUST FUND.

Paragraph (1) of section 905(b) (42 U.S.C. 1105(b)) is amended to read as follows:

"(b)(1) Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month), from the employment security administration account to the extended unemployment compensation account established by subsection (a), an amount equal to 20 percent of the amount by which—

"(A) the transfers to such account pursuant to section 901(b)(2) during such month, exceed

"(B) the payments during such month from the employment security administration account pursuant to section 901(b)(3) and (d).

If for any month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.".

Subtitle G—Other Provisions

SEC. 361. EXTENSION OF DEMONSTRATION TO EXPAND JOB OPPORTUNITIES.

(a) IN GENERAL.—Section 505 of the Family Support Act of 1988 (42 U.S.C. 1315 note; 102 Stat. 2404) is amended—

(1) in subsection (e), by striking "3-year period" and inserting "5-year period",

(2) in subsection (f)(2), by striking "January 1, 1993" and inserting "January 1, 1995", and

(3) in subsection (g), by striking "1991, and 1992" and inserting "1991, 1992, 1993, 1994, and 1995".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1993.

SEC. 362. EARLY CHILDHOOD DEVELOPMENT PROJECTS.

Section 501(a) of the Family Support Act of 1988 (42 U.S.C. 1315 note; 102 Stat. 2400) is amended by adding at the end the following:

"(4) For grants to States to conduct demonstration projects under this subsection, there are authorized to be appropriated not to exceed $3,000,000 for each of the fiscal years 1994 through 1998.".

SEC. 363. REALLOCATION OF FUNDS UNDER TITLE XX FOR EMPOWERMENT AND ENTERPRISE GRANTS.

Section 2007 (42 U.S.C. 1397f), as added by section 13761 of OBRA-1993, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection:

"(e) REALLOCATION OF REMAINING FUNDS.—

"(1) REMITTED AMOUNTS.—The amount specified in section 2003(c) for any fiscal year is hereby increased by the total of the amounts remitted during the fiscal year pursuant to subsection (d) of this section.

"(2) AMOUNTS NOT PAID TO THE STATES.—The amount specified in section 2003(c) for fiscal year 1998 is hereby increased by the amount made available for grants under this section that has not been paid to any State by the end of fiscal year 1997.".

SEC. 364. CORRECTIONS RELATED TO THE INCOME SECURITY AND HUMAN RESOURCES PROVISIONS OF THE OBRA-1990.

(a) AMENDMENT RELATED TO SECTION 5035(a)(2).—Section 5035(a)(2) of OBRA-1990 is amended by striking "a semicolon" and inserting

"'; and'".

(b) AMENDMENT RELATED TO SECTION 5040.—Section 1631(n) (42 U.S.C. 1383(n)) is amended by striking "subsection" and inserting "section".

(c) AMENDMENT RELATED TO SECTION 5051(a).—Section 402(a)(14) (42 U.S.C. 602(a)(14)) is amended to read as follows:

"(14) at the option of the State and with respect to such category or categories as the State may select and identify in the plan, provide that—

"(A) the State agency will require each family to which the State provides (or, but for paragraph (22) or (32), would provide) aid to families with dependent children, as a condition to the continued receipt of such aid (or to continuing to be deemed to be a recipient of such aid), to report to the State agency monthly (or less frequently in the case of such categories of recipients as the State may select) on—

"(i) the income of the family, the composition of the family, and other relevant circumstances during the prior month; and

"(ii) the income and resources the family expects to receive, or any changes in circumstances affecting continued eligibility for, or amount of benefits, the family expects to occur, in that month or in future months; and

"(B) in addition to any action that may be appropriate based on other reports or information received by the State agency, the State agency will—

"(i) take prompt action to adjust the amount of assistance payable, as may be appropriate, on the basis of the information contained in the report (or upon the failure of the family to submit a timely report); and

"(ii) give the family an appropriate explanatory notice concurrent with any action taken under clause (i);".

(d) REPEAL OF PROVISION INADVERTENTLY INCLUDED.—Section 5057 of OBRA-1990, and the amendment made by such section, are hereby repealed, and section 1139(d) of the Social Security Act shall be applied and administered as if such section 5057 had never been enacted.

(e) AMENDMENT RELATED TO SECTION 5105(d)(1)(B).—Subparagraphs (E) and (F) of section 1631(a)(2) (42 U.S.C. 1383(a)(2)) are amended to read as follows:

"(E) In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.

"(F) The Secretary shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this paragraph, including—

"(i) the number of cases in which the representative payee was changed;

"(ii) the number of cases discovered where there has been a misuse of funds;

"(iii) how any such cases were dealt with by the Secretary;

"(iv) the final disposition of such cases (including any criminal penalties imposed); and

"(v) such other information as the Secretary determines to be appropriate.".

(f) AMENDMENT RELATED TO SECTION 5105(a)(1)(B).—The second paragraph of section 1631(a) (42 U.S.C. 1383(a)) is amended by striking "(A)(i) Payments" and inserting "(2)(A)(i) Payments".

(g) AMENDMENTS RELATED TO SECTION 5105(b).—Section 1631(a)(2)(C) (42 U.S.C. 1383(a)(2)(C)) is amended—

(1) in clause (i), by striking "to representative" and inserting "to a representative";

(2) by striking clause (ii);

(3) by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively; and

(4) in clause (iv) (as so redesignated), by striking "(iii), and (iv)" and inserting "and (iii)".

(h) AMENDMENTS RELATED TO SECTION 5107(a)(2)(B).—Section 1631(c)(1)(B) (42 U.S.C. 1383(c)(1)(B)) is amended by striking "paragraph (1)" each place such term appears and inserting "subparagraph (A)".

(i) AMENDMENT RELATED TO SECTION 5109(a)(2).—Section 1631 (42 U.S.C. 1383) is amended by redesignating the subsection (n) added by section 5109(a)(2) of OBRA-1990, as subsection (o).

(j) AMENDMENTS RELATED TO SECTION 11115(b)(2).—Section 11115(b)(2) of OBRA-1990 is amended—

(1) in subparagraph (A), by striking "paragraph (8)" and inserting "paragraph (9)";

(2) in subparagraph (B), by striking "paragraph (9)" and inserting "paragraph (10)"; and

(3) in subparagraph (C), by redesignating the new paragraph added thereby as paragraph (11).

(k) EFFECTIVE DATE.—Each amendment made by this section shall take effect as if included in the provision of OBRA-1990 to which the amendment relates at the time such provision became law.

SEC. 365. TECHNICAL CORRECTIONS RELATED TO THE HUMAN RESOURCE AND INCOME SECURITY PROVISIONS OF THE OBRA-1989.

(a) AMENDMENT RELATING TO SECTION 8004(a).—Section 408(m)(2)(A) (42 U.S.C. 608(m)(2)(A)) is amended by striking "a fiscal" and inserting "the fiscal".

(b) AMENDMENT RELATING TO SECTION 8006(a).—Section 473(a)(6)(B) (42 U.S.C. 673(a)(6)(B)) is amended by striking "474(a)(3)(B)" and inserting "474(a)(3)(C)".

(c) AMENDMENT RELATING TO SECTION 8007(b)(3).—Subparagraph (D) of section 475(5) (42 U.S.C. 675(5)(D)) is amended by moving such subparagraph 2 ems to the right so that the left margin of such subparagraph is aligned with the left margin of subparagraph (C) of such section.

(d) EFFECTIVE DATE.—Each amendment made by this section shall take effect as if the amendment had been included in the provision of OBRA-1989 to which the amendment relates, at the time the provision became law.

SEC. 366. TECHNICAL CORRECTION RELATED TO THE HUMAN RESOURCE AND INCOME SECURITY PROVISIONS OF THE OBRA-1993.

(a) AMENDMENT RELATING TO SECTION 13713(a).—Section 473(a)(6)(B) (42 U.S.C. 673(a)(6)(B)) is amended by striking "474(a)(3)(C)" and inserting "474(a)(3)(E)".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if the amendment had been included in the provision of OBRA-1993 to which the amendment relates, at the time the provision became law.

SEC. 367. ELIMINATION OF OBSOLETE PROVISIONS RELATING TO TREATMENT OF THE EARNED INCOME TAX CREDIT.

(a) TREATMENT OF EITC AS EARNED INCOME.—Section 1612(a)(1) (42 U.S.C. 1382a(a)(1)) is amended by striking subparagraph (C) and by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively.

(b) ADJUSTMENT OF BENEFITS DUE TO TREATMENT OF EITC AS EARNED INCOME.—Section 1631(b) (42 U.S.C. 1383(b)) is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

SEC. 368. REDESIGNATION OF CERTAIN PROVISIONS.

Section 1631(e)(6) (42 U.S.C. 1383(e)(6)) is amended by redesignating subparagraphs (1) and (2) as subparagraphs (A) and (B), respectively.

SECTION-BY-SECTION ANALYSIS

TITLE I—MEDICARE PROVISIONS

Subtitle A—Provisions relating to part A

Sec. 101. Provisions relating to adjustments to standardized amounts for wages and wage-related costs

(a) Wage Index and Medicare Geographic Classification Review Board (MGCRB)—The Secretary would be authorized, but not required, to take occupational mix into account in the development of MGCRB guidelines for reclassification to the extent the Secretary determines is appropriate. Clarifies that if labor markets are no longer based on Metropolitan Statistical Areas, the method of calculating the wage index for reclassification would not apply and the MGCRB guidelines may be revised.

(b) Labor and Non-Labor Portions of Standardized Amounts—The Secretary would set the labor and non-labor portion of each standardized amount equal to the national average beginning in fiscal year 1995.

Effective date: Effective upon the date of enactment.

Sec. 102. Essential Access Community Hospital (EACH) Amendments

(a) Authorization for appropriations would be continued at current levels ($10 million a year for grants to States and $15 million a year for grants to hospitals) through fiscal year 1995. The length of stay requirement for State designation of rural primary care hospitals would be modified to provide that no patient may be admitted unless the attending physician certifies that the patient may reasonably be expected to be discharged or transferred within 72 hours, and that the facility may not provide surgery or other services requiring general anesthesia (other than procedures approved for performance on an ambulatory basis) unless the attending physician certifies that the risk of transfer to another facility for the services outweighs the benefits. The Secretary would be authorized to terminate the designation of a rural primary care hospital whose average length of stay (not counting longer stays during periods of inclement weather or other emergencies) exceeds 72 hours. The General Accounting Office would report to the Congress, within 2 years after enactment, on the application and impact of the changes in length-of-stay requirements.

(b) The number of States eligible for grants under the EACH program would be increased from seven to nine. The Committee anticipates that the Secretary will designate additional States on the basis of applications received in response to the initial solicitation and the evaluation performed by the Department in response to those applications.

(c) The Secretary would be authorized to designate an urban hospital as an essential access community hospital if the hospital otherwise meets the criteria for designation. However, urban hospitals would not be eligible for a change in Medicare payment as a result of the designation.

(d) A State receiving a grant under the EACH program could designate a facility in an adjoining State as an essential access community hospital or a rural primary care hospital if the facility is otherwise eligible for designation. The Secretary would be authorized to designate a facility as an essential access community hospital or a rural primary care hospital if the facility is not in a State receiving an EACH program grant and if the facility is a member of a rural health network of a State receiving a grant.

(e) The requirements for written policies and procedures and the supervision of those procedures in rural primary care hospitals would be amended to clarify that the requirements are similar to those for hospitals. Specifically, rural primary care hospitals would be required to appoint a physician, as defined in section 1861(r)(1) of the Social Security Act, to supervise the implementation of the policies.

(f) A rural primary care hospital that had a swing-bed agreement at the time of designation would be authorized to provide swing-bed services up to the hospital's licensed acute care bed capacity at the time of conversion, minus the number of inpatient beds retained by the rural primary care hospital. The Committee recognizes that the statutory criteria regarding designation of a rural primary care hospital are based on the expectation that the RPCH will have a limited number of inpatient beds, and expects that in cases where the RPCH has a substantially greater number of patients, the Secretary may impose additional standards with respect to staffing or other requirements comparable to those applicable to skilled nursing facilities.

(g) The applicability of the inpatient hospital deductible and coinsurance to stays in rural primary care hospitals would be clarified.

(h) The Secretary would be required to implement a prospective payment system for outpatient RPCH services by January 1, 1996. The election of payment alternatives would continue until the Secretary implemented the new system. Payment for outpatient rural primary care hospital services would be made without regard to lesser-of-cost-or-charges limits. Minor drafting errors would be corrected.

Effective date: Effective upon the date of enactment.

Sec. 103. Provisions related to Rural Health Transition Grant Program

Appropriations for the rural health transition grant program would be authorized at $30 million a year for fiscal years 1993 through 1997. Rural Primary Care Hospitals would be eligible to receive grants.

Effective date: Effective upon the date of enactment.

Sec. 104. Psychology services in hospitals

In a State in which such supervision is authorized by State law, the care of hospital inpatients receiving qualified psychologist services could be supervised by a clinical psychologist with respect to such services to the extent permitted by State law.

Effective date: Effective upon the date of enactment.

Sec. 105. Medicare-Dependent, Small Rural Hospital and Sole Community Hospitals

(a) Medicare Dependent, Small Rural Hospitals—A technical correction to clarify that payment amounts are determined by using a 36-month cost reporting period. The target amount definitions needed to make the calculations for Medicare Dependent Hospitals would be extended to September 30, 1994.

(b) Sole Community Hospitals—A technical correction to clarify that the update factor for these hospitals would be based on cost reporting periods for fiscal year 1994.

Effective date: Effective upon the date of enactment.

Sec. 106. Skilled Nursing Facilities

(a) Wage Index—The Secretary would be required to begin collecting the data necessary to compute a wage index based on wages specific to skilled nursing facilities within one year of enactment. The Prospective Payment Assessment Commission would be required to study and report by March 1, 1994 on the impact of applying routine per-diem cost limits on a regional basis.

(b) A technical correction to utilization review and minor conforming amendments to correspond to Medicare Nursing Home Reform.

Effective date: Effective upon the date of enactment.

Sec. 107. Notification of Availability of Hospice Benefit

Hospital conditions of participation with respect to discharge planning would be modified to require an evaluation of a patient's likely need for appropriate post-hospital services, including hospice services, and the availability of those services.

Effective date: The provision would apply to services furnished on or after the first day of the first month beginning more than one year after the date of enactment.

Sec. 108. Clarifying Expertise of Individuals to Serve on Prospective Payment Assessment Commission

Expertise of individuals to serve on the Prospective Payment Commission would be clarified to provide for expertise in health facility management, reimbursement of health facilities or other providers of services which reflect the scope of the Commission's responsibilities.

Effective date: Effective upon the date of enactment.

Sec. 109. Authority for Budget Neutral Adjustments for Changes in Payment Accounts for Transfer Cases

The Secretary currently defines transfers and determines payment amounts for transfer cases in the Prospective Payment System. The Secretary would be authorized to make future revisions to transfer payment policy in a budget neutral manner.

Effective date: Effective upon the date of enactment.

Sec. 110. Clarification of DRG Payment Window; Miscellaneous and Technical Corrections

A Diagnosis Related Group (DRG) window provision of 24 hours would apply to hospitals that are not paid on the basis of DRGs. Other minor technical corrections would be made to Part A.

Effective date: Effective upon the date of enactment.

Provisions relating to part B

Sec. 121. Development and Implementation of Resource-Based Methodology for Practice Expenses

The Secretary would be required to develop a methodology for implementing in 1997 a resource-based system for determining practice expense relative value units for each physicians' service. In developing the methodology, the Secretary would consider the staff, equipment and supplies used in the provision of various medical and surgical services in various settings. The Secretary would be required to report to Congress on the methodology by June 30, 1995. The existing payment methodology would be repealed when the new payment methodology takes effect—for services provided in years beginning with 1997.

Effective date: Effective upon enactment.

Sec. 122. Geographic Cost of Practice Index Refinements

(a) Use of More Recent Data.—The Secretary would review and revise the geographic practice cost index (GPCI) by not later than January 1, 1995 using the most recent data on practice expenses, malpractice expenses and physicians' work effort. The Secretary would consult with appropriate representatives of physicians in reviewing geographic adjustment factors and indices. The Secretary is required to study and report to the Congress on the construction of the index by April 1, 1994.

The Secretary would conduct a study and, within one year of enactment, report to the Congress on: (1) the data necessary to review and revise the GPCI indices, including the shares allocated to physicians' work effort, practice expenses (other than malpractice expenses) and malpractice expenses; the weights assigned to the input components of such shares; and the index values assigned to such components; (2) any limitations on the availability of data necessary to review and revise the indices at least every 3 years; (3) ways to address such limitations, with attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every three years; and (4) the costs of developing more accurate and timely data sources.

Effective date: Effective upon the date of enactment.

Sec. 123. Extra-Billing Limits

(a) Limitations on Beneficiary Liability—Non-participating physicians and nonparticipating suppliers would be prohibited from billing or collecting from any person an actual charge in excess of the Medicare limiting charge. No person would be liable for payment of any amount billed in excess of the limiting charge. Physicians, suppliers and other persons who bill or collect amounts exceeding the limiting charge would be required to: (1) refund the full amount collected in excess of the limiting charge; (2) reduce the outstanding balance owed for other items and services furnished to the individual by the amount of the charge exceeding the limiting charge and refund any amount in excess of the outstanding balance; or (3) in the case of where the excess charges have not been collected by the physician, reduce the actual charge billed for the service to the amount approved by Medicare.

Carriers would be required to notify a physician, supplier, or other person within 30 days if the physician has billed in excess of the limiting charge. The physician, supplier or other person would be required to refund or credit excess charges within 30 days after the date the physician, supplier, or other person is notified by the carrier of the violation.

A physician, supplier or other person who (1) knowingly and willfully bills or collects amounts in excess of the limiting charge on a repeated basis; or (2) fails to comply with the refund requirements would be subject to sanctions in accordance with Section 1842(j) of the Social Security Act.

(b) Clarification of Mandatory Assignment Rules for Certain Practitioners—Specified that physicians' assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse-midwives, clinical social workers and clinical psychologists could only bill for services on an assignment-related basis and that no person is liable for amounts billed in violation of the assignment-related basis. The Secretary could impose sanctions under Section 1842(j) of the Social Security Act on a practitioner who knowingly and willfully bills in violation of this requirement.

(c) Information Regarding Limiting Charges—

(1) Carriers would be required to provide limiting charge information on the Explanation of Medicare Benefits form after the submission of an unassigned claim which exceeds the limiting charge, and to include on such forms information relating to the beneficiary's right to a refund of any excess amounts collected.

(2) Carriers would be required to screen 100 percent of unassigned claims submitted by non-participating physicians, suppliers or other persons prior to making payment to determine whether the amount billed exceeds the limiting charge.

(d) The Secretary would report to the Congress annually on the extent to which annual charges exceeded limiting charges, the number and types of services involved, and the average amount of excess charges.

(e) The provision makes miscellaneous and technical corrections.

Effective date: Except as otherwise provided, subsections (a) and (e) would be effective on enactment, except that subsection (a) does not apply to services of a non-participating supplier or other person furnished before January 1, 1994; subsections (b) and (c)(2) would apply to services furnished, or contracts, on or after January 1, 1994; and subsection (c)(1) would apply to forms provided on or after July 1, 1994. Subsection (d) applies to reports for years beginning with 1994.

Sec. 124. Relative Value for Pediatric Services

The Secretary would fully develop and refine by October 1, 1994 the relative values for the full range of pediatric services. The Secretary would conduct a study of the relative values for pediatric and other services to determine whether there are significant variations in the resources used in providing similar services to different populations. In conducting the study, the Secretary would consult with appropriate organizations representing pediatricians and other physicians, and submit a report to the Congress by July 1, 1995.

Effective date: Effective upon the date of enactment.

Sec. 125. Administration of Claims Relating to Physician Services

The Secretary would be prohibited from imposing any fees related to the filing of claims for physicians' services, for claims errors or denials, for administrative appeals, for obtaining unique identifier numbers, or for responding to inquires concerning the status of pending claims.

The Secretary would be permitted to recognize substitute billing arrangements between two physicians. In order to be recognized, such substitute billing arrangements would be required either to be informal, reciprocal, coverage agreements or per diem or other fee-for-time agreements. The duration of such agreements would be limited to 60 continuous days, and claims for services provided pursuant to such agreements would be required to include the unique identifying number of both physicians. These requirements would be effective for services provided under such arrangements in the first month beginning more than 60 days after the enactment of this Act.

Effective date: Effective upon the date of enactment.

Sec. 126. Miscellaneous and Technical Corrections

(a) Overvalued Procedures—Some procedures would be deleted from the list of exempted services and errors in the names of other services would be corrected. The procedures that would be deleted from the list of exempted services are: lobectomy; enterectomy; colectomy; cholecystectomy; and sacral laminectomy.

(b) Radiology Services—The conversion factors below the maximum reduction amount would not be permitted to be increased. The provision makes other technical changes to OBRA 90.

(c) Anesthesia Services—The conversion factors below the maximum reduction amount would not be permitted to increase. The provision makes other technical changes to OBRA 90.

(d) Assistants at Surgery—The application of the extra-billing limits to physicians serving as assistants at surgery would be clarified.

(e) Technical Components of Diagnostic Services—The limits on payment for the technical component of diagnostic services would not apply to services whose payments were reduced under the OBRA 89 overvalued procedure list.

(f) Statewide Fee Schedules—The OBRA 90 requirement for agreement from members of Congress would be eliminated, and Nebraska and Oklahoma would be statewide localities beginning in 1991.

(g) Study of Aggregation Rule for Claims of Similar Physician Services—The date that the study must be submitted to the Congress would be changed from December 31, 1992 to December 31, 1993.

A number of technical and drafting errors contained in OBRA 90 would be made through minor and conforming amendments.

Effective date: Effective as if included in OBRA 90.

PART II—DURABLE MEDICAL EQUIPMENT

Sec. 131. Certification of Suppliers

(a) (1) Certification of Suppliers—Suppliers of medical equipment and supplies (durable medical equipment, prosthetic devices, orthotics and prosthetics, surgical dressings and such other items as the Secretary may determine and home dialysis supplies and equipment and immunosuppressive drugs) will not be reimbursed for these items unless they have a Medicare supplier number. A supplier may not obtain a supplier number unless the supplier meets uniform national standards prescribed by the Secretary. By January 1, 1996, the Secretary would revise the standards.

The standards would require suppliers to (1) comply with all applicable State and Federal licensure and regulatory requirements; (2) maintain a physical facility and inventory on an appropriate site; (3) have proof of appropriate liability insurance; (4) meet other requirements established by the Secretary. In addition, the requirement for suppliers to obtain a supplier number does not apply to medical equipment and supplies furnished as incident to a physician's service. The Secretary is prohibited from delegating the responsibility to determine whether the supplier meets the standards necessary to obtain a supplier number.

The Secretary would be prohibited from issuing more than one billing number to any supplier, unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

(2) Standardized Certificates of Medical Necessity—Not later than May 1, 1994, the Secretary would develop one or more standardized certificates of medical necessity for medical equipment and supplies if a certificate of medical necessity is required by the Secretary.

The OBRA 90 provision prohibiting suppliers of medical equipment and supplies from distributing completed or partially completed certificates of medical necessity would be modified. Effective May 1, 1994, suppliers may distribute to physicians or beneficiaries a certificate of medical necessity which contains no more than the following information: (1) an identification of the supplier and the beneficiary to whom such equipment or supplies are furnished; (2) a description of the equipment and supplies; (3) any product code identifying the medical equipment or supplies; (4) any other administrative information (other than information relating to the beneficiary's medical condition) identified by the Secretary. If a supplier distributes a certificate containing any of this information, the supplier must also list on the certificate of medical necessity the fee schedule payment amount and the supplier's charge prior to distribution to the physician for completion. Suppliers who violate the provisions would be subject to a civil money penalty in an amount not to exceed $1,000 for each certificate of medical necessity so distributed.

(3) Uniform National Coverage and Utilization Review Requirements—Not later than January 1, 1996, the Secretary would, in consultation with representatives of DME suppliers, beneficiaries, and medical specialty organizations, develop and establish uniform national coverage and utilization review criteria for 100 items of medical equipment and supplies. The criteria would be part of the instructions available to suppliers, and no further publication, including Federal Register publication, would be required.

The Secretary would select an item for development of national coverage and utilization review criteria if: (1) the item is frequently rented or purchased by beneficiaries; (2) the item is frequently subject to a determination that it is not medically necessary; or (3) a wide variation in the coverage or utilization review criteria applied to the item exists among carriers (as of the date of enactment). The Secretary would be required annually to review and determine whether items not on the list should be subject to uniform national coverage and utilization review criteria and to subject them to these criteria if necessary.

(b) Use of covered items by disabled beneficiaries—The Secretary would study and report to the Congress not later than one year following enactment on the effects of the methodology for determining payments for durable medical equipment items and supplies on the ability of persons entitled to disability benefits to obtain equipment, including customized items.

(c) Variations in Quality of Equipment—The Secretary would study and report to the Congress not later than one year after enactment describing prosthetic devices or orthotics and prosthetics that do not require individualized or custom fitting and adjustment. The Secretary would make recommendations regarding an appropriate method for determining the amount of payment for such items that do not require individualized or custom fitting and adjustment.

Effective date: Effective upon enactment, except as otherwise indicated.

Sec. 132. Prohibition Against Carrier Forum Shopping

The Secretary would be authorized to designate in a regulation one carrier for one or more entire regions to process all claims within the region for covered durable medical equipment, prosthetic devices, and orthotics and prosthetics. Unless permitted by the Secretary, suppliers would be prohibited from submitting claims to any carrier other than the carrier having jurisdiction over the geographic area that includes the permanent residence of the patient to whom the item is furnished.

Effective date: Effective for items and services furnished on or after May 1, 1994.

Sec. 133. Restrictions on Certain Marketing and Sales Activities

Suppliers would be prohibited from making unsolicited telephone contacts with Medicare beneficiaries, unless the individual gives written permission to the supplier, or the supplier has furnished the individual with a covered item within the preceding 15 months. Medicare would not pay for items provided subsequent to a prohibited telephone contact. The Secretary would be required to exclude from programs under the Social Security Act suppliers who knowingly make prohibited telephone contacts to such an extent that the supplier's conduct establishes a pattern of contacts in violation of the prohibition. Beneficiaries would not be liable for the cost of items provided as a result of prohibited telephone contacts, and the supplier would be required to refund any amounts collected on a timely basis or be subject to certain sanctions.

Effective date: Effective 60 days after enactment.

Sec. 134. Kickback Clarification

The exemption from anti-kickback penalties for employees in bona-fide employment relationships with providers of Medicare-covered services and supplies would not include the tasks of transmitting assignment rights of Medicare beneficiaries to suppliers of covered items, or performing warehousing or stock inventory functions.

Effective date: Effective 60 days after enactment.

Sec. 135. Beneficiary Liability for Non-covered Services

Medicare beneficiaries would not be financially liable for covered items furnished by a supplier on an unassigned basis if: (1) the supplier does not meet Medicare standards for suppliers of medical equipment and supplies; (2) Medicare has denied payment for the item in advance; or (3) the carrier has determined that the item is not medically necessary.

Effective date: Effective for services provided on or after October 1, 1994.

Sec. 136. Adjustments for Inherent Reasonableness

The Secretary would determine whether the payment amounts for decubitus care mattresses, transcutaneous electrical nerve stimulators (TENS), and any other items considered appropriate by the Secretary are inherently reasonable and would adjust payments for these items if the amounts are not inherently reasonable. Adjustments for these items would be based on the prices and costs applicable at the time the item is furnished.

Effective date: Effective on the date of enactment.

Sec. 137. Miscellaneous and Technical Corrections

(a) Updates to Payment Amounts—The OBRA 90 error would be corrected by specifying that the 1991 and 1992 update is the CPI-U minus one percentage point.

(b) Potentially Overused items and Advance Determinations of Coverage—The Secretary would be able to develop a list of potentially overused items for which advance determinations of coverage may be made if the Secretary determines, based on prior payment experience, that these items are frequently subject to unnecessary utilization throughout a carrier's entire service area or portion of such area. The Secretary could also develop a list of suppliers for which advance determinations of coverage may be made because the Secretary has found that a substantial number of claims have been denied on the basis that they are not medically necessary; or the Secretary has identified a pattern of overutilization resulting from the business practices of the supplier.

A carrier would be required to determine in advance of delivery of an item whether payment for the item may not be made because the item not covered, is included on the list of potentially overused items developed by the Secretary or the item is furnished by a supplier included on the list of potentially abusive suppliers developed by the Secretary.

(c) Study in Variations in Durable medical Equipment Supplier Costs—The Secretary would be required to collect data on supplier costs for DME and analyze them to determine costs attributable to service and product components and the extent to which they vary by type of equipment and geographic region. The HCFA administrator would be required to submit a report and recommendations for a geographic cost adjustment index for DME supplies and an analysis of the impact of such an index on Medicare payments.

(d) Oxygen Retesting—The OBRA 90 language regarding the arterial blood gas values would be amended to require retesting when a beneficiary's initial value is at or above 56.

In addition, the proposal includes certain technical corrections to Sections 4152 and 4153 of OBRA 90.

Effective date: Effective as if included in OBRA 90.

PART III—OTHER ITEMS AND SERVICES

Sec. 141. Ambulatory Surgical Center Services

(a) Payment Amounts—The update for ambulatory surgery services would be established, beginning with fiscal year 1995, at the CPI-U, as estimated by the Secretary, for the twelve-month period ending with the midpoint of the year involved. The Secretary would be required to conduct a survey, based on a representative sample of procedures and facilities, taken not later than January 1, 1995 and updated every five years thereafter, of the actual audited costs of ambulatory surgery facilities. The survey results would be used in establishing payment rates. The Secretary would be required to consult with appropriate trade and professional organizations in updating the list of procedures that can be performed in ambulatory surgery centers.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses—The Secretary would be required, within one year after the date of enactment, to develop and implement a process for reviewing reimbursement for new technology intraocular lenses (IOLs). In order to be considered a new technology IOL, the device would have to be approved by the FDA. The Secretary would also be required to consider specific circumstances in determining whether to adjust the payment amount for new technology IOLs. The provision also would specify the administrative procedures for reviewing and approving new technology IOLs.

(c) Technical Corrections—The provision makes technical and miscellaneous corrections to OBRA 90 regarding ambulatory surgery centers.

Effective date: Subsection (a) would be effective upon enactment. Any adjustments of payment amounts under Subsection (b) would become effective not later than 30 days after the date on which the notice of adjustment is published. Subsection (c) would be effective as if included in OBRA 90.

Sec. 142. Study of Medicare Coverage of Patient Care Costs Associated with Clinical Trials of New Cancer Therapies

The Secretary would study the costs of patient care for Medicare beneficiaries enrolled in clinical trials of new cancer therapies (where the protocol for the trial has been approved by the National Cancer Institute or meets similar scientific and ethical standards, including approval by an Institutional Review Board) and report to Congress within two years.

Effective date: Effective upon enactment.

Sec. 143. Study of Annual Cap on Amount of Medicare Payments for Outpatient Physical Therapy and Occupational Therapy Services

The Secretary would study the appropriateness of continuing the annual limitation on the amount of payment for outpatient services of independently practicing physical and occupational therapists and report to Congress by January 1, 1995.

Effective date: Effective upon enactment.

Sec. 144. Payment of Part B Premium Late Enrollment Penalties by States

The Secretary would be authorized to enter into agreements with States for purposes of allowing States to make premium payments for penalties associated with late enrollment under Part B. States would be permitted to make quarterly payments on a lump-sum basis.

Effective date: Effective upon enactment.

Sec. 145. Treatment of Inpatients and Provision of Diagnostic X-Ray Services by Rural Health Clinics and Federally Qualified Health Centers

The provision clarifies that rural health clinics (RHCs) and federally qualified health centers (FQHCs) are not limited to providing services solely to outpatients. Physician services provided to Medicare patients of a RHC or a FQHC would be covered (and paid for through the all-inclusive rate) when such patients are inpatients in a covered medical facility. In addition, diagnostic X-ray services would be covered as qualified RHC and FQHC services.

Effective date: Applies to services furnished on or after January 1, 1994.

Sec. 146. Application of Mammography Certification Requirements

Any mammography facility providing covered screening or diagnostic mammograms to Medicare beneficiaries would be required to hold a certificate (or provisional certificate) issued in accordance with the provisions of the Public Health Service Act.

Effective date: Applies to mammography furnished by a facility on and after the first date that the certificate requirements of section 354(b) of the Public Health Service Act apply to such mammography conducted by such facilities.

Sec. 147. Coverage of Services of Speech-Language Pathologists and Audiologists

The term "speech pathologist" would be changed to "speech-language pathologist" where it appears, except that this amendment would not change the definition of services covered in any setting. A statutory definition of speech-language pathologist and audiologists would be established, consistent with current coverage guidelines.

Effective date: Effective on January 1, 1994.

Sec. 148. Miscellaneous and Technical Corrections

(a) Revision of Information on Part B Claims—The claim form would be required to include the unique physician identification number (UPIN), and the requirement that claims indicate whether the referring physician is an investor in the entity would be repealed.

(b) Consultation for Social Workers—Clinical social workers would be required to consult with a patient's attending physician in the same manner as clinical psychologists.

(c) Reports on Hospital Outpatient Payment—The requirement for the preparation of reports contained in Section 6137 of OBRA 89 and Section 1135(d)(6) of the Social Security Act would be repealed.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments—Outpatient payment limits would apply to diagnostic services. The physician component of the limit would be based on the resource based relative value scale.

(e) Payments to Nurse Practitioners in Rural Areas—The services of nurse practitioners and clinical nurse specialists would be added to the list of services excluded from the definition of inpatient hospital services.

(f) Other Technical and Conforming Amendments—The special enrollment period would be modified to allow individuals who have employer group health coverage to enroll in Part B at any time they are enrolled

in the group health plan, rather than after they leave the plan. If an individual enrolls in Part B while enrolled in the group health plan or in the first month after leaving the plan, Medicare coverage would begin on the first day of the month in which the individual enrolled (or, at he option of the individual) on the first day of any of the following three months).

Various technical and conforming amendments to Sections 4154 through 4164 of OBRA 90 would be made.

Effective date: Except as otherwise provided, effective as if included in OBRA 90.

Subtitle C—Provisions relating to parts A and B

Sec. 151. Medicare Secondary Payer Reforms

(a)(1) The Administrator of HCFA would be required to mail questionnaires to individuals, before such individuals become entitled to benefits under part A or enroll in part B, to determine whether the individual is covered under a primary plan. In addition, the provision would clarify that payments would not be denied for covered services solely on the grounds that a beneficiary's questionnaire fails to note the existence of other health plan coverage.

(2) Providers and suppliers would be required to complete information on claim forms regarding potential coverage under other plans.

Civil monetary penalties would be established for an entity that knowingly, willfully and repeatedly fails to complete a claim form with accurate information.

(b)(1) Contractors would be required to submit a report to the Secretary annually regarding steps taken to recover mistaken payments.

(2) The Secretary would be required to evaluate the performance of contractors in identifying cases in which Medicare is secondary payer.

(3) The provision would clarify the Secretary's authority to charge interest if payment is not received within 60 days after notice is given.

Effective date: The requirements under subsection (a) regarding improved identification of Medicare secondary payer situations would be effective upon the date of enactment, with the exception of subparagraph (2)(A), affecting screening requirements for providers and suppliers, which would apply to items and services punished on or after January 1, 1994. The requirements specified under (b)(1) and (b)(2) would apply to contracts with fiscal intermediaries and carriers for years beginning in 1994. Paragraph (b)(3) affecting the deadline for reimbursement by primary plans would apply to payments for items and services furnished on or after the date of enactment.

Sec. 152. Physician Ownership and Referral

The provision would clarify reporting requirements by specifying that physicians would be required to report investment and compensation arrangements (in addition to ownership) of designated health services. The provision would also clarify the list of designated health services subject to self-referral prohibitions by deleting the term "other diagnostic services" following radiology services and substituting "magnetic resonance imaging, computerized axial tomography scans and ultrasound services." The provision would clarify the application of effective dates with respect to some exceptions.

Effective date: The provisions regarding reporting requirements and the list of designated health services would apply to referrals made on or after January 1, 1995. The provision clarifying effective dates would apply as if included in the enactment of OBRA 93.

Sec. 153. Definition of FMGEMS Examination for Payment of Direct Graduate Medical Education

This provision allows the Secretary to recognize the successor test to the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS).

Sec. 154. Qualified Medicare Beneficiary Outreach

The Secretary would be required to establish and implement a method for obtaining information from individuals when they become entitled to benefits under part A or enroll in part B that may be used to determine eligibility for benefits under the QMB program.

Effective date: Effective upon the date of enactment.

Sec. 155. Hospital Agreements With Organ Procurement Organizations

Hospitals and rural primary care hospitals would be required to enter into an agreement with the organ procurement organization (OPO) designated by the Secretary for the geographic area in which the hospital or rural primary care hospital is located unless the hospital or rural primary care hospital has obtained a waiver from the Secretary. The Secretary would be required to grant a waiver if the Secretary determines: (1) that the waiver is expected to increase organ donation; and (2) that the waiver will assure equitable treatment of patients referred for transplants within the service area served by such hospital's designated OPO and within the service area served by the OPO with which the hospital or rural primary care hospital enters into an agreement under the waiver.

In making a decision whether to grant a waiver, the Secretary would be authorized to consider such factors as (1) cost effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to a change made on or after December 28, 1992 in the definitions for metropolitan statistical areas (as established by the Office on Management and Budget); and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO, except that the factors the Secretary may consider in determining whether to grant a waiver are not to be construed to permit the Secretary to grant a waiver that is not expected to increase organ donation or assure equitable treatment to patients served by both OPOs affected by a waiver.

Hospitals or rural primary care hospitals seeking a waiver would be required to submit an application to the Secretary containing information the Secretary deems appropriate. The Secretary would be required to publish a public notice of any waiver application within 30 days of receiving an application and would be required to offer interested parties the opportunity to submit written comments during a 60-day period following publication of the notice.

Hospitals and rural primary care hospitals that currently have agreements with organ procurement organizations other than the OPO designated by the Secretary for that geographic area and which desire to continue such agreements must submit a waiver application to the Secretary by January 1, 1995. Hospitals and rural primary care hospitals may continue such agreements pending the Secretary's decision on the waiver.

The Office of Technology Assessment (OTA) would be required, pursuant to the approval of its Technology Assessment Board, to study the efficacy and fairness of requiring a hospital or rural primary care hospital to enter into an agreement with the OPO designated by the Secretary for the service area in which the hospital or rural primary care hospital is located and the impact of this requirement on the efficacy and fairness of organ procurement and distribution. The OTA would be required to submit its report to Congress not later than two years following enactment of this act. The report is to include findings and the implications of these findings on policies affecting organ procurement and distribution.

Effective date: Applies to hospitals and primary care hospitals participating in Medicare and Medicaid beginning January 1, 1995.

Sec. 156. Peer Review Organizations

The requirement that PROs precertify selected surgical procedures would be repealed. Clarifies the notification of state licensing boards by PROs.

Effective date: Effective upon the date of enactment.

Sec. 157. Health Maintenance Organizations

The Secretary would be required to revise the payment methodology for HMOs for contract years beginning with 1994 to take into account variation in costs associated with beneficiaries for whom Medicare is the secondary payer. The Secretary would be further required to submit a proposal to Congress by October 1, 1994 that provides for revisions to the payment methodology for contract years beginning with 1996. In proposing the revisions, the Secretary would be required to consider (1) the difference in costs associated with beneficiaries with different health status and (2) the effects of using alternative geographic classifications. The Comptroller General would be required to report to the Congress on the proposed revisions no later than three months after the Secretary's proposal was submitted.

Effective date: Effective upon the date of enactment.

Sec. 158. Home Health Agencies

(a) Wage Index—The most recent hospital wage data are to be used in constructing the home health wage index for cost reporting periods beginning July 1, 1996.

(b) Waiver of Liability Extension—The limits on liability for claims disallowed by a lack of medical necessity are extended through December 31, 1995 to be comparable to Skilled Nursing Facilities (SNFs) and Hospice Services.

Sec. 159. Permanent Extension of Authority to Contract with Fiscal Intermediaries and Carriers on Other than a Cost Basis

Limited authority provided in section 2326 of the Deficit Reduction Act of 1984 for the Secretary to enter into agreements with fiscal intermediaries and carriers on other than a cost basis would be made permanent.

Sec. 160. Miscellaneous and Technical Corrections

(a) Survey and Certification Requirements—The provision would clarify that user fees imposed under the Clinical Laboratory Improvement Act are not subject to the general ban on user fees.

Minor and technical errors relating to a home dialysis demonstration program authorized under OBRA 90 and Medicare secondary payer requirements in OBRA 90 would be corrected. In addition, the provision would correct minor and technical errors in Sections 4201 through 4207 of OBRA 90.

(b) Other Technical Amendments—A number of minor technical amendments relating to Parts A and B of the Medicare program would be made.

(c) Technical Correction To Revisions of Coverage for Immunosuppressive Drug Therapy—The provision would modify the phase-in schedule enacted in OBRA 93 for beneficiaries who receive immunosuppressive drugs following on organ transplant. Individuals who receive a transplant prior to 1994 would be eligible for immunosuppressive drug coverage within 12 months following the date of the transplant. Individuals who receive a transplant during 1994 would be eligible for such drug coverage for 487 days after the date of the transplant.

Effective date: Effective on the date of enactment.

Subtitle D—Medicare supplemental insurance policies

Sec. 171. Standards for Medicare Supplemental Insurance Policies

Preventing Duplication—This provision would continue the current law prohibition on the sale of duplicative health insurance policies subject to the conditions described in the following paragraph. The provision would clarify that it is unlawful to sell or issue to an individual entitled to benefits under Part A or enrolled under Part B: (i) a health insurance policy with knowledge that such policy duplicates health benefits to which such an individual is otherwise entitled under Medicare or Medicaid; (ii) a Medigap policy with knowledge that the individual is entitled to benefits under another Medigap policy; or, (iii) a health insurance policy, other than a Medigap policy, with knowledge that such policy duplicates health benefits to which the individual is otherwise entitled.

Penalties would not apply, however, to the sale or issuance of a policy or plan that duplicates health benefits under Medicare or Medicaid or a policy or plan that duplicates health benefits to which the individual is otherwise entitled if, under the policy or plan, all benefits are fully payable directly to or on behalf of the individual without regard to other health benefits coverage of the individual. In addition, for the penalty to be waived in the case of the sale or issuance of a policy or plan that duplicates benefits under Medicare or Medicaid, the application for the policy must include a statement, prominently displayed, disclosing the extent to which benefits payable under the policy or plan duplicate Medicare benefits.

Policies that would be subject to the disclosure requirement include, but are not limited to: specific disease policies, hospital confinement indemnity policies, long term care policies, policies that provide fixed indemnity benefits for nursing home care, nursing services in the home or for home care, and policies that provide fixed indemnity benefits for any medical or surgical service or treatment.

The new provisions pertaining to non-duplication would not alter the current law prohibition on the sale of a Medigap policy to a Medicaid beneficiary, except for policies containing prescription drug coverage to Qualified Medicare Beneficiaries, and there is no prohibition on sale of policies to low-income Medicare beneficiaries for whom Medicaid pays only Part B premiums.

Loss Ratios and Refund of Premiums—The provision would clarify that the OBRA '90 loss ratio standard would apply to policies sold or renewed after the effective date of the provision. With respect to a refund or credit for policies issued prior to the effective date of the provision, the calculation would be based on aggregate benefits provided and premiums collected for all policies issued by an insurer in a state and based only on aggregate benefits provided and premiums collected under the policies after the effective date. Other minor and technical drafting errors would be corrected.

Pre-existing Condition Limitations—The provision would clarify the intent of OBRA'90 that, in the case of individuals enrolled in part B prior to age 65, Medigap insurers are required to offer coverage, regardless of medical history, for a six-month period when the individual reaches age 65. The provision would also clarify that insurers are prohibited from discriminating in the price of policies for such an individual, based upon the medical or health status of the policyholder.

Other Miscellaneous and Technical Corrections—The provision would clarify that certain language should be deleted from section 12(C) of the National Association of Insurance Commissioners Model Regulations pertaining to sales commissions. The effective dates for various provisions would be modified. Other minor and technical drafting errors would be corrected.

Effective date: Effective upon the date of enactment.

(c) Effective for contract years beginning on or after April 1, 1994, whether or not there are regulations promulgated by such date for information required to be reported before that date.

(d) Effective for contract years beginning on or after April 1, 1994.

(e) Effective for contract years beginning on or after January 1, 1995.

(f) Effective for contract years beginning on or after January 1, 1994.

Sec. 202–204. Medicaid managed care waiver extensions

Extends waivers of the enrollment mix requirement for certain managed care organizations in the District of Columbia, Tennessee, and Wisconsin through December 1995.

Effective date: Effective upon enactment, except for Chartered Health Plan of the District of Columbia, whose waiver extension is effective retroactively back to October 1992.

Sec. 205. Extension of Minnesota prepaid Medicaid demonstration project

Extends the demonstration period through 1998 and provides authority and conditions for the imposition of premium charges for participants.

Effective date: Effective upon enactment.

Sec. 211. Prior institutionalization requirement for home and community based waiver programs

Eliminates the prior institutionalization requirement for habilitation services provided under a home and community based waiver program.

Effective date: Effective for services provided on or after January 1, 1994.

Sec. 212. Third party liability

Relieves states of the obligation to pursue payment from third parties for the costs of Medicaid case management services

TITLE II—MEDICAID PROVISIONS

Sec. 201. Medicaid managed care antifraud provisions

(a) Prohibiting Affiliations with Individuals Debarred by Federal Agencies—Prohibits Medicaid managed care entities from having as a director, officer, partner, or persons with beneficial ownership greater than five percent of the organization's equity if the person has been debarred or suspended from government contracting pursuant to the Federal Acquisition Regulations, or if the person is an affiliate of such debarred person. Prohibits Medicaid managed care entities from having business affiliations (employment, consulting, or other agreement) for the provision of goods and services that are significant and material to the managed care organization if the person has been debarred or suspended from government contracting pursuant to the Federal Acquisition Regulations.

(b) Requirement for State Conflict of Interest Safeguards in Medicaid Risk Contracting—Requires a state to certify to the Secretary that it has safeguards against conflict of interest between state employees responsible for Medicaid managed care contracting and such contractors.

(c) Disclosure of Financial Information—Requires Medicaid managed care contractors to report financial information specified by the Secretary and the states related to fiscal solvency. A managed care contractor must also agree to make available certain specified information to enrollees upon request.

(d) Prohibiting Marketing Fraud—Requires the Secretary to promulgate regulations on marketing for enrollment and re-enrollment purposes to provide adequate client information.

(e) Requiring Adequate Provision Against the Risk of Insolvency—Requires the Secretary to promulgate regulations concerning solvency standards for Medicaid managed care contractors.

(f) Requiring Report on Net Earnings and Additional Benefits—Medicaid managed care providers will be required to provide an audited financial statement and a report on any benefits provided to Medicaid clients in excess of what was required under the Medicaid contract. These will be annual requirements and the required information will be provided to the State and the Secretary for each contract year.

Effective date:

(a) Effective for Medicaid managed care contracts entered into or renewed on or after January 1, 1994.

(b) Effective July 1, 1994, whether or not there are regulations when it is not cost-effective in the aggregate to do so.

Effective date: Effective January 1, 1994.

Sec. 223. Changes to certain waiver formula

Makes technical changes to the 1915(d) waiver formula.

Effective date: Effective as if included in OBRA 87.

Sec. 221. Presumptive eligibility

Modifies current law to permit state eligibility workers to make presumptive eligibility determinations for pregnant women under certain conditions if the state uses all other presumptive providers specified in statute.

Effective date: Effective January 1, 1994.

Sec. 222. Medicaid disallowances

Allows states to make a showing of certain factors that the Secretary and the Departmental Appeals Board shall consider in determining the amount of a Medicaid disallowance.

Effective date: Effective for disallowance made on or after enactment.

Sec. 223. Medicaid intermediate sanctions for kickback violations

(a) Penalty for Kickbacks—In addition to criminal penalties for kickback violations under Title XI, provides for intermediate sanctions (civil monetary penalties) for violation of the antikickback rules by state health care program providers.

(b) Authorization to Impose Civil Monetary Penalties—Allows the Secretary of HHS to impose civil monetary penalties if the Attorney General does not initiate action in federal District Court within one year of the date on which the Secretary presents to the Attorney General for consideration, a case concerning a state health care program provider.

Effective date:

(a) Effective upon enactment.

(b) Effective for cases presented to the Attorney General on or after enactment.

Sec. 224. Medicaid tax and donation provision

Makes technical change to 1991 law to prohibit double taxation of Health Maintenance Organizations.

Effective date: Effective January 1, 1994 except where state law changes are required.

Sec. 225. Application of mammography certification rules

Requires a Medicaid facility to be certified (provisionally or otherwise) under Sec. 354 of the Public Health Service Act in order to receive payment for mammography screening.

Effective date: Effective concurrent with Sec. 354 except in the case of states requiring state enabling legislation in which case the provision is effective the first day of the first calendar quarter beginning after the close of the first regular session of the state legislature that begins after the date of enactment.

Sec. 226. Nursing home reform changes

(a) Nurse Aide Training in Nursing Facilities Subject to an Extended Facility Survey—Modifies the conditions under which a nursing facility would be prohibited from conducting nurse aide training when it is subject to an extended survey of compliance with Medicaid conditions of participation.

(b) Requirements for Drug Regimen Review Consultants—Allows the Secretary to consider the availability of qualified consultants in determining whether a nursing facility has met requirements for review of resident drug therapies.

(c) Resident's Personal Funds—Raises the minimum amount of funds which a nursing facility must place in a separate, interest bearing account from $50 to $100.

(d) Due Process Protections for Nurse Aides—Prohibits including any undocumented allegations against a nurse aide in a state registry that pertain to resident abuse or neglect, or misappropriation of resident property.

(e) Written Notice of Allegations—Clarifies that a state must make written notification to a nurse aide of allegations of abuse or misappropriation of property, including a written notice of an opportunity for a hearing to rebut allegations and requires that the State make a written finding concerning the allegation(s).

Effective date:

(a) Effective as if included in OBRA 87.

(b) Effective as if included in OBRA 87.

(c) Effective January 1, 1994.

(d) Effective January 1, 1994.

Sec. 227. Maternal and child health block grant

Sets the MCHBG authorization level at $705 million.

Effective date: Effective upon enactment.

Sec. 242. Corrections to OBRA 90 drug rebate program.

Makes various technical corrections and clarifications to the Medicaid drug rebate provisions of OBRA 90.

Effective date: Effective as if included in OBRA 90

Sec. 241, 243–263. Corrections to OBRA 90

Makes various technical corrections and clarifications to OBRA 90 provisions.

Effective date: Effective as if included in OBRA 90

Sec. 271–273. Corrections to OBRA 93

Makes various technical corrections and clarifications to OBRA 93 provisions concerning personal care services and emergency services to aliens.

Effective date: Effective as if included in OBRA 93

Sec. 274. Corrections to eligibility provisions of OBRA 93

Makes technical corrections to the asset transfer and trusts provisions of OBRA 93, by including a delayed effective date for states requiring enabling legislation to implement the new rules on asset transfers (to parallel similar provision for implementation of trust rules) and clarifying that when assets are returned to an individual, the period of ineligibility is proportional to the amount of assets that were not returned.

Effective date: Effective as if included in OBRA 93.

Sec. 275. Corrections relating to Medicaid estate recoveries

Makes technical corrections to the estate recovery provisions.

Effective date: Effective as if included in OBRA 93.

Secs. 276–277. Corrections relating to third party liability and medical child support

Makes technical changes to both provisions and clarifies that a state must assure the Secretary that it has laws requiring insurers to recognize the rights of assignment of both the state Medicaid agency and the rights of assignment of any other state Medicaid agency.

Effective date: Effective as if included in OBRA 93.

Sec. 278. Physician referral

Makes a technical correction to Sec. 13624 concerning physician referrals.

Effective date: Effective as if included in OBRA 93.

Sec. 279. Vaccine purchase provisions

(a) Interim Replacement Program—Conforms provision to current practice by clarifying that vaccine shipping costs for the Medicaid replacement program are not included in the vaccine price under the price cap.

(b) Vaccine Purchase—Clarifies that excise taxes are not included under the price cap.

Effective date: Both (a) and (b) are effective as if included in OBRA 93.

Sec. 280. OBRA 1990 demonstration project

Makes technical correction to OBRA 90 Medicaid demonstration projects.

Effective date: Effective as if included in OBRA 90.

TITLE III—INCOME SECURITY, HUMAN RESOURCES, AND RELATED PROGRAMS

Subtitle A—Child welfare services, foster care, and adoption assistance

Sec. 301. Required protections for foster children

Present law: In order to receive its share of the title IV–B allocation in excess of $141 million, each State is required under section 427(a) of title IV–B to conduct an inventory of children in foster care; and to implement and operate, to the satisfaction of the Secretary, a tracking system for children in foster care, a case review system for children in foster care, and a service program designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption or legal guardianship.

Further, under section 427(b), if the appropriations for the title IV–B program equal $325 million for two consecutive years, a State does not receive its title IV–B allotment in excess of its share of the 1979 funding level unless it has met all the section 427 requirements outlined above, and in addition, has implemented a preplacement preventive services program designed to help children remain with their families. Finally, States that have elected to provide Federally-supplemented foster care payments for voluntarily-placed foster children are required to implement all section 427 protections, including the preplacement preventive services program.

Committee amendment: Beginning for fiscal year 1996, the provision would repeal section 427 of title IV–B and require that the State plan for basic title IV–B funds provide for the foster care protections currently outlined in section 427.

In addition, within 12 months after enactment, States would be required to review State policies and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of such children), and, within 24 months after enactment, to implement such policies and procedures as the State determines necessary to enable permanent decisions to be made expeditiously regarding the placement of such children.

Also, funds withheld or recovered from a State based on its failure to provide the above protections could not be reallotted among other States.

Effective date: October 1, 1995.

Sec. 302. Conformity reviews

Present law: (a) Title IV–B.—Section 427 of title IV–B contains certain protections for foster children with which States must comply to be eligible to receive incentive funds. The Department of Health and Human Services (HHS) has developed a review system to determine State compliance with these protections.

States self-certify their compliance with section 427 requirements, and are then reviewed by HHS to determine actual compliance. To verify compliance with section 427, HHS conducts a two-stage review. The first stage is an administrative review to determine whether States have developed policies and procedures necessary to implement section 427 protections for all children in foster care under the responsibility of the State. The second stage is a case record survey to determine if these policies are being implemented throughout the State.

An initial review is conducted for the first year in which the State self-certifies its eligibility. The case record survey in the initial review must confirm that section 427 protections are provided for at least 66 percent of the children in foster care. If a State meets the initial review requirements, a subsequent review is conducted for the following fiscal year, which must find that section 427 protections are provided for at least 80 percent of the children. States which meet the subsequent review will be reviewed for the third fiscal year following the fiscal year for which the subsequent review was conducted. This triennial review must find section 427 protections are being provided for at least 90 percent of the children in foster care. If a State does not meet the requirements for any year under review, the review is conducted each succeeding fiscal year until eligibility is established for title IV–B incentive funds, or until the State withdraws it self-certification.

(b) Title IV–E.—Section 471(a)(13) of title IV–E requires, as a component of State plans

under title IV-E, that States arrange for periodic and independent audits of their activities under titles IV-B and IV-E, to be conducted at least once every three years. In addition, section 471(b) allows the Secretary of HHS to withhold or reduce payments to States upon finding that a State plan no longer complies with State plan requirements, or, in the State's administration of the plan, there is substantial failure to comply with its provisions. The Secretary must first provide reasonable notice and opportunity for a hearing.

Committee amendment: The Secretary, in consultation with State agencies administering programs under parts B and E of title IV, is required to publish regulations not later than January 1, 1995, to be effective on and after October 1, 1995, to determine whether State programs are in conformity with State plan requirements under parts B and E, the implementing regulations promulgated by the Secretary, and the relevant approved State plans.

The regulations would have to:

(a) specify the review timetable, which would have to require an initial review of each State program; a timely review of a State program which has been found not to be in substantial conformity; and could permit less frequent reviews of State programs found in substantial conformity;

(b) specify the requirements subject to review, and the criteria for measuring conformity and whether there is a substantial failure to conform;

(c) specify the method to be used to determine the amount of any withholding of Federal matching funds for failure to conform, under which: (i) no withholding could occur unless the program fails substantially to conform, (ii) no withholding could occur for a failure resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary, and (iii) the withholding would be related to the extent of the failure to conform;

(d) require the Secretary, with respect to any State found to have failed substantially to conform, (i) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to conform, (ii) to make technical assistance available to the State to the extent feasible to enable the State to develop and implement the corrective action plan, (iii) to suspend any withholding while the corrective action plan is in effect, and (iv) to rescind any withholding if the failure to conform is ended by successful completion of the corrective action plan.

The regulation must: (i) require the Secretary to give notice to a State not later than 10 days after the determination that the State's program is not in conformity, stating the basis for the determination and the amount of Federal matching funds (if any) to be withheld from the State, (ii) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days of receipt of the notice (or, if later, after failure to continue or to complete a corrective action plan), and (iii) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, by appeal to the appropriate Federal district court within 60 days after receiving notice of the Board's decision.

Effective date: Upon enactment.

Sec. 303. States required to report on measures taken to comply with measures taken to comply with the Indian Child Welfare Act

Present law: The Indian Child Welfare Act (P.L. 95-608) includes a number of State requirements relating to the foster care or adoptive placement, or termination of parental rights, of Indian children. There is currently no statutory link between the Indian Child Welfare Act and the child welfare services programs under the Social Security Act.

Committee amendment: A State plan for title IV-B must contain a description, developed after consultation with tribal organizations in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act.

Effective date: October 1, 1994.

Sec. 304. Child welfare traineeships

Present law: Title IV-B authorizes such sums as may be necessary to enable the Secretary to make grants to public or private nonprofit institutions of higher education for training personnel for work in the field of child welfare.

Committee amendment: The Secretary could award grants to institutions of higher learning for child welfare traineeships with stipends only where the grant application provides assurances that:

(a) students given stipends would have to agree to participate in training at a child welfare agency and either to serve in a public or private child welfare agency for a period equal to the period of training, or to repay the cost (or an appropriately pro-rated part) of the stipend, plus interest and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary). Exceptions to repayment may be prescribed by the Secretary in regulations;

(b) the institution would enter into agreements with child welfare agencies for on-site training of stipend recipients, accept applications from individuals already employed in the field of child welfare services, and track, for a period of three years after completion of a course of study, the employment record of each former student.

Effective date: Would apply to grants awarded on or after October 1, 1994.

Sec. 305(a). "Most appropriate setting" requirement

Present law: Current law requires each foster child to have a case plan designed to achieve placement in the "least restrictive (most family-like) setting available."

Committee amendment: The current law amendment will be modified to require placement in "the least restrictive (most family-like) and most appropriate setting available."

Effective date: October 1, 1994.

Sec. 305(b). Dispositional hearing

Present law: In order to receive certain incentive funds under title IV-B, States are required to implement and operate, in addition to other activities, a case review system for each child receiving foster care under the supervision of the State. Section 475 of title IV-E defines "case review system" to mean a procedure for assuring that: (a) each child has a case plan meeting certain specified requirements; (b) the status of each child is reviewed at least once every six months by a court or by administrative review; and (c) each child in foster care is guaranteed a dispositional hearing in a family or juvenile court or another court of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 18 months after the original placement in foster care (and periodically thereafter during a continuation of foster care).

The dispositional hearing determines: (a) the future status of the child, including but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should be continued in foster care on a permanent or long-term basis; and (b) for a child who is age 16 or older, the services needed to assist the child to make the transition to independent living.

Committee amendment: The initial dispositional hearing would continue to have to take place no later than 18 months after the original placement in foster care, but subsequent hearings would have to take place not less frequently than every 12 months thereafter (rather than "periodically").

Effective date: October 1, 1994.

Sec. 306. Elimination of foster care ceilings and authority to transfer unused foster care funds to child welfare services programs.

Present law: The foster care ceilings and the authority to transfer foster care funds to child welfare services expired September 30, 1992.

Prior to the expiration, the law imposed mandatory State-by-State ceilings on foster care funds if the Federal appropriation for child welfare services reached a specified trigger level. In the absence of a mandatory foster care ceiling, States could elect to operate under a voluntary ceiling. A State could use one of several methods to calculate the most favorable ceiling. The mandatory ceiling did not go into effect after 1981.

Under a voluntary ceiling, a State could transfer a portion of its unused foster care funds to its child welfare services program. However, the amount transferred, together with the State's IV-B allocation, could not exceed what the State would have received if the child welfare services funding had triggered the ceiling. It is estimated that the amount transferred by States equaled less than $1 million for fiscal year 1991, and no funds were transferred for fiscal year 1992.

Committee amendment: Repeals the ceiling and transfer provisions.

Effective date: October 1, 1993.

Sec. 307. Demonstration projects

Present law: No similar provision.

Committee amendment: The provision would authorize the Secretary to permit up to 10 States to conduct demonstration projects which the Secretary finds likely to promote the objectives of titles IV-B or IV-E. The Secretary could waive State conformity with any requirement of titles IV-B and IV-E, which, if applied, would prevent the State from carrying out the demonstration or from effectively achieving the purpose of the demonstration, except the Secretary could not waive: (i) the foster care child protections of title IV-B, (ii) the requirement for the reporting of data on adoption and foster care (section 479), and (iii) any provision of title IV-E which, if waived, would impair the entitlement of any qualified child or family to benefits under title IV-E.

For purposes of Federal payments, expenditures under an approved demonstration could be treated, at State option, as expenditures under title IV-B or under title IV-E.

Demonstrations would be limited to five years. A State seeking to conduct a demonstration project must submit an application to the Secretary, in the form the Secretary requires, which includes:

(a) a description of the proposed project, the geographic area in which the project would be conducted, the children or families to be served, and the services to be provided (which must provide, where appropriate, for random assignment of children and families

to groups served under the demonstration and to control groups);

(b) a statement of the period during which the project would be conducted;

(c) a discussion of the benefits that are expected from the project;

(d) an estimate of the costs or savings of the project;

(e) a statement of program requirements for which waivers would be needed to permit conduct of the demonstration;

(f) a description of the proposed evaluation design; and

(g) such additional information as the Secretary may require

The State must obtain an evaluation by an independent contractor of the effectiveness of the demonstration project, using an evaluation design approved by the Secretary which provides for: (i) comparison of methods of service delivery under the demonstration, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management; (ii) comparison of outcomes for children and families (and groups of children and families) under the demonstration, and such outcomes under the State plan or plans, for purposes of assessing the effectiveness of the demonstration in achieving its goals; and (iii) any other information that the Secretary requires. The State must provide interim and final evaluation reports to the Secretary at such times and in such manner as the Secretary may require.

The Secretary could not authorize a State to conduct a demonstration unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the demonstration over its approved term (or some portion thereof or other period the Secretary may find appropriate) will not exceed the amount of such funds that would be spent under the State programs under part B and E of title IV in the State if the demonstration were not conducted.

Effective date: Upon enactment.

Sec. 308. Placement accountability for child placed out of State

Present law: Title IV-E does not require the States to implement any specialized reviews or procedures in the case of children who are placed in foster care outside the State.

Under title IV-E, States are required to provide for the development of a case plan for each child receiving foster care maintenance payments, which must meet certain requirements.

Committee amendment: The case plan for a child placed in a foster family home or child care institution a substantial distance from his home, or in a different State, would have to include a declaration of the reasons why the placement is in the best interests of the child. Also, in the case of a child placed in foster care in a different State, the case plan for the child must require that, periodically, but not less frequently than every 12 months, an agency caseworker of either State visit the child in the foster home or institution, and submit a report on the visit to the State agency of the child's home State. In addition, the dispositional hearing for a child placed in foster care in a different State must determine whether the out-of-State placement continues to be appropriate and in the best interests of the child.

The statutorily-mandated data collection system relating to adoption and foster care (section 479(b)(2) of title IV-E) must provide information on the number and characteristics of children placed in foster care outside the State.

Effective date: October 1, 1994.

Section 309. Payments of State Claims for Foster Care and Adoption Assistance

Present law. No provision. However, Federal regulations provide a timetable for the treatment of State claims for foster care and adoption assistance, and other programs.

Committee amendment: The provision would codify the regulations. Title IV-E would provide that upon receipt of a State claim for expenditures, the Secretary must within 60 days allow, disallow, or defer the claim. Within 15 days after a decision to defer a claim, the Secretary must notify the State of the reasons for the deferral action and of the additional information which the Secretary believes is necessary to determine the allowability of the claim. Within 90 days after receiving all information (in readily reviewable form) necessary to determine the allowability of the claim, the Secretary must either: (1) disallow the claim, if able to complete the review and make a determination that the claim is not allowable, or (2) in any other case, allow the claim subject, as necessary, to later disallowance upon completion of the review, and subject, in any case, to later disallowance on the basis of findings of an audit or financial management review.

Effective date: Upon enactment.

Sec. 310. Effect of failure to carry out State plan (Suter v. Artist M.)

Present law: The "State plan" titles of the Social Security Act include aid to Families with Dependent Children (AFDC) (Title IV-A), Child Welfare Services (Title IV-B), Child Support and Establishment of Paternity (Title IV-D), Foster Care and Adoption Assistance (Title IV-E), Job Opportunities and Basic Skills Training (JOBS) (Title IV-F), and Medicaid (Title XIX). Under these titles, as a precondition of funding, each participating State is required to develop a written "State plan" that meets certain statutory requirements in order to be approved by the Secretary of the Department of Health and Human Services (HHS).

The adoption Assistance and Child Welfare Act of 1980 amended the Social Security Act to require States to provide in their title IV-E plans that, in the case of each child, reasonable efforts will be made (a) prior to the placement of the child in foster care, to prevent or eliminate the need for removal of the child from his home, and (b) to make it possible for the child to return to his home (Sec. 471(a) (15)).

On March 15, 1992, the U.S. Supreme Court held in *Suter v. Artist M.*, that the "reasonable efforts" clause does not confer a federally-enforceable right on its beneficiaries, nor does it create an implied cause of action on their behalf. In rendering its opinion, the Court also stated that although section 417(a) does place a requirement on the States, that requirement "only goes so far as to ensure that the States have a plan approved by the Secretary which contains the 16 listed features."

Committee amendment: The provision would amend title XI of the Social Security Act by adding a new section that reads as follows:

"In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is to intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in *Suter v. Artist M.* that section 471(a) (15) of the Act is not enforceable in a private right of action."

The intent of the provision is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to the decision in *Suter v. Artist M.*, while also making clear that there is no intent to overturn or reject the determination in Suter that the reasonable efforts clause of title IV-E does not provide a basis for a private right of action.

Effective date: The amendment would apply to actions pending on the date of enactment and to actions brought on or after the date of enactment.

Subtitle B—Child support enforcement

Sec. 311. Reports to credit bureaus on persons delinquent in child support payments

Present law: The Child Support Enforcement Amendments of 1984 required State child support enforcement agencies to provide information regarding the amount of overdue support owed by an obligor residing in the State to any consumer reporting agency, as defined under the Fair Credit Reporting Act, upon the request of that agency, if the arrearage exceeds $1,000. If the amount of overdue support is less than $1,000, the State may choose whether or not to report the delinquency.

The information may not be made available to the consumer reporting agency until notice of the proposed action has been sent to the obligor, the obligor has been given a reasonable opportunity to contest the accuracy of the information and all procedural due process requirements of the State have been fulfilled. Also, a fee, not to exceed the cost of furnishing the information, may be imposed on the requesting agency by the State.

The Ted Weiss Child Support Enforcement Act of 1992 amended the Fair Credit Reporting Act to require consumer reporting agencies to include in any consumer report information on child support delinquencies provided by or verified by State or local child support enforcement agencies which predates the report by no more than seven years.

Committee Amendment: The provision would require State child support enforcement agencies to report periodically the names of obligors who are at least 2 months delinquent in the payment of support and the amount of the delinquency to consumer reporting agencies. The present law requirement that the amount of the delinquency must exceed $1,000, and the requirement for notice and due process, would be retained. The provision relating to payment of a fee by the credit reporting agencies would be repealed.

Information could not be made available to a consumer reporting agency if: (1) the State determined that the consumer reporting agency lacked capacity to make systematic and timely use of the information; and (2) it did not furnish evidence satisfactory to the State that it conforms to the definition of a "consumer reporting agency" under Federal law.

Effective date: October 1, 1995.

Sec. 312. Technical Amendments to Provision on State Paternity Establishment Programs

Present law: P.L. 103-66, the Omnibus Budget Reconciliation Act of 1993, established new paternity establishment percentages which States must meet in operating their child support enforcement programs. The bill also made technical changes in how the paternity establishment percentage is calculated.

Committee amendment: The amendment corrects drafting errors in P.L. 103-66 that specify how the paternity establishment percentage is calculated.

Effective date: Upon enactment.

Sec. 313. Agreement to assist in locating missing children under the Parent Locator Service

Present law: The Department of Health and Human Services operates a Parent Locator Service to obtain and transmit information as to the whereabouts of any absent parent when such information is to be used to locate the parent for the purpose of enforcing support obligations owed by the parent.

Committee amendment: The Secretary of HHS would be required to enter into an agreement with the Attorney General under which the services of the Parent Locator Service shall be made available to the Office of Juvenile Justice and Delinquency Prevention, upon its request for the purpose of locating any parent or child. The Parent Locator Service may charge no fee for these services.

Effective date: October 1, 1994.

Subtitle C—Supplemental security income

Sec. 321. Definition of disability for children under age 18 applied to all individuals under age 18

Present law: Present law provides a definition of disability applicable to children. Under this definition, a child's physical or mental impairments are evaluated according to criteria that have been developed especially for children. The SSI program defines a child as someone who is neither married nor the head of a household, and who is:

(1) under age 18, or (2) under age 22 and a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful work. As a result, the special evaluation criteria developed to evaluate childhood disabilities may not be used for some SSI applicants who are under age 18.

Committee amendment: The provision would extend the SSI childhood definition of disability to any person under age 18.

Effective date: Applies to determinations made on or after the date of enactment.

Sec. 322. Commission on childhood disability

Present law: No provision.

Committee amendment: The Secretary is directed to appoint a Commission on the Evaluation of Disability in Children, consisting of from 9 to 15 members including recognized experts in relevant fields of medicine; recognized experts in psychology, education and rehabilitation, law, social insurance (including health insurance), or administration of disability programs; and other experts determined appropriate by the Secretary.

The Commission will conduct a study, in consultation with the National Academy of Sciences, on the effects of the current Supplemental Security Income definition of disability, as it applies to children under the age of 18 and their receipt of services, including the advantages and disadvantages of using an alternative definition. The Commission will summarize the results of this study in a report due to the Committees on Finance and Ways and Means, due no later than September 1, 1995.

Effective date: Upon enactment.

Sec. 323. Exemption from pass-along requirements

Present law: Section 1618 of the Social Security Act requires that States making supplementary payments to Supplemental Security Income recipients "pass along" cost-of-living increases in the Federal benefit. There are two options for the States in meeting the "pass-along" requirement: (1) the aggregate spending level option, under which States may make supplementary payments in the 12-month period beginning with the month of the Federal benefit increase that are no less, in the aggregate, than were made in the previous 12-month period; or (2), the individual payment level option, under which a State may maintain the supplementary payment levels that were in effect for categories of individual recipients in March 1983.

Committee amendment: For the purpose of determining under the "aggregate spending level option," whether a State's expenditures for supplementary payments during a 12-month period are not less than its expenditures for such payments in the preceding 12-month period, retroactive SSI payments made to children qualifying under the *Zebley* court decision may, pursuant to a State's one-time option, be excluded from the computation of the State's expenditures.

Effective date: Upon before and after the date of enactment.

Subtitle D—Aid to families with dependent children

Sec. 331. Simplification of income and eligibility verification system

Present law: Section 1137(d) of the Social Security Act specifies that States must require, as a condition of eligibility for the AFDC, Medicaid, unemployment compensation, and food stamp programs, a declaration in writing by each adult individual (or, in the case of a child, by another individual on the child's behalf), stating whether the individual is a citizen or national of the U.S., and if not, that the individual is in a satisfactory immigration status. Under AFDC policy, a newborn child may not be eligible until a declaration had been signed.

Legislation enacted in 1990 overrode the provision of sec. 1137 with respect to the food stamp program. Under that legislation, one adult member of the food stamp household is required to sign, under penalty of perjury, a written declaration as to the citizenship or satisfactory immigration status of all household members, and by regulation, a declaration for newborn children is allowed no later than the next redetermination of eligibility.

Committee amendment: With respect to the programs specified in section 1137(b) (listed above), this provision would allow one adult member of a family or household to sign a declaration, under penalty of perjury, on behalf of other adults in the household. In addition, in the case of a newborn child, it would permit an adult to sign a declaration on behalf of the child no later than the date of the next redetermination of the eligibility of the family or household.

Effective date: Upon enactment.

Sec. 332. Measurement and reporting of welfare receipt

Present law: National and State information on AFDC receipt and the characteristics and financial circumstances of AFDC recipients is compiled annually by the Department of Health and Human Services (DHHS), using data from the National Integrated Quality Control Review System (NIQCS).

Committee amendment: The provision would require the Secretary of Health and Human Services, in consultation with the Secretary of Agriculture, to develop (1) indicators of the rate at which, and (to the extent feasible) the degree to which, families depend on income from welfare programs; and the duration of welfare participation; and (2) predictors of welfare receipt. Not later than 2 years after the date of enactment, the Secretaries of HHS and Agriculture would be required to submit an interim report with conclusions to designated committees of Congress.

A temporary Advisory Board on Welfare Indicators would be created, composed of 12 Members with equal number appointed by the House of Representatives, the Senate and the President. The Board would be composed of experts in the field of welfare research and welfare statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues. The Board will provide advice and recommendations to the Secretary on the development of the indicators described above, and on the development and presentation of the annual report on welfare receipt.

The provision would require the Secretary to prepare an annual report on welfare receipt, that provides information on the indicators described above, trends in the indicators, predictors of welfare receipt, the causes of welfare receipt, patterns of multiple program receipt, and such other information as the Secretary deems relevant; and such recommendations for legislation, which shall not include proposals to reduce eligibility levels or impose barriers to program access, as the Secretary may determine to be necessary or desirable to reduce (1) the rate at which, and the degree to which, families depend on income from welfare programs; and (2) the duration of welfare receipt. The report shall include analysis of families and individuals receiving assistance under means-tested programs, including AFDC, food stamps, SSI, and State or local general assistance. The first report would be due no later than 3 years after the date of enactment.

Effective date: Upon enactment.

Sec. 333. New hope demonstration project

Present law: No provision.

Committee amendment: The provision would allow the Secretary to provide for a demonstration project for a qualified program to be conducted in Milwaukee, Wisconsin. A qualified program is defined as a program operated by the New Hope Project, Inc., a private not-for-profit corporation in Milwaukee, which offers low-income residents employment, wage supplements, child care, health care, and counseling and training for job retention or advancement.

The provision would require the Secretary to make payments for no more than 20 quarters, in an amount equal to the aggregate amount that would otherwise have been payable to the State with respect to participants in the program, in the absence of the program, for cash assistance and child care under Title IV-A, and for administrative expenses for these programs. Payment to the State under this provision may not include the cost of evaluating the effects of the program.

The operator of the program must provide in the application that the following conditions will be met: (1) the operator will implement an evaluation plan designed to provide reliable information on the impact and implementation of the program, that will include adequately sized groups of participants

and control groups assigned at random; (2) the operator will develop and implement a plan addressing the services and assistance to be provided by the program, the timing and determination of payments from the Secretary to the operator of the program, and the roles and responsibilities of the Secretary and the operator with respect to meeting specified requirements; (3) the operator will specify a reliable methodology for determining expenditures to be paid to the operator by the Secretary, with assistance from the Secretary in calculating the amount; and (4) the operator will issue an interim and final report on the results of the evaluation of the program at such times as required by the Secretary.

Effective date: The provision would take effect on the first day of the first calendar quarter that begins after the date of enactment.

Sec. 334. Delay in requirement that outlying areas operate an AFDC-UP Program

Present law: The Family Support Act of 1988 included a requirement that any State AFDC plan make AFDC available to needy dependent children of unemployed parents (for at least 6 out of 12 months). The amendment was effective for the States on October 1, 1990, and for Puerto Rico, Guam, the Virgin Islands and American Samoa on October 1, 1992. (American Samoa, however, does not participate in the AFDC program.) Unlike States, these outlying areas are subject to limitations on payments for AFDC and related programs.

Committee amendment: This provision would delay the requirement for implementation of the Unemployed Parent program in Puerto Rico, Guam, the Virgin Islands, and American Samoa until such time as the limitations on Federal matching payments to these jurisdictions for purposes of making AFDC maintenance payments are repealed.

Effective date: Upon enactment.

Sec. 335. New York State Child Support Demonstration Program

Present law: New York State currently operates a Child Assistance Program (CAP) demonstration under Federal waiver authority enacted under the Omnibus Budget Reconciliation Act of 1987. The demonstration is testing an alternative to AFDC for families with child support orders and monthly earnings. The five year waiver is effective through March 31, 1994.

Committee amendment: The provision would extend the CAP demonstration project for an additional five years, to April 1, 1999.

Effective date: Upon enactment.

Sec. 336. State option to use retrospective budgeting without monthly reporting

Present law: Under current law, States may choose whether or not to use retrospective budgeting for AFDC (i.e., determining AFDC benefits based on the family's income and circumstances in a prior month, rather than the current month). However, States are allowed to use retrospective budgeting only in cases where the family is required to report monthly on income, resources, family composition, and other relevant information. States may require families to report monthly but choose not to apply retrospective budgeting to those families.

Committee amendment: States would decide, with respect to categories of families, whether or not to use monthly reporting, retrospective budgeting, or a combination of the two. Thus, unlike present law, States could use retrospective budgeting for a category of families that is not required to report monthly.

Effective date: October 1, 1993.

Subtitle E—Jobs Program

Sec. 341. Expansion of coverage for Indian tribes

Present law: The Family Support Act of 1988 provides Federal funding for JOBS programs administered by Indian tribes whose applications for funding have been approved by the Secretary of HHS. The formula for funding each program is based on the number of adult members of the Indian tribe that receive AFDC. This formula excludes those Indians who live on the Indian reservation but belong to another tribe.

Committee amendment: All Indians who live on the reservation, regardless of whether they are members of the tribe, are to be counted in determining the tribe's allocation of funds.

Effective date: October 1, 1994.

Sec. 342. Report to the Congress with respect to performance standards in the JOBS Program

Present law: Section 487 of the Social Security Act requires the Secretary, not later than 3 years after the effective date of the Family Support Act of 1988, to develop performance standards for the Job Opportunities and Basic Skills (JOBS) program and to submit her recommendations for performance standards to appropriate committees of Congress. The recommendations must include recommendations with respect to specific measurements of outcomes, may not be based solely on levels of activity or participation, and must take into account what States reasonably can be expected to achieve.

Committee amendment: The provision would delay the required date for recommendations by one year. Also, the Secretary would be required to develop criteria for the performance standards, rather than performance standards.

Effective date: Upon enactment.

Subtitle F—Unemployment insurance

Sec. 351. Extension of reporting date for Advisory Council on Unemployment Compensation

Present law: The Emergency Unemployment Compensation Act of 1991 authorized a quadrennial advisory council on unemployment compensation to examine the purpose, goals, and functioning of the unemployment compensation system, and to make recommendations for improvement. Its first report is due by February 1, 1994.

Committee amendment: The provision would delay the Council's report for one year to February 1, 1995.

Effective date: Upon enactment.

Sec. 352. Technical amendment to unemployment trust fund

Present law: Title IX of the Social Security Act allocates Federal unemployment tax revenue into three accounts of the unemployment trust fund: (1) the Employment Security Administration Account (ESAA); (2) the Extended Unemployment Compensation Account (EUCA); and (3) the Federal Unemployment Account (FUA).

Committee amendment: The provision would strike language that was inadvertently included in the Emergency Unemployment Compensation Amendments of 1992 (P.L. 102-318), that relates to the transfer of funds from the State administration account to the extended unemployment compensation account, within the Federal Unemployment Trust Fund.

Effective date: Upon enactment.

Subtitle G—Other provisions

Sec. 361. Extension of demonstration to expand job opportunities

Present law: The Family Support Act of 1988 established a demonstration project under which not fewer than 5 nor more than 10 nonprofit organizations were authorized to conduct demonstration projects to create employment opportunities for certain low-income individuals. The amount authorized for these grants is $6.5 million for each of fiscal years 1990, 1991, 1992, and 1993.

Committee amendment: The demonstration project would be continued for 2 additional years, through fiscal year 1995.

Effective date: October 1, 1993.

Sec. 362. Extension of authority for early childhood development projects

Present law: The Family Support Act of 1988 authorized up to 10 demonstration projects to test and evaluate the effect of early childhood development programs on families receiving AFDC and participating in Job Opportunities and Basic Skills Training (JOBS), and authorized $6 million for each of fiscal years 1990, 1991, and 1992 for these and two other categories of projects. No funds were appropriated for the early childhood development projects for fiscal years 1990 through 1993.

Committee amendment: The provision would extend the authorization for early childhood development projects through fiscal year 1998. It authorizes to be appropriated for these projects up to $3 million for each of fiscal years 1994 through 1998.

Effective date: Upon enactment.

Sec. 363. Reallocation of funds under the Title XX Empowerment Zone and Enterprise Community Grant Program

Present law: The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) provided $1 billion under title XX of the Social Security Act for grants to States for social services to be provided in qualified empowerment zones and enterprise communities. With respect to each qualified empowerment zone, the Secretary will make one grant to each State in which the zone lies on the date of its designation, and a second grant on the first day of the first fiscal year that begins after the designation. With respect to each enterprise community, the Secretary will make one grant to each State in which the community lies, on the date of its designation.

The amount of each grant to a State for an empowerment zone will equal $50 million if the zone is designated in an urban area and $20 million if the zone is designated in a rural area. The amount of each grant to a State for an enterprise community will equal 1/95 of $280 million. There is no provision for reallocation of any funds that are not used by a grantee.

Committee amendment: Funds that are received by a zone or community but are not used would be reallocated to the States for use under the title XX social services block grant program.

Sec. 364. Corrections related to the Income Security and human resource provisions of the Omnibus Budget Reconciliation Act of 1990

Committee amendment: The provision would correct references and punctuation in various SSI and AFDC provisions, eliminate conflicting provisions concerning the reporting date of the National Commission on Children, and correct and simplify language concerning special sequestration rules for JOBS funds.

Sec. 365. Technical corrections related to the human resource and income security provisions of the Omnibus Budget Reconciliation Act of 1989

Committee amendment: The provision would correct a word and spacing in AFDC quality control and adoption assistance legislative language, and a reference concerning foster care and adoption assistance.

Sec. 366. Technical correction related to the human resources and income security provisions of the OBRA-93

Committee amendment: This provision corrects a reference in a section relating to the adoption assistance program.

Sec. 367. Elimination of obsolete provisions relating to treatment of the earned income tax credit

Committee amendment: The provision would eliminate provisions in SSI law about treatment of EITC made obsolete by OBRA 1990, which specifies that SSI (and AFDC, Medicaid, and food stamps) are to disregard EITC as income.

Sec. 368. Redesignation of certain provisions

Committee amendment: The provision would redesignate two subparagraphs of the Social Security Act concerning when face-to-face interviews at field offices must be granted.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 17, 1993.

Hon. DANIEL P. MOYNIHAN,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the Social Security Act Amendments of 1993, as ordered reported by the Senate Committee on Finance on November 17, 1993. The enclosed table summarizes the direct spending or receipts and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

The bill would make a number of amendments to health and income security programs. Several provisions could affect direct spending, but the estimated cost of each provision that could be estimated is zero, or savings of less than $500,000 annually. The total direct spending effect is estimated to be savings of $2 million over five years, as shown in the enclosed table. One provision, Section 310, could have more significant effects on state and federal spending, but the magnitude of the potential increase could not be estimated. Several other provisions would increase authorization amounts, with total authorizations increasing by $90 million in 1994 and $305 million over the five-year period.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lori Housman (Title I), Jean Hearne (Title II), and Julie Isaacs and John Tapogna (Title III), who can be reached at 226-2820.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Enclosure.

SOCIAL SECURITY ACT AMENDMENTS OF 1993

CONGRESSIONAL BUDGET OFFICE ESTIMATE

[Outlays by fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998	Total
Title I—Medicare provisions:						
Direct spending:						
Budget authority	0	0	0	0	0	0
Outlays	0	0	0	0	0	0
Subject to appropriations:						
Authorization level	59	56	30	30	0	175
Outlays	53	56	33	30	3	175
Title II—Medicaid provisions:						
Direct spending:						
Budget authority	(1)	(1)	−1	(1)	(1)	−2
Outlays	(1)	(1)	−1	(1)	(1)	−2
Subject to appropriations:						
Authorization level	18	19	19	19	19	94
Outlays	10	17	19	19	19	84
Title III—Income security, human resources, and related programs:						
Direct spending:						
Budget authority	0	0	0	0	0	0
Outlays	0	0	0	0	0	0
Subject to appropriations:						
Authorization level	13	11	4	4	4	36
Outlays	11	11	4	4	4	34
Total:						
Direct spending:						
Budget authority	(1)	(1)	−1	(1)	(1)	−2
Outlays	(1)	(1)	−1	(1)	(1)	−2
Subject to appropriations:						
Authorization level	90	86	53	53	23	305
Outlays	74	84	56	53	26	293

[1] Less than $500,000.●

By Mrs. HUTCHISON (for herself, Ms. MIKULSKI and Mrs. FEINSTEIN):

S. 1669. A bill to amend the Internal Revenue Code of 1986 to allow homemakers to get a full IRA deduction; to the Committee on Finance.

INDIVIDUAL RETIREMENT ACCOUNT LEGISLATION

● Mrs. HUTCHISON. Mr. President, I rise to introduce a bill with Senator MIKULSKI and Senator FEINSTEIN that will allow the homemakers of this country to make fair, fully deductible individual retirement account contributions. The Tax Code currently discriminates against women who work at home; it is high time for a change. This bill will allow equal IRA contributions by Americans that work at home—women, and a growing number of men, who have suffered unfairly under an out-of-date section of the Tax Code.

Under the current rules governing individual retirement accounts, married couples are restricted to a deductible IRA contribution of $2,250 each year if only one spouse brings home a paycheck. But if both spouses in a household work outside the home, each is permitted to contribute up to $2,000 annually to an IRA—that's a combined contribution of $4,000. With a $4,000 contribution instead of a $2,250 contribution, over 40 years a couple can make an additional $70,000 in contributions. After 40 years at 6-percent interest, the couple will have $287,084 more in savings for their retirement income needs.

It's obvious that the retirement income needs of the one-income couple are the same as the two-income couple. In fact, they may be even greater, because the one-income couple has earned less money to set aside for the future. We can help them meet that need by giving them the incentive and opportunity to save. We can enable our workers to be secure and independent when they are senior citizens by providing them with the opportunity to save more and have their savings grow to hundreds of thousands of dollars during their working lifetime.

The current lack of fairness in IRA savings also has a negative effect on the future economic strength of this country. Personal savings rates in the United States are shockingly low in comparison to other comparable industrialized countries. In the last 3 years, the Japanese personal savings rate averaged 14.6 percent, while the personal savings rate in the United States averaged 4.7 percent. By increasing the deductible IRA contribution, we can reduce the tax cost of saving, increase the incentive to save, and thereby increase the savings rate.

IRA funds are not just put under a big mattress in Federal Reserve buildings across the United States. They are lent by banks to businesses for investment. The new savings created by increasing the IRA deduction for wives and husbands who work at home will be invested in the economy to create jobs and increase Federal tax revenue. Most important is that while increasing the IRA deduction may reduce revenue for a short period, over the long term increased retirement savings will result in economic growth and a reduced burden on the Federal Government by making our retirees financially independent.

Mr. President, women have longer life expectancies than men, make less money for the same work, and lose more work time due to pregnancy and care for their families. Because of these burdens women begin saving for retirement much later than men, and when they retire they have less retirement savings. We can correct that today. I urge the Senate to promptly pass this bill so that American families can begin saving for retirement.

Mr. President, I introduce a bill to enact fairness in individual retirement account savings.●

By Mrs. FEINSTEIN:

S.J. Res. 152. A joint resolution to designate the visitors center at the Channel Islands National Park, California, as the "Robert J. Lagomarsino Visitors Center"; to the Committee on Energy and Natural Resources.

ROBERT J. LAGOMARSINO VISITORS CENTER ACT OF 1993

● Mrs. FEINSTEIN. Mr. President, today I am introducing a resolution to designate the visitors center at the Channel Islands National Park, CA, as the "Robert J. Lagomarsino Visitors Center." The legislation is identical to House Joint Resolution 67 introduced in the House by Congressman ELTON GALLEGLY and others.

As many of my colleagues know, Robert Lagomarsino served in the House of Representatives for 18 years,

from 1974 to 1992, representing the 19th District of California—Santa Barbara County and part of Ventura County. A member of the House Interior and Insular Affairs Committee and the Subcommittee on National Parks and Public Lands, Bob Lagomarsino was active on a wide range of natural resource issues, including the Alaska National Interest Lands Act, the Strip Mine Control Act, the California Wilderness Act, the Sespe Condor Rivers and Range Act, and hundreds of other bills.

But perhaps Bob Lagomarsino is most closely associated with protection of the Santa Barbara Channel and the establishment of the Channel Islands National Park. Even before his election to the House of Representatives, Bob Lagomarsino worked to protect the fragile Channel Islands and their remarkable scenery and wildlife. As a member of the California State Senate, Bob Lagomarsino authored the bill creating a State sanctuary around the Channel Islands. As a Member of the House, Bob Lagomarsino sponsored the legislation which expanded the existing Channel Islands National Monument and redesignated the area as a National Park. He then worked hard to secure the funding necessary to complete the park. Additionally, as a Member of the House, he fought to protect the Channel Islands National Park from potential oil spills, successfully persuading oil companies not to ship Alaskan oil through the Santa Barbara Channel and opposing new Federal oil leases in the area.

Given Bob Lagomarsino's long association with protection of the Channel Islands, I believe it is most fitting for us to designate the visitors center at the Channel Islands National Park as the "Robert J. Lagomarsino Visitors Center." I hope my colleagues will join me in recognizing the contributions of this distinguished Californian and pass this resolution.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 152

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The visitors center at the Channel Islands National Park, California, is designated as the "Robert J. Lagomarsino Visitors Center".

SEC. 2. LEGAL REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the visitors center referred to in section 1 is deemed to be a reference to the "Robert J. Lagomarsino Visitors Center".●

ADDITIONAL COSPONSORS

S. 486

At the request of Mr. HEFLIN, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 486, a bill to establish a specialized corps of judges necessary for certain Federal proceedings required to be conducted, and for other purposes.

S. 636

At the request of Mr. KENNEDY, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 636, a bill 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.

S. 738

At the request of Mr. DANFORTH, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 738, a bill to promote the implementation of programs to improve the traffic safety performance of high risk drivers.

S. 793

At the request of Mr. DORGAN, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 793, a bill to amend the Federal Food, Drug, and Cosmetic Act to require that standards of identity for milk include certain minimum standards regarding milk solids, and for other purposes.

S. 1329

At the request of Mr. D'AMATO, the names of the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Arkansas [Mr. BUMPERS], and the Senator from Iowa [Mr. GRASSLEY] 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. 1405

At the request of Mr. KERRY, the names of the Senator from South Dakota [Mr. DASCHLE] and the Senator from Washington [Mrs. MURRAY] were added as cosponsors of S. 1405, a bill to strengthen the National Flood Insurance Program and to reduce risk to the flood insurance fund by increasing compliance, providing incentives for community floodplain management, providing for mitigation assistance, and for other purposes.

S. 1408

At the request of Mr. LOTT, the names of the Senator from Utah [Mr. HATCH] and the Senator from North Carolina [Mr. FAIRCLOTH] were added as cosponsors of S. 1408, a bill to repeal the increase in tax on Social Security benefits.

S. 1437

At the request of Mr. DOLE, the name of the Senator from South Carolina [Mr. HOLLINGS] 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. 1514

At the request of Mr. COVERDELL, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1514, a bill entitled the "Guaranteed Deficit Reduction Act of 1993."

S. 1533

At the request of Mr. LOTT, the names of the Senator from North Carolina [Mr. HELMS], the Senator from Florida [Mr. MACK], and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of S. 1533, a bill to improve access to health insurance and contain health care costs, and for other purposes.

S. 1602

At the request of Mr. METZENBAUM, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 1602, a bill to amend the Sherman Act to restore fair competition in the ocean shipping industry.

S. 1632

At the request of Mr. COCHRAN, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 1632, a bill to extend the effectiveness of an exemption from the requirements of the Depository Institution Management Interlocks Act.

SENATE JOINT RESOLUTION 52

At the request of Mr. PACKWOOD, the names of the Senator from Maine [Mr. COHEN], the Senator from North Dakota [Mr. CONRAD], the Senator from Wisconsin [Mr. KOHL], the Senator from Arizona [Mr. MCCAIN], the Senator from Connecticut [Mr. DODD], the Senator from Arkansas [Mr. PRYOR], the Senator from South Dakota [Mr. PRESSLER], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Florida [Mr. MACK], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Nebraska [Mr. EXON] were added as cosponsors of Senate Joint Resolution 52, a joint resolution to designate the month of November 1993 and 1994 as "National Hospice Month."

SENATE JOINT RESOLUTION 81

At the request of Mr. LAUTENBERG, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Joint Resolution 81, a joint resolution designating the oak as the national arboreal emblem.

SENATE CONCURRENT RESOLUTION 34

At the request of Mr. BRADLEY, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Alabama [Mr. SHELBY], the Senator from North Carolina [Mr. FAIRCLOTH], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of Senate Concurrent Resolution 34, a concurrent resolution expressing the sense of the Senate regarding the accounting standards proposed by the Financial Accounting Standards Board.

SENATE CONCURRENT RESOLUTION 45

At the request of Mr. COATS, the names of the Senator from New Hampshire [Mr. GREGG] and the Senator

from Idaho [Mr. KEMPTHORNE] were added as cosponsors of Senate Concurrent Resolution 45, a concurrent resolution relating to the Republic of China on Taiwan's participation in the United Nations.

At the request of Mr. D'AMATO, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of Senate Concurrent Resolution 45, supra.

SENATE CONCURRENT RESOLUTION 50

At the request of Mr. LAUTENBERG, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of Senate Concurrent Resolution 50, a concurrent resolution concerning the Arab boycott of Israel.

SENATE RESOLUTION 162

At the request of Mr. LAUTENBERG, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of Senate Resolution 162, a resolution relating to the treatment of Hugo Princz, a United States citizen by the Federal Republic of Germany.

SENATE RESOLUTION 164

At the request of Mr. MOYNIHAN, the names of the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Michigan [Mr. LEVIN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Hawaii [Mr. AKAKA], the Senator from Colorado [Mr. CAMPBELL], the Senator from Connecticut [Mr. DODD], the Senator from California [Mrs. BOXER], the Senator from Maryland [Mr. SARBANES], the Senator from Maine [Mr. COHEN], the Senator from Kentucky [Mr. FORD], the Senator from Ohio [Mr. METZENBAUM], and the Senator from South Dakota [Mr. PRESSLER] 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. 1159

At the request of Mr. BOND, his name was added as a cosponsor of amendment No. 1159 proposed to S. 1607, a bill to control and prevent crime.

AMENDMENT NO. 1201

At the request of Mr. HEFLIN, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of amendment No. 1201 proposed to S. 1607, a bill to control and prevent crime.

AMENDMENT NO. 1204

At the request of Mr. FEINGOLD, his name was added as a cosponsor of amendment No. 1204 proposed to S. 1607, a bill to control and prevent crime.

SENATE CONCURRENT RESOLUTION 52—RELATIVE TO A CONFERENCE ON SECURITY AND COOPERATION IN THE MIDDLE EAST

Mr. DECONCINI (for himself, Mr. GRASSLEY, and Mr. D'AMATO) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 52

Whereas it is in the interest of the United States and the international community to promote security and cooperation through democracy, human rights, and the rule of law in the Middle East;

Whereas recent developments in the Middle East, including the signing of the historic Declaration of Principles on Interim Self-government Arrangements, have given rise to new hopes for a just and lasting peace and new opportunities for cooperation in the region;

Whereas the Conference on Security and Cooperation in Europe has, since 1975, contributed to positive developments in Europe by providing a comprehensive framework for the consideration of questions relating to security, including a regime of confidence and security building measures; cooperation in the fields of economics, science and technology, and the environment; and cooperation in humanitarian and other fields; and

Whereas the framework and mechanisms of the Conference on Security and Cooperation in Europe, including those devoted to conflict prevention, could serve as useful models for enhancing security, promoting cooperation, and protecting human rights in the Middle East: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) it should be the policy of the Government of the United States to encourage leaders in the Middle East to consider establishing a Conference on Security and Cooperation in the Middle East, modeled on the Conference on Security and Cooperation in Europe, as they attempt to overcome the legacy of the past, strengthen peace and understanding, and develop relations based on mutual respect and confidence, respect for human rights and the rule of law, and economic cooperation; and

(2) the Government of the United States, drawing upon its extensive experience in the Conference on Security and Cooperation in Europe, should consult with interested parties, including the government of the Russian Federation, to explore the possibilities for establishing a Conference on Security and Cooperation in the Middle East.

• Mr. DECONCINI. Mr. President, recent developments in the Middle East, including the signing of the historic Declaration of Principles on Interim Self-Government Arrangements, have given rise to new hopes for a just and lasting peace as well as new opportunities for cooperation in the region. It is in the interest of the United States and the international community to promote security and cooperation through democracy, human rights and rule of law in the Middle East.

I believe that a Conference on Security and Cooperation in the Middle East [CSCME], modeled on the Conference on Security and Cooperation in Europe [CSCE], could make a significant and constructive contribution to that end. The CSCE has, since 1975, contributed to positive developments in Europe by providing a comprehensive framework for the consideration of questions relating to military security and human rights as well as cooperation in the fields of economics, science and the environment. In addition, the CSCE serves as a useful model for confidence-building—a process which will be required if genuine peace is to be established and maintained in the Middle East.

I recently chaired a Helsinki Commission hearing to explore the possibility for establishment of a CSCME. Dr. Abba Eban, former Foreign Minister of Israel, observed, "the key to peace lies in institutionalized regional cooperation." Egypt's Ambassador to the United States, Ahmed Maher El Sayed, noted that "there are violations of human rights in many of the countries of the Middle East, not excluding anyone, but I think that participating in such a process—CSCME—would certainly be very helpful toward enlarging the respect of human rights in all of the countries of the area." Prof. I. William Zartmen of the Johns Hopkins University concluded that "the situation is appropriate for the establishment of a Conference on Security and Cooperation in the Middle East [CSCME], modeled on the European experience." Following the Commission hearing I received a letter from the Crown Prince of Jordan reiterating his support for the concept of a CSCE-like framework for the Middle East.

I harbor no illusions about the serious obstacles standing in the path of achieving lasting stability and peace in the Middle East. Nevertheless, the current climate in the region presents us with an opportunity to begin the process one step at a time.

Mr. President, we should take advantage of this opportunity by encouraging the leaders of the Middle East to consider establishing a CSCME as they attempt to overcome the legacy of the past. The establishment of a CSCME would provide a useful framework to begin building the types of relationships upon which real peace would rest.

The resolution I introduced today, along with Senators GRASSLEY and D'AMATO, is meant to give further impetus to this process. It is imperative that the leaders of the Middle East and all those interested in promoting peace work to maintain the momentum of this historic moment.•

SENATE RESOLUTION 167—RELATIVE TO THE MARSH ARABS OF SOUTHERN IRAQ

Mr. MOYNIHAN (for himself and Mr. PELL) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 167

Whereas the Government of Saddam Hussein has a long and well documented history of brutal repression of the population of Iraq;

Whereas Saddam Hussein carried out a methodical campaign of genocide against Iraqi Kurds, including extensive efforts to render large areas of Iraqi Kurdistan uninhabitable and the use of poison gas in violation of international law;

Whereas Saddam Hussein is now conducting a massive campaign of repression against the population of Shi'ite Arabs in southern Iraq known as the marsh Arabs or the Maadan;

Whereas this campaign includes an enormous effort to drain the wetlands at the confluence of the Tigris and the Euphrates which have sustained the distinct marsh Arab civilization for thousands of years.

Whereas in addition to draining the wetlands Iraqi troops have extensively shelled villages in the marshes.

Whereas the campaign against the marsh Arabs appears to constitute an effort to drive the entire civilian population out of the marshes and to destroy the way of life for a distinct community within Iraq.

Whereas there are recent reports that Iraqi troops have employed chemical weapons against the marsh Arabs in violation of international law and United States Security Council resolutions concerning Iraq;

Whereas prior to the Gulf war the world community did not stop Saddam Hussein from employing similar tactics against the Kurds; Now, therefore, be it

Resolved by the Senate, that the United States Government should immediately—

(a) raise the issue of Saddam Hussein's campaign against the marsh Arabs in the Security Council;

(b) insist that United Nations weapons inspectors be permitted to conduct on site inspection concerning the possible use by Iraqi troops of chemical weapons;

(c) seek to provide humanitarian assistance to persons fleeing from the marshes; and,

(d) study and report to the Congress concerning the environmental consequences of the destruction of this vast wetlands area.

AMENDMENTS SUBMITTED

INDEPENDENT COUNSEL REAUTHORIZATION ACT OF 1993

McCAIN (AND GRASSLEY) AMENDMENT NO. 1205

Mr. McCAIN (for himself and Mr. GRASSLEY) proposed an amendment to the bill (S. 24) to reauthorize the independent counsel law for an additional five years, and for other purposes; as follows:

Strike beginning on page 18, line 14, through page 20, line 2, and insert the following:

SEC. 4. MEMBERS OF CONGRESS.

(a) MANDATORY COVERAGE OF MEMBERS AND POST EMPLOYMENT COVERAGE.—Section 591(b) of title 28, United States Code, is amended by—

(1) redesignating paragraph (8) as paragraph (9); and

(2) striking paragraphs (6) and (7) and inserting the following:

"(6) any Members of Congress;

"(7) any individual who held an office or position described in paragraphs (1) through (5), for 1 year after leaving the office or position or until the President under whom the individual served leaves office, whichever period expires first;

"(8) any individual who held an office or position described in paragraphs (1) through (5) during the incumbency of 1 President and who continued to hold that office or position for not more than 90 days into the term of the next President, until the individual leaves such office or position; and".

(b) DISCRETIONARY AUTHORITY.—Section 591(c) of title 28, United States Code, is amended to read as follows:

"(c) PRELIMINARY INVESTIGATION WITH RESPECT TO OTHER PERSONS AND MATTERS.—When the Attorney General determines that an investigation or prosecution of a person or matter by the Department of Justice may result in a person, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person or matter in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether there may have been a violation of federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.".

COCHRAN AMENDMENT NO. 1206

Mr. COCHRAN proposed an amendment to the bill S. 24, supra; as follows:

In lieu of the language proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Department of Justice Special Counsel Act of 1993".

SEC. 2. REPEAL OF INDEPENDENT COUNSEL PROVISIONS.

(a) IN GENERAL.—Chapter 40 of title 28, United States Code, is repealed.

(b) TABLE OF CONTENTS.—The table of contents for part II of title 28, United States Code, is amended by striking the item relating to chapter 40.

SEC. 3. SPECIAL COUNSEL.

Chapter 31 of part II of title 28, United States Code, is amended by adding at the end thereof the following:

"§ 531. Special counsel

"(a) IN GENERAL.—The President, upon recommendation by the Attorney General, shall appoint, by and with the advice and consent of the Senate, a special counsel who shall serve in the place of the Attorney General as provided in this section.

"(b) APPOINTMENT OF SPECIAL COUNSEL.—If the Attorney General determines that an investigation or prosecution of a person described in subsection (c) by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may recommend to the President that a special counsel be appointed.

"(c) PERSONS TO WHOM SUBSECTION (b) APPLIES.—The persons referred to in subsection (b) are—

"(1) the President and Vice President;

"(2) any individual serving in a position listed in section 5312 of title 5;

"(3) any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5;

"(4) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5;

"(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

"(6) any individual who leaves any office or position described in any of paragraphs (1) through (5) of this subsection, during the incumbency of the President under whom such individual served in the office or position plus one year after such incumbency, but in no event longer than a period of three years after the individual leaves the office or position;

"(7) any individual who held an office or position described in any of paragraphs (1) through (5) of this subsection during the incumbency of one President and who continued to hold the office or position for not more than 90 days into the term of the next President, during the 1-year period after the individual leaves the office or position;

"(8) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President; and

"(9) any other person the investigation and prosecution of whom may result in a personal, financial, or political conflict of interest.

"(d) AUTHORITIES.—Notwithstanding any other provision of law, a special counsel appointed under this section shall have, with respect to all matters in such counsel's prosecutorial jurisdiction established by the Attorney General full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General's, and other officer or employee of the Department of Justice, except that the Attorney General shall exercise directions or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

"(1) conducting proceedings before grand juries and other investigations;

"(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such special counsel considers necessary;

"(3) appealing any decision of a court in any case or proceeding in which such special counsel participates in official capacity;

"(4) reviewing all documentary evidence available from any source;

"(5) determining whether to contest the assertion of any testimonial privilege;

"(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

"(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General;

"(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

"(10) consulting with the United States attorney for the district in which any violation of law with respect to which the special counsel is appointed was alleged to have occurred.

"(e) COMPENSATION.—A special counsel appointed under this section shall receive compensation at the per diem rate equal to the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

"(f) PUBLIC INTEGRITY SECTION.—The special counsel shall use the staff and resources of the Public Integrity Section of the Criminal Division of the Department of Justice in conducting any investigation and prosecution under this section.

"(g) ADDITIONAL PERSONNEL.—For the purposes of carrying out the duties of an office of special counsel, such special counsel may appoint, fix the compensation, and assign the duties of such employees as such special counsel considers necessary (including investigators, attorneys, and part-time consultants) but such employees shall not exceed 50 percent of total staff of the special counsel. The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate of pay payable for GS-18 of the General Schedule under section 5332 of title 5. All employees employed by the special counsel shall be directly supervised by the special counsel.

"(h) STAFF MISCONDUCT.—If a special counsel has reasonable grounds to believe that an employee of the special counsel has or is engaging in improper conduct, the special counsel shall notify the Office of Professional Responsibility of such improper conduct and the Office shall investigate.

"(i) REMOVAL OF AN INDEPENDENT COUNSEL.—An independent counsel appointed under this section may be removed from office, other than by impeachment and conviction, if the Attorney General determines that—

"(1) the independent counsel has failed to follow Department of Justice guidelines;

"(2) the independent counsel violates the cannons of ethics; or

"(3) the investigation of the independent counsel can be conducted by the Department of Justice without a conflict of interest.".

ROTH AMENDMENT NO. 1207

Mr. ROTH proposed an amendment to the bill S. 24, supra; as follows:

On page 18, line 13, strike all after the period down through page 20, line 2, and insert in lieu thereof the following:

SEC. 4. APPLICABILITY OF INDEPENDENT COUNSEL PROVISIONS.

Section 591(b) of title 28, United States Code, is amended to read as follows:

(b) PERSONS TO WHOM SUBSECTION (a) APPLIES.—

(1) Subsection (a) shall apply to each of the following persons in all circumstances:

(A) the President;

(B) the Vice President; and

(C) the Attorney General.

(2) Subsection (a) shall apply to each of the following persons, unless the Attorney General certifies that in the circumstances presented the preliminary investigation and any subsequent investigation of such person by the Attorney General pose no personal financial, or political conflict of interest and that the possible appointment of an independent counsel would not be necessary to assure the public of the impartial administration of justice:

(A) any Member of Congress;

(B) any individual serving in a position listed in section 5312 of title 5;

(C) any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5;

(D) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5;

(E) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

(F) any individual who held an office or position described in paragraph 1 or in subparagraphs (B) through (E) of paragraph (2), for 1 year after leaving the office or position or until the President under whom the individual served leaves office, whichever period expires first;

(G) any individual who held an office or position described in paragraph 1 or in subparagraphs (B) through (E) of paragraph (2) during the incumbency of 1 President and who continued to hold that office or position for not more than 90 days into the term of the next President, until the individual leaves such office or position; and

(H) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President.

MCCAIN AMENDMENTS NOS. 1208–1210

Mr. COHEN (for Mr. MCCAIN) proposed three amendments to the bill S. 24, supra; as follows:

AMENDMENT NO. 1208

At the end of Sec. 3(a)(2), strike the word "counsel." and insert in lieu thereof the following: "counsel, which shall not be withheld unless the Independent Counsel determines that such information would interfere with a pending investigation or prosecution."

AMENDMENT NO. 1209

On page 11, line 21, beginning with the word "chapter" strike all through line 24 and insert in lieu thereof the following: "chapter. The one year period may be extended by 3 months if the employee assigned duties under subsection (e)(1)(A)(iii) certifies that the investigation will likely be concluded within that time period."

AMENDMENT NO. 1210

At the appropriate place in the bill, insert the following new section:

SEC. . REPORT ON WHITE HOUSE OFFICE PERSONNEL.

(a) SUBMISSION OF REPORT.—Beginning on January 1, 1994, and again each 6 months thereafter, the President shall submit a report described under subsection (b) to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(b) CONTENTS.—The report under subsection (a) shall include—

(1) a list of each individual—

(A) employed by the White House Office; or

(B) detailed to the White House Office, and

(2) with regard to each individual described under paragraph (1), such individual's—

(A) name;

(B) position and title:

(C) annual rate of pay; and

(D) amount of Federal pay received in the 3-month period immediately preceding the date of the submission of the applicable report required by this section.

DOLE AMENDMENTS NOS. 1211–1214

Mr. COHEN (for Mr. DOLE) proposed four amendments to the bill S. 24, supra; as follows:

AMENDMENT NO. 1211

On page 17, strike lines 14 through 20 and insert the following:

(n) REQUIREMENT TO USE DEPARTMENT OF JUSTICE PERSONNEL.—Section 594(d)(1) of title 28, United States Code, is amended to read as follows:

"(1) REQUIRED USE.—An independent counsel shall request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties.

AMENDMENT NO. 1212

On page 14, lines 23-25, strike "3" to the end of the sentence and insert the following: "2 years after the appointment of an independent counsel or the reported expenditures by such independent counsel have reached $2 million, whichever occurs first, and at the end of each succeeding 1-year period."

AMENDMENT NO. 1213

On page 20, between lines 2 and 3 insert the following:

SEC. 5. REMOVAL OF INDEPENDENT COUNSEL FOR GOOD CAUSE.

Section 596(a)(1) of title 28, United States Code, is amended by adding at the end thereof the following: "For purposes of this paragraph, the term 'good cause' includes, but is not limited to, (A) the failure of an independent counsel to follow written Department of Justice guidelines, subject to the limitations of 594(f)(1) and 594(l)(1)(B), respecting enforcement of the criminal laws, and (B) violations of canons of ethics governing the independent counsel and Federal prosecutors."

AMENDMENT NO. 1214

On page 18, between lines 13 and 14, insert the following:

(p) FINAL REPORT.—Section 594(h)(1)(B) of title 28, United States Code, is amended—

(1) by striking "fully and completely"; and

(2) by striking ", and the reasons" through the period and inserting a period.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. MITCHELL. Mr. President, I would like to announce that the Senate Committee on Indian Affairs and the House Subcommittee on Native American Affairs, Committee on Natural Resources, will be holding a House-Senate conference on Thursday, November 18, 1993, beginning at 5 p.m., in HC-8 of the Capitol Building on H.R. 1268, the Indian Tribal Justice Act.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Wednesday, November 17, 1993, at 9 a.m. on SR-332 on the nominations of Anthony A. Williams, of Connecticut, to be Chief Financial Officer for the Department of Agriculture; Grant B. Buntrock, of South Dakota, to be a member of the Board of Directors of the Commodity Credit Corporation; John E. Tull, Jr., of Arkansas, to be Commissioner of Commodity Futures Trading Commission: Wally B. Beyer, of North Dakota, to be Administrator of the Rural Electrification Administration; Barbara Pedersen Holum, to be a Commissioner of the Commodity Futures Trading Commission; and Michael Dunn, of Iowa, to be Administrator of the Farmers Home Administration.

The PRESIDING OFFICER. Without objection, it is so ordered

COMMITTEE ON ARMED SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Wednesday, November 17, 1993, at 9:30 a.m., in open session, with the possibility of a closed session, to consider the nomination of Dr. Morton H. Halperin to be Assistant Secretary of Defense for democracy and peacekeeping.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to conduct a hearing on S. 1627, legislation implementing NAFTA, on November 17, 1993, beginning at 3 p.m.

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

COMMITTEE ON FINANCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet today at 10 a.m. to consider miscellaneous no-cost legislative provisions relating to health and welfare that were omitted from the Budget Reconciliation Act due to the Byrd rule.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, November 17, 1993, at 3 p.m. to hold a nomination hearing on K. Terry Dornbush, to be Ambassador to the Kingdom of the Netherlands.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, November 17, 1993, at 3:30 p.m. to hold nomination hearings on: Mr. M. Douglas Stafford, of New York, to be Assistant Administrator for Food and Humanitarian Assistance of the Agency for International Development; and Mr. L. Ronald Scheman, of the District of Columbia, to be U.S. Executive Director of the Inter-American Development Bank for a term of 3 years.

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

COMMITEE ON LABOR AND HUMAN RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet on November 17, 1993, at 9 a.m., for an Executive Session to consider S. 1595, Bone Marrow Donor Program Reauthorization Act of 1993; S. 1597, Organ Transplant Program Reauthorization Act of 1993; S. 244, National Community Economic Partnership Act of 1993; and the nominations of Olivia Golden to be Commissioner on Children, Youth, and Families at the Department of Health and Human Services; Magdalena Jacobsen to be a member of the National Mediation Board; and Preston Taylor, Jr., to be Assistant Secretary for Veterans' Employment and Training at the Department of Labor.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on Public Health: Meeting the Health Care Needs of All Americans, during the session of the Senate on November 17, 1993, at 10 a.m.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on November 17, 1993, at 10 a.m. on S. 1350—Natural Disaster Protection Act.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, November 17 at 10 a.m. to hold an open hearing on commercial imagery.

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

ADDITIONAL STATEMENTS

STOCK OPTIONS—THE EQUITY EXPANSION ACT OF 1993

• Mr. LIEBERMAN. Mr. President, last June I introduced legislation creating a new class of stock option, the performance stock option, and directing the Securities and Exchange Commission to overturn a proposed FASB rule to change the current accounting treatment of stock options. Not surprisingly, the second piece of my legislation has received most of the attention. Because of the growing opposition to FASB's stock option proposal, I wanted to come to the floor this morning and briefly describe my rationale for this bill.

Mr. President, I firmly believe that markets operate freely and efficiently only with full and accurate information. I also believe that financial statements must be credible and comparable, and that the accounting standards that drive financial reporting ought to be set by the private sector. Notwithstanding, I came to believe the FASB proposal must be rejected after reaching three conclusions.

1. ECONOMIC COSTS VERSUS ACCOUNTING BENEFITS

First, Mr. President, I concluded that—in weighing the costs and benefits—the FASB stock option proposal is so potentially damaging to the economy and offers so little in terms of improved comparability and integrity of financial statements that this proposal must not go forward. I believe FASB is ignoring its charter responsibility to promulgate rules only when the expected benefits exceed the perceived costs. FASB's mission statement clearly establishes a standard where the expected benefits must exceed the perceived costs. This is a significant standard for FASB to meet and a higher standard than a mere cost versus benefit analysis.

Mr. President, an employee stock option represents the right of an employee to purchase a set number of company shares for a fixed price at some defined time in the future. Stock options make it possible to start new companies and create new jobs. They enable small companies to stretch scarce venture capital dollars and attract key employees. Stock options also encourage risk-taking and spur technological innovation by putting employees on the same team as the stockholders. In short, they represent an integral and indispensable tool for economic growth and job creation.

Stock options are accounted for today the same as other inherently difficult to value items—by disclosure. For example, since the cost of a pending lawsuit cannot be known in advance, current accounting rules [FASB] require the fact of the suit to be disclosed to investors. In the same

way, since the value of an employee stock option depends on unknown variables, the proper accounting is full disclosure to the shareholders.

Specifically, stock options authorize a future capital transaction between a company's stockholders and employees. The cost of that transaction is borne entirely by the shareholders—not the company—through a dilution in the value of their shares. This cost to shareholders is fully disclosed by current stock option accounting as a reduction in earnings per share. Stock option plans are also the only element of corporate compensation that already require the express approval of shareholders. Yet the FASB proposal will require a charge to the company's financial statements, regardless of whether the stock price ever rises or whether the options expire absolutely worthless. In both cases, the real cash value to the employee is zero.

FASB suggests that current accounting recognizes all other equity transactions involving the issuance of stock in exchange for goods and services. In other words, if I gave you stock and you gave me a Ford pickup truck, such a transaction would be accounted for over the depreciable life of the truck. So when I give you stock and when you give me something we will call employee services we should account for that as well. Presuming stock options are compensation—and the company is getting something of value—that would be theoretically correct.

The problem is we can't measure something called employee services. So FASB says since we can't measure what we are getting—employee services—we have to measure what we are giving up. They propose to measure this by using an option pricing model—Black Scholes or a binomial model—by measuring the exercise price, the expected term of the option, the current price of the underlying stock, its expected volatility, the expected dividend yield on the stock, and the risk-free interest rate for the expected option.

But since the real cash value to employees—today—on fixed options offered at the market is indeed zero, we are really not measuring today's value, but rather we are measuring the employees right to participate. There is no question that there is some limited, theoretical justification for FASB's position. But there is significant debate as to whether or not we can measure this right to participate. Bottom line. When you can't count it, disclose it.

One of the problems with the mouse trap—Black Scholes—or any other option pricing model—is that they were designed to measure traded options. These options—unlike fixed employee stock options—are transferable and subject to continual market verification of price. Their value comes from their transferability and volatility. Would anybody really suggest that these options would retain their value if they were no longer able to be traded? Of course not. Yet employee options are not transferable to anyone. The fact is that accurately estimating the present value of a fixed employees stock option—measured in terms of his or her right to participate—is impossible, making these charges imprecise and speculative. No model yet offered comes close. But FASB proposes to force such guesses about the future onto the company's income statement as a reduction of its hard-won earnings.

So we come back to the basis for any accounting change—the cost versus the benefits. In other words, will the improved integrity and comparability of financial statements outweigh the economic costs? I have concluded that they will not, and I am not alone in my analysis. The FASB rule is opposed by the vast majority of the investment community including, the Council of Institutional Investors, the United Shareholders Association, National Venture Capital Association, hundreds of pension funds, three of the four SEC Commissioners, the Financial Executives Institute, the NASDAQ stock market, and each of the big six accounting firms, to name a few. And this does not even begin to count the dozens of high technology industry groups opposing the decision.

The Board says the market will learn to overlook these charges and discern the true nature of the companies earnings. Presuming a thoroughly efficient marketplace, this could be true for the Fortune 500, but 48 percent of all NASDAQ stocks are never followed by any analyst. These companies—the smaller, more volatile, job creating companies—will be seriously impacted. The result of this change will be lower earnings which will impact the ability of these firms to raise capital and will curtail their ability to offer options to a broad-base of their work force.

At a recent Senate hearing, the Council of Institutional Investors said it best:

> There is no group that has a greater interest in the principled right answers to accounting questions than we do. We are the people who invest real money—huge amounts of money—based upon what we read in financial statements. We are America's employees and America's retirees, and we will not get our pensions if we do not invest wisely based on accurate financial information. So no one will be hurt more than we if any other agenda—however virtuous—is pursued at the expense of the accuracy and usefulness of financial statements. This is real people's grocery money. She goes on to say: "The exposure draft requires companies to put something in their financial statements that simply isn't true."

Indeed, Mr. President, FASB is trying to impose the first generally accepted accounting principle, which is generally accepted by no one.

2. WHAT ARE THE BENEFITS OF STOCK OPTIONS AND WHO GETS THEM?

Mr. President, the second reason I introduced my legislation was because there seems to be a looming misunderstanding about what stock options are and who gets them. There has been a lot of attention paid to the horror stories about a relatively small number of extravagantly compensated executives. These stories are true and the outrage is understandable. But that does not paint an accurate picture of the role stock options play in the U.S. economy today. Nor does it paint an accurate picture of who gets them.

The fact is that there are many thousands of companies who offer stock option packages, and many hundreds of thousands of employees who receive them. Some of the companies which have broad-based stock option plans include Nynex, General Mills, Microsoft, Genentech, Wal-Mart, Intel, Motorola, Wendy's, Pepsi-Co, DuPont, NationsBank, and Pfizer. And the practice is even more widespread among smaller, newer companies. The fact is that America's most dynamic, job-creating companies consistently rely on employee stock options to attract and motivate their employees. Not just their top executives, all their employees. Let me just mention one recent survey which concluded that of companies offering stock option plans with fewer than 100 employees, fully 9 out of 10 offer options to every single employee.

Mr. President, as I eluded to earlier, stock options represent enormous economic benefits for businesses and employees alike. Stock options make it possible to start new companies and create new jobs. They stretch venture capital dollars, enhance recruitment, and motivate employees. Indeed, nearly every study of what works in successful companies advocates encouraging employees to buy and own meaningful portions of their company's stock.

Stock options also represent significant benefits for employees. I am speaking of the hundreds of thousands of midlevel, middle class employees who receive options. For these people, stock options represent the difference between working for a company and having an ownership stake in a company. And, in many cases, stock options also represent an extra bonus—a dividend, if you will—that makes it possible to afford a home, a child's college education, a retirement nest egg, or even startup capital to open a business and create more jobs.

3. THE FASB PROCESS IS BROKEN

Mr. President, the third reason I introduced my legislation was because I believe that, in this instance, the FASB process is broken. Arthur Levitt, Chairman of the Securities and Exchange Commission, has taken exception with my view, but nonetheless has taken a position that I believe to be rational and reasoned. Chairman Levitt has argued that the FASB process is fair and open. He has encouraged a

thorough debate; has encouraged opponents of the FASB rule to participate in that debate; and has said he will withhold judgment until such a debate occurs. But, Mr. President, this morning I received a copy of a letter sent to Chairman Levitt from 10 industry organizations which makes clear that, in this case, the FASB process is fatally damaged. To quote from the letter: "There is no longer any basis for believing that FASB has maintained the open mind that is essential for regulatory due process." While this is not exactly like a regulatory process, their point is well taken and noteworthy.

Allow me to elaborate. As part of FASB's ongoing deliberative process the Financial Accounting Standards Board issues an exposure draft which is described as a "proposed statement of financial accounting standards," akin to a governmental rulemaking proposal. Simply stated, this exposure draft sets forward the conceptual basis for its proposed standard and the process by which written and oral comments may be made. The first page of the exposure draft for Accounting for Stock-based Compensation reads:

> The proposals that the Board believes are the most significant are summarized below to assist recipients of the proposed Statement.

Under the first heading, "Recognition of Compensation Cost," the exposure draft asks:

> Issue 1: * * * Should the issuance of fixed stock options like the issuance of other equity instruments, result in recognition of the consideration and the subsequent cost incurred as the consideration—employee services—is used in the entity's operations?

Indeed, this is the fundamental question of the debate. Stated simply, the issues raised are: First, are stock options compensation; and second, should fixed stock option grants result in a charge against earnings. Moreover, these are the questions to which many distinguished and accomplished accountants, financial information users, and financial officers hold different views. The exposure draft goes on to raise issues related to measurement date, measurement method, attribution period, and disclosures.

But, Mr. President, last month—more than 2 months before the end of the official public comment period, FASB made it clear their minds are already made up on this central issue. Mr. James Leisenring, vice chairman of the Financial Accounting Standards Board, stated in both written and oral testimony before the U.S. Senate Securities Subcommittee:

> Have we made up our minds that stock options are compensation that should be recognized? Yes. Have we made up our minds about how to exactly measure the compensation expense? No.

In other words, Mr. President, sending FASB any opposing views is a waste of time. Fundamental requirements of due process and fair administrative procedure require that those affected by proposed regulations have a right to have their views heard and considered before the regulations are implemented. FASB's declaration of its conclusions 2 months before its public comment period has closed is a clear breach of fairness and administrative due process. FASB has undermined their own process—a process which has turned out to be neither fair nor open. This process by FASB's own statements is a sham. And, this is not the first time they have made these statements. In virtually every public meeting and in virtually every press report, the message is the same. The FASB has made clear that they are not respecting the public comment process that FASB itself set up to resolve the key questions set forth in their own exposure draft. They are making clear that any public comments on the central issues will not be considered and that their position is nondebatable. That being the case, what is the purpose of this comment period?

Mr. President, I believe it is now necessary and appropriate for Chairman Levitt to stop deferring to the FASB process. It is time for the chairman to step in and exercise the SEC's statutory oversight responsibility and put an end to this misguided exercise in accounting theory. He should do so because the process is flawed. More important, Mr. President, he should do so because—on the substance—the FASB proposal is bad policy, bad economics, and bad accounting.

Mr. President, let me just conclude by quickly addressing a couple of additional points raised by the FASB. FASB has argued that they have no responsibility to take the economic impact of its actions into account. And, they argue that Congress should not become involved in the standard setting process. Generally speaking, I agree with both points. However, do not be fooled into thinking that this is like past accounting debates, despite FASB's attempt to raise the stakes of this proposal. This debate is not about postretirement health benefits, unfunded pensions, or thrift accounting. There is no comparison, and, in this case, there are no identifiable victims.

FASB also states that "Current accounting produces financial statements that are neither credible nor representationally faithful." This statement—like the statement comparing this debate to the savings and loan crisis—is an outrageous exaggeration of the facts. Let me quote Jim Bunt, comptroller of General Electric, at last month's Senate hearing testify on behalf of the Financial Executives Institute:

> I can assert that during the past 20 years, not one shareowner, securities analyst, not one member of the business press, has ever suggested that my company's financial statements are flawed or misleading as a result of our accounting for employee stock options.

Let me also quote from a letter sent to me last summer by the United Shareholders Association, representing 65,000 individual investors. They stated:

> As investors and regular users of corporate financial reports, USA members are the very people the accounting rules are designed to protect. Our members oppose charging earnings for stock options. We do not believe FASB's proposal would clarify the reports we receive. In fact, we believe that including speculative estimates of future stock option values in corporate earnings statements diminishes rather than enhances their usefulness.

Finally, Mr. President, let me just make clear that this debate is not about the independence of the Financial Accounting Standards Board. I am a full supporter of the FASB and their independence, but this debate is not about the FASB. This debate is about employee ownership, economic growth, and job creation. Nobody is arguing that the threat of job loss justifies bad accounting. We are arguing for a pragmatic approach to financial accounting—an approach which recognizes that when you weigh the economic costs against the theoretical accounting benefits—the outcome is clear. What we get is a highly debatable accounting standard, what we give up is a vital tool for economic growth and job creation. This proposal should be withdrawn.•

S. 1618, THE TRIBAL SELF-GOVERNANCE ACT OF 1993

• Mr. GORTON. Mr. President, I am very pleased to have added my name as an original cosponsor to S. 1618, the Tribal Self-Governance Act of 1993, introduced by my distinguished colleague and vice chairman of the Indian Affairs Committee, Senator MCCAIN.

Self-governance is part of a relatively recent trend toward more direct tribal responsibility for, and control over, Federal Government programs. The first step, taken over a decade ago, was the creation of 638 contracts whereby a tribe contracts with the Bureau of Indian Affairs to administer Bureau programs, but cannot change or alter the benefits, structure or regulations associated with the program. Self-governance takes it a big step further.

In 1987, a number of tribes developed a proposal entitled the "Tribal Self-Governance Research and Demonstration Project Act." The next year, after extensive discussions, Congress passed legislation establishing this self-governance demonstration project for a very small number of tribes.

The self-governance demonstration project, which is completely voluntary, provides tribal governments with more control, flexibility and decisionmaking

authority over the Federal programs and financial resources intended to benefit Indian people. Tribal governments become policymakers, having the power to alter a Federal program and its funding level to meet tribally determined priorities and the unique needs of their communities. Tribes are not required to operate existing programs. If they wish, they can reallocate funds from that program to another program that is also authorized by Congress.

To date, 28 tribes have entered into compacts with the Department of the Interior. Six tribes have done so with the Indian Health Service, with more in the works. Eight tribes in my home State of Washington participate—the highest number of tribes from any State. These tribes are the Lummi Indian Nation, the Quinault Indian Nation, the Jamestown Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Jakah Tribe, the Lower Elwha S'Klallam Tribe, the Squaxin Island Tribe, and the Swinomish Tribe.

I am especially pleased that some of the tribes in Washington State have taken the lead in the Self-Governance Program, publishing a newsletter, Sovereign Nations, and providing education and assistance to other tribes who are interested in, or are in the process of, becoming self-governing.

Mr. President, I have heard from the tribal leaders in my State that self-governance has had a positive effect on participating tribes. They tell me how self-governance allows them to become more independent of the centralized bureaucracy of the BIA, gives them more authority and responsibility to alter Federal programs to meet tribal needs, makes their governments more responsible to tribal members and provides for a greater degree of self-sufficiency. They tell me it has allowed them to grow.

W. Ron Allen, chairman of the Jamestown Klallam Tribe, during testimony before the Senate Indian Affairs Committee, stated "* * * the Jamestown Klallam Tribal Council has had the opportunity to become more flexible with greater opportunity to create responses to specific tribal needs." Chairman Allen goes on to say that the tribe "envisions a strong, stable and more responsible government that can promote greater social, economic and political self-sufficiency for our tribe through the Self-Governance Demonstration Project."

In an interview published in Sovereign Nations, Lummi Nation self-governance Coordinator, Raynette Finkbonner, was asked how the self-governance process has affected the tribe. She responded that, "The process has let the tribe create innovative approaches in redesigning programs to better meet our community needs. It has expanded the decisionmaking authority of the tribal government, the establishment of tribal priorities and the allocation of resources to meet those priorities. We have a good budget ordinance and we have better fiscal accountability. We have involvement and input from the tribal community in our budget process and the establishment of tribal priorities."

Clearly self-governance has moved many important decisions out of Washington, DC to tribal headquarters. It provided tribes with a greater degree of authority and responsibility, enabling them to become more self-sufficient and responsive. And while self-governance does not solve all of a tribe's problems, it is assuredly a step in the right direction.

Mr. President, I have listened to the tribal leaders in my State. I have listened to their hopes for the future, their optimism, and their desire to take more control of their destinies. I have listened and I agree. Self-governance is a new way of doing business that should be promoted and made permanent. That is why I added my support as an original cosponsor to legislation to make self-governance permanent for the department of the Interior and increase the number of tribes which can participate. I urge swift action on this bill and hope to see it passed into law quickly.●

COST COMPARISON BETWEEN "CENTURION" AND "SEAWOLF"

● Mr. D'AMATO. Mr. President, I am very disturbed by the results of the *Centurion* Cost and Operational Effectiveness Analysis [COEA]. A cost comparison between *Centurion* and *Seawolf* equalized for production rate projects a unit price for *Centurion* approaching that of *Seawolf*. This is a shocking outcome considering the original intent of the program was to design a submarine with a unit cost roughly approximating that of the improved *Los Angeles* class.

To fully achieve the affordability goals established for *Centurion*, I believe it will be necessary to pursue a more measured development program geared to thoroughly exploiting new technologies to ensure that significant savings are realized. An extension of *Centurion* development will, in turn, require the procurement of a small number of *Seawolf* subs to sustain the submarine industrial base.

Although the *Centurion* COEA was received too late to affect this year's Defense appropriations markup, I proposed, as a Conference matter, transferring funds from various *Centurion* accounts to the submarine industrial base line, leaving only enough *Centurion* R&D funds to maintain the level of effort necessary to preserve core submarine design capabilities. Accompanying language would have required that, prior to the release of funds, the Navy to report on the cost-effectiveness, particularly over the FYDP, of using pooled fiscal year 1994 *Centurion* funds to: First, partially offset the cost of completing the SSN-23; or second, continue *Centurion* development at the current pace. The Navy would have been further required to reflect in the fiscal year 1995 defense budget request the proposed use of fiscal year 1994 funds.

Senators are familiar with the overall funding crisis in the shipbuilding and conversion, Navy, account, so I will not belabor the point. At a minimum sustaining rate of roughly 1 boat every 2 years, a rate that will protect the current submarine industrial base, the *Seawolf* has a unit cost of ±$2.35 billion. For $3.5 billion-plus in development, a less capable *Centurion* is projected to cost ±$1.4 billion per unit at a rate of 1.5–2 boats per year. Even if these projected costs prove accurate *Centurion* will, at a minimum, require almost twice the funding of *Seawolf*, $4.2 billion-plus versus ≥$2.5 billion every 2 years.

By continuing to build *Seawolf* at a minimal rate and delaying *Centurion*, we can save money outright, then save additional funds by amortizing *Seawolf* production and O&S costs over a greater number of hulls, protect the industrial base, manage the total fleet size better, and engage in a measured development of *Centurion* geared to generating true savings.

Understandably, my colleagues were reluctant to consider such a sweeping proposal during conference. Fortunately, the rescission bill expected in January and the Somalia supplemental offer other opportunities to implement my plan. If accepted, we can put submarine development and acquisition spending on a realistic, affordable footing.●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar Nos. 326, 485, 487, 488, 489, 514, 515, 516;

I further ask unanimous consent that the nominees be confirmed, en bloc; that any statements appear in the RECORD as if read; that upon confirmation, the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action.

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

The nominations, considered and confirmed, en bloc, are as follows:

DEPARTMENT OF STATE

Alvin P. Adams, Jr., of Virginia, 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 Republic of Peru.

DEPARTMENT OF JUSTICE

Eduardo Gonzalez, of Florida, to be Director of the U.S. Marshals Service.

Carl Kimmel Kirkpatrick, of Tennessee, to be U.S. attorney for the Eastern District of Tennessee for the term of 4 years.

Frances Cuthbert Hulin, of Illinois, to be U.S. attorney for the Central District of Illinois for the term of 4 years.

Nora Margaret Manella, of California, to be U.S. attorney for the Central District of California for the term of 4 years.

DEPARTMENT OF DEFENSE

R. Noel Longuemare, Jr., of Maryland, to be Deputy Under Secretary of Defense for Acquisition.

Gilbert F. Casellas, of Pennsylvania, to be General Counsel of the Department of the Air Force.

Henry Allen Holmes, of the District of Columbia, to be an Assistant Secretary of Defense.

TREATY WITH THE GOVERNMENT OF ROMANIA CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT

TREATY WITH THE ARGENTINE REPUBLIC CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT

TREATY WITH THE REPUBLIC OF BULGARIA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT

TREATY WITH THE REPUBLIC OF ARMENIA CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT

TREATY WITH THE REPUBLIC OF KYRGYZSTAN CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT

TREATY WITH THE REPUBLIC OF MOLDAVA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT

TREATY WITH THE REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the following treaties:

Executive Calendar No. 2, Treaty with the Government of Romania Concerning the Reciprocal Encouragement and Protection of Investment; Calendar No. 3, Treaty with the Argentine Republic Concerning the Reciprocal Encouragement and Protection of Investment; Calendar No. 4, Treaty with the Republic of Bulgaria Concerning the Encouragement and Reciprocal Protection of Investment; Calendar No. 5, Treaty with the Republic of Armenia Concerning the Reciprocal Encouragement and Protection of Investment; Calendar No. 7, Treaty with the Republic of Kyrgyzstan Concerning the Encouragement and Reciprocal Protection of Investment; Calendar No. 8, Treaty with the Republic of Moldova Concerning the Encouragement and Reciprocal Protection of Investment; and Calendar No. 9, Treaty with the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment.

I further ask unanimous consent that the treaties be considered as having been advanced through the various parliamentary stages up to and including the presentation of the Resolution of Ratification; that no amendments, conditions, declarations, provisos, understandings, or reservations be in order; that any statements appear as if read in the RECORD, and that the Senate vote with one vote to count as seven on the resolution of ratification, without intervening action or debate; that after the vote, the motion to reconsider the vote be tabled; that the President be notified of the Senate's action, and that the Senate return to legislative session.

Mr. President, I ask for a division vote.

The PRESIDING OFFICER. All those in favor will stand and be counted. (After a pause.) Those opposed will stand and be counted.

In the opinion of the Chair, two-thirds of those present having voted in the affirmative, the Resolutions of Ratification are agreed to.

So it was

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the Government of the United States of America and the Government of Romania Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol and Related Exchange of Letters, signed at Bucharest on May 28, 1992.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Argentine Republic Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington on November 14, 1991; and an Amendment to the Protocol effected by Exchange of Notes at Buenos Aires on August 24 and November 6, 1992.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Republic of Bulgaria Concerning the Encouragement and Reciprocal Protection of Investment, with Protocol and Related Exchange of Letters, signed at Washington on September 23, 1992.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Republic of Armenia Concerning the Reciprocal Encouragement and Protection of Investment, signed at Washington on September 23, 1992.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Republic of Kygyzstan Concerning the Encouragement and Reciprocal Protection of Investment, signed at Washington on January 19, 1993.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Republic of Moldova Concerning the Encouragement and Reciprocal Protection of Investment, with Protocol and Related Exchange of Letters, signed at Washington on April 21, 1993.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty Between the United States of America and the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment, with Protocol and Related Exchange of Letters, signed at Washington on August 27, 1993.

Mr. PELL. Mr. President, the Senate has before it today bilateral investment treaties with Argentina, Armenia, Bulgaria, Ecuador, Kyrgyzstan, Moldova, and Romania.

These treaties are part of a series of bilateral investment treaties being negotiated by the United States. The principal purpose of the bilateral investment treaties is to promote the free flow of international investment and to encourage and protect U.S. investment in developing countries.

Before entering into negotiations, the United States developed a model treaty which sought to incorporate provisions which would facilitate the free flow of investment, prohibit practices which have emerged in various countries which inhibit that free flow, and generally codify rules on investment and dispute settlement, which the United States views as well established international law and precedent. Specifically, the model treaty seeks to achieve the following objectives:

The better of either national or most-favored nation treatment, for each party to the treaty, thereby providing in the case of U.S. companies a "level playing field" in competing with national and third country investors, both on establishment of an investment and thereafter, subject to specified exceptions set forth in the annex or protocol to each treaty;

Application of international law standards to the expropriation of investments, permitting expropriation only for a public purpose in a nondiscriminatory manner and requiring the payment of prompt, adequate, and effective compensation;

The free transfer of all funds associated with an investment into and out of the host country in a freely usable currency;

Access to binding international arbitration for settlement of investment disputes without first resorting to domestic courts;

A prohibition on the imposition of performance requirements, such as obligations to use local products or to export goods, which have become important as countries have increasingly imposed requirements to use domestically produced goods; and

The right of companies to hire top managers of their choice, regardless of nationality.

Intellectual property rights are included in the treaty's definition of "investment." Although the treaty does not prescribe the elements of an intellectual property rights regime, any rights conferred by the national laws of a Party with respect to intellectual property must be treated as an investment. Such rights are accorded the same protections; that is national treatment, as granted to other forms of investment under a bilateral investment treaty.

In each of the bilateral investment treaties, including these treaties, the United States has reserved the right to make or maintain limited exceptions to national or most-favored-nation treatment in specific sectors or matters set forth in the annex or protocol to each treaty.

These treaties all satisfy the basic objectives of the bilateral investment treaty program.

On September 10, 1993, the committee held a hearing on these treaties. Testimony was received by the Honorable Daniel K. Tarullo, Assistant Secretary of State for Economic and Business Affairs, Department of State, who was accompanied by Donald S. Abelson, Assistant U.S. Trade Representative for Services, Investment and Intellectual Property.

In addition, the committee received statements in support of the treaties from Ambassador Charlene Barshefsky, Deputy U.S. Trade Representative, the National Association of manufacturers, the U.S. Council for International Business and Joel W. Messing, an international lawyer.

The Committee voted to report favorably the treaties, and recommend that the Senate give it's advice and consent to ratification thereof by a voice vote, with a quorum being present, at a meeting on September 14, 1993.

The treaty text, the administration's summary analysis of each treaty and the committee's recommendations are set forth in the treaty submittals and respective committee reports. (Argentina-Treaty Doc. 103-2, Ex. Rept. No. 103-8; Armenia-Treaty Doc. 103-11, Ex. Rept. No. 103-10; Bulgaria-Treaty Doc. 103-3, Ex. Rept. No. 103-9; Ecuador-Treaty Doc. 103-15, Ex. Rept. No. 103-14; Kyrgyzstan-Treaty Doc. 103-13, Ex. Rept. No. 103-12; Moldova-Treaty Doc. 103-14, Ex. Rept. No. 103-13; and Romania-Treaty Doc. 102-36, Ex. Rept. No. 103-7). The administration's responses to committee questions regarding the interpretation of treaty provisions are available for review as part of the committee's hearing record on each treaty.

Mr. President, I urge that the Senate advise and consent to the ratification of these seven bilateral investment treaties.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

THE MIDDLE EAST PEACE FACILITATION ACT OF 1993

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 1667, a bill to extend the authorities under the Middle East Facilitation Act of 1993 by 6 months, introduced earlier today by Senator PELL; that the bill be deemed read the third time, and passed; the motion to reconsider laid upon the table, and any statements appear at the appropriate place in the RECORD as though read.

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

So the bill (S. 1667) was deemed read the third time, and passed, as follows:

S. 1667

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

SECTION 1. EXTENSION OF AUTHORITIES.

Section 3(a) of the Middle East Peace Facilitation Act of 1993 (Public Law 103-125) is amended by striking "January 1" and inserting in lieu thereof "July 1".

IRANIAN BAHA'I COMMUNITY CONCURRENT RESOLUTION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 225, Senate Concurrent Resolution 31, a concurrent resolution concerning the emancipation of the Iranian Baha'i community; that the concurrent resolution be deemed agreed to; the motion to reconsider be laid on the table and any statements thereon appear in the RECORD at the appropriate place as though read.

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

So the concurrent resolution (S. Con. Res. 31) was deemed agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, is as follows:

S. CON. RES. 31

Whereas in 1982, 1984, 1988, 1990, and 1992, the Congress, by concurrent resolution, declared that it holds the Government of Iran responsible for upholding the rights of all its nationals, including members of the Baha'i Faith, Iran's largest religious minority;

Whereas in such resolutions and in numerous other appeals, the Congress condemned the Government of Iran's religious persecution of the Baha'i community, including the execution of more than 200 Baha'is, the imprisonment of additional thousands, and other repressive and discriminatory actions against Baha'is based solely upon their religious beliefs;

Whereas in 1992, the Government of Iran summarily executed a leading member of the Baha'i community, arrested and imprisoned several other Baha'is, condemned two Baha'i prisoners to death on account of their religion, and confiscated individual Baha'is' homes and personal properties in several cities;

Whereas the Government of Iran continues to deny the Baha'i community the right to organize, to elect its leaders, to hold community property for worship or assembly, to operate religious schools and to conduct other normal religious community activities, and

Whereas on February 22, 1993, the United Nations Commission on Human Rights published a formerly confidential Iranian government document constituting a blueprint for the destruction of the Baha'i community, which document reveals that these repressive actions are the result of a deliberate policy designed and approved by the highest officials of the Government of Iran: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) continues to hold the Government of Iran responsible for upholding the rights of all its nationals, including members of the Baha'i community, in a manner consistent with Iran's obligations under the Universal Declaration of Human Rights and other international agreements guaranteeing the civil and political rights of its citizens;

(2) condemns the repressive anti-Baha'i policy adopted by the Government of Iran, as set forth in a confidential official document which explicitly states that Baha'is shall be denied access to education and employment, and that the government's policy is to deal with Baha'is "in such a way that their progress and development are blocked";

(3) expresses concern that individual Baha'is continue to suffer from severely repressive and discriminatory government actions, solely on account of their religion; and that the Baha'i community continues to be denied legal recognition and the basic rights to organize, elect its leaders, educate its youth, and conduct the normal activities of a law-abiding religious community;

(4) urges the Government of Iran to extend to the Baha'i community the rights guaranteed by the Universal Declaration of Human Rights and the international covenants on human rights, including the freedom of thought, conscience, and religion, and equal protection of the law; and

(5) calls upon the President to continue—

(A) to emphasize that the United States regards the human rights practices of the Government of Iran, particularly its treatment of the Baha'i community and other religious minorities, as a significant factor in the development of the United States Government's relations with the Government of Iran;

(B) to urge the Government of Iran to emancipate the Baha'i community by granting those rights guaranteed by the Universal Declaration of Human Rights and the international covenants on human rights; and

(C) to encourage other governments to continue to appeal to the Government of Iran, and to cooperate with other governments and international organizations, including the United Nations and its agencies, in efforts to protect the religious rights of the Baha'is and other minorities through joint appeals to the Government of Iran and through other appropriate actions.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President.

Mr. DODD. Mr. President, I rise in strong support of this legislation, and I want to thank the majority leader for allowing this measure to be considered by the Senate before the winter recess.

Mr. President, the resolution before us is a very simple one. It calls on the Government of Iran to improve its treatment of the Baha'i, Iran's largest religious minority with over 300,000 members. In addition, this resolution calls on the President to continue to consider the treatment of the Baha'i as a significant factor in United States-Iranian relations.

Mr. President, in the 14 years since the Islamic Revolution, members of the Baha'i community have been the target of widespread and systematic persecution, harassment, and discrimination. More than 200 Baha'is have been executed and thousands of others have been arbitrarily imprisoned, robbed of their belongings, and refused employment or educational opportunities.

Iran's true intentions toward the Baha'i community were made clear last winter when a high-level Iranian Government communique was obtained by the U.N. Human Rights Commission. This document spells out in detail the manner in which the Baha'i are to be singled out for discrimination, such as expelling them from universities, denying them employment, and devising a plan to destroy their cultural roots outside the country. The existence of this document came as no surprise to the Baha'i, who had already been living under these de facto conditions for quite some time.

Iran's treatment of the Baha'i has been repeatedly condemned by the State Department and the United Nations. In fact, both President Clinton and Vice President GORE have taken the opportunity in the last several months to personally single out the Iranian regime for its treatment of the Baha'i community.

Here in Congress, Iran's treatment of the Baha'i has also gained considerable attention. In every one of the last four Congresses, legislation has been enacted that calls on the Iranian Government to improve its treatment of the Baha'i. This continued pressure is necessary if we are to send a clear message to the leaders of Iran that their behavior toward the Baha'i cannot be tolerated.

Mr. President, in some ways it would appear that the constant U.S. pressure on this issue has had some results. For example, the number of political killings of Baha'i has dropped to virtually zero over the past several years. Unfortunately, disturbing signs continue to emerge from Iran indicating that the leaders in Tehran still have a long way to go.

For example, earlier this year the Government of Iran began excavating a Baha'i cemetery in order to build a local cultural center. This appalling act was condemned by the United States as yet another example of abuse of the Iranian Baha'i religious community by the Government of the Islamic Republic of Iran. The New York Times, in an editorial, wrote that a regime that stoops to body-snatching can hardly reach lower. I will soon ask unanimous consent that both of these documents be placed in the RECORD at the appropriate place.

In addition, just last month the Iranian parliament passed a law banning civil servants from participating in groups whose constitution is based on the denial of divine religions. This arbitrary and discriminatory provision would clearly prohibit members of the Baha'i community from serving as civil servants.

Mr. President, this resolution currently has 52 cosponsors in this Chamber—a clear indication of the type of broad-based support that this issue has in the Congress. I thank the majority leader for allowing this measure to come to the floor and I urge my colleagues to lend their support to it.

I ask unanimous consent that the documents I referred to be printed in the RECORD.

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

DEPARTMENT OF STATE,
OFFICE OF THE SPOKESMAN,
August 4, 1993.

DESECRATION OF BAHA'I CEMETERY IN TEHRAN

We have received reports from the Baha'i community that the Tehran municipality is building a community center on the site of a former Baha'i cemetery. Independent sources have confirmed this information.

The United States Government condemns the desecration of this cemetery. It is yet another example of abuse of the Iranian Baha'i religious community by the Government of the Islamic Republic of Iran.

We urge the Iranian Government to halt the construction work immediately.

[From the New York Times, July 8, 1993]

IRAN STOOPS TO GRAVE ROBBING

After the election of President Hashemi Rafsanjani, a supposed harbinger of moderation, the world hoped for better from Iran. But the mortality policy still stalk the streets, jailing men for wearing T-shirts and women for wearing sunglasses. Even more upsetting is the recent bulldozing of grave sites and uprooting of bodies from a Baha'i cemetery in Teheran, ostensibly to make way for a cultural center.

This officially sanctioned grave-robbing follows years of persecution of an estimated 300,000 Iranian Bahais, whose faith the mullahs treat with spite, since it is viewed as a heretical offshoot of Islam. Bahais were singled out for oppression in a secret 1991 order calling for their dismissal from jobs and universities. When the order became known this year, it was rightly condemned by the Clinton Administration and in U.N. debates.

With the death warrant on the novelist Salman Rushdie, the mullahs of Iran made plain their contempt for Western traditions of tolerance. True, those traditions are fragile. Islamic peoples have been persecuted in Germany and the Balkans. And in America, virtually every minority has been the target of hate crimes.

But there's a big difference between state-sponsored persecution and gutter bigotry. Reverence for the dead reaches across all cultures and religions. A regime that stoops to body-snatching can hardly reach lower.

Mr. MCCAIN. Mr. President, 3 years ago, I spoke on the Senate floor in support of a resolution urging the Government of Iran to end its repression of the Baha'i community in Iran. I began that statement by recognizing that some limited progress had been made in improving conditions for Baha'is in Iran. I noted that at least Iran had ceased executing Baha'is for their religious beliefs and that the number of Baha'is imprisoned for their faith had decreased dramatically.

Despite the cessation of the most horrible acts of official persecution, it was still clear 3 years ago that Iran's rulers continued to systematically persecute Baha'is for their religious beliefs. That sad fact remains true today.

Moreover, the oppression endured by Baha'is in Iran today has taken an ominous turn for the worse. In March of last year, Bahman Samandari, an Iranian of the Baha'i faith, was executed without notification to his family and for simply practicing his faith. Other Baha'is are currently under sentence of death in Iran. Others have been murdered or have died under strange circumstances.

The UN special representative's report on the human rights situation in Iran, released this past February, provides a bleak account of the outrageous conditions imposed on Baha'is by their Government.

The arbitrary arrest and detention of Baha'is continues.

Baha'is are routinely denied access to institutes of higher learning.

They are prevented from meeting as a community, and from maintaining the administrative offices of their faith.

They are denied means to earn a decent living, and their property rights are casually disregarded.

Their marriages and divorces are not legally recognized.

They are officially regarded by the Iranian Government as unprotected infidels, and undeserving of even minimal respect for their civil rights.

Of course, as you have all heard by now, the most alarming development concerning the Baha'is in Iran is the disclosure of a secret code of oppression approved by President Rafsanjani and Khomeini's successor, the Ayatollah Khameini. This 2-year-old document outlines Iran's cynical design for the destruction of the Baha'i faith.

It orders the expulsion of known Baha'is from universities.

It emphasizes that Baha'is should be punished on trumped up allegations of political espionage.

It calls for a multifaceted effort to stop the growth of the Baha'i religion.

And most frighteningly, it urges the destruction of the Baha'is' cultural roots outside their country.

There is also evidence in this document that Iran is sensitive to international opinion on this issue as it reveals the lengths Iran will go to in order to obscure their oppression of the Baha'is.

We recognize that the United States Congress can influence decisionmaking in Iran. As it has previously, Congress should again pass a resolution denouncing these abuses and calling on Iran to observe recognized standards of decency.

In this way, we can assure Iran's leaders that their gross abuses of the Baha'is will not go unnoticed by us, and it will have consequences.

We must communicate to the Government of Iran that Americans and, indeed, all the ever-expanding free world, consider religious tolerance to be a minimal requirement for entry into the community of nations. If Iran is ever to enjoy normal relations with the free world, it will have to exhibit a far greater acceptance of freedom of religion than has ever been the case in revolutionary Iran. A Baha'i, no less than any other human being, is entitled to the right to life, liberty and the pursuit of happiness.

For Baha'is, as for many people, happiness is pursued through religious devotion. If the theocracy that rules Iran cannot accept that enduring truth, than it has no right to consider itself a worthy member of the civilized world.

Mrs. KASSEBAUM. Mr. President, in June of this year, I was pleased to join with Senator DODD and others in cosponsoring Senate Concurrent Resolution 31, concerning the emancipation of the Iranian Baha'i community. Since 1982, Congress has adopted five resolutions calling on the Iranian Government to cease repressive actions against the Baha'is, Iran's largest religious minority. These resolutions have won broad bipartisan support with more than 50 senators cosponsoring this year's resolution.

Repressive actions have been the deliberate policy of the government of Iran. According to a secret Iranian Government document revealed this year by the U.N. Human Rights Commission, Iran's highest officials have proclaimed a policy calling for the destruction of the Baha'i community. In light of this continuing destructive policy and the recent desecration of the Baha'i cemetery in Tehran, Congress must continue to make clear its concern about Iran's treatment of Baha'is.

There is evidence that the Iranian regime is sensitive to international criticism. Therefore, I urge my colleagues to support this resolution in the hope that this effort will bring about positive results.

Mr. PELL. Mr. President, today the Senate is expected to consider legislation, Senate Concurrent Resolution 31, introduced by Senator DODD, myself and others concerning the tragic situation of the Baha'i community in Iran. While much of the international community's attention has understandably been focused on the major human rights atrocities being committed in such places as Bosnia, Iraq and Haiti, the oppression of the Baha'is, the largest non-Moslem religious minority in Iran, must not be forgotten.

The Baha'is are neither subversives or even separatists; they seek only the right to practice their religion freely. Although they are non-violent by the tenets of their faith, the Iranian Baha'is have been subjected to harassment, imprisonment, loss of jobs, confiscation of property, and even summary executions, solely on the basis of their religious beliefs. Recently, an Iranian government document was obtained which outlines the government's strategy of dealing with the Baha'is "in such a way that their progress and development are blocked." The document goes on to call for a plan "to confront and destroy their cultural roots outside the country."

The government of Iran must be held responsible by the international community for this deliberate effort to repress the Baha'i people. I and a number of other Senators have been calling attention to this tragedy for years; from my experience, I know that congressional attention to this issue has had a positive effect on the policies of the Tehran regime. It remains essential, therefore, to apply constant pressure on Iran.

I would like to draw the attention of the Senate to an appeal made by the American Baha'i community, urging the international community to speak out against Iran's repression of the Baha'is. This appeal has been co-signed by many prominent scholars and policymakers, including Elie Wiesel, George Shultz, and Zbigniew Brzezinski, among others. I ask unanimous consent that the text of the appeal, entitled "An Appeal to the Conscience of Humankind," be included in the RECORD at the conclusion of my remarks, and I also urge my colleagues to support the resolution.

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

NATIONAL SPIRITUAL ASSEMBLY OF THE BAHA'IS OF THE UNITED STATES,

Washington, DC.

AN APPEAL TO THE CONSCIENCE OF HUMANKIND

A law-abiding religious minority in Iran has been the target of official persecution since the Islamic regime was established fourteen years ago. More than 200 members of the Baha'i Faith have been executed because of their religion. Thousands have been imprisoned, and hundreds of thousands denied education and employment.

As "unprotected infidels," Baha'is have no legal rights or protection. They are under severe and continuing pressure to renounce their faith.

These repressive actions are the deliberate policy of the Government of Iran. According to a secret Iranian government document revealed this year by the U.N. Human Rights Commission, Iran's highest officials—including President Rafsanjani and the Supreme Leader, Ayatollah Ali Khamenei—have proclaimed a policy calling for the destruction of the Baha'i community.

Iran's official policy "regarding the Baha'i question" states that "a plan must be devised to confront and destroy their cultural roots outside the country."

Presidents Reagan, Bush and Clinton, the U.S. Congress, the European Parliament, and the parliaments of Australia, Brazil, Canada, Germany and other nations have decried Iran's repressive actions against Baha'is. The U.N. Human Rights Commission and the General Assembly have repeatedly condemned Iran's abuses of human rights, including its actions against the Baha'i minority.

As Americans who cherish religious freedom and tolerance, we urge the world's leaders to continue to speak out against Iran's plan to destroy the Baha'is.

We urge the United Nations and other organizations such as the Council of Europe and the European Community to call upon the Government of Iran to extend to Baha'is the religious rights guaranteed by the Universal Declaration of Human Rights.

CO-SIGNERS OF AMERICAN BAHA'I COMMUNITY APPEAL FOR IRANIAN BAHA'IS (AS OF NOVEMBER 15, 1993)

Morton Abramowitz, Fouad Ajami, John Brademas, Tom Bradley, William E. Brock, Zbigniew Brzezinski.

Hodding Carter, Chester A. Crocker, Patricia Derian, Edward Derwinski, Lawrence S. Eagleburger, Suzanne Garment, Carl Gershman.

Richard N. Haass, Alexander M. Haig, Jr., Rita E. Hauser, Max M. Kampelman, Robert V. Keeley, Geoffrey Kemp, Coretta Scott King.

Jeane J. Kirkpatrick, Morton M. Kondracke, Leon M. Lederman, Sol M. Linowitz, Bette Bao Lord, Richard W. Murphy.

Michael Novak, Daniel Pipes, Richard Pipes, William B. Quandt, Rozanne L. Ridgway, Stuart Robinson.

Peter R. Rosenblatt, Eugene V. Rostow, Jerome J. Shestack, George P. Shultz, Richard H. Solomon, Helmut Sonnenfeldt, Art Ulene, M.D.

Ben J. Wattenberg, George Weigel, John C. Whitehead, Elie Wiesel, Roger Wilkins, Clarence N. Wood, Michael York, Andrew Young.

INCREASING RATE OF SPECIAL PENSION TO PERSONS WHO HAVE RECEIVED THE MEDAL OF HONOR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Veterans Affairs Committee be discharged from further consideration of H.R. 3341, a bill to increase the rate of special pension paid to persons who have received the Medal of Honor, and that the Senate proceed to its immediate consideration; that the bill be deemed read the

third time, passed, and the motion to reconsider laid upon the table; that any statements relating to this measure appear in the RECORD at the appropriate place and as if given.

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

So the bill (H.R. 3341) was deemed read the third time, and passed.

CORINTH, MISSISSIPPI, BATTLEFIELD ACT OF 1993

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 289, S. 986, to provide for an interpretive center at the Civil War Battlefield of Corinth, MS.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill (S. 986) to provide for an interpretive center at the Civil War Battlefield of Corinth, MS, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments; as follows:

S. 986

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 "Corinth, Mississippi, Battlefield Act of 1993".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the 14 sites located in the vicinity of Corinth, Mississippi, that were designated as a National Historic Landmark by the Secretary of the Interior in 1991 represent nationally significant events in the Siege and Battle of Corinth during the Civil War; and

(2) the Landmark sites should be preserved and interpreted for the benefit, inspiration, and education of the people of the United States.

(b) PURPOSE.—It is the purpose of this Act to provide for a center for the interpretation of the Siege and Battle of Corinth and other Civil War actions in the region and to enhance public understanding of the significance of the Corinth Campaign in the Civil War relative to the Western theater of operations, in cooperation with State or local governmental entities and private organizations and individuals.

SEC. 3. ACQUISITION OF PROPERTY AT CORINTH, MISSISSIPPI.

(a) IN GENERAL.—The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to acquire by donation, purchase with donated or appropriated funds, or exchange, such lands or interests therein in the vicinity of the Corinth battlefield in the State of Mississippi, as the Secretary determines necessary for the construction of an interpretive center to commemorate and interpret the 1862 Civil War Siege and Battle of Corinth: *Provided*, That such lands or interests therein shall only be acquired with the consent of the owner thereof.

(b) PUBLICLY OWNED LANDS.—Lands and interests in lands owned by the State of Mississippi or a political subdivision of the State of Mississippi may be acquired only by donation.

SEC. 4. INTERPRETIVE CENTER AND MARKING.

(a) CONSTRUCTION OF CENTER.—The Secretary is authorized to construct, operate, and maintain on the property acquired under section 3 a center for the interpretation of the Siege and Battle of Corinth and associated historical events. The Center shall include interpretive exhibits and such other features as may be necessary for public appreciation and understanding of the Siege and Battle of Corinth.

(b) MARKING.—The Secretary may mark sites associated with the Siege and Battle of Corinth National Historic Landmark, as designated on May 6, 1991, if such sites are determined by the Secretary to be protected by State or local governmental agencies.

(c) ADMINISTRATION—The lands and interests in lands acquired, and the facilities constructed and maintained pursuant to this Act shall be administered by the Secretary as a part of Shiloh National Military Park, subject to the appropriate laws and regulations applicable to the park, the Act of August 25, 1916 (39 Stat. 535, chapter 408; 16 U.S.C. 1 et seq.), and the Act of August 21, 1935 (49 Stat. 666, chapter 593; 16 U.S.C. 461 et seq.).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(A) IN GENERAL.—Subject to subsection (b), there are authorized to be appropriated such sums as are necessary to carry out this Act.

(b) CONSTRUCTION.—Of the amounts made available to carry out this Act, not more than $6,000,000 may be used to carry out section 4(a).

Mr. MITCHELL. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; and that any statements on this measure appear in the RECORD at the appropriate place as if read.

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

So the bill (S. 986) was deemed read three times and passed, as follows:

S. 986

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 "Corinth, Mississippi, Battlefield Act of 1993".

SEC. 2. FINDINGS AND PURPOSE.

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(1) the 14 sites located in the vicinity of Corinth, Mississippi, that were designated as a National Historic Landmark by the Secretary of the Interior in 1991 represent nationally significant events in the Siege and Battle of Corinth during the Civil War; and

(2) the Landmark sites should be preserved and interpreted for the benefit, inspiration, and education of the people of the United States.

(b) PURPOSE.—It is the purpose of this Act to provide for a center for the interpretation of the Siege and Battle of Corinth and other Civil War actions in the region and to enhance public understanding of the significance of the Corinth Campaign in the Civil War relative to the Western theater of operations, in cooperation with State or local governmental entities and private organizations and individuals.

SEC. 3. ACQUISITION OF PROPERTY AT CORINTH, MISSISSIPPI.

(a) IN GENERAL.—The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to acquire by donation, purchase with donated or appropriated funds, or exchange, such lands or interests therein in the vicinity of the Corinth Battlefield in the State of Mississippi, as the Secretary determines necessary for the construction of an interpretive center to commemorate and interpret the 1862 Civil War Siege and Battle of Corinth: *Provided*, That such lands or interests therein shall only be acquired with the consent of the owner thereof.

(b) PUBLICLY OWNED LANDS.—Lands and interests in lands owned by the State of Mississippi or a political subdivision of the State of Mississippi may be acquired only by donation.

SEC. 4. INTERPRETIVE CENTER AND MARKING.

(a) CONSTRUCTION OF CENTER.—The Secretary is authorized to construct, operate, and maintain on the property acquired under section 3 a center for the interpretation of the Siege and Battle of Corinth and associated historical events. The center shall include interpretive exhibits and such other features as may be necessary for public appreciation and understanding of the Siege and Battle of Corinth.

(b) MARKING.—The Secretary may mark sites associated with the Siege and Battle of Corinth National Historic Landmark, as designated on May 6, 1991, if such sites are determined by the Secretary to be protected by State or local governmental agencies.

(c) ADMINISTRATION.—The lands and interests in lands acquired, and the facilities constructed and maintained pursuant to this Act shall be administered by the Secretary as a part of Shiloh National Military Park, subject to the appropriate laws and regulations applicable to the park, the Act of August 25, 1916 (39 Stat. 535, chapter 408; 16 U.S.C. 1 et seq.), and the Act of August 21, 1935 (49 Stat. 666, chapter 593; 16 U.S.C. 461 et seq.).

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AUTHORITY FOR SECRETARY OF THE INTERIOR TO CONVEY CERTAIN LAND

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 433 to authorize and direct the Secretary of the Interior to convey certain lands in Cameron Parish, LA, 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. 433) entitled "An Act to authorize and direct the Secretary of the Interior to convey certain lands in Cameron Parish, Louisiana, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. CONVEYANCE OF LANDS.

(a) IN GENERAL.—Subject to the limitations set forth in this section, the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is directed to convey by quitclaim

deed and without monetary consideration, all right, title, and interest of the United States in and to certain lands located in Cameron Parish, Louisiana, described as section 32, Township 15 south, Range 10 West, Louisiana Meridian, as depicted on the official plat of survey on file with the Bureau of Land Management, to the West Cameron Port Commission for use as a public port facility or for other public purposes. As used in this subsection, the term "other public purposes" means governmental or public welfare purposes (including, but not limited, to schools and roads) within the authority of a unit of local government under the laws of the State of Louisiana, and includes a commercial use by the West Cameron Port Authority of lands conveyed by the United States pursuant to this Act so long as the revenue from such use is devoted to such governmental or public welfare purposes.

(b) RESERVATION OF MINERALS.—The United States hereby excepts and reserves from the provisions of subsection (a) all minerals underlying the lands, including the right to enter and remove same.

(c) REVERSION TO THE UNITED STATES.—If the lands conveyed by the United States pursuant to this Act cease to be operated by the West Cameron Port Authority for use as a public port facility or for other public purposes, such lands shall revert to the United States: Provided, That the lands shall not revert if the Secretary determines that such lands, or any portion thereof, have become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 and following)).

(d) RETENTION OF PROPERTY FOR COAST GUARD.—The Secretary, after consultation with the Coast Guard and the West Cameron Port Authority, shall except and reserve from such conveyance all right, title, and interest to approximately 3.0 acres of land known as the Calcasieu Pass Radio Beacon Site used by the Coast Guard, along with any improvements thereon, for the continued use and benefit of the Coast Guard.

(e) RETENTION OF OTHER ENCUMBRANCES.—(1) The Secretary shall not convey any right, title, or interest held by the United States on the date of enactment of this Act in or to the following encumbrances, as identified on the map referred to in section 2—

(A) a permit granted to the United States Army to install and maintain an automatic tide gauge for recording storm and hurricane tides; and

(B) height restrictions in relation to the radio beacon tower.

(2) The Secretary, after consultation with the Coast Guard, may include in the deed of conveyance any other restrictions the Secretary determines necessary for the benefit of the Coast Guard, including, but not limited to restrictions on height of structures, and requirements to shield seaward facing lights.

SEC. 2. LETTERMAN-LAIR COMPLEX AT PRESIDIO.

The Secretary of the Interior is authorized to negotiate and enter into leases, at fair market rental and without regard to section 321 of chapter 314 of the Act of June 30, 1932 (40 U.S.C. 303b), for all or part of the Letterman-LAIR complex at the Presidio of San Francisco to be used for scientific, research or educational purposes. For 5 years from the date of enactment of this section, the proceeds from any such lease shall be retained by the Secretary and used for the preservation, restoration, operation and maintenance, improvement, repair and related expenses incurred with respect to Presidio properties. For purposes of any such lease, the Secretary may adjust the rental by taking into account any amounts to be expended by the lessee for preservation, maintenance, restoration, improvement, repair and related expenses with respect to the leased properties.

Mr. MITCHELL. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Maine.

The motion was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the action just taken, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORITY FOR COMMITTEES TO REPORT DURING THE RECESS OR ADJOURNMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that during the recess/adjournment of the Senate that Senate Committees may file committee-reported Legislative and Executive Calendar business on Thursday, December 9 from 11 a.m., to 3 p.m.

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

ORDER FOR THE RECOGNITION OF SENATOR BIDEN AND RECESS UNTIL THURSDAY, NOVEMBER 18, 1993, AT 9:25 A.M.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the distinguished Senator from Delaware, the chairman of the Judiciary Committee, be recognized to address the Senate and that upon conclusion of his remarks the Senate stand in recess as previously ordered.

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

The Senator from Delaware.

Mr. BIDEN. Mr. President, I realize the hour is late and I will not trespass very long on the time of the Senate and the Presiding Officer. I realize he is a captive in that chair, and I will not keep him very long.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

The Senate continued with the consideration of the bill.

COMMUNITY SCHOOL AMENDMENT

Mr. BRADLEY. Mr. President, with $22 billion available in this bill for prisons and police, a number of us have been concerned that we are not doing anything to get to the fundamental forces behind the epidemic of violence among disaffected, forgotten, angry and lonely young people. For that reason, I offered an amendment to add a community schools demonstration, to give every neighborhood a physical space and a support system for kids who need safety, a library, a quiet room, a gym, or a mentor. I am pleased that the chairman and ranking member of the Judiciary Committee have both enthusiastically agreed to accept this amendment to prevent crime.

One of the great outrages of our cities is that the one public building that is part of every neighborhood and every family's life—the school—bolts its doors tight every afternoon at 3:30 or 4 and every Friday for 48 hours. During that time, kids whose parents are not home often have no safe place to go and no one to help them with homework, sports, or the basic questions about growing up. The dedicated people of the community, who want to be a part of raising the community's children, have no place to come together and help. But if we look at what a few dedicated people have done, we can find an answer. In Newark, NJ, it's the Boys and Girls Club of Newark. In East Orange, NJ, a local YMCA is transforming itself into a safe haven for young people after school. And in Washington, DC, it's a former executive named Kent Amos, who gave up his career to give his full attention to the 50 or more kids who come to his home every afternoon for help with homework and other activities.

Meanwhile, the school buildings, with their gyms and libraries, their nurses' offices and auditoriums, are shuttered. Community schools will provide basic funds to open the schools after hours for purposes the community chooses. It might be a safe place for homework, or an athletic program, or a parenting program for young mothers. Kids need two things during their free time: a place and a mentor. This bill will give both, in communities where there is the kind of commitment that Kent Amos and others have demonstrated in Washington, DC. But now a caring community can affect hundreds of thousands of kids, not just 50.

This amendment is a little different from the bill we introduced last spring, in that it concentrates the effort on supervised activities designed to keep young people out of trouble. It is integrated with the Ounce of Prevention Council, an interagency council on violence prevention which has already begun work and which is given grantmaking authority by another creative amendment to this bill, one developed by Senator DODD. The amendment authorizes $100 million a year for these grants.

I want to stress that the point of this bill is that we are not putting a new burden or new responsibility on the school system, which has its hands full with the basic task of educating kids from 8:30 until 3. The school is a building, usually the only building, where there is a library, a gym, classrooms, a nurse's office, and all the basic facilities that the community needs to shelter and nurture its children. From 3 into the evening, we want that building to belong to the community, to use as it sees fit for its own children.

This crime bill, with its unique new funding mechanism, can offer tough penalties, adequate prison space for those who are apprehended and convicted, and tighten the avenues through which criminals evade or delay justice. But it cannot get to its central purpose, which is "to prevent and control crime," without something that gets to people before they cross the line. Strong communities need the tools to keep young people engaged, ambitious, and optimistic about their futures. A community cannot do that if the schools it possesses are off-limits, owned and controlled by an external bureaucracy, after 3, on weekends, and for 3 months in the summer.

I want to thank my colleagues Senator DANFORTH, again, for his continuing involvement in this initiative, and Senator DOMENICI, who brought some ideas of his own to this amendment as well as enthusiasm for the idea.

OMNIBUS CRIME BILL

Mr. BRADLEY. Mr. President, I rise to speak in favor of this omnibus crime bill. Last week, Senator MITCHELL reminded us that crime is essentially a local issue. I agree with him that much of what we have done over the last few weeks will have only a negligible effect on crime across the country. But I think he would agree that the dialog we have started on crime and violence is an important one. I want to congratulate the chairman of the Judiciary Committee, Senator BIDEN, on this bill and I look forward to continuing the conversation about crime and violence which has gripped this body over the last few weeks.

We have all heard the stories: a child killed in drive-by shooting, an elderly woman afraid to walk out of her home for fear of being robbed in broad daylight by some drugged up young thug, a businessman driving in his car, the random victim of a car-jacking. These are the headlines. They disgust us, enrage us, frighten us, and then fade from our memories once another outrage is committed. We have become hardened to this senselessness. We turn on the nightly news expecting it.

But every day, in ways that have become part of our normal routine, we do little things to avoid becoming victims of crime. We lock our doors. Some people might laugh at this, but there was a time when we did not lock our doors. We hold our possessions closely as we walk through crowded areas. We do not walk out alone at night. We take quick glances behind ourselves when we take money out of ATM machines. We cross the street in an effort to avoid people that we think are threatening. Increasingly, the profile of the threatening person at least as depicted by the media and suggested by their disproportionate presence in our prisons, are young, black, and Hispanic men.

We don't like to talk about that perception, but it is there. Regardless of how much the statistics show that most victims of crime share the same race as their victimizers, we have to acknowledge that many people take subtle and not-so-subtle actions based on their fears about who is committing crime. We buy guns under the mistaken impression that we can protect ourselves, even if our local police force cannot, and even if we know that for every intruder shot in self-protection there are 43 murders, suicides, and accidental killings, often a family member.

This crime bill attempts to respond to some of these concerns. It attempts to give people the ability to regain control of their communities. It is a good start toward this goal, and will, I am certain, spark serious discussion about what our escalating crime problem portends for our society in general.

This bill accomplishes many things. It makes certain that we as a society can rightly express our outrage at the perpetrators of heinous crimes by making sure they serve long sentences. It allows us to impose the sentence of death, where appropriate. And it takes steps to combat some of the social causes of crime, especially among youngsters.

This bill puts 100,000 new police on the street for community policing, increases the penalties for a number of violent and drug-related crimes, and allows people to attend college in return for agreeing to serve as local police officers after graduation. It also provides a variety of discretionary grant programs to help local communities combat youth violence, drug-related crime, and child abuse.

Recognizing that drug treatment is essential to reducing the rate of recidivism among prisoners, this bill authorizes expanded drug treatment for Federal prisoners, and offers grants for drug treatment in State prisons, as well.

While I believe this bill as a whole will be effective in shoring up public confidence in our criminal justice system, I would like to highlight certain provisions of it which I believe will be particularly helpful in making our communities safer.

As I have already mentioned, this bill puts 100,000 additional police on the street to conduct community policing. As the sponsor of similar community policing legislation, I strongly support this effort. Earlier this year, I met a small businessman in New Jersey. His store was in the shadow of City Hall, just blocks away, but when he called the police, he said it took them 3 hours to respond. He concluded that Government would do nothing to ensure his safety, and now he carries a gun.

Government's response to the epidemic of violent crime has been to toughen and toughen again the penalties. I have supported this effort—because the penalties should fit the magnitude of the crime—but there is a larger point. A police culture that isolates officers in squad cars, responding to crimes only after the fact, will never prevent crime and rarely catch the criminal.

While Government was speaking louder about crime, but carrying what looked like a smaller and smaller stick, a few communities were inventing for themselves a new way to promote safety. In East Orange, NJ, police officers recently took the roughest 12-block zone of the city and made it a miniprecinct, with an accessible office and distinct neighborhood beats for every officer.

A similar program that started in 1990 in Columbia, SC, brought an immediate 30 percent reduction in crime. An elderly woman living in a housing project, who had slept on her floor for 5 years because she feared bullets coming through her window, was finally able to get back into bed. Now police officers worry less about what crimes have occurred, and spend more time talking to people, finding out where trouble is brewing, and intervening before it happens. Police know the mothers who are worried about their sons and daughters; they know the shopkeepers who are worried about neighborhood thugs, and they know the thugs the shopkeepers worry about. With knowledge comes trust and trust is the foundation for security. These communities have invented for themselves new ways to ensure safety and will benefit from this bill.

This bill mandates stiffer penalties for drug dealing in public housing. I introduced legislation establishing increased penalties a few years ago. Inspired by the courageous parents of an Elizabeth, NJ, housing project, the legislation toughens the penalty for selling drugs in the vicinity of a public housing project, as is done when a person is convicted of selling drugs in or in the vicinity of a school or playground.

Like most families, families that live in public housing hope to build a better life for themselves and their children. Drugs destroy that possibility, just as surely as drugs destroy the possibility of learning in school. This provision will help families in public housing remake the possibilities by cracking down on those who sell drugs in or near their homes.

This bill also authorizes funding for drug court programs like the successful program in Dade County, FL. Drug court programs provide drug testing, drug treatment, and alternative punishments for certain drug offenders. If an offender comes through the drug court, he or she has to enter into treatment and commit to getting his or her life together. The court monitors the progress of the offender, and if positive progress is made, he or she can avoid incarceration. I know the Attorney

General supports this program. I am pleased that it was included in this bill.

Early intervention during initial contact with the criminal justice system has been credited with turning many young offenders away from a life of drugs and crime. Instead of putting them with hardened criminals or warehousing them in traditional prisons, some local governments have experimented successfully with the idea of sending some youthful offenders to boot camps or neighborhood-based half-way houses. This bill authorizes funds to support these local activities, so that we can get a better idea of how effective alternative incarceration programs can be in reducing recidivism among youthful offenders.

Another important initiative in this bill is the Police Corps. Under this program, individuals will be given scholarships to complete their college educations. In exchange, they must commit to serving as police officers for 4 years after graduation. By placing more college-educated individuals within our police forces, this provision will strengthen the image of police work among the greater community and enhance police departments' ability to understand the social causes; that is, joblessness, low basic skills development, hopelessness, low parent-child supervision of crime. The more educated the police force, the better it is able to respond to crime in urban America.

An important benefit of the Police Corps is its emphasis on public service. Police work is difficult, stressful, and demanding. It often requires individual police officers to risk their lives in order to serve the larger community. It is with a sense of public purpose that most police officers serve their communities. The Police Corps affirms this public purpose.

The ratio of police power to violent crime today is one-tenth of what it was 35 years ago. Many students entering college today have seen their neighborhoods, the places in which they used to play ball and bike safely as first and second graders, become combat zones that their younger brothers and sisters watch from behind barricaded doors and windows. Others recognize that crime is a universal problem, and that America cannot live up to its promise as a Nation if it cannot offer safety to its citizens. Perhaps it is partially because of this sensitivity to the crime problem that a large number of college students polled by the Department of Justice recently said they would be eager to participate in the Police Corps.

The crime wave of recent years has led many cynics to proclaim a breakdown in the desire for public service in America. On the contrary, Mr. President, I believe we are witnessing a resurgence of citizenship and a renewed dedication among younger Americans to give something back to their communities. The Police Corps will allow us to draw on this renewed sense of citizenship to restore viability to our troubled neighborhoods and ensure that the most modest of American dreams—a life free from violence and terror—is a reality in every city in our land.

This bill also strengthens the Juvenile Justice Program to confront the problem of youth gangs in our country. It expands the initiatives set forth in the 1988 drug bill to fund support and prevention programs for young street gang members, offering these youth viable alternatives to life on the streets.

In 1988, Congress established the Community Youth Activity Program. This program authorized funds for education, training, and recreation programs aimed at reaching at-risk youth, including high school dropouts and gang members. New Jersey was awarded one of the program's first grants, which was aimed at reaching New Brunswick youth whose older siblings were involved in drugs, crime, and gangs. I have visited the program and can attest to its effectiveness. But one program in one city in New Jersey will not solve the problem. We must target more resources at gangs. If we do not spend the money now, we will spend much more later to apprehend and imprison those who are caught up in the vicious cycle of gang violence and crime.

Under the expanded program required by this bill, $100 million will be made available to reduce the number of juveniles involved in gang-related crime, to reduce juvenile involvement in drug-related crimes, and to promote the involvement of juveniles in productive activities.

Mr. President, we were able to focus to some extent on guns during the debate on this bill. I know that many of my colleagues did not desire a discussion of guns on this bill, but I am happy we were able to at least start that discussion. I look forward to discussing the destructive effects of certain guns a bit more extensively in the future.

If you talk about crime to the residents of any community in America, you are going to hear about guns. You are going to hear about the high number of guns on the street. You are going to hear about the damage caused, lives lost, and bodies injured. We often think of guns in terms of their impact on the criminal justice system because more guns in the hands of people makes it much more difficult for our police to protect us against crime. But the widespread availability of guns is also a health issue. Gun violence costs the American taxpayers $3 billion a year in health care costs, and I believe we should use our taxing power to offset some of these costs.

There are now an estimated 209 million firearms in this country, about 71 million of which are handguns. A new handgun is produced every 20 seconds. For at least a decade now, almost half of America's households have owned at least one gun and at least 25 percent have owned a handgun. According to one commentator, "gun ownership has become so pervasive that the mere fact of possession has become a problem in and of itself. The presence of guns, especially handguns in homes, has begun to be recognized as a danger to the families who live in those homes."

Wide-spread gun ownership has its consequences. Every 14 minutes someone in the United States dies from a gunshot in a homicide, suicide, or accident. Every 6 hours, a youth between the ages of 10 and 19 commits suicide with a firearm. Nonfatal gunshot injuries have also risen dramatically. There were 240,000 such injuries in the United States in 1989.

Although handguns account for only one-third the number of firearms, they cause two thirds of the firearm-related deaths. They are also used in about 80 percent of all gun murders. Assault weapons cause a far fewer number of deaths, but, on account of their destructive capacity, they have created a crisis for hospitals and health care providers in many communities.

Ninety-five percent of the people injured by a handgun each year require emergency care or hospitalization. Of these, 68 percent require overnight care and 32 percent require a hospital stay of 8 days or more. A study by the University of Arizona Emergency Medical Research Center found that the average cost per gunshot victim was $16,704. When additional charges, such as physician services, ambulances, followup care and rehabilitation, are added in, the overall cost to our health care system is about $3 billion a year.

According to the Centers for Disease Control, at least 80 percent of the economic costs of treating firearms injuries are paid for by taxpayer dollars, a fact every person concerned about the rising cost of health care should heed. The total life-time costs associated with firearm deaths and injuries were over $20 billion in 1990.

Ask any trauma center official about the health care cost of guns and you are certain to get a dose of reality. In 1982, 95 percent of gunshot victims treated at Cook County Hospital had been shot only once, usually with a low-velocity bullet. In 1991, 25 percent of gunshot victims were treated for multiple wounds, many of which were made by high-velocity bullets. The gunshot injuries are so devastating at the Washington, DC, Hospital Center that military trauma physicians are being recruited to relieve the work load.

In northern New Jersey, a 16-year-old girl was shot recently by a fellow classmate during an argument. The victim

was paralyzed by a spinal cord injury, and spent 34 days in acute care at a cost of $147,000. This figure does not even include the cost of physical therapy. An uninsured man in New Jersey recently became the unintended victim of a drive-by shooting. The cost of his treatment: in excess of $70,000.

I could mention many causes for the increase in gun violence: lack of opportunity, the waning of basic values, lack of respect for human life, weak law enforcement, light sentencing. But accepting many of these causes of gun violence does not erase the reality that crime and deviant behavior have become much more costly to our health care system because of the prevalence of handguns and assault weapons. Disputes that were settled with fists and knives 10 years ago are now settled with guns. The number, availability and destructive capacity of handguns and assault weapons have contributed significantly to this tragedy.

When the current firearm excise tax provisions were passed by Congress in 1954, the gun market was dominated by sportsmen. We did not have a plethora of guns on the streets of our Nation threatening the physical well-being of our citizens. We did not suffer from the ravages of semiautomatic assault weapons and irresponsible gun use. We were not facing a crisis of gun violence. Because this situation in this country has changed, so should the taxes on handguns, assault weapons, and ammunition.

I want to emphasize that I am not suggesting that we impose a higher tax on gun purchases made for legitimate sporting purposes. To the contrary, I would impose an enhanced Federal tax only on the purchases of handguns, assault weapons, and the ammunition for these firearms. The data show that handguns and assault weapons are responsible for a disproportionate share of gun violence. It is reasonable to tax these firearms at a higher level.

Mr. President, this bill takes several important steps to reduce the incidence of crime in the United States. I am proud to be associated with it. It also starts us toward a dialog which is necessary if we are ever going to turn the tide on crime. I look forward to continuing this dialog and I congratulate my colleagues on this bill.

SUPPORT OF BAN ON ASSAULT GUNS

Mr. AKAKA. Mr. President, I am pleased to be a cosponsor of Senator FEINSTEIN's amendment to restrict the use and possession of assault weapons. It is absolutely imperative to rid the streets of weapons of destruction that have no place in society.

Throughout the debate on S. 1607, many Members have related how violent acts have personally affected their lives. Several months ago, I didn't have a story to tell. Unfortunately, today I do. Only last month, I met with the family of John Scully, a young attorney from Hawaii, who was one of eight people murdered by a lone gunman with two assault guns during a rampage through a San Francisco law firm this past summer.

As I sat with John's parents, Niall and Pegi Scully of Honolulu, John's wife, Michelle Spiess Scully, his sister, Megin Scully-Minuth, and her husband, Reed, I became personally involved with the tragedy of a violent crime. I was no longer able listening to these fine people as just their Senator. I was drawn into this personal tragedy as a parent, a grandfather, and a friend of the family.

Despite their recent loss, the Scully family came to Capitol Hill to meet with Senators and their staffs to urge passage of gun control legislation. I know they met with a number of Members and were appreciative of the time that Senators spent with them. In addition to seeking enactment of gun control measures, the Scullys have established the John and Michelle Scully Fund, which will work toward reducing handgun-related violence in this country.

Their selflessness is remarkable; their commitment to change Senators' minds steadfast; and their willingness to relate their personal tragedy inspiring. Pegi described how she felt calling her six surviving children to tell them of their brother's death. Michelle, whose injuries from the attack are still evident, quietly spoke of her husband's last words as he shielded her from the gunman. Megin, a physician, provided staggering figures relating to the medical costs of gun violence. And her father, also a physician, called gun-related violence a devastating public health issue.

Mr. President, I bring this to my colleagues' attention because the seriousness of allowing individuals to own, or have access to, weapons of such dramatic destruction is unacceptable. We cannot have a crime bill without dealing with the issue of the availability of military style assault weapons. I urge adoption of this amendment.

TRIBUTE TO STELLA BOYLE SMITH

Mr. PRYOR. Mr. President, today, November 17, is Stella Boyle Smith's 100th birthday, and, this afternoon there is a special birthday party in Little Rock in her honor. On this day of well-deserved tribute for Mrs. Stella Boyle Smith, I would like to take just a few moments to recognize the generosity and spirit of this unique person.

Mrs. Smith says that instead of waiting until after her death to bequeath money to deserving institutions, she has been selfish enough to give it away while she could enjoy it. If that is the case, Mrs. Smith has certainly enjoyed a great deal over the 100 years of her life, and there are a number of causes that consider themselves very blessed to have been able to indulge her selfishness.

Her bequests to Arkansas Children's Hospital alone total over $1 million. To show its appreciation, the hospital has named an entire pediatric unit after her, the Infant-Toddler Special Care Unit. The fourth-floor patient pavilion also bears her name.

Mr. President, over the years Mrs. Smith has made donations to many other institutions, including: the Arkansas Symphony Orchestra, St. Vincent Infirmary, the Baptist Medical System, the Central Arkansas Radiation Therapy Institute, the University of Arkansas at Little Rock, Arkansas College, the Malvern Boys Club and the Society to Prevent Blindness.

Among her most recent gifts was a $500,000 trust to the ophthalmology department in the College of Medicine at the University of Arkansas for Medical Sciences [UAMS]. Mrs. Smith was prompted to make this gift after undergoing cataract surgery.

In addition to her enormous monetary generosity over her almost 70 years of dedicated philanthropy, Mrs. Smith has also shown a willingness to give her time to countless causes.

Mrs. Smith marks her involvement with caring for others from a very early age. As the 7th of 10 children, she says he had to learn how to share. When she was only 4 years old, she began visiting shut-ins with her mother and her enthusiasm for helping those in need has not flagged since.

In commenting on her early good works, she has said, "I didn't always have the money, but I had the time."

Mrs. Smith has been honored many times for her years of philanthropy, including being named the Arkansas Democrat Woman of the Year in 1984 and Arkansas Philanthropist of the Year by the Arkansas Chapter of fund-Raising Executives in 1986.

Mrs. Smith herself best summed up what has made her life such a happy one, when she gave the following advice to young people just starting out in life, "Have pride. Enjoy what you're doing. * * * being happy in what you're doing is the main thing. And always be honest and trustworthy."

Happy 100th birthday, Stella Boyle Smith. Thank you for helping so many others.

"KIDS AND GUNS" AMENDMENT (NO. 1148)

Mrs. FEINSTEIN. Mr. President, I rise today in support of the amendment offered by the senior Senator from Wisconsin [Mr. KOHL]. The amendment is simple. It would:

First, make it illegal for anyone to sell a handgun or handgun ammunition to minors under the age of 18; and

Second, make it illegal for a minor to possess a handgun or handgun ammunition except under the supervision of an adult in certain circumstances.

These are two provisions that could save the lives of hundreds of children annually. And, I believe these two provisions do not encroach upon the right

of adults to bear arms, but simply monitor a potentially dangerous activity for children.

The fact is, the issue of kids and guns is becoming a chronic problem throughout the United States. Every day we hear stories of gun-related violence involving children. Examples include:

The gun battle which erupted a few weeks ago in a crowded New York City movie theater, leaving one teenager dead and three others wounded. Police recovered four semiautomatic handguns from the theater;

The four 15-year-old children in Louisiana who were arrested last month for bringing guns to a high school football game. Police found 3 semiautomatic handguns and a 30-round semiautomatic assault rifle with a scope and bayonet in one suspect's car;

The story of the teenagers who terrorized a neighborhood for an hour in Dallas last September, randomly firing handguns and an AK-47 from a stolen school bus;

The shooting last summer at a crowded Washington DC, swimming pool in which a teenage gunman fired some 20 rounds into the pool and wounded 6 children; and

Just last week near Los Angeles, three children were shot and killed while coming home from a Halloween party. The police have no motive. The weapon used; a semiautomatic handgun.

When my generation grewup, we worried about the threat of nuclear attack. Today, children grow up worrying about being shot. I was shocked when I read in the Washington Post recently that District children no longer plan for their wedding, they plan for their funeral.

Young students today must walk through metal detectors to go to class. More than 300 metal detectors have already been installed in schools across the country.

The problem is only getting worse. More and more kids are becoming involved in gun-related violence, and more and more kids are using semiautomatic handguns.

A Chicago police superintendent attributed many of his city's 50 homicides of children just through September of this year to semiautomatic weapons. He stated:

> We have younger immature individuals who have precision killing instruments in their hands. * * * They identify targets, but these weapons allow the emission of so many bullets by a single or easy series of trigger pulls they are * * * jeopardizing others as well.

Here are some statistics that reinforce my point:

A recent Joyce Foundation study found that 59 percent of all children in 6th grade through 12th grade said they could get a handgun if they wanted—36 percent said they could get one within an hour;

A national report by the American Psychological Association said that teenagers are 2½ times more likely to be victims of violent crimes than people over 20 years of age;

Every 6 hours a young person unable to cope with adolescent pressures takes his or her own life using a gun;

Between 1980 and 1990 there was a 79-percent increase in the number of young people committing murder with guns; and

More than six young people are murdered each day by someone, often a peer, using a gun.

Kids are obviously getting the weapons from someone. Amazingly, it is currently not illegal for an adult to give or sell a handgun or handgun ammunition to children. It is only illegal for licensed gun dealers to sell to minors.

For the entire population, homicide is the 12th leading cause of death. But for the young people, it is the second leading cause of death.

The Kohl amendment is simple. It is just common sense. It would make it illegal for adults to arm children. I urge my colleagues to support this important amendment.

DRIVER'S PRIVACY PROTECTION ACT AND LAW ENFORCEMENT

Mr. HARKIN. Mr. President, I want to clarify my understanding of the provision of the Driver's Privacy Protection Act concerning law enforcement access to driver's personal information. Under section 2720(b)(2), law enforcement agencies have unrestricted access to this information in carrying out its functions. I believe that, with respect to law enforcement agencies, this provision should be interpreted so as not to in any way restrict or hinder successful law enforcement and crime prevention strategies.

In appropriate circumstances, law enforcement agencies may reasonably determine that disclosure of this private information to a citizen or group of citizens will assist in carrying out the function of the agency. In my view, section 2720(b)(2) authorizes such disclosure. This would include providing such information to neighborhood watch groups engaged in crime deterrence and prevention activities in their neighborhood. Neighborhood watch groups have been successful in reducing the incidence of crimes such as prostitution and drug trafficking by using this information to contact people seen acting suspiciously in their neighborhoods, and in my view, this legislation would not undermine their ability to continue this activity.

However, this exception is not a gaping loophole in this law. A false representation that this information will be used for law enforcement purposes would be punishable under section 2721(b)(1), and misuse of this information would be punishable under 2721(b)(2). Similarly, a law enforcement officer who knowingly provided personal information to a person or group who intended to use that information for purposes that were not in furtherance of the function of that officer's agency would be in violation of the provisions of section 2721(a).

Therefore, it is my view that legislation clearly provides law enforcement agencies with latitude in receiving and disseminating this personal information for the purpose of deterring or preventing crime or other legitimate law enforcement functions. The threshold question, in my view, is whether the law enforcement agency's action is taken in carrying out its functions. My strong support for this legislation is premised on the belief that its implementation will not in any way undermine law enforcement or community policing efforts.

GRAHAM AMENDMENT (NO. 1200) ON THE TRANSFER OF CERTAIN CRIMINAL ALIENS TO FEDERAL FACILITIES

Mr. SIMPSON. Mr. President, I rise to express my support for Senator GRAHAM'S amendment which was adopted on November 16.

This amendment permits the Attorney General at the request of the State, county, or municipality, to transfer to a Federal prison criminal aliens convicted of felonies and incarcerated in State or local correctional facilities.

The aliens who may be transferred to Federal facilities under this amendment are those who entered the country illegally, or who are subject to exclusion or deportation.

We cannot deny that it is a Federal responsibility to control illegal immigration, and to assure that those who come legally, leave the country when their status has expired. If those who enter illegally or who become out-of-status are convicted of felonies in State or local jurisdictions, it is not unfair to expect the Federal Government to assume some responsibility of the cost of their incarceration.

To my colleagues that argue that the State and local governments should not have to pay for the cost of illegal aliens because of the failure of the Federal Government to control illegal immigration, I would point out that we cannot prevent illegal immigration without more border patrol, stronger employer sanctions, including a system to verify employment authorization, and the full cooperation of State and local governments with the immigration service.

If my colleagues who complain about the cost of illegal immigration to State governments want us to control our borders, then you must support enforcement measures I have described. Without them the State and local governments will continue to experience the costs of illegal immigration.

I am pleased that we adopted the Roth amendment, which provides a

strong incentive for State and local law enforcement agencies to cooperate with the Immigration Service. We should have passed such a law years ago.

I will support this amendment, but I do urge my colleagues who complain about these costs to support our efforts to take the necessary steps to control illegal immigration.

AMENDMENT NO. 1159

Mr. LEVIN. Mr. President, I will vote against the Helms amendment which is aimed at stripping the Federal courts of their jurisdiction.

There is a proper procedure for amending the Constitution as it affects the judicial branch. However, the attempt to strip the Federal courts of jurisdiction to rule on constitutional rights in an ad hoc manner on the Senate floor is an approach that will not work under our Constitution. It raises false expectations among those who support changing the underlying policy to which the limitations on the Federal courts' jurisdiction are directed.

AMENDMENT NO. 1159

Mr. MACK. Mr. President, I am pleased to join in offering this amendment to the crime bill because it is high time we started favoring innocent citizens over convicted felons. This amendment is straight-forward and quite simple—it merely prevents Federal courts from imposing a cap on prison population unless the plaintiff before them can prove that they personally are suffering an eighth amendment violation because of overcrowding.

The burden of prison population caps arises out of the overlitigious nature of inmates. A judge issues a cap only after a group of clever prisoners brings a suit alleging that the prison population is so high that their right to be free from cruel and unusual punishment is being abridged. While I strongly believe that we should not be violating anyone's constitutional rights, the remedy of prison caps should not be the first or only answer. If a plaintiff cannot prove that he, as an individual, has so little space that his eighth amendment rights are being violated, then a prison cap should simply not be ordered.

In order to meet these caps, prison officials must release felons in order to accommodate newly admitted inmates. These releases take place regardless of the behavior of the inmate. Prisoners are not released because of exemplary conduct or hard work while in prison. They automatically receive time off their sentence and an unearned, quick ticket to freedom. This just isn't right. Unfortunately, the friends and relatives of detective Evelyn Gort know the danger and tragedy of these one-way passes first hand. The individual accused of murdering her was twice released early because of judicially imposed prison caps.

While the early release of inmates is just one aspect of the pervasive fear that grips the streets of my State, it is one we here in Congress can do something about. This fear, that any one of us could be the next victim of a random act of violence, perpetrated by someone who should be paying for their last crime, can be assuaged by passing this amendment. If we limit the power of Federal courts to order these prison caps where they are not absolutely necessary, we keep more violent thugs in prison for more of their full sentence—and that's a good thing. I believe this approach is the least we can do to protect law-abiding citizens and I urge my colleagues to approve the amendment.

GRAHAM/MACK AMENDMENT ON CRIMINAL ALIENS

Mr. MACK. Mr. President, I rise today with my colleague from Florida, and with the support of many others, to ask that the Federal Government be responsive to a problem of its own creation. This amendment permits, but does not require, the Attorney General of the United States to take custody of, or financial responsibility for, criminal aliens incarcerated in State prisons and jails. The flow of illegal immigrants into this country is a Federal problem, not a State problem. An individual State such as Florida can do nothing to prevent illegal immigration. This is solely the province of the Department of Justice, the Federal Customs Service and INS. Florida citizens, like those of California, New York, Texas, and Illinois, are weary of bearing the financial burden for the failure of these agencies to secure our borders.

The injustice perpetuated upon the good citizens of our States are twofold: First, these aliens are able to circumvent our immigration system and illegally gain entry to our country. In many cases, this results in a drawdown of scarce State human resources funds. Federal reimbursement for unpaid medical bills and the educational costs for the children of these immigrants never fully compensates our States. Worse yet, some of these illegal aliens commit crimes, again subjecting the State taxpayers to paying the freight for incarceration costs. The fact of the matter is that these individuals would not be in our jails, and thus depleting our State resources if it weren't for the failures of the Federal Government.

It is not the fault of anyone in my State that the Customs Service didn't catch the boat coming in, or the passenger with fraudulent documents. Why should my constituents or those of any other State be forced to pay for their mistakes? In Florida alone, we have 3,433 illegal aliens serving time in our prisons. That comes out to $58.6 million in State taxpayer funds that could be going to keep more violent criminals behind bars for longer.

The amendment we have offered is based on fundamental fairness and the notion that the Federal Government can and should be accountable for its failure to maintain control of our borders and I urge my colleagues to vote in favor of its passage.

MORGAN P. HARDIMAN TASK FORCE ON MISSING AND EXPLOITED CHILDREN

Mr. D'AMATO. Mr. President, I wanted to speak briefly on the passage of an amendment that Senator DECONCINI and I attached to S. 1607, the 1993 Crime Bill on November 10, 1993. This amendment establishes the Morgan P. Hardiman Task Force on Missing and Exploited Children.

This issue is one that is particularly close to my heart, both because of the dire need to organize this task force on missing and exploited children, but also for whom it is named.

Morgan joined my staff in January 1983, and handled crime and drug issues with great success, traveling and seeing, firsthand, the awful effect on people of illegal drug use, as well as the terrible crime this country faces on a daily basis. Until just before his final illness this past month, Morgan remained dedicated to his work. Morgan always fought for what was just, and that included the rights of children and the effort to locate the thousands who have been abducted and exploited throughout the country.

Mr. President, the U.S. Department of Justice national incidence study found 4,600 nonfamily abductions reported to police, 438,600 children lost, injured, or otherwise missing, and 354,100 children abducted by family members. These numbers are overwhelming.

As we discuss the various amendments to the crime bill, we aim to protect our people. This amendment does just that. Moreover, it seeks to protect our Nation's children by establishing a task force offering the combined resources and expertise of the FBI, ATF, Secret Service, Customs, Postal Inspections Service, U.S. Marshals Service, and the DEA, all to help local governments and police forces in the search for these children. The task force will work together with the Center for Missing and Exploited Children to identify what actions are needed.

Our local police forces are often overwhelmed with an enormous caseload and many times they need expert assistance. With the help of the National Center, and expertise of this task force, critical cases will get the necessary specialized attention to perhaps help solve more outstanding cases. Information and evidence cannot be allowed to fall through the cracks and investigations must continue. This will be the job of the Morgan P. Hardiman Task Force on Missing and Exploited Children.

Mr. President, Morgan P. Hardiman was a quiet hero. He was a colleague and a friend. I am glad that his achievements can be memorialized

with his task force. He poured his energy into the creation of Project Alert—America's Law Enforcement Retiree Team—as part of the National Center for Missing and Exploited Children and this task force is a natural outgrowth of his efforts. The people who worked with him in these efforts know that he made a remarkable contribution to his country, and I want to thank Senator DECONCINI for the thoughtful gesture of proposing to name the task force after Morgan. It is a fitting tribute to a man who worked arduously to end the abuse of our nation's children and to bring those missing, home to their families.

I want to thank Senator DECONCINI for this fine amendment, and for the tribute that it provides to my former staffer, Morgan P. Hardiman.

NATIONAL CHILD PROTECTION ACT OF 1993

Mr. COATS. Mr. President, several years ago I supported an effort to address a need that many working American families have for safe and affordable child care. The compromise proposal we passed and the President signed, recognized the reality of working parents and their need to have safe, clean, and secure environments for their children.

Subtitle B of the legislation before us today is, in my opinion, a logical and necessary next step in providing a safe and secure environment for children.

The National Child Protection Act of 1993, which has been included in the crime bill, establishes a nationwide criminal background check for child care workers to determine if persons who are caring for children have committed child abuse or other serious crimes.

Mr. President, this is a very important provision. Protecting our children must be one of our Nation's highest priorities. And I say that not just as a parent, and not just as ranking member of the Subcommittee on Children, but as a former volunteer of an organization which has for the last 90 years, endeavored to help our Nation's children overcome the many obstacles they face by providing one-to-one services to children in need. I am speaking of Big Brothers/Big Sisters of America.

Selection of the most appropriate volunteers to serve as Big Brothers and Big Sisters is a task their more than 500 affiliates take very seriously—the result of which has been the establishment of a very comprehensive mechanism to enable selection of the most qualified and committed volunteers. This process of selection includes a criminal background check. However, some States do not permit or do not assist with the obtaining of police checks; for example, New York and New Jersey, while others require cost prohibiting fees.

This legislation will greatly assist organizations like Big Brothers/Big Sisters in providing valuable services to children in need.

In his testimony before the House Subcommittee on Civil and Constitutional Rights, Big Brothers' President Lynn C. Swann told the committee that:

> This legislation of national criminal background checks would create a uniform and consistent method of reporting and tracking individuals who have been involved in child abuse crimes. As a national organization, with affiliates in all 50 States, we are most interested in an approach on a national level that will enable our agencies to access criminal background checks. The modest investment of dollars would pay significant dividends, if only a few children are saved by this reporting requirement.

Mr. President, this is modest investment in the safety of our children and I am pleased to support it.

KASSEBAUM-SIMPSON SENSE-OF-THE-CONGRESS AMENDMENT NO. 1172

Mr. SIMPSON. Mr. President, I rise in support of the Kassebaum-Simpson amendment which was adopted on November 10, 1993.

Our asylum system has been turned on its head in recent years as would-be immigrants have found it more attractive to come to the United States and claim asylum than to apply for refugee status abroad, or to enter through our regular immigration process.

Mr. President, it's more attractive because once they get into the United States, they then become entitled to all the due process our Constitution provides for American citizens.

If they apply for refugee status abroad, and if they are then found to not have a well-founded fear of persecution, they will be denied refugee status, and that is the end of it.

However, if they can manage to get to the United States to claim asylum, they are then entitled to appeal after appeal, with the final decision made by the Federal Circuit Court of Appeals.

This process can take years, and in the meantime, the alien has an opportunity to live and work in the United States, which was often the primary objective.

The original purpose of asylum was to provide a refuge for people who found themselves in the United States when conditions changed at home, making it unsafe for them to return. That is why we provided an annual allotment of only 5,000 asylum slots when we passed the Refugee Act of 1980.

We have a separate refugee policy to enable people who are outside their countries of nationality, and who have a well-founded fear of persecution, to apply for refugee status at our refugee processing centers, our Embassies, and our consulates abroad.

We should not make it more attractive for aliens to enter the United States, legally of illegally, to apply for asylum, than it is for them to apply for refugee status abroad.

I support the findings of the Kassebaum amendment, and I support the policy it proposes.

We are currently working in the subcommittee, with the administration, to draft expedited asylum procedures for those aliens attempting to enter with fraudulent documents, or no documents.

We are also drafting legislation to provide a more streamlined asylum process for those people already in the country who then claim asylum.

This sense-of-the-Congress amendment expresses the appropriate policy, and one that Congress should support.

BOXER AMENDMENT NO. 1183 TO INCREASE PENALTIES FOR DOCUMENT FORGERY

Mr. SIMPSON. Mr. President, I rise in support of Senator BOXER's amendment adopted on November 10.

Mr. President, this amendment increases the civil penalties for immigration document fraud.

In 1990, I offered an amendment to the Immigration Act of 1990 to create civil penalties for document fraud. This amendment was necessary because U.S. attorneys were reluctant to bring criminal charges against aliens and others who used fraudulent documents to obtain immigration or employment benefits.

By establishing new civil penalties for this type of document fraud, immigration officers could file complaints and bring these charges without involving the U.S. attorneys.

This amendment would increase the civil penalties for a first offense from a minimum of $250 to a minimum of $1,000, and it would increase the maximum penalty from $2,000 to $5,000.

The amendment would also increase the civil penalties for subsequent offenses from a $2,000 minimum to $5,000, and from a $5,000 maximum to $10,000.

In addition to increasing the civil penalties for document fraud under the immigration laws, the amendment would also increase the criminal penalties for document fraud under the Criminal Code.

Document fraud is one of the most serious and difficult problems we are encountering in our efforts to control illegal immigration. Stiffer penalties may reduce the incidence of document fraud, and I support the amendment.

BOXER CRIME BILL AMENDMENTS—INCREASED PENALTIES FOR DOCUMENT FORGERY

This is a simple amendment. It increases the civil and criminal penalties for any visa, border crossing card, alien registration receipt card, or any other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or used to satisfy any requirement of the Immigration and Nationality Act.

Current law has civil penalties of not less than $250 and not more than $2,000 for each document used, accepted, or created and each instance of use, acceptance, or creation. My amendment would increase these penalties to a $1,000 and a maximum of $5,000.

For those persons who are already under a cease and desist order for document violations, the current penalty is not less than $2,000 and not more than $5,000. My amendment would raise the civil penalty for repeat

offenders to not less than $5,000 and not more than $10,000 for each document used, accepted, or created or each instance of use, acceptance, or creation.

My amendment would also increase the criminal penalties for fraud and misuse of visas, permits, and other documents. For violations under this section, my amendment would raise the current prison term from not more than 5 years to not more than 10 years and, for other circumstances, from not more than 2 years to not more than 5 years.

Additionally, my amendment would increase fines to $10,000 or $5,000 for certain violations under this section of our criminal statutes.

FEDERAL GUN DEALER LICENSING REFORM

Mrs. FEINSTEIN. Mr. President, I rise today in strong support of the amendment offered by the Senator from Illinois [Mr. SIMON]. Simply put, this commonsense amendment would help bring sanity to the federally licensed firearms business.

Everyone in this body has heard the nightmare stories about federally licensed firearms dealers. Such as:

The Maryland man who sold 9mm Glock handguns and Tec-9 semiautomatic weapons out of the trunk of his car;

The Los Angeles gang member who sold more than 1,500 guns to his colleagues—one of the more than 3,000 licensed firearms dealers in Los Angeles County—and only four of the weapons were properly registered with California authorities;

The many Virginians who obtain Federal licenses to avoid the one-gun-per-month law recently adopted;

The Californian who was arrested for selling machineguns and other weapons out of his parents' home to the Fourth Reich skinheads—a group that planned racially motivated terrorist attacks against minority groups, including the well-known first AME church; and

The gun dealership known simply as "Chuck's Guns," which operated out of room 744 of the Frontier Hotel on skid row in downtown Los Angeles.

These are just some examples. There are many, many more.

Unfortunately, as noted above, the results when a criminal receives a Federal firearms license can be deadly. A single dealer has the power to put a large number of guns into the wrong hands before he or she is caught. As one Alcohol, Tobacco and Firearms agent put it, "Hopefully we can catch them [the bad dealers] before too much damage is done. But in the meantime, how many people have been injured or worse?"

The problem is that it is just too easy for criminals to obtain licenses. Just fill out the application, send in the $30 fee, and within 45 days almost anyone can have a 3-year license to sell firearms. Chances are, no one will call or visit the applicant to verify any of the information. In fact, due to a lack of resources, less than 1 out of 10 applicants are personally visited by an ATF inspector before a license is issued.

This headline from the Wall Street Journal says it all: "Want A Gun? Become A Gun Dealer".

As this chart illustrates, the problem is only getting worse. As the number of ATF inspectors who conduct investigations has declined by 13 percent, the number of Federal firearms dealers has increased to 286,000—an increase of 99 percent over the last two decades. There are now more firearms dealers in California than there are high school teachers.

An example of how flawed the system is occurred when a Washington Post reporter sent in an application for his dog "Fifi". ATF ran the required computer check, found no record of criminal activity, and after the 45-day limit, issued "Fifi" a Federal firearms license. The problem is simple and is best described by ATF's head of gun dealer licensing—"If a criminal lies, I catch that up front".

Fault lies not with the Bureau of Alcohol, Tobacco and Firearms. Fault lies with Congress. Unfortunately, ATF just doesn't have the resources to do their job properly.

Under current law, ATF is supposed to process Federal firearms dealer applications as quickly and as efficiently as possible. And even if a full investigation has not been completed, ATF must issue a license after 45 days unless the applicant is disqualified. If ATF does not issue the license, the applicant can sue the Government. I am not aware of any other application procedure in the United States where an applicant can sue the Government if an application is not approved after 45 days.

Congress must act to reform the system of obtaining Federal firearms licenses. When it is harder to get a liquor license, or even a driver's license, than it is to get a firearms license, something is wrong.

The Simon amendment is simple. It would do the following seven things:

First, increase the 45-day ATF license processing requirement to 60 days to ensure that a thorough background check is completed before a license is issued;

Second, make sure that license recipients are in compliance with State and local laws to help make sure that those selling guns are law abiding citizens. The former ATF Director recently testified that "ATF must issue licenses even in situations where we [ATF] may have every reason to believe that the business will be operated in violation of State or local law";

Third, require licensees to report the theft or loss of a firearm within 48 hours of being discovered so ATF can conduct timely investigations;

Fourth, make sure that all Federal firearms dealers are finger-printed and have photo identification—similar to when applying for a drivers license;

Fifth, allow ATF to inspect dealer's inventory and records when a firearm involved in a crime is traced to the dealer;

Sixth, let State and local governments know who has a Federal firearms license in their jurisdiction; and

Seventh, require all licensees to respond to requests from ATF for information in a dealers record within 24 hours. This would help ensure that law enforcement agencies can receive timely information during a criminal investigation.

This amendment is just common sense. I understand that most dealers are law abiding citizens. But, many are not and there are numerous examples to prove that. Let's reform the system to ensure that law abiding citizens and only law abiding citizens can obtain Federal firearms licenses.

As one legitimate federally licensed firearms dealers stated, "It's a joke. The politicians are screaming about gun control, but the Federal Government is handing out licenses to every Tom, Dick, and Harry. And then they never check the people. It makes you want to scream."

I strongly support the Simon amendment, but believe that real reform of Federal firearms licensing procedures can not occur without a discussion of the fee structure. A recent report from ATF estimates that the actual costs to issue a Federal firearms license and to maintain the compliance program is more than $600 per dealer annually. I believe that this taxpayer subsidy must end, and I intend to address this important issue in the future.

The Simon amendment is a good first step that will bring some sanity to the licensing of Federal firearms dealers, and I urge my colleagues to support the amendment.

I ask unanimous consent that the Wall Street Journal article and the AFT cost analysis be entered into the RECORD at this time.

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

Firearms Dealer Compliance Costs

First year costs for:	
Firearms dealer dealing in any title 1 firearms:	
Application processing (Incl. 3 FBI name chk)	$107
Field investigation of applicant	275
Related program costs	220
Admin support	44
Total first year cost	646
Subsequent year cost for:	
1. Firearms dealer dealing in any title 1 firearms:	
Application processing—renewal	34
Field compliance inspection	275
Related program costs	220
Admin support	44
Total out year cost	573
2. Pawnbroker dealing in any title 1 firearms:	
Application processing—renewal	34

Field compliance inspection	382
Related program costs	305
Admin support	61
Total out year cost	792

3. Dealer in (sporting) long guns only:	
Application processing—renewal (every other year)	34
Field compliance inspection	275
Related program costs	220
Admin support	44
Total annual out year cost	286

Source: Bureau of Alcohol, Tobacco, and Firearms.

[From the Wall Street Journal Nov. 4, 1993]

WANT A GUN? BECOME A GUN DEALER

(By Josh Sugarmann)

Sen. Bill Bradley's statement Thursday that Congress should raise the licensing fee on gun dealers to $2,500 from $30 highlighted one of the most overlooked aspects of the national debate on firearms: the ease with which nearly any American over the age of 21 can become a federally licensed gun dealer.

Mr. Bradley's statement follows the recent signing of an executive order by President Clinton directing the federal Bureau of Alcohol, Tobacco and Firearms to begin restricting federal firearms licenses (FFLs) to bona fide gun dealers. This sensible step will help stem the flow of guns to America's criminals, a move that conservatives, who repeatedly emphasize the "rights with responsibilities" ethic, should applaud.

The Type 1 FFL is the basic federal license required to sell guns in America and grants the licensee unique and broad privileges. America's 246,532 Type 1 FFL holders can ship and receive firearms and ammunition in interstate commerce via common carrier and purchase weapons at wholesale prices. Most activity can be conducted free of local and state regulations that apply to individual "over-the-counter" purchases, such as waiting periods or background checks.

LAX PROCEDURES

One would assume that to become a federally licensed firearms dealer, a rigorous set of regulations would be in place to keep undesirables out of the business. But the reality is that any American over the age of 21 can become a gun dealer upon paying a $30 three-year licensing fee and undergoing a loophole-ridden background check for possible felony convictions.

Because of the cursory nature of the application check, those with felony records can avoid detection merely by having relatives, girlfriends, or even pets register for them. In 1990, ATF officials were embarrassed when it was revealed that they had approved a license application for two dogs. "The point is well taken," an ATF spokesman acknowledged. The dogs would clearly pass a record check designed for human beings."

The result of these incredibly lax procedures is that in many states, it is easier to become a dealer in firearms than to purchase a handgun legally. It's not surprising that from 1975 to 1993, the number of Type 1 FFLs jumped more than 68%. The licensing procedure is so lenient that today the U.S. has more gun dealers than it does gas stations.

Yet according to a July ATF report, only 18% of the holders of Type 1 FFLs operate actual storefront businesses such as gun or sporting goods stores. The vast majority, 74%, are "kitchen-table" dealers who conduct business out of their homes—often in violation of state and local zoning, business, or firearms laws. (The remainder conduct business out of commercial premises not associated with the sale of goods to the public, e.g. real estate offices, auto repair shops, or beauty shops.)

While most of the ATF's regulatory lethargy as regards FFL issuance, renewal and revocation has been self-imposed, in 1986 Congress placed major roadblocks in the agency's way when it passed the Firearms Owner's Protection Act. The law helped curtail FFL enforcement by limiting ATF to one unannounced dealer inspection per year; reducing the record-keeping requirements for dealers selling guns from their "personal" collections; removing record-keeping requirements for ammunition dealers; prohibiting ATF from centralizing or computerizing dealers' records; and imposing a higher standard of proof (violations need to be "knowing" or "willful") while lessening penalties for dealer violations.

Moreover, less than 6% of all FFL holders are inspected in an average year. In 1990, the agency revoked only three of the 235,700 Type 1 FFLs then held. The ATF estimates that at current funding levels it would take the agency more than a decade to inspect every FFL holder.

For the first time, however, the ATF recently began visiting or calling all new applicants. Two cases cited by former ATF Director Stephen Higgins in June testimony before the House Subcommittee on Crime illustrate the need for increased oversight.

The first case concerned a New Jersey man whose stated place of business was a room at the YMCA. The applicant had several guns in the room and was reloading ammunition while talking to the inspector. "The applicant," Mr. Higgins testified, "was also watching movies about the Vietnam War and appeared to be irrationally enthralled with that conflict." In a second case, after a preliminary inspection the prospective gun dealer withdrew his application. "One week later," Mr. Higgins continued, "the applicant was arrested for possessing * * * machine guns. He was subsequently released, only to later engage in a shootout with local police."

The bureau has also improved its inspection process by visiting the holders of FFLs in select urban areas prior to renewal, in an attempt to confirm that they have met all state and local licensing requirements. Those who have not met the requirements are informed that their licenses will most likely not be renewed.

Yet an unknown number of FFLs remain in criminal hands. Licensee abuses cited at the June House hearing included those of Detroit kitchen-table dealer Larry Wilson, who sold 2,169 handguns and assault rifles off the books to criminals; New York City resident John Adams, who ordered more than 1,000 handguns through the mail and then sold them on the city's black market; and fellow New Yorker John Zodda, who over a five-year period used his own FFL and a series of falsified licenses to buy and sell more than 2,400 firearms, including assault weapons.

These are not isolated cases. A 1992 study by the Violence Policy Center found that kitchen-table dealers contribute significantly to criminal gun flow. In an analysis of ATF crime-gun traces for Detroit, the study found that one-third of all dealers who had five or more guns used in crimes traced back to them were kitchen-table dealers; the average number of crime guns traced per kitchen-table dealer was nearly 50% higher than that of gun shop owners; and six of the top 10 dealers with five or more criminal gun traces were kitchen-table dealers. These statistics illustrate the folly of the federal government's permissive firearms licensing procedures. Even opponents of gun control should be in favor of measures that would limit gun-dealing licenses to legitimate gun dealers.

WHAT'S NEEDED

As a result of President Clinton's directive, additional steps to be undertaken by ATF include the development of a more comprehensive application form, finger-printing applicants, and automating the bureau's dealer records. The problem cannot be solved, however, until Congress moves to limit license availability to legitimate storefront operations by—at the very least—increasing the annual dealer licensing fee and requiring that before a federal license is granted applicants show proof of having obtained all necessary local and state permits. The recent resignation of Mr. Higgins from the ATF highlights the need for a new director who is committed to implementing these regulations.

These moves will not make it any more difficult for law-abiding citizens to obtain firearms. They will, however, be a big step forward in reducing the number of kitchen table dealers and in the process limiting criminal access to guns. That's as effective a weapon as any in the fight against crime.

LEVIN AMENDMENT TO THE CRIME BILL

Mr. DURENBERGER. Mr. President, I rise to explain the reasons I am a cosponsor of the amendment by my friend and colleague from Michigan, Senator LEVIN.

Senator LEVIN'S amendment would replace the death penalty provisions of this bill with mandatory life in prison without the possibility of parole.

The crime bill began by imposing the Federal death penalty for 47 offenses, and in our mad rush to appear tough on crime the Senate has kept adding to that list. The tone of the debate on this bill has been so extreme that the Senate defeated a very reasonable amendment by Senator SIMON that would have prohibited the execution of juveniles.

I am philosophically opposed to the death penalty as a matter of conscience. But I believe that there are also many practical policy reasons to oppose the death penalty. If we were less concerned about appearing tough on crime and more concerned about crafting rational and effective policy, the Senate would adopt the Levin amendment.

First, we should dispel several myths that have been perpetuated about the death penalty:

Myth No. 1: The death penalty is the only way to permanently incapacitate dangerous criminals. The public supports the death penalty to prevent dangerous individuals from reentering society. But this can also be accomplished by life imprisonment without possibility of parole. Public support for the death penalty drops dramatically when life without parole is mentioned as an alternative.

Myth No. 2: The death penalty is less costly than life imprisonment. Actually, the average trial and one appeal

to a State court in a capital case costs about twice as much as incarcerating a prisoner for life. Putting criminals on death row drains the limited resources of our criminal justice system.

Myth No. 3: The death penalty is a deterrent to crime. There is no statistical evidence that the death penalty is a deterrent to violent crime. In fact, murder rates have risen the most over the past 10 years in States with the death penalty. My home State of Minnesota and other States without the death penalty have comparatively low murder rates.

Myth 4: The death penalty is needed to make victims whole. In 1991, the Minnesota State Legislature considered a bill that would have reimposed the death penalty in my home State. The parents of Carin Streufert, a University of Minnesota student who was brutally murdered, testified against the bill. Don and Mary Streufert stated that the death penalty could never erase the pain and grief of victims' families. Don said, "We see no sweetness in revenge, only bitterness and alienation." The death penalty only accomplishes vengeance, and vengeance does not make victims whole.

Another factor that should cause the Senate to stop and think before it drastically expands the death penalty is the inconsistent application of the death penalty. One Federal death penalty is currently in effect under the Anti-Drug Abuse Act of 1988. Under that act, the Justice Department has sought the death penalty against 30 defendants. 22 of these prosecutions were against African Americans. Half of the remaining eight were Hispanic defendants. It is troubling that the Justice Department has not explained this racial disparity.

Mr. President, the vast majority of the free world has rejected the death penalty, while America is in the company of the some of the most intolerant and backward governments on the globe. Our use of the death penalty undermines our standing as a proponent of human rights around the world.

Imposing a Federal death penalty for dozens of offenses is no solution to violent crime. The death penalty is not a deterrent. The death penalty is not a cost-effective alternative to incarcerating criminals. It cannot erase the pain and grief of victims' families. The only thing that can be said for the death penalty is that it feeds our lust for vengeance and perpetuates the cycle of violence.

I urge the Senate to inject some rationality in the crime bill debate and adopt the Levin amendment.

FEINSTEIN AMENDMENT TO THE CRIME BILL

Mr. DURENBERGER. Mr. President, I rise to explain my reasons for opposing the amendment by my distinguished colleague from California, Senator FEINSTEIN, which imposes a ban on certain types of semiautomatic weapons.

First, I must compliment Senator FEINSTEIN for her efforts to exempt hunting and sporting rifles from the ban. I respect her attempt to find a compromise between those who advocate a complete ban on semiautomatic weapons and those who want to protect legitimate sporting rifles. I have often found myself in the same position of trying to find common ground on controversial issues, and I know how difficult that can be.

But I cannot support this amendment at this time because I am not convinced that a ban on semiautomatic weapons will have any real impact on the problem of violent crime.

Semiautomatic weapons make up approximately 15 percent of the firearms owned by Americans. Yet, less than half of 1 percent of violent crimes involve these types of weapons. According to the FBI, more people were killed in 1992 by fists and feet than by rifles of any type. Five times as many people were killed by knives.

Further, if semiautomatic weapons are inherently a danger to the community—and the statistics do not indicate that they are—then I would question why so many weapons have been exempted by this amendment. If semiautomatic weapons are inherently dangerous, then this amendment will not amount to much more than a symbolic gesture.

Crime and violence in America has become a public health crisis. We are in a battle for the hearts and minds of young people in our communities. We are not going to solve the problem through the expansion of the death penalty, nor are we going to solve it through weapons bans. It misdirects our limited resources to think that we can. That is why I will cast my vote against the Feinstein amendment.

REGARDING THE HUTCHISON AMENDMENT TO S. 1607

Mr. PELL. Mr. President, I particularly want to clarify what may be some misunderstanding about the participation of the incarcerated in the Pell grant program. It is important to understand, at the outset, that no prisoner displaces another deserving student who is not in prison. The Pell grant program functions as a quasi-entitlement in which a student qualifies for a grant, and the size of the grant depends on the availability of sufficient appropriations. Thus, a student is not cut out of the program because a prisoner qualifies for a grant. If they are both eligible, they both receive a grant and there is little relationship between the two.

Also, regarding the number of prisoners who receive Pell grants, the Inspector General at the U.S. Department of Education estimates that the number is far less than the 100,000 figure that has been cited, and is actually only about 25,000. This is less than one-half of 1 percent of the 4.5 million students who received Pell grants last year. Further, the actual cost is also considerably less than the $200 million cited, and is much closer to $40 million, which is about six-tenths of 1 percent of the total Pell appropriation.

Mr. President, today there are currently more than 1,000,000 men and women in our Nation's jails. The cost of incarceration of this magnitude is enormous. On average, we spend $30,000 a year to keep a person in jail. As I have said on many, many occasions, it costs us more to send a person to jail than to Yale.

Education is our primary hope for rehabilitating prisoners. Without education, I am afraid we are doomed to a recidivism rate of somewhere between 50 and 70 percent. The door into jail will remain a revolving one. With little or no education, a person will leave prison only to commit another crime and be returned to prison.

Mr. President, we know that postsecondary education for incarcerated students dramatically helps to reduce recidivism rates. Rates for prisoners who receive 2 years of schooling are about only 10 percent, compared with an overall rate of five to seven times that. In Arkansas, for example, inmates who get a high school degree and postsecondary training have a recidivism rate of 8%, less than one-sixth the national rate. Graduates of Alabama's largest inmate education program, J.F. Ingram State Technical College, have a recidivism rate that is one-third lower than that of the Alabama prison system as a whole.

It is most important, however, to understand that these results are achieved with only a very small Federal effort. We spend almost $30 billion a year to keep people in prison. The amount we spend on education through the Pell Grant Program is only one-tenth of 1 percent of what we spend simply to keep a person behind bars. Given that situation, the very small Federal effort we make through the Pell Grant Program certainly helps achieve some very important and remarkable results.

In reauthorizing the Higher Education Act of 1965 last year, we were careful to address concerns about prisoners receiving Pell grants. We now exclude from Pell grant eligibility inmates under a death sentence or serving a life sentence without parole. Postsecondary institutions may not participate in the Pell Grant Program if incarcerated students comprise more than 25 percent of their total student population. Pell grant money cannot supplant State postsecondary correction educational assistance. And finally, incarcerated students eligible for Pell grant aid are limited to tuition and fees. The cost of living expenses for incarceration are not allowed, and this very definitely limits the size of the grants they can receive.

Mr. President, I realize that this is a difficult and highly charged issue. We can take still more steps to ensure that funds go to those with the best chance of rehabilitation, but I do not believe that we should end our commitment to postsecondary education for prisoners. Criminals should be sentenced and incarcerated, but let us also be concerned with their rehabilitation so that they will not return to a life of crime upon release from prison.

Mr. BIDEN. Mr. President, I rise at this late hour because we have been debating the crime bill for an extended period of time now, a number of days, and we have been working out very complicated agreements whereby we would be able to proceed to act on some very, very consequential legislation and very controversial legislation, including what we did today, the vote on the Feinstein-Metzenbaum-DeConcini assault weapons provision and what we hope we can do tomorrow, finally disposing of the Brady bill, hopefully in the fashion I would like to see it disposed of—that is passed.

Tomorrow will be a busy day. Our staffs, as we speak now, our Republican and Democratic staff, leader staff, manager's staff of this bill are trying to work out how to proceed under a time agreement on the Brady bill tomorrow.

So, the reason I tell you all this is to explain why I am about to do something I have not done in 20 years, and that is come and speak on an issue at this late hour rather than during the regular hours because tomorrow, I imagine, if all goes well there will not be much time to discuss what I want to discuss.

That is, I want to speak specifically and briefly to one of the literal casualties of the inability or unwillingness of the Nation to respond to violence in America.

As we debate how best to respond to the epidemic of violent crime in America and hopefully bring to resolution that debate in the Senate tomorrow before the sun sets, and it is a debate that by necessity will last long beyond whatever action we will take on this legislation currently under consideration, in our discussions we inadvertently spend a lot of time talking about statistics.

I have stood on this spot over the last five, six, seven, eight—I do not know how many days now—reciting unfortunately from memory because I have come to know them too well the awesome statistical carnage that occurs on our streets, but they are statistics. And I have cited how bad things are but the empirical evidence is, in fact, very important.

But what we must never forget in the course of quoting the studies and citing the numbers is that every statistic represents a very real human life, in all its riches of experience and emotion, every one of the statistics we have cited on the floor is a human life that has been affected or taken as a consequence of an action by a violent individual and the statistics we state.

Every statistic represents a family, a future, a whole interdependent web of feelings, hopes and plans that has been dashed as a consequence of a malfeasance in our society.

No one who was involved, or who even witnessed, our Judiciary Committee hearings on the proposed assault weapons ban earlier this year, none of us will ever forget, none of us will ever be able to forget if he wanted to, the testimony of a young widower-father and young widow, the living victims of fatally violent acts that shattered their families and so much of what they, like all of us, had assumed could be counted on in life.

I would like tonight to submit written testimony into the RECORD, testimony that reveals another face behind the statistics of violent crime, and a family that, after more than a decade of living with their loss, continues to struggle every day with the scars left by the violent death of a loved one.

The faces in this family are very familiar to me, because one of them belongs to a very good friend of my wife and mine, Kathleen Anderson Winter.

Kathy is a person who can accurately be described as joyful. She is a successful professional, married to a successful professional, with a beautiful young family. She has a great spirit, both generous and warm.

Kathy is also one of the many Americans for whom the violent death of a family member—her brother—remains an inescapably pervasive, fundamental and defining fact of her life and the life of her family.

The testimony I will submit was sent to me in letter form by Kathy's mother, Suzanne Slate Anderson, and I hope all my colleagues will take the time to read it in full. For it is a truly, and painfully, powerful expression of the struggle faced by this and so many other families, who have been victims of tragedy and violence.

What Mrs. Anderson herself describes as "continuing anguish * * * an ongoing awareness that there can never be a wholeness again." She writes that life does go on, but in "a painful, broken rhythm."

The testimony is a powerful expression, too, of how much we all lost the night of August 12, 1982, when Thomas Clark Anderson—age 20, college student, working at a suburban restaurant for his summer job—was killed, by a drug-addicted, would-be robber with a handgun.

It is what we lose every day because of violence in America—promise, security, trust, hope, opportunity, justice, liberty—the very foundations of all that we cherish in our private and our communal lives are threatened by violent crime.

When Mrs. Anderson was going through her son's belongings after his death, she came across a statement he'd written in a chemistry notebook, which read:

> Let me leave you with this thought. Remember that the American dream can not die; for when you are deprived of something you want, you dream about it, and your dream will last as long as you strive to turn it into reality.

Mrs. Anderson speaks to all of us when she quotes that statement and writes:

> Young Americans out there have dreams. I charge you this day with stabilizing our society so that these dreams can be realized. Young people should not have to live in fear that guns will kill them, that schools and neighborhoods are not safe. And parents should not have to bury their children, for they are never whole again.

Unfortunately, Mr. President—and I think I have only mentioned this one other time in 20 years—I can, as we say in our antiseptic language in the Senate, associate with Mrs. Anderson's loss. For the loss of a child, I think, is like no other loss that anyone can experience.

Mr. President, it is time, I believe, for us to answer the charge of Mrs. Anderson to do all that we can to preserve the trend we hope to get started of dealing with violence and reverse the trend of increasing violence in America.

America should not, and must not, be a society where the reasons for fear are greater than the capacity to dream.

Mr. President, I would like to take time now to read—and it is a relatively short letter—portions of Mrs. Anderson's letter to me.

> DEAR SENATOR BIDEN: The following testimony hopefully will reveal to you the continuing, anguish over the violent death of a fine young man felt by his family. It is still acutely painful to reveal the emotion of the loss. Yet, it is still too clinical just to give a statistical accounting of the effect of his death on our lives. Where we are and who we are today has been immeasurably influenced by his death.
>
> There is an exponential factor in reaction to murder, to grieving and to the justice process. It is not a television whodunit where only the question of the guilty is solved. For those who suffer, for those who try to comfort, for those who seek to bring legal and social justice, there is an ongoing awareness that there can never be a wholeness again. Life will never be the same. It is essential for the populace to know that recovering from a death by violent means does not get better in the morning. Time does not necessarily heal all wounds. Anger is not dissipated by years. There is no antidote for this pain, ever.
>
> Thomas Clark Anderson was born on January 19, 1962. He followed two sisters, Kathleen and Jane and was the older brother to John, who was born three years later. He was energetic, had a tremendous work ethic even as a little boy of three, and felt a great sense of family responsibility. Tom loved sports, was popular with his peers and he enjoyed the respect and friendship of people of all ages. He was independent, savvy, and wonderfully polite and well mannered. He was

goal oriented and had a vitality that would tire us all. We loved him and he loved us.

Tom was educated in the public schools until the fourth grade, when he moved with his family to Geneva, Switzerland (as a result of his father's employment) where for five years he attended the International School of Geneva. Upon the family's move back to the United States, he returned to public school, but mainstreaming into a nonflexible program that did not allow for his course of study in Geneva proved difficult. This led us to enroll him in The Hill School, a private school in Pottstown, Pennsylvania.

At The Hill School, Tom was an above average student, a really good soccer player and a prefect his senior year. He was selected by the faculty to counsel younger classmates on values, studies and student life. For his service as a counselor, he was chosen as one of the three outstanding prefects his senior year. Capitalizing on his years in Switzerland, he received honors in the study of French. Tom was accepted at Duke University and entered Duke in January of 1981.

In January 1980, Tom turned 18. One gray winter day when he was on holiday from school, he and I were running errands. He turned to me and said that he needed to register for the draft and would it be all right to do so that day. With a certain emotional tightening, I realized that this was indeed a responsibility of an 18 year old and I agreed to go along. That registration was a time of painful reflection for me. Fortunately, we were at peace. No wars were actually being fought, but I could well remember that there had been wars and friends of mine had lost brothers. I remember the gray sadness when Bill Lentz, a tall blond, blue eyed young man, a recent graduate from NC State, B-17 pilot, an only son and older brother of my friend, was killed in W.W.II. I recall the loss of Charles Long Casey in Korea and how unreal it seemed because he had just been swimming at the country club the summer before and now it was summer again and life at the country club was just the same. For the Casey family it was a painful realization. And then there was C.L. Corn, serving his country as young men who graduated in 1954 had to do. All had died before age 25. Too young, too soon. I was grateful that the reality of war was remote and Tom would be spared that threat.

Tom worked after graduation from high school in a nearby restaurant. He washed dishes at first and then served as a busboy, and did this until I drove him one snowy morning to Duke University. Tom loved Duke. It was the perfect match. He went to both sessions of summer school in 1981 so there was no summer job. In the summer of 1982, he returned to our home in West Chester, Pennsylvania. Summer jobs were not plentiful, so he ended up at the same restaurant working as a busboy, much to the delight of the owner. His brother John, then age 16, joined Tom in working at the restaurant and at times shared the same schedules. John used to complain that Tom was a task master while cleaning up those tables. Tom was saving his money to buy a car and commenced in an exhaustive search for most of the summer. Two years prior to this, he and I had made an in-depth study of all the cars and test drove many of them together. He brought a metallic light blue Honda Accord, where he paid for half and we assisted with a loan for the other half. Tom loved this car and enjoyed showing everyone how the car would talk to you if you left the lights on.

Two weeks prior to the start of the 1982 fall semester, Dennis Dreibelbus, the night manager of the restaurant quit his job to take a position with the Boy Scouts of America. While the owner of the restaurant looked for another night manager, he asked Tom to assume that position. Tom was thrilled and said that this job experience would look good on his resume. We admonished him to be careful, but had no real concern for his safety as the parking lot was well lit and it was a nice suburban area.

On August 12, 1982 our world fell apart. Tom and John were working at the restaurant that night. After the restaurant closed, John talked a few moments with Tom and Teresa Miley, a college student who also worked at the restaurant and dated Tom that summer. John left and went home. Tom and Teresa got into their respective cars to start over to a friend's house. Neither of them saw the 2 robbers with stockings over their heads approach them. Jerry Mims, by his own admission, was high on cocaine and needed money for more drugs. He thought that he might rob the restaurant where he had once worked as he figured it to be an easy target. Mims fired a shot over the hood of Tom's car, then ran around to the driver's side window and fired a shot point blank into Tom's head. The car drifted slowly backwards into the side of the restaurant as Tom was fatally injured. Mims turned and fired a shot at Teresa, but unfortunately the bullet lodged in her car door. Had it been a later model car, she too would have taken a bullet in the head. Mims ran off without the money. Teresa got out of her car and ran to check on Tom. Realizing that he was in need of medical attention, she ran for help. As she ran onto the highway, she fully expected to be shot in the back, but she knew she had to try to get help.

The third car finally stopped for her. She asked the driver to take her to Lasorda's Marchwood Tavern that was the closest thing open and where she could get to a phone to call for an ambulance. When she reached the tavern and asked if she could use the phone, that someone had been shot and needed help, she was told to use the pay phone outside. She found change and called.

The phone rang at our house just as we were getting ready for bed. John had just come in and we chatted a few minutes with him. Tom's father answered the phone. I could hear the subdued voice suddenly filled with anguish. I asked if it was his mother, who was in her nineties. No, it was Kathy, our daughter who worked as a nurse at the local hospital. She had been called down to the emergency room after her shift because one of the nurses in the emergency department, a neighbor, recognized Tom. Tom had been brought in as a John Doe and they needed identification. Kathy said that Tom had been shot, that it was bad, and to come quickly because he was dying. My reaction was total disbelief and my mental picture was of a shot to the shoulder. Oh, that it might have been just that.

We were at the nearby hospital in just a few minutes. John went with us, but we left Jane at home asleep. There was simply not time to apprise her of the situation.

In the emergency room, there were spots of blood on the floor leading to the stretcher where Tom lay. There was hushed apprehension as all service focused on this emergency. No, we could not see Tom. No, I could not hold his hand. No, it was not a good picture; the outlook was bad. The doctor was pale and concerned. Machines kept making those electric impulse sounds and the room was eerily quiet. We all looked at each other not wanting to recognize the reality, wanting this moment to go away. This was not supposed to happen in this safe town. The sounds of the machine stopped. The doctor appeared and said with a choked voice how sorry he was. Tom was dead at 20 years of age.

Sometime later they let me see Tom. I bent over his white sheeted body to kiss that dear young face whose head was wrapped in bandages. He was cold, he was gone. Too soon. Too young. The vitality and laughter of the morning was gone. The energy and expectation forever quieted. This could not be real. But it was and this was only one incident in the many shootings that increasingly have followed.

As we made funeral plans, the Chester County Detectives under Sgt. Mike Carroll began their work. I can never say enough good about these detectives and the judicial system. Their dedication to this case and their compassion for us created a bond that exists with us to this day. They were completely there for us.

Life continued with a painful, broken rhythm. Jane had been told of Tom's death when we returned home that night. Two weeks later she hesitantly packed for the new semester at Lynchburg College. Thank goodness this was a small school where students and professors cared and expressed concern.

Kathy moved back home from her apartment. She managed to complete her second college degree that fall while continuing to work. Her work took on new meaning while dealing with life, death and dying.

John began his senior year in high school. Suddenly the youngest had a forced growing up. He and Tom had been very close, quite different people, but very close.

In 1982, shootings did not happen in public areas such as shopping centers. Violent crime did not happen to people like us. Shooting and murders occurred in "bad" neighborhoods. People with whom you worked were to be trusted. Tom was not that lucky. Dennis Dreibelbus had been the previous night manager of the restaurant. Tom liked and respected Dennis. Dennis quit to take a job with the Boy Scouts of America and Tom was given Dennis' job. It was disclosed during the investigation that Dennis was surreptitiously dealing drugs. Jerry Mims bought drugs from Dennis Dreibelbus. Jerry Mims owed Dennis money. Dennis knew that Mims was going to rob the restaurant. Dennis did not tell anyone. Tom was killed. Dennis Dreibelbus is still alive. Dennis was fired by the Boy Scouts of America upon learning of his drug activity. Justice is not always served.

The detectives did catch the two men who shot Tom. We have been through two trials and we have witnessed their indifferent, callous confessions. It was a painful, stressful experience. Life did not mean much to the person holding the gun. They are in prison serving life sentences without parole.

As the fall began, I knew that it was necessary that I gather together Tom's things. I did not want help. I wanted to grieve, be angry, but recall the good memories that were there among his possessions. I opened every notebook and there among his chemistry notes was a page full of philosophical thoughts on what was important in life. As days turned into weeks and I had almost completed this task, I found the following statement which was so indicative of his life. He had written: "Let me leave you with this thought. Remember that the American dream can not die; for when you are deprived of something you want, you dream about it,

and your dream will last as long as you strive to turn it into reality."

Young Americans out there have dreams. I charge you this day with stabilizing our society so that these dreams can be realized. Young people should not have to live in fear that guns will kill them, that schools and neighborhoods are not safe. And parents should not have to bury their children for they are never whole again. Each day is always an acknowledgment of reality. Each day you hope that the surface of your healing will not be scratched, for if it is, you will only bleed again.

Respectfully yours,

SUZANNE SLATE ANDERSON.

As I said, in 20 years I have never read a personal letter in the Chamber, but I have never had such a profound letter written to me. I believe as I said—and I will conclude with this—after all the statistics which I have cited, I know with numbing accuracy, having done this for 15 years, even sometimes I forget that there is a face attached to every one of those statistics.

It is my hope, Mr. President, that when we pass this crime bill tomorrow, eventually pass it in conference with the House, and send it to the President's desk, that we will spare other mothers, fathers, brothers, and sisters, from having to deal with what Mrs. Anderson says, paraphrasing her; the reality that the dream has died, and the scar never heals.

Mr. President, I thank you for your indulgence. I realize that I have kept you longer than you need be here. But knowing the gentleman that you are, you probably would have stayed if I had gone another half hour.

I thank the staff for listening as well.

I yield any time that is available to me.

ORDERS FOR THURSDAY, NOVEMBER 18, 1993

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:25 a.m., Thursday, November 18, 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 upon the disposition of S. 24, the independent counsel bill the Senate resume consideration of S. 1607, the crime bill and that there be 90 minutes for debate, equally divided in the usual form, remaining on the bill, with all other provisions of the previous consent agreement governing consideration of that bill remaining in effect.

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

RECESS UNTIL TOMORROW AT 9:25 A.M.

The PRESIDING OFFICER. Under the unanimous consent, the Senate stands in recess.

Thereupon, the Senate, at 10:05 p.m., recessed until tomorrow, Thursday, November 18, 1993, at 9:25 a.m.

NOMINATIONS

Executive nominations received by the Senate November 17, 1993:

DEPARTMENT OF STATE

JEANETTE W. HYDE, OF NORTH CAROLINA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BARBADOS, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE COMMONWEALTH OF DOMINICA, AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO ST. LUCIA, AND AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO ST. VINCENT AND THE GRENADINES.

THE JUDICIARY

JUDITH W. ROGERS, OF THE DISTRICT OF COLUMBIA, TO BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT, VICE CLARENCE THOMAS.

THOMAS I. VANASKIE, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA VICE A NEW POSITION CREATED BY PUBLIC LAW 101-65, APPROVED DECEMBER 1, 1990.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 17, 1993:

DEPARTMENT OF STATE

ALVIN P. ADAMS, JR., OF VIRGINIA, 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 REPUBLIC OF PERU.

DEPARTMENT OF DEFENSE

R. NOEL LONGUEMARE, JR., OF MARYLAND, TO BE DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION.

GILBERT F. CASELLAS, OF PENNSYLVANIA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF THE AIR FORCE.

HENRY ALLEN HOLMES, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF DEFENSE.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF JUSTICE

EDUARDO GONZALEZ, OF FLORIDA, TO BE DIRECTOR OF THE U.S. MARSHALS SERVICE.

CARL KIMMEL KIRKPATRICK, OF TENNESSEE, TO BE U.S. ATTORNEY FOR THE EASTERN DISTRICT OF TENNESSEE FOR THE TERM OF 4 YEARS.

FRANCES CUTHBERT HULIN, OF ILLINOIS, TO BE U.S. ATTORNEY FOR THE CENTRAL DISTRICT OF ILLINOIS FOR THE TERM OF 4 YEARS.

NORA MARGARET MANELLA, OF CALIFORNIA, TO BE U.S. ATTORNEY FOR THE CENTRAL DISTRICT OF CALIFORNIA FOR THE TERM OF 4 YEARS.