

HOUSE OF REPRESENTATIVES—Thursday, February 10, 1994

The House met at 10 a.m.

Rev. George Wilson, St. Augustine Catholic Church, Washington, DC, offered the following prayer:

Lord, it was You who first planted us on this Earth.

You fenced us around with the love of our families and friends.

Their care towered over us.

Under the shelter of this tower,

We grew in safety and peace.

The year of our life is passing.

The harvest is approaching.

What have we to show?

What fruit have we produced?

What if, after all this care,

We should be found to be without the fruits of love?

What if we had nothing to offer,

But the sour grapes of indifference, selfishness, and neglect?

May You, Lord, have mercy on us,

And with Your patient urging,

Help us to return Your love. Amen.

THE JOURNAL

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

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

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Delaware [Mr. CASTLE] please come forward and lead the House in the Pledge of Allegiance?

Mr. CASTLE led the Pledge of Allegiance as follows:

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

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2333. An act to authorize appropriations for the Department of State, the United States Information Agency, and related agencies, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 2333) "An Act to authorize appropriations for the Department of State, the United States Information Agency, and related agencies, and for other purposes," requests a con-

ference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. KERRY of Massachusetts, Mr. PELL, Mr. BIDEN, Mr. SARBANES, Mr. DODD, Mr. SIMON, Mr. MOYNIHAN, Mr. HELMS, Mr. LUGAR, Mrs. KASSEBAUM, Mr. PRESSLER, Mr. MURKOWSKI, and Mr. BROWN, to be the conferees on the part of the Senate.

THE REVEREND GEORGE WILSON

(Ms. NORTON asked and was given permission to address the House for 1 minute.)

Ms. NORTON. Mr. Speaker, we are pleased to welcome this morning Father George Walter Wilson, who is a priest of one of Washington's oldest and most revered churches, St. Augustine Catholic Church.

Father Wilson has spent most of his life in service to his church as a devoted Catholic layman. He entered the priesthood only 2 years ago, after serving for 17 years as a permanent deacon. Today he ministers to the elderly, to those with HIV, to families, to the homeless, and to youth. Father Wilson's priesthood follows directly from his life, including 35 years as a public schoolteacher in the Baltimore Public Schools. He was educated in the public schools of the District of Columbia, we are proud to say. He is now a Ph.D. from the University of California.

Mr. Speaker, Father Wilson is a priest whose life flows into and from his ministry. We are pleased that he has graced this Chamber this morning.

A CLOSE LOOK AT CLINTON BUDGET REVEALS DISAPPOINTING ASPECTS

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

Mr. GINGRICH. Mr. Speaker, when the American people look at President Clinton's budget in detail, they are going to be very disappointed.

There is no provision in the budget over the next 5 years for real welfare reform to require work and to reduce children born outside of marriage. There is no provision to build the prisons necessary for life sentences for three-time violent offenders. There are no provisions to stop the illegal aliens who are costing billions of dollars, especially to States like California, Texas, New Mexico, Arizona, and Florida.

Again and again, where we need real reform, the Clinton budget is silent and

does not provide for the changes we need.

Mr. Speaker, I think it is a big disappointment to those who believe we have to reform welfare, we have to stop violent crime, and we have to end subsidizing illegal aliens.

REAL WORKABLE CUTS FEATURED IN CLINTON BUDGET

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

Mr. VISCLOSKY. Mr. Speaker, last year, Congress and President Clinton passed the largest deficit reduction bill in history.

The bill reduces the deficit by \$496 billion with over \$250 billion in spending cuts. This historic, cost-cutting measure was passed without a single Republican vote.

This year, President Clinton's budget builds on last year's success. His budget request calls for the elimination of 115 Government programs and cuts more than 300 others. Just as last year, these cuts are real and they will work.

It is clear that President Clinton is committed to cutting programs and putting Government back on the side of the people.

Mr. Speaker, this budgetary course, coupled with the cost controls contained in President Clinton's health care plan, will put our Nation's fiscal house in order. These are the choices we must make to guarantee the best and brightest future for ourselves and our children.

APPOINTMENT OF MEMBERS TO REPRESENT THE HOUSE AT GEORGE WASHINGTON BIRTHDAY CEREMONIES

Mr. KLECZKA. Mr. Speaker, I ask unanimous consent that it shall be in order for the Speaker to appoint two Members of the House, one upon the recommendation of the minority leader, to represent the House of Representatives at appropriate ceremonies for the observance of George Washington's Birthday to be held on Monday, February 21, 1994.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER. Pursuant to the order of the House of today, the Chair appoints the following Members to represent the House of Representatives at

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

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

appropriate ceremonies for the observance of George Washington's Birthday to be held on Monday, February 21, 1994: Mrs. BYRNE of Virginia; and Mr. BATEMAN of Virginia.

WINTER HEALTH OLYMPICS

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

Mr. HEFLEY. Mr. Speaker, as the Nation prepares for the 1994 Winter Olympics, here are some thoughts on the upcoming health care debate.

The President, in his rhetoric, has slalomed around the truth when he says his plan will be simple, will save money, and will preserve choice.

Actually, his plan will promote a blizzard of new bureaucracies, new taxes, and new regulations. And worse, it will cause the quality of our health care to go downhill faster than an out-of-control Alpine skier.

The President may think he hit the triple axle with his spin control operation, but the judges will deduct points for not coming clean with the American people.

Nancy Kerrigan may have received first-class medical attention under our current system, but who can say if she would receive the same kind of treatment under the Clinton plan?

The President's plan takes a slapshot at the health care of all Americans. For that, I think he should spend some time in the penalty box.

NATO SETS STAGE FOR AIR STRIKES IN BOSNIA

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

Mr. ENGEL. Mr. Speaker, it is about time. As the siege of Sarajevo approaches the end of its second year, the West has finally agreed to respond to the Bosnian tragedy. NATO will use air strikes if the Serbs do not pull their heavy guns 12 miles from the city within 10 days or engage in further attacks before that deadline arrives.

It is shameful that the United States and Europe have acquiesced in the land grabs and ethnic cleansing of Serbian President Slobodan Milosevic. Even more shameful is the fact that the deaths of more than 60 people in a Sarajevo market place were required before the West would use its muscle to halt the slaughter.

Although sanctions were imposed in May of 1992 against Serbia and a no-fly-zone was extended over Bosnia, our actions thus far have been ineffective. If we continue to deny Bosnia the right to defend itself, let us at least stand up to those who kill innocent civilians.

No American will ever forget the image shown on television last week of snow stained with blood, where only

minutes before children were sleigh riding. While these pictures stick in our consciousness and drive us toward action, the real tragedy is that this type of carnage happens every day.

Now is the time to act. I call on my colleagues to join in support of the use of NATO air power to lift the siege of Sarajevo. The bloodshed must end.

WELFARE REFORM CANNOT WAIT

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

Mr. CASTLE. Mr. Speaker, how much longer will we have to wait for real welfare reform? Given the fact that it appears disagreements on welfare reform are relatively limited between Republicans, Democrats, and the administration, the time is ripe to make major improvements in our welfare system.

In this regard, 162 Republicans have sponsored a welfare reform bill which includes provisions I think we all can agree on to a great degree. Strong paternity establishment, expansion of statutory flexibility of States for means-tested programs, a strong mandatory work program, time-limited benefits, tough child support enforcement, and controlling welfare costs.

With these provisions that we are all generally aligned on, combined with the earned income tax credit, we have an excellent chance to provide welfare recipients with expanded hope, responsibility, and opportunity to escape the welfare trap. Our Republican bill includes these incentives, and more, and does so at a \$20 billion savings to the taxpayers over 5 years.

But what is the hold-up if we are speaking the same language on welfare reform? We need to move forward now, and that is why I have introduced a bill that would create an ad hoc welfare reform committee, of limited duration and at no extra cost, that would facilitate an expedited welfare reform bill that welfare recipients need and taxpayers deserve.

We have been, and continue to work with the Governors to hammer out our differences over our bill, which are fairly limited, and I urge my Democratic colleagues to join us. We are too close and in too much agreement on this issue to let this historic opportunity pass us by. Welfare reform cannot wait because America cannot wait.

THE BUDGET

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

Mr. CLYBURN. Mr. Speaker, I rise today in support of President Clinton's budget proposal.

Some may view the President's budget proposal as a heartless cut and slash

of vital Government programs. Yet for others, it does not cut enough. But this budget is a pretty good balance of our Nation's priorities.

While the President's budget proposal calls for cuts in some rather popular programs, it also calls for a \$888 million increase for childhood immunizations, and a 7-percent increase in education programs, with a boost in efforts to ensure safe and drug-free schools.

The budget proposal also increases law enforcement spending—enabling States and municipalities to put more police officers on the streets, and contains \$500 million additional for veterans' medical care.

Mr. Speaker, this is a budget that seeks to further reduce the deficit, while continuing to provide the kinds of services and programs needed from the Federal Government.

GET IT RIGHT THE FIRST TIME

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

Ms. DUNN. Mr. Speaker, according to a story in today's Washington Post, the President wants to speed up consideration of his health care proposal in the Congress. It seems that the longer people look at his plan, the less they like it. In fact, Mr. Clinton himself has said this was a "bad week," not surprising, considering the rejection of his plan by both the National Business Roundtable and the National Chamber of Commerce.

The President, frankly, appears to be fearful of the public scrutiny of his health care proposal. He would rather rush through this debate and jam this costly and bureaucracy laden proposal down the throats of the American people than allow the Congress to deliberate carefully on all the alternatives that exist at this time.

The best alternative is, I believe, the Michel-Lott bill. It saves costs. It increases access. It maintains choices, and it solves the problems of portability and preexisting conditions without erecting a huge Government bureaucracy.

Mr. Speaker, I urge the Congress to ignore the President's advice and to look fully at all the possible solutions. This is one area where we must not hurry to make a mistake.

U.S. TRADE FIGURES

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

Ms. KAPTUR. Mr. Speaker, after 14 frustrating years of Japanese obstruction in the marketplace and at the negotiating table, the United States Government at last seems to be getting

tough on trade, and it is about time. I strongly support the Clinton administration's insistence on measurable, enforceable results instead of more talk. In fact, no deal is better than another bad deal.

The Japanese trade gap with the United States rang in at over \$131 billion, the largest ever. And the merchandise part of that, manufacturing, jumped about 10 percent to more than \$56 billion. That means even more lost jobs in our manufacturing sector.

If current trends continue, the 1993 auto-parts deficit of \$11 billion will be topped by a \$12.2 billion deficit in 1994, according to the U.S. Commerce Department's latest forecast. These figures are directly related to Japan's pattern, unique among major industrial nations, of minimal market access for foreign manufactured goods.

United States Trade Representative Mickey Kantor yesterday announced that trade talks with Japan are at an impasse. Tomorrow Prime Minister Hosokawa arrives in Washington for a trade summit with President Clinton. The Prime Minister has just had himself formally designated Japan's national trade ombudsman for dealing with complaints against Japanese trade barriers. If he means for that role to be substantive, not just symbolic, he has a chance to prove it by striking a meaningful market-access agreement with President Clinton tomorrow. If not, Japan will face a President, a Congress, United States industry and labor who all agree that time has run out for talk.

THE CLINTON HEALTH PLAN

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

Mr. GOODLATTE. Mr. Speaker, this week numerous members of the President's party have come to this floor to speak in support of the Clinton health plan.

They have told chilling stories of gaps in our current health care system and make the argument that since these folks have fallen through the cracks we should radically change our system. Republicans believe we should fill in the cracks.

Most people work hard to get good health care, but the Clinton plan looks like a leap into the abyss of the unknown.

Elements of the Michel plan, on the other hand, have been tried and tested, and in each heart-wrenching instance cited by our Democratic colleagues, the Republican alternative would solve the problem more effectively, more efficiently, and with more equity.

The choice here is not between helping these people or not.

The choice is between Government-run health care, with increased taxes,

lower quality, rationing, and limited doctor choice or a common-sense plan which fixes the bad aspects of our current system without destroying the best aspects.

Let us not leap into a black hole of the unknown—let us look to the Michel plan.

THE TRADE DEFICIT WITH JAPAN

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

Mr. TRAFICANT. Mr. Speaker, Japan told Nixon, "We will buy your products." Japan told Ford, "Don't worry." Japan told Carter, "We will buy spare parts for our cars in America." Japan told Reagan, "We will do better." Japan told Bush, "We will even honor our side bar agreements." Japan now tells Clinton, "We will change."

Members, the trade deficit with Japan is \$54 billion, and our trade program in America is a joke. And Japan is laughing all the way to the bank. There is only one way Japan is going to change. They are going to have to get hit in the wallet.

Let me say this, Congress, \$54 billion is no small change. It is time for Congress to get in the back pocket of Japan.

PAY UP, WASHINGTON

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

Mr. GOSS. Mr. Speaker, another boat-load of refugees arrived in America from tempest-tossed Haiti this week. Tragically, several drowned on their way. Those that made it ashore have disappeared without HIV screening or asylum processing.

In the eyes of the Federal Government, it is almost as if they don't exist, as if they are not people. But to budget-strapped Florida, they are people in need and a costly reality. Immigration—legal and illegal—is a Federal problem, but Washington is not offering concrete solutions and Floridians are picking up the tab for an estimated 345,000 illegals. In 1992, the cost to Floridians of this non-policy was \$793 million. In desperation, Florida's Governor Chiles has filed a lawsuit to pursue reimbursement. The 25-member Florida congressional delegation strongly supports his effort. After lessons learned during NAFTA, I hope the administration does not intend to ignore the fourth largest delegation on the hill. It is time for Washington to pay up.

NASA

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

minute and to revise and extend his remarks.)

Mr. ROEMER. Mr. Speaker, I am very concerned about the NASA budget. It is going down this year, and it will be flat for the next 5 years. This year, it represents a \$250 million cut. There are no new initiatives in the NASA budget, and we are represented by that budget in other requests in science with the smallest investment as a percent of Gross National Product since 1954.

The problem with all this is the Space Station. The Space Station is the albatross around NASA's neck.

We now have gone to a joint venture with the Russians. This presents compatibility problems with technology, cost, infrastructure with the Kazakstan and Baykonyr facilities, all kinds of new problems.

I strongly suggest that NASA step back. We evaluate where NASA needs to go and where we need to invest this money and cancel the Space Station.

□ 1020

AUTOMATIC DEDUCTION FOR CHILD SUPPORT PAYMENTS

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

Mr. CAMP. Mr. Speaker, there is widespread agreement that we need reform in child support enforcement.

Right now \$46 billion in back child support is owed to mothers and children. It is time to ratchet up the pressure. Let us send a message to these parents that they cannot run, and they cannot hide from their financial obligations to their kids.

Let us give States the freedom to automatically deduct child support payments from a parent's paycheck and to work across State lines so parents cannot avoid child support by moving to a different State. And, let us clarify the law so collection organizations can make reasonable efforts to contact these parents who are not paying up, without the fear of endless and expensive law suits.

Mr. Speaker, there are nearly 5 million mothers across America receiving welfare because fathers are not paying child support. How much longer do we have to wait for the President's welfare reform proposal, so we can collect this money from deadbeat dads and give their children an opportunity for a bright future?

We have a Republican welfare reform plan. Let us act on it now.

TIME FOR A COMMITMENT TO WELFARE REFORM

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

Mr. SANTORUM. Mr. Speaker, candidate Clinton is President Clinton, in large respect because he showed he was a new Democrat throughout the campaign of 1992, because of one issue: the welfare issue. He was a new Democrat because he wanted to reform the broken-down Government system that is trapping the poor in this country with despair.

President Clinton has an opportunity now to work with us to get a welfare bill done. He is like the suitor, the suitor to the welfare issue who gives us flowers, who says nice things, who stands up at the State of the Union Address and presents us with nice gifts, but has yet to deliver the ring.

It is time for commitment. It is time to move forward, and we have an opportunity with the Republican bill, which has gotten broad support across both sides of the spectrum, to move some reform to help these people. They deserve better. They deserve an opportunity to go to work, to learn, and to be able to get into the mainstream of America.

Mr. President, it is time to move, and the Republican plan is a place to start.

INTRODUCTION OF THE PROTECTION FROM SEXUAL PREDATORS ACT

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

Ms. SLAUGHTER. Mr. Speaker, as the rate of rape continues to increase, it has become clear to me that our current approach to convicted sexual offenders is failing.

Not long ago, my own community of Rochester, NY, was terrorized by Arthur Shawcross, a serial rapist and murderer. Shawcross had served less than 15 years for the sexually motivated murders of two children before he was paroled—and then his parole officer and the justice system lost track of him, setting him free to rape and kill again.

Mr. Speaker, American children deserve to grow up free of the fear of rapists. Some national statistics indicate that rapists are 10 times more likely than other convicts to repeat their crimes. Since we cannot change the behavior of these sexual predators, we need to keep them behind bars.

I am preparing a bill, the Protection from Sexual Predators Act, that will allow Federal authorities to keep the Nation's worst repeat rapists for life. The legislation also establishes a national data base to register and track sex offenders and their crimes.

I urge my colleagues to endorse the bill as original cosponsors. We in Congress must act now. The current system does not work; it is time to break this cycle of repeated rape.

LET US GO FORWARD WITH WELFARE REFORM

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

Mr. SHAW. Mr. Speaker, candidate Clinton came out very, very vividly, and I say very intelligently, outlined a new approach to welfare, welfare reform. We are going to change welfare as we know it today. I applauded him for that move, because he adopted the Republican plan that has been out there, that I filed 3 to 4 years ago with Vin Weber, a former Member of this body.

Then in his first State of the Union address, and then again the other night, President Clinton talked about welfare reform, how he was going to change it and what he was going to call for. We are still waiting for his bill. There is not one thing that the President has said in either one of his State of the Union addresses pertaining to welfare reform that is not already drafted in a plan that has been filed by the Republicans and is sitting there and beginning to accumulate dust.

I ask my colleagues, let us go forward. Let us go forward with welfare reform. Let us not politicize it. The President has embraced what is already in the Republican plan. There are Democrats, our colleagues right here in the House, who are supporting that and want to move the ball forward.

We have 162 cosponsors on the Republican plan. We are ready to move. We can show the President that he has the votes. Just give us a few good Democrat votes, and we will pass it and we will change welfare, and we will make productive human beings out of people who now have nothing but a welfare trap to rely upon.

PRESIDENT CLINTON'S HEALTH SECURITY ACT WILL FIX AMERICA'S HEALTH CARE CRISIS

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

Ms. DELAURO. Mr. Speaker, on Tuesday the Congressional Budget Office released its analysis of President Clinton's Health Security Act. It contains good news for the millions of Americans who understand what it means to have a health care crisis.

The report confirms that we can guarantee all Americans private health insurance and provide coverage to 30 million additional Americans by the year 2000.

The report confirms that we will be able to dramatically lower health expenditures over the long run—by \$30 billion in the year 2000 and \$150 billion in 2004.

And, finally the report says that President Clinton's plan will lead to

overall deficit reduction in the long term.

Unfortunately, before the ink has dried on the CBO report, the sentinels of the status quo are dusting off their tired old rhetoric about big government and tax increases. It is a shame that they choose to use this analysis to score cheap political points.

I suggest that opponents to health care reform start looking at these numbers: the 58 million Americans who will have no health insurance at some point this year, the 81 million Americans who are denied health coverage each year because of preexisting conditions, the 3 out of 4 Americans who have lifetime limits on their health care coverage.

When you add up these numbers, you can only reach one conclusion: We have a health care crisis and we must summon the courage to fix it.

BIG GOVERNMENT HAS CREATED THE WELFARE MESS

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

Mr. DUNCAN. Mr. Speaker, everyone from President Clinton on down is talking about welfare reform. What some do not yet realize or are unwilling to admit is that our big government liberal establishment policies have largely created the mess we are in. Most of the welfare programs we now have benefit the bureaucrats more than the intended beneficiaries. A welfare supervisor from New Hampshire wrote in last week's U.S. News and World Report these words:

Welfare programs start with the best of intentions but never seem to instill a sense of responsibility. Instead of solving the problem, they perpetuate it. Recent federally mandated programs are legitimizing illegitimacy at a tremendous social and economic cost.

The Federal welfare state has been a total and complete failure. In fact, it has made the problem worse. The only real way to correct the problem is to do something that I know we will not do, and that is to get the Federal Government totally out of the welfare business. The function should be returned to our local governments without Federal requirements or mandates because it can be handled the most economically and efficiently at the local level.

□ 1030

Our benefits are too generous and any society that pays healthy people more to stay at home than to work cannot long survive.

HAWAII'S HEALTH CARE SYSTEM

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

Mr. ABERCROMBIE. Mr. Speaker, recently the gentleman from Tennessee [Mr. COOPER] presented what he called a plan for health care coverage. In it he was very critical of a national employer mandate and referred to the Hawaii system as an example of one which had employer mandates and did not cover all of its residents 100 percent.

Not only has Hawaii been able to achieve near universal coverage, they have done so with no negative impact, no negative impact on the business community. Rather, we in Hawaii have achieved a positive business growth, decreased unemployment, and have a business failure rate below that of the national average.

Mr. Speaker, our health care system in Hawaii works because it requires employers to provide health insurance coverage for their workers. Dependents are often covered on a voluntary basis. Employers and employees share the cost of the coverage, and both benefit from the ready availability of health care.

The system was selected because it built upon rather than tried to duplicate a system which, like the rest of the United States today, covered the majority of our people. Our insurance system in Hawaii is not overburdened and does not have to shift the cost of care from those without insurance to the insured population. Insurers in Hawaii are able to provide fair insurance practices and not exclude the sick and those with high risk for illnesses.

In Hawaii all share the costs, all share the benefits. It is the most productive social contract we have, and it is the most advanced in the United States. And I suggest that the gentleman from Tennessee [Mr. COOPER] examine the Hawaii system and redo his own bill so that that bill just comes up in some small measure to match that of Hawaii. In Hawaii our results are better overall health status, lower cost.

CBO NUMBERS—THEN AND NOW

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

Mr. DREIER. Mr. Speaker, last year the President announced he would put together a budget and I quote, "using the independent numbers of the Congressional Budget Office."

He went on to say:

I did this so that we could argue about priorities with the same set of numbers; I did this so that no one could say I was estimating my way out of difficulty.

Well that was then, Mr. Speaker. Since then, President Clinton has been lobbying hard and heavy to get CBO to say his health care plan is not part of the budget, and should not be counted as deficit reduction.

Well, that was then.

This is now:

CBO just this week, as we all know, declared that President Clinton's health care plan which aims to take over one-seventh of the Nation's economy is—surprise—part of the Government.

CBO declared that this massive Federal bureaucracy should—surprise—be part of the Federal budget.

CBO declared that the Federal bureaucracy which will take over one-seventh of the Nation's economy will not reduce the deficit but—surprise—will add \$130 billion to the deficit.

What drove President Clinton to CBO then was the search for credibility. If he is to retain any credibility now, then he should accept the CBO estimate and announce how he will pay for the \$130 billion shortfall.

FORMER PRESIDENT BUSH SHOULD CHECK THE FACTS ON BOSNIA

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

Mr. WISE. Mr. Speaker, today as the hell of Bosnia once again forces our country to evaluate the consequences of military action, I was appalled to see former President George Bush state, in a grab for applause lines in his remarks:

The United States can't wait for somebody else to decide what we have to do. If I had sat around and waited before Desert Storm for the Congress to come along, Saddam Hussein would be in Riyadh today.

I urge former President Bush to use the fact check in his computer before writing his memoirs.

The fact is that checking with the Congress and the American people is something we call democracy. The fact is that before Desert Storm, President Bush did not send our children to the Persian Gulf without consulting Congress and, in fact, that was one of the high points of the Congress, that debate on Desert Storm. It was not his decision. It was the Nation's decision.

The fact is that Bosnian tragedy has been on President Bush's watch as long as it was on President Clinton's watch, and indeed one of the tragedies is that President Bush did not seek to engage the American people in a discussion of Bosnia.

So I would suggest that former President Bush think more carefully before criticizing President Clinton for fulfilling his most sacred trust of all, and that is involving the people and their representatives in the very crucial decisions of military engagement.

THREE THINGS TO DO TO SOLVE OUR HEALTH CARE PROBLEMS

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

minute and to revise and extend his remarks.)

Mr. CALVERT. Mr. Speaker, we do need health care reform. But we do not want to destroy the best health care system in the world.

What we need is a way to make health care insurance available to more people. And that, Mr. Speaker, does not require a huge new Government bureaucracy.

We can solve our health care problems tomorrow—or at least next month—if we do just three things: First, make all insurance portable so people will not lose their insurance if they change or lose their jobs. Second, require all employers to offer insurance to their employees; and third, give people tax credits or vouchers to help pay for insurance.

Mr. Speaker, the President's policy wonks love to propose solutions to problems.

Unfortunately, when it comes to health care, their proposals require advanced calculus when simple arithmetic will do just fine.

THE PRESIDENT'S BUDGET

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

Mrs. CLAYTON. Mr. Speaker, I want to commend the President for developing a budget that makes a great strides in reducing our Nation's fiscal deficit. I am pleased that he has followed the guidelines established by the Omnibus Budget Reconciliation Act of 1993. The President's budget for fiscal year 1994 does indeed prove that he is committed to leading this Nation out of its fiscal and social deficits.

I do want to add, however, that some of the cuts are going to be very hard on the most needy in our society, especially the 40 percent reduction in the Low Income Home Energy Assistance Program. I look forward to working with members on the Budget Committee to try to address this concern.

Although I support the President's health care reform proposal, I have a great concern for his reliance only on the tobacco tax to finance health care reform. I do not believe that it is a fair or responsible government that would place such a great burden on one industry—knowing that this burden threatens the well-being of farmers and all those hardworking Americans who are involved in producing this product. Instead, I urge all my colleagues to remember the tobacco farmer as they debate the means to finance health care reform.

Despite the concerns I have just raised, I applaud the President for giving the American people a sincere budget committed to deficit reduction. I look forward to working with my colleagues in Congress to promote deficit

reduction while maintaining our support for poor families.

IS PRESIDENT CLINTON'S PLAN SOCIALIZED MEDICINE?

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

Mr. KINGSTON. Mr. Speaker, proponents of the President's health care plan have been bombarding the leery American public with a PR campaign entitled "Tell that to the Joe Blow constituent stories," and it is always a scenario which is a good scenario about the need for health care reform. But the irony is nobody is debating the need for health care reform. The debate is: Is the crisis so big that we need to socialize medicine or is it such that the free-market-targeted reforms will do the trick?

The Michel plan targets reforms and allows the free market to be free, to have competition, and the Clinton plan basically socializes medicine. I truly believe that there are a lot of people who have heartbreak stories out there that we need to help, and the Michel plan is aimed at helping them.

We are not debating the need for reform. We are debating socialized medicine.

Mr. Speaker, I hold in my hand a document which says what the National Health Care Board does. It is in the bill, all through the bill, sections 1141, 1503, 1522, 1911, 1571. This outlines the powers of the National Health Care Board which basically socializes medicine in our country, gives them the power to develop, and implement national health insurance, set standards for doctors, write, develop, and approve policy language for insurance companies, control costs, set community rates from Maine to Florida, oversight on drug pricing, power to set health care budgets, power to set the budget for regional health care alliances, deciding who will get health care, where they will get it, and under what procedures and circumstances.

Mr. Speaker, this is a profound list. It is available to the public. It is something people need to know about, because this is an absolute blueprint for socialized medicine as part of the Clinton plan.

We need the Michel plan that targets the part that is broken, while the Clinton plan throws out the whole system and starts all over again and puts the Government in charge and not the consumers.

HAITIAN SANCTIONS VIOLATE STANDARDS OF DECENCY AND INTERNATIONAL JUSTICE

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

Mr. MICA. Mr. Speaker, what does it take to get the attention of the House of Representatives and this administration?

How many more babies, sick and elderly must we kill with our policy of sanctions on Haiti?

How many more Haitian bodies must wash up on Florida's shores?

I ask you, how much more misery must we, by our action and inaction, impose on the people of Haiti?

We have sent our forces to Grenada, Panama, and last week we voted to spend \$1.2 billion to support our military presence in Somalia.

We have drawn deadlines in the sand only to see them washed away by the blood of Haitian martyrs.

Every deadline has passed for action, and time and again the White House and this administration have fumbled.

We continue to underwrite the United Nations and they fail to act.

I ask my colleagues, has the United States, the United Nations and this Congress abandoned every standard of decency and international justice?

A NEW AND DIFFERENT TIME

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

Mr. TORRICELLI. Mr. Speaker, what began in Chiapas, Mexico, as a small disturbance has now captured the imagination of the Mexican people. All of the years of frustration, of an electoral process that does not do justice to Mexican democracy, the discrimination, the failure of economic opportunity now across Mexico are being heard and debated for the first time in a generation.

Within Mexico some can claim that it is foreign education; others can object that those of us in the United States can find sympathy with those who want democracy in their own land. But what they cannot deny is that this is a new and different time when all peoples around the globe believe that in the cause of human rights and basic justice and opportunity that we are all one people, all having the right to address injustice everywhere. We address the concerns of Mexico not because we care about Mexico less but because we care about her people more.

Because we are now in an economic alliance with Mexico, we have certain rights, indeed, responsibilities to ensure her people, as she has a right in looking at our people, have basic opportunities and simple justice.

In this, to the people of Mexico, we find common cause.

WHY CONGRESS SHOULD PASS A WELFARE REFORM BILL THIS YEAR

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

minute and to revise and extend his remarks.)

Mr. ARCHER. Mr. Speaker, I am here this morning to plead with Members of Congress and the administration to get moving on welfare reform. I agree with Senator MOYNIHAN: The Nation has a welfare crisis.

Spending on welfare programs is growing out of control. Welfare spending grew by \$55 billion between 1989 and 1992. That is 36 percent in just 3 years. CBO projects that welfare spending will grow by another 20 percent in 1994 and 1995.

We can stop these outrageous growth rates if we reform the Nation's welfare programs. And at the same time, we can strike another blow for deficit reduction.

If we pass the House Republican welfare reform bill, we can stop dependency on welfare and save \$20 billion at the same time.

But we cannot pass any bill until we get started. Where is the President's proposal? Mr. Speaker, let us get started on welfare reform.

THERE THEY GO AGAIN

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

Mr. GEJDENSON. Mr. Speaker, I think it was a recent President who used this line first, "But there they go again."

The party that was against Social Security, against Medicare, is now against health care reform. Ask me why I am not surprised.

Their coalition with the economic powerful interests in this country once again thinks that it is wrong for America to take a step forward. They are going and they are doing it again. They are taking the special interests, they are joining up with them, and they are fighting what is best for America.

They said the same kinds of silly things when they fought Social Security. They did it again when we provided Medicare for our senior citizens, and now when we are trying to provide uninterrupted, guaranteed medical health care for every American, they are on the attack again telling us we do not need it.

They were wrong on Social Security, they were wrong on Medicare, and they are wrong that there is no medical crisis in America.

We need to have health care that you cannot lose, that you cannot be precluded from getting because you have a member of your family with an illness and that you cannot lose when you lose your job. We need to support this President in his effort to make health care coverage universal.

THE REPUBLICAN WELFARE REFORM PLAN

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

Mr. WALKER. Mr. Speaker, the Republican Party has on the table a welfare reform plan. The Democrats, after 40 years of controlling the Congress, do not even have plans to develop a welfare reform plan. Only the Republicans have put forward a real welfare reform plan, and we intend to do something about it by moving it through the legislative process.

Mr. Speaker, I yield to the gentleman from Florida [Mr. SHAW] to tell us what the plans are to try to get a vote on welfare reform before the end of this session.

Mr. SHAW. Mr. Speaker, we have now, on the Republican side, had a bill that has been out there for about 4 years. The President has endorsed it. He has made it part of his platform. We intend to introduce it.

With the passage of all of this time, we are frustrated to the point that we are going to be putting in process a discharge petition that will force the House under an open rule to bring forth this bill and any other proposals that may be out there. We will be doing this after the recess.

The Congress now has plenty of time to play plenty of attention to this process. We have a Subcommittee on Human Resources that has not really started the debate.

We need to start the debate, and we are going to bring the debate directly here to the floor unless there is movement within the next few weeks.

Mr. WALKER. Mr. Speaker, I congratulate the gentleman who has been a leader in welfare reform and hope that we can move the subject.

LISTEN TO THE PEOPLE FOR A CHANGE

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

Mr. KLEIN. Mr. Speaker, President Clinton handed Congress a challenge on Monday. He gave us a budget that sends us in the right direction, a plan that offers the fiscal discipline my constituents are demanding. Now, we have heard lots of clever spin about where and why the President's budget does not go far enough, but these critics are missing the point.

The President's budget plan will cut the budget deficit to \$176 billion in 1995. That is 3 straight years of a declining deficit, something we haven't seen since Harry Truman was in the White House. The people have told us, time and again, that they are willing to make tough choices to achieve real deficit reduction. Is it not time we listened to the people for a change?

This budget will not be easy and it will not be painless. President Clinton suggested a lower level of transportation funds, and I find this troublesome. But, I also know how crucial it is to eliminate this deficit before another generation has to pay for our fiscal irresponsibility. I will fight throughout the budget process to see that New Jersey gets treated fairly, but I will not sacrifice the future and I will not give up the cause of fiscal discipline.

□ 1050

WE NEED WELFARE REFORM NOW

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

Mr. FRANKS of Connecticut. Mr. Speaker, we just recently witnessed a dreadful example of why it is so important to take cash out of our welfare system and replace it with a debit card.

Mr. Speaker, in Chicago, 20 people were living in a 2-bedroom apartment, 5 families used the address to qualify for welfare—\$4,500 in welfare benefits were going to the adults in the apartment. One mother admitted being a drug abuser. Most likely the five adults were using the children to feed their drug habits. Their children were being abused, and we the taxpayers were inadvertently assisting.

Mr. Speaker, this is not an isolated incident. It is happening in varying degrees across the country. It is our welfare system that helps create this problem. A welfare debit card instead of cash payments will help prevent child abuse, help us with our war on drugs, and finally give the taxpayers an accounting of their hard-earned tax dollars.

JAPANESE IN WASHINGTON IN ATTEMPT TO REVIVE CERTAIN TRADE TALKS

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

Mr. REGULA. Mr. Speaker, Mr. Tsutomu Hata, the Japanese foreign minister, arrived in Washington yesterday in a last-minute attempt to revive trade talks on the framework agreement. These negotiations are aimed at addressing the current Japanese account surpluses and the low penetration of their market by imports.

I join my colleagues on both sides of the aisle in supporting the administration's position of numerical goals in import penetration based on sales, coupled with effective enforcement mechanisms.

As repeatedly said by our negotiators, no agreement is better than a bad agreement. To do otherwise compromises the American worker and consumers around the world.

A 1991 joint survey by the United States and Japanese Governments of auto parts pricing turned up telling evidence on this point. For a Toyota Corolla, replacement parts were priced 107 percent higher in Japan than in the United States. For a Nissan Sentra, replacement parts were 119 percent higher than in the United States. Japanese consumers paid higher prices because of no competition, thereby subsidizing their auto parts makers' penetration of the United States market, and the eventual higher prices to our consumers.

Refusing to move forward, after so many years of talking, can only be seen for what it is—a lack of good faith and therefore a basis for congressional action.

RECESS

The SPEAKER pro tempore (Mr. WISE). Pursuant to the provisions of clause 12, rule I, the House will stand in recess until 11 a.m.

Accordingly (at 10 o'clock and 55 minutes a.m.), the House stood in recess until 11 a.m. today.

□ 1101

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore [Mr. GEJDENSON] at 11 o'clock a.m.

INDEPENDENT COUNSEL REAUTHORIZATION ACT OF 1993

The SPEAKER pro tempore. Pursuant to House Resolution 352 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 811.

□ 1101

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 811) to reauthorize the independent counsel law for an additional 5 years, and for other purposes, with Mr. TORRICELLI in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, February 9, 1994, amendment No. 3 printed in House Report 103-419 had been disposed of.

It is now in order to consider amendment No. 4 printed in House Report 103-419.

AMENDMENT OFFERED BY MR. RAMSTAD

Mr. RAMSTAD. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. RAMSTAD: Page 10, insert the following after line 20 and redesignate the succeeding section accordingly:

SEC. 6. GROUNDS FOR REMOVAL.

Section 596(a)(1) of title 28, United States Code, is amended by adding at the end the following: "Failure of the independent counsel to comply with the established policies of the Department of Justice as required by section 594(f) or to comply with section 594(j) may be grounds for removing that independent counsel from office for good cause under this subsection."

The CHAIRMAN. Pursuant to the rule, the gentleman from Minnesota [Mr. RAMSTAD] will be recognized for 5 minutes, and a Member opposed to the amendment will be recognized for 5 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment is both reasonable and straightforward.

Under my amendment, an independent counsel may be removed for good cause for failure to comply with the standards of conduct which are set forth in the independent counsel statute.

Those standards of conduct are spelled out in the statute in two sections, the first section 594(f), as amended by the subcommittee reads:

An independent counsel shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

The other provision is section 594(j). This places employment restrictions on independent counsel and staff while they are serving and for periods subsequently. It also provides restrictions on law firm associates of the independent counsel.

Mr. Chairman, these standards of conduct are wise and reasonable. Presently, however, there is no enforcement mechanism, no penalty whatsoever for failing to comply with sections 594 (f) or (j).

My amendment seeks to correct this oversight. It simply states that:

Failure of the independent counsel to comply [with sections 594(f) or 594(j)] * * * may be grounds for removing that independent counsel from office for good cause.

I want to emphasize again, this does not compel the Attorney General to remove an independent counsel, it only provides guidance.

Clearly, the intent of this amendment is not to seek the removal of an independent counsel for minor or technical violations of DOJ policy.

Mr. Chairman, if we think it is important enough to impose certain requirements on an independent counsel, then we should be willing to enforce those requirements.

Let us remember what role an independent counsel plays. He or she sim-

ply acts in the place of a U.S. attorney, whom we do not want to conduct the investigation because of a conflict of interest. For all intents and purposes, an independent counsel should and must adhere to the very same prosecutorial standards that a U.S. attorney would have followed.

Indeed, this principle is recognized in the Judiciary Committee report on page 20:

Section 594(f) maintains the policy that independent counsel are expected to follow the same rules as the Department of Justice in their investigations and in making decisions on whether or not to seek indictments. This provision is designed to help ensure that an individual who is the subject of an independent counsel investigation will not be held to a higher standard or subject to stricter enforcement of the laws than other individuals.

The committee report on page 21 goes on to clarify that, and I quote:

Penalties [to be applied to U.S. Attorneys] for failure to comply with policy range from no sanction or administrative reprimand all the way to dismissal, depending on the importance of the policy and the extent and nature of the divergence.

I would suggest that all independent counsel be held to the very same standard for breach of established Department of Justice policies.

Clearly, only the most serious breaches would lead to removal from office.

Mr. Chairman, I urge my colleagues to vote for this sensible amendment.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Is the gentleman from Texas [Mr. BROOKS] opposed to the amendment?

Mr. BROOKS. The Chairman is correct.

The CHAIRMAN. The gentleman from Texas [Mr. BROOKS] is recognized for 5 minutes.

Mr. BROOKS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition to this amendment offered by my good friend and a distinguished member of the committee, Mr. RAMSTAD, the gentleman from Minnesota. Because the Attorney General already has the power to remove any independent counsel for good cause, this amendment is unnecessary.

But of equally great concern to me is that this amendment spells out two—but only two—of the grounds which might constitute "good cause" under the statute. Because good cause for removal could be based on any number of actions, misdeeds, or circumstances, the statute has wisely left the determination of what constitutes the standard of good cause in the hands of the Attorney General. H.R. 811 continues to do so.

On a more technical ground, the amendment on the surface appears to repeat the scheme that is currently in the independent counsel statute, but

by using different words, it could lead to interpretive confusion.

I very much respect the motivation behind the gentleman's amendment, but I urge that we keep the statute's current treatment of good cause in place. For this reason, I must urge rejection of this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. RAMSTAD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in response to the gentleman from Texas [Mr. BROOKS], the distinguished chairman of the Committee on the Judiciary, I would just quote from the Independent Counsel Reauthorization Act of 1993, the committee report from 1982, which totally contradicts what my good friend from Texas said, and I am quoting now from the committee report:

This section should not be interpreted to mean that failure of the special prosecutor to follow departmental policies would constitute grounds for removal of the special prosecutor by the Attorney General.

So, this section should not be interpreted to mean that failure of the special prosecutor to comply with these two sections should constitute grounds for removal of the special prosecutor by the Attorney General.

Such an interpretation would seriously compromise the special prosecutor's dependence.

Well, Mr. Chairman, obviously the legislative history spells out that, if the independent counsel fails to comply with existing policy, that that is not grounds for removal.

That is right here in the committee report.

Mr. BROOKS. Mr. Chairman, will the gentleman yield?

Mr. RAMSTAD. I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Chairman, to my distinguished friend from Minnesota I say, "This section is included in the Hyde amendment substitute, and I would hope that we could resolve it in that overall context and not in a long, separate vote in contention here on the floor. We have got three or four, at least, additional votes on this bill before we conclude this afternoon, and some of the Members are trying to depart from this city by plane early before that snow storm hits."

Mr. Chairman, I thank the gentleman.

Mr. RAMSTAD. Mr. Chairman, reclaiming my time, I am one of those Members who would like to get out of town, but this amendment is, as the distinguished chairman points out, part of the more comprehensive amendment to be offered subsequently. However that amendment is very controversial. There are two other major points of contention in that broader amendment.

So, Mr. Chairman, this is a very straightforward amendment, and I did not think it would be a controversial amendment. It simply says that if the independent counsel fails to comply with standard Department of Justice policies, and those are accepted widely by the criminal bar across this country, and they are reasonable standards of conduct, if he or she fails to comply with those standards of conduct, then the Attorney General may—not must or shall, but may—remove the independent counsel. If there are flagrant abuses, violations, of established policy, prosecutorial policy, then it seems to me it is only reasonable that the Attorney General have the power to remove an independent counsel. I think there needs to be that minimum check or balance, and again I would emphasize that it is discretionary.

So, Mr. Chairman, I am real puzzled by the chairman's opposition to this amendment.

Mr. BROOKS. Mr. Chairman, will the gentleman yield?

Mr. RAMSTAD. I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Chairman, I would just say that I believe that this is something that we might consider in the conference. In other words, I am going to be opposed to the Hyde amendment and hope we can beat it. But that does not mean we will exclude this concept from consideration in the conference.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. RAMSTAD] has expired.

Mr. BROOKS. Mr. Chairman, I yield myself such time as I may consume.

Mr. RAMSTAD. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to the gentleman from Minnesota.

Mr. RAMSTAD. I would just suggest, Mr. Chairman, to my good friend from Texas that he accept the amendment. That is an easy resolution of this very straightforward amendment which is discretionary, I would remind my friend from Texas, totally discretionary, the independent counsel violates these provisions. The broader amendment, which is coming subsequently, Mr. Chairman, is much more controversial, so I do not want to muddy the waters of that amendment.

□ 1110

Mr. BROOKS. Mr. Chairman, let me reclaim my time in order to answer the question briefly.

It is good cause if you limit it to just one or two issues, but there might be several more that the Attorney General might well consider good cause, and I would rather have the broader interpretation available to the Attorney General. That is really my only real query or question about rewriting the language. That is what we do not want to do.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. RAMSTAD].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. RAMSTAD. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 187, noes 227, not voting 24, as follows:

[Roll No. 18]

AYES—187

- Allard, Andrews (NJ), Archer, Arney, Bachus (AL), Baker (CA), Baker (LA), Ballenger, Barrett (NE), Bartlett, Barton, Bateman, Bentley, Bereuter, Bilbray, Bliley, Blute, Boehlert, Boehner, Bonilla, Bunning, Burton, Buyer, Callahan, Calvert, Camp, Canady, Castle, Clinger, Coble, Collins (GA), Combust, Cooper, Cox, Crane, Crapo, Cunningham, DeFazio, DeLay, Diaz-Balart, Dickey, Dooley, Doolittle, Dreier, Duncan, Dunn, Ehlers, Emerson, Everett, Fawell, Fields (TX), Fish, Fowler, Franks (CT), Franks (NJ), Frost, Gallegly, Gallo, Gekas, Gilchrest, Gillmor, Gilman, Gingrich, Goodlatte, Goodling, Goss, Grams, Grandy, Greenwood, Gunderson, Hancock, Hansen, Hayes, Hefley, Herger, Hobson, Hoekstra, Hoke, Horn, Houghton, Huffington, Hunter, Hutchinson, Hyde, Inglis, Inhofe, Istook, Johnson (CT), Johnson, Sam, Johnston, Kasich, Kim, King, Kingston, Klug, Knollenberg, Kolbe, Kyl, Lazio, Leach, Levy, Lewis (CA), Lewis (FL), Lightfoot, Linder, Livingston, Machtley, Manzullo, Margolies-Mezvinsky, McCandless, McCollum, McCrery, McCurdy, McDade, McHale, McHugh, McInnis, McKeon, McMillan, Meyers, Mica, Michel, Miller (FL), Molinari, Moorhead, Morella, Myers, Nussle, Orton, Oxley, Packard, Parker, Paxon, Penny, Peterson (FL), Peterson (MN), Petri, Pomo, Porter, Portman, Pryce (OH), Quillen, Quinn, Ramstad, Ravenel, Regula, Rogers, Rohrabacher, Ros-Lehtinen, Roth, Roukema, Royce, Santorum, Saxton, Schaefer, Schiff, Sensenbrenner, Shaw, Shays, Shuster, Sisisky, Skeen, Smith (MI), Smith (NJ), Smith (TX), Snowe, Solomon, Spence, Stearns, Stump, Sundquist, Talent, Taylor (MS), Taylor (NC), Thomas (CA), Thomas (WY), Torkildsen, Traficant, Upton, Walker, Walsh, Weldon, Wolf, Young (AK), Young (FL), Zeliff, Zimmer

NOES—227

- Abercrombie, Ackerman, Andrews (ME), Applegate, Baucus (FL), Baesler, Barca, Barcia, Barlow, Barrett (WI), Becerra, Beilenson, Berman, Bevill, Bishop, Bonior, Borski, Boucher, Brewster, Brooks, Browder, Brown (CA), Brown (FL), Brown (OH)

- Bryant, Byrne, Cantwell, Cardin, Carr, Clay, Clayton, Clement, Clyburn, Collins (IL), Collins (MI), Condit, Conyers, Coppersmith, Costello, Coyne, Cramer, Danner, Darden, de Lugo (VI), Deal, DeLauro, Dellums, Derrick, Deutsch, Dicks, Lloyd, Dingell, Dixon, Durbin, Edwards (CA), Edwards (TX), Engel, English, Eshoo, Evans, Faleomavaega (AS), Farr, Fazio, Fields (LA), Finer, Fingerhut, Flake, Foglietta, Ford (MI), Frank (MA), Furse, Gejdenson, Gephardt, Geren, Gibbons, Glickman, Gonzalez, Gordon, Green, Gutierrez, Hall (OH), Hall (TX), Hamburg, Hamilton, Harman, Hefner, Hilliard, Hinchey, Hoagland, Hochbrueckner, Holden, Hoyer, Hughes, Hutto, Insee, Jacobs, Jefferson, Johnson (GA), Johnson (SD), Johnson, E. E., Kanjorski, Kaptur, Kennedy, Kennelly, Kildee, Kleczka, Klein, Klink, Kopetski, Kreidler, LaFalce, Lambert, Lantos, LaRocco, Lehman, Levin, Lewis (GA), Lipinski, Lloyd, Long, Lowey, Maloney, Mann, Markey, Matsui, Mazzoli, McCloskey, McDermott, McKinney, McNulty, Meehan, Meek, Menendez, Mfume, Miller (CA), Mineta, Minge, Mink, Moakley, Mollohan, Montgomery, Moran, Murphy, Murtha, Nadler, Natchner, Neal (MA), Norton (DC), Oberstar, Obey, Olver, Ortiz, Owens, Pallone, Pastor, Payne (NJ), Payne (VA), Pelosi, Pickett, Pickle, Pomeroy, Poshard, Price (NC), Rahall, Rangel, Reed, Reynolds, Richardson, Roemer, Romero-Barcelo (PR), Rose, Rostenkowski, Rowland, Roybal-Allard, Rush, Sabo, Sanders, Sangmeister, Sarpalius, Sawyer, Schenk, Schroeder, Schumer, Scott, Serrano, Sharp, Shepherd, Skaggs, Skelton, Slaughter, Smith (IA), Spratt, Stark, Stenholm, Stokes, Strickland, Studds, Stupak, Swett, Synar, Tanner, Tauzin, Tejada, Thompson, Thornton, Thurman, Torres, Torricelli, Towns, Underwood (GU), Unsoeld, Valentine, Velazquez, Vento, Vislosky, Volkmmer, Waters, Watt, Waxman, Wheat, Whitten, Williams, Wilson, Wise, Woolsey, Wyden, Wynn, Yates

NOT VOTING—24

- Andrews (TX), Bilirakis, Blackwell, Chapman, Coleman, de la Garza, Dornan, Ewing, Ford (TN), Hastert, Hastings, Lancaster, Laughlin, Manton, Martinez, Neal (NC), Ridge, Roberts, Slattery, Smith (OR), Swift, Tucker, Vucanovich, Washington

□ 1133

The Clerk announced the following pairs:

- On this vote: Mr. Bilirakis for with Mr. Blackwell against. Mr. Ewing for with Mr. Washington against. Mr. Dornan for with Mr. Manton against.

Ms. SCHENK and Messrs. JOHNSON of Georgia, WILSON, HEFNER, KENNEDY, and MINGE changed their vote from "aye" to "no."

Messrs. LEWIS of California, PETERSON of Florida, and FIELDS of Texas changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 103-419.

AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I offer an amendment.

The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. Hyde: Page 2, add the following after line 6 and redesignate succeeding sections and references thereto, accordingly:

SEC. 3. BASIS FOR PRELIMINARY INVESTIGATION.

(a) INITIAL RECEIPT OF INFORMATION.—Section 591 of title 28, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "information" and inserting "specific information from a credible source that is"; and

(B) by striking "may have" and inserting "has";

(2) in subsection (c)(1)—

(A) by striking "information" and inserting "specific information from a credible source that is"; and

(B) by striking "may have" and inserting "has"; and

(3) by amending subsection (d) to read as follows:

"(d) TIME PERIOD FOR DETERMINING NEED FOR PRELIMINARY INVESTIGATION.—The Attorney General shall determine, under subsection (a) or (c) (or section 592(c)(2)), whether grounds to investigate exist not later than 15 days after the information is first received. If within that 15-day period the Attorney General determines that there is insufficient evidence of a violation of Federal criminal law referred to in subsection (a), then the Attorney General shall close the matter. If within that 15-day period the Attorney General determines there is sufficient evidence of such a violation, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 15-day period, whether there is sufficient evidence of such a violation, the Attorney General shall, at the end of that 15-day period, commence a preliminary investigation with respect to that information."

(b) RECEIPT OF ADDITIONAL INFORMATION.—Section 592(c)(2) of title 28, United States Code, is amended by striking "information" and inserting "specific information from a credible source that is".

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, what I am seeking by this amendment is to make this a better independent counsel bill. Right now the threshold for triggering a preliminary investigation by the Attorney General, simply requires that "infor-

mation," not evidence—information is received sufficient to constitute grounds that a covered person "may" have violated any Federal criminal law.

I suggest to the Members that is way too low. I suggest to the Members to make this a meaningful, effective statute, we ought to elevate the triggering threshold to the "specific evidence from a credible source." I am tightening up what is a rather loosely drawn piece of law that has too wide a net. 28 U.S.C. §591(a). I am doing this, Mr. Chairman, as a Republican. One would think it would be in our interests to have the threshold low, to catch as many people as possible. I can assure the Members, that is not in my interest. That is not my intention.

I have always supported the Independent Counsel law. I voted for it in 1978. I voted to reauthorize it in 1983 and 1987. But I want it to be a professionally drawn, good, effective law that provides due process. I do not want to trigger expensive and sometimes awkward investigations that are brought sometimes for political purposes.

The manpower, the resources of the Justice Department should not have to be expended on surmise, on rumors, on innuendo, on more allegations. Rather, there should be real evidence so I am asking my colleagues in a bipartisan way, because nothing can pass, at least from the Republican side, without Democrat support, to join me in raising the threshold for triggering this law to specific evidence from a credible source. It seems to me that is in everybody's interest, to eliminate the trivialities and the frivolities of people who want to cause somebody a hard time.

I have never served on the Committee on Standards of Official Conduct, but I have been told by people who do that the non-members would be amazed at the mail they get. The charges they get that are frequently off the wall, not all of them, but a lot of them are.

□ 1140

And it just seems to me that the triggering of this law ought to require the provision of specific evidence from a credible source.

So I am attempting to tighten it, to fine-tune it, to sand off the rough edges and to help the cause of due process.

Mr. Chairman, I reserve the balance of my time.

Mr. BROOKS. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Texas [Mr. BROOKS] is recognized for 10 minutes.

Mr. BROOKS. Mr. Chairman, I yield myself such time as I may require.

Mr. Chairman, I must rise in strong opposition to this amendment.

The amendment, has two different parts—which, for some reason, seems to be obscured by the sponsors in de-

scribing the amendment. Now that the moment of truth has arrived it is essential that all Members understand what both parts would do to the structure of the Independent Counsel process.

It is understandable why the sponsors of the amendment emphasized only the first part of the amendment: For that part is nothing more than a restatement of the existing standard found in the Independent Counsel statute that guides the Attorney General in conducting a preliminary investigation.

It was in the bill in 1978.

Thus, part 1 of the Hyde amendment requires that the Attorney General—in determining whether there are grounds to conduct a preliminary investigation—find that the information submitted to her is "specific" and from a "credible source." It sounds good.

Guess what? The existing independent counsel statute (28 U.S.C. 591(D)(1)) states the following: "In determining * * * whether grounds to investigate exist, the Attorney General shall consider only (a) the specificity of the information received; and (b) the credibility of the source of the information." In other words, it is the same.

If the Hyde amendment was simply a restatement of the existing standard, it would be superfluous but nothing more. But it is something more because of the second part of the amendment. That part creates a new, untested legal standard which eviscerates the very independence of the independent counsel once he or she is appointed.

"Hyde, part two"—as I shall call it—directs the Attorney General not to proceed with the process if, within 15 days, she "determines there is insufficient evidence of a violation of criminal law * * *." But requiring the Attorney General to make an ultimate finding of whether there is a criminal violation is not the Attorney General's function at the "preliminary stage": Ultimate findings of guilt or not are for the independent counsel to make. In other words, the second part of the Hyde amendment would make the appointment of an independent counsel a mere "afterthought" since the Attorney General will have already prejudged the likely existence of a criminal offense.

What is the point of having an independent counsel if the Attorney General is both prosecutor and adjudicator of guilt or innocence? How does this type of provision avoid the conflict of interest of the executive branch judging itself?

For all these reasons, I must urge you to reject the Hyde amendment. It started out so promising and unobjectionable, but at the end of the road, it is a radical concept that strips away the very independence of the independent counsel.

Mr. Chairman, I reserve the balance of my time.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am really astonished at my friend, the gentleman from Texas [Mr. BROOKS]. I think he is trying to impute some Machiavellian method here. I am trying to make this a workable provision.

Under the law that we are about to reauthorize, the preliminary investigation threshold question was too low. It is true the gentleman talks about insufficient evidence of a violation. But that comes later, after a 15-day inquiry. It is the beginning of the preliminary investigation that I want to deal with and I want to raise that threshold, not lower it. I do not want political manipulation of the independent counsel law, nor the Office of Attorney General. I want the trigger, the threshold of the preliminary investigation, not to have to happen unless there is specific evidence from a credible source of a violation of a Federal law. The complicated machinery of the independent counsel law should not get underway unless there is real evidence of possible wrongdoing. I am simply raising the threshold. After the investigation is underway, I have no problem with sufficient evidence.

Mr. BRYANT. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I am happy to yield to the gentleman from Texas.

Mr. BRYANT. Mr. Chairman, I really wonder if the gentleman understands what we are saying is what the gentleman has done is provide that the Attorney General under his provision has 15 days in order to determine whether there is sufficient evidence of a violation. And the statute has always said that they have 15 days to determine if there is a specific allegation from a credible source, and if there is, then there is a 90-day period in which an investigation takes place.

I do not think the gentleman realizes the effect of the words he has written.

Mr. HYDE. Recapturing my time, the law we are reenacting says the Attorney General must conduct a preliminary investigation whenever the she (or he) receives information sufficient to constitute grounds that any person may have violated any Federal criminal law. But I want to change that to say not mere information but specific evidence, real evidence—not rumors, not assertions but specific evidence from a credible source.

Mr. BRYANT. The gentleman is right. But will the gentleman yield further?

Mr. HYDE. Certainly I yield to the gentleman from Texas.

Mr. BRYANT. The gentleman stopped reading too soon. If he kept reading he would specifically see that the statute already says that the specificity of information received and the credibility of the source are the key factors in her determination. So it is

exactly like the language the gentleman is talking about. The problem is the second half of his amendment which requires the Attorney General to determine in 15 days if there is sufficient evidence of a violation, and that is the province of the independent counsel, not the Attorney General. So if we leave it to the Attorney General, then we have no independent counsel.

Mr. BROOKS. Mr. Chairman, will the gentleman yield?

Mr. HYDE. Of course I yield to the gentleman from Texas, the gentleman who voted no on this bill when it first was presented in 1978, and I am still shocked about that.

Mr. BROOKS. But I saw the light. The gentleman remembers that I voted for it ever since.

Mr. HYDE. That is true. The road to Damascus is a short one for the gentleman from Texas.

Mr. BROOKS. But I have never deterred from my route since then. It is these people that go back and forth that make you nervous.

Mr. HYDE. I think I see a halo. I think.

Mr. BROOKS. Now, what I was going to suggest is I believe that the first part of the amendment is a useful statement of what is in the bill now. It is the second part that we have trouble with. If the gentleman would get unanimous consent to drop that part of it, we would accept the first part and be very pleased. I think it encourages a restatement, makes more clear that we need to have specificity and credibility of the source of the information, just as we really believe there should be.

□ 1150

Mr. HYDE. Mr. Chairman, I am trying to elevate the threshold that triggers this whole complicated operation. If the gentleman is satisfied to have it based merely on allegations that somebody may make, then the gentleman is welcome. Because it is his party that may be the focus of these investigations—unless, of course, we are successful in getting Congress covered, which I hope we do. But I am trying to make it a more workmanlike, professional due-process threshold.

The gentleman thinks there is some motive that frankly does not exist to eviscerate the bill. I am trying to strengthen it. If the gentleman does not want it strengthened, then the gentleman will prevail, but I hope people understand the threshold should be elevated.

Mr. BROOKS. If the gentleman will yield further, I do not want the gentleman to portray my effort as weakening in any way, because I think that if you give more authority to the Attorney General, you will destroy the authority of the independent counsel.

Mr. HYDE. No. I want to give her specific—

Mr. BROOKS. She makes all the judgments at this point, if you combine

the adjudication with the administration, and we do not want to do that.

Mr. HYDE. I do not want to give the Attorney General more authority. I want to give her specific evidence rather than just information. I want it from a credible source, not somebody off the wall. I think that helps everybody. But the gentleman obviously does not.

Mr. BROOKS. Section 591 in the bill. Mr. HYDE. Pardon?

Mr. BROOKS. Section 591 in the bill, "shall" uses the word "shall," and it uses the same words, the same terminology exactly.

Mr. HYDE. Mr. Chairman, I yield back the balance of my time.

Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT. Mr. Chairman, I would just like to restate what the chairman said. We would be glad to accept the first part of the amendment offered by the gentleman from Illinois [Mr. HYDE], because it is simply a restatement of what is in the bill with regard to specificity.

It is the second part that is the problem. I am not sure he realizes the catastrophic impact it has on the bill. The question is, What threshold do you have to meet for the Attorney General to go into the 90-day period? The history of this act is that only 13 independent counsels have been appointed in 15 years. It is not as though this has been rushed into and independent counsels are appointed willy-nilly, right and left all the time. It is very rare.

In fact, of those 13 independent counsels, almost half of them have decided there was no reason to prosecute.

So changing fundamentally the threshold would be a terrible mistake. What the amendment offered by the gentleman from Illinois [Mr. HYDE] does is provide that the Attorney General would have only 15 days in which to determine, not if there is a specific allegation from a credible source, but 15 days in which to determine whether or not there is sufficient evidence to go forward. If you impose the sufficiency-of-evidence standard, you have then given all of the authority to the Attorney General, which is the person from whom we are trying to take the authority in order to guarantee that a conflict of interest will not result in unnecessarily, unfairly, unjustly shielding her colleagues, 60 people in the executive branch, from an objective analysis and objective investigation of their activity and possible prosecution.

Unless the gentleman from Illinois wants to accept an amendment in which we adopt the first half of his amendment and drop the second half, I am afraid we will have to continue our opposition to the amendment.

I strongly urge Members to vote "no."

Mr. BROOKS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. HYDE].

The amendment was rejected.

The CHAIRMAN. It is now in order to consider amendment No. 6 printed in House Report No. 103-419.

AMENDMENT OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. GEKAS: Page 9, strike line 18 and all that follows through line 14 on page 10 and insert the following:

SEC. 4. APPLICATION TO MEMBERS OF CONGRESS.

Section 591(b) of title 28, United States Code, 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) any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, or any person who has served as a Senator, a Representative, Delegate, or Resident Commissioner within the 2-year period before the receipt of the information under subsection (a) with respect to conduct that occurred while such person was a Senator, a Representative, Delegate, or Resident Commissioner."

The CHAIRMAN. Pursuant to the rule, the gentleman from Pennsylvania [Mr. GEKAS] will be recognized for 15 minutes, and a Member opposed to the amendment will be recognized for 15 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, if there is one thing the American people have unanimously voiced over the last several years, it is disgust with the Congress in the fact that the Congress seeks and often accomplishes exemption of itself from the laws which it imposes upon the public at large. There are many, many examples of it. The people not only perceive it but believe it, because it is actually true.

Let me give you an example of how this occurs. Now, we are talking about the Congress subjecting the general public to certain laws and other segments of society to certain laws, but not itself to the disgust of the American people.

Here is a list of them: the Civil Rights Act of 1964, the Americans with Disabilities Act, the AIDS Discrimination in Employment Act, the Rehabilitation Act of 1973, the National Labor Relations Act, the Fair Labor Standards Act, the Equal Pay Act of 1963, OSHA, the Freedom of Information Act, and the Privacy Act. I state these and put them in the RECORD to demonstrate that what the Gekas amend-

ment does in the bill that is now in front of us is to rectify that just a little bit to give to the American people the sense that we are going to be about the business of setting that sorry record straight, that here we have an independent-counsel statute that calls for the Attorney General, in the case of alleged wrongdoing of a member of the Cabinet, that that Attorney General must take action to bring that wrongdoer before an independent counsel, but then, lo and behold, if a Member of Congress is accused of wrongdoing, and God knows we have had that happen quite often in the past 10 years, if a Member of Congress be accused of some wrongdoing, then when the Attorney General gets that information, the Attorney General does not have to appoint an independent counsel to look into the wrongdoing of a Member of Congress.

Is that or is that not a double standard, I ask the Members of Congress?

At the same time I will not yield at the moment.

Now, those who propose the bill will, in sophistry and in very pastor-like ways, say, "We have taken care of that problem, Mr. GEKAS. We have language in the bill, and you know it, Mr. GEKAS, that will allow the Attorney General to visit an independent counsel against a Member of Congress."

But the language is not to the satisfaction of the American people. It says, "may"; it says "may be"; "well, perhaps," while the Gekas amendment says it must investigate when allegations of wrongdoing are visited against a Member of Congress just as it is for members of the Cabinet, and that is what I want to do with the Gekas amendment, put for the first time in a long time Members of Congress on the same level of culpability, of liability, as the general members of the public, especially to those who are members of the Cabinet. The people want this, and I urge that we successfully defeat the Bryant amendment that will come later which is aimed at obviating, erasing the Gekas amendment.

Let us make no mistake about this: the Bryant amendment that is to follow, because remember, the Gekas amendment will not be voted on up or down. The Committee on Rules took care of that. Rather, after we finish debate on the Gekas amendment, bill-Bryant, as I said yesterday, the bill, the Bryant bill that carries the bill language, the bill-Bryant will be brought up, and then we must vote, those of us who want to preserve the Gekas amendment, we must vote "no" on Bryant, because it just carries that "maybe" language allowing the Attorney General to weasel out of an independent-counsel investigation of a Member of Congress.

So be careful and stick with me, and we will do something for the American people to rectify this imbalance.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Is the gentleman from Texas [Mr. BROOKS] opposed to the amendment?

Mr. BROOKS. Mr. Chairman, I rise in vigorous opposition to the amendment.

The CHAIRMAN. The gentleman from Texas [Mr. BROOKS] is recognized for 15 minutes.

Mr. BROOKS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in vigorous opposition to the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS] and urge my colleagues to support the Bryant substitute offered by the distinguished chairman of the Judiciary Committee's Subcommittee on Administrative Law and Governmental Relations.

The Gekas amendment can only be viewed as a rhetorical smokebomb lobbed at Members to create panic and destroy the careful plan of the independent counsel statute. The amendment is a misnomer—for it implies that Members of Congress are not covered by the statute. That is plain wrong; Members have been covered since 1983. If we have truth in advertising, it is high time for truth in amending.

No one has ever accused the Department of Justice of not diligently investigating and prosecuting individual Members of Congress, as well as conducting broad-scale investigations of the House as an institution. It has done so zealously under Democratic and Republican Administrations, alike. Yet, the Gekas amendment straitjackets the Attorney General from having the option of using U.S. Attorneys or an independent counsel in pursuing charges of wrongdoing against a Member of Congress.

Both the administration and the Attorney General—a former prosecutor herself—opposed the Gekas amendment. Let me read from the Attorney General's letter I received yesterday on February 9, 1994, which I will submit for the RECORD of this debate. She states:

*** Let me reiterate the position of the administration and the Department [of Justice] that the act should not be amended to provide for mandatory coverage of Members of Congress. Such an amendment would be at odds with the fundamental purpose of the act: to deal with the potential for conflicts of interest in the investigation and prosecution of high-level officials within the executive branch. No such inherent conflict of interest exists in the investigation of Members of Congress. Moreover, I firmly reject the notion that the criminal investigative process should be made the pawn of political gamesmanship by covering Members of the legislative branch simply because certain executive branch officials are covered.

A more thoughtful application of the independent counsel statute is found in the substitute amendment offered by the gentleman from Texas [Mr. BRYANT]. Under the Bryant amendment,

and to remove all doubt, Members of Congress are explicitly covered by the independent counsel statute. The Bryant amendment authorizes the Attorney General to invoke the independent counsel procedures to investigate and prosecute Members of Congress if doing so would be in the public interest." Thus, under the Bryant amendment, the Attorney General has two options: She can use the independent counsel process when she believes it to be in the public interest; or, she can investigate and prosecute Members by using the formidable enforcement resources of the Department of Justice—just as she can do with members of the Federal judiciary, State and local officials or any other American citizen.

The other body by a bipartisan vote of 67 to 31 rejected the Gekas approach in favor of the Bryant approach. I urge you to cast an "aye" vote in support of the Bryant substitute to the Gekas amendment.

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, February 9, 1994.

Hon. JACK BROOKS,

Chairman, Committee on the Judiciary, U.S.
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I want to take this opportunity to express the support of the Department of Justice and the Administration for reauthorization of the Independent Counsel Act. Public trust in our government is predicated on the belief that our Nation's justice system is being administered in an even-handed and impartial manner; reauthorization of the Independent Counsel Act is crucial to ensuring continued public confidence in the integrity of that system. Both H.R. 811 and the Senate companion bill, S. 24, advance this vital goal and make valuable improvements to the underlying Act. You and your Senate counterparts are to be congratulated for your efforts in reviving this measure.

In particular, let me reiterate the position of the Administration and the Department that the Act should not be amended to provide for mandatory coverage of Members of Congress. Such an amendment would be at odds with the fundamental purpose of the Act: to deal with the potential for conflicts of interest in the investigation and prosecution of high-level officials within the Executive Branch. No such inherent conflict of interest exists in the investigation of Members of Congress. Moreover, I firmly reject the notion that the criminal investigative process should be made the pawn of political gamesmanship by covering Members of the Legislative Branch simply because certain Executive Branch officials are covered.

Again, I appreciate your consideration of the Department's views and commend you for advancing this important legislation.

Sincerely,

JANET RENO.

□ 1200

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I now yield 2 minutes to the gentleman from North Carolina [Mr. COBLE], a member of the subcommittee and the committee of jurisdiction.

Mr. COBLE. I thank the gentleman for yielding this time to me.

Mr. Chairman, I came to the floor with no intentions of speaking today, but I have heard this and I felt compelled to speak.

I hear words such as "double standard"; I hear words such as "exemption" from this proposal or that proposal. As the gentleman from Pennsylvania [Mr. GEKAS] just said, this is what annoys the American public, seeing this body day in and day out enacting laws and then, very conveniently, exempting ourselves.

We feed the Congress from one bucket filled with sweet water, and then the public goes to another trough and drinks from that container. It is simply not right. The situation is, if Mr. GEKAS's amendment does not pass, will simply be permissive. The Attorney General will not have to assign anyone or do anything.

Now, I am not wild generally about independent counsels. It is my belief that the public integrity section of the Justice Department can handle these situations, and I am particularly not wild about it in view of the last exercise that the Walsh investigation conducted when the meter ran eternally. I think it is going to end up costing the American taxpayers somewhere in the vicinity of \$50 million. That is one reason why I am opposed to it. But the public integrity section can take care of it.

Having said that, we are going to steam along this course whether we like it or not. So if we are going to go the independent counsel route, for gosh sake let us respond as we make everyone else respond.

I think that is the way to go. If I had my druthers, I would say let the public integrity section handle it. But I do not have my druthers. So if we are going to go the route of the independent counsel, by all means, as the gentleman from Pennsylvania said, let us bring ourselves under the umbrella.

Mr. BROOKS. Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT. Mr. Chairman, I do not know where the folks who have been talking on the Republican side have been the last 10 years. They are as capable of reading the law as we are.

It is available to them. I guess they do not want to read it. The law as of 10 years ago said Members of Congress were covered by this act. They continue to say that we are not. They are covered, just like any other American, and it has been that way since 1983.

They say they want Congress to be covered by the laws just as everybody else, and I agree, there are some instances where we should have been and we were not. But this is not one of those instances, and they know it is not one of them. Look at the statute. We are treated just like every other American under that statute, and we would be under my amendment as well.

Now, the fact of the matter is this rhetoric is part of a premeditated strategy to pound on a Republican theme that even though this does not quite fit into it, it is OK with them, apparently, to come up here and say that it does. Read the statute.

Let me ask a question, a rhetorical question—and I am not afraid to yield to anybody. When we began this debate last year on the Judiciary Committee, I pointed out at that time that we had three investigations of Members of Congress under way by the Justice Department, four prosecutions in progress, and there had been three convictions in the recent couple of years.

Now, I do not find any evidence that there has been any evidence that there has been any hesitance on the part of the Attorney General of the United States, Republican or Democrat, to pursue Members of Congress. I have never heard anyone suggest in private or in public that there is somebody out there who is shielded from prosecution by the Attorney General because they are friends with them.

Now, if the gentleman knows of any, some case like that, this is a good time to tell us.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. BRYANT. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I thank the gentleman for yielding.

Mr. Chairman, I subscribe to the statement that the gentleman made, but that does not preclude the new wave of authority that we want to put in the Attorney General to investigate wrongdoing in Members of Congress, high-profile Members of Congress, who have apparent or actual conflict of interest, and give them the additional power, the Attorney General, to execute an independent counsel appointment so that the whole world will know that this will be an independent investigation of a high-ranking Member of Congress who is a member of the same party as the Attorney General and the White House.

This is the purpose of this bill.

Mr. BRYANT. Are you not reading the newspapers?

Mr. GEKAS. The gentleman yielded to me. Now, if the U.S. attorney on his own or the Attorney General on his own wishes to follow that, that is all right. But we want that opportunity mandated just like the members of the Cabinet are to have an alleged wrongdoing in the Congress, a high-ranking profile Member who is tied in with the Attorney General and the White House in the same party. That is what we are trying to get.

Mr. BRYANT. Reclaiming my time, and the gentleman pointed out that I yielded to him, and I did. I wish I could get them to yield to us occasionally.

I will proceed with my statement.

Are you not reading the papers? Are you not aware that high-ranking Mem-

bers of Congress of both parties are presently under investigation? Is there some indication otherwise? Have you not read the law? I will not yield again.

Have you not read the law that says clearly Members of Congress are covered? It is optional, but what the gentleman wants to do is to make it mandatory. They continue this rhetoric that somehow we are not treated like all other Americans. The independent counsel statute was written for 60 people who have become such good friends with the Attorney General that we cannot rely on human beings who serve as Attorney General to investigate objectively or to prosecute. Only 60. Everybody else is treated the same. The public integrity unit, the drug unit, every other unit out there is out and available to the prosecutors to investigate us, just like the general public. That is the way it ought to be.

I will be back in a moment with an amendment to the Gekas amendment that I think gives every Member an opportunity to vote on the principle that Members ought to be covered, but the coverage ought to be at the discretion of the Attorney General.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. GOODLATTE] a member of the committee.

□ 1210

Mr. GOODLATTE. My colleagues, nothing angers my constituents more than the idea that Members of Congress are treated differently than others by so many different statutes, and the gentlemen from Texas are correct that Members of Congress are included in this bill. But they are treated differently than the members of the executive branch in the fact that the Attorney General has the option to choose to treat them with a preliminary investigation or not to treat them. She does not have that option with the other members of the executive branch that are included in the bill, and that is what is wrong.

Mr. Chairman, we are sending a message here that Members of this body, some of whom who are very high ranking, very high profile, who are under investigation right now; under this bill the Attorney General, in some instances a member of the same party as those individuals, would have an opportunity to turn a blind eye to those situations and choose not to conduct that preliminary investigation, and that is what we are talking about.

The distinction here is between whether it should be optional on the part of the Attorney General or mandatory.

Mr. BROOKS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Texas.

Mr. BROOKS. To my friend I say, "The Attorney General said very clear-

ly, and she uses English, American, you know, in her letters, said, 'No such inherent conflict of interest exists in the investigation of Members of Congress.' In other words, you investigate the Members of Congress on an optional basis the way you want to. They haven't had any trouble doing it. But you don't mandate that they do it just like they do the 60 members of the executive department."

Mr. Chairman, this bill is not designed to investigate Congress. They can do that anyway with U.S. attorneys all over the United States.

Mr. GOODLATTE. Mr. Chairman, reclaiming my time because I have very little of it, let me say that this bill is intended to make sure that Members of Congress can have special prosecutors, independent counsels, appointed to investigate high crimes on their part, and we should make sure that there is no difference.

Mr. BROOKS. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Chairman, I rise in opposition to the Gekas amendment.

I realize that an increasing number of our colleagues find that there is political mileage in attacking the institution of which they are Members, and maligning their colleagues.

Like the American officer in Vietnam who uttered the explanation, "It was necessary to destroy the village in order to save it," some of our colleagues believe that they must destroy this institution in order to get control of it.

This amendment is based on that premise. Proponents of the amendment argue that the present law and the bill before us is another example of Congress passing laws for everyone else, and carving out an exception for themselves.

The facts are that the independent counsel law and the bill before us do create some special exceptions, but there is no such exception for Members of Congress.

The special exception is for the President, Vice President, members of the President's Cabinet and officials of comparable rank, high ranking members of the White House staff, and key operatives of the President's reelection efforts. The special exception provides that when any of these officials are to be investigated for criminal wrongdoing, the investigation should, in every case, be turned over to an investigator, and, if ultimately justified, a prosecutor who is independent of the control and direction of the Attorney General.

The basis for this exception is that the Attorney General, who is appointed by and closely associated with the President, should not be investigating and prosecuting the President or other persons closely associated with the President.

This special exception applies to only about 60 individuals. The other 250 million of us—including the 535 Members of Congress—are subject to no exceptional rules, but are investigated and prosecuted by normal Department of Justice processes.

Members of Congress are subject to no special rules, nor should we be. We are not appointed by the President. Under our system of separation of powers, we do not work for him, and he does not work for us.

There is not one shred of evidence to suggest that Department of Justice investigators and prosecutors are reluctant to pursue allegations of criminal misconduct by Members of Congress. In fact, prosecutions of Members of Congress of both parties are a common occurrence, regardless of which party controls the White House.

Members of Congress are already subject to investigation by independent counsel, a fact which will be made even more explicit when this legislation is enacted. It is not mandatory, nor should it be. If we need referral to an independent counsel to investigate Members of Congress in every case, one would think that the four Republican Attorneys General we had between 1981 and 1993 would have found at least one occasion in which appointment of a special counsel was appropriate. There have been none.

The fact is there is reason to believe that mandatory referral to an independent counsel would likely make prosecution of Members of Congress more subject to political manipulation, not less.

Under our present system, an Attorney General who personally takes charge of decisionmaking in the prosecution of a Member of Congress is subject to special scrutiny and suspicion, and should be. If a political ally is involved, the suspicion is of favoritism; if an enemy, the suspicion is of unfair persecution.

However, if independent counsel referral is mandatory, the personal intervention of the Attorney General will be mandated. Not only mandated, but mandated at a very early stage in the proceedings. Rather than thoroughly investigating allegations against a Member of Congress, investigators will be required to turn the matter over to the politically appointed Attorney General at a very preliminary stage for decision on the future of the investigation.

Suppose that at this point the Attorney General decides that there is no basis for further investigation. Even if this is based on lack of evidence and not on political manipulation, it makes the process more suspect, and prosecution of Members of Congress much more difficult.

Cases which should be and could be made if the regular procedures were followed may not be made if the case is

prematurely taken out of the hands of career investigators and prosecutors.

Furthermore, in cases which are initially rejected by the Attorney General, while it is theoretically possible that additional information could be produced, leading to a decision that an independent counsel should be appointed, this is unlikely. It is unlikely because the best source of such information is not anonymous phone calls to the Attorney General, but Justice Department investigators. However, once an Attorney General finds that, in the words of the statute, "That there are no reasonable grounds to believe that further investigation is warranted." A pretty clear message is sent to career investigators and prosecutors that the matter is closed.

The shrill voices clamoring for mandatory referral of cases involving Members of Congress to an independent counsel seem to be proclaiming that the independent counsel process is superior to the normal methods of bringing Federal prosecutions, and that Members should always be investigated and prosecuted by this superior process.

The fact of the matter is the independent counsel process is not the best process for prosecuting Federal crimes—the best process, the one most likely to lead to conviction where conviction is warranted, is the normal criminal justice procedure under which all but about 60 individuals in our Nation are investigated and prosecuted. It is only in the case of this handful of individuals that we should and must resort to the extraordinary processes of the independent counsel, an inherently inferior process for most cases, but one that is superior for the special circumstances of these few individuals.

We heard much talk yesterday about coverage of Members versus cover for Members. The fact is the committee bill and the Bryant amendment provide appropriate coverage of Members. Cover for Members is found not in those proposals, but in the Republican proposals to free Members, in every case, from the time-tested and proven investigative and prosecutorial practices of the Department of Justice. The Republicans would instead force every case into a decisionmaking process not designed for and often totally unsuited for the circumstances presented.

Mr. GEKAS. Mr. Chairman, I yield 1½ minutes to the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Chairman, I would like to respond to some of the things that the previous gentleman, the gentleman from New Jersey [Mr. HUGHES], said.

First of all, Mr. Chairman, this is not a partisan issue, and to suggest that it is a gross misrepresentation of the debate. The fact is that the Attorney General is wrong, with respect to there being no conflict of interest.

In fact there is a very real conflict of interest.

It should be absolutely clear to anyone who has ever spent even 1 day in this Chamber that a tremendous amount of power is wielded here by certain Members of the House and the Senate and that there are Members that any administration, and it does not matter if it is Democrat or Republican, must do business with in order to advance its own agenda, and any administration, whether it is Democrat or Republican, will at the very least think very carefully before pursuing a criminal investigation of a Member of Congress who commands great power and influence. That is the fact.

I say to my colleague:

The fact is, if you just look at the very recent history, we have gone through a period in which there has been a scandal with respect to the House Post Office, there has been a scandal with respect to the House Bank. Have we had any indictments of any Members of Congress with respect to either one? No, we have not. But have we had indictments and, in fact, convictions of staff members? Yes, we have, multiples, and yet the fact is that, because there has been a conflict of interest, we have not had the kind of investigation, we have not had the kind of results, that ought to come from those investigations.

Clearly, Mr. Chairman, the Attorney General is wrong with respect to the conflict of interest.

Mr. BROOKS. Mr. Chairman, what is the time remaining on each side?

The CHAIRMAN. The gentleman from Texas [Mr. BROOKS] has 2 minutes remaining, and the gentleman from Pennsylvania [Mr. GEKAS] has 5 minutes remaining.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Oklahoma [Mr. ISTOOK].

□ 1220

Mr. ISTOOK. Mr. Chairman, I rise in support of the Gekas amendment.

I hear people saying, "Oh, we will destroy the institution" if we are asked to have Congress follow the same laws and rules and standards that apply to everyone else. The problem is that Congress seems dead set on destroying itself, and it has got to be changed.

I remember back in the Watergate scandal the so-called Saturday Night Massacre, because the counsel was not independent and could be removed and only acted at the pleasure of the Attorney General. And it is correct, as the gentleman from Ohio [Mr. HOKE] pointed out, that any President needs Members of Congress and their support to accomplish his agenda and, therefore, wants to be on good terms with them and has reservations about anything that might step on their toes such as a criminal indictment.

And making it optional? Will that happen? Look at what is going on. Look at what has happened with the House Post Office. Seven months ago

there was a guilty plea in Federal Court by the former Postmaster of this institution, who took three counts of conspiring with Members of Congress to embezzle taxpayers' money.

It was tens of thousands of dollars. Where are the indictments? They are not there.

Mr. BRYANT. Mr. Chairman, will the gentleman yield?

Mr. ISTOOK. I will not yield.

Mr. BRYANT. Why not?

Mr. ISTOOK. I will not.

Mr. BRYANT. Why not?

Mr. ISTOOK. Because the Ethics Committee of this body is sitting on it instead of investigating as it needs to do to get to the bottom of this scandal and hold Members of this institution accountable.

We have guilty pleas, and we have Federal court papers identifying that several Members of Congress were involved in embezzlement, and it is time for this institution to get with it and stop the double standard and stop the word games of trying to exempt ourselves from the standards that everybody else in this country must follow.

Mr. BRYANT. Now, will the gentleman yield?

Mr. ISTOOK. No, sir.

Mr. BRYANT. Why not?

Mr. ISTOOK. I have heard enough of your rhetoric.

Mr. BROOKS. Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield such time as he might desire to the gentleman from Florida [Mr. SHAW], who in 1987 launched a similar effort to try to make mandatory the inclusion of Members of Congress as subjects and targets of the independent counsel.

Mr. SHAW. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I think this is a tremendously important amendment. Let us really look at the record of the special prosecutors and how they have evolved over the years. It is a very tough standard that we must put on any administration that a special prosecutor with all these powers can be appointed, and this person is appointed to investigate a specific person, and this person is semi-independent from the Department of Justice.

I think that what we have to do is say that if we are going to put this as a standard on the administration, then we certainly should apply it ourselves. It can be said that here we go again, exempting ourselves from these laws, and that is exactly what we are doing.

By boiling this thing down and saying it is permissive, it just simply yanks the heart out of the whole thing.

This is a high standard that we place upon the administration. We should place this same standard upon ourselves and this body. I do not view this as a partisan move at all. It simply says that exactly what we are going to do to any administration, whether it be

a Republican or a Democratic administration, we simply apply the same standard to ourselves. That is the question. It is plain and simple.

Mr. Chairman, I ask for a positive vote on the Gekas amendment and a negative vote on the watered-down amendment.

Mr. GEKAS. Mr. Chairman, I reserve the balance of my time.

Mr. BROOKS. Mr. Chairman, I yield the balance of my time to the gentleman from Texas [Mr. BRYANT].

The CHAIRMAN. The gentleman from Texas [Mr. BRYANT] is recognized for 2 minutes.

Mr. BRYANT. Mr. Chairman, I will not consume all of the remaining time.

I just have to observe that whenever a human being, in the face of the language of the law when it is laid before them and repeated over and over in terms that anyone could understand, continues to deny what is before their very eyes, there is something afoot other than a legitimate effort to offer an amendment to improve legislation.

The law since 1983 has provided that Members of Congress are covered by the independent counsel statute when the Attorney General would like to appoint an independent counsel. My amendment to the Gekas amendment which I will offer in just a moment will continue the law just as it has been, and it has worked well for 15 years. After all, there have been only 13 independent counsels appointed.

Notwithstanding that, as I said a moment ago, despite the outburst we heard a moment ago—and I noticed that the Member would not yield to me, apparently for fear that he would hear the words I am about to speak—while considering this matter in the Judiciary Committee last year, we had four people being investigated, I think three convictions had already taken place, and there were also a number of other ones going on at the same time. There has never been any hesitancy to prosecute Members of Congress.

Let me point out one other thing that was said so very well by the gentleman from New Jersey [Mr. HUGHES] a moment ago. The great irony of this is that you would come to the floor and act as though you were somehow trying to guarantee that Members of Congress are treated like everyone else when the plain result of what you are doing is to put us in a special category that would make it harder, more cumbersome, and more difficult for the Attorney General to prosecute or conduct an investigation against the Member of Congress. Every knowledgeable analyst of this statute agrees with what I have just said.

This is a shell game, as the gentleman from New Jersey [Mr. HUGHES] described it so aptly a moment ago.

Mr. Chairman, I urge the Members of Congress to vote against the Gekas amendment and vote for the Bryant

amendment which I will bring before the body in just a few moments.

Mr. GEKAS. Mr. Chairman, I yield myself the remainder of my time. Mr. Chairman, we do read the statute, we do read the Bryant language, we read the bill language, and the bill language and the Bryant confirmation of the present language says that when the Attorney General deems that it would be in the public interest, this would happen. These are tremendous loopholes. Discretion is given to the Attorney General. Public interest is what the Attorney General may decide it might be.

Then it says the Attorney General may conduct a preliminary investigation. We are reading the law, the bill, the Bryant language, the very language that the gentleman from Texas wants us to read. I am reading it into the RECORD. That is permissive. It uses the words, "may" and "maybe." Who knows whether we will or not. It is that kind of language. I do not know what it is. I am reading it in the RECORD again.

It is "may" language. It is discretionary on the part of the Attorney General, and the Attorney General may just not move against a Member of Congress when indeed that Attorney General would be compelled under similar circumstances to move against a member of the Cabinet.

So the question remains: Shall we raise the Member of Congress to that state of liability and of targetism of the independent counsel law that we accord now to the members of the Cabinet?

The CHAIRMAN. All time has expired for debate on the amendment.

AMENDMENT OFFERED BY MR. BRYANT AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. GEKAS

Mr. BRYANT. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The CHAIRMAN. The clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered as a substitute by Mr. BRYANT for the amendment offered by Mr. GEKAS: Page 10, strike lines 6 through 14 and insert the following:

"(2) MEMBERS OF CONGRESS.—Whenever 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 has received 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."

The CHAIRMAN. Pursuant to the rule, the gentleman from Texas [Mr. BRYANT] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

The Chair recognizes the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the substitute amendment to which I referred a moment ago.

We bring this amendment to the floor in order that every Member of the House might have an opportunity to vote as we voted in the Judiciary Committee in favor of an amendment on Member coverage. That amendment provides that whenever 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 has received information sufficient to constitute grounds to investigate whether a Member of Congress may have violated any Federal criminal law other than minor misdemeanors.

It makes it very plain that we continue to be covered as we have been covered for the last 10 years.

As the Members know, the independent counsel law was enacted because the American people lacked confidence in the ability of the Justice Department to act impartially when allegations of criminal wrongdoing were made against high ranking officers of the executive department. Those reasons are quite obvious.

The Attorney General is a member of the President's Cabinet and is part of the political team.

While we have come to expect that Attorneys General will avoid most forms of partisan wrangling, it is unreasonable to expect that any human being who holds that job would not be influenced by the threat that investigation or prosecution of members of the President's Cabinet might pose to the success of the administration. In addition, in order to do their jobs, Attorneys General must form strong bonds with other Cabinet officers, White House officials, and division heads of the Justice Department itself. These are the people they work with from day to day to carry out the President's policies and, under those circumstances, it is just unreasonable to expect an Attorney General to act impartially when making decisions about whether to investigate and, if appropriate, to prosecute one of their colleagues.

□ 1230

When the law was first passed, it covered senior officials of the administration. Once the act's thresholds were met, use of the independent counsel process with regard to those individuals was mandatory. In 1982, when the statute was reauthorized for the first time, the act was amended to include a second category of coverage. That category provided that in other cases where a personal, economic, or political conflict of interest might arise, the Attorney General would be permitted to use the independent counsel process.

This amendment that I offer makes it very explicit that that portion of the statute refers to Members of Congress.

Mr. Chairman, I submit that this is a good standard. It has worked well in the past. We make it more explicit today. The adoption of the amendment would obviate the language that the gentleman from Pennsylvania [Mr. GEKAS] has brought forward, which would make it mandatory, thereby expanding the category of the class of those who would be covered by the independent counsel statute to almost 600 people from the originally intended 60. That would be, in my view, a great mistake.

Mr. Chairman, the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS], as I said a moment ago, I think basically originated with a political strategy to somehow continue to pound this theme that we are in some fashion placing ourselves in a special category. I am arguing that we should not place the Members of the House in a special category. They should be treated as they have been treated in the past, like everybody else is treated.

Only 60 people are treated in a special way. It does not make sense to continue this argument, to say that we are somehow, by virtue of treating ourselves like everybody else, treating ourselves in a special fashion.

In fact, as I stated a moment ago, there has been no hesitancy to prosecute Members of Congress. I regret very much the outrageous statements made a few moments ago on the floor of the House that suggested anything otherwise. I think it may be time for us to purchase a subscription to a daily newspaper for a few people who have been speaking a moment ago.

There are Members of Congress, powerful Members of Congress, on both sides of the aisle, under investigation at the present time by the Attorney General, who were being investigated by the previous Attorney General. The fact of the matter is there is no objective evidence whatsoever that we ought to place ourselves in a special category.

Mr. Chairman, I urge Members to vote in favor of the Bryant amendment to the Gekas amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GEKAS] is recognized for 15 minutes.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, it has come down to this, the vote. The Bryant amendment is an endorsement of the bill language. The Bryant amendment embraces the bill language.

Mr. Chairman, we had a division of the question, a very discernible, easy

issue: Either the bill or the Gekas amendment. But by virtue of the games that the Committee on Rules played, the Bryant bill comes back out through the back door into the whole issue, reverberating what the bill contained in the first place. So the Bryant bill says the Attorney General may, if the Attorney General wants to, prosecute through the independent counsel mechanism. May, if the Attorney General finds it be in the public interest, another discretionary phrase in favor of the Attorney General.

The Gekas amendment, which opposes the bill and the Bryant amendment, says that when such wrongdoing is alleged on the part of a Member of Congress and it comes to the attention of the Attorney General, the Attorney General must proceed with an investigation to determine whether or not that should lead to the appointment of an independent counsel. It is black and white, clear as crystal, the issue before us.

Those who want to make sure that Members of Congress who are accused of wrongdoing are put under the same scrutiny as members of the Cabinet will vote no on Bryant, because that would be a vote for the Gekas amendment. Vote no on Bryant, which is a reprise of the bill, which gives wide discretion to the Attorney General, in favor of the later vote on the Gekas amendment, which will be to tighten up the Attorney General's discretion on the appointment of an independent counsel.

Mr. Chairman, that is the nub of the problem, and I want the support of all Members.

There is another thing that has been said by the gentleman from Texas [Mr. BRYANT] which I need to counter a little bit. I believe that the very examples the gentleman gives, and others have given, that in past cases the Attorney General has utilized the U.S. Attorney to properly and successfully prosecute Members of Congress, does not erase the contention of many of us and the observation that there still is a potential conflict of interest, even in those kinds of cases, in the original impetus of the case.

Mr. Chairman, I repeat, if there is a powerful Member of Congress who is put to the fire by the Attorney General, by the appointment of a U.S. Attorney, it still remains as a basic fact that the high ranking Member of Congress and the U.S. Attorney and the Attorney General and the President of the United States might all be of the same party.

Even in those cases, the only way we can approach impartiality would be if the Attorney General turned the matter over to an independent counsel, so that the court would appoint someone to pursue the Member of Congress who has been accused of wrongdoing.

I say that the actuality of conflict, which everybody acknowledges can

happen, at least the appearance of conflict, which everybody must agree can occur when a high ranking Member of Congress is alleged to have done something wrong, then the only way we can make sure that the public will be satisfied with what we do on the floor with respect to conflict of interest and appearance of conflict of interest is to erase it by voting for the Gekas amendment and against the Bryant amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. BRYANT. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I just cannot resist observing that as the gentleman continues to characterize our efforts here in opposing the Gekas amendment in favor of the Bryant amendment as some type of a conspiracy, that I have to repeat what I said yesterday, which was initially contradicted by the gentleman, and I think the gentleman has checked the RECORD and seen that it was true, that the ranking Republican Member of the Committee on the Judiciary, the gentleman from New York [Mr. FISH] voted against the Gekas amendment, and voted in a fashion exactly consistent with the amendment I am about to offer, in 1987, as did 14 of the leading Republican Members of the Senate just a few weeks ago when the Senate voted down the Gekas amendment and kept language like the Bryant amendment by a margin of 67 to 31.

Mr. Chairman, I think we are pursuing a prudent course here that is constructive. It leaves the Attorney General in the position where she can prosecute the laws without any hindrances. It does not put Members of Congress on a pedestal, but treats us like everybody else.

Mr. Chairman, I yield such time as he may consume to the gentleman from Massachusetts, [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Chairman, I thank the gentleman from Texas [Mr. BRYANT] who is doing an extremely good job of managing this bill.

First of all, I do want to say both the gentleman from Texas [Mr. BROOKS] the chairman of the Committee on the Judiciary, and the gentleman from Texas [Mr. BRYANT] the subcommittee chairman, and others, deserve credit. We had some skeptics say that the independent counsel statute was just some partisan tool that Democrats liked because it harassed Republicans.

Let us just remind people of the history. The independent counsel statute was first enacted by a Democratic House and a Democratic Senate under a Democratic President, Jimmy Carter. It was in fact at its most ferocious back then. The trigger level that set off the independent counsel was, by everybody's agreement, too low at that point. But it was set up by Democrats under a Democratic President.

Now that a Democratic President is back in office, we had predictions that

we would allow it to lapse. In fact, that is not the case. Once the Senate acted, we have moved very quickly.

□ 1240

The Senate did not act. There had been a partisan dispute in the Senate. The Senate finally acted at the end of last session. Here we are at the outset of this session moving a bill to where I hope it will be on the President's desk within the first week when we come back, because there will not be many differences between us and the Senate unless we adopt the amendment offered by the gentleman from Pennsylvania.

One point should be very clear. For those who want the independent counsel statute reauthorized quickly, adopting the amendment of the gentleman from Pennsylvania will certainly delay this and may kill it for this reason. The U.S. Senate, of blessed memory, dealt with this exact issue last November. And an amendment that embodied the principle of the amendment of the gentleman from Pennsylvania was presented by the Senator from Arizona.

The Senate, by 67 to 31, voted it down. Leading the charge were two Senators, the Democratic Senator from Michigan, Mr. LEVIN, and the Republican Senator from Maine, Mr. COHEN. The Assistant Republican Leader, Mr. SIMPSON, voted against the amendment.

The Senate dealt with this issue and very firmly, by better than 2 to 1, said, "We want to leave it as is."

If the House were, in fact, to disagree, we would be guaranteeing a long conference from which perhaps no bill might emerge, because the House and Senate position on this central issue greatly at variance guarantees no quick action.

One way to get quick action so that the Clinton administration will, in fact, be subjected to the exact same independent counsel statute, remember, we are talking about the same panoply of powers aimed at the executive branch now as was facing Reagan and faced Bush, the only way to do that is, in fact, to defeat this amendment. Because if we can get this amendment defeated, the differences between the House and the Senate are sufficiently small. And there has been sufficient discussions on a bipartisan basis from Senators LEVIN and COHEN so that we can get a bill to the President's desk very quickly.

Next I want to talk about the substance. The gentleman from Pennsylvania said, if a senior member of the President's own party were to be indicted or investigated by that Attorney General, there would be the appearance of conflict. I want to defend Attorney General Barr against the criticism that has been leveled at him by Republicans, because Attorney General Barr, appointed by Bush, Attorney General

Thornburgh, appointed by, I think, Reagan and Bush, Attorney General Meese and Attorney General Smith, all four men who served as Attorneys General under President Reagan and President Bush authorized Justice Department investigations of Members of Congress of both parties.

All four of those men authorized investigations of both Democratic and Republican Congressmen, in some cases some senior Members of their own party.

Now, all four of those men, under the statute as it then existed and as the gentleman from Texas [Mr. BRYANT] wants to reconstitute it, had the unchallenged authority to ask for an independent counsel. Any Attorney General at any time could ask for an independent counsel for anybody if he or she thinks there is a conflict. So if, in fact, there was that appearance of conflict, as the gentleman from Pennsylvania says, why did four Republican Attorneys General refuse to use the mechanism available to them? Why did Mr. Meese and Mr. Smith and Mr. Thornburgh and Mr. Barr all refuse to ask for an independent counsel?

We will be told that they believed that it should be mandatory. That is the oddest profession I have ever heard. Here are four men who apparently insist that, I guess their argument is, stop me before I conflict again. Here are four men who ignored their own authority to ask for an independent counsel, who now tell us that what they did was somehow wrong, apparently, and that an independent counsel must be offered. If that seems illogical to Members, I think that helps them understand what the basis of what we are talking about is.

Yes, when the Attorney General is asked to investigate the Vice President, the Secretary of Labor, the Chairman of the President's own party, we believe there is an inherent conflict. When a Member of Congress is involved, there may or may not be a conflict. We leave it up to the Attorney General to decide it.

Members have also said this thing costs too much. Well, what my friends on the other side want to do is to increase the cost of this by a factor of 10. Nothing would be more likely to undermine the existence of the independent counsel than to increase the cost by a factor of 10, because 60 people are now automatically covered, they would make 600 people automatically covered. And if we had the same incidents of appointments among Members of Congress and the executive branch, we could increase it by a factor of 10, if we made it automatic.

Now, I am prepared to concede that the Republican Attorneys General erred in the past and should have appointed an Independent Counsel two or three times when they did not. I am sorry that they never did it. I am sorry

that they never dealt with the potential of a conflict. I am sorry that they disagreed with the gentleman from Pennsylvania, who said it was an apparent conflict. And he is right to use the phrase "apparent conflict." That is one of the things we legitimately are concerned about.

But when four Republican Attorneys General over a 12-year period consistently refuse to use this authority, which they had without any possible challenge, how can it be argued that somehow this is the logical policy that they should have been forced to do it?

Finally, let me address the procedure. We have a procedure where, yes, the pending amendment is already in the bill. That happens from time to time, because Members want to make sure that the issue is properly framed in debate. If it was up to me, we would never do it. If it was up to my friends on the Republican side, I believe from history, we would sometimes do it and sometimes not do it. Because we do it when it helped them and not when it did not.

When we debated the Defense bill, we had the Skelton amendment. The Skelton amendment was the text of the bill. And we had a King of the Hill situation. There were two amendments prior to the Skelton amendment on gays in the military. They both lost. We then voted on the Skelton amendment. And in that case we did not even have a Gekas type amendment to choose between.

We had a situation that said, if we voted for the Skelton amendment, it would be in the bill. But if we voted against the Skelton amendment, it would be in the bill.

I challenge my colleagues to find in the CONGRESSIONAL RECORD one Republican objecting to that procedure. We did that. It was less logical than this one. Because here we will be making a choice. In the military issue, we choose between Skelton and Skelton. Here we are choosing between Bryant and Gekas.

Now, Members may not think that the difference between Gekas and Bryant is great. I happen to think it is, but the difference between Bryant and Gekas is greater than the difference between Skelton and Skelton. I mean, Members who believe in that procedure, frankly, might have thought that it was designed not by the gentleman from Missouri [Mr. SKELTON] but by Red Skelton. But I did not remember a single Republican objection, not one, not during the rule debate, not during the debate on the floor.

So we have a procedure that has been used before with Republican support. We have a rule that says the Attorney General can appoint, whenever he or she wants to, an independent counsel. And four Republican Attorneys General have declined to do that, and many of them have investigated Mem-

bers of their own party and of the other party.

We have a proposal that would increase by a factor of perhaps 10, a thousand percent, the cost of this. The history of the independent counsel is that when Mr. Nixon was in trouble, there were difficulties. And that is what led to the independent counsel statute. There was not a history of executive branch officials being unwilling to prosecute Members of Congress. Jimmy Carter presided over Abscam, which sent mostly Democrats to prison. Republican Attorneys General have indicted and convicted or dismissed charges against Members of Congress.

This is a continuation of what we have had. The Democrats have a challenge, and I believe we are meeting it. Will we apply to the Clinton administration exactly the same rules that we applied to the Bush and Reagan administrations?

Vote for the Bryant amendment and that is what we will accomplish, because we will be able to go promptly to conference with the Senate and put that bill on the President's desk. Vote for the amendment offered by the gentleman from Pennsylvania, and we will guarantee the grinding down, people will be talking about gridlock. We will have a difficulty with the Senate which has already rejected it, and we may or may not be able to resuscitate.

I believe we will take the appropriate action, and I call for a yes vote on the Bryant amendment.

Mr. GEKAS. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I wonder if I might ask the gentleman from Texas [Mr. BRYANT] a question or two.

It is my belief that the gentleman's amendment on coverage, optional coverage of Congress, eliminates, of course, the mandatory coverage but also provides a weaker standard. Under the existing law or, rather, the law that we seek to reincarnate, it says, "Preliminary investigation with respect to persons not listed." Then, of course, that would be Congressmen. The Attorney General determines that an investigation or prosecution of the person with respect to the information received by the Attorney General or other officer of the Department of Justice may result in a "personal, financial or political conflict of interest."

When that happens, then the independent counsel is triggered. Under the amendment of the gentleman from Texas [Mr. BRYANT], he eliminates "financial, personal or political conflict of interest," and he puts in "in the public interest."

It seems to me there could be a financial conflict of interest. There could be a political conflict of interest. There could be a personal conflict of interest, but the AG will not find it in the public interest to appoint an independent counsel.

□ 1250

Why did the gentleman change the standard? Why did he not go with the tried and true, proven phrase, "personal, financial, or political conflict of interest"?

Mr. BRYANT. Will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Texas.

Mr. BRYANT. I would say to the gentleman, because "personal, financial, or political conflict of interest," all of those would be good grounds for going forward, but we have broadened it even further to say if it is in the public interest for any reason, she can include a Member of Congress under the coverage of this statute. We are trying to make it easier, not harder.

Mr. HYDE. Why did the gentleman not add it, then, instead of substituting it, because many of us think "in the public interest" is a different standard and one could have a political conflict, a personal conflict, a financial conflict, but not find it in the public interest. There are two different standards.

Mr. BRYANT. If the gentleman will continue to yield, the answer is very easy. Whenever we begin to place specific language in there, we then place a negative inference on the remaining language.

We have written it in such a way that the broadest possible interpretation allows the Attorney General to use the independent counsel statute to apply to a Member of Congress if she thinks it is in the public interest, rather than limiting it the way it is now.

Mr. HYDE. The gentleman keeps characterizing it as the broadest possible, but really and truly, the public interest may well be different from a personal, financial, or political conflict.

Mr. BRYANT. If the gentleman will continue to yield, it is broader.

Mr. HYDE. I think it weakens rather than strengthens the standards, and I just regret that the gentleman has done that. I thank the gentleman.

Mr. BRYANT. I do not agree with that.

Mr. GEKAS. May I inquire of the Chair the balance of the time remaining?

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GEKAS] has 8½ minutes remaining, and the gentleman on the other side has exhausted his time.

PARLIAMENTARY INQUIRY

Mr. GEKAS. Mr. Chairman, may I pose a parliamentary inquiry to the Chair?

Mr. Chairman, the so-called Gekas amendment will not receive a yes or no vote at this juncture, is that correct?

The CHAIRMAN. The first vote will be on the question of the substitute offered by Mr. BRYANT.

Mr. GEKAS. Further inquiring of the Chair, the so-called Bryant amendment

would in effect, if successful, meld into the so-called Gekas amendment and really substitute for it, is that correct?

The CHAIRMAN. The amendment offered by the gentleman from Texas [Mr. BRYANT] is a substitute for the so-called Gekas amendment. The question on the language of the so-called Gekas amendment would only arise if the substitute offered by Mr. BRYANT were not to succeed.

Mr. GEKAS. So that, in further inquiry on a parliamentary basis, if the Members called to vote by the Chair would have the option, if they wanted to support the so-called Gekas amendment, they would have to vote no on Bryant, is that correct?

The CHAIRMAN. The gentleman has correctly stated the position. The so-called Gekas amendment would not arise for a vote unless the substitute offered by the gentleman from Texas [Mr. BRYANT] were defeated.

Mr. GEKAS. I would ask, Mr. Chairman, is that quite correct?

The CHAIRMAN. The gentleman will suspend.

The answer to the gentleman's inquiry is that there could be a vote on the so-called Gekas amendment as amended if the substitute offered by the gentleman from Texas succeeded.

Mr. GEKAS. If the so-called Bryant amendment should fail, then the so-called Gekas amendment would recur for a vote, is that correct?

The CHAIRMAN. That is correct. The gentleman has stated the situation correctly.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

The CHAIRMAN. The gentleman is recognized for the balance of his time.

Mr. GEKAS. Mr. Chairman, I am hopeful that as the Members come to the floor, they will picture in their mind the following scene. A high-ranking, high-profile Member of Congress is accused of wrongdoing in one form or another, and that accusation, that allegation, finds itself on the desk of the Attorney General.

The Attorney General, under the concept of bill and Bryant, bill/Bryant, may decide to call for an independent counsel, may, and may decide not to even investigate, could quash the whole matter right at the Attorney General's desk, refuse to investigate, refuse to articulate any concern or jurisdiction over that matter.

Envision further, I ask the Members as they come up, this high-ranking, powerful Member of Congress happens to be of the same political party as the Attorney General, and the Attorney General, of course, is of the same political party as the President of the United States.

Under bill/Bryant, if in the public interest, and if upon further reflection, perhaps, maybe the Attorney General might consider doing something about the case, is the bill and the Bryant ap-

proach, against which we must vote if we want to enter the proper picture in the minds of the Members, and that is, we have a high-ranking, powerful Member of Congress on whom the White House might depend for clearance of bills and for initiatives near and dear to the heart of the President of the United States, or of the Attorney General, being of the same party of the Attorney General and of the President of the United States, under the so-called Gekas amendment, accusations or allegations of wrongdoing against that Member of Congress will find its way to the Attorney General's desk, and then under the Gekas amendment law, if it should become law, that Attorney General must do the duties ascribed to it by that law and must launch an investigation into these allegations of wrongdoing on the part of the powerful Member of Congress. That is the picture.

If Members believe they like the picture of the high-ranking Member of Congress looking at the Attorney General of the same party and the President of the United States of the same party and seeing whether or not that will be followed through by the Attorney General, vote yes for Bryant, go ahead and vote yes for Bryant.

If you think there is something wrong with that picture, and that the high-ranking Member of Congress, when allegations of wrongdoing are put in front of his fellow partisan in the White House and the Attorney General, then would it not be leveling with the American people to say, "We are going to have a full faith and credit type of investigation, a just inquiry into these facts," because the Attorney General under the so-called Gekas amendment will be compelled to relegate this to an independent counsel appointed by a court and an individual who will be appointed as independent counsel, who will have no ties with the President, no ties with the Attorney General, and no ties with the high-ranking, powerful Member of Congress. That is an advance into good government.

Mr. Chairman, I implore the Members to keep that vision in mind and vote no on Bryant, bill/Bryant, bill/Bryant, no, and vote to place into law the vision of better Government through the so-called Gekas amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Texas [Mr. BRYANT] as a substitute for the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GEKAS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. Pursuant to clause 2 of rule XXIII, the Chair announces that he will reduce to not less than 5 minutes the period of time for a roll-call vote, if ordered, on the so-called Gekas amendment.

The vote was taken by electronic device, and there were—ayes 230, noes 188, not voting 20, as follows:

[Roll No. 19]

AYES—230

Abercrombie	Green	Ortiz
Ackerman	Gutierrez	Owens
Andrews (ME)	Hall (OH)	Oxley
Applegate	Hamburg	Pallone
Baessler	Hamilton	Pastor
Barca	Harman	Payne (NJ)
Barcia	Hayes	Payne (VA)
Barlow	Hefley	Pelosi
Barrett (WI)	Hefner	Penny
Becerra	Hilliard	Peterson (FL)
Beilenson	Hinchee	Peterson (MN)
Berman	Hoagland	Pickett
Bevill	Hochbrueckner	Pickle
Bilbray	Holden	Pomeroy
Bishop	Hoyer	Poshard
Blackwell	Hughes	Price (NC)
Bonior	Hutto	Rahall
Borski	Inslee	Rangel
Boucher	Jefferson	Reed
Brewster	Johnson (GA)	Reynolds
Brooks	Johnson (SD)	Richardson
Browder	Johnson, E. B.	Roemer
Brown (CA)	Johnson	Romero-Barceló
Brown (FL)	Kanjorski	(PR)
Brown (OH)	Kaptur	Rose
Bryant	Kennedy	Rostenkowski
Byrne	Kennelly	Roybal-Allard
Cantwell	Kildee	Rush
Cardin	Kleczka	Sabo
Carr	Klein	Sanders
Chapman	Klink	Sangmeister
Clayton	Kopetski	Sarpalius
Clement	Kreidler	Sawyer
Clyburn	LaFalce	Schenk
Collins (IL)	Lambert	Schroeder
Collins (MI)	Lancaster	Schumer
Condit	Lantos	Scott
Conyers	LaRocco	Serrano
Costello	Lehman	Sharp
Coyne	Levin	Shepherd
Cramer	Lewis (GA)	Sisisky
Danner	Lipinski	Skaggs
Darden	Lloyd	Slaughter
de Lugo (VI)	Long	Smith (IA)
DeFazio	Lowey	Spratt
DeLauro	Maloney	Stark
Dellums	Mann	Stokes
Deutsch	Manton	Strickland
Dicks	Margolies-	Studds
Dingell	Mezvinsky	Stupak
Dixon	Markey	Swift
Dooley	Martinez	Synar
Durbin	Matsui	Tanner
Edwards (CA)	McCloskey	Tejeda
Edwards (TX)	McDermott	Thompson
Engel	McKinney	Thornton
English	McNulty	Thurman
Eshoo	Meehan	Torres
Evans	Meek	Torrice
Faleomavaega	Menendez	Towns
(AS)	Mfume	Trafficant
Farr	Miller (CA)	Underwood (GU)
Fazio	Mineta	Unsoeld
Fields (LA)	Minge	Velázquez
Filner	Mink	Vento
Fingerhut	Moakley	Visclosky
Flake	Mollohan	Waters
Foglietta	Montgomery	Watt
Ford (MI)	Moran	Waxman
Ford (TN)	Murphy	Wheat
Frank (MA)	Murtha	Whitten
Frost	Nadler	Wilson
Gejdenson	Natcher	Wise
Gephardt	Neal (MA)	Woolsey
Gibbons	Norton (DC)	Wyden
Glickman	Oberstar	Wynn
Gonzalez	Obey	Yates
Gordon	Oliver	

Allard	Gilman	Packard
Andrews (NJ)	Gingrich	Parker
Archer	Goodlatte	Paxon
Army	Goodling	Petri
Bacchus (FL)	Goss	Pombo
Bachus (AL)	Grams	Porter
Baker (CA)	Grandy	Portman
Baker (LA)	Greenwood	Pryce (OH)
Ballenger	Gunderson	Quillen
Barrett (NE)	Hall (TX)	Quinn
Bartlett	Hancock	Ramstad
Barton	Hansen	Ravenel
Bateman	Herger	Regula
Bentley	Hobson	Roberts
Bereuter	Hoekstra	Rogers
Billey	Hoke	Rohrabacher
Blute	Horn	Ros-Lehtinen
Boehlert	Houghton	Roth
Boehner	Huffington	Roukema
Bonilla	Hunter	Rowland
Bunning	Pastor	Royce
Burton	Payne (NJ)	Santorum
Buyer	Payne (VA)	Saxton
Callahan	Pelosi	Schaefer
Calvert	Penny	Schiff
Camp	Peterson (FL)	Sensenbrenner
Canady	Peterson (MN)	Shaw
Castle	Pickett	Shays
Clinger	Pickle	Shuster
Coble	Pomeroy	Skeen
Collins (GA)	Poshard	Skelton
Combest	Price (NC)	Smith (MI)
Cooper	Rahall	Smith (NJ)
Coppersmith	Rangel	Smith (OR)
Cox	Reed	Smith (TX)
Crane	Reynolds	Snowe
Crapo	Richardson	Solomon
Cunningham	Roemer	Spence
Deal	Romero-Barceló	Stearns
DeLay	(PR)	Stenholm
Diaz-Balart	Rose	Stump
Dickey	Rostenkowski	Lightfoot
Doolittle	Roybal-Allard	Linder
Dornan	Rush	Livingston
Dreier	Sabo	Machtley
Duncan	Sanders	Manzullo
Dunn	Sangmeister	Mazzoli
Ehlers	Sarpalius	McCandless
Emerson	Sawyer	McCollum
Everett	Schenk	McCreery
Fawell	Schroeder	McDade
Fields (TX)	Schumer	McHale
Fish	Scott	McHugh
Fowler	Serrano	McInnis
Franks (CT)	Sharp	McKeon
Franks (NJ)	Shepherd	Meyers
Furse	Sisisky	Mica
Gallely	Skaggs	Miller (FL)
Gallo	Slaughter	Molinar
Gekas	Smith (IA)	Moorhead
Geren	Spratt	Myers
Gilchrest	Stark	Nussle
Gillmor	Stokes	Orton

NOT VOTING—20

Andrews (TX)	Hastert	Neal (NC)
Bilirakis	Hastings	Ridge
Clay	Laughlin	Slattery
Coleman	McCurdy	Tucker
de la Garza	McMillan	Washington
Derrick	Michel	Williams
Ewing	Morella	

□ 1317

The Clerk announced the following pair:

On this vote:

Mr. Washington for, with Mr. Bilirakis against.

Messrs. DEAL, ROWLAND, and SKELTON changed their vote from "aye" to "no."

Mrs. MINK of Hawaii and Mrs. THURMAN changed their vote from "no" to "aye."

So the amendment offered as a substitute for the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS], as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BRYANT. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 339, noes 76, not voting 23, as follows:

[Roll No. 20]

AYES—339

Ackerman	Dooley	Kasich
Allard	Durbin	Kennedy
Andrews (ME)	Edwards (CA)	Kennelly
Andrews (NJ)	Edwards (TX)	Kildee
Applegate	Engel	Kim
Bacchus (FL)	English	Klecicka
Bachus (AL)	Eshoo	Klein
Baesler	Evans	Klink
Baker (LA)	Everett	Klug
Ballenger	Faleomavaega	Knollenberg
Barca	(AS)	Kopetski
Barcia	Farr	Kreidler
Barlow	Fawell	LaFalce
Barrett (WI)	Fields (LA)	Lambert
Bateman	Filner	Lancaster
Becerra	Fingerhut	Lantos
Beilenson	Fish	LaRocco
Bentley	Flake	Lazio
Bereuter	Foglietta	Leach
Berman	Ford (MI)	Lehman
Bevill	Ford (TN)	Levin
Bilbray	Frank (MA)	Lewis (CA)
Bishop	Franks (NJ)	Lewis (FL)
Blackwell	Frost	Lewis (GA)
Blute	Gallely	Lightfoot
Boehlert	Gallo	Lipinski
Bonilla	Gejdenson	Livingston
Bonior	Gephardt	Lloyd
Borski	Geren	Long
Boucher	Gibbons	Lowe
Brewster	Gilchrest	Machtley
Brooks	Gillmor	Maloney
Browder	Gilman	Mann
Brown (FL)	Glickman	Manton
Brown (OH)	Gonzalez	Manzullo
Bryant	Goodlatte	Margolies-
Bunning	Gooding	Mezvinsky
Byrne	Gordon	Markley
Calvert	Green	Martinez
Camp	Greenwood	Matsui
Canady	Gunderson	Mazzoli
Cantwell	Hall (OH)	McCandless
Cardin	Hall (TX)	McCloskey
Carr	Hamburg	McCrery
Castle	Hamilton	McCurdy
Chapman	Harman	McDade
Clayton	Hayes	McDermott
Clement	Hefley	McHale
Clinger	Hefner	McInnis
Clyburn	Heger	McKeon
Collins (GA)	Hilliard	McKinney
Collins (IL)	Hinchez	McNulty
Collins (MI)	Hoagland	Meehan
Combest	Hobson	Meek
Condit	Hochbrueckner	Menendez
Conyers	Hoekstra	Meyers
Cooper	Holden	Mfume
Coppersmith	Hoyer	Mineta
Costello	Hughes	Minge
Coyne	Hunter	Mink
Cramer	Hutchinson	Moakley
Cunningham	Hutto	Molinari
Danner	Inhofe	Mollohan
Darden	Inslee	Montgomery
de Lugo (VI)	Istook	Moran
DeFazio	Jacobs	Morella
DeLauro	Jefferson	Murphy
Dellums	Johnson (CT)	Murtha
Derrick	Johnson (GA)	Nadler
Deutsch	Johnson (SD)	Natcher
Dickey	Johnson, E. B.	Neal (MA)
Dicks	Johnston	Norton (DC)
Dingell	Kanjorski	Oberstar
Dixon	Kaptur	Obey

Olver	Roukema	Stupak
Ortiz	Rowland	Swift
Orton	Roybal-Allard	Synar
Owens	Rush	Talent
Oxley	Sabo	Tanner
Pallone	Sanders	Tauzin
Parker	Sangmeister	Tejeda
Pastor	Santorum	Thomas (WY)
Payne (NJ)	Sarpalius	Thompson
Payne (VA)	Sawyer	Thornton
Pelosi	Saxton	Thurman
Penny	Schaefer	Torkildsen
Peterson (FL)	Schenk	Torres
Peterson (MN)	Schiff	Torrice
Petri	Schroeder	Towns
Pickett	Schumer	Traficant
Pickle	Scott	Tucker
Pomeroy	Sensenbrenner	Unsoeld
Porter	Serrano	Upton
Portman	Sharp	Valentine
Poshard	Shaw	Velazquez
Price (NC)	Shays	Vento
Pryce (OH)	Shepherd	Visclosky
Quinn	Shuster	Volkmer
Rahall	Siskis	Walsh
Ramstad	Skaggs	Waters
Rangel	Skeen	Watt
Ravenel	Skelton	Waxman
Reed	Slaughter	Wheat
Regula	Smith (IA)	Whitten
Reynolds	Smith (MI)	Wilson
Richardson	Smith (NJ)	Wise
Richards	Smith (OR)	Wolf
Roberts	Snowe	Woolsey
Roemer	Spratt	Wyden
Rogers	Stark	Wynn
Romero-Barcelo	Stenholm	Yates
(PR)	Stokes	Young (AK)
Rose	Strickland	Young (FL)
Rostenkowski	Studds	Zimmer
Roth		

NOES—76

Abercrombie	Fowler	Miller (FL)
Archer	Franks (CT)	Moorhead
Armey	Furse	Myers
Baker (CA)	Gekas	Nussle
Barrett (NE)	Gingrich	Packard
Bartlett	Goss	Paxon
Barton	Grams	Pombo
Billiey	Grandy	Quillen
Boehner	Hancock	Rohrabacher
Burton	Hansen	Ros-Lehtinen
Buyer	Hoke	Smith (TX)
Callahan	Horn	Solomon
Coble	Houghton	Spence
Cox	Huffington	Stearns
Crane	Hyde	Stump
Crapo	Inglis	Sundquist
Deal	Johnson, Sam	Swett
DeLay	King	Taylor (MS)
Diaz-Balart	Kingston	Taylor (NC)
Doollittle	Kolbe	Thomas (CA)
Dornan	Kyl	Vucanovich
Dreier	Levy	Walker
Dunn	Linder	Weldon
Ehlers	McCollum	Zeliff
Emerson	McHugh	
Fields (TX)	Mica	

NOT VOTING—23

Andrews (TX)	Fazio	Neal (NC)
Bilirakis	Gutierrez	Ridge
Brown (CA)	Hastert	Royce
Clay	Hastings	Slattery
Coleman	Laughlin	Underwood (GU)
de la Garza	McMillan	Washington
Duncan	Michel	Williams
Ewing	Miller (CA)	

□ 1326

The Clerk announced the following pair:

On this vote:

Mr. Fazio for, with Mr. Bilirakis against.

Messrs. ROHRBACHER, KYL, SUNDQUIST, and PAXON changed their vote from "aye" to "no."

Messrs. KASICH, LAZIO, and CUNNINGHAM changed their vote from "no" to "aye."

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mrs. MINK of Hawaii). It is now in order to consider amendment No. 8 printed in House Report 103-419.

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

Mr. HYDE. Madam Chairman, pursuant to the rule, I offer amendment No. 8, an amendment in the nature of a substitute.

The CHAIRMAN pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. HYDE:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Counsel Accountability and Reform Act of 1994".

SEC. 2. EXTENSION.

Section 599 of title 28, United States Code, is amended by striking "Reauthorization Act of 1987" and inserting "Accountability and Reform Act of 1994".

SEC. 3. APPLICATION TO MEMBERS OF CONGRESS.

Section 591(b) of title 28, United States Code, 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) any Senator, or any Representative in, or Delegate or Resident Commissioner to, the Congress, or any person who has served as a Senator or such a Representative, Delegate, or Resident Commissioner within the 2-year period before the receipt of the information under subsection (a) with respect to conduct that occurred while such person was a Senator or such a Representative, Delegate, or Resident Commissioner."

SEC. 4. BASIS FOR PRELIMINARY INVESTIGATION.

(a) INITIAL RECEIPT OF INFORMATION.—Section 591 of title 28, United States Code, is amended—

(1) in subsection (a)—
(A) by striking "information" and inserting "specific information from a credible source that is"; and
(B) by striking "may have" and inserting "has";

(2) in subsection (c)(1)—
(A) by striking "information" and inserting "specific information from a credible source that is"; and
(B) by striking "may have" and inserting "has"; and

(3) by amending subsection (d) to read as follows:

"(d) TIME PERIOD FOR DETERMINING NEED FOR PRELIMINARY INVESTIGATION.—The Attorney General shall determine, under subsection (a) or (c) (or section 592(c)(2)), whether grounds to investigate exist not later than 15 days after the information is first received. If within that 15-day period the Attorney General determines that there is insufficient evidence of a violation of Federal criminal law referred to in subsection (a), then the Attorney General shall close the matter. If within that 15-day period the At-

torney General determines there is sufficient evidence of such a violation, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 15-day period, whether there is sufficient evidence of such a violation, the Attorney General shall, at the end of that 15-day period, commence a preliminary investigation with respect to that information."

(b) RECEIPT OF ADDITIONAL INFORMATION.—Section 592(c)(2) of title 28, United States Code, is amended by striking "information" and inserting "specific information from a credible source that is".

SEC. 5. SUBPOENA POWER.

Section 592(a)(2) of title 28, United States Code, is amended by striking "grant immunity, or issue subpoenas" and inserting "or grant immunity, but may issue subpoenas duces tecum".

SEC. 6. PROSECUTORIAL JURISDICTION OF INDEPENDENT COUNSEL.

(a) PROSECUTORIAL JURISDICTION.—Section 593(b) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking "define" and inserting "with specificity, define"; and

(B) by adding at the end the following: "Such jurisdiction shall be limited to the alleged violations of criminal law with respect to which the Attorney General has requested the appointment of the independent counsel, and matters directly related to such criminal violations."; and

(2) by amending paragraph (3) to read as follows:

(3) SCOPE OF PROSECUTORIAL JURISDICTION.—In defining the independent counsel's prosecutorial jurisdiction, the division of the court shall assure that the independent counsel has adequate authority to fully investigate and prosecute the alleged violations of criminal law with respect to which the Attorney General has requested the appointment of the independent counsel, and matters directly related to such criminal violations, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses."

(b) CONFORMING AMENDMENT.—Section 592(d) of title 28, United States Code, is amended by striking "subject matter and all matters related to that subject matter" and inserting "the alleged violations of criminal law with respect to which the application is made, and matters directly related to such criminal violations".

SEC. 7. USE OF STATE AND LOCAL PROSECUTORS; STAFF OF INDEPENDENT COUNSEL.

(a) PROSECUTORS AS INDEPENDENT COUNSEL.—Section 593(b)(1) of title 28, United States Code, as amended by section 7 of this Act, is further amended by adding at the end the following: "The division of the court should strongly consider exercising the authority of section 3372 of title 5 so that it may appoint as independent counsel prosecutors from State or local governments, and the division of the court may exercise the authorities of such section 3372 for such purpose to the same extent as the head of a Federal agency."

(b) STAFF OF INDEPENDENT COUNSEL.—Section 594(c) of title 28, United States Code, is amended by striking the last sentence and inserting the following: "Not more than 2 such employees may be compensated at a rate not to exceed the rate of basic pay payable for level V of the Executive schedule under section 5316 of title 5, and all other

such employees shall be compensated at rates not to exceed the maximum rate of basic pay payable for GS-15 of the General Schedule under section 5332 of title 5. The independent counsel should, to the greatest extent possible, use personnel of the Department of Justice, on a reimbursable basis, in lieu of appointing employees, to carry out the duties of such independent counsel. The independent counsel should also strongly consider exercising the authority of section 3372 of title 5 so that he or she may appoint as employees under this subsection prosecutors of State or local governments. In order to carry out the preceding sentence, each independent counsel shall, for purposes of such section 3372, be considered to be the head of a Federal agency."

SEC. 8. ATTORNEYS' FEES.

Section 593(f)(1) of title 28, United States Code, is amended in the first sentence—

(1) by striking "the court may" and inserting "the court shall";

(2) by inserting after "pursuant to that investigation," the following: "if such individual is acquitted of all charges, or no conviction is obtained against such individual, at a trial brought pursuant to that investigation, or if the conviction of such individual at such a trial is overturned on appeal,;" and

(3) by inserting "trial, and appeal (if any)" after "during that investigation".

SEC. 9. TREATMENT OF CLASSIFIED INFORMATION.

Section 594(a) of title 28, United States Code, is amended by adding at the end the following:

"An independent counsel appointed under this chapter who gains access to classified information shall follow all procedures established by the United States Government regarding the maintenance, use, and disclosure of such information. The failure to follow such procedures shall be grounds for removal for good cause under section 596(a)(1), in addition to any penalty provided in section 798 of title 18 or any other law that may apply."

SEC. 10. INDEPENDENT COUNSEL PER DIEM EXPENSES.

Section 594(b) of title 28, United States Code, is amended to read as follows:

"(b) COMPENSATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), an independent counsel appointed under this chapter shall receive compensation at the per diem rate not to exceed the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

(2) TRAVEL AND LODGING IN WASHINGTON.—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, with respect to duties performed in the District of Columbia after 1 year of service under this chapter."

SEC. 11. AUTHORITIES AND DUTIES OF INDEPENDENT COUNSEL.

(a) ADMINISTRATIVE SUPPORT.—Section 594 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(1) ADMINISTRATIVE SERVICES.—

"(1) ADMINISTRATIVE SUPPORT.—The Administrator of General Services shall provide administrative support to each independent counsel.

"(2) OFFICE SPACE.—The Administrator of General Services shall promptly provide appropriate office space for each independent counsel. Such office space shall be within a Federal building unless the Administrator of

General Services determines that other arrangements would cost less."

(b) COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.—Section 594(f) of title 28, United States Code, is amended—

(1) by striking "except where not possible," and inserting "at all times"; and

(2) by striking "enforcement of the criminal laws" and inserting "the enforcement of criminal laws and the release of information relating to criminal proceedings".

(c) LIMITATION ON EXPENDITURES.—Section 594 of title 28, United States Code, is amended by adding at the end the following:

"(m) LIMITATION ON EXPENDITURES.—No funds may be expended for the operation of any office of independent counsel after the end of the 2-year period after its establishment, except to the extent that an appropriations Act enacted after such establishment specifically makes available funds for such office for use after the end of that 2-year period."

SEC. 12. PERIODIC REPORTS.

Section 595(a)(2) of title 28, United States Code, is amended by striking "such statements" and all that follows through "appropriate" and inserting "annually a report on the activities of such independent counsel, including a description of the progress of any investigation or prosecution conducted by such independent counsel. Such report need not contain information which would—

"(A) compromise or undermine the confidentiality of an ongoing investigation under this chapter,

"(B) adversely affect the outcome of any prosecution under this chapter, or

"(C) violate the personal privacy of any individual,

but shall provide information adequate to justify the expenditures which the office of that independent counsel has made, and indicate in general terms the state of the work of the independent counsel".

SEC. 13. REMOVAL, TERMINATION, AND PERIODIC REAPPOINTMENT OF INDEPENDENT COUNSEL.

(a) GROUNDS FOR REMOVAL.—Section 596(a)(1) of title 28, United States Code, is amended by adding at the end the following: "Failure of the independent counsel to comply with the established policies of the Department of Justice as required by section 594(f) or to comply with section 594(j) may be grounds for removing that independent counsel from office for good cause under this subsection."

(b) TERMINATION.—Section 596(b)(2) of title 28, United States Code, is amended to read as follows:

"(2) TERMINATION BY DIVISION OF THE COURT.—The division of the court may terminate an office of independent counsel at any time—

"(A) on its own motion,

"(B) upon the request of the Attorney General, or

"(C) upon the petition of the subject of an investigation conducted by such independent counsel, if the petition is made more than 2 years after the appointment of such independent counsel,

on the ground that the investigation conducted by the independent counsel has been completed or substantially completed and that it would be appropriate for the Department of Justice to complete such investigation or to conduct any prosecution brought pursuant to such investigation, or on the ground that continuation of the investigation or prosecution conducted by the independent counsel is not in the public interest."

(c) PERIODIC REAPPOINTMENT.—Section 596 of title 28, United States Code, is amended by adding at the end the following:

“(d) PERIODIC REAPPOINTMENT OF INDEPENDENT COUNSEL.—If an office of independent counsel has not terminated before—

“(1) the date that is 2 years after the original appointment to that office, or

“(2) the end of each succeeding 2-year period,

such counsel shall apply to the division of the court for reappointment. The court shall first determine whether the office of that independent counsel should be terminated under subsection (b)(2). If the court determines that such office will not be terminated under such subsection, the court shall reappoint the applicant if the court determines that such applicant remains the appropriate person to carry out the duties of the office. If not, the court shall appoint some other person whom it considers qualified under the standards set forth in section 593 of this title. If the court has not taken the actions required by this subsection within 90 days after the end of the applicable 2-year period, then that office of independent counsel shall terminate at the end of that 90-day period.”

SEC. 14. JOB PROTECTIONS FOR INDIVIDUALS UNDER INVESTIGATION.

(a) IN GENERAL.—Section 597 of title 28, United States Code, is amended—

(1) by amending the section caption to read as follows:

“§ 597. Relationship with Department of Justice; job protection for individuals under investigation”; and

(2) by adding at the end the following:

“(c) JOB PROTECTION FOR INDIVIDUALS UNDER INVESTIGATION.—

“(1) PROHIBITED PERSONNEL PRACTICE.—It shall be a prohibited personnel practice for an employee of the United States Government who has authority to take, direct others to take, recommend, or approve any personnel action (as defined in section 2302(a)(2)(A) of title 5) with respect to an individual described in paragraph (2) who is the subject of an investigation or prosecution under this chapter, to take or fail to take, or threaten to take or fail to take, such a personnel action with respect to such individual, on account of such investigation or prosecution.

“(2) APPLICABILITY.—The individuals referred to in paragraph (1) are individuals other than—

“(A) any person described in section 591(a); and

“(B) any employee of the Federal Government whose position is excepted from the competitive service on the basis of its confidential, policy-determining, policy-making, or policy-advocating character.

“(3) EXEMPTION.—Paragraph (1) does not apply in the case of an individual who is convicted of a criminal offense pursuant to an investigation or prosecution described in paragraph (1), unless such conviction is overturned on appeal.

“(4) REMEDIES.—An individual with respect to whom a prohibited personnel practice applies under paragraph (1) may seek corrective action from the Merit Systems Protection Board to the same extent as an employee may seek corrective action under section 1221 of title 5 (including subsection (h) of such section), except that, for purposes of such section, any reference to section 2302(b)(8) of title 5 shall be deemed to refer to paragraph (1) of this subsection, and any reference to a disclosure under such section 2302(b)(8) shall be deemed to refer to an in-

vestigation or prosecution described in paragraph (1) of this subsection.”

(b) CONFORMING AMENDMENT.—The item relating to section 597 in the table of sections at the beginning of chapter 40 of title 28, United States Code, is amended to read as follows:

“597. Relationship with Department of Justice; job protection for individuals under investigation.”

SEC. 15. EFFECT OF TERMINATION OF CHAPTER.

Section 599 of title 28, United States Code, is amended by inserting “, or until 120 days have elapsed, whichever is earlier” after “completed”.

SEC. 16. GAO REPORT.

The Comptroller General of the United States shall submit to the Congress, not later than 1 year after the date of the enactment of this Act, a report setting forth recommendations of ways to improve controls on costs of offices of independent counsel under chapter 40 of title 28, United States Code.

The CHAIRMAN pro tempore. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] will be recognized for 20 minutes, and a Member opposed will be recognized for 20 minutes.

The Chair recognizes the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, ladies and gentlemen of the House, this is nearly the last vote we will have on this very significant piece of legislation, the reauthorization of the independent counsel statute. My substitute, in my opinion, makes it a better bill. I am for the concept, I have always been for the concept, I voted for this when it was first presented back in 1978, and I have voted for it in every succeeding time that it has been presented. I think we should have learned something from experience. We should have learned from history how this bill has operated, and now we have an opportunity to sand off the rough edges, an opportunity to fine-tune it, to make it a better law, a more effective law.

Madam Chairman, I suggest nobody can accuse me of trying to eviscerate, diminish or demean or weaken this independent counsel law.

I ask you to put partisanship aside. I know it is difficult, difficult for all of us, but try to make this a better bill, try to go to school on the experience we have had under the most recent independent counsel operation.

□ 1330

This substitute is about reform, congressional reform. It is about accountability, budgetary accountability, and personal, professional accountability of the independent counsel. And it is about due process of law. These are things that ought to concern us mightily.

Under the old, and I will call it the Walsh law because it is the law that Judge Walsh operated under, its reincarnation, which is what we are about today, I suggest this will be too costly

without the reforms in my substitute. It is too open-ended and, thus, violates due process or has the potential to violate due process, and it is too easily manipulated.

I ask anybody who is listening to me to tell me if they do not think the indictment of former Secretary Weinberger 3 days before the election was not political. Now, one may say, “Secretary Weinberger ought to have been indicted.” One could say that if they wish. But the timing 3 days before the election, I suggest to anybody, was manipulation, political manipulation, and, if it can happen to Secretary Weinberger, it can happen to my colleagues, and we ought to prevent that type of politicization of this very important office of independent counsel.

Now the reason for this law is that no man or woman should be above the law. That only makes sense. I say to my colleagues, “Whether you hold high office in the executive branch or not, nobody should be above the law, but let us not create an office where the office holder, the independent counsel, is above the law, and I fear that’s what we have done. We have created Dr. Frankenstein in creating an office that is not accountable to the Congress, to the Justice Department, to the Committee on Appropriations, to anybody of indefinite duration, 7 years and \$40 million.”

I suggest we, as the trustees of the tax dollars of the people we represent, have a duty to put some accountability into this important office of independent counsel as well as fairness, due process, accountability, cost controls and congressional reform.

Now the first thing in my bill, my substitute, is mandatory congressional coverage. We have just voted twice on the Bryant bill, and the Bryant bill provides optional congressional coverage. I suggest to my colleagues that the American people, not the American Bar Association, the American people, want Congress to cover itself with the same laws that have applied to other people, in this case a small few people in the executive department, but political conflicts of interest can arise not only just within the executive, but within Congress. The people want us to be covered by this law, and this is the only chance my colleagues will get to vote on mandatory coverage of Members of Congress. It is not 535 Members because, if my substitute passes, it will be only those Members, and may they be few, about whom specific evidence from a credible source has been adduced that a Federal crime has been violated.

Second, Madam Chairman, effective cost controls. We need accountability from the Office of Independent Counsel. The independent counsel has to have some oversight, some restraints, and there are none in the bill that we are about to reauthorize if my substitute is

defeated. My substitute requires a submission to the Committee on Appropriations for further money, further millions of dollars, after 2 years. In the first 2 years the independent counsel can go right ahead as he or she wishes. But, after 2 years, for goodness sake come forward, and come to the Congress, the steward of tax dollars, and ask for the money, and make a showing that the money has been spent well and that the money will be spent well in the future with effective cost controls.

Treatment of classified information:

It is outrageous what has happened to classified information in the last independent counsel's conduct of the office both in court and out of court. Now the gentleman from Texas [Mr. BROOKS] to his credit emphasizes in the bill and through an amendment that the rules and regulations dealing with classified information must be followed. What the gentleman from Texas [Mr. BROOKS] omits is a sanction, and my amendment provides the sanction of removal if these rules and regulations are ignored.

Another thing:

I say to my colleagues, "When you are appointed independent counsel, you don't have a hunting license to kill elephants and woodchucks. You should have a specific jurisdiction that is defined. You shouldn't go roaming through the forest with an Uzi shooting everything that moves. There should be focus, there should be direction, and you should have a jurisdiction that is defined, not one of these general jurisdictional grants that permits you to go on, and on, and on against anyone and everything." So, Madam Chairman, I am asking for focus, jurisdiction defined.

Now we have already debated, my colleagues, the gentlemen from Texas, Mr. BRYANT and Mr. BROOKS, and I, my amendment which was previously offered as a freestanding amendment to require, before the preliminary investigation, the 15 days' lapse, that specific evidence, not just information, and it must be from a credible source, not from anybody, that a Federal law has been violated, not may have been violated. Now, once that threshold is crossed, it seems to me that we can make a determination thereafter, one by the Attorney General, that insufficient evidence exists and no independent counsel need be appointed. But make the threshold high, make it at the outset, so this whole operation is not triggered for less than specific evidence from a credible source.

Duration of an investigation, 7 years:

Judge Walsh went on, and maybe 7 years was called for. I will not even comment on that. But somebody ought to take a look at this after a few years and say, "Yes, go ahead," or, "You've done your job. Fold up your tent," And what I am suggesting is that after 2 years a review of the appointment is

made, and the court must reappoint the office or it expires.

I say to my colleagues, "Maybe you don't like the 2 years, but 2 years ought to be enough to justify going forward or folding up."

Attorney fees:

One of the great injustices in our system of justice is that people who are targets of investigation who get indicted, who get tried and who are found not guilty, are left with the satisfaction that they are not guilty and with enormous legal fees that never get paid, and they never get out from under. I suggest that if that happens, Madam Chairman, if someone is found not guilty or if someone is found guilty and their conviction is reversed, they get their attorney fees. That is the least we can do to make people whole who have been through a hellish adventure and experience, and those fees are set by the court. That is only fair. That is due process. That is reauthorization.

My colleagues, a prosecutor ought to be as zealous to protect the innocent as to prosecute the guilty. That is due process. That is fairness. And I am suggesting, if we circumscribe this omnipotent power that the independent counsel is given, that we restrain it in a budgetary way, in an accountability way, and, if we expand the coverage to include ourselves, because we can be as capable, as much as some person working over in the Executive Office Building of violating a Federal law, then we will have done a good day's work.

□ 1340

Madam Chairman, I suggest to the Members that this improves the bill. It does not eviscerate it, it does not hobble it, but it makes it a fairer bill and it is respectful of the taxpayers' interests.

Madam Chairman, I reserve the balance of my time.

Mr. BROOKS. Madam Chairman, I rise in opposition to the substitute amendment.

The CHAIRMAN pro tempore (Mrs. MINK). The gentleman from Texas [Mr. BROOKS] is recognized for 20 minutes.

Mr. BROOKS. Madam Chairman, I yield myself such time as I may require.

Madam Chairman, I rise in opposition to the substitute offered by the distinguished gentleman from Illinois [Mr. HYDE]. While I do not question his sincerity in putting forth this substitute, I must nevertheless say what it is: A radical, broadside attack on every aspect of the independent counsel process and authority. Parts of this substitute have already been offered as individual amendments, and have been already defeated. We need to do the same thing here.

The independent counsel statute was devised to ensure the independence of action by judicially appointed counsel without interference by Congress or

the executive branch. Yet, the Hyde substitute creates a new, untested legal standard for the use of the independent counsel process. The House earlier today defeated the gentleman's separate amendment on this issue.

The substitute also includes the text of the Gekas amendment—which, again, the House defeated earlier today. This part of the Hyde substitute would take away the double-barrelled power of the Attorney General to prosecute Members of Congress when prosecution by the Justice Department would be more appropriate than use of the independent counsel process.

At the same time, the substitute gives an extraordinary option to the subject of an investigation: It allows the target of investigation to be able to petition the court to terminate the investigation, and to do so as frequently and as often as the subject wants. I wonder what U.S. attorneys and local prosecutors would think about the concept.

The substitute further requires that all independent counsel investigations lasting more than 2 years be tied directly to the appropriations process in Congress, thus politicizing the tenure of an independent counsel to congressional whim. Does this mean Congress can put a rider on a 1200-page appropriation bill and shut down an independent counsel investigation? It sure does.

While H.R. 811 controls costs in the manner recommended by the General Accounting Office, the Hyde substitute fails to include those administrative and cost control provisions—including the appointment of a certifying employee for expenditures.

The substitute has many other infirmities, but I hope the case has been made against it. Suffice it to say, passage of the Hyde substitute would be the functional equivalent of the Republican strategy last Congress—which was to render the independent counsel statute a nullity. I urge you to cast a "nay" vote.

Madam Chairman, I reserve the balance of my time.

Mr. HYDE. Madam Chairman, I yield 5 minutes to the distinguished ranking Republican member of the Committee on the Judiciary, the gentleman from New York [Mr. FISH].

Mr. FISH. Madam Chairman, I thank my colleague for yielding this time to me.

Madam Chairman, as I said earlier, the independent counsel statute is an important law and it should be reauthorized. However, the law which expired has not fulfilled its purpose due to shortcomings in the former statute. We need to reform this law if we are to reauthorize it here today.

The Hyde substitute embraces virtually every issue debated and voted on in the Judiciary Committee. It represents a responsible and comprehen-

sive reform package that will improve this law and make it a better law than the one that expired in 1992. Colleagues, this substitute is the only comprehensive reform measure that we will be voting on today.

Accountability and cost control, as I stated in opening the debate on this bill, are central to improving the independent counsel function. Madam Chairman, these are they key concepts of the Hyde substitute. For example, the substitute provides that after 2 years each independent counsel shall become subject to the annual appropriations process. This is a responsible cost control intended to avoid runaway investigations such as Iran-Contra, which spent over \$39 million. If the substitute passes, the independent counsel will be subject to congressional oversight and the appropriations process.

Additionally, under the Hyde substitute, every 2 years the independent counsel would have to apply to the court for reappointment. If the court determines that the investigation should continue and that the specific independent counsel remains the appropriate individual to carry on the investigation, by reappointing that individual, the court adds to his credibility. This provision is about accountability and review, and will allow us to avoid irresponsible fishing expeditions that last for years.

Madam Chairman, the Hyde substitute would require that independent counsel comply at all times with the established policies of the Department of Justice with respect to the enforcement of criminal law. This is an amendment which I offered at the Judiciary Committee, and which closes a substantial loophole found in H.R. 811.

Madam Chairman, there should be no exception for a Federal prosecutor with respect to Justice Department criminal enforcement policies. We should not provide anyone the authority to avoid compliance with established prosecutorial policy as set forth in the U.S. attorneys manual or the Code of Federal Regulations. The independent counsel, Madam Chairman, was intended to merely step into the shoes of our other duly appointed Federal prosecutors, and as such should not be made the beneficiary of a lesser standard regarding criminal prosecution.

Finally, ignoring our experience under the prior law, H.R. 811 does nothing to safeguard the handling of national security information and classified documents. During the independent counsel's Iran-Contra investigation, numerous shortcomings in this area became evident. For example CIA cables—with highly sensitive markings—were released as exhibits during trials; in a motion to quash a subpoena, a covert agent was identified by name, and highly sensitive classified documents were inexplicably lost at

the Los Angeles International Airport. At a minimum, we should make it clear that an independent counsel must fully comply with Federal law and regulations regarding the handling and disclosure of classified information. Most importantly, if there is failure to comply, then removal should occur. The problem with the Brooks amendment which passed yesterday regarding this issue, is that it imposes no sanction if an independent counsel fails to follow the low or applicable regulations on handling national security documents. As a practical matter, we cannot realistically expect that a special prosecutor will be prosecuted for violating 18 U.S.C. 798. The only realistic sanction in these kinds of circumstances is to make the independent counsel subject to removal for good cause—just as my good friend from Illinois, Mr. HYDE, proposes.

Madam Chairman, I say to my colleagues the purposes of the independent counsel law was to restore public faith in our system of government and to ensure a fair and impartial system of justice. This substitute provides us the opportunity to vote for real reform of this important law and allows us the opportunity to make the independent counsel more accountable to the public. If we forego the opportunity to reform this law and instead allow it to remain vulnerable to the criticisms that it is arbitrary, too costly and unfair, then the very purpose of the law will be undermined. I encourage my colleagues to vote "yes" on the Hyde substitute.

Madam Chairman, I reserve the balance of my time.

□ 1350

Mr. HYDE. Madam Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. Madam Chairman, more accountability is necessary in the Office of Independent Counsel than this bill provides. The Hyde amendment corrects that.

Since 1978 a permanent, indefinite appropriation within justice has existed to fund expenditures by independent counsels. This is a formula for abuse.

We have the power today to prevent history from repeating itself. No one should have the unbridled authority possessed by Lawrence Walsh during the Iran-Contra investigation. The General Accounting Office found during its financial audit of Judge Walsh's investigation that many of the expenses incurred were inconsistent with laws and regulations.

For instance, GAO computations showed that Mr. Walsh received reimbursements in excess of the amounts he should have received. Based on records provided by Mr. Walsh, GAO calculated that the total amount of unallowable reimbursements for lodging and meals for Judge Walsh was approximately

\$78,000 more than the allowable per diem rate.

For at least his first 2 years as independent counsel, Mr. Walsh was reimbursed for first class air travel—while most businesses are flying their executives economy class.

GAO concluded in its report that the problems they found in not only Walsh's investigation but eight other independent counsel investigations "Showed a serious breakdown in the accountability over independent counsel administrative operation."

As written, H.R. 811 is too costly and easily subject to abuse by independent counsels who choose to wield their power as a political weapon. This statute needs real accountability and cost controls—H.S. 811 does not go far enough to attain that goal.

That is why I support provisions in the Hyde substitute which require the independent counsel to reapply for appointment every 2 years; place cost controls on independent counsels by making them subject to the annual appropriations process after 2 years; limit staff salaries and travel expenses; require each independent counsel to follow established Department of justice policies with respect to expenditures and personnel; and allow the appointing court to terminate an independent counsel's office when it is in the public interest.

The Hyde substitute contains safeguards to prevent the abuses of power cited in the GAO report. It is clear that independent counsels must be held more accountable for their expenditures. The Hyde amendment accomplishes that goal.

Mr. BROOKS. Madam Chairman, I yield 3 minutes to the distinguished gentlewoman from Colorado [Mrs. SCHROEDER], a member of the Committee on the Judiciary.

Mrs. SCHROEDER. Madam Chairman, I thank the gentleman for yielding.

Madam Chairman, I think I can safely say this, and then we can yield back all the time and hopefully get to a vote. Most of the Members have heard this over and over again. Let me reiterate what the Hyde amendment does. It absolutely guts everything we have done so far today. So if you want to gut it, this is the thing you want to vote for.

Madam Chairman, remember what we are trying to do today. We are trying to reinstate what we did before, which is to find a way that we can have a judicially appointed counsel that can be independent and not interfered with by either the Congress or the executive branch. If you like that concept, then you should vote "no," because what this does is take that and stand it on its head.

It allows interference by the Congress in a lot of different ways. It has some new, untested legal standards, as

the gentleman from Texas [Mr. BROOKS], the chairman of the Committee on the Judiciary, pointed out earlier.

It also ties this to the appropriations cycle of 2 years. That might sound a little political. It seems to me Members of Congress run every 2 years. Could that be what it is about? I am sure it is not. If I sound like I am being a little facetious with tongue in cheek, I am.

Nevertheless, that is what I am talking about when I say it takes away the independence of this judicially appointed counsel that we are so concerned about and want to reinstate for 5 years in this bill.

Madam Chairman, it does some other things. It takes away the ability of the Attorney General to have a double-barreled shot at any Member of Congress. It only gives her one shot. They can do it with an independent counsel, but they cannot use U.S. attorneys. They cannot do those types of things.

Madam Chairman, I could go on and on. The chairman listed it at the beginning. I know there are Dear Colleagues out. I think one of the problems has been we have been talking about everything except what the amendment does. If you want to gut the bill, you should vote for this. I do not. I think this is a bill that we should have passed last time. I think it is very important, and we should proceed.

The final thing that I was very surprised the amendment did, is it took out the part of the bill that really put fiscal responsibility into it. What this bill says, if it is allowed to stand, is you appoint an employee to make sure the funds are being spent properly. If that employee does not do it, they have to repay. This does not have that in it. So if you vote for the Hyde amendment, you are, one more time, allowing for this money to come out, and no one knows exactly how it is spent.

Madam Chairman, I would encourage Members to vote "no" and get on with it, and finally reinstate the independent counsel bill, which has had a long and distinguished trial period. I think we have found it has worked very well. Let us keep it working in the way that we had anticipated.

Madam Chairman, I thank the gentleman from Texas [Mr. BROOKS] for his handling of this.

Mr. BROOKS. Madam Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT. Madam Chairman, I am glad we are moving to the end of this debate. I think it has been a good debate. We have strong words that have been spoken throughout it. Strong feelings, of course, exist on both sides. In fact, we are trying to pass a bill today that has a 15-year history, a noble history. We would like to see it reinstated basically as it has

functioned in the past. The bill that is on the floor today would accomplish that, with some notable improvements that I think are constructive and respond to what we have learned during the operation of the statute during the last 15 years.

The Hyde substitute which is before us for the next vote, in my view, would move us away from what we have learned with regard to the operation of the act, and I think take us away also from common sense.

One point that has been made well here, and ought to be made again, is that if you do what is in the Hyde substitute and include mandatory coverage of Members of Congress, rather than keeping it optional, and also require Congress to vote every year on the appropriation for the independent counsel, then obviously you will be building into the law an enormous conflict of interest. I do not think that is workable in any way, and I am not sure that has been thought through, even by the author.

Members should also be aware that the Hyde substitute does not contain the cost controls that are found in the existing bill, which is ironic, since the alleged extravagant expenditures of funds by Mr. Walsh's investigation have been raised as an argument to change the law.

Under H.R. 811, an independent counsel is required to conduct all activities with due regard for expense. That provision is not in the Hyde substitute. Under the bill before us, H.R. 811, an independent counsel can authorize only reasonable and lawful expenditures. That is not in the Hyde substitute. And under H.R. 811, the bill before us, an independent counsel must assign a specific employee to certify that expenditures are reasonable and made in accordance with law, and that is not in the Hyde substitute.

The bill before us provides a very reasonable and meaningful structure within which we can guarantee that expenditures in the future will be prudent and will be consistent with the public interest.

I urge the Members not to vote to change that. I urge Members to vote against the Hyde substitute. Let us reinstate a law that has worked well for 15 years. With the changes that we have made, based upon what we have learned in the last 15 years, it will make it even better.

I urge Members to vote "no" on the Hyde substitute and to vote "aye" in favor of H.R. 811.

Mr. BROOKS. Madam Chairman, I yield back the balance of my time.

Mr. HYDE. Madam Chairman, I yield myself such time as I may consume. Just a couple of very brief comments.

Somebody said this would render the bill a nullity. Why in the world would we Republicans want to weaken the Office of Independent Counsel, now that

the administration of the folks from Arkansas are in power? We want an independent counsel, oh, how we want a strong independent counsel law. Please understand that.

Second, the gentlewoman from Colorado says my substitute guts the bill. Well, it is true. It does put accountability in. It does require some oversight over the millions of dollars that one of these special creatures, who is very much above the law, can spend. If coming to Congress for appropriations after 2 years is somehow a bad move, then so be it. Do not vote for accountability. But 7 years and \$40 million for the Iran Contra hearings and producing dust, it just seems to me that is not very responsible on our part.

I want to make one last appeal to the freshmen, who came here hell-bent for reform. We are going to reform the way this place operates. Here is their chance. Here is the first vote of this session on real reform, to include mandatorily Members of Congress under the blanket, under the mantle of the independent counsel law. Think about that as they cast their vote.

Mr. MICHEL. Madam Chairman, I rise in strong support of the Hyde substitute.

We have now had several years of experience with the independent counsel statute and it seems to me we have yet to learn the lessons of history. Mr. HYDE, great student of history himself, rights those wrongs in his substitute.

Make no mistake about it, the Hyde substitute is the only way left to dramatically improve this bill. If this substitute is defeated, this House will leave untouched the abuses of past prosecutors and the vicious attacks against decent public servants. We will have forsaken our oversight responsibilities once again.

The Congress, without the Hyde amendment, will forfeit once again its constitutional responsibilities of oversight. Nowhere in our Government today is there a more autonomous office than that of the independent counsels.

We all knew that Lawrence Walsh dangled plea bargains in front of lesser targets. His weapon was not justice, it was money.

Plead guilty to a minor infraction, Mr. Walsh would say, or face years of legal battles to save your name and reputation at a cost that will leave you virtually bankrupt.

What an abuse of power, and Congress couldn't do anything about it.

We all knew that Lawrence Walsh was renting an apartment at the Watergate Hotel, traveled first class, and paid staff top dollar, and we couldn't do anything about it.

We all knew that Mr. Walsh had carelessly lost highly classified information and that he attempted to coverup this embarrassment, and Congress couldn't do anything about it.

We all knew that Lawrence Walsh had tired and had turned over day-to-day operations to his bitterly partisan deputy—and we couldn't do anything about it.

We all knew that Lawrence Walsh had essentially completed his investigation years ago, but we couldn't do anything about it.

We all knew Mr. Walsh was incompetent and Congress couldn't do anything about it.

We all knew Lawrence Walsh was spending, or wasting, upwards of \$40 million dollars, and couldn't do anything about it.

We all knew that Lawrence Walsh wanted to nab George Bush. Where else did the leak come from about the Weinberger notes? These were notes that Mr. Weinberger himself told Mr. Walsh existed and could be found at the Library of Congress, notes that Mr. Walsh's deputies looked through but missed the critical information that Mr. Walsh later claimed Mr. Weinberger concealed.

Congress created a legal bully and watched helplessly as rogue prosecutors destroyed reputations.

Do any of you remember Ray Donovan, the former Secretary of Labor. He endured two trials and was ultimately found not guilty. At the conclusion of his long ordeal he painfully asked "tell me where I go to get my reputation back?"

And Congress, in adopting the Hyde substitute, will be getting back at least part of its reputation as a responsible and effective institution.

I say to my colleagues that I can support a prosecutor who is independent of the executive branch, but it is our responsibility to carefully craft that office so its mission is defined, its legal parameters clear, the rights of the targets are the same in any investigation, that we do not unleash a rogue operation, and that we maintain proper oversight and that, yes, covers the Congress.

I maintain that only in the Hyde substitute has the Congress adequately achieved these goals. I urge the adoption of the Hyde substitute.

Mr. HYDE. Madam Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mrs. MINK). All time having expired, the question is on the amendment in the nature of a substitute offered by the gentleman from Illinois [Mr. HYDE].

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. HYDE. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 181, noes 238, not voting 19, as follows:

[Roll No. 21]

AYES—181

Allard	Burton	Dornan
Archer	Buyer	Dreier
Armey	Callahan	Duncan
Bachus (AL)	Calvert	Dunn
Baker (CA)	Camp	Ehlers
Baker (LA)	Canady	Emerson
Ballenger	Castle	Everett
Barrett (NE)	Clinger	Fawell
Bartlett	Coble	Fish
Barton	Collins (GA)	Fowler
Bateman	Combest	Franks (CT)
Bentley	Cooper	Franks (NJ)
Bereuter	Cox	Galleghy
Bliley	Crane	Gallo
Blute	Crapo	Gekas
Boehlert	DeLay	Geren
Boehner	Diaz-Balart	Gilchrest
Bonilla	Dickey	Gillmor
Bunning	Doolittle	Gilman

Gingrich	Linder	Santorum
Goodlatte	Livingston	Saxton
Goodling	Machtley	Schaefer
Goss	Manzullo	Schiff
Grams	McCandless	Sensenbrenner
Grandy	McCollum	Shaw
Greenwood	McCrery	Shays
Gunderson	McDade	Shuster
Hancock	McHugh	Skeen
Hansen	McInnis	Skelton
Hefley	McKeon	Smith (MI)
Hefley	Meyers	Smith (NJ)
Heger	Mica	Smith (OR)
Hobson	Miller (FL)	Smith (TX)
Hoekstra	Molinari	Snowe
Hoke	Montgomery	Solomon
Horn	Moorhead	Spence
Houghton	Morella	Stearns
Huffington	Myers	Stenholm
Hunter	Nussle	Stump
Hutchinson	Oxley	Sundquist
Hutto	Packard	Talent
Hyde	Parker	Tauzin
Inglis	Paxon	Taylor (MS)
Inhofe	Petri	Taylor (NC)
Istook	Pickle	Thomas (CA)
Jacobs	Pombo	Thomas (WY)
Johnson (CT)	Porter	Torkildsen
Johnson, Sam	Portman	Upton
Kasich	Pryce (OH)	Valentine
Kim	Quillen	Vucanovich
Kingston	Quinn	Walker
Klug	Ramstad	Walsh
Knollenberg	Ravenel	Weldon
Kolbe	Regula	Wilson
Kyl	Roberts	Wolf
Lazio	Rogers	Young (AK)
Leach	Rohrabacher	Young (FL)
Levy	Ros-Lehtinen	Roth
Lewis (CA)	Roukema	Zimmer
Lewis (FL)	Royle	
Lightfoot		

NOES—238

Abercrombie	Derrick	Johnson (SD)
Ackerman	Deutsch	Johnson, E.B.
Andrews (ME)	Dicks	Johnston
Andrews (NJ)	Dingell	Kanjorski
Applegate	Dixon	Kaptur
Bacchus (FL)	Dooley	Kennelly
Baessler	Durbin	Kildee
Barca	Edwards (CA)	King
Barcia	Edwards (TX)	Kleczka
Barlow	Engel	Klein
Barrett (WI)	English	Klink
Becerra	Eshoo	Kopetski
Bellenson	Evans	Kreidler
Berman	Faleomavaega	LaFalce
Bevill	(AS)	Lambert
Bilbray	Farr	Lancaster
Bishop	Fazio	Lantos
Blackwell	Fields (LA)	LaRocco
Bonior	Fliner	Lehman
Borski	Fingerhut	Levin
Boucher	Flake	Lewis (GA)
Brewster	Foglietta	Lipinski
Brooks	Ford (MI)	Long
Browder	Ford (TN)	Lowe
Brown (CA)	Frank (MA)	Maloney
Brown (FL)	Frost	Mann
Brown (OH)	Furse	Manton
Bryant	Gejdenson	Margolies-
Byrne	Gephardt	Mezvinsky
Cantwell	Gibbons	Markey
Cardin	Glickman	Martinez
Carr	Gonzalez	Matsui
Chapman	Gordon	Mazzoli
Clay	Green	McCloskey
Clement	Gutierrez	McCurdy
Clyburn	Hall (OH)	McDermott
Collins (IL)	Hamburg	McHale
Collins (MI)	Hamilton	McKinney
Condit	Harman	McNulty
Conyers	Hayes	Meehan
Coppersmith	Hefner	Meek
Costello	Hilliard	Menendez
Coyne	Hinche	Mfume
Cramer	Hoagland	Miller (CA)
Danner	Hochbrueckner	Mineta
Darden	Holden	Minge
de Lugo (VI)	Hoyer	Mink
Deal	Hughes	Moakley
DeFazio	Inslie	Mollohan
DeLauro	Jefferson	Moran
Dellums	Johnson (GA)	Murphy

Murtha	Romero-Barcelo	Swift
Nadler	(PR)	Synar
Natcher	Rose	Tanner
Neal (MA)	Rostenkowski	Tejeda
Norton (DC)	Rowland	Thompson
Oberstar	Roybal-Allard	Thornton
Obey	Rush	Thurman
Oliver	Sabo	Torres
Ortiz	Sanders	Torricelli
Orton	Sangmeister	Towns
Owens	Sarpalius	Trafcant
Pallone	Sawyer	Tucker
Pastor	Schenk	Underwood (GU)
Payne (NJ)	Schroeder	Unsoeld
Payne (VA)	Schumer	Velazquez
Pelosi	Scott	Vento
Penny	Serrano	Visclosky
Peterson (FL)	Sharp	Volkmer
Peterson (MN)	Shepherd	Waters
Pickett	Sisisky	Watt
Pomeroy	Skaggs	Waxman
Poshard	Slaughter	Wheat
Price (NC)	Smith (IA)	Whitten
Rahall	Spratt	Williams
Rangel	Stark	Wise
Reed	Stokes	Woolsey
Reynolds	Strickland	Wyden
Richardson	Studds	Wynn
Roemer	Stupak	Yates
	Swett	

NOT VOTING—19

Andrews (TX)	Fields (TX)	Michel
Bilirakis	Hastert	Neal (NC)
Clayton	Hastings	Ridge
Coleman	Kennedy	Slattery
Cunningham	Laughlin	Washington
de la Garza	Lloyd	
Ewing	McMillan	

□ 1424

The Clerk announced the following pair:

On this vote:

Mr. Ewing for, with Mr. Washington against.

Messrs. LIPINSKI, HAMBURG, RUSH, and WISE changed their vote from "aye" to "no."

Mr. GRANDY changed his vote from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mrs. MINK of Hawaii). The question is on 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 CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. CARDIN) having assumed the chair, Mrs. MINK of Hawaii, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 811) to reauthorize the independent counsel law for an additional 5 years, and for other purposes, pursuant to House Resolution 352 she reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute

adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

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

MOTION TO RECOMMIT OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. GEKAS. I am opposed to it as presently framed, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. GEKAS moves to recommit the bill (H.R. 811) to the Committee on the Judiciary with instructions to report the bill back to the House forthwith with the following amendment:

Page 9, strike line 18 and all that follows through line 14 on page 10 and insert the following:

SEC. 4. APPLICATION TO MEMBERS OF CONGRESS.

Section 591(b) of title 28, United States Code, 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) any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, or any person who has served as a Senator, a Representative, Delegate, or Resident Commissioner within the 2-year period before the receipt of the information under subsection (a) with respect to conduct that occurred while such person was a Senator, a Representative, Delegate, or Resident Commissioner."

Mr. GEKAS (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania [Mr. GEKAS] is recognized for 5 minutes in support of his motion to recommit.

Mr. GEKAS. Mr. Speaker, we have just gone through a very tortuous exercise in the Gekas amendment as amended by BRYANT, and so we never had the opportunity to clearly define or to vote up or down on the Gekas amendment, which is opposite in notion to that which the bill carries. Once again, this will be our opportunity to vote yes or no, up or down on the Gekas amendment.

□ 1430

Once again, the picture I want to paint here is this: As you prepare to vote, consider this, consider that you see in front of you a high-ranking

Member of Congress against whom some allegations have been made and which allegations reach the desk of the Attorney General.

Under the bill that has been now amended by BRYANT which really returns to the original language of the bill, the Bryant bill language under that, the Attorney General does not have any duty at all to move those allegations but has utmost discretion to deal with it as the Attorney General wants to do.

Consider the alternative: The Gekas amendment, when these allegations are made against this high-ranking Member of Congress, the Attorney General, upon seeing them, must act on it. And why? Because we make the language comparable to that that is applicable to Members of the Cabinet.

When the high-ranking Member of Congress is of the same party as the Attorney General and the Attorney General, of course, has been appointed by the President, all three being in the same party, if these is not conflict of interest there certainly is the appearance of conflict of interest. That is what the Gekas amendment cures. It gives to the American people the opportunity to say, "Yes for Congress. It has finally acted to bring a sense of proportion and justice to its procedures at least in one area, that of independent counsel."

I ask for a yes vote on the motion to recommit, because in doing so, you are restoring the faith of the American people in the ability of Congress to treat its Members as all other citizens.

Mr. Speaker, I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore (Mr. CARDIN). The gentleman from Texas [Mr. BROOKS] will be recognized for 5 minutes.

Mr. BROOKS. Mr. Speaker, I rise in opposition to this motion to recommit.

The Members of this body have spoken loudly and clearly on the application of the independent-counsel statute through the Members of Congress. They have voted, we have voted, this afternoon to cover all Members of the U.S. Congress through the Bryant amendment by a vote of 339 to 76.

They also voted against the Gekas amendment and the Hyde amendment.

I do not think we need to take up any more time. We know what we want to do. Let us kill the motion to recommit, pass the bill, and I am going to Texas.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. GEKAS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 183, noes 230, answered, not voting 20, as follows:

[Roll No. 22]

AYES—183

Allard	Goodlatte	Parker
Archer	Goodling	Paxon
Armey	Goss	Petri
Bachus (AL)	Grams	Pombo
Baker (CA)	Grandy	Porter
Baker (LA)	Greenwood	Portman
Ballenger	Gunderson	Pryce (OH)
Barrett (NE)	Hall (TX)	Quillen
Bartlett	Hancock	Quinn
Barton	Hansen	Ramstad
Bateman	Hefley	Ravenel
Bentley	Hergert	Regula
Bereuter	Hobson	Roberts
Bliley	Hoekstra	Rogers
Blute	Hoke	Rohrabacher
Boehler	Horn	Ros-Lehtinen
Boehner	Houghton	Roth
Bonilla	Huffington	Roukema
Brown (FL)	Hunter	Royce
Bunning	Hutchinson	Santorum
Burton	Hyde	Saxton
Buyer	Inglis	Schaefer
Byrne	Inhofe	Schiff
Callahan	Istook	Sensenbrenner
Calvert	Jacobs	Shaw
Camp	Johnson (CT)	Shays
Canady	Johnson, Sam	Shepherd
Castle	Kasich	Shuster
Clinger	Kim	Skeen
Coble	Kingston	Skelton
Collins (GA)	Klug	Smith (MI)
Combest	Knollenberg	Smith (NJ)
Cox	Kolbe	Smith (OR)
Crane	Kyl	Smith (TX)
Crapo	Lazio	Snowe
Cunningham	Leach	Solomon
Deal	Levy	Spence
DeLay	Lewis (CA)	Stearns
Diaz-Balart	Lewis (FL)	Stenholm
Dickey	Lightfoot	Stump
Doolittle	Linder	Sundquist
Dornan	Livingston	Swett
Dreier	Machtley	Talent
Duncan	Manzullo	Tauzin
Dunn	McCandless	Taylor (MS)
Ehlers	McCollum	Taylor (NC)
Emerson	McCrery	Thomas (CA)
Everett	McDade	Thomas (WY)
Fawell	McHugh	Torkildsen
Fish	McInnis	Upton
Fowler	McKeon	Valentine
Franks (CT)	Meyers	Volkmer
Franks (NJ)	Mica	Vucanovich
Galleghy	Miller (FL)	Walker
Gallo	Molinar	Walsh
Gekas	Moorhead	Weeldon
Geren	Morella	Wolf
Gilchrest	Myers	Young (AK)
Gillmor	Nussle	Young (FL)
Gilman	Oxley	Zeliff
Gingrich	Packard	Zimmer

NOES—230

Abercrombie	Brown (OH)	Deutsch
Ackerman	Bryant	Dicks
Andrews (ME)	Cantwell	Dingell
Andrews (NJ)	Cardin	Dixon
Applegate	Carr	Dooley
Baesler	Chapman	Durbin
Barca	Clay	Edwards (CA)
Barcia	Clement	Edwards (TX)
Barlow	Clyburn	Engel
Barrett (WI)	Collins (IL)	English
Becerra	Collins (MI)	Eshoo
Beilenson	Condit	Evans
Berman	Conyers	Farr
Bevill	Cooper	Fazio
Bilbray	Coppersmith	Fields (LA)
Bishop	Costello	Filner
Blackwell	Coyne	Fingerhut
Bonior	Cramer	Flake
Borski	Danner	Foglietta
Boucher	Darden	Ford (MI)
Brewster	DeFazio	Ford (TN)
Brooks	DeLauro	Frank (MA)
Browder	Dellums	Frost
Brown (CA)	Derrick	Furse

Gejdenson
Gephardt
Gibbons
Glickman
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamburg
Hamilton
Harman
Hayes
Hefner
Hinchee
Hoagland
Hochbrueckner
Holden
Hoyer
Hughes
Hutto
Insee
Jefferson
Johnson (GA)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
King
Klecza
Klein
Klink
Kopetski
Kreidler
LaFalce
Lambert
Lancaster
Lantos
LaRocco
Lehman
Levin
Lewis (GA)
Lipinski
Lloyd
Long
Lowey
Maloney
Mann
Manton

The vote was taken by electronic device, and there were—ayes 356, noes 56, not voting 21, as follows:

[Roll No. 23]

AYES—356

Ackerman
Allard
Andrews (ME)
Andrews (NJ)
Applegate
Bachus (AL)
Baesler
Baker (LA)
Barca
Barcia
Barlow
Barrett (NE)
Barrett (WI)
Bateman
Becerra
Beilenson
Bentley
Bereuter
Berman
Bevill
Bilbray
Bishop
Blackwell
Blute
Boehlert
Boehner
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Burton
Byrne
Calvert
Camp
Canady
Cantwell
Cardin
Carr
Castle
Chapman
Clay
Clement
Clinger
Clyburn
Collins (GA)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooper
Coppersmith
Costello
Coyne
Cramer
Cunningham
Danner
Darden
Deal
DeFazio
DeLauro
Dellums
Derrick
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Dooley
Dunn
Durbin
Edwards (CA)
Edwards (TX)
Ehlers
Engel
English
Eshoo
Evans
Everett
Farr
Fawell
Fazio

Richardson
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roukema
Rowland
Roybal-Allard
Royce
Rush
Sabo
Sanders
Santorum
Sarpalius
Sawyer
Saxton
Schenk
Schiff
Schroeder
Schumer
Scott
Serrano
Sharp
Shaw
Shaughnessy
Shepherd
Sisisky

NOES—56

Abercrombie
Archer
Army
Ballenger
Bartlett
Barton
Billiey
Bonilla
Bunning
Buyer
Callahan
Coble
Cox
Crane
Crapo
DeLay
Dickey
Doolittle
Dornan

NOT VOTING—21

Andrews (TX)
Bacchus (FL)
Baker (CA)
Bilirakis
Clayton
Coleman
de la Garza

□ 1459

Mr. NUSSLE changed his vote from "aye" to "no."

Messrs. HOBSON, SMITH of Michigan, ROYCE, and BURTON of Indiana changed their vote from "no" to "aye." So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1500

Mr. BROOKS. Mr. Speaker, pursuant to the provisions of House Resolution 352, I call up from the Speaker's table the Senate bill (S. 24) to reauthorize the independent counsel law for an additional 5 years, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. BROOKS

Mr. BROOKS. Mr. Speaker, I offer a motion.

NOT VOTING—20

Andrews (TX)
Bacchus (FL)
Bilirakis
Clayton
Coleman
de la Garza
Ewing

□ 1450

The Clerk announced the following pairs:

On this vote:
Mr. Bilirakis for, with Mr. Andrews (TX) against.

Mr. Ewing for, with Mr. Washington against.

Mr. SKELTON changed his vote from "no" to "aye."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. CARDIN). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GEKAS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The Clerk read as follows:

Mr. BROOKS moves to strike out all after the enacting clause of the Senate bill, S. 24, and insert in lieu thereof the provisions of H.R. 811 as passed by the House, as follows:

S. 24

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Counsel Reauthorization Act of 1994".

SEC. 2. FIVE-YEAR REAUTHORIZATION.

(a) REAUTHORIZATION.—Section 599 of title 28, United States Code, is amended by striking "1987" and inserting "1993".

(b) EFFECTIVENESS OF STATUTE.—Chapter 40 of title 28, United States Code, shall be effective, on and after the date of the enactment of this Act, as if the authority for such chapter had not expired before such date.

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:

"(1) 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 Director of the Administrative Office of the United States Courts shall provide administrative support and guidance to each independent counsel. No officer or employee of the Administrative Office of the United States Courts shall 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 Administrator of General Services, in consultation with the Director of the Administrative Office of the United States Courts, shall promptly provide appropriate office space for each independent counsel. Such office space shall be within a Federal building unless the Administrator of General Services determines that other arrangements would cost less."

(b) INDEPENDENT COUNSEL PER DIEM EXPENSES.—Section 594(b) of title 28, United States Code, is amended—

(1) by striking "An independent counsel" and inserting

"(1) IN GENERAL.—An independent counsel"; 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, including travel or transportation expenses in accordance with section 5703 of title 5.

"(3) TRAVEL TO PRIMARY OFFICE.—An independent counsel and any person 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 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 by that independent counsel or person (as the case may be) under this chapter unless the employee assigned duties under subsection (1)(1)(A)(iii) certifies that the payment is in the public interest to carry out the purposes of this chapter. Any such certification shall be effective for 6 months, but may be renewed for additional periods of 6-months each if, for each such renewal, the employee assigned duties under subsection (1)(1)(A)(iii) makes a recertification with respect to the public interest described in the preceding sentence. In making any certification or recertification under this paragraph with respect to travel and subsistence expenses of an independent counsel or person appointed under subsection (c), such employee shall consider, among other relevant factors—

"(A) the cost to the Government of reimbursing such travel and subsistence expenses;

"(B) the period of time for which the independent counsel anticipates that the activities of the independent counsel or person, as the case may be, will continue;

"(C) the personal and financial burdens on the independent counsel or person, as the case may be, of relocating so that such travel and subsistence expenses would not be incurred; and

"(D) the burdens associated with appointing a new independent counsel, or appointing another person under subsection (c), to replace the individual involved who is unable or unwilling to so relocate.

An employee making a certification or recertification under this paragraph shall be liable for an invalid certification or recertification to the same extent as a certifying official certifying a voucher is liable under section 3528 of title 31."

(c) INDEPENDENT COUNSEL EMPLOYEE PAY COMPARABILITY.—Section 594(c) of title 28, United States Code, is amended by striking the last sentence and inserting the following: "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 Attorney General and the Director of the 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 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".

(f) PUBLICATION OF REPORTS.—Section 594(h) of title 28, United States Code, is amended—

(1) 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, 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 Superintendent of Documents sales program under section 1702 of title 44 and the depository library program under section 1903 of such title."; and

(2) in the first sentence of paragraph (2), by striking "appropriate" the second place it ap-

pears and inserting "in the public interest, consistent with maximizing public disclosure, ensuring a full explanation of independent counsel activities and decisionmaking, and facilitating the release of information and materials which the independent counsel has determined should be disclosed".

(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 "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 not 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 shall, not later than March 31 of the year following the submission of any such statement, report the results of each audit to the Committee on the Judiciary and the Committee on Government Operations of the House of Representatives and to the Committee on Governmental Affairs and the Committee on the Judiciary of the Senate."

SEC. 4. MEMBERS OF CONGRESS.

Section 591(c) of title 28, United States Code, is amended—

(1) by indenting paragraphs (1) and (2) two ems to the right and by redesignating such paragraphs as subparagraphs (A) and (B), respectively;

(2) by striking "The Attorney" and all that follows through "if—" and inserting the following:

"(1) IN GENERAL.—The Attorney General may conduct a preliminary investigation in accordance with section 592 if—" and

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

"(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."

SEC. 5. GROUNDS FOR REMOVAL.

Section 596(a)(1) of title 28, United States Code, is amended by striking "physical disability, mental incapacity" and inserting "physical or mental disability (consistent with prohibitions on discrimination otherwise imposed by law)".

SEC. 6. NATIONAL SECURITY.

Section 597 of title 28, United States Code, is amended by adding at the end the following:

"(c) NATIONAL SECURITY.—An independent counsel shall comply with guidelines and procedures used by the Department in the handling and use of classified materials."

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall become effective on the date of the enactment of this Act.

The motion was agreed to.

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

A similar House bill (H.R. 811) was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 811

Mr. BROOKS. Mr. Speaker, pursuant to the provisions of House Resolution 352, I move that the House insist on its amendments to the Senate bill, S. 24, and request a conference with the Senate thereon.

The SPEAKER pro tempore (Mr. CARDIN). The question is on the motion offered by the gentleman from Texas [Mr. BROOKS].

The motion was agreed to.

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees: Messrs. BROOKS, BRYANT, GLICKMAN, FRANK of Massachusetts, FISH, HYDE, and GEKAS.

There was no objection.

PERSONAL EXPLANATION

Mr. SWIFT. Mr. Speaker, on rollcall 18 earlier today I believe that through malfunction of the machine or, much more likely, malfunction of me, the vote failed to record. Had I been recorded, I would have voted "no".

PERSONAL EXPLANATION

Mr. TALENT. Mr. Speaker, it has come to my attention that, although I was present at the time of the vote on final passage of H.R. 811, the Independent Counsel Reauthorization Act of 1993, I failed to vote. The RECORD should show that, because this bill did not cover the Congress, I would have voted "no" on final passage.

PERSONAL EXPLANATION

Mr. BAKER of California. Mr. Speaker, I was not present for the vote on the final passage of H.R. 811, the reauthorization of the independent counsel, because I was unaware that this was a 5-minute vote. Had I been present I would have voted "no." Although I strongly support reauthorizing an independent counsel as proposed by Congressman HYDE, I felt that the independent counsel reauthorization under H.R. 811 was severely flawed: The bill did not mandatorily apply to Members of Congress; it left the door open for another Lawrence Walsh debacle; and it did nothing to prevent the unrestrained spending of taxpayer dollars.

**FEDERAL WORK FORCE
RESTRUCTURING ACT OF 1994**

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 357 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 357

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 3345) to amend title 5, United States Code, to eliminate certain restrictions on employee training; to provide temporary authority to agencies relating to voluntary separation incentive payments; and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and the amendments made in order by this resolution and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute printed in part 1 of the report of the Committee on Rules accompanying this resolution. The amendment in the nature of a substitute shall be considered as read. No amendment to the amendment in the nature of a substitute shall be in order except the amendment printed in part 2 of the report of the Committee on Rules, which may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against the amendments printed in the report of the Committee on Rules are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from New York [Mr. SOLOMON], for the purpose of debate only, pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, I want to begin today by thanking Chairman BILL CLAY, ranking member JOHN MYERS, STENY HOYER, DAN BURTON, JERRY SOLOMON,

and TIM PENNY for their willingness to sit down and work together to help craft a fair and responsible compromise for this very important issue. The absolute deadline for implementation of this program is imminent and any further delay would likely mean the end of this initiative to reduce the Federal work force without major RIF's [Reductions-in-Force]. I am very appreciative of all their efforts to help bring this bill to the floor today.

Mr. Speaker, House Resolution 357 provides for consideration of the Federal Workforce Restructuring Act. The rule provides 1 hour of general debate equally divided and controlled by the chairman and ranking minority member of the Post Office and Civil Service Committee.

The rule makes in order as an original bill for purposes of amendment the Clay substitute printed in part 1 of the report to accompany the rule. The only amendment to the substitute made in order under the rule is the Penny/Burton amendment printed in part 2 of the report. The Penny/Burton amendment is debatable for 30 minutes.

The Penny-Burton amendment is considered as read, is not subject to amendment, and is not subject to a demand for a division of the question. All points of order are waived against the amendments printed in the report. Finally, the rule provides one motion to recommit with or without instructions.

In February 1993, President Clinton signed an Executive order directed at downsizing the Federal work force. Each agency with a work force of at least 100 full-time employees was required to achieve at least a 4 percent reduction in its civilian work force by the end of fiscal year 1995, with 10 percent of that total to come from the Senior Executive Service, GS-14 and GS-15 or their equivalents. These reductions, to the extent possible, were to be achieved through attrition and early-out programs. Additionally, Vice President GORE in his National Performance Review called for reducing the Federal work force by 12 percent or approximately 252,000 positions over the next 5 years. In an effort to help attain these goals, H.R. 3345 seeks to implement a system for offering governmentwide voluntary separation incentive payments to encourage Federal employees who may wish to retire early. The exact amount of the incentive payment would be the amount that a particular employee would receive for severance pay or \$25,000, whichever is less. The money would be paid in a lump sum after the employee's separation. The period must end before January 1, 1995. Money used to pay for these buyouts must come from the Agency's existing funding. Employees who take this separation payment may not be reemployed by the Federal Government for at least 2 years. Those who do return during that period must

repay the full amount received under this program. Additionally, agencies must contribute to the civil service retirement fund 9 percent of the final annual pay of each departing employee who is taking early retirements. In its initiative to reinvent and improve the Federal Government, H.R. 3345 sets up this procedure for Federal agencies to reduce full-time positions without the disruptive and costly reductions-in-force system that has been used in the past for cutting back Federal positions. The Department of Defense and the Central Intelligence Agency already have in place similar voluntary separation payment agreements. These agencies have found this program to be very successful and effective in reducing staff while still achieving the assignments of their respective organizations.

Mr. Speaker, H.R. 3345 is absolutely critical if we are to responsibly address the issue of reducing the Federal work force and meeting the goals for streamlining the Federal Government as proposed by the Clinton administration.

Enactment of this legislation is the most effective and efficient way to accomplish the target number of reducing Federal employment by 252,000. H.R. 3345 authorizes Federal agencies to offer up to \$25,000 in voluntary separation incentive payments to qualified Federal employees. Employees may either leave the Federal service entirely or, if qualified, retire early from Government services. This bill will allow for an orderly, agency-by-agency restructuring and reduction. Each individual agency will determine the appropriate divisions or components of that agency where the voluntary separation incentives will be offered.

Without this bill, it is inevitable that massive and arbitrary layoffs of Federal employees will be forthcoming. We must help avoid this disruption to Government services—and particularly the terrible toll on personnel that would occur with the activation of such [RIF's] reduction-in-force. This bill and this rule are both the result of countless hours of deliberation and negotiation with Members from both sides of the aisle working together to craft a responsible and fair compromise. I urge Members to support both the rule and the bill so we may move this legislation and begin an orderly process of addressing Federal personnel.

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

Mr. Speaker, the rule before us provides for the consideration of the Federal Workforce Restructuring Act of 1994, the so-called buyout bill. While I prefer an open rule on a bill like this, I appreciate the spirit of negotiation that was exemplified in the Committee on Rules last night.

Mr. Speaker, when the Committee on Rules began its consideration of this bill, I expressed reservations about the

bill on behalf of our Republican leader, the gentleman from Illinois [Mr. MICHEL]. I also pointed out several loopholes that had to be tightened if there were to be any Republican votes for it at all.

We heard testimony from the ranking Republican member of the Committee on Post Office and Civil Service, the gentleman from Indiana [Mr. MYERS] raising these same kinds of concerns.

Mr. Speaker, all too often, all we Republicans get in the Committee on Rules is a chance to talk. Many times our views are just shunted aside. But last night we were invited to negotiate a procedure for this legislation to be considered on the floor.

The bipartisan group that met in the office of my good friend, the gentleman from Massachusetts [Mr. MOAKLEY] during the hearing to sort out the details consisted of the chairman of the Committee on Post Office and Civil Service, the gentleman from Missouri [Mr. CLAY], the chairman of the Committee on Rules, the gentleman from Massachusetts [Mr. MOAKLEY], myself, the gentleman from Maryland [Mr. HOYER], the gentleman from Indiana [Mr. MYERS], the gentleman from Indiana [Mr. BURTON] and the gentleman from Minnesota [Mr. PENNY] as well as majority members of the Committee on Rules.

□ 1510

An amendment was crafted as a result of this bipartisan session to allay the concerns of many Members about this legislation. The amendment to be offered by the gentleman from Minnesota [Mr. PENNY] and the gentleman from Indiana [Mr. BURTON] which incorporates my own amendment, addresses these concerns. Due to the rushed procedure the House is employing to consider this legislation, Members should be familiar with the objectives raised to the bill and the provisions of the bipartisan amendment.

The amendment clearly does improve the bill. First, the bill does not adequately address the possibility of Federal employees taking the buyout and then coming back to work soon thereafter. I objected to that. I offered an amendment in the Committee on Rules to correct that problem.

Under the bill, as reported by the Committee on Post Office and Civil Service, any employee who returns to the job within 2 years after accepting the buyout must repay the amount which can be up to \$25,000. Now, the intent of the bill is to downsize the Federal Government. And if a Federal employee takes a buyout, he should not magically reappear in the job.

The bipartisan amendment states that if a Federal employee accepts the buyout and returns to work within 5 years, not just 2 years, but within 5 years, that Federal employee must repay the buyout.

This, it is hoped, will discourage employees from coming back and, therefore, negating the real reason for this bill.

The bill, as reported, provides a waiver for the repayment under certain circumstances. Under the Burton-Penny-Solomon amendments, the language of this provision is tightened in the hopes that it will be difficult for Federal workers to return to work and still keep the cash.

In order to further alleviate the concern of Members that this bill may create a revolving door for Government employees collecting buyouts and not actually leaving, the Penny-Burton amendment includes the requirement that the total number of employee positions in all agencies be reduced by one position for every employee who receives a buyout.

Mr. Speaker, another concern raised by our Republican leader, the gentleman from Illinois [Mr. MICHEL] related to the bill's failure to codify the reductions in Federal employment as promised by President Clinton. The Penny-Burton amendment made in order under the rule sets limits on the number of positions in the Federal Government for the next 6 years as determined by the Office of Management and Budget. This provision is crucial, if the American people hope to hold the President's feet to the fire on his pledge to reduce the Federal bureaucracy.

Mr. Speaker, the buyout concept is sweeping this Nation in the private sector, and it is only right because it treats long-term employees fairly. And the Federal Government is right to finally catch on. I think this is the way to go. I think we Republicans and Democrats alike ought to adopt this policy. Because of the overwhelming public sentiment, Republicans have stood ready to assist in enacting the Government reforms that were recommended by Vice President GORE in his national performance review last year.

This bill, properly amended by the gentleman from Indiana [Mr. BURTON] and the gentleman from Minnesota [Mr. PENNY] and myself, is an important first step in that process. Therefore, if the Penny-Burton-Solomon amendment passed, I would recommend a "yes" vote on the bill and ask every Republican to vote for it. If the amendment fails, however, I am going to be the first red "no" vote up there on the board, and I hope everybody then would vote against the bill.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I want to thank my friend, the gentleman from New York, and thank my colleague on the Committee on Appropriations as well as the ranking member of the

Committee on Post Office and Civil Service, the gentleman from Indiana [Mr. MYERS] and the gentleman from Massachusetts [Mr. MOAKLEY] for the incredible work they have done on this issue. I wanted to assure the gentleman from New York, I intend to support his amendment.

We have said we were going to do this. His amendment ensures that we are going to do it, and it is not a revolving door. I think that is fair, as the gentleman well knows. I think 252 is much too low a number, but that is the number we have decided on. It has passed this House, and I intend to support his amendment. And not only that, I intend to urge Members on our side to support the Penny-Burton-Solomon amendment.

Mr. SOLOMON. Mr. Speaker, let me just say to the gentleman from Maryland that he has done yeoman's work on behalf of the Federal employees in sticking up to a fair bill that would treat them fairly, and I commend the gentleman for it. It just goes to show, when both sides of the aisle get together and they work with a little comity, they can come out with a good product.

This is a good product. I commend the gentleman for all of his efforts, along with my friend, the gentleman

from Massachusetts [Mr. MOAKLEY] and others.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. Mr. Speaker, I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. Mr. Speaker, I thank the gentleman for yielding to me.

I join our friend, the gentleman from Maryland [Mr. HOYER] in thanking the committee for giving us a rule that we all can support. Often this year and last year I have not been able to support rules, where many years ago I never, ever voted against a rule. I thought every bill was entitled to be heard. But on this side, we feel like we sometimes have been denied the right to offer amendments.

I certainly want to thank our chairman, the gentleman from Massachusetts [Mr. MOAKLEY] and the gentleman from New York [Mr. SOLOMON] ranking member, and all members of the committee for giving us a rule and working late into yesterday afternoon and evening.

I realize that a lot of Members like to go home early, but I do compliment the committee for realizing the necessity of moving this as rapidly as we can, and I do thank the committee for a rule that we all can vote for.

Mr. SOLOMON. Mr. Speaker, the gentleman and his staff did yeoman's work

on this, too, to finally come up with a compromise, along with our Republican leader, the gentleman from Illinois [Mr. MICHEL]. The bill is going to work out to be a good bill for the taxpayers of this Nation and for the Federal employees.

Mr. Speaker, I include for the RECORD some printed material:

OPEN VERSUS RESTRICTIVE RULES 95TH-103D CONG.

Congress (years)	Total rules granted ¹	Open rules		Restrictive rules	
		Number	Percent ²	Number	Percent ³
95th (1977-78)	211	179	85	32	15
96th (1979-80)	214	161	75	53	25
97th (1981-82)	120	90	75	30	25
98th (1983-84)	155	105	68	50	32
99th (1985-86)	115	65	57	50	43
100th (1987-88)	123	66	54	57	46
101st (1989-90)	104	47	45	57	55
102d (1991-92)	109	37	34	72	66
103d (1993-94)	56	12	21	44	79

¹Total rules counted are all order of business resolutions reported from the Rules Committee which provide for the initial consideration of legislation, except rules on appropriations bills which only waive points of order. Original jurisdiction measures reported as privileged are also not counted.

²Open rules are those which permit any Member to offer any germane amendment to a measure so long as it is otherwise in compliance with the rules of the House. The parenthetical percentages are open rules as a percent of total rules granted.

³Restrictive rules are those which limit the number of amendments which can be offered, and include so-called modified open and modified closed rules, as well as completely closed rule, and rules providing for consideration in the House as opposed to the Committee of the Whole. The parenthetical percentages are restrictive rules as a percent of total rules granted.

Sources: "Rules Committee Calendars & Surveys of Activities," 95th-102d Cong.; "Notices of Action Taken," Committee on Rules, 103d Cong., through Feb. 10, 1994.

OPEN VERSUS RESTRICTIVE RULES: 103D CONG.

Rule number date reported	Rule type	Bill number and subject	Amendments submitted	Amendments allowed	Disposition of rule and date
H. Res. 58, Feb. 2, 1993	MC	H.R. 1: Family and medical leave	30 (D-5; R-25)	3 (D-0; R-3)	PQ. 246-176. A: 259-164. (Feb. 3, 1993).
H. Res. 59, Feb. 3, 1993	MC	H.R. 2: National Voter Registration Act	19 (D-1; R-18)	1 (D-0; R-1)	PQ. 248-171. A: 249-170. (Feb. 4, 1993).
H. Res. 103, Feb. 23, 1993	C	H.R. 920: Unemployment compensation	7 (D-2; R-5)	0 (D-0; R-0)	PQ. 243-172. A: 237-178. (Feb. 24, 1993).
H. Res. 106, Mar. 2, 1993	MC	H.R. 20: Hatch Act amendments	7 (D-1; R-8)	3 (D-0; R-3)	PQ. 248-166. A: 249-163. (Mar. 3, 1993).
H. Res. 119, Mar. 9, 1993	MC	H.R. 4: NIH Revitalization Act of 1993	13 (D-4; R-9)	8 (D-3; R-5)	PQ. 247-170. A: 248-170. (Mar. 10, 1993).
H. Res. 132, Mar. 17, 1993	MC	H.R. 1335: Emergency supplemental Appropriations	37 (D-8; R-29)	1 (not submitted) (D-1; R-0)	A: 240-185. (Mar. 18, 1993).
H. Res. 133, Mar. 17, 1993	MC	H. Con. Res. 64: Budget resolution	14 (D-2; R-12)	4 (1-D not submitted) (D-2; R-2)	PQ. 250-172. A: 251-172. (Mar. 18, 1993).
H. Res. 138, Mar. 23, 1993	MC	H.R. 670: Family planning amendments	20 (D-8; R-12)	9 (D-4; R-5)	PQ. 252-164. A: 247-169. (Mar. 24, 1993).
H. Res. 147, Mar. 31, 1993	C	H.R. 1430: Increase Public debt limit	6 (D-1; R-5)	0 (D-0; R-0)	PQ. 244-168. A: 242-170. (Apr. 1, 1993).
H. Res. 149, Apr. 1, 1993	MC	H.R. 1578: Expedited Rescission Act of 1993	8 (D-1; R-7)	3 (D-1; R-2)	A: 212-208. (Apr. 28, 1993).
H. Res. 164, May 4, 1993	O	H.R. 820: Nate Competitiveness Act	NA	NA	A: Voice Vote. (May 5, 1993).
H. Res. 171, May 18, 1993	O	H.R. 873: Gallatin Range Act of 1993	NA	NA	A: Voice Vote. (May 20, 1993).
H. Res. 172, May 18, 1993	O	H.R. 1159: Passenger Vessel Safety Act	NA	NA	A: 308-0 (May 24, 1993).
H. Res. 173, May 18, 1993	MC	S.J. Res. 45: United States forces in Somalia	6 (D-1; R-5)	6 (D-1; R-5)	A: Voice Vote. (May 20, 1993).
H. Res. 183, May 25, 1993	O	H.R. 2244: 2d supplemental appropriations	NA	NA	A: 251-174. (May 26, 1993).
H. Res. 186, May 27, 1993	MC	H.R. 2264: Omnibus budget reconciliation	51 (D-19; R-32)	8 (D-7; R-1)	PQ. 252-178. A: 236-194 (May 27, 1993).
H. Res. 192, June 9, 1993	MC	H.R. 2348: Legislative branch appropriations	50 (D-6; R-44)	6 (D-3; R-3)	PQ. 240-177. A: 226-185. (June 10, 1993).
H. Res. 193, June 10, 1993	MC	H.R. 2200: NASA authorization	NA	NA	A: Voice Vote. (June 14, 1993).
H. Res. 195, June 14, 1993	MC	H.R. 5: Sinker replacement	7 (D-4; R-3)	2 (D-1; R-1)	A: 244-176. (June 15, 1993).
H. Res. 197, June 15, 1993	MO	H.R. 2333: State Department. H.F. 2404: Foreign aid	53 (D-20; R-33)	27 (D-12; R-15)	A: 294-129. (June 16, 1993).
H. Res. 199, June 16, 1993	C	H.R. 1876: Ext. of "Fast Track"	NA	NA	A: Voice Vote. (June 22, 1993).
H. Res. 200, June 16, 1993	MC	H.R. 2295: Foreign operations appropriations	33 (D-11; R-22)	5 (D-1; R-4)	A: 263-160. (June 17, 1993).
H. Res. 201, June 17, 1993	O	H.R. 2403: Treasury-postal appropriations	NA	NA	A: Voice Vote. (June 17, 1993).
H. Res. 203, June 22, 1993	MO	H.R. 2445: Energy and Water appropriations	NA	NA	A: Voice Vote. (June 23, 1993).
H. Res. 206, June 23, 1993	O	H.R. 2150: Coast Guard authorization	NA	NA	A: 401-0. (July 30, 1993).
H. Res. 217, July 14, 1993	MO	H.R. 2010: National Service Trust Act	NA	NA	A: 261-164. (July 21, 1993).
H. Res. 218, July 20, 1993	O	H.R. 2530: BLM authorization, fiscal year 1994-95	NA	NA	
H. Res. 220, July 21, 1993	MC	H.R. 2667: Disaster assistance supplemental	14 (D-8; R-6)	2 (D-2; R-0)	PQ. 245-178. F: 205-216. (July 22, 1993).
H. Res. 226, July 23, 1993	MC	H.R. 2667: Disaster assistance supplemental	15 (D-8; R-7)	2 (D-2; R-0)	A: 224-205. (July 27, 1993).
H. Res. 229, July 28, 1993	MO	H.R. 2330: Intelligence Authority Act, fiscal year 1994	NA	NA	A: Voice Vote. (Aug. 3, 1993).
H. Res. 230, July 28, 1993	O	H.R. 1964: Maritime Administration authority	NA	NA	A: Voice Vote. (July 29, 1993).
H. Res. 246, Aug. 6, 1993	MO	H.R. 2401: National Defense authority	149 (D-109; R-40)	NA	A: 246-172. (Sept. 8, 1993).
H. Res. 248, Sept. 9, 1993	MO	H.R. 2401: National Defense authorization	NA	NA	PQ. 237-169. A: 234-169. (Sept. 13, 1993).
H. Res. 250, Sept. 13, 1993	MC	H.R. 1340: RTC Completion Act	12 (D-3; R-9)	1 (D-1; R-0)	A: 213-191-1. (Sept. 14, 1993).
H. Res. 254, Sept. 22, 1993	MO	H.R. 2401: National Defense authorization	NA	91 (D-67; R-24)	A: 241-182. (Sept. 28, 1993).
H. Res. 262, Sept. 28, 1993	O	H.R. 1845: National Biological Survey Act	NA	NA	A: 238-188 (10/06/93).
H. Res. 264, Sept. 28, 1993	MC	H.R. 2351: Arts, humanities, museums	7 (D-0; R-7)	3 (D-0; R-3)	PQ. 240-185. A: 225-195. (Oct. 14, 1993).
H. Res. 265, Sept. 29, 1993	MC	H.R. 3167: Unemployment compensation amendments	3 (D-1; R-2)	3 (D-1; R-1)	A: 239-150. (Oct. 15, 1993).
H. Res. 269, Oct. 6, 1993	MC	H.R. 2739: Aviation infrastructure investment	NA	NA	A: Voice Vote. (Oct. 7, 1993).
H. Res. 273, Oct. 12, 1993	MO	H.R. 3167: Unemployment compensation amendments	3 (D-1; R-2)	2 (D-1; R-1)	PQ. 235-187. F: 149-254. (Oct. 14, 1993).
H. Res. 274, Oct. 12, 1993	MC	H.R. 1804: Goals 2000 Educate America Act	15 (D-7; R-7; 1-1)	10 (D-7; R-3)	A: Voice Vote. (Oct. 13, 1993).
H. Res. 282, Oct. 20, 1993	C	H.J. Res. 281: Continuing appropriations through Oct. 28, 1993	NA	NA	A: Voice Vote. (Oct. 21, 1993).
H. Res. 286, Oct. 27, 1993	O	H.R. 334: Lumber Recognition Act	NA	NA	A: Voice Vote. (Oct. 28, 1993).
H. Res. 287, Oct. 27, 1993	C	H.J. Res. 283: Continuing appropriations resolution	1 (D-0; R-0)	0	A: Voice Vote. (Nov. 3, 1993).
H. Res. 289, Oct. 28, 1993	O	H.R. 2151: Maritime Security Act of 1993	NA	NA	A: 252-170. (Oct. 28, 1993).
H. Res. 293, Nov. 4, 1993	MC	H. Con. Res. 170: Troop withdrawal Somalia	NA	NA	A: Voice Vote. (Nov. 3, 1993).
H. Res. 299, Nov. 8, 1993	MO	H.R. 1036: Employee Retirement Act-1993	2 (D-1; R-1)	NA	A: 390-8. (Nov. 8, 1993).
H. Res. 302, Nov. 9, 1993	MC	H.R. 1025: Brady handgun bill	17 (D-6; R-11)	4 (D-1; R-3)	A: Voice Vote. (Nov. 9, 1993).
H. Res. 303, Nov. 9, 1993	O	H.R. 322: Mineral exploration	NA	NA	A: 238-182. (Nov. 10, 1993).
H. Res. 304, Nov. 9, 1993	C	H.J. Res. 288: Further CR, FY 1994	NA	NA	A: Voice Vote. (Nov. 10, 1993).
H. Res. 312, Nov. 17, 1993	MC	H.R. 3425: EPA Cabinet Status	27 (D-8; R-19)	9 (D-1; R-8)	F: 191-227. (Feb. 2, 1994).
H. Res. 313, Nov. 17, 1993	MC	H.R. 796: Freedom Access to Clinics	15 (D-9; R-6)	4 (D-1; R-3)	A: 233-192. (Nov. 18, 1993).
H. Res. 314, Nov. 17, 1993	MC	H.R. 3351: Alt Methods Young Offenders	21 (D-7; R-14)	6 (D-3; R-3)	A: 238-179. (Nov. 19, 1993).
H. Res. 316, Nov. 19, 1993	C	H.R. 51: D.C. statehood bill	1 (D-1; R-0)	NA	A: 252-172. (Nov. 20, 1993).

OPEN VERSUS RESTRICTIVE RULES: 103D CONG.—Continued

Rule number date reported	Rule type	Bill number and subject	Amendments submitted	Amendments allowed	Disposition of rule and date
H. Res. 319, Nov. 20, 1993	MC	H.R. 3: Campaign Finance Reform	35 (D-6; R-29)	1 (D-0; R-1)	A. 220-207 (Nov. 21, 1993)
H. Res. 320, Nov. 20, 1993	MC	H.R. 3400: Reinventing Government	34 (D-15; R-19)	3 (D-3; R-0)	A. 247-183 (Nov. 22, 1993)
H. Res. 336, Feb. 2, 1994	MC	H.R. 3759: Emergency Supplemental Appropriations	14 (D-8; R-5; I-1)	5 (D-3; R-2)	PQ: 244-168, A. 342-65, (Feb. 3, 1994)
H. Res. 352, Feb. 8, 1994	MC	H.R. 811: Independent Counsel Act	27 (D-8; R-19)	10 (D-4; R-6)	PQ: 249-174, A. 242-174, (Feb. 9, 1994)
H. Res. 357, Feb. 9, 1994	MC	H.R. 3345: Federal Workforce Restructuring	3 (D-2; R-1)	2 (D-2; R-0)	

Note.—Code: C-Closed; MC-Modified closed; MO-Modified open; O-Open; D-Democrat; R-Republican; PQ: Previous question; A-Adopted; F-Failed

Mr. Speaker, I reserve the balance of my time.

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

I thank the gentleman from Maryland [Mr. HOYER] for allowing this dialog to take place on the floor. It sounds like resurrection day. I just hope that Members will look at this tape, and it will remind us of what we can do, working jointly together, to get a package through that really affects the entire United States.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SOLOMON. Mr. Speaker, it just so happens that I just did an interview with a member of the press in which I had some accolades to say about my good friend, the gentleman from Massachusetts [Mr. MOAKLEY]. He has lived up to everything I just told the press.

Mr. Speaker, I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

FEDERAL WORK FORCE REDUCTION

The SPEAKER pro tempore (Mr. CARDIN). Pursuant to House Resolution 357 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3345.

The Chair designates the gentleman from Virginia [Mr. MORAN] as Chairman of the Committee of the Whole and requests the gentleman from West Virginia [Mr. RAHALL] to assume the chair temporarily.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3345) to amend title 5, United States Code, to eliminate certain restrictions on employee training; to provide temporary authority to agencies relating to voluntary separation incentive payments; and for other purposes, with Mr. RAHALL, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Missouri [Mr. CLAY] will be recognized for 30 minutes, and the gentleman from Indiana [Mr. MYERS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Missouri [Mr. CLAY].

Mr. CLAY. Mr. Chairman, the administration has proposed an overall reduction in the number of Federal workers of 252,000. Even apart from the administration's plans for reducing the Federal work force, appropriations already enacted by the Congress will necessitate reductions beyond those that can be accommodated by normal attrition in a number of agencies. Last week, the subcommittee on the Civil Service and the Subcommittee on Compensation and Employee Benefits held a hearing to examine the need for imminent work force reductions. Among the witnesses were the Secretaries of the Departments of Agriculture, Interior, and Transportation. All three Departments face work force reductions in this fiscal year that are likely to exceed normal attrition. Additionally, the Office of Personnel Management, the General Services Administration, and the National Aeronautics and Space Administration are facing the necessity of conducting involuntary reductions in force unless they receive buy-out authority this year.

H.R. 3345 provides essential authority to enable agencies to rationally and humanely reduce their work force. In the absence of authority to offer voluntary separation incentives, there will be involuntary reductions in force this year. As a consequence, senior employees will bump employees with less seniority. Agencies will incur severance and unemployment compensation costs. Higher paid employees will end up performing work formerly done by lower paid employees and overall agency salary levels will increase. Agencies will be unable to target reductions to either retain key individuals or preserve work force diversity. As bumping occurs, resulting dislocations will spread within the agency to the detriment of program administration. Hardworking Americans will involuntarily lose their jobs through no fault of their own.

None of this need occur. Last Congress, the Defense Department was authorized to offer employees voluntary separation incentives. In fiscal year 1993, the Department of Defense was able to reduce its work force by almost 70,000 employees. At the beginning of

the year, Defense anticipated it would have to involuntarily separate 35,000 workers. Only 2,000 employees were involuntarily separated. Through the use of its buyout authority, the Department induced the voluntary separation of 32,000 employees. It thereby avoided paying severance and unemployment compensation and the salary inflation accompanying RIF's. More importantly, the reduction was achieved in a planned and controlled manner that minimized the impact on agency morale, work force diversity, and the administration of national defense programs. Most importantly, this reduction was achieved in a cost-effective manner that minimized the hardships American workers would otherwise have faced.

We cannot further delay the extension of voluntary separation incentive authority. Voluntary separation incentives in this fiscal year must be paid out of an agency's current appropriation. Unless the agencies are able to act quickly, they will not be able to offset the cost of separation incentives through salary reductions, and will be unable to avoid involuntary reductions-in-force in fiscal year 1993 even if the voluntary separation incentive authorization is extended.

H.R. 3345 authorizes agencies to offer a separation incentive bonus equal to the lesser of \$25,000 or the amount of severance an employee would otherwise be entitled to receive. In addition, the legislation provides that agencies shall pay an additional 9 percent to the civil service retirement fund for those Civil Service Retirement System participants who, as a result of accepting a separation incentive, take early retirement. Finally, it provides that the authority to offer voluntary separation incentives, pursuant to this legislation, expires at the end of this calendar year.

An amendment will be offered by Mr. PENNY and Mr. BURTON to reduce the overall Federal work force by 252,000; to provide that anyone receiving a separation incentive who returns to government service within 5 years must payback the entire bonus; and to provide that overall Federal employment ceilings will be reduced on a one-for-one basis for each separation incentive that is accepted. I support the amendment. Adoption of the amendment will both ensure that the reduction that separation incentives are intended to facilitate does occur and will also further ensure that voluntary separation

incentives are used only for the purpose of reducing the size of the government.

I want to commend the Members on both sides of the aisle who have made it possible to bring forward a responsible bill that will significantly reduce the Federal deficit. The chairman and ranking member of the Rules Committee, Mr. MOAKLEY and Mr. SOLOMON, the authors of the amendment, Mr. PENNY and Mr. BURTON, the chairman of the Budget Committee, Mr. SABO, the minority leader, Mr. MICHEL, and the chairman of the Democratic caucus, Mr. HOYER, have all played an exceptional role in forging a bipartisan consensus that allows us to move forward on a very urgent matter. The ranking member of the Post Office and Civil Service Committee, Mr. MYERS, the subcommittee chairs, Mr. MCCLOSKEY and Ms. NORTON, and the members of the Post Office and Civil Service Committee have been instrumental, not only in the development of this legislation, but also in the development of the legislation that has already saved the jobs of 33,000 Defense Department employees at the same time the Department has reduced overall employment by 70,000.

Mr. Chairman, enactment of H.R. 3345 will provide a proven, efficient, essential tool to reduce the size of the government. I urge my colleagues to support the Penny-Burton amendment and I urge my colleagues to support H.R. 3345 on final passage.

Mr. CLAY. Mr. Chairman, I yield myself 5 minutes.

□ 1520

Mr. Chairman, I reserve the balance of my time.

Mr. MYERS of Indiana. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I certainly support the thrust, the intention, the direction that we are talking about here, reducing in force the number of employees for the Federal Government. Nothing new about that. We have heard for years from our constituents that most of the agencies in the Federal Government are bloated. This may be true in some instances, but in some it is not. We all recognize the need to reduce the number of employees, thereby saving the taxpayers of this country unneeded expenditures.

The way to go about it is where we have run into a difficulty through the years. We can do it through normal attrition if we have an agreement that they will not be replaced. There has been some of that going on in the last several administrations. There have been people who have retired, who have left employment, and all of them have not been replaced.

However, there is another way. We can just simply fire them, RIF, kick them out. But that is not fair to the

Federal employees, many of whom, most of whom, have dedicated their lives, and some have worked many, many years, and maybe just lack a few years in completing their service. To force them out of employ because we have decided that we no longer need them is not fair to those individuals who have given so much of their lives to the service of their Federal Government.

There is a more reasonable way, a more justifiable way, a more equitable way to both the taxpayer as well as to the employee. That is this procedure that we are using today to give them some incentive to leave their employment. When this bill originally passed out of our committee last year, I did not support it, even though, again, the concept I completely agree with. I thought it had some problems, most of which have been either addressed in the legislation now as it has been refined, or it has been, at least through the amendments, I believe there is an agreement we will accept. I think we have accepted the amendments, or I understand we are going to, which will remedy many of the reasons that I could not support it last year, even though, again, I certainly agreed with the concept of what we were intending to do.

One of these which concerned me was were we really serious about reducing the number of employees. As an example, we have a target now of 252,000. The way I interpreted the legislation originally passed out last year, and as added to 3400, then it was taken out of 3400, it was that an employee could leave the employ, get \$25,000, but that person could be replaced next week; that slot, that position, could be replaced by a new employee, but even worse than that, in 2 years and 1 day come back in to pocket the \$25,000 and come back into the employ. I think we have eliminated that particular problem.

Another problem that I was concerned about is that the agencies could reduce this individual, then bring that same person back in under contract, working on a contract. I believe the amendment we are discussing now will take care of that, so we are now being serious. We are going to reduce a number of employees, we are going to reduce the obligation that the taxpayers have to support all these employees.

I realize the gentleman in the chair right now and the gentleman from Maryland [Mr. HOYER], whom I certainly thank, I congratulate, because I do not know of anyone who worked any harder than the gentleman from Maryland, STENY HOYER, in bringing this about, and I understand that both of the gentlemen, and others here, the gentleman from Virginia [Mr. WOLF] have a lot of Federal employees. It is a real, real problem that these gentlemen had with their own constituency,

but they were taxpayers, too. I believe now this is the most fair way we have addressed this problem.

One other reservation I had, and I do not know if we are ever going to correct this, I was concerned that there are employees in the various agencies of the Federal Government that were going to retire anyway, next year or the year after next, and we are giving them the incentive of \$25,000, which then amounts to a bonus, but in looking at what the Defense Department and a few other agencies would do who have already started exercising this, I am told that has not apparently been a problem, so I am willing to set that aside. I do not know how to address it anyway to correct the problem, to save the taxpayers that \$25,000, if a person is going to retire anyway, but I am told that the average benefit which we provide up to \$25,000, the actual benefit in the Department of Defense has been about \$18,000 for those retirees, which have been about 50,000 they have encouraged to retire early.

I think on balance, as we look at this legislation, while I think it will accomplish what we need to do, I think all of the differences I had with the amendments that are adopted will be resolved, so I am happy today to be a part of this process. We need to get moving with it.

Again, I congratulate the chairman, our own chairman, who worked so hard on this, and the gentleman from Maryland, STENY HOYER, who worked so hard on this to bring this to reality, so we can get started on this issue of reducing Federal employees as rapidly as we can, doing it fairly, which I think we all have an obligation to those dedicated Federal employees. I believe this is the fairest way we can go about it.

I thank all of those who have worked so hard to bring this day about.

Mr. Chairman, I reserve the balance of my time.

□ 1530

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana [Mr. MCCLOSKEY].

Mr. MCCLOSKEY. Mr. Chairman, I thank the gentleman for yielding the time. As others have mentioned, I surely do want to heartily congratulate Chairman CLAY as well as the gentleman from Maryland [Mr. HOYER] and particularly the gentlewoman from the District of Columbia, Ms. ELEANOR HOLMES NORTON, who got a major part of this bill out of subcommittee, and also the gracious and bipartisan leadership for the minority leadership, particularly the gentleman from New York [Mr. SOLOMON] and the gentleman from Indiana [Mr. MYERS]. I might say that my Hoosier colleague, DAN BURTON, made a special effort in this regard last night.

Total chaos will prevail in the Federal Government if Congress does not

pass this legislation. Last week ELEANOR HOLMES NORTON, chair of the Subcommittee on Compensation and Employee Benefits, and I conducted a hearing on the restructuring of the Federal Government under the reinventing government program. We had some three Cabinet Secretaries testifying at once, almost a first, and they were followed by numerous other very high-ranking Federal administrators and others who all testified that they were unanimous, and indeed very strong that if this legislation does not pass the impact on the Federal workforce would be devastating.

For those of my colleagues who are unclear about RIF's, RIF's are another term for layoffs. They are used to reduce Federal employment by allowing more senior employees to bump more junior employees from their positions. If this occurs, there will be chaos.

Those who are ultimately laid off receive severance pay, and extension of health benefits for 18 months. Typically these employees are women, minorities and disabled employees.

RIF's are time-consuming, costly, demoralizing to the work force, provide little benefit to an agency or an employee, hamper productivity, and wreak havoc on the diversity of the workplace.

It seems that almost every Member of Congress, both majority and minority, have made statements calling for reinventing government and eliminating mid-level bureaucrats, thereby saving billions of dollars, and there are significant savings as documented by the CBO over 5 years and beyond, far exceeding their initial costs. Savings are estimated at more than \$110,000 per job eliminated over 5 years and \$980,000 per position abolished over 30 years.

Without this buyout legislation, reinventing government will be a free-for-all, and in all likelihood productivity will be hurt, and agencies will not be able to reduce their numbers of mid-level managers. We must pass this legislation today and expedite the signing.

I urge my colleagues to support this legislation. If we do not, there will be problems that we can hardly believe.

Mr. CLAY. Mr. Chairman, I yield 1 minute to the gentlewoman from Virginia [Mrs. BYRNE].

Mrs. BYRNE. Mr. Chairman, I rise to express my support for the Federal Workforce Restructuring Act of 1993.

Congress likes to talk about downsizing as an abstract mathematical exercise. But for Federal employees, the threat of massive reductions is very real.

Over the past few months, I have spoken with hundreds of Federal employees in my district who don't know whether they will have a job a year from now.

They express their frustration at not being in charge of their own destiny. They tell me that without buy-outs,

they are caught in a no-win situation—retire now into an uncertain job market or risk being the victim of downsizing.

Buy-outs are clearly the most humane way to downsize. All the other options cost more money, disrupt lives and leave the Government unprepared for the challenges that lie ahead.

Buy-outs allow agencies to thin out middle management while preserving staff on the front lines. Buy-outs create a healthy mix of young people, with new ideas to move us into the future, alongside senior staff with corporate memory to help us build upon the successes of the past.

Most importantly, buy-outs will not place the downsizing burden on women, minorities and the disabled.

We in Congress sometimes think that our decisions do not matter to the average person.

I can assure you this decision matters to Federal workers who want to pay for their children's education or refinance a mortgage or purchase a car, but do not know whether they will get a retirement incentive this year or be laid off.

Federal employees want to plan for the future, and we owe it to them to pass this bill and give them a choice in their career plans.

Seventy-nine Fortune 100 companies offer their employees buy-outs. If we want to downsize the Government like the private sector has, then we should give them the same tools used by corporate America.

I urge a yes vote on H.R. 3345.

Mr. CLAY. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Chairman, I thank the gentleman for yielding the time. I am pleased to follow my colleague from Virginia [Mrs. BYRNE], who also was very active on this. And I am pleased to be here in the Chamber with the gentleman from Virginia, [Mr. MORAN], who is chairing the committee, and who I know also did a lot of work on this issue. And I want to thank my friend, the gentleman from Indiana [Mr. JOHN MYERS]. I have said it before, but I want to repeat it. He is one of the most decent, honest Members of this House. He is a credit to democracy in the sense that he comes here and, as he said, he had some concerns and some disagreements, but he is always willing to honestly discuss those disagreements and try to reach a consensus so that we can move forward. And I want to particularly thank the chairman of this committee, the gentleman from Missouri [Mr. BILL CLAY], my friend, who has been the chairman of this committee for some time now. I served on the committee when he was a member, of course, and he has always been in the forefront of legislation for rational personnel policy for the Federal Government.

This bill accomplishes that and I am pleased to support it. As I said, I am going to support as well the Penny-Burton-Solomon amendment which the gentleman from Indiana [Mr. MYERS], was also very much involved in formulating, to make sure that we do what we are saying we are doing. This will be the legislation which will reduce by 252,000. As I said earlier, that would not have been my figure. I am not sure that that necessarily is the figure that I would have chosen.

Downsizing is clearly important, and we are going to accomplish that objective. This does it in as rational a fashion as we can possibly effect, I think. And I thank the chairman for all his work and leadership, and also thank the gentleman from Indiana [Mr. MYERS], for facilitating us getting to this point.

Mr. Chairman, I rise today to ask my colleagues to support H.R. 3345 on the floor today. I also urge Members to vote in favor of the amendment to be offered by Mr. PENNY—which will once and for all put into law the real reduction of 252,000 Federal positions.

This matter is of critical importance. I do not say that lightly. We are all in agreement that we will downsize the Federal Government. What this bill does is ensure that these reductions happen responsibly and without jeopardizing services our constituents demand. Without this bill, there is no question that there will be reductions-in-force this year, and very likely next year as well. RIF's cannot be targeted toward non-productive sectors of the Government. RIF's do not take out fat.

They are a meat ax approach that kicks off an endless round of bumping—where higher paid workers bump lower paid ones out the door—and the taxpayers end up paying a higher paid worker to do a lower paid worker's job.

The bottom line is simple—RIF's are more expensive, and they are far less efficient. What you have left when they are done is a mish-mash Government that may not have the skill mix it needs to deliver essential services to the public.

Is that a risk we are willing to place on the people in Los Angeles, or wherever the next disaster strikes?

RIF's also irreparably damage the morale of the remaining work force.

Buy-out authority is an alternative that works. We know that. It has worked at DOD and CIA. At DOD last year, 30,000 people took the buy-out option, another 34,000 retired willingly without a buy-out and only 4,000 employees had to be rifled.

Without buy-out, DOD would have had to RIF 30,000 people. And chaos is what would have resulted.

But most importantly, buy-out authority allows managers to target where you apply reductions. Everyone agrees that the middle management layer is where reductions would be most productive—and where we can save the most money. Agencies can target that level with buy-out authority and achieve greater efficiencies. They cannot with RIF authority.

This legislation makes sense. As the policy arm of this Government, we also serve as the

employer of our Federal work force. Simple fairness and basic good management require us to treat our work force sensibly and with dignity. This is a management tool that works. It has worked for the private sector and it has worked for Government. I urge my colleagues to adopt this legislation and give to the President the ability to bring about a streamlined, efficient and effective Federal work force.

Mr. MYERS of Indiana. Mr. Chairman, I yield myself such time as I may consume to thank our colleague from Maryland for those very kind words. There are a lot of times when we do have disagreements, but it is always an honest disagreement and nothing that cannot be worked out if we all put our shoulders to the wheel and our heads to the issue. We can do that, and this is certainly an example where we did not have any real serious disagreements. There were differences in the numbers between OMB or CBO. All along I thought that this was not an issue that we should fall apart on, that we could work that out later.

So we had some disagreements along the line, but they were not insurmountable as proven by the fact that we are now able to bring this bill to the floor.

There are a lot of people to thank today, and certainly our staff on both sides, the majority and the minority, worked so hard also behind the scenes. But I again do not think that anyone worked any harder than the gentleman from Maryland, [Mr. HOYER] to make sure that this became a reality. So I thank the gentleman very much.

Mr. Chairman, I yield 5 minutes to the gentlewoman from Maryland [Mrs. MORELLA], another Member who certainly has a lot of Federal employees and who has worked very hard on this as far as way back last year when we were trying to resolve the differences here.

Mrs. MORELLA. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, as a member of the Committee on Post Office and Civil Service, I strongly urge my colleagues to support the Federal voluntary separation incentive program—also called the buy-out bill.

Though the term "buy-out" sounds negative, the purpose of this legislation is to streamline Government. Reduction of personnel can be done by voluntary separation or involuntary separation. The voluntary buy-out option before us is the fiscally responsible way to achieve the long-term savings. Involuntary separations are costly and do not separate employees and positions which are in surplus. Involuntary separations retain the most senior employees and move these employees into lower positions at the same pay level they were receiving when the job was eliminated. It then bumps out younger, more recently hired employees.

Mr. Chairman, we all represent Federal employees. Separations, whether voluntary or involuntary, may affect people in every congressional district. Rightsizing can be accomplished in the most compassionate manner by utilizing the voluntary separation incentive program. In fact, this method has been used successfully in the private sector. We have also seen positive results in the Federal sector after Congress authorized the voluntary separation incentive program for downsizing the Department of Defense and the General Accounting Office, and the Central Intelligence Agency.

I congratulate Members on both sides of the aisle for reaching an agreement on this legislation and again, Mr. Chairman, I urge swift passage of this buy-out proposal.

□ 1540

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. Mr. Chairman, I thank the distinguished chairman for yielding me this time as well as the distinguished chairman of the Appropriations Subcommittee in the Speaker's chair.

I want to make a point perhaps in somewhat blunter fashion than has been expressed, but I think it is important to make the point that so many Federal employees are aware of.

It is not responsible policy, in my opinion, to decide to eliminate a quarter of a million Federal employees and to save \$22 billion without first identifying what functions within the Federal Government are expendable, what programs can be consolidated, how are you going to achieve this reduction. Because the fact is that the people who are going to leave Federal employment have no correlation to the functions that are expendable.

However, what I think is folly would turn into travesty if we were not to pass this legislation. Because what will happen if we do not pass this legislation is that people in the middle management, higher priced positions are going to wind up bumping people below them. You can have situations where you will have scientists driving fork trucks because they have the opportunity to bump all the way down to the point where you have the last person hired at the lowest salary, and that person is the most vulnerable.

They are the ones who are going to lose their jobs, and that, of course, has no correlation to the functions that we can afford to lose within the Federal Government.

This bill is a necessity. We should not have been put into this situation, in my opinion, and I know that there are many colleagues who share that, particularly from the Washington Metropolitan Area.

I regret that we are in this situation. But I applaud my colleagues for at

least trying to make the best out of a bad situation.

Mr. MYERS of Indiana. Mr. Chairman, I yield 5 minutes to the gentleman from Indiana [Mr. BURTON], another colleague on the committee, a very hardworking Member.

Mr. BURTON of Indiana. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I had some reservations about this initially because the initial cost is going to be something like \$519 million. Initially there was no guarantee that we were really going to reduce the work force, because even though we were going to let people buy out, we could have in another area of Government hired somebody else to replace them.

But my colleagues on both the Democrat and Republican side had a spirit of cooperation on this bill, and I want to thank the chairman, the gentleman from Missouri [Mr. CLAY], for his cooperation and everybody else. Because they have agreed to the Penny-Burton amendment which will save for every one employee that buys out there will be a reduction in the Federal work force of one. So what that means over the course of the next few years is there will be thousands and thousands fewer Federal employees which means that the taxpayers over the long haul will save about \$20 billion.

So this is a step in the right direction as far as reducing the size and cost of the Federal Government. I want to compliment our committee on this.

In addition to that, there was some question about somebody taking a buyout and then coming back in a short period of time and going to another job in the Federal Government. We have an amendment which is going to put a 5-year requirement on this that you cannot come back within 5 years without paying back the retirement buyout that you took. This is a guarantee, I think, that will again save the taxpayers a lot of money.

Now in the event where there is a critical need, for instance, you may have a nuclear scientist, that nuclear scientist, if it is a special case, can come back into the Federal Government without this penalty, but that is the exception, the vast exception rather than the rule.

I would just like to say to my colleagues that I think this is a quantum leap in the right direction. I am so happy that it is a bipartisan effort, and I wish that we could do more of this in the House, working together for the good of the country. If we could put partisan politics aside more often and really get down to the task of reducing the size of Government and cutting the work force in a way that is still efficient, I think it would be great for this country, because we have huge deficit problems where they have to be dealt with, and if we deal with them respon-

sibly like we are doing today, I think we can get this budget deficit under control and have a good economic future for the entire country.

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from Minnesota [Mr. SABO], the distinguished chairman of the Committee on the Budget, a Member who has been very helpful to us in putting this compromise piece of legislation together.

Mr. SABO. Mr. Chairman, I rise in strong support of this bill. It accomplishes lots of good things in a responsible fashion.

I rise in strong support of H.R. 3345, the Federal Workforce Restructuring Act. This bill is essential to implementing President Clinton's plans to reduce Federal personnel and restructure the Government.

Under this bill, Federal agencies would be able to offer targeted incentives to encourage workers in certain offices or occupations to retire or resign. Without the bill, agencies would be forced to carry out their downsizing through layoffs—a process not only harmful to the workers involved but also very costly and disruptive to the Government.

As chairman of the Budget Committee, let me say a few words about the financial costs and benefits of H.R. 3345. While this bill does have some short-term costs, it also produces substantial savings in both the short run and the long run.

First, the buyout payments themselves are not a new or additional cost for the Government. Federal agencies will be required to absorb the cost of these payments out of their regular personnel appropriations. This bill does not provide any extra funds for buyouts.

The only cost increases produced by the bill come in the Federal retirement system. These are more than offset by later savings in that same system.

The cost increases occur because some of the workers who accept the buyouts will retire and start to draw their pensions earlier than they would have. These costs are only short-term because the pensions received by these workers will be lower throughout their lifetimes than the pensions they would have received if they stayed on the job longer. Therefore, according to the Congressional Budget Office, the buyout bill will actually reduce Federal retirement costs beginning in fiscal year 1997.

Finally, we should look at the buyout bill as an integral part of the overall plan to reduce Federal employment by 252,000 positions. That plan will produce well over \$30 billion in savings over the next 5 years.

Buyouts are currently the most effective way of reducing Federal employment. Layoffs can be much more expensive. Any Federal employee who is laid off is entitled to severance pay. Further, employees whose positions are abolished are allowed to bump workers of lesser seniority, but to retain their old pay rate for 2 years. All this bumping and reshuffling leads to further costs and disruptions. And, finally, of course, layoffs are extremely corrosive of morale and efficiency.

For all these reasons, I believe H.R. 3345 makes eminent good sense. I urge its speedy enactment.

Mr. MYERS of Indiana. Mr. Chairman, I yield 3 minutes to our col-

league, the gentleman from Virginia [Mr. WOLF], who has a great many Federal employees and who, through the workings of this, trying to develop this legislation today, has had a lot of concerns about being sure we are treating everybody fairly. We thank him for the contribution.

Mr. WOLF. Mr. Speaker, I rise in support of H.R. 3345, the Federal Workforce Restructuring Act. First, let me applaud the committee for putting together a responsible and fair package of buyouts for Federal employees. Buyouts are by far the fair way to reduce Federal personnel. Downsizing is always painful; however, this legislation will give employees security, and will help preserve morale. Moreover, buyouts are preferable to reductions-in-force because of the tremendous personal and real costs that are associated with RIF's. RIF's require substantial up-front severance pay costs, buyouts don't. RIF's leave families guessing from where the next paycheck is coming, buyouts don't. For these reasons, I am supporting this legislation.

Mr. Speaker, while I support the buyout option, I believe the Congress must be on guard about the full ramifications of the Vice President's National Performance Review. The Clinton administration has not prioritized the functions of Government which desperately needs to be done.

Furthermore, I am concerned that the Vice President's National Partnership Council is recommending that Federal employees be required to pay union dues even though they are not union members. This is unfair and should not occur. In actuality, this would be a tax increase on Federal employees who do not want to be compelled to pay dues when they are not union members. While all employees should have the opportunity to join a union, employees should also have the option not to join or pay dues.

Mr. Speaker, I am supporting this legislation because it is the equitable way to reduce the size of the Federal work force, but I urge my colleagues to take a long, hard look at the National Performance Review's plan to restructure the Federal Government and the impact on the lives of Federal employees.

Mr. CLAY. Mr. Chairman, I yield 3 minutes to the gentlewoman from the District of Columbia [Ms. NORTON].

Ms. NORTON. I thank the gentleman for yielding me this time, and, indeed, I want to thank Chairman CLAY and the gentleman from Indiana [Mr. MYERS], and I want to thank the chairman, the gentleman from Maryland [Mr. HOYER]. Indeed, I want to thank the bipartisan leadership that has worked this difficult problem out for the benefit not only of the employees involved but of the efficiency of the Government and of the expectations of our country.

Last October my Subcommittee on Compensation and Employee Benefits moved expeditiously to mark up H.R. 3345, and the chairman, the gentleman from Missouri [Mr. CLAY], moved it immediately to the floor for fast action to reduce agency personnel. We acted quickly because we ourselves had approved a budget that assumed huge reductions in the Federal service that were even then not on schedule.

Only 20,000 employees left voluntarily in fiscal year 1993, while we assumed 25,000 would leave the Federal service. It was clear that attrition was not working.

The reason was also clear. Buyouts had been offered in some agencies and not others. Obviously, Federal employees assumed that, out of logic and surely out of fairness, Congress would not favor some agencies and some employees over others.

□ 1550

Attrition all but closed down some agencies. If consideration of this bill had not stalled at the end of the last session, most agencies would now be on their way to achieving a historic and unprecedented permanent downsizing of the Federal bureaucracy for fiscal year 1994, and we probably would have made up for the shortfall on attrition for fiscal year 1993 as well. Every day of delay digs into our own deficit reduction goals. Moreover, quiet as it is kept, huge RIF's, or layoffs, are not an alternative to buyouts. RIF's actually cost considerably more than buyouts because of substantial mandatory costs, such as severance. Worse, lower paid employees, those who serve the public on the front line, would be laid off, and higher paid managers, the ones who are in excessive supply in the Government, would remain—an absolutely perverse result. Moreover, GAO has testified that layoffs of 252,000 employees over 5 years simply could not be achieved if there was to be a Government left standing.

Mr. Chairman, we actually have one and only one choice now: Get this bill out fast. Without favorable action, we can forget reinventing Government, we can forget our deficit reduction goals, and, heaven knows, we will be forgetting what is minimally owed one of the highest quality work forces in the country. It is not too late, just almost too late, to meet the goals we set in the Omnibus Budget Act passed last year. Let us do it and avoid a self-inflicted wound to our own historic deficit reduction package.

Mr. MYERS of Indiana. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland [Mr. MFUME], who, like many others today, has a great many Federal employees.

Mr. MFUME. Mr. Chairman, let me thank the gentleman from Indiana [Mr. MYERS] for being so gracious with his time. I do appreciate that.

I rise in support of the bill, Mr. Chairman. As written, the bill provides, as most of my colleagues know, Federal agencies with the flexibility necessary to proceed with the mandated loss in personnel and that they be able to do that in an organized and an efficient manner, and, while most agencies will probably claim that the loss of personnel is painful, and in some instances clearly it is, there are clearly some offices that will, in fact, suffer if too many employees are released.

Speaking from my own experience, Mr. Chairman, I know that the Social Security Administration, headquartered in Baltimore, is understaffed now, that any further reductions in their staff would only hamper its ability to be efficient. I would hope that this legislation will allow us and enable the arms of the Federal Government, such as the Social Security Administration and HCFA, I might also add, to be flexible enough to reduce costs without diminishing the product that they have provided to us for such a long time.

Mr. Chairman, the bill before us today allows us to do just that. H.R. 3345 represents a reasonable effort by the Congress to try to reduce the Federal work force in a manner that we believe is fair to the employees and at the same time true to the fiscal intent of the previous actions.

Therefore, Mr. Chairman, I rise today in strong support of the legislation before us, and I urge all of my colleagues to support its quick enactment.

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from Guam [Mr. UNDERWOOD].

Mr. UNDERWOOD. Mr. Chairman, I rise today in support of H.R. 3345, the Federal workforce Restructuring Act. While we all agree that the Federal work force needs to be trimmed down, this bill will ensure that it is done in the most fair and equitable way. It will do this by making separation from Federal employment voluntary, without making use of reductions in force or RIF's, which disproportionately affect women and minorities. After so much has been accomplished in diversifying the Federal work force, are we willing to take two steps backward in the struggle to increase opportunities for minorities by utilizing another, more destructive method? I know that this bill's answer is: "No." Constructive incentive payments like the one proposed in this legislation have already proven effective in three Government agencies, most notably the Department of Defense.

Incentive programs in place in the Department of Defense are vital in alleviating the affects of reductions in personnel. In my home, Guam, the Navy ship repair facility [SRF] has been scheduled for a significant cut in workload. As the Navy attempts to

eliminate positions in preparation for this change, voluntary separation will offer workers the opportunity to leave if they choose to do so while simultaneously eliminating the need for the Navy to force workers out. If such an option did not exist, the Navy would be forced to fire workers who would rather stay and keep workers who might otherwise opt for an early retirement. I hope that they will stay on this intelligent and wise course.

This should provide a tangible example of why this legislation and the process it proposes is the best option available in attempting to substantially cut the Federal work force. I urge my colleagues to support the passage of the bill H.R. 3345. Downsizing should not be synonymous with dehumanizing the reduction of the Federal work force.

Mr. MYERS of Indiana. Mr. Chairman, may I ask how much time remains on each side?

The CHAIRMAN. The gentleman from Indiana [Mr. MYERS] has 14 minutes remaining, and the gentleman from Missouri [Mr. CLAY] has 13 minutes remaining.

Mr. MYERS of Indiana. Mr. Chairman, I yield myself such time as I may consume to just comment on some reservations that I have, some concerns that I have.

Mr. Chairman, I do support the legislation; no question about it. However, wearing the other hat, my appropriations hat that I have got to put on later this afternoon, hopefully before midnight, to go to conference with the Senate on the supplemental appropriation, I am thinking about how we are going to pay for this. I know we got a letter from OMB saying it is off-budget, but how many times can we continue to go off-budget and say it is going to be swept under the rug? The justification from Mr. Panetta, our former colleague, I understand over a 5- to 6-year period, we are going to save money, or can. I certainly hope we do. But we have to pay for it whether it be \$500 million this next year. It has to come from someplace.

So, Mr. Chairman, I am concerned about making certain we know where this money is going to come from in the intervening period here, and it will save money, I hope, if it is properly run. It will save money. But we do have to pay for it next year. So, I do have some concern about this. I hope we will find some way, finding a way to pay for it without just continually taking everything off-budget.

Mr. Chairman, I reserve the balance of my time.

Mr. CLAY. Mr. Chairman, I yield 2 minutes to the gentleman from Washington [Mr. DICKS].

Mr. DICKS. Mr. Chairman, I rise in strong support of this important legislation that is essential to the efficient and fair execution of reduction in the

Federal work force necessitated by spending cuts needed to achieve deficit reduction.

I want to express appreciation on behalf of all Federal workers to those members who worked so hard to reach the agreement that has allowed this legislation to come to the floor today. Clearly, if we are to achieve the reductions that must be made intelligently, this legislation is urgently required.

This legislation will extend the same early retirement and voluntary resignation incentives that are already in place for the Department of Defense, GAO and the CIA.

I have seen first hand the successful application of this approach to employment reductions in my district at the Navy's Puget Sound Naval Shipyard. The yard had to reduce nearly 3,000 positions as a result of smaller workload associated with the declining fleet. Prior to the establishment of incentives there was widespread fear of reductions in force that seriously undermined employee morale. Fortunately, these incentives successfully avoided a RIF at Puget Sound and achieved the necessary reductions.

Reductions in force are also cost inefficient for the Government. Severance pay requirements are only the tip of the iceberg. Because of rules that allow more senior workers to bump junior workers, while retaining their pay levels, RIF's produce situations with overqualified, and overpaid individuals performing lower level tasks. It also produces a major gap in work force experience makeup that can produce serious problems when there is a wholesale retirement from these more senior workers and the experience base to produce continuity does not exist.

With the amendment that will be offered by Congressmen PENNY and BURTON the link of providing these incentives to the commitment in the President's budget to reduce Federal employment by 250,000 by 1999 will be directly linked. This will overcome any concerns that we are somehow providing a windfall and are, in fact, simply providing the most effective way to take this critical element of deficit reduction.

Mr. Chairman, I also want to compliment my colleague, the gentleman from Maryland [Mr. HOYER] for his efforts on this legislation.

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Mr. CLAY. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, I want to thank my distinguished chairman, the gentleman from Missouri [Mr. CLAY] for yielding.

Mr. Chairman, I want to say that I am going to speak rapidly, because we need to get this out. We should have gotten this out last year. As everyone has said, this is very important.

On the Committee on Armed Services we always talk about surgical strikes. Without this, we do not give the people who manage the different agencies the right to be surgical in the positions they can do without. Without this, they are forced to go into things such as RIF's or freezes, that we know do not work.

Mr. Chairman, this is not a surprise. We know how this works. The CIA has done it, the Department of Defense has done it, and the GAO has done it. They have shown how well it works. We know if we do this, this will help us save almost \$30 billion over the next 5 years. We also know if people decide to get rehired and come back to the Government in the next 5 years, they have to pay this back.

So I think this is proper. I think we ought to move on it.

Mr. Chairman, I must say this is an historic day. People told me if I was here long enough, I would find something I agreed with with the gentleman from Indiana [Mr. BURTON], and I am delighted that that day has finally come.

Mr. Chairman, I am pleased that we have this bipartisan consensus that this must be done. I think it is a good message to Federal employees, that people here in the House feel they should be treated with the dignity and respect the private sector would give. For that, we are going to get much, much more back in the realm of morale and a much better motivated work force.

Mr. Chairman, I thank all Members for the high level of this debate, and urge passage.

Mr. Chairman, we hear rhetoric every day that the President's budget is full of gimmicks. Well, if you want real cuts this bill gives agencies the authority to make them. Agencies will finally have the tools necessary to trim 252,000 jobs from the Federal work force and save almost \$30 billion over 5 years.

If this doesn't pass, the only other alternative is to RIF employees. The Congressional Budget Office and the General Accounting Office have made it clear that RIF's demoralize the workforce, hit women and minorities hardest, and leave agencies "top heavy." Moreover, employees who are RIF'ed, generally receive severance pay, which can cost plenty.

And in the long run, RIF's don't save any more money than a buyout plan.

This bill allows Federal agencies to offer incentive payments to employees who agree to retire or resign voluntarily from the Government. Agencies could offer up to \$25,000 to employees.

We know that Federal employees will take advantage of this program. It has worked for the Central Intelligence Agency, the General Accounting Office, and most recently the Defense Department. In fiscal year 1993, the Defense Department successfully used the same

kind of incentive to cut its work force by about 30,000 workers.

One last point: Federal employees feel like they have gone 15 rounds with Evader Holyfield. Every year there is a new proposal to raise the retirement age or to ax their pay and benefits.

It's time we did something to give Federal employees control over their lives. The Federal Workforce Restructuring Act does this and reduces the deficit. I know it's a new concept for a lot of Members, but it has a lot of merit.

Mr. BROWN of California. Mr. Chairman, I rise in support of H.R. 3345, the Federal Work Force Restructuring Act of 1993.

I would like to take just a moment to describe the impact that H.R. 3345 will have on the National Aeronautics and Space Administration [NASA].

H.R. 3345 would allow NASA to offer separation incentive payments to encourage eligible employees to retire or resign voluntarily from the agency. It would provide NASA with an alternative to involuntary separations due to reduction in force, reorganization, transfer of function, or other similar action. As such, H.R. 3345 is critically important legislation that will enable NASA to downsize its personnel base in a manner that does not adversely affect civil service employees.

NASA's fiscal year 1994 appropriations was premised on a rapid reduction in the agency's civil service work force by some 1,000 employees, targeting a work force ceiling of 22,900 by the beginning of fiscal year 1995. These reductions reflect in large part the Space Station redesign and program reorganization that occurred over the course of the last year.

However, the efficacy of H.R. 3345 to enable NASA to achieve necessary cost savings diminishes with each passing day. Because of the delay in enacting this legislation, work force reductions have not occurred at a rate sufficient to meet the budget shortfall. In order for NASA to capitalize on the program authorized in this bill, and to minimize the use of program funding to meet the fiscal year 1994 payroll, the agency must begin to offer separation incentives to eligible employees as soon as possible.

I would also take this opportunity to express my appreciation to my colleague from Missouri, and chairman of the Committee on Post Office and Civil Service, Mr. CLAY, for his cooperation in advancing our common objectives through this bill.

I urge my colleagues to join me in passing H.R. 3345.

Mr. BORSKI. Mr. Chairman, I rise today to express my strong support for H.R. 3345, the Federal Workforce Restructuring Act. This legislation would further emphasize this Congress' support for the reduction of Government spending, as outlined in the National Performance Review.

On November 22, 1993, the House overwhelmingly supported the Vice President's plan to reduce spending of the Federal Government. The National Performance Review called for the downsizing of the Federal Government by 252,000 positions within 5 years. H.R. 3345 humanely reduces the number of

Federal employees by providing Federal agencies the ability to offer buyouts to those who voluntarily resign or retire.

Mr. Chairman, it is my belief that mandatory reductions in force are an inhumane means of downsizing our Federal Government. Mandatory layoffs unfairly target the most recently hired employees, causing a disproportionate number of minorities and women to be released, reducing the diversity of the workplace. Layoffs also tend to lower the productivity of the Federal Government by removing vital clerical and administrative positions and leave agencies saturated with a redundancy of middle-management positions. Reductions in force can also instill a sense of fear among those employees targeted for removal.

Voluntary separation incentives are the most cost-effective and equitable means of achieving targeted reductions in the Federal work force. Layoffs and early retirements are more costly, generally requiring substantial severance pay or pensions to those who retire early. The buyouts provided in H.R. 3345 will facilitate the required reduction in force in a way that targets the excess positions of Federal Government in a long-term cost-effective means. This bill also ensures that once a position has been bought out, this position will be permanently removed, as opposed to relocating this position with another Federal agency.

Mr. Speaker, unless this bill is passed as quickly as possible, the Federal Government will be forced to begin laying off employees, forcing them to seek work, uncompensated, at a time when work can be difficult to find, but I believe that reinvention of government is important, I do not feel that it should be at the expense of the Federal workers whom we represent. I therefore urge my colleagues to support this bill and help to equitably reduce Government spending.

Mr. RICHARDSON. Mr. Chairman, we as a body have come to the bold agreement that downsizing the Federal work force is in the best interest of this country. We agreed on this when we passed H.R. 3400 the Government Reform and Savings Act. Now we are left with the critical decision of choosing the most sound policy to reduce the Federal work force by 250,000. I urge my colleagues to support H.R. 3345, which I believe is the best policy for restructuring the Federal work force.

The Congressional Budget Office recently released a study examining different options for achieving downsizing in the Federal work force. The study found the two best downsizing alternatives, involuntary dismissals and pay incentives, each achieved nearly identical savings over 5 years.

The difference the study found between involuntary dismissals and pay incentives was that involuntary dismissals would disproportionately effect women and minorities. We have worked hard over the last decade to ensure that our highly skilled Federal work force is representative of the diversity of our Nation. In the State of New Mexico, 27,700 individuals are employed in Federal Government positions. Some 13,100 of these employees, or just over 50 percent are minorities. The Federal work force in New Mexico is representative of the Hispanic, Native American, African-American, and Asians who comprise 60 percent of New Mexico's population. I want to en-

sure that the integrity of New Mexico's Federal work force is not disturbed.

Today we will consider the Federal Workforce Restructuring Act, which would help agencies in their efforts to downsize by 250,000 while maintaining the diversity and health of the work force.

Mr. Chairman, when we have a choice that is just as cost effective as an involuntary dismissal but offers everyone in the work force the same voluntary incentive we should take it. There should be no question that we should support H.R. 3345, the Federal Workforce Restructuring Act.

Ms. PELOSI. Mr. Chairman, I rise today in strong support of H.R. 3345, the Federal Workforce Restructuring Act. This buyout bill is the fiscally and administratively sound way to achieve President Clinton and Vice President Gore's goal of reducing our Federal work force by 252,000 people over the next 5 years.

Presently, governmentwide voluntary turnover is at a record low. H.R. 3345 would allow the Government to offer incentives to Federal employees to voluntarily resign or retire early. These incentives have a proven track record of success. Last year, the Department of Defense was able to encourage over 30,000 employees to leave early under a similar plan.

The alternative to H.R. 3345 is massive furloughs and costly reductions-in-force [RIF's]. Reductions-in-force are a cumbersome and demoralizing alternative to the buyout, resulting in a lengthy process, expensive severance packages, and low worker morale. Rather than eliminating higher-paid, often redundant positions, layoffs would affect the newer, younger and more diverse population of Federal employees—the very ones our Government has been working so hard to recruit. Women, ethnic minorities, and disabled workers would be especially hard hit. RIF's and furloughs would result in a huge step backwards in Federal employment policy. Alternatively, H.R. 3345 would allow Federal agencies to target the employee reductions, maximizing efficiency as well as work force diversity.

Mr. Chairman, I know that H.R. 3345 would be welcomed by hardworking Federal public servants across the country, including those in my district of San Francisco. This is the smart, efficient and proper way to achieve the administration's goal of reducing the Federal work force, thus helping to make our Government work better and cost less. In order for a buyout to be most cost effective, however, it needs to be enacted swiftly. We must do our part in helping Federal agencies constructively cut their work force. I urge my colleagues to pass the Federal Workforce Restructuring Act today.

Mr. MYERS of Indiana. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. CLAY. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in part 1 of House Report 103-422 is considered as an original bill for the purpose

of amendment and is considered as read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 3345

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 "Federal Workforce Restructuring Act of 1994".

SEC. 2. VOLUNTARY SEPARATION INCENTIVES.

(a) DEFINITIONS.—For the purpose of this section—

(1) the term "agency" means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the Department of Defense, the Central Intelligence Agency, or the General Accounting Office; and

(2) the term "employee" means an employee (as defined by section 2105 of title 5, United States Code) who is employed by an agency, is serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 12 months; such term includes an individual employed by a county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)), but does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system for employees of the Government; or

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in subparagraph (A).

(b) AUTHORITY.—

(1) IN GENERAL.—In order to avoid or minimize the need for involuntary separations due to a reduction in force, reorganization, transfer of function, or other similar action, and subject to paragraph (2), the head of an agency may pay, or authorize the payment of, voluntary separation incentive payments to agency employees—

(A) in any component of the agency;

(B) in any occupation;

(C) in any geographic location; or

(D) on the basis of any combination of factors under subparagraphs (A) through (C).

(2) CONDITION.—

(A) IN GENERAL.—In order to receive an incentive payment, an employee must separate from service with the agency (whether by retirement or resignation) before January 1, 1995.

(B) EXCEPTION.—An employee who does not separate from service before the date specified in subparagraph (A) shall be ineligible for an incentive payment under this section unless—

(i) the agency head determines that, in order to ensure the performance of the agency's mission, it is necessary to delay such employee's separation; and

(ii) the employee separates after completing any additional period of service required (but not later than December 31, 1996).

(c) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

(1) shall be paid in a lump sum after the employee's separation;

(2) shall be equal to the lesser of—

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code, if the employee were entitled to payment under such section; or

(B) \$25,000;

(3) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

(4) shall not be taken into account in determining the amount of any severance pay to which an employee may be entitled under section 5595 of title 5, United States Code, based on any other separation; and

(5) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—

(1) IN GENERAL.—An employee who has received a voluntary separation incentive payment under this section and accepts employment with the Government of the United States within 2 years after the date of the separation on which the payment is based shall be required to repay the entire amount of the incentive payment to the agency that paid the incentive payment.

(2) WAIVER AUTHORITY.—

(A) EXECUTIVE AGENCY.—If the employment is with an Executive agency (as defined in section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee.

(B) LEGISLATIVE BRANCH.—If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee.

(C) JUDICIAL BRANCH.—If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the employment is in a position for which there is exceptional difficulty in recruiting a qualified employee.

(e) REGULATIONS.—The Director of the Office of Personnel Management may prescribe any regulations necessary for the administration of subsections (a) through (d).

(f) EMPLOYEES OF THE JUDICIAL BRANCH.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program consistent with the program established by subsections (a) through (d) for individuals serving in the judicial branch.

SEC. 3. ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.

(a) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, an agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 9 percent of the final basic pay of each employee of the agency—

(1) who retires under section 8336(d)(2) of such title; and

(2) to whom a voluntary separation incentive payment under section 2 (including under any program established under section 2(f)) has been paid by such agency based on that retirement.

(b) DEFINITION.—For the purpose of this section, the term "final basic pay", with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-

time basis, with appropriate adjustment therefor.

(c) REGULATIONS.—The Director of the Office of Personnel Management may prescribe any regulations necessary to carry out this section.

The CHAIRMAN. No amendment to the substitute is in order except the amendment printed in part 2 of the report. The amendment may be offered only by a Member designated in the report, shall be considered as read, is not subject to amendment and is not subject to a demand for a division of the question.

Debate time on the amendment will be equally divided and controlled by the proponent and an opponent of the amendment.

AMENDMENT OFFERED BY MR. PENNY

Mr. PENNY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PENNY:

In section 2(d)(1), strike "2" and insert "5".
In section 2(d)(2)(A), strike "repayment if" and all that follows through the period and insert "repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position."

In section 2(d)(2)(B), strike "repayment if" and all that follows through the period and insert "repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position."

In section 2(d)(2)(C), strike "repayment if" and all that follows through the period and insert "repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position."

In section 2(d), add at the end the following:

(3) DEFINITION.—For purposes of paragraph (1) (but not paragraph (2)), the term "employment" includes employment under a personal services contract with the United States.

After the last section, add the following:

SEC. 4. REDUCTION OF FEDERAL FULL-TIME EQUIVALENT POSITIONS.

(a) DEFINITION.—For purposes of this section, the term "agency" means an Executive agency as defined under section 105 of title 5, United States Code, but does not include the General Accounting Office.

(b) LIMITATIONS ON FULL-TIME EQUIVALENT POSITIONS.—The President, through the Office of Management and Budget (in consultation with the Office of Personnel Management), shall ensure that the total number of full-time equivalent positions in all agencies shall not exceed—

- (1) 2,084,600 during fiscal year 1994;
- (2) 2,043,300 during fiscal year 1995;
- (3) 2,003,300 during fiscal year 1996;
- (4) 1,963,300 during fiscal year 1997;
- (5) 1,922,300 during fiscal year 1998; and
- (6) 1,882,300 during fiscal year 1999.

(c) MONITORING AND NOTIFICATION.—The Office of Management and Budget, after consultation with the Office of Personnel Management, shall—

(1) continuously monitor all agencies and make a determination on the first date of each quarter of each applicable fiscal year of

whether the requirements under subsection (b) are met; and

(2) notify the President and the Congress on the first date of each quarter of each applicable fiscal year of any determination that any requirement of subsection (b) is not met.

(d) COMPLIANCE.—If at any time during a fiscal year, the Office of Management and Budget notifies the President and the Congress that any requirement under subsection (b) is not met, no agency may hire any employee for any position in such agency until the Office of Management and Budget notifies the President and the Congress that the total number of full-time equivalent positions for all agencies equals or is less than the applicable number required under subsection (b).

(e) WAIVER.—

(1) EMERGENCIES.—Any provision of this section may be waived upon a determination by the President that—

(A) the existence of a state of war or other national security concern so requires; or

(B) the existence of an extraordinary emergency threatening life, health, safety, property, or the environment so requires.

(2) AGENCY EFFICIENCY OR CRITICAL MISSION.—

(A) Subsection (d) may be waived, in the case of a particular position or category of positions in an agency, upon a determination of the President that the efficiency of the agency or the performance of a critical agency mission so requires.

(B) Whenever the President grants a waiver pursuant to subparagraph (A), the President shall take all necessary actions to ensure that the overall limitations set forth in subsection (b) are not exceeded.

(f) EMPLOYMENT BACKFILL PREVENTION.—

(1) IN GENERAL.—The total number of funded employee positions in all agencies (excluding the Department of Defense and the Central Intelligence Agency) shall be reduced by one position for each vacancy created by the separation of any employee who has received, or is due to receive, a voluntary separation incentive payment under section 2(a)-(e). For purposes of this subsection, positions and vacancies shall be counted on a full-time-equivalent basis.

(2) RELATED RESTRICTION.—No funds budgeted for and appropriated by any Act for salaries or expenses of positions eliminated under this subsection may be used for any purpose other than authorized separation costs.

The CHAIRMAN. Pursuant to the rule, the gentleman from Minnesota [Mr. PENNY] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes. Is there a Member in opposition?

There apparently is no opposition to the amendment. The Chair recognizes the gentleman from Minnesota [Mr. PENNY] for 15 minutes.

Mr. PENNY. Mr. Chairman, I will divide my 15 minutes with the gentleman from Indiana [Mr. BURTON] for him to manage.

Mr. Chairman and members, this is a straightforward amendment. It deals with a work force reduction to be implemented over the next 6 years. This is not a new issue to the Congress. Several times in the last few months, we have debated and concurred in the decision that 252,000 Federal workers could

be taken off the Federal payroll over the next 5 or 6 years.

We first raised this issue as part of a deficit reduction sponsored by myself and Mr. KASICH last fall. That amendment conformed with the recommendation by Vice President GORE to reinvent Government and to down size the Federal work force.

While that effort was unsuccessful, an alternative proposal was approved by the House of Representatives, the Sabo amendment, which incorporated these same staffing reductions. It is uncertain when or whether that bill will be processed by the Senate.

We also know that in the Senate, Senator GRAMM of Texas pursued a work force reduction to finance most of the elements of the pending crime bill. But, as we know, that bill has a long and torturous path before final enactment.

We feel it critically important to get the work force reductions locked into law as soon as possible. We feel that it is entirely appropriate that these work force reductions be tied to this buyout legislation, because the buyout legislation makes it possible to achieve roughly 40,000 personnel in work force reductions each of the next 6 years.

For that reason, we present the amendment at this time. It could save as much as \$25 billion in Federal expenditures over that timeframe. It makes good sense.

This bill is a bill that must become law. It must be sent to the President's desk at the earliest possible date. By adding this amendment to the buyout legislation, we package the entire issue as it ought to be packaged. We ought to get this issue behind us once and for all. By putting the work force reduction in this bill we settle the issue, and then we can move forward to address the remaining items in the Federal budget.

Mr. HOYER. Will the gentleman yield?

Mr. PENNY. I yield to the gentleman from Maryland.

Mr. HOYER. I thank the gentleman for yielding.

Mr. Chairman, there are few Members in this House on either side of the aisle who have been more conscientious in the review of the budget and of fiscal policy than has been the gentleman from Minnesota [Mr. PENNY] during the course of his career here in the House of Representatives.

I have not always agreed with Mr. PENNY, but we have always disagreed I think with honesty and with good demeanor.

That has been so mostly on my part because I have such respect for him. On his part, because he does not deal in personalities. He deals in substance, and I congratulate him for that.

I also want to thank the gentleman very much for looking at this issue, for realizing we were all going to accom-

plish the same objectives, and working with us to fashion a bill and an amendment that would accommodate that objective as quickly as possible.

I thank the gentleman very much. I would also say that I want to thank the gentleman from Indiana [Mr. BURTON] a member of the committee, who worked also very hard to come up with language.

I also want to thank the gentleman from New York [Mr. SOLOMON] and again the gentleman from Indiana [Mr. MYERS].

I also want to thank Billy Pitts. I do not know if Billy was on the floor, but he was asked by the minority leadership to work this issue. Every time I called him he was available to discuss it. He was very candid and honest with the problems that Members on his side of the aisle, on the Republican side of the aisle, had, and he served a very important and useful function in getting us to this point in time. I appreciate that very much.

Mr. PENNY. I thank the gentleman from Maryland for those remarks. I too want to express my appreciation to the gentleman for his leadership on this issue, to the gentleman from Missouri [Mr. CLAY] for his leadership, and to the others here involved in this very critical issue, and also to those on the Republican side.

I think this is a good compromise. This package makes good sense. Let us get the bill passed today, send it to the Senate, and get this issue settled once and for all.

Mr. Chairman, I yield back the balance of my time.

Mr. BURTON of Indiana. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me first say that I echo what was just said about the gentleman from Minnesota [Mr. PENNY]. We are going to miss him around here, because he was one of the stalwarts who has worked so hard to get this massive Federal budget under control. I am very proud to be a cosponsor of this amendment with the gentleman.

This amendment, Mr. Chairman, guarantees that there will be a reduction in the work force. One of the problems that we felt we might have with the bill is that we would have people buy out, and then might be replaced in another area of government. This amendment, the Penny-Burton amendment, will guarantee for each Federal employee that takes the buyout option, there will be a reduction in the Federal work force of one.

Mr. Chairman, that will ultimately result in they estimate 252,000 fewer Federal employees by the year 1999, and it will save \$20 to \$30 billion. That is a quantum leap in the right direction, and I appreciate that being done and the cooperation of both Democrats and Republicans on this.

Mr. Chairman, the other provision, as I mentioned earlier, that I think is

very important, is that except in very special cases, very rare cases, anyone who takes the buyout option will not be able to come back and work for the Federal Government for 5 years without repaying their retirement buyout option.

So I think there are all kinds of protections in the Penny-Burton amendment. I still am concerned about, as the gentleman from Indiana [Mr. MYERS] the \$519 million that is going to be off budget. However, when you look at \$519 million as opposed to \$20 to \$30 billion in savings, you have to say this is the right thing to do, and it is the right thing to do at the right time. I am glad once again there is cooperation with both sides. I am very happy to be a cosponsor of this amendment.

Mr. Chairman, with that, I yield back the balance of my time.

Mr. MICHEL. Mr. Chairman, we all agree on one thing today. We agree that the Federal work force should be trimmed by 252,000 positions.

A week ago the President asked me to assist him in passing the Federal Workforce Restructuring Act. He felt strongly that he needed the same tool that we in Congress have authorized for the Defense Department, the CIA, the GAO, and the Library of Congress to bring down their work force levels.

And that tool is a Federal incentive payment to encourage individuals to leave Federal service.

I expressed to administration officials and to Members of the majority, including the distinguished gentleman from Maryland [Mr. HOYER] that when passing such incentive payments, it is imperative to also place into law a specific timetable to achieve the personnel reductions that we all agree on.

I further insisted on additional safeguards to ensure that the reductions are real.

We provided such a timetable and such safeguards in the Penny-Kasich amendment which narrowly failed by a vote of 213 yeas to 219 nays on November 22, 1993.

When I agree with the President on a particular policy objective, such as reducing Federal personnel levels, then I feel I must also provide him the tools he says he needs to accomplish that policy objective.

Otherwise, I have no basis upon which to criticize the President if he does not meet that objective. That is why I decided to work with him on this issue.

But, I want to make clear that in the end the burden will be on the President and his administration to bear the full responsibility for the end result. We will turn to the President for proof that the personnel reductions have been achieved each year.

My effort to work with the President culminated with the Burton-Penny amendment which I will support today.

That amendment puts into law a 6-year schedule to reduce work force levels by 252,000 positions. The base from which the reductions are made is the OMB estimate contained fiscal year 1995 budget submission.

I candidly would have preferred the 5-year plan voted on in the Penny-Kasich amendment. But, my office was told last night that

the President believes he can no longer achieve the 252,000 reduction over 5 years.

The Burton-Penny amendment also lengthens the time from 2 years to 5 years in which a person cannot be rehired by the Federal Government. It places in law a new prohibition on a person being rehired as a consultant to the Federal Government within a 5-year period of accepting an incentive payment.

Finally, the Burton-Penny amendment contains specific backfill language that states that for any position that is vacated because of an incentive payment, one position must be eliminated. Furthermore, funds appropriated for any eliminated position may not be used for any other purpose.

I believe that the Burton-Penny amendment contains strong safeguards to assure that the incentive payments can be used to achieve real and substantial personnel reductions in short order.

We will be vigilant to make certain that these incentives are used properly and for the purpose intended—to achieve substantial long-term savings because of a streamlined Federal work force.

□ 1610

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. PENNY].

The question was taken; and the Chairman announced that the yeas appeared to have it.

RECORDED VOTE

Mr. BURTON of Indiana. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—yeas 409, noes 1, not voting 28, as follows:

[Roll No. 24]

AYES—409

Abercrombie	Browder	Danner
Ackerman	Brown (CA)	Darden
Allard	Brown (FL)	de Lugo (VI)
Andrews (ME)	Brown (OH)	Deal
Andrews (NJ)	Bryant	DeFazio
Applegate	Bunning	DeLauro
Archer	Burton	DeLay
Arney	Buyer	Dellums
Bacchus (FL)	Byrne	Derrick
Bachus (AL)	Callahan	Deutsch
Baesler	Calvert	Diaz-Balart
Baker (CA)	Camp	Dickey
Baker (LA)	Canady	Dicks
Ballenger	Cantwell	Dixon
Barca	Cardin	Dooley
Barcia	Carr	Doolittle
Barlow	Castle	Dornan
Barrett (NE)	Chapman	Dreier
Barrett (WI)	Clay	Duncan
Bartlett	Clayton	Dunn
Barton	Clement	Durbin
Bateman	Clinger	Edwards (CA)
Becerra	Clyburn	Edwards (TX)
Beilenson	Coble	Ehlers
Bentley	Collins (GA)	Emerson
Bereuter	Collins (IL)	Engel
Berman	Collins (MI)	English
Bevill	Combest	Eshoo
Bilbray	Condit	Evans
Bishop	Conyers	Everett
Blackwell	Cooper	Faleomavaega
Bliley	Coppersmith	(AS)
Blute	Costello	Farr
Boehlert	Cox	Fawell
Bonilla	Coyne	Fazio
Bonior	Cramer	Fields (LA)
Borski	Crane	Filner
Boucher	Crapo	Fingerhut
Brewster	Cunningham	Fish

Flake	Levin	Richardson	Woolsey	Yates	Zimmer		[Roll No. 25]	
Foglietta	Levy	Roberts	Wyden	Young (FL)			YEAS—391	
Ford (MI)	Lewis (CA)	Roemer	Wynn	Zeliff				
Ford (TN)	Lewis (GA)	Rogers						
Fowler	Lightfoot	Rohrabacher						
Frank (MA)	Linder	Romero-Barceló						
Franks (CT)	Lipinski	(PR)						
Franks (NJ)	Livingston	Ros-Lehtinen						
Geren	Lloyd	Rose						
Frost	Long	Rostenkowski	Andrews (TX)	Hall (OH)	Ridge	Abercrombie	Engel	Klug
Furse	Lowey	Roukema	Bilirakis	Hastert	Roth	Ackerman	English	Knollenberg
Galleghy	Maloney	Rowland	Boehner	Hastings	Scott	Allard	Eshoo	Kolbe
Gallo	Mann	Roybal-Allard	Brooks	Laughlin	Sharp	Andrews (ME)	Evans	Kopetski
Gejdenson	Manton	Royce	Coleman	Lewis (FL)	Slattery	Andrews (NJ)	Everett	Kreidler
Gekas	Manzullo	Rush	de la Garza	Machtley	Towns	Applegate	Farr	Kyl
Gephardt	Margolies-	Sabo	Dingell	Michel	Washington	Bacchus (FL)	Fawell	LaFalce
Geren	Mezvinsky	Sanders	Dingell	Neal (NC)	Young (AK)	Bachus (AL)	Fazio	Lambert
Gibbons	Markley	Sangmeister	Ewing	Ortiz		Baessler	Fields (LA)	Lancaster
Gilchrist	Martinez	Santorum	Fields (TX)	Owens		Baker (CA)	Filner	Lantos
Gillmor	Matsui	Sarpalius	Gutierrez			Baker (LA)	Fingerhut	LaRocco
Gilman	Mazzoli	Sawyer				Ballenger	Fish	Lazio
Gingrich	McCandless	Saxton				Barca	Flake	Leach
Glickman	McCloskey	Schaefer				Barlow	Foglietta	Lehman
Gonzalez	McCloskey	Schenk				Barrett (NE)	Ford (MI)	Levin
Goodlatte	McCormack	Schiff				Barrett (WI)	Ford (TN)	Levy
Goodling	McCurdy	Schroeder				Bartlett	Fowler	Lewis (CA)
Gordon	McDade	Schumer				Bateman	Frank (MA)	Lewis (GA)
Goss	McDermott	Sensenbrenner				Becerra	Franks (CT)	Lightfoot
Grams	McHale	Serrano				Bellenson	Franks (NJ)	Linder
Grandy	McHugh	Shaw				Bentley	Frost	Lipinski
Green	McInnis	Shays				Bereuter	Furse	Livingston
Greenwood	McKeon	Shepherd				Berman	Galleghy	Lloyd
Gunderson	McKinney	Shuster				Beverly	Gallo	Long
Hall (TX)	McMillan	Siakis				Bilbray	Gejdenson	Lowey
Hamburg	McNulty	Skaggs				Bishop	Gekas	Maloney
Hamilton	Meehan	Skeen				Blackwell	Gephardt	Mann
Hancock	Meek	Skelton				Bliley	Geren	Manton
Hansen	Menendez	Slaughter				Blute	Gibbons	Manzullo
Harman	Meyers	Smith (IA)				Bonilla	Gilchrist	Margolies-
Hayes	Mfume	Smith (MI)				Bonior	Gillmor	Mezvinsky
Hefley	Mica	Smith (NJ)				Borski	Gilman	Markley
Hefner	Miller (CA)	Smith (OR)				Boucher	Gingrich	Martinez
Herger	Miller (FL)	Smith (TX)				Brewster	Glickman	Matsui
Hilliard	Mineta	Snowe				Browder	Gonzalez	Mazzoli
Hinchee	Minge	Solomon				Brown (CA)	Goodlatte	McCandless
Hoagland	Mink	Spence				Brown (FL)	Goodling	McCloskey
Hobson	Moakley	Spratt				Brown (OH)	Gordon	McCormack
Hochbrueckner	Molinari	Stark				Bryant	Goss	McCurdy
Hoekstra	Mollohan	Stearns				Bunning	Grams	McDade
Hoke	Montgomery	Stenholm				Burton	Grandy	McDermott
Holden	Moorhead	Stokes				Buyer	Green	McHale
Horn	Moran	Strickland				Byrne	Greenwood	McHugh
Houghton	Morella	Studds				Callahan	Gunderson	Gutierrez
Hoyer	Murphy	Stump				Calvert	Gutierrez	Hall (TX)
Huffington	Murtha	Stupak				Cantwell	Hamburg	Hall (TX)
Hughes	Myers	Sundquist				Cardin	Hamilton	McKinney
Hunter	Nadler	Swett				Carr	Hansen	McMillan
Hutchinson	Natcher	Swift				Castle	Harman	McNulty
Hutto	Neal (MA)	Synar				Chapman	Hayes	Meek
Hyde	Norton (DC)	Talent				Clay	Hefley	Menendez
Inglis	Nussle	Tanner				Clayton	Hefner	Meyers
Inhofe	Oberstar	Tauzin				Clement	Herger	Mfume
Inslee	Obey	Taylor (MS)				Clinger	Hilliard	Mica
Istook	Oliver	Taylor (NC)				Clyburn	Hinchee	Miller (CA)
Jacobs	Orton	Tejeda				Coble	Hoagland	Miller (FL)
Jefferson	Oxley	Thomas (CA)				Collins (GA)	Hobson	Mineta
Johnson (CT)	Packard	Thomas (WY)				Collins (IL)	Hochbrueckner	Minge
Johnson (GA)	Pallone	Thompson				Collins (MI)	Hoekstra	Mink
Johnson (SD)	Parker	Thornton				Combest	Hoke	Moakley
Johnson, E. B.	Pastor	Thurman				Condit	Holden	Molinari
Johnson, Sam	Paxon	Torkildsen				Conyers	Horn	Mollohan
Johnston	Payne (NJ)	Torres				Cooper	Houghton	Montgomery
Kaptur	Payne (VA)	Torricelli				Coppersmith	Hoyer	Moorhead
Kasich	Pelosi	Traficant				Costello	Huffington	Moran
Kennedy	Penny	Tucker				Cox	Hughes	Morella
Kennelly	Peterson (FL)	Underwood (GU)				Coyne	Hunter	Murphy
Kildee	Peterson (MN)	Unsoeld				Cramer	Hutchinson	Murtha
Kim	Petri	Upton				Crapo	Hutto	Myers
King	Pickett	Valentine				Cunningham	Hyde	Nadler
Kingston	Pickle	Velázquez				Danner	Inglis	Natcher
Kleccka	Pombo	Vento				Darden	Inhofe	Neal (MA)
Klein	Pomeroy	Visclosky				Deal	Inslee	Nussle
Klink	Porter	Volkmer				DeFazio	Istook	Oberstar
Klug	Portman	Vucanovich				DeLauro	Jacobs	Obey
Knollenberg	Poshard	Walker				Dellums	Jefferson	Oliver
Kolbe	Price (NC)	Walsh				Derrick	Johnson (CT)	Orton
Kopetski	Pryce (OH)	Waters				Deutsch	Johnson (GA)	Oxley
Kreidler	Quillen	Watt				Diaz-Balart	Johnson (SD)	Packard
Kyl	Quinn	Waxman				Dickey	Johnson, E. B.	Pallone
LaFalce	Rahall	Weldon				Dicks	Johnston	Parker
Lambert	Ramstad	Whitton				Dixon	Kanjorski	Pastor
Lancaster	Rangel	Whitman				Doolley	Kaptur	Paxon
Lantos	Ravenel	Williams				Doolittle	Kennedy	Payne (NJ)
LaRocco	Reed	Wilson				Dorman	Kennelly	Payne (VA)
Lazio	Regula	Wolf				Dreier	Kildee	Pelosi
Leach	Reynolds					Dunn	Kim	Penny
Lehman						Durbin	King	Peterson (FL)
						Edwards (CA)	Kingston	Peterson (MN)
						Edwards (TX)	Kleccka	Petri
						Emerson	Klein	Pickett
							Klink	Pickle

NOES—1

NOT VOTING—28

□ 1633

Mr. CONYERS changed his vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended.

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

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. SKAGGS) having assumed the chair, Mr. MORAN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3345) to amend title 5, United States Code, to eliminate certain restrictions on employee training; to provide temporary authority to agencies relating to voluntary separation incentive payments; and for other purposes, pursuant to House Resolution 357, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment in the nature of a substitute.

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

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

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

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MYERS of Indiana. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device and there were—yeas 391, nays 17, not voting 25, as follows:

Pombo	Schumer	Thomas (CA)
Pomeroy	Scott	Thomas (WY)
Portman	Serrano	Thompson
Poshard	Sharp	Thornton
Price (NC)	Shaw	Thurman
Pryce (OH)	Shays	Torkildsen
Quillen	Shepherd	Torres
Quinn	Shuster	Torricelli
Rahall	Sisisky	Trafficant
Ramstad	Skaggs	Tucker
Rangel	Skeen	Unsoeld
Ravenel	Skelton	Upton
Reed	Slaughter	Valentine
Regula	Smith (IA)	Velázquez
Reynolds	Smith (NJ)	Vento
Richardson	Smith (OR)	Visclosky
Roberts	Smith (TX)	Volkmer
Roemer	Snowe	Vucanovich
Rohrabacher	Solomon	Walker
Ros-Lehtinen	Spence	Walsh
Rose	Spratt	Waters
Rostenkowski	Stark	Watt
Roukema	Stearns	Waxman
Rowland	Stenholm	Weldon
Roybal-Allard	Stokes	Wheat
Royce	Strickland	Whitten
Rush	Studds	Williams
Sabo	Stupak	Wilson
Sanders	Sundquist	Wise
Sangmeister	Swett	Wolf
Santorum	Swift	Woolsey
Sarpalius	Synar	Wyden
Sawyer	Talent	Wynn
Saxton	Tanner	Yates
Schaefer	Tauzin	Young (FL)
Schenk	Taylor (MS)	Zeliff
Schiff	Taylor (NC)	Zimmer
Schroeder	Tejeda	

NAYS—17

Archer	DeLay	Porter
Armey	Duncan	Rogers
Barton	Ehlers	Sensenbrenner
Camp	Hancock	Smith (MI)
Canady	Johnson, Sam	Stump
Crane	Kasich	

NOT VOTING—25

Andrews (TX)	Hall (OH)	Owens
Billrakis	Hastert	Ridge
Boehner	Hastings	Roth
Brooks	Laughlin	Slattery
Coleman	Lewis (FL)	Towns
de la Garza	Machtley	Washington
Dingell	Michel	Young (AK)
Ewing	Neal (NC)	
Fields (TX)	Ortiz	

□ 1708

Mr. CANADY changed his vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

The title of the bill was amended so as to read: "A bill to provide temporary authority to Government agencies relating to voluntary separation incentive payments, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CLAY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous material, on H.R. 3345, the bill just passed.

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

There was no objection.

LEGISLATIVE PROGRAM

Mr. GINGRICH. Mr. Speaker, I wish to proceed out of order for 1 minute for the purpose of discussing the schedule over the next few days with the distinguished majority leader. For the enlightenment of Members, I yield to my good friend from Missouri, [Mr. GEPHARDT] to brief Members on what is and is not happening.

Mr. GEPHARDT. Mr. Speaker, I thank the gentleman for yielding. We will try to enlighten together.

Mr. Speaker, our plan is to try to go to a motion to go to conference on a prospective basis.

□ 1710

We understand there will be a motion to instruct.

There will be one vote in the potential time of 1 hour from now. I think that would be the maximum that it would take to get to that vote. The conference on the bill, assuming the other body is able to finish its work tonight and we are led to believe that they can, would begin in the morning. Members should know that work has been going on all day between the staffs.

There are about 120 or so differences between these bills so there is a good deal of work that has to be done, and a lot of it already has been done. And more will go on tonight and so they will be prepared at about 10 in the morning to go into a productive conference. We are hopeful that they can finish their work in 4 or 5 hours, and then there is a period of 4 or so hours after that in order to get the paperwork to be completed and distributed.

Therefore, we are looking at a possible time of vote at around 7 o'clock tomorrow night. That is our best guess at this point. So our proposal would be to adjourn after this next vote, to come back at 2 p.m. tomorrow. Members would not have to be here at that time. We would give the Cloakrooms and the Members' offices notice 2 hours before the vote, potential votes on the rule and other votes on the conference report would take place.

Mr. GINGRICH. Mr. Speaker, first of all, would we do the adjournment resolution tonight or tomorrow?

Mr. GEPHARDT. Mr. Speaker, if the gentleman will continue yield, we would like to do it this evening.

Mr. GINGRICH. We see, on our side, no reason for a vote so that could be done by voice.

Second, just for the Members, on the motion to instruct conferees, on our side I think we expect a relatively limited debate and would not anticipate, unless it got exciting, to go the full hour but, rather, would yield back and get to that vote fairly early.

Third, I wanted to raise, because I think the House needs to be aware that despite the best efforts of the leadership on both sides, there is a possibility

that the conference will not be as productive as we hope. I think that is a real danger.

I also think that it is a real problem. I just wanted to be candid for our friends in the Committee on Appropriations both here and in the other body, that Saturday gets to be a real problem. I think with the storm and with other things going on, I hope that the conferees will be talking a lot all morning as the papers are prepared and will understand that there is a very real concern about getting this aid to California done tomorrow, because I think it gets very difficult for the House to function effectively on Saturday, just given the weather and given all the various Members who had previous plans.

We do hope we can get it done. We look forward to working with the gentleman on a bipartisan way to pass the aid to California before we leave here. I think that is the right thing to do.

Mr. GEPHARDT. Mr. Speaker, I thank the gentleman.

It may be of help, maybe to the younger Members, I called my wife this afternoon. We were planning to leave yet this evening.

I told her, when she asked me when we were leaving, I said I did not know. She said, "Well, that is just about the ten-thousandth time that I have heard that since you have been in Congress." So if that is of any solace to anyone, that is where we all are. We do not know, but we are going to do our best to be out tomorrow night. It may be Saturday.

DEEMING HOUSE TO HAVE DISAGREED TO SENATE AMENDMENTS AND AGREED TO CONFERENCE AND DEEMING SPEAKER TO HAVE APPOINTED CONFEREES ON H.R. 3759, EMERGENCY SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1994.

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that if and when the Clerk receives a message from the Senate indicating that that body has passed H.R. 3759, the emergency supplemental appropriations bill, with amendments, insisted on its amendments and requested a conference with the House, that the House be deemed to have disagreed to the amendments of the Senate and agreed to the conference asked by the Senate, and that the Speaker be deemed to have appointed conferees.

Mr. SOLOMON. Mr. Speaker, reserving the right to object, I do not intend to object, but I need a clarification on the so-called Fazio offsetting amendment. I wanted to ask a member of the Committee on Appropriations what the intent of that amendment was. Is there anyone who could speak to that?

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

Mr. GEPHARDT. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. Continuing my reservation of objection, I yield to the gentleman from Missouri [Mr. GEPHARDT].

Mr. GEPHARDT. Mr. Speaker, we are not in a position to answer that question. Perhaps the gentleman could direct it to the gentleman from California [Mr. FAZIO], but I am not prepared to answer that question.

Mr. SOLOMON. Mr. Speaker, the gentleman from California [Mr. FAZIO] is not on the floor.

Mr. GEPHARDT. Mr. Speaker, if the gentleman will continue to yield, I am sure he will be here for the vote. I will try to find him and make him available to answer that question. I cannot answer it.

Mr. SOLOMON. Mr. Speaker, continuing my reservation of objection, I appreciate the gentleman yielding. I will not hold up the proceedings of the House.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3325

Mr. WALSH. Mr. Speaker, I ask unanimous consent that my name be withdrawn as a cosponsor of H.R. 3325.

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

There was no objection.

MOTION TO INSTRUCT CONFEREES ON H.R. 3759, EMERGENCY SUPPLEMENTAL APPROPRIATIONS FISCAL YEAR 1994

Mr. MCDADE. Mr. Speaker, I offer a motion to instruct conferees on H.R. 3759.

The Clerk read as follows:

Mr. MCDADE moves that the managers on the part of the House, at the conference on the disagreeing votes of the two Houses on H.R. 3759, be instructed to agree to the D'Amato amendment number 1442 as modified, as adopted by the Senate. On vote number 36, as follows:

SEC. . Extension of RTC Civil Statute of Limitations.

"Section 21A(b)(14)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(14)(C) is amended by striking clause (i) and inserting in lieu thereof the following:

"(i) the period beginning on the date the claim accrues (as determined pursuant to section 11(d)(14)(B) of the Federal Deposit Insurance Act) and ending on December 31, 1995; or ending on the date of the termination of the corporation pursuant to section 21A(m)(1), whichever is later; or."

Mr. MCDADE (during the reading). Mr. Speaker, I ask unanimous consent that the motion to instruct conferees

be considered as read and printed in the RECORD.

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

Mr. GONZALEZ. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The Clerk will continue to read the motion to instruct.

The Clerk concluded the reading of the motion to instruct conferees.

The SPEAKER pro tempore. The gentleman from Pennsylvania [Mr. MCDADE] will be recognized for 30 minutes, and the gentleman from Iowa [Mr. SMITH] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. MCDADE].

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

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

I know the hour is late. Members have all kinds of travel plans. All this does is express the will of the body that we do what the Senate did unanimously, 96-nothing, in extending the statute of limitations for civil matters with respect to the RTC, FDIC and FSLIC. It was unanimous in the other body. I would suggest that it can be done in this body by a unanimous vote, and I hope that we will do so promptly.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

This amendment passed, as the gentleman said, unanimously in the Senate. I do not know of any need to have an extended discussion at this time, and reserve the balance of my time.

Mr. MCDADE. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Iowa [Mr. LEACH].

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

I will be very brief. This amendment did come from the Senate side. In the broadest sense, the issue is one of recovery of taxpayer lost resources. In what we have all come to understand as the largest public sector mistake of the century—the S&L debacle—where the taxpayers lost about a quarter-of-a-trillion dollars, less than 1 percent has been recovered. Part of the reason relates to, in the broadest sense, to the complicated nature of financial institution litigation. For example, in Texas, where there is several hundred billion dollars in taxpayer losses, the recovery rate has been almost negligible.

The RTC, frankly, in a circumstance of major litigation, has not had the time nor the resources to pursue all it needs to pursue. In the more narrow sense, it certainly is true that the mi-

nority is concerned about responsibility for failure of a particular institution in the State of Arkansas, which cost the American taxpayer \$60 million. I would only note, with regard to that institution, that quite frankly, there was a late recusal of a U.S. Attorney in Little Rock.

There was also unconventional advocacy of a particular law firm hired by the FDIC for the taxpayer.

And for those reasons, the minority respectfully requests consideration of this motion.

I would only conclude by noting that if there is a case for vigorous legal intervention in the American economy today, it has to be to develop precedent that the taxpayer cannot be robbed with impunity from the corporate board room. And to paraphrase one of the great Americans of this century, "Moderation in the pursuit of accountability for lapses in public ethics is no virtue, extremism in defense of the taxpayer, no vice."

□ 1720

Mr. MCDADE. Mr. Speaker, I yield back the balance of my time.

Mr. SMITH of Iowa. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CHAPMAN) Without objection, the previous question is ordered on the motion to instruct conferees.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct conferees offered by the gentleman from Pennsylvania [Mr. MCDADE].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. SOLOMON. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 390, noes 1, answered "present" 1, not voting 41, as follows:

[Roll No. 26]

AYES—390

Abercrombie	Bereuter	Camp
Ackerman	Berman	Canady
Allard	Bevill	Cantwell
Andrews (ME)	Bibray	Cardin
Andrews (NJ)	Bishop	Carr
Applegate	Blackwell	Castle
Archer	Bliley	Chapman
Armey	Blute	Clayton
Bacchus (FL)	Boehert	Clement
Bachus (AL)	Bonilla	Clinger
Baessler	Bonior	Clyburn
Baker (CA)	Borski	Coble
Baker (LA)	Boucher	Collins (GA)
Ballenger	Brewster	Collins (IL)
Barca	Browder	Collins (MI)
Barcia	Brown (CA)	Combest
Barlow	Brown (FL)	Condit
Barrett (NE)	Brown (OH)	Conyers
Barrett (WI)	Bryant	Cooper
Bartlett	Bunning	Coppersmith
Barton	Burton	Costello
Bateman	Buyer	Cox
Becerra	Byrne	Coyne
Beilenson	Callahan	Cramer
Bentley	Calvert	Crane

Crapo Johnson (CT)
 Cunningham Johnson (GA)
 Danner Johnson (SD)
 Darden Johnson, E. B.
 Deal Johnson, Sam
 DeLauro Johnston
 DeLay Kanjorski
 Dellums Kaptur
 Derrick Kasich
 Deutsch Kennedy
 Diaz-Balart Kennelly
 Dickey Kildee
 Dicks Kim
 Dixon King
 Dooley Kingston
 Doolittle Kleczka
 Dornan Klein
 Dreier Klink
 Duncan Klug
 Dunn Knollenberg
 Durbin Kolbe
 Edwards (CA) Kopetski
 Edwards (TX) Kridler
 Ehlers Kyl
 Emerson LaFalce
 Engel Lambert
 English Lancaster
 Eshoo Lantos
 Evans LaRocco
 Everett Lazio
 Farr Leach
 Fawell Lehman
 Fazio Levin
 Fields (LA) Levy
 Filner Lewis (CA)
 Fish Lewis (GA)
 Flake Lightfoot
 Ford (MI) Linder
 Ford (TN) Livingston
 Fowler Lloyd
 Frank (MA) Long
 Franks (CT) Lowey
 Franks (NJ) Maloney
 Frost Mann
 Furse Manton
 Gallegly Manzullo
 Gallo Margolies-
 Gekas Mezvinsky
 Gephardt Markey
 Geren Martinez
 Gilchrest Matsui
 Gillmor Mazzoli
 Gilman McCandless
 Gingrich McCloskey
 Glickman McCollum
 Gonzalez McCrery
 Goodlatte McCurdy
 Goodling McDade
 Gordon McDermott
 Goss McHale
 Grams McHugh
 Grandy McInnis
 Green McKeon
 Greenwood McKinney
 Gunderson McNulty
 Gutierrez Meehan
 Hall (TX) Meek
 Hamburg Menendez
 Hamilton Meyers
 Hancock Mfume
 Hansen Mica
 Harman Miller (CA)
 Hayes Miller (FL)
 Hefley Mineta
 Hefner Minge
 Herger Mink
 Hilliard Moakley
 Hinchey Molinari
 Hoagland Mollohan
 Hobson Montgomery
 Hochbrueckner Moorhead
 Hoekstra Moran
 Hoke Morella
 Holden Myers
 Horn Nadler
 Houghton Natcher
 Hoyer Neal (MA)
 Huffington Neal (NC)
 Hughes Nussle
 Hunter Oberstar
 Hutchinson Obey
 Inglis Oliver
 Inhofe Oxley
 Inslee Packard
 Istook Pallone
 Jefferson Parker

Pastor
 Paxon
 Payne (NJ)
 Payne (VA)
 Pelosi
 Penny
 Peterson (FL)
 Peterson (MN)
 Petri
 Pickett
 Pickle
 Pombo
 Pomeroy
 Porter
 Portman
 Poshard
 Price (NC)
 Pryce (OH)
 Quinn
 Rahall
 Ramstad
 Rangel
 Ravenel
 Reed
 de la Garza
 DeFazio
 Dingell
 Ewing
 Fields (TX)
 Fingerhut
 Foglietta
 Gejdenson
 Gibbons

Tucker
 Unsoeld
 Upton
 Valentine
 Velazquez
 Vento
 Visclosky
 Volkmer
 Vucanovich
 Walker

Walsh
 Waters
 Watt
 Waxman
 Weldon
 Wheat
 Whitten
 Williams
 Wilson
 Wise

Wolf
 Woolsey
 Wyden
 Wynn
 Yates
 Young (FL)
 Zeliff
 Zimmer

NOES—1

Clay

ANSWERED "PRESENT"—1

Hyde

NOT VOTING—41

Andrews (TX) Hall (OH)
 Bilirakis Hastert
 Boehner Hastings
 Brooks Hutto
 Coleman Jacobs
 de la Garza Laughlin
 DeFazio Lewis (FL)
 Dingell Lipinski
 Ewing Machtley
 Fields (TX) McMillan
 Fingerhut Michel
 Foglietta Murphy
 Gejdenson Murtha
 Gibbons Ortiz

□ 1746

Mr. COX changed his vote from "no" to "aye."

So the motion to instruct was agreed to.

The result of the vote was announced as above recorded.

APPOINTMENT OF CONFEREES ON H.R. 3759

The SPEAKER pro tempore (Mr. CHAPMAN). Without objection, the Chair appoints the following conferees: Messrs. NATCHER, SMITH of Iowa, YATES, OBEY, STOKES, BEVILL, MURTHA, DIXON, FAZIO, HEFNER, HOYER, CARR of Michigan, DURBIN, MCDADE, MYERS of Indiana, REGULA, LIVINGSTON, LEWIS of California, ROGERS, SKEEN, and PORTER.

There was no objection.

PERSONAL EXPLANATION

Mr. FINGERHUT. Mr. Speaker, due to official business in my district and adverse weather conditions in Washington, I was not present at the end of the House session. Had I been present, I would have voted "yes" on the McDade motion to instruct conferees to agree to the D'Amato amendment numbered 1442, as modified, regarding the extension of RTC civil statute limitations.

PERSONAL EXPLANATION

Mr. HASTERT. Mr. Speaker, during the week of February 7, I was called back to Illinois because of a death in my family. Had I been present, I would have voted:

- "Aye" on rollcall 18, the Ramstad amendment.
- "No" on rollcall 19, the Bryant amendment.
- "No" on rollcall 20, the Gekas amendment as amended by Bryant.
- "Aye" on rollcall 21, the Hyde substitute.
- "Aye" on rollcall 22, the motion to recommend with instructions to provide mandatory coverage of Members of Congress.
- "Yea" on rollcall 23, final passage of the bill.
- "Aye" on rollcall 24, the Penny amendment to H.R. 3345.

□ 1750

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

PROVIDING FOR ADJOURNMENT OF THE HOUSE AND RECESS OR ADJOURNMENT OF THE SENATE OVER THE LINCOLN-WASHINGTON DISTRICT WORK PERIOD

Mr. GEPHARDT. Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. 206), and I ask for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the concurrent resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 206

Resolved by the House of Representatives (the Senate concurring). That when the House adjourns on Thursday, February 10, 1994, Friday, February 11, 1994, Saturday, February 12, 1994, Sunday, February 13, 1994, Monday, February 14, 1994, Tuesday, February 15, 1994, Wednesday, February 16, 1994, Thursday, February 17, 1994, or Friday, February 18, 1994, pursuant to a motion made by the Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, February 22, 1994, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, February 10, 1994, Friday, February 11, 1994, Saturday, February 12, 1994, Sunday, February 13, 1994, Monday, February 14, 1994, Tuesday, February 15, 1994, Wednesday, February 16, 1994, Thursday, February 17, 1994, or Friday, February 18, 1994, pursuant to a motion made by the Majority Leader or his designee, in accordance with this resolution, it stand recessed or adjourned until noon on Tuesday, February 12, 1994, or at such time as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

The concurrent resolution was agreed to. A motion to reconsider was laid on the table.

HOUR OF MEETING ON TOMORROW

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 2 p.m. tomorrow.

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

There was no objection.

DISPENSING WITH CALENDAR
WEDNESDAY BUSINESS ON
WEDNESDAY, FEBRUARY 23, 1994

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday, February 23, 1994.

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

There was no objection.

AUTHORIZING THE SPEAKER AND
MINORITY LEADER TO ACCEPT
RESIGNATIONS AND MAKE AP-
POINTMENTS, NOTWITHSTAND-
ING ADJOURNMENT

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that, notwithstanding any adjournment of the House until Tuesday, February 22, 1994, the Speaker and the minority leader be authorized to accept resignations and to make appointments authorized by law or by the House.

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

There was no objection.

REMOVAL OF NAME OF MEMBER
AS COSPONSOR OF H.R. 2241

Mr. McDERMOTT. Mr. Speaker, I ask unanimous consent that the name of the gentleman from Indiana [Mr. SHARP] be removed as a cosponsor of H.R. 2241.

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

There was no objection.

NATIONAL EMERGENCY WITH RE-
SPECT TO LIBYA—MESSAGE
FROM THE PRESIDENT OF THE
UNITED STATES (H. DOC. NO. 103-
208)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Foreign Affairs and ordered to be printed:

To the Congress of the United States:

I hereby report to the Congress on the developments since my last report of July 12, 1993, concerning the national emergency with respect to Libya that was declared in Executive Order No. 12543 of January 7, 1986. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50

U.S.C. 1641(c); section 204(c) of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1703(c); and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa-9(c).

1. On December 3, 1993, I announced new measures to tighten economic sanctions against Libya. These measures are taken pursuant to the imposition by the world community of new sanctions against Libya under Security Council ("UNSC") Resolution 883 of November 11, 1993, and are designed to bring to justice the perpetrators of terrorist attacks against Pan Am flight 103 and UTA flight 772. The actions signal that Libya cannot continue to defy justice and flout the will of the international community with impunity.

UNSC Resolution 883 freezes on a worldwide basis certain financial assets owned or controlled by the Government of Libya or certain Libyan entities and bans provision of equipment for refining and transporting oil. It tightens the international air embargo and other measures imposed in 1992 under UNSC Resolution 748. It is the result of close cooperation between the United States, France, and the United Kingdom, whose citizens were the principal victims of Libyan-sponsored terrorist attacks against Pan Am 103 and UTA 772, and of consultations with Russia and other friends and allies.

On December 2, 1993, I renewed for another year the national emergency with respect to Libya pursuant to IEEPA. This renewal extends the current comprehensive financial and trade embargo against Libya in effect since 1986. Under these sanctions, all trade with Libya is prohibited, and all assets owned or controlled by the Libyan Government in the United States or in the possession or control of U.S. persons are blocked. In addition, I have instructed the Secretary of Commerce to reinforce our current trade embargo against Libya by prohibiting the re-export from foreign countries to Libya of U.S.-origin products, including equipment for refining and transporting oil.

2. There has been one amendment to the Libyan Sanctions Regulations, 31 C.F.R. Part 550 (the "Regulations"), administered by the Office of Foreign Assets Control ("FAC") of the Department of the Treasury, since my last report on July 12, 1993. The amendment (58 Fed. Reg. 47643) requires U.S. financial institutions to provide written notification to FAC of any transfers into blocked accounts within 10 days of each transfer. It also standardizes registration and reporting requirements applicable to all persons holding blocked property and requires the annual designation of an individual contact responsible for maintaining the property in a blocked status. A copy of the amendment is attached to this report.

3. During the current 6-month period, FAC made numerous decisions with respect to applications for licenses to engage in transactions under the regulations, issuing 65 licensing determinations—both approvals and denials. Consistent with FAC's ongoing scrutiny of banking transactions, the largest category of license approvals (17) concerned requests by non-Libyan persons or entities to unblock bank accounts initially blocked because of an apparent Libyan interest. One license involved export transactions from the United States to support a United Nations program in Libya. Six licenses were issued authorizing intellectual property protection in Libya. Two licenses were issued that permit U.S. attorneys to provide legal representation under circumstances permitted by the regulations. FAC has also issued one license authorizing U.S. landlords to liquidate the personality of the People's Committee for Libyan Students, with the net proceeds from the sale paid into blocked accounts. Finally, FAC has issued three licenses to the Embassy of the United Arab Emirates, as Protecting Power for Libya, to manage Libyan property in the United States subject to stringent FAC reporting requirements.

4. During the current 6-month period, FAC has continued to emphasize to the international banking community in the United States the importance of identifying and blocking payments made by or on behalf of Libya. The FAC worked closely with the banks to implement new interdiction software systems to identify such payments. As a result, during the reporting period, more than 130 transactions involving Libya, totaling more than \$20.7 million, were blocked.

Since my last report, FAC has collected 39 civil monetary penalties totaling nearly \$277,000 for violations of U.S. sanctions against Libya. All but 8 of the violations involved the failure of banks to block funds transfers to Libyan-owned or controlled banks, with 5 of the remainder involving the U.S. companies that ordered the funds transfers. The balance involved one case each for violations involving a letter of credit, trademark registrations, and export transactions.

Various enforcement actions carried over from previous reporting periods have continued to be aggressively pursued. Several new investigations of potentially significant violations of the Libyan sanctions have been initiated by FAC and cooperating U.S. law enforcement agencies. Many of these cases are believed to involve complex conspiracies to circumvent the various prohibitions of the Libyan sanctions, as well as the utilization of international diversionary shipping routes to and from Libya. FAC continued to work closely with the Departments of State and Justice to identify U.S. per-

sons who enter into contracts or agreements with the Government of Libya, or other third-country parties, to lobby U.S. Government officials and to engage in public relations work on behalf of the Government of Libya without FAC authorization.

FAC also continued its efforts under the Operation Roadblock initiative. This ongoing program seeks to identify U.S. persons who travel to and/or work in Libya in violation of U.S. law.

FAC has continued to pursue the investigation and identification of Libyan entities as Specially Designated Nationals of Libya. During the reporting period, those activities have resulted in the addition of one third-country Libyan bank to the Specially Designated Nationals list; and FAC has intervened with respect to a Libyan takeover attempt of another foreign bank. FAC is also reviewing options for additional measures directed against Libyan assets in order to ensure strict implementation of UNSC Resolution 883 that has imposed international sanctions against Libyan financial assets.

5. The expenses incurred by the Federal Government in the 6-month period from July 7, 1993, through January 6, 1994, that are directly attributable to the exercise of powers and authorities conferred by the declaration of the Libyan national emergency are estimated at approximately \$1 million. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the Office of the General Counsel, and the U.S. Customs Service), the Department of State, and the Department of Commerce.

6. The policies and actions of the Government of Libya continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. The United States continues to believe that still stronger international measures than those mandated by UNSC Resolution 883, including a worldwide oil embargo, should be enacted if Libya continues to defy the international community. We remain determined to ensure the perpetrators of the terrorist acts against Pan Am 103 and UTA 772 are brought to justice. The families of the victims in the murderous Lockerbie bombing and other acts of Libyan terrorism deserve nothing less. I shall continue to exercise the powers at my disposal to apply economic sanctions against Libya fully and effectively, so long as those measures are appropriate, and will continue to report periodically to the Congress on significant developments as required by law.

WILLIAM J. CLINTON,
THE WHITE HOUSE, February 10, 1994.

TRANSPPOSITION OF SPECIAL ORDER TIME

Mr. GOSS. Mr. Speaker, I ask unanimous consent that the special orders

previously granted for today, February 10, 1994, to the gentleman from Georgia [Mr. GINGRICH] and the gentleman from Florida [Mr. GOSS] be transposed.

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

There was no objection.

COMMUNICATION FROM RANDALL B. MEDLOCK, ACTING DIRECTOR OF NON-LEGISLATIVE AND FINANCIAL SERVICES

The SPEAKER pro tempore laid before the House the following communication from the Acting Director of the Office of the Director, Non-Legislative and Financial Services:

OFFICE OF THE DIRECTOR, NON-LEGISLATIVE AND FINANCIAL SERVICES, HOUSE OF REPRESENTATIVES

Washington, DC, February 10, 1994.

Hon. THOMAS S. FOLEY,

Speaker, House of Representatives, Washington, DC

DEAR MR. SPEAKER: This is to notify you formally pursuant to Rule L (50) of the Rules of the House that the Office Supply Service and the Office of Finance have each been served with a subpoena issued by the United States District Court for the District of Columbia.

After consultation with the General Counsel to the House, I have determined that compliance with the subpoenas is consistent with the privileges and precedents of the House.

Sincerely,

RANDALL B. MEDLOCK,
Acting Director.

RESPECT FOR MEN AND WOMEN IN UNIFORM

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

Mrs. SCHROEDER. Mr. Speaker, the one thing every Member in this body should work very hard to do is to see that our men and women in uniform who are out there for our freedoms are treated with respect and dignity, and the command is sending all the right messages.

As we know, in Tailhook they have dismissed all the charges because the brave Navy captain who wrote the decision seemed to find exactly the same thing that our new Navy Secretary found, and that was the CNO. Mr. Kelso, happened to be at the event and sending all the wrong messages to our young people that this was OK. Therefore, we have 88 victims and no one held accountable, because it appears Admiral Kelso was winking at it.

This has been brushed aside twice now. I am putting this decision in the RECORD. I hope every Member looks at this, and we call upon our new Secretary of Defense, Mr. Bill Perry, to please, please act on this. Otherwise I think it will look like we really do not

care, and we really do not think how young women are treated in our military is very important, that an admiral is much more important than 88 women.

GENERAL COURT-MARTIAL, UNITED STATES NAVY, TIDEWATER JUDICIAL CIRCUIT, NORFOLK, VA

United States v. Thomas R. Miller, Cdr., USN, and United States v. Gregory E. Tritt, Cdr., USN, and United States v. David Samples, Lt., USN

I. NATURE OF MOTION

On motion through defense counsel, CDR Miller, CDR Tritt, and LT Samples¹ move this court to dismiss the charges brought against them for the following two separate but related reasons.

First, that ADM Frank B. Kelso II, Chief of Naval Operations (CNO) is an "accuser" within the meaning of Article 1(9), Uniform Code of Military Justice (UCMJ).² Further, that he was an "accuser" at the time he appointed VADM Paul Reason, Commander Naval Surface Force, U.S. Atlantic Fleet, to act as the convening authority in their respective cases. The defense then argues that pursuant to Rule for Courts-Martial (R.C.M.) 504, ADM Kelso's status as an "accuser" must result in the disqualification of VADM Reason from acting as the convening authority. This would be true if ADM Kelso is an "accuser," as R.C.M. 504 requires the disqualification of any convening authority junior in rank or command.

Second, the defense contends that since ADM Kelso may have been guilty of the same or similar crimes of omission as those alleged against CDRs Miller and Tritt, his appointment of a subordinate officer to act as convening authority effectively shielded him from prosecution and thus amounted to unlawful command influence within the meaning of Article 37, UCMJ.³

In support of these two broad contentions, CDR Miller, CDR Tritt and LT Samples more specifically contend the following chain of events:

(1) CDR Miller and CDR Tritt are charged, *inter alia*, with being present and then failing to take action to stop subordinate officers, including several officers assigned to their command, from assaulting certain unidentified females by touching them on the buttocks with their hands during the 1991 Tailhook Symposium (hereinafter "Tailhook 91").

(2) The alleged failure to act as well as the alleged assaults on the unidentified females by the subordinate Navy officers took place on the third floor pool patio of the Las Vegas Hilton (hereinafter "patio") during the evening hours of Saturday, 07 September 1991.

(3) ADM Frank B. Kelso II, CNO, was also present on the patio on 07 September 1991 at or about the time these alleged crimes took place.

(4) ADM Kelso later denied being present on the patio at any time during the evening hours of Saturday, 07 September 1991. He likewise denied being in the third floor hallway or in any of the various squadron hospitality suites at any time.

(5) Subsequent to this interview, the Defense Criminal Investigative Service (DCIS)⁴ obtained the statements of a substantial number of eyewitnesses who recalled seeing, and in some cases speaking with, ADM Kelso on the patio during the evening hours of Saturday, 07 September 1991.

Footnotes at end of article.

(6) Based on these eyewitness statements, ADM Kelso was reinterviewed by DCIS on 15 April 1993. At this interview ADM Kelso was advised of his rights under Article 31(b), UCMJ, as a suspect. He was advised that he was under suspicion of violating Articles 107 and 134, UCMJ (Making a False Official Statement and False Swearing, respectively), both suspected crimes stemming from his 23 July 1992 statement wherein he denied being on the patio Saturday evening, 07 September 1991.

(7) That likewise on the prior evening, Friday, 06 September 1991, ADM Kelso was present on the patio, which he acknowledges, and also in the third floor hallway and made personal visits to the various squadron hospitality suites, which ADM Kelso denies.

(8) That during this earlier Friday visit, ADM Kelso witnessed inappropriate conduct occurring on the patio and in the hospitality suites, including female "leg shaving." This personal knowledge of inappropriate behavior by subordinate officers, combined with his failure as the senior Navy officer present to stop the behavior, is sufficient to make ADM Kelso a suspect in the commission of the same type of crimes (failure to act) alleged against CDR Miller and CDR Tritt. At the very least he would be considered a material witness to these events. That, furthermore, ADM Kelso's personal knowledge and involvement with the misconduct at Tailhook 91, and the subsequent publicity surrounding the allegations of assault and failure of Navy leadership, have so closely connected him with these events that he would reasonably be perceived to have a personal interest in the courts-martial of CDRs Miller and Tritt and LT Samples.

(9) On 01 February 1993, ADM Kelso personally appointed VADM Reason to act as the Consolidated Disposition Authority (CDA) to take administrative and disciplinary action for all Navy personnel found to have committed misconduct at Tailhook 91. ADM Kelso further directed that all related matters requiring review would be forwarded to his office for action.

The defense contends these events taken together lead to the disqualification of the convening authority. In short, they reason as follows: ADM Kelso's presence on the patio during the evening hours of 06 and 07 September 1991, at which times he either observed or knew of the inappropriate behavior of his subordinates and failed to act to stop such behavior; ADM Kelso's subsequent status as a criminal suspect and as a potential material witness; and, the current controversy regarding ADM Kelso's denial that he was ever physically present on the patio during the evening hours of 07 September 1991—viewed either separately or collectively—give him an interest "other than official" in the outcome of the prosecution of courts-martial stemming from Tailhook 91.

If ADM Kelso has an "other than official interest" in this litigation generally or these three accused's cases specifically, he is an "accuser" within the meaning of Article 1(9), UCMJ. As an "accuser," ADM Kelso was disqualified from appointing any subordinate in rank or command to convene a court-martial stemming from Tailhook 91, and as a subordinate in rank and command to ADM Kelso, VADM Reason became a "junior accuser" and was disqualified from acting as the convening authority in these cases pursuant to R.C.M. 504(c)(2).

Finally, that ADM Kelso's action in appointing a subordinate, VADM Reason, to act as the CDA when ADM Kelso knew himself to be a possible suspect for his own ac-

tions related to Tailhook, 91, which appointment effectively shielded himself and possibly other officers senior to VADM Reason from courts-martial, amounted to unlawful command influence within the meaning of Article 37, UCMJ.

Briefly, the government generally denies the above contentions and responds that ADM Kelso never visited the third floor hallway or the hospitality suites during his stay at Tailhook 91 and, although he did visit the patio on Friday, he never went to the third floor at all on Saturday evening, 07 September 1991. Further, since ADM Kelso never personally witnessed any inappropriate conduct, he would not be a material witness. That throughout this court-martial process, ADM Kelso has had only an official interest in the litigation and has taken no action that would in any way influence these proceedings. Finally, the government responds that the evidence fails to establish that ADM Kelso has been so closely connected to these events that a reasonable person would conclude that he had more than simply an official interest in the cases of CDRs Miller and Tritt and LT Samples.

II. BACKGROUND TO TAILHOOK 91

The defense claims that the nexus linking ADM Kelso's personal involvement in Tailhook 91 to the charges before this court does not arise from any single event. The defense argues that ADM Kelso's personal involvement derives from all of his connections with the events of these courts-martial beginning with his knowledge of reported incidents of inappropriate behavior at Tailhook Symposiums prior to 1991, and continuing up to his appearance as a witness before this court. In order to assess the merit of this claim by the defense, and to bring Tailhook 91 events germane to the defense issues into proper perspective, the court will begin with an analysis of the evidence relating to the Navy's past sponsorship of the Tailhook Association. This includes reports of inappropriate behavior occurring at past Tailhook Symposiums and the Navy's response to those reports.

This court finds that:

1. Tailhook 91 was held at the Las Vegas Hilton Hotel, Las Vegas, Nevada, from 05 through 08 September 1991. It was attended by hundreds of aviators, male and female, including active duty, reserve, and retired officers from both the Navy and Marine Corps aviation communities. Also in attendance were many high ranking uniformed Navy and Marine Corps officers and civilian Department of the Navy (DON) personnel, including ADM Kelso and then Secretary of the Navy (SECNAV), H. Lawrence Garrett III.

2. The Tailhook Symposium was an annual event sponsored by the Tailhook Association. At the time of Tailhook 91, the Association was officially sanctioned by the Department of the Navy. However, following reports of alleged assaults on female attendees and other inappropriate conduct at Tailhook 91, the Navy withdrew its support of the Association.

The stated purpose of the annual symposium was to provide a single forum within the Navy and Marine Corps aviation communities to address a broad range of matters affecting the state and future of naval aviation. Tailhook 91 was to be particularly significant since it provided an opportunity to address the recent combat successes of "Operation Desert Storm," and a future aviation plan then under consideration by the Congress. The future role of female aviators would also be a major topic of discussion, which was one of the primary reasons that

ADM Kelso attended. See Appellate Exhibit LXXII, p. 17.

3. Despite the worthy official purpose, the evidence is replete with references to the annual symposium's long-standing and widely-known reputation for wild partying, heavy drinking, and lewd behavior by some attendees, particularly junior aviators. Reports of such activities at past Tailhook Symposiums had sparked concerns at the highest levels of the Navy.

In 1986, VADM Martin, then serving as the Assistant Chief of Naval Operations for Air Warfare (OP-05), formally expressed his concerns in writing regarding inappropriate behavior at the 1985 Symposium. See Appellate Exhibit CLXXXV. This led to a routine practice by Tailhook Association Presidents of sending a letter to aviation squadron commanders prior to each annual symposium urging moderation regarding social activities. CAPT Ludwig, then President of the Tailhook Association, sent such a letter to squadron commanders some weeks prior to Tailhook 91. In his correspondence, CAPT Ludwig, being concerned with past incidents of misbehavior among some symposium attendees, urged squadron commanders to guard against what he termed "late night gang mentality." See Appellate Exhibit CLXXXVI.

Col Wayne Bishop, USMC, former Special Assistant and Marine Corps Aide to SECNAV, and who attended Tailhook 91 with Secretary Garrett, harbored serious reservations concerning both Secretary Garrett's and his own attendance at Tailhook 91. Col Bishop's concerns stemmed from reports he had received of inappropriate behavior occurring at past Tailhook Symposiums. This included what he described as:

"stories concerning pornographic movies, strippers and prostitutes * * * lots of drinking, junior officers and senior officers, flag officers, removing themselves from their office for the purpose of discussing contentious issues in the aviation community one-on-one." (Appellate Exhibit CXL at pp. 14-18.)

VADM Dunleavy, who was serving as the Assistant Chief of Naval Operations for Air Warfare (OP-05) at the time of Tailhook 91, was also keenly aware of the social climate at past Tailhook Symposiums. In his sworn statement to Mr. Suessman, DCIS, of 28 July 1992, VADM Dunleavy acknowledged his attendance at the 1990 Tailhook Symposium. In discussing his knowledge of reported incidents of inappropriate behavior at that Symposium, VADM Dunleavy stated,

"I've seen some wild stuff over the years * * * broken furniture and spilled drinks * * *. I heard of the '90 Gauntlet from my son * * * he says it is a bunch of drunks running around chasing girls * * *. It's a grab ass of JOs [junior officers] * * * everyone just lines up in the passageway and every good looking girl that goes through they grab at some of that." (Appellate Exhibit LXXXII(A), pp. 7-9.)

In commenting on the term "late night gang mentality" used by CAPT Ludwig in his letter to squadron commanders prior to Tailhook 91, VADM Dunleavy stated, "[t]he kids just getting out of hand in the sense of dancing and, you know, mooning people. * * *"

Secretary Garrett was also aware of the potential for inappropriate activities at Tailhook 91. He attended the 1990 Tailhook Symposium, at which time he acknowledged witnessing "female leg shaving" activities. The potential for inappropriate behavior at Tailhook 91 was also anticipated by members of Secretary Garrett's personal staff. He was

warned by at least one highly vocal member of his staff not to attend Tailhook 91 because of the well-known reputation for lewd and inappropriate behavior. See Appellate Exhibit CXL at pp. 14-18.

4. This court finds that this quantum of information concerning the symposium's notorious social reputation prior to Tailhook 91, and in particular the warnings given by VADM Martin and CAPT Ludwig, could not have escaped Adm Kelso's attention. It served to place him and other high ranking officers on notice as to the social climate at past Tailhook Symposiums, and the kind of social environment to expect at Tailhook 91.

The failure by those responsible to take strong corrective action regarding inappropriate behavior that obviously occurred at past Tailhook Symposiums is incomprehensible. As events have proven, this embarrassing failure of leadership and "head in the sand" attitude, which conveyed a signal of condonation, contributed to the sexually offensive conduct which later escalated to the actual sexual assaults on female attendees. This excusing attitude was underscored by Secretary Garrett's in-court testimony that he did not find the female leg shaving exhibition to be offensive. He further stated that he viewed the female leg shaving to be permissible as "conduct between consenting adults."

Excessive drinking, "pornographic movies, strippers, and prostitutes," all of which had been a well known part of past Tailhook conferences were repeated again at Tailhook 91 as part of the planned activities in the hospitality suites. Finally, the infamous gauntlet, in which male Navy officers felt it was permissible to grab at any woman who walked past—and which was at the heart of the complaints by female attendees—was likewise a tradition of past Tailhook conferences. It should go without saying that this behavior should have never been permitted to start, having started should have been swiftly ended, and that over the years of permissive leadership had gotten completely out of hand. This common knowledge of inappropriate and offensive behavior at past symposiums and failure by senior Navy leadership to take corrective action is an inseparable part of the motion before this court.

5. Within days following Tailhook 91, LT Paula Coughlin, a female aviator, was the first to formally complain to the Naval Investigative Service (NIS) that she had been the victim of an assault in the gauntlet on the third floor. In the weeks that followed, other female attendees also came forward to complain of being assaulted. The growing reports of sexual assault quickly generated public outrage and a demand by the Congress for an investigation to both identify the assailants and secure individual accountability under the UCMJ. It is the actions of Adm Kelso in carrying out his codal role in the ensuing military justice process, and the extent to which his own accountability and personal involvement at Tailhook 91 may have affected the lawfulness of this process, that have been called into question by the defense.

III. ADM KELSO'S PERSONAL INVOLVEMENT AT TAILHOOK 91

Adm Kelso gave two sworn statements to DCIS investigators on 23 July 1992 and 15 April 1993, respectively. See Appellate Exhibits LXXII and LXXVIII. He also gave sworn testimony before this court. See Transcript at pp. 349-385. In both of his statements to DCIS and during his in-court testimony, Adm Kelso acknowledged that during the Tailhook 91 symposium he visited the patio

of the Las Vegas Hilton Hotel (Hilton) during the evening hours of Friday, 06 September 1991. The patio adjoins the hospitality suites and it was there that most of the socializing and partying took place. Nevertheless, Adm Kelso denied: (1) that he witnessed any inappropriate behavior at any time; (2) that he visited any of the squadron hospitality suites during his sojourn on the patio Friday evening or at any other time during his two-day visit; and (3) that he ever visited the patio on Saturday evening, 07 September 1991.

Friday, 06 September 1991

This court finds the convincing weight of the evidence reveals the following chain of events on Friday, 06 September 1991.

6. Adm Kelso arrived at Nellis Air Force Base, located near Las Vegas, Nevada, at approximately 1700, to commence his official visit at Tailhook 91. He was accompanied by members of his personal staff which included CAPT Philip Howard, his Executive Assistant (EA); Maj Mike Edwards, USMC, his Flag Aide; Master Chief Roger Wise, his Flag Writer; and Petty Officer Dubell, his Communicator. Adm Kelso was greeted by LCDR Elizabeth Toedt, one of the Tailhook 91 VIP protocol officers. LCDR Toedt escorted Adm Kelso and his official party to the Hilton via limousines furnished by the Hilton. See Appellate Exhibit CLXX.

7. They arrived at approximately 1730 and Adm Kelso was greeted by CAPT Ludwig, President of the Tailhook Association. Maj Edwards checked the Admiral into the hotel and escorted him to his room, number 2124, located on the 21st floor. Adm Kelso settled into his room, changed into a suit and tie, and made final preparations for his keynote speech at the Friday evening reception and banquet. This reception and banquet was scheduled to begin at 1900.

8. At approximately 1845, Maj Edwards met Adm Kelso at his room and escorted him to the banquet room on the first floor of the Hilton. While enroute, Adm Kelso informed Maj Edwards that he would be going to the patio with VADMs Dunleavy and Fetterman following the banquet. Maj Edwards did not attend the banquet. After escorting Adm Kelso to the banquet room, Maj Edwards went to survey the patio and the various squadron hospitality suites in advance of Adm Kelso's visit.

9. The banquet was attended by some 800 people, including VADM Dunleavy, VADM Fetterman, and a host of other flag officers. CAPT Howard also attended the banquet. Following the banquet, which ended at approximately 2100, Maj Edwards escorted Adm Kelso back to his room to change clothes. Adm Kelso changed into slacks and an open-collar sport shirt. At approximately 2200, VADMs Dunleavy and Fetterman, CAPT Howard, and Maj Edwards met with Adm Kelso at his room, and escorted him down the center bank of elevators to the third floor.

Tour of the hospitality suites

10. Adm Kelso testified that, upon arriving on the third floor, he immediately entered the patio from the center bank of elevators. Adm Kelso further testified that while on the patio he remained in about a 30-yard radius, talking and socializing. After about 40 minutes on the patio, he was escorted back to his room by Maj Edwards. Transcript at 351. However, VADM Dunleavy testified that after the Friday evening banquet, he and VADM Fetterman escorted Adm Kelso to the patio, and together they made a tour of the hospitality suites. Adm Dunleavy spe-

cifically testified that: "[A]fter the President's dinner Friday night . . . my partner [VADM Fetterman] and I escorted Kelso down, so that he could see the JOs [junior officers] and chat with them. We spent about probably 45 minutes to an hour down there, and then I escorted the CNO out, and he went to his room, and I think I went—Friday night, I think I went back down and spent some more time with the JO's and then went back to my room, probably about 11, 1130 . . . Yes, in fact, I escorted him [referring to Adm Kelso] around, and we walked around. From the patio, finally made a swing through the suites down the passageway, up to another suite and back on the patio . . . about 9:30, 9:45, immediately after the President's dinner . . . Yeah, but, you know, again we swing out through the patio and then up, usually 128 because for me it is the walkway in there and then back again." (Transcript at pp. 501, 504, 515.)

Maj Edwards' testimony also contradicts Adm Kelso's best recollection of the route he took when he initially entered the patio. In describing the route the party took onto the patio from Adm Kelso's room, Maj Edwards stated, "the party entered the patio from the doorway near room 308, the Rhino suite." Maj Edwards further stated, "if Adm Kelso gave a different account of the route onto the patio, he must have been mistaken." Transcript at pp. 1088-1090. This court finds Maj Edwards' testimony concerning this issue more accurate since it corroborates, at least in part, the detailed account given by VADM Dunleavy. Moreover, Maj Edwards was more familiar with the patio area, having made a tour of the section earlier in the evening.

Based on the convincing weight of the testimony given by VADM Dunleavy, CAPT Howard and Maj Edwards, and despite Adm Kelso's best recollection, this court finds the following chain of events occurred relating to Adm Kelso's movements during his visit to the third floor on Friday evening:

Upon arrival on the third floor, VADMs Dunleavy and Fetterman, in company with CAPT Howard and Maj Edwards, escorted Adm Kelso onto the patio through the exit from the center bank of elevators. The group then walked past the front center planters and turned left towards the third floor hallway entrance from the patio adjacent to room 308, the Rhino suite. They entered the third floor hallway from that entrance and toured the various suites, during which time they talked and socialized with junior aviators and others present. Following a tour of the suites, the group exited back onto the patio through the same doorway from which they entered, where they spent a period of time talking and socializing with others individually and as a group. Later, Adm Kelso, VADM Dunleavy, CAPT Howard and Maj Edwards re-entered the third floor through the entrance to the center bank of elevators. Maj Edwards escorted Adm Kelso back to his room. VADM Dunleavy and CAPT Howard returned to the patio.

Activities in the suites

This court further finds that Adm Kelso was exposed to, and actually witnessed incidents of inappropriate decorum and behavior while touring the various hospitality suites. More specifically:

11. Based on VADM Dunleavy's testimony, this court finds that both VADM's Dunleavy and Fetterman were keenly aware that activities of questionable propriety were occurring in the suites on Friday evening. In fact, VADM Dunleavy's testimony strongly suggests that VADM Fetterman moved ahead of

him and ADM Kelso to alert unsuspecting aviators and others of ADM Kelso's approach. This was done in order to minimize ADM Kelso's exposure to untoward activities occurring in the suites. Transcript at 507-508. However, ADM Kelso was unavoidably exposed, at the very least, to the sexually oriented displays in the various suites, including the Rhino suite's large and very visible rhino mural, adorned with a "dildo" drink dispenser. See photographs, Appellate Exhibits CXXXVIII, CXXXIX, and CXCVI.

12. This court further finds that indisputable evidence has been presented showing that female "leg shaving" occurred in at least one of the suites during Tailhook 91. The occurrence of such activities is clearly and explicitly revealed in photographs taken during Tailhook 91. See Appellate Exhibit CXCVII. This court also finds that "leg shaving" activities were occurring during the time that ADM Kelso was on the patio and touring the various suites on Friday evening with VADMs Dunleavy and Fetterman.

For example, in a sworn statement to DCIS investigators on 18 July 1992, LT John Wood, then attached to VF-124, declared that he was on the patio from approximately 2200 to 2300 on Friday evening. During that time he witnessed "females having their legs shaved in the VAW-110 suite." Appellate Exhibit LXXVI, Attachment GG.

In a sworn statement to DCIS investigators on 09 December 1992, CAPT Daniel Whalen corroborated LT Wood's observation. CAPT Whalen, then serving as the TQL Program Coordinator in OP-05, related that he visited the patio on Friday evening from about 2100 to 2300. During his visit, he observed "leg shaving" occurring in the VAW-110 suite, room 303. Appellate Exhibit CII. CAPT Whalen affirmed the accuracy of his 09 December statement during his in-court testimony. Transcript at 553.

13. This court further finds that ADM Kelso actually witnessed "leg shaving" activities on either Friday or Saturday evening, or on both evenings.

For example, in his sworn statement to DCIS investigators on 16 September 1992, Col Raymond Powell, USMC (Ret), stated that he was on the patio on Saturday night, 07 September 1991, from approximately 2200 to 2300. He stated that during that time, he spent approximately 20 minutes talking with Secretary Garrett and a group of admirals including ADM Kelso. At that time, according to Col Powell, they were standing "approximately 20 feet from the leg shaving suite, and that women were lined up waiting to get into the suite." He also stated that someone in the group commented to the effect that, "the girls must like having their legs shaved." Col Powell further stated, "ADM Kelso walked in front of the window to the 'leg shaving' suite." (Appellate Exhibit LXXVI, Attachment X.)

Activities on the patio

Even if one were to assume that ADM Kelso did not actually witness female "leg shaving," the evidence demonstrates that he could not help but know that such activities were occurring. In this respect, this court finds that:

14. The convincing weight of the evidence reveals that while he was on the patio, the sign over the doorway to room 303, the VAW-110 suite, advertising "Free Female Leg Shaves" was clearly visible to ADM Kelso. The sign was reported to be more than 15 feet long. Further, this finding is strongly corroborated by the testimony of both CAPT Howard and Maj Edwards. Maj Edwards, who initially viewed the "leg shaving" sign dur-

ing his earlier tour of the patio area, testified that he was standing near ADM Kelso on the patio on Friday evening. Maj Edwards recalls the "leg shaving" sign was plainly visible from his vantage point. He specifically stated that, "[f]rom about 20 feet away from the Admiral, I could observe it ***. It was pretty hard to miss ***. It was a fairly large sign. Transcript at 1103-1104.

CAPT Howard also testified that he viewed the "leg shaving" sign during his visit to the patio with ADM Kelso on Friday evening. In testimony mirroring that given by Maj Edwards, CAPT Howard stated that, "the sign was visible at a distance of about 20 to 25 feet from where [he] and ADM Kelso were standing." Transcript at pages 443-445.

15. ADM Kelso's exposure to "leg shaving" activities is also corroborated by LT Rolando Diaz. In a Stipulation of Expected Testimony, LT Diaz states that during Tailhook 91 he set up a leg shaving suite (VAW-110 suite, room 303) and placed a large banner across the entrance to the suite advertising free leg shaves. He further states that at sometime during either Friday or Saturday evening, he took a break from leg shaving activities and walked out onto the patio directly outside of the leg shaving suite. As he walked out, he observed ADM Kelso, dressed in a yellow "Izod" sport shirt, standing with a group of 3 to 4 individuals approximately 30 to 50 feet from him in the middle of the patio between his suite and the VAQ suite (room 302). LT Diaz states that ADM Kelso had a clear view of his suite and the leg shaving sign. See Appellate Exhibit CLX.

16. This court further finds the evidence clearly reveals that, in addition to "leg shaving" activities, incidents of rowdy and indecent behavior involving public nudity occurred in the third floor hallway, in the suites, and on the patio during both Friday and Saturday evenings. The occurrence of this kind of activity is clearly depicted in photographs taken during Tailhook 91. Appellate Exhibit CXCVIII.

In this respect, this court finds that ADM Kelso actually witnessed at least one such incident during his visit to the patio on Friday evening. None of the evidence presented is more convincing of this fact than the undisputed testimony of CAPT Robert Beck, a Naval Reserve aviator and commercial airline pilot who was in attendance at Tailhook 91. In describing a conversation he had with ADM Kelso while on the patio on Friday evening, CAPT Beck stated that he was well acquainted with VADM Dunleavy, having worked for him for two years while serving as Commanding Officer of a Reserve-Out unit supporting OP-05. He also stated that he had previously met and talked with ADM Kelso on several occasions in the Navy Command Center in Washington, D.C. He further described that ADM Kelso, in company with VADMs Dunleavy and Fetterman, approached him while he was standing on the patio. He first spotted the trio at a distance of 75 to 100 feet. As they approached, he was greeted by VADM Dunleavy. Shortly thereafter, ADM Kelso "kind of presented himself," and they began a conversation. As his conversation ensued, VADMs Dunleavy and Fetterman moved away towards the suites. Moments later, his conversation with ADM Kelso was interrupted by chants from several men and women who were surrounding a woman in the vicinity where they were standing. The few individuals surrounding the woman quickly grew into a large crowd, which he estimated numbered at least 100. According to CAPT Beck's graphic descrip-

tion of the event, the crowd was, "trying to allure the young lady into exposing her breasts because they were shouting 'tits, tits, tits' *** after about five or six of the chants, the admiral said to me, 'Am I hearing what I think I am hearing?' and I said, 'Well, Admiral, if you think that you are hearing 'tits' shouted, yes, you are absolutely right.'" About 15 to 20 seconds later *** the crowd aroused in claps and hurrying, and one person in the center, and we could not see the center of it because we were at the same level, but I did and we could see the girl's top of her bathing suit being held up in the air by someone *** the admiral turned to me and said, "Well, I guess that's the end of that," and I said, "Well, maybe not, maybe not, admiral." And subsequent to that, there was then a chorus, the words (sic) "bush" being used several times, and I was looking at the mass of humanity in front of me. At that time, the admiral started walking away *** the security of the Hilton came and dispersed the crowd." (Transcript at 1000-1001.)

In addition to the photographs mentioned above, CAPT Beck's testimony is also corroborated by the observations of LCDR Joseph Fordham. In a statement to DCIS investigators on 27 October 1992, LCDR Fordham stated that he was standing on the patio near the VA-126 suite on Thursday or Friday night at which time he heard a group of men chanting, "show us your tits." When he turned to observe the scene, he witnessed two women expose their breasts. He further stated that "the women were not being coerced" and were "laughing" during the incident. Appellate Exhibit LXXVI, Attachment I.

Saturday, 07 September 1991

The court next turns to the issue of whether ADM Kelso was ever present on the patio on Saturday evening, 07 September 1991.

17. This court finds that ADM Kelso's movements and activities during the morning, afternoon, and early evening hours of Saturday, 07 September 1991, are not in dispute. He departed the Hilton at approximately 0700 in the company of CAPT Howard for an official visit to a classified area located near Nellis Air Force Base. He returned to the Hilton around 1400. At approximately 1500, he attended a "Flag Panel," which ended at approximately 1700. At approximately 1800, ADM Kelso attended an official awards banquet on the first floor of Hilton, which featured Secretary Garrett as the guest speaker.

18. What is in dispute, however, is whether ADM Kelso ever visited the patio following his departure from the banquet and prior to his departure from the Hilton to Nellis Air Force Base for his return trip to Washington, D.C. The defense opines that this was the approximate time period numerous indecent assaults occurred in the third floor hallway and on the patio. The assaults were perpetrated upon female officers and civilian attendees in the hallway of the third floor and on the patio. It was also during this time that CDRs Miller and Tritt were on the patio, and allegedly failed to prevent several of their subordinate officers from touching females on their buttocks.

As noted earlier, ADM Kelso testified that he never visited the patio on Saturday evening. He also testified that he never witnessed any assaultive or inappropriate behavior during that evening. The court now turns to the voluminous body of evidence presented on these most contentious issues.

Attendance at the "Flag Panel" and Saturday evening banquet

This court finds from the evidence that:

19. Secretary Garrett arrived at Tailhook 91 around 1400 on Saturday, 07 September 1991. Shortly following his arrival, he joined ADM Kelso and CAPT Howard in attendance at the "Flag Panel."

20. At approximately 1700, ADM Kelso departed the "Flag Panel" in the company of CAPT Howard, Secretary Garrett, and Col Wayne Bishop, USMC, Secretary Garrett's Executive Assistant (EA). Secretary Garrett invited ADM Kelso and CAPT Howard to accompany him and Col Bishop to view the symposium's exhibit area. ADM Kelso declined the invitation explaining that he had already viewed the exhibits. ADM Kelso and CAPT Howard then entered one of the first floor center elevators and proceeded to their individual rooms to rest and to prepare for attendance at the Saturday evening reception and banquet.

21. Maj Edwards did not attend the "Flag Panel" with ADM Kelso. He participated in a 5K running event during the time of ADM Kelso's Saturday morning/early afternoon official activities. Upon his return to the Hilton, Maj Edwards discovered that ADM Kelso had already departed the "Flag Panel" and returned to his room. He then went to see ADM Kelso in his room to ensure that he was properly informed as to the time of the banquet and the required dress. Transcript at 241, 1081.

22. At approximately 1830, Maj Edwards returned to ADM Kelso's room to escort him to the banquet, scheduled to begin at 1900. ADM Kelso was wearing a suit and tie and he wore these to the banquet. ADM Kelso and Maj Edwards were joined by CAPT Howard on the way to the banquet room located on the first floor of the Hilton. Maj Edwards did not attend the banquet. Upon arrival at the banquet area, Maj Edwards parted company with ADM Kelso and CAPT Howard.

23. During the banquet, ADM Kelso sat at the head table with a number of high ranking dignitaries, including Secretary Garrett who was the keynote speaker. Following the banquet, and prior to leaving the banquet room, Secretary Garrett, VADM Dunleavy, ADM Kelso, and other senior officers engaged in conversation about making a visit to third floor. During his in-court testimony, ADM Kelso acknowledged that he engaged in "some general discussion" with Secretary Garrett and VADM Dunleavy following the banquet. Transcript at pp. 352, 388, 427-428, 503.

The question of ADM Kelso's visit to the patio

The defense initially submitted thirty-four Reports of Interview (ROI)⁷ in support of their averment that ADM Kelso visited the patio on Saturday evening. The ROI's were prepared by DCIS investigators from notes taken during oral interviews of Tailhook 91 attendees. The vast majority of interviews were conducted during a period from approximately July 1992 to January 1993, some 8 to 14 months following Tailhook 91. Of the thirty-four attendees who were subjects of the ROI's, ten appeared as in-court witnesses, and five were the subjects of stipulations of expected testimony. The testimony of one of the nine who testified in court, Ms. Karye LaRocque, was withdrawn by the defense and disregarded by the court. The defense also withdrew the ROI relating to the statement of LCDR Paul LaRocque. All remaining ROI's, with related corrections or clarifications noted by counsel on the record, were considered by the court together with all other evidence of record. However, the

court gave the greatest weight to the ROI's which were augmented by in-court testimony or by stipulations of expected testimony. See Appellate Exhibit CXCIV.

In addition to the ROI's and related derivative testimony, the defense and the government presented the testimony of other witnesses and numerous documents in support of their respective positions.

Key evidence

The court further finds that:

24. In evaluating the key evidence in support of the defense position that ADM Kelso did, in fact, visit the patio on Saturday evening, the following corroborating facts supporting this contention were established by the evidence. More specifically, this court finds that:

(a) The patio area was well-lighted, making identification more certain.

(b) ADM Kelso's distinctive physical features make him easily recognizable, a fact which was noted by a number of witnesses.

(c) The vast majority of the witnesses observed ADM Kelso on the patio between 2130 and 2300, and close in time with the surge of banquet attendees coming onto the patio.

(d) ADM Kelso was observed by a large number of witnesses in the same general area of the patio, that is, along the front of the patio between the entrance to the center bank of elevators and the planters. Compare testimony of witnesses to related diagrams of the patio, Appellate Exhibits XCVII, CV, CXVIII.

(e) A number of witnesses observed ADM Kelso in the company of Secretary Garrett on the patio. Since Secretary Garrett did not arrive at Tailhook 91 until Saturday afternoon, this minimizes the likelihood these witnesses were confusing Friday and Saturday evenings.

(f) A number of witnesses observed ADM Kelso conversing with the young aviators on the patio on either Friday or Saturday evening, or on both evenings. VADM Dunleavy strongly encouraged the many flag officers in attendance to engage in one-on-one social interaction with junior aviators. This was a part of the Tailhook 91 agenda. Transcript at p. 1021. The purpose of this interaction was to elicit the views and true feelings of the junior aviators regarding the state of naval aviation. ADM Kelso stated to Mr. Suessman during his 23 July 1992 interview that he was most interested in obtaining the views of all attendees regarding the Navy's aviation plan for the future. As noted earlier, he was especially interested in obtaining the views of junior male aviators regarding the issue of expanding the role of female aviators. The evidence reveals that many of the junior aviators spent the majority of their time socializing and conversing on the patio and in the various squadron hospitality suites. Thus, it was in these areas that the flag officers, including ADM Kelso, found the greatest opportunity to meet and talk with junior aviators one-on-one.

25. This court further finds that many of the eyewitnesses gave persuasive detailed accounts of their observations of ADM Kelso's presence on the patio on Saturday evening, notwithstanding disparities regarding exact times, modes of dress, and specific locations. Moreover, a number of the witnesses insisted that their recollections were uncommonly clear not only because of that rare and memorable opportunity of seeing the CNO and SECNAV in person, but also because of other memorable events surrounding their personal activities during Tailhook 91, and Saturday evening in particular. These key witnesses include: CAPT James Terrill, USN;

CDR Kathleen Ramsey, JAGC, USN; LCDR Richard Scudder, USN; Col Raymond Powell, USMC (Ret); CDR John Hoefel, USN; CDR David Cronk, USN; LCDR James Quinn, USN; CDR Richard Martin, USN; CAPT Robert Nordgen, USN (Ret); CDR George Ghio, USN; Capt Ronald Rives, USMCR; and LT John Moriarty, USN.

26. CAPT James Terrill, currently assigned to the staff of Commander Naval Air Force, Atlantic (COMNAVAIRLANT), testified with confidence concerning his observation of ADM Kelso on the patio on Saturday evening. CAPT Terrill was previously interviewed by DCIS investigators, however, he stated that he was never asked during the interview to comment on whether ADM Kelso was ever present on the patio. He added that his knowledge of ADM Kelso being on the patio on Saturday evening was discussed with the COMNAVAIRLANT Staff Judge Advocate, CDR Tom Taylor, after he had read an article in a local Tidewater area newspaper that ADM Kelso's presence on the patio was in question. In discussing the article's speculation regarding the location of ADM Kelso on Saturday evening, CAPT Terrill stated that he commented, "Well, I know where he was." His discussion with CDR Taylor was later brought to the attention of one of the defense counsel, and this resulted in his being called as a witness.

In describing his activities on Saturday evening, CAPT Terrill testified he did not attend the banquet. Following dinner at the Hilton, he went up to the third floor patio to visit with friends. He stated he was not wearing a watch, but estimated he arrived on the patio around 2000, and departed at approximately 2200. CAPT Terrill testified further that just after finishing a conversation, he looked up to see who else was on the patio. At that moment he observed ADM Kelso about one arm's length to his left and Secretary Garrett about one arm's length to his right, and that both were engaged in conversation with separate groups. He estimated that his observation of ADM Kelso and Secretary Garrett occurred sometime between 2130 and 2200. He stated that he was sure, however, that his observation occurred shortly after he observed "all of the suits coming in from the banquet." This was one of the reasons he recalled that the sightings occurred on Saturday night rather than Friday. CAPT Terrill further stated that he was able to recognize ADM Kelso from "numerous exposures, videos and pictures." He also stated that he was embarked on several aircraft carriers in the Mediterranean during the time ADM Kelso was the Sixth Fleet Commander, and he had seen him in person several times. He further stated he recognized Secretary Garrett from photographs, both official and unofficial. See Transcript at pp. 688-701.

27. CDR Kathleen Ramsey, JAGC, USN, currently a sitting military trial judge, was interviewed by an NIS special agent on 14 November 1991, only five weeks following Tailhook 91. At that time, the question of whether ADM Kelso was present on the patio at any time during Tailhook 91 was not at issue. In fact, as will be addressed later in a separate finding, the evidence reveals that the NIS investigation never focused on the conduct or accountability of any flag officer in attendance at Tailhook 91, nor were any flag officers or high ranking civilian officials ever interviewed during the NIS investigation. (See Finding of Fact 63.) During the NIS interview, CDR Ramsey stated that she was on the patio on Saturday evening between 2200 and 2330, during which time she

observed Secretary Garrett, ADM Kelso and VADM Dunleavy in the pool area. See Appellate Exhibit LXXVII.

In a stipulation of expected testimony, CDR Ramsey related that although she could not now swear to seeing either Secretary Garrett or ADM Kelso on the patio that evening due to the lapse of time, she believes her statement to NIS was accurate at the time she gave it. In describing her activities, she stated she attended Tailhook 91 with her husband, CAPT Robert Ramsey, an aviator who retired from the Navy in July 1993. In a detailed description of events, she stated she and her husband attended the Saturday afternoon "Flag Panel." Later at approximately 1800, they attended the Saturday evening banquet featuring Secretary Garrett as the guest speaker. Following the banquet, which concluded sometime between 2100 and 2130, she and her husband went directly to the third floor pool patio area. She stated that they entered the patio through the revolving doors leading from the elevators to avoid the hallway or the hospitality suites. She did not want to transit either of these areas because of an incident that occurred during the 1988 Symposium, at which time someone threw drinks on her in the hallway. In confirming the accuracy of her prior statement to NIS concerning her observation of Secretary Garrett, ADM Kelso and VADM Dunleavy, CDR Ramsey explained that they did not appear to be together. She believed she was near the NSWC suite (room 305) at the time she observed ADM Kelso, and she recognized him because of his distinctive eyebrows. She also stated she spoke to VADM Dunleavy, exchanging pleasantries. See Appellate Exhibit CXXXVI.

28. LCDR Richard Scudder, assigned to HS-3, NAS Jacksonville, Florida, furnished an oral statement to DCIS investigators on 28 September 1992. See Appellate Exhibit CX. With the exception of several minor corrections, he confirmed the accuracy of his 28 September statement during his in-court testimony.

LCDR Scudder testified that he attended the Saturday evening banquet, which ended between 2100 and 2115. Following the banquet, he returned to his room to change into casual clothing. He immediately departed his room and set out to find his commanding officer, who was lodged at the hotel "Circus Circus," to inform him of a time change for their Sunday morning return flight to NAS Cecil Field, Florida. On the way to the hotel, he decided to make a swing through the third floor patio to determine if his commanding officer might be in that area since he had been unable to reach him earlier by telephone. He moved around the patio area and through several of the suites but did not see his commanding officer. As he was departing the patio area at approximately 2200, he observed Secretary Garrett, ADM Kelso, and VADM Dunleavy. LCDR Scudder testified that they were all in a group surrounded by what he described as "well-wishers and smoozers." He further stated that all three appeared to be dressed in casual clothing, except that Secretary Garrett looked at if he had only taken off his necktie. Transcript at pp. 642-662.

29. Col. Raymond Powell, USMC (Ret), gave a statement to DCIS investigators on 16 December 1992, which was referenced earlier in Finding of Fact number 13. He was questioned by the defense as an in-court witness, but was unable to appear due to physical incapacitation. However, when questioned by both defense and government counsel, he confirmed the accuracy of the ROI summarizing his prior oral statement.

In describing his activities, Col Powell reported he was on the patio for approximately forty-five minutes on Saturday night, the only night he visited the patio. He further stated that during that time, he spent about 20 minutes talking to Secretary Garrett and a group of admirals, including ADM Kelso. Col Powell also stated that they were standing about 20 feet from the leg shaving suite where women were lined up to get their legs shaved. He stated that someone in the group commented, "the girls must like to have their legs shaved." Also, according to Col Powell, he observed ADM Kelso walk in front of the window to the leg shaving suite. See Appellate Exhibit LXXVI, Attachment X.

30. CDR John Hoefel, then assigned as VAQ-131 Executive Officer, provided a statement to DCIS investigators on 30 October 1992. He reported observing ADM Kelso on the patio on Saturday evening. See Appellate Exhibit CXI. With the exception of several minor corrections, CDR Hoefel confirmed his 30 October statement during his in-court testimony.

In describing his activities and observations, CDR Hoefel testified that he was sure he observed ADM Kelso on the patio on Saturday evening because he had retired to bed very early on Friday night. He explained further that around 1900 on Saturday evening he had dinner with two of his friends, CDRs Lane and Waltman. The trio returned to the Hilton at approximately 2100 and went directly to the third floor patio. CDR Hoefel further stated that he staked out an area in the vicinity of the VAQ-129 suite, room 302, near a large planter with a ledge that was comfortable for sitting. He stated he had a good view of the patio area from his location, and of the individuals passing nearby. He stated that while he was in that area someone in his group exclaimed: "There's Secretary Garrett!" He stated he was not familiar with Secretary Garrett, but when he looked to his right, he observed ADM Kelso and VADM Dunleavy in company with the individual identified as Secretary Garrett. He stated that when he saw ADM Kelso and VADM Dunleavy the thought came to him, "here are some people who have a large impact on your career." He further stated that the trio appeared to be looking over the patio, and it was his impression they had just entered the patio from the elevators since he was aware the banquet had broken up some thirty minutes earlier. He stated that he observed the trio for about five minutes before they left the area. CDR Hoefel explained to the best of his recollection ADM Kelso and VADM Dunleavy were wearing blue blazers and gray slacks. When asked how he was able to identify ADM Kelso, CDR Hoefel said, "ADM Kelso's not the tallest man in the world and he has a face that looks like it's got a lot written on it * * * a heavily lined face." Transcript at pp. 663-683.

31. CDR David Cronk, VAQ-309 Executive Officer, gave a statement to DCIS investigators on 09 November 1992. See Appellate Exhibit CIII. At that time, CDR Cronk stated he observed Secretary Garrett, ADM Kelso, and VADM Dunleavy on the patio on Saturday evening. Except for several minor corrections, he confirmed the accuracy of his 09 November statement during his in-court testimony.

CDR Cronk testified that he arrived on the patio on Saturday evening between 2030 and 2100. He stated that around 2200 that evening he observed ADM Kelso, VADM Dunleavy, and someone who he believed to be Secretary Garrett. Although he was not sure of the exact time, he remembered it was shortly

after the banquet ended. He mentioned that when he spotted them he remembered saying: "Hey, there's SECNAV and CNO and Dunleavy." In describing the incident, he also stated that one of his friends, CDR "Kilo" Parks, went over and talked to someone in the group. When Parks returned from the group, he was given "some verbal abuse about sucking up to the senior guys." CDR Cronk testified he was certain it was Saturday evening. He stated that he stayed up very late on Thursday night and actually watched the sun rise on Friday morning. He explained that he did not recall going to the third floor anytime on Friday night, and he was in bed by around 2000 that evening. He also stated that a glass window was broken that evening. (The window was broken on Saturday, see Appellate Exhibit CXLIV.) He remembered glass falling and thinking to himself, "God, I'm glad nobody was standing under that." Transcript at pp. 583-600.

The court notes that CDR Kenneth "Kilo" Parks provided an oral statement to DCIS investigators on 03 November 1992. At that time CDR Parks stated he was on the patio on Saturday night; however, he did not state that he talked to Secretary Garrett, ADM Kelso, or VADM Dunleavy. He stated he observed VADM Dunleavy on the patio on both Friday and Saturday nights. He further stated he had only heard that Secretary Garrett and ADM Kelso were on the third floor on Saturday night. However, this court finds CDR Cronk's account more credible since he appeared as an in-court witness. Further, CDR Parks' reference to the third floor could mean the hallway, the suites, or the pool patio. See Appellate Exhibit CLXXXII.

32. LCDR James Quinn, then assigned as the Operations Officer, COMFITAEW WINGPAC, gave an oral statement to DCIS investigators on 14 July 1992. LCDR Quinn stated that he attended the awards banquet on Saturday evening, 07 September 1991. In describing the occasion, he stated that he sat beside CAPT Jim Burin, a member of his group, who received the Carrier Airlift Award, and J.A. Campbell, who received the Tailhook of the Year Award for his work during "Operation Desert Storm." He further stated that following the banquet, he was on his way to the third floor and he observed Secretary Garrett, ADM Kelso and VADM Dunleavy enter an elevator. He entered the next elevator and arrived on the third floor immediately following the elevator carrying Secretary Garrett, ADM Kelso and VADM Dunleavy. He followed the group to the patio. See Appellate Exhibit CXXXVII.

In response to a message inquiry seeking to confirm his 14 July 1992 statement, LCDR Quinn does not mention the elevator incident. However, his observation of ADM Kelso, Secretary Garrett and VADM Dunleavy entering the elevator is specifically recorded in notes taken by the investigator during the interview. See Appellate Exhibit CLVIII.

33. CDR Richard Martin, then assigned to VAQ-132, gave an oral statement to DCIS investigators on 23 October 1992. At that time, CDR Martin stated that after visiting exhibits and attending presentations, he went to the third floor hospitality area. He arrived on the third floor at approximately 2100 and departed at approximately 0200 the next morning. He stated he visited some of the suites, but spent most of his time on the patio. He further stated sometime that evening he observed Secretary Garrett, VADM Dunleavy, and ADM Kelso walking on the patio towards the entrance to the elevator lobby. See Appellate Exhibit LXXVI, Attachment R.

In response to a naval message inquiry seeking to confirm the accuracy of his statement, CDR Martin stated he was on the patio on both Friday and Saturday evenings. He further stated that he observed ADM Kelso and VADM Dunleavy walking towards the third floor main guest elevators with a person he believed to be Secretary Garrett. He further stated to the best of his recollection the sighting occurred on Saturday night between 2100 and 2200. See Appellate Exhibit CXLV.

34. CAPT Robert Nordgen, USN (Ret), testified he attended the Saturday evening banquet. He stated during the banquet he talked with CAPT Howard, an old friend with whom he had served on board USS Constellation. During the conversation, he asked CAPT Howard how his job was going and what time he would be heading back to Washington. CAPT Howard replied, "we're going to be wheels in the well at midnight * * * the CNO has a family meeting on Sunday afternoon and we need to get back for that." CAPT Nordgen further stated ADM Kelso sat at the head table at the banquet with Secretary Garrett. He stated the banquet ended around 2130.

CAPT Nordgen testified that following the banquet he returned to his room to change clothes. He stated that as he was preparing to enter an elevator on the first floor, he observed Secretary Garrett enter a separate elevator. He revealed that after changing clothes, he returned to the patio, exiting the elevator onto the patio near the VR-57 suite, room 357. He remained in that general area talking with old shipmates. Sometime later, he observed Secretary Garrett, VADM Dunleavy, and other senior officers standing in a group. He also observed someone he believed to be ADM Kelso walking alone towards the center bank of elevators. He recalled at that moment he remarked to RADM Walker, "Hey, that's amazing * * * I know that the Admiral's got to catch a midnight flight. * * * He's pushing it pretty close." He further stated he believed it was about 2315 when he sighted ADM Kelso. When asked how he would be able to recognize ADM Kelso, CAPT Nordgen stated he met ADM Kelso when he visited Naval Air Command Pacific Headquarters in San Diego, and he had been briefed by ADM Kelso in Washington. Transcript at pp. 702-717.

35. Capt Ronald Rives, USMCR (Inactive) gave a statement to DCIS investigators on 21 October 1992. See Appellate Exhibit LXXVI, Attachment BB. At that time he related he observed three admirals on the patio on Saturday evening, ADM Kelso, VADM Dunleavy, and VADM Fetterman. Except for minor corrections, he confirmed the accuracy of his statement during his in-court testimony.

Capt Rives testified that on Saturday afternoon he gambled for a short time in the hotel "Circus Circus" casino. He returned to the Hilton and went to the patio around 1900, and he stayed in that area until about 0100, Sunday morning. While on the patio, he stated he observed the three admirals within a half-hour on either side of a time frame between about 1930 and 2200. He stated the admirals were standing about 20 feet apart, and he observed them as he was moving across the patio from the VMFAT suite (room 355) to the Rhino suite (room 308). He further stated he was able to recognize ADM Kelso from the many official photographs of him he had seen, and he had been embarked on ADM Kelso's Sixth Fleet flagship as a Naval Academy midshipman. When asked how he was sure that it was Saturday night, Capt Rives explained he attended the Saturday

afternoon "Flag Panel," and during the discussions there was heated dialog regarding a number of topics including women and F-18's. He stated that he was surprised at how open the discussion was between junior officers and flag officers. He further stated when he observed ADM Kelso on the patio that evening he wondered why he had not been a member of the flag panel. See Transcript at pp. 601-617.

36. CDR George Ghio, then assigned to CF-14, gave a statement to DCIS investigators on 22 July 1992. CDR Ghio stated that he was on the patio on Saturday evening, and he spotted ADM Kelso and VADM Dunleavy on the pool deck; however, he could not recall the approximate time. See Appellate Exhibit CXXVI. CDR Ghio confirmed his earlier statement to DCIS investigators by message from USS Kitty Hawk. See Appellate Exhibit CLVII.

37. LT John Moriarty, then assigned to VFA-15, NAS Cecil Field, Florida, supplied a statement to DCIS investigators on 25 September 1992. LT Moriarty revealed that on Saturday, 07 September 1991, he went to the third floor of the Hilton at around 1100, and again between 2100 and 2130. When he arrived that evening, he found the third floor area "packed with wall-to-wall people." He also stated the hallway "stunk." LT Moriarty further stated that he exited the revolving doors leading to the patio. Upon arriving on the patio, he observed "a bunch of admirals" talking to "guys." Included in this group were Secretary Garrett, ADM Kelso, and VADM Dunleavy. He stated that he talked with VADM Dunleavy for a few minutes. See Appellate Exhibit LXXVI, Attachment U. When asked by defense counsel to confirm his account set forth in the ROI, LT Moriarty stated he could not recall his statement.

38. The court further finds that a number of the witnesses who testified were ambivalent regarding their prior statements to DCIS investigators. Some of these witnesses admitted to being personally intimidated in knowing that ADM Kelso denied ever being on the patio during his in-court testimony. However, the majority of these witnesses confirmed the accuracy of their prior statements. These witnesses include: RADM Paul Parcells, Deputy Commander, Naval Forces, Central Command; CAPT Daniel Whalen, USN (Ret); Mrs. Margaret Handy, GS-9; and LT Ellen Moore, VA-42.

39. RADM Parcells furnished a sworn statement to DCIS investigators on 15 October 1992. See Appellate Exhibit CXXX. At that time, he related that he observed Secretary Garrett on the patio on Saturday evening in the company of ADM Kelso. However, during his in-court testimony, RADM Parcells stated although he believed his statement was true at the time he gave it, he reanalyzed his statement after learning ADM Kelso had testified he was not present on the patio on Saturday. In addressing the impact of ADM Kelso's denial, he stated, "What I've got to say is that I still feel that I saw him there, but my degree of confidence in that feeling is very, very low . . ."

In describing his visit to the patio on Saturday evening, RADM Parcells stated that he attended the Saturday evening banquet. Following the banquet he returned to his room at the Hilton to change clothes. Sometime later he visited the patio. He explained that he exited the elevator entrance onto the patio. After walking a short distance, he observed Secretary Garrett and ADM Kelso in front of him dressed in sport clothing. Transcript at pp. 973-996.

40. CAPT Whalen gave a statement to DCIS investigators on 09 December 1992. At that time, CAPT Whalen stated he observed ADM Kelso, VADM Dunleavy, and CAPT Howard on the patio on Saturday evening for a short time. See Appellate Exhibit CII.

During his in-court testimony, CAPT Whalen revealed that he visited the patio on Friday night and observed ADM Kelso conversing with a crowd of individuals. He estimated he was only on the patio that evening for 15 to 20 minutes. He testified further that he visited the patio again on Saturday evening and he observed CAPT Howard in a "transient mode." He recalled the event because he wanted to speak with ADM Kelso regarding being free for certain duties since having been relieved of his TQL responsibilities. He explained that when he approached CAPT Howard and indicated a desire to speak with ADM Kelso, CAPT Howard replied, "You aren't going to get to the big guy tonight . . . we're out of here." When questioned as to why stated that he observed ADM Kelso on the patio that evening, CAPT Whalen stated "it was his gait." He also stated he was in company with Ms. Margaret Handy and other civilian OPNAV personnel on the patio for most of the evening.

Following further intense questioning, CAPT Whalen stated that he was no longer sure he observed ADM Kelso with CAPT Howard. He specifically stated "if Frank Kelso says that he wasn't out there on Saturday, I take him at his word, absolutely." Transcript at pp. 544-579.

41. Ms. Margaret Handy, GS-9 Secretary, OPNAV (N88), in an oral statement to DCIS investigators on 07 December 1992 explained that after the banquet on Saturday evening, she went to the third floor patio. While on the patio, she observed Secretary Garrett, ADM Kelso, VADM Dunleavy and VADM Fetterman. She stated the group walked by her and stopped to say hello. They were all wearing civilian clothing. She was unable to recall the time of the encounter. See Appellate Exhibit CXIV.

During her in-court testimony, Ms. Handy denied she ever stated on 07 December that she observed ADM Kelso on the patio. She stated that she could not remember whether she observed other members of the group on Friday or Saturday evening. In short, Ms. Handy stated that due to the passage of time, she was now unable to recall the events of Saturday evening, or what she mentioned to the interviewing investigators. She did acknowledge she was aware ADM Kelso had denied being on the patio on Saturday night. She also acknowledged she was in the process of moving to a new position in OPNAV and she would be working closely with personnel in the CNO's office. Transcript at pp. 721-746, 797-791.

42. LT Ellen Moore, then assigned to VA-42, gave an oral statement to DCIS investigators on 15 September 1992. LT Moore stated that she visited the patio on Saturday afternoon, 07 September 1991. She stated that during this time, she was shocked at observing a "topless" female being carried on the shoulders of an unidentified male. She mentioned how Tailhook literally "takes over" the pool and the hotel, and "the prevailing attitude displayed to the general public is that you should not be here knowing how drunk sailors can act." She further stated that she visited the patio on Saturday evening, but avoided the hallway because she did not want to subject herself to any abuse. LT Moore said she observed ADM Kelso and VADM Dunleavy on the patio early Saturday evening. She departed the patio around 0400

Sunday morning. See Appellate Exhibit CVIII.

LT Moore testified in court that many aspects of the ROI reporting her oral statement were inaccurate. See Transcript at pp. 617-641. For example, she noted that she did not state she observed a "topless" female. In addition, she testified she did not state she observed either ADM Kelso or VADM Dunleavy on the patio on Saturday evening. However, she testified that she was aware she was being called to testify since the ROI summarizing her oral statement indicated she had observed ADM Kelso on the patio on Saturday evening. She further acknowledged that during a prior discussion with LCDR Little, CDR Tritt's detailed defense counsel, she expressed concerns about being the only one who would place ADM Kelso on the patio on Saturday evening. Transcript at 631. This court finds the tenor of LT Moore's testimony revealed she was intimidated by the prospect of having to testify regarding the accuracy of the ROI reflecting her 15 September 1992 oral statement. However, the statement given by her at that time is specifically confirmed by the interviewer's notes taken during the interview. See Appellate Exhibit CIX.

43. This court further finds some of the witnesses stated they observed ADM Kelso on the patio, but were unsure whether the sighting occurred on Friday or Saturday night. These witnesses include: RADM James Finney, USN; LCDR Lawrence Rice, USN; and 1stLt Adam Tharp, USMC.

44. RADM Finney was questioned by DCIS investigators on 02 October 1992 in a taped interview which was later transcribed. During the interview, RADM Finney was asked if he observed ADM Kelso on the patio on Friday night. He responded that he did not see ADM Kelso on Friday night, but he did see him on the patio on Saturday night. Later in the interview, the investigator returned to the subject of who RADM Finney had seen on the patio on Saturday evening. During this part of the interview, RADM Finney stated he arrived on the patio that evening around 2200. He then stated to the investigator, "[Y]ou asked me before did I see the CNO Friday night *** I saw him Saturday night out there *** around 2300 *** plus or minus a few [minutes]." When questioned as to how ADM Kelso was dressed, RADM Finney stated, "I don't remember *** I'm not 100 percent sure, but I think he may have still been in his suit." When pressed further on his recollection of his observation of ADM Kelso on Saturday night, the investigator stated, "You sure that's not Friday night?" In response to RADM Finney's response in the affirmative, the investigator stated, "We think he left before Saturday night." (The investigator was wrong.) In making this comment, the investigator explained to RADM Finney that he was not attempting to change his mind but was trying to test the firmness of his recollection. At that point, RADM Finney acquiesced by stating, "Well, if you think he left already, maybe I didn't see him *** Maybe it was Friday night." RADM Finney stated further that he was aware CAPT Howard was a part of ADM Kelso's group, but he did not see him on the patio that evening with ADM Kelso. See Enclosure to Appellate Exhibit CXXXIV.

In a stipulation of expected testimony, Appellate Exhibit CXXXIV, RADM Finney stated that when he made the statement to the investigator that he observed ADM Kelso on the patio on Saturday evening "there was no question in his mind." He was very firm

about the time being Saturday. He questioned his recollection only after the investigator stated to him that ADM Kelso had left before Saturday night.

In describing his activities on Friday and Saturday evenings, RADM Finney stated he attended the banquets on both evenings; he went to his room and changed clothes following each banquet; he visited the patio on both Friday and Saturday evenings; and he visited the Strike Warfare suite during each visit. He stated that he related his observation of ADM Kelso to these activities. He stated he saw ADM Kelso around 2200 on the patio outside of the planters straight out from the Strike Warfare suite. ADM Kelso was approximately 10 to 20 feet from his position. He stated that he is sure he observed ADM Kelso on the patio only one night. He did not recall seeing Secretary Garrett except at the banquet on Saturday. RADM Finney further stated that his recognition of ADM Kelso was based on previous face-to-face meetings and briefings given to him on several occasions.

45. In separate statement to DCIS investigators, both LCDR Rice and 1stLt Tharp stated they observed ADM Kelso on the patio on Saturday evening. LCDR Rice stated that while on the patio that evening, he observed Secretary Garrett and ADM Kelso "glad-handing" with a group of individuals, none of whom he recognized. He estimated the time to be around 2000. He recalled the sighting as occurring on Saturday because that was the day of the "Flag Panel." See Appellate Exhibit LXXXVI, Attachment Z. 1stLt Tharp stated sometime during that evening he was introduced to ADM Kelso and VADM Fetterman. See Appellate Exhibit LXXXVI, Attachment EE.

In separate stipulations of expected testimony, LCDR Rice and 1stLt Tharp stated they observed ADM Kelso on the patio, but could not now recall whether the sighting occurred on Friday or Saturday night. Both stated they had no reason to lie to the investigators at the time of their statements. Each also stated that no one influenced their respective statements to counsel in arriving at the stipulations of expected testimony. See Appellate Exhibits CXXXVII and CXXXV.

Finding that ADM Kelso visited the patio on Saturday evening

46. Based on the convincing nature of the testimonial evidence and the many corroborating facts and circumstances surrounding such evidence, this court finds ADM Kelso is in error in his assertion that he did not visit the patio on Saturday evening. This court specifically finds ADM Kelso visited the third deck patio at some time during the evening hours of 07 September 1991. This court further finds ADM Kelso was exposed to incidents of inappropriate behavior while on the patio on Saturday evening, including public nudity and "leg shaving activities."

The finding by this court that ADM Kelso is in error as to his movements and activities on Saturday evening is further supported by the highly contradictory, and often implausible, nature of the testimony presented by the government. More specifically, this court further finds:

47. ADM Kelso gave a summary account of his movements and activities on Saturday evening during his in-court testimony. He testified that following the banquet he proceeded to the casino which was located on the same floor; gambled with VADM (then RADM) Spane for about an hour and a half; and he never left the casino until he departed for Nellis Air Force Base at approxi-

mately 2330. He also related he "believed" Maj Edwards was with him in the casino. When questioned by the trial counsel as to how sure he was that he did not visit the patio on Saturday evening, ADM Kelso replied, "I am positive I was not." Transcript at pp. 352-354.

This court finds, however, the degree of certainty expressed by ADM Kelso during his in-court testimony was much more definite than it was during his sworn statement to Mr. Suessman, DCIS, on 15 April 1993, some nine months earlier. At that time, ADM Kelso stated he could have gone back to his room following the Saturday banquet. He also stated to the "best of his recollection" he did not visit the third floor that evening. See Appellate Exhibit LXXII.

48. VADM Spane testified in support of ADM Kelso's account of his activities following the banquet. See Transcript at pp. 519-543. VADM Spane testified that he was with ADM Kelso in the casino following the banquet, and ADM Kelso never left the casino prior to departing for Nellis Air Force Base.

VADM Spane, currently serving as Commander, Naval Air Force, U.S. Pacific Fleet, testified he first met ADM Kelso while ADM Kelso was serving as Commander, Sixth Fleet. In 1990, he served as ADM Kelso's Operations Officer on the CINCLANTFLT Staff.

In describing the events of Saturday evening, VADM Spane testified he attended the Saturday evening banquet, which ended about 2130. He mentioned observing ADM Kelso sitting at the head table but did not speak to him during the banquet. He did not change clothes following the banquet, but went straight to the casino and to the same crap table where he had won the night before. He related that he left the banquet room before ADM Kelso departed. About fifteen minutes later, ADM Kelso arrived unexpectedly in the casino. Following a brief discussion, they began playing craps. He described ADM Kelso as wearing a doubled breasted suit and tie. He acknowledged there was a structure between the banquet room and the casino, so he was unable to determine the direction of ADM Kelso's entry into the casino. He stated ADM Kelso never left the casino, and they played craps and the slot machines until ADM Kelso departed the Hilton, which he estimated was around midnight. VADM Spane said his son arrived while he and ADM Kelso were gambling, as did various other individuals throughout the evening. He said he knew ADM Kelso had two aides, CAPT Howard and a Marine, and they were around him from time to time while they were in the casino, stressing ADM Kelso is never alone. VADM Spane said the aides entered the casino while they were playing the slot machines, and informed ADM Kelso it was time to depart.

VADM Spane gave a sworn statement to DCIS investigators on 14 October 1992. During that interview, he never mentioned being in the casino with ADM Kelso on Saturday night. When questioned as to why he did not mention this event, VADM Spane stated he did not consider it appropriate to use ADM Kelso's presence at the dice tables to establish his location that night. He acknowledged, however, he did name others he was in company with at other times during Tailhook 91 in explaining his activities. See Appellate Exhibit CI.

VADM Spane was interviewed a second time on 17 April 1993. See Appellate Exhibit CLXXXI. He acknowledged that prior to this interview, he was informed by the interviewing investigators that were trying to establish ADM Kelso's movements and location on Saturday night.

During this interview, VADM Spane explained he was in the casino with ADM Kelso following the banquet. He stated ADM Kelso was walking around the casino talking with various individuals and he just stopped at his table to talk. He stated that he did not see CAPT Howard with ADM Kelso. He also said that he could have been in the casino for as long as thirty minutes before ADM Kelso arrived. When questioned in court regarding the disparity in his testimony and his statement to DCIS investigators concerning how long he had been in the casino prior to ADM Kelso's arrival, VADM Spane stated he was just trying to bracket the time.

49. LTJG Robert Spane II, son of VADM Spane, was interviewed by telephone on 18 April 1993, by Mr. Mike Suessman, DCIS. The results of the telephone interview were reduced to a written ROI by Mr. Suessman on 19 April 1993. See Appellate Exhibit CLXXIX.

During the interview, LTJG Spane stated he attended Tailhook 91. On Saturday night, he met his father, VADM Spane, in the casino lobby next to the craps tables. He could not recall whether ADM Kelso was with his father at the time they met. He recalled playing craps and the slot machines with his father and ADM Kelso sometime after he met his father in the casino. He stated a Marine officer was with ADM Kelso, but could not recall if a second aide was present. He stated further that he stayed with ADM Kelso and his father for some time. He stated he then left and visited the third floor. He did not recall when ADM Kelso and his father separated, and he presumed they left and went up to their rooms for bed. He stated he did not recall going up the elevator with either his father or ADM Kelso. He also said he did not see either his father or ADM Kelso on the third floor that evening.

50. Maj Edwards, currently assigned to the Marine Security Force Battalion, Norfolk, Virginia, testified in-court on two occasions. During his testimony, Maj Edwards testified he was contacted by ADM Kelso in early September 1993. At that time, ADM Kelso asked if Maj Edwards could confirm the Admiral was not on the patio on Saturday night. He responded that he would be glad to testify or make any statements necessary, and agreed to the release of his name and telephone number. Maj Edwards also stated he had been contacted by CAPT Donald Guter, JAGC, USN, ADM Kelso's senior Staff Judge Advocate. He testified it was his understanding that DODIG had reinterviewed ADM Kelso, and that CAPT Guter wanted to inform him that his name had been mentioned during the interview.

In describing ADM Kelso's movements and activities following the Saturday evening banquet, Maj Edwards testified he met ADM Kelso as he was exiting the banquet room in the company of a "group of individuals" at approximately 2130. Except for CAPT Howard, he could not recall the names of the individuals. He mentioned that he walked with ADM Kelso and CAPT Howard to the casino area near the front doors on the first floor. He said ADM Kelso then asked him "what the plan was." Maj Edwards stated he replied, "Sir, you're out a little bit early. You've got about an hour and a half before the transportation is here." He explained to ADM Kelso the pre-flight of his aircraft would take time, and the flight crew had not been informed they might leave early. At about that time, according to Maj Edwards, VADM Spane approached ADM Kelso and they began a conversation. Shortly thereafter, ADM Kelso stated to him that he and VADM Spane were going to the casino to

gamble. Maj Edwards testified he and CAPT Howard accompanied ADM Kelso and VADM Spane into the casino area. CAPT Howard remained with the group for a short while and then went to the patio area to bid farewell to some of his friends.

Maj Edwards testified further that he stayed in the casino with ADM Kelso until their departure for Nellis Air Force Base, except for several visits to the lobby area to check with Master Chief Wise concerning baggage and ground transportation to Nellis Air Force Base for the Master Chief and Petty Officer Dubell. He also stated while in the casino, ADM Kelso was wearing the suit and tie he wore to the banquet and he never changed clothes prior to their departure for Nellis Air Force Base. Maj Edwards also testified that he was responsible for ensuring the timely provision of ground transportation to Nellis Air Force Base. However, he was unable to explain who, when, and how he was informed that ADM Kelso's ground transportation to Nellis Air Force Base had arrived at the Hilton. This court finds this lack of explanation, at best, puzzling. Transcript at pp. 239-247, 1073-1130.

While this court finds Maj Edwards' testimony is generally corroborative of ADM Kelso's account of his movements and activities following the banquet, the court also finds several material contradictions between his testimony and that of Master Chief Wise. Maj Edwards stated that during the time ADM Kelso was attending the banquet, he went to Master Chief Wise's room to check with him on a plan to handle baggage and to ask the Master Chief to call Nellis Air Force Base and determine if the departure flight could be moved to an earlier time. See Transcript at pp. 1081, 1084. However, Master Chief Wise testified he collected ADM Kelso's baggage from his room prior to ADM Kelso's departure for the banquet. He also denied he was ever requested by Maj Edwards to contact Nellis Air Force Base concerning moving ADM Kelso's departure flight to an earlier time. Master Chief Wise testified the flight was pre-scheduled to depart at 2400, and to the best of his knowledge no attempt was ever made to alter the schedule. Transcript at pp. 899-919.

In addition, the testimony of Col Bishop, Secretary Garrett's EA, contradicts Maj Edwards' testimony that he was with ADM Kelso the entire time ADM Kelso was in the casino. Col Bishop testified he was on the patio on Saturday evening, but departed the patio around 2200 and went to the casino on the first floor. He stated while in the casino he observed Maj Edwards, but he did not see ADM Kelso with Maj Edwards. See Transcript at 1035. When Maj Edwards was asked during his in-court testimony to explain why he might have been seen by Col Bishop in the casino without ADM Kelso, Maj Edwards responded that he was always within view of ADM Kelso, but ADM Kelso might not have been aware of his presence, describing his presence with ADM Kelso at certain times as that of a "shadow figure." Transcript at 1083.

51. CAPT Howard testified he attended the Saturday evening banquet with ADM Kelso. Following the banquet, in company with ADM Kelso and Maj Edwards, he walked to the casino area on the first floor. Shortly thereafter, ADM Kelso encountered VADM Spane and VADM Spane's son. "[T]hey started playing craps together." CAPT Howard further stated that since he didn't gamble, he asked Maj Edwards to remain with ADM Kelso. He then went to the patio and third floor area. When he returned to the casino area around 2330, he found Maj Edwards in

the lobby waiting for ADM Kelso. He asked Maj Edwards about ADM Kelso's location since he was not at the craps tables. Maj Edwards stated to him, "He's about finished and he's asked me if the plane was ready to return to Washington." CAPT Howard testified he then stated to Maj Edwards that the plane was ready, to which Maj Edwards replied, "Well, he may want to leave early, in about 5 or 10 minutes." CAPT Howard stated that about ten minutes later, ADM Kelso walked up to him and said, "When can we return to Washington?" He replied, "We're ready to go now, sir, if you're ready." The group then departed for Nellis Air Force Base. CAPT Howard also testified he may have returned to his room to change clothes before going to the patio; that Master Chief Wise took care of his luggage; and he checked himself out of the Hilton. He also stated to the best of his knowledge, ADM Kelso did not visit the patio on Saturday evening. Transcript at pp. 424-498.

This court further finds, unlike typical witness evidence concerning events several years past, CAPT Howard's in-court testimony is noticeably aligned with that of ADM Kelso and Maj Edwards regarding their activities immediately following the banquet. This court also finds, further, CAPT Howard's in-court testimony is conspicuously different from his oral statement originally reported by Special Agent Jack Kennedy, Director of Criminal Investigative Policy, Oversight Division, DODIG, on 08 December 1992. As recorded in the ROI prepared by Special Agent Kennedy, CAPT Howard in explaining his own movements was reported to have stated:

"[D]uring the evening [referring to Saturday, 07 September 1991] he attended the banquet, made a short visit to the Las Vegas Hilton casino and went to the third floor, all with the CNO. Again, [contrasting CAPT Howard's account of his Friday evening visit to the patio with ADM Kelso] he estimated their entire time on the third floor did not exceed 45 minutes. At about 2330, CAPT Howard and the CNO departed the Las Vegas Hilton to catch their return flight to Washington from Nellis Air Force Base." (See ROI, Appellate Exhibit LXXXIII.)

During the in-court testimony, CAPT Howard insisted Mr. Kennedy was in error when he quoted him in the ROI as stating that he visited the patio with ADM Kelso on Saturday evening. He insisted further that his statement was that he (CAPT Howard) went to the patio after the banquet. He acknowledged, however, except for that one aspect of his statement, the ROI reflected an accurate account of the interview. When asked to explain the circumstances regarding his discovery of what he believed to be an error on the part of Special Agent Kennedy, CAPT Howard stated he was never provided a copy of the ROI following the interview with Mr. Kennedy. He further stated that on 14 April 1993, the day before ADM Kelso was scheduled to be reinterviewed by Mr. Suessman, DODIG, he engaged in a conversation with General Jumper, who was then serving as a military assistant in the Office of the Secretary of Defense, regarding the scheduling of forthcoming meetings. During the conversation, he mentioned ADM Kelso was scheduled to be interviewed the next day. He asked General Jumper if he had any idea what the subject of the interview might be. General Jumper informed him that a number of people had placed ADM Kelso on the patio on Saturday night, and there were "differences" in CAPT Howard's statement to DCIS and that of ADM Kelso. CAPT Howard

testified he was not informed of the disparity at that time, but later learned the following day, 15 April 1993, from CAPT Guter, JAGC, USN, ADM Kelso's senior legal advisor, that the ROI summarizing CAPT Howard's statement to Special Agent Kennedy placed ADM Kelso on the third floor on Saturday evening. CAPT Howard explained he immediately went to the DODIG's office and discussed the situation with Mr. Suessman. He arranged for a second interview which occurred that same day. During the interview, which was conducted by Special Agent Kennedy and his supervisor, Special Agent Tom Bonnar, CAPT Howard clarified his prior statement, denying ADM Kelso was ever with him on the patio on Saturday evening. See Appellate Exhibit LXXXVII; Transcript at pp. 435-441.

52. Special Agent Kennedy, who appeared as an in-court witness on two occasions, testified that prior to conducting the second interview of CAPT Howard on 15 April 1993, he was informed by Special Agent Bonnar of the discrepancy claimed by CAPT Howard in the ROI. He was specifically informed that CAPT Howard denied ever stating to him that he visited the patio on Saturday evening with ADM Kelso. Special Agent Kennedy testified that upon review of his interview notes, Appellate Exhibit LXXXIV, he concluded that at the time he prepared the ROI, which occurred some two weeks following the interview, he had made an error with respect to the entry in his notes, which read, "w to 3rd FL Patio or VX-4 ste." He specifically explained while drafting the ROI he misinterpreted the beginning symbol "w/" to mean "with," and he should have interpreted the symbol to mean "witness." In short, Special Agent Kennedy testified the entry should have been recorded in the ROI as "witness to third floor or VX-4 suite." He further explained he had been careless in reading his notes at the time he prepared the ROI. He said he concluded he had misinterpreted the meaning of the symbol "w/" since there was nothing in his notes indicating ADM Kelso was with CAPT Howard on Saturday night. He stated further he could not recall CAPT Howard ever stating during the interview that he had visited the third floor with ADM Kelso. He acknowledged that in his some 19 years of experience as an investigator, he could not recall another instance when he had incorrectly interpreted his interview notes. When questioned as to how such a mistake could have been made, Agent Kennedy explained he frequently used the symbol "w/" interchangeably to mean "with" or "witness." However, Mr. Mancuso testified in his experience the symbol "w/" is routinely used by investigators to mean "with." See Transcript at pp. 297-329.

53. VADM Dunleavy testified that following the banquet, he asked ADM Kelso if he would like to make one more swing on the third deck "to see the JO's [junior officers]." According to VADM Dunleavy, ADM Kelso declined, stating he was tired; that he had been at it all day; and he had an early flight. VADM Dunleavy stated he returned to his room, changed clothes, went down to the third deck, and he did not see ADM Kelso on the third floor following the banquet. However, VADM Dunleavy stated there was a very large crowd on the patio on Saturday evening, and ADM Kelso could have been there without being seen by him. Transcript at pp. 494-516.

54. Secretary Garrett testified he arrived at Tailhook 91 about 1400 on Saturday afternoon. Shortly thereafter he attended the "Flag Panel," and he was the guest speaker

at the Saturday evening banquet. Following the banquet, he asked ADM Kelso if he was going to the third floor and "mingle with the troops." ADM Kelso declined stating he was not going to do that since he had been on the third floor on Friday night and had an early flight. According to Secretary Garrett, ADM Kelso also stated "he was going back to his room, pack, and prepare to leave." Transcript at 388.

This court specifically finds the statement by ADM Kelso to Secretary Garrett that "he was going to his room and pack" is wholly consistent with his statement to Mr. Suessman on 15 April 1993, when he said that he may have gone back to his room to change clothes following the banquet. (See Finding of Fact number 47).

55. In a stipulation of expected testimony, VADM John Fetterman provided a summary account of his activities and his association with ADM Kelso on Friday evening. He stated following the Friday evening banquet, he and VADM Dunleavy escorted ADM Kelso from his room to the patio. He further stated that he remained on the patio with ADM Kelso for about one hour and twenty minutes.

VADM Fetterman's account of events on Saturday evening is equally abbreviated. In describing these events, he states that he attended the Saturday evening banquet. Following the banquet, he discussed plans for the remainder of the evening with Secretary Garrett, who informed him that he was going to the patio. He stated that he went to his room, changed clothes, and went immediately to the patio. He then linked up with Secretary Garrett and talked for a short time in an area directly out from the glass doors leading to the elevators. He further stated he was within 15 to 20 feet of Secretary Garrett for about one and a half hours, and he never observed ADM Kelso on the patio. He further stated he had no interface with ADM Kelso following the banquet. See Appellate Exhibit CXCXV.

While the court finds VADM Fetterman's testimony is supportive of the government's position, his explanation of ADM Kelso's movements and activities on the patio on Friday evening is contrary to VADM Dunleavy's testimony that he and VADM Fetterman escorted ADM Kelso through the various squadron hospitality suites. Further, his statement that ADM Kelso was on the patio on Friday evening for one hour and twenty minutes far exceeds the 40 to 45 minute time frame given by ADM Kelso, CAPT Howard and Maj Edwards.

Additional key evidence

This court further finds:
56. LCDR Charles Henry, CVWR-20, provided an oral statement to DCIS investigators on 12 January 1993. At the time, LCDR Henry stated that during Tailhook 91 he was in charge of the Transportation Committee, a position he had held for several years.

In describing his activities during Tailhook 91, LCDR Henry stated his committee occupied a suite on the eighth floor of the Hilton where he spent the majority of his time working out transportation arrangements. He stated that he was present on the third floor and the patio from approximately 2200 to 2400 on Friday evening during which time he visited some of the suites. He stated further that he witnessed one individual "ball-walking" on the patio. While in the suites, he witnessed men cheering as some females voluntarily removed their blouses. The women were rewarded with T-shirts. He also witnessed "zappers" on some women. See Appellate Exhibit CLXI.

LCDR Henry also stated while in the transportation suite on Saturday night, he received a telephone call around midnight reporting that things had gotten out of hand on the third floor. He went immediately to the third floor. He met someone who he identified as CDR Nagelin, VF-202, who informed him that some females had gotten their clothes torn off. He was also informed by a security guard that a naked female had been thrown out into the hallway. He stated that he remained in the area for about an hour. While in the area of the third floor, he observed Secretary Garrett and VADM Dunleavy.

In a stipulation of expected testimony, LCDR Henry clarified his 12 January 1993 statement to DCIS investigators. In the stipulation, LCDR Henry stated while in the transportation suite on Saturday night he received the telephone call reporting the disturbance on the third floor around 2300. He went immediately to the third floor. While on the third floor, he observed Secretary Garrett and VADM Dunleavy in the third floor passageway in front of a suite located approximately two doors down from the Rhino suite. At about that same time, he was informed ADM Kelso was on the patio. He walked out onto the patio through the doors at the center of the building near the main elevators. Upon entering the patio, he observed ADM Kelso near the entrance to the elevator exit. He stated ADM Kelso was wearing casual clothing. He also stated that he had never met ADM Kelso or seen him in person prior to seeing him on the patio that evening. He stated that he recognized ADM Kelso that evening from photographs and videotapes. See Appellate Exhibit CLXI(A).

57. The court further finds that a 29 December 1993 statement given by LCDR Elizabeth Toedt to Special Agent Brewer of the Naval Investigative Service further contradicts the testimony of the key government witnesses. As noted earlier, LCDR Toedt was one of the Tailhook 91 Navy protocol officers who met ADM Kelso at Nellis Air Force Base upon his arrival on Saturday, 06 September 1991. She was also in charge of arranging ground transportation for ADM Kelso and his official party on Saturday night, 07 September 1991.

In describing her involvement in arranging limousine transportation for ADM Kelso on Saturday night, LCDR Toedt related that following the banquet she walked to the head tables in the banquet room. She spoke with someone she believed to be Maj Edwards and asked him if there were any changes in ADM Kelso's departure plans. He replied there was no change in plans, and they would be leaving as soon as they changed clothes. She recalled ADM Kelso was present, and he was wearing a suit and tie. She departed the banquet room to ensure the Hilton limousines and drivers were out in front of the lobby area of the Hilton. She also contacted Air Force protocol officers at Nellis Air Force Base to ensure ADM Kelso's party would not encounter any problems getting through the main gate.

After making these arrangements, she returned to the lobby and waited for ADM Kelso and his party. She estimated that she did not wait for more than fifteen minutes before CAPT Howard entered the lobby. CAPT Howard was the first to arrive, followed by Maj Edwards and the two enlisted personnel in ADM Kelso's party. She stated ADM Kelso arrived last, but she could not recall the direction from which he entered. She stated all members of the party had changed into casual clothing. ADM Kelso was wearing

slacks and an open-collar casual shirt. She stated that she asked Maj Edwards if they would need an escort to Nellis Air Force Base. He replied an escort would not be necessary. ADM Kelso and his party then departed for Nellis Air Force Base. See Appellate Exhibits CLXX and CLXXXVIII.

LCDR Toedt stated the banquet ended between 2215 and 2230. She further estimated the time between the end of the banquet and ADM Kelso's departure for Nellis Air Force Base was approximately forty minutes. This court finds LCDR Toedt, like all witnesses who testified or provided statements, gave only their best estimates of time in relation to descriptions of events. Nonetheless, this court finds LCDR Toedt's account to be consistent with the convincing weight of evidence showing ADM Kelso changed clothes following the banquet, and he visited the patio prior to his departure for Nellis Air Force Base. In particular, this court finds LCDR Toedt's account is remarkably consistent with CAPT Howard's account of events as set forth in his first statement to DCIS special agent Kennedy on 08 December 1992. See Finding of Fact Number 52.

58. This court notes, finally, a revealing declaration in the sworn statement of Ms. Barbara Pope to DCIS investigators on 30 June 1992. Ms. Pope, then Assistant Secretary of the Navy for Manpower and Reserve Affairs, stated she discussed the events at Tailhook 91 with Secretary Garrett on several occasions. During the discussion of an early conversation with Secretary Garrett regarding his visit to Tailhook 91, she stated: "I mean, right when all that came public about Paula Coughlin having been assaulted and her letter. We talked about his being there. We talked about he and the CNO going up, you know, after the banquet and having a drink on the patio." (Appellate Exhibit CXLVI, at 61.)

Evidence related to the occurrence of misconduct

This court further finds the defense claim that while on the patio on Saturday evening ADM Kelso may have witnessed the same or similar conduct to that alleged in the charges against CDRs Miller and Tritt, is supported by the evidence. More specifically this court finds:

59. In findings of fact set forth earlier, this court found incidents of inappropriate and sexually offensive behavior occurred in the third floor hallway, in the various hospitality suites, and on the patio on Friday evening, 06 September 1991. These findings were supported by the testimony of eyewitnesses and photographs taken by various individuals during Tailhook 91. The evidence reveals the same or similar incidents of improper decorum and inappropriate behavior also occurred in these same areas during the evening hours of Saturday, 07 September 1991. None of the evidence presented is more convincing of this fact than an eyewitness account given by VADM Dunleavy.

In a statement to DCIS Special Agent Eckert on 05 August 1992, VADM Dunleavy remarked that while present on the third floor of the Hilton on Saturday evening, he became aware that a "gauntlet" was operating in the third floor hallway. In describing this activity, VADM Dunleavy stated while in that area he heard "guys" yelling, "show us your tits." He then walked into the third floor hallway and observed it was crowded with people. He stated that he further observed a commotion in the hallway as many in the crowd "hooted and hollered." He stated that he did not attempt to stop the commotion because he knew that he would not

be heard above the noise. He stated it appeared to him the "gauntlet" activities were in fun, rather than molestation. He specifically stated: "It was my impression, from what I saw, that no one was upset, and I felt that they [referring to females] wouldn't have gone down the hall if they didn't like it."

In describing other activities, VADM Dunleavy stated there were incidents of "mooning" the crowd on the patio by young men and women from hotel windows. He also acknowledged that he observed some women who were "bearing (sic) their clothing" and allowing aviators to stick squadron stickers on their breasts and buttocks. He also stated that he heard "strippers" had been hired by some of the groups to perform in the suites. However, he denied ever observing such activity. See Appellate Exhibit CXCI.

This court finds VADM Dunleavy's reference to the hiring of "strippers" is corroborated by the oral statement of LT Kenneth Carel, VF-124, to DCIS investigators on 21 July 1992. At that time, LT Carel stated that he arrived on the third floor at approximately 1800. He stated that he and several of his fellow aviators sought out "strippers" to perform in the suites. He further stated a disc jockey working in the VF-124 suite helped negotiate the hiring of "strippers" to perform later that evening in the VF-124 suite. He stated at approximately 2300, the "strippers" arrived in company with the disc jockey for their scheduled performance in the VF-124 suite. LT Carel stated that he did not stay for the entire performance since he had an early flight the next morning. LT Carel's oral statement is recorded in the investigator's interview notes. See Appellate Exhibits CXC and CXCA).

IV. KEY EVENTS FOLLOWING TAILHOOK 91

The evidence reveals the following chain of key events following Tailhook 91 related to the claim by the defense that ADM Kelso attempted to shield his personal involvement at Tailhook 91, and he possessed a "personal interest" rather than an "official interest" in the prosecution of the cases at bar at the time he appointed VADM Reason as the CDA.

ADM Kelso's initial involvement in the investigative process

This court finds:

60. Shortly following Tailhook 91, LT Paula Coughlin complained to her immediate superior, RADM John Synder, then serving as Commander, Naval Air Test Center, Patuxent, Maryland, that she had been assaulted in the third floor hallway of the Hilton during the Saturday evening hours of 07 September 1991. When RADM Synder failed to act on her complaint, LT Coughlin sent a letter of complaint to VADM Dunleavy in early October 1991. VADM Dunleavy met with LT Coughlin on 10 October 1991. Following this meeting, he informed ADM Jerome Johnson, then Vice Chief of Naval Operations (VCNO), of his meeting with LT Coughlin and of her written complaint. ADM Kelso was also advised of LT Coughlin's complaint and of RADM Synder's failure to act on her complaint. This marked the beginning of ADM Kelso's active involvement in the aftermath of Tailhook 91. See Appellate Exhibit LXXII at 27.

61. In mid-October 1991, amid escalating public and Congressional concern, RADM Duvall Williams, JAGC, UNS, then Commander, NIS, and in ADM Kelso's direct chain of command, was ordered by the VCNO to open a criminal investigation into the alleged criminal assault on LT Coughlin at

Tailhook 91 and on the additional reported incidents of assault on other female attendees. Simultaneously, the Navy Inspector General (Navy IG), RADM George Davis, was ordered by Secretary Garrett to open an investigation into Tailhook 91 to examine matters relating to alleged non-criminal violations of the Standards of Conduct such as the improper use of government material assets, like air transportation, in support of Tailhook 91. During the course of the ensuing NIS and Navy IG investigations, numerous meetings and briefings were conducted among representatives of the Offices of SECNAV, CNO, the Navy Judge Advocate General, NIS, and the Navy IG. This included Mr. Daniel Howard, Under Secretary of the Navy, who was tasked by Secretary Garrett to oversee the overall conduct of the investigations; Ms. Barbara Pope, Assistant Secretary of the Navy for Manpower and Reserve Affairs; RADM John E. Gordon, Judge Advocate General of the Navy; RADM Davis; RADM Williams; and other representatives from offices of SECNAV and CNO. In addition, Secretary Garrett and ADM Kelso were briefed at least weekly on the progress of the investigations.

The limited scope of the NIS and Navy IG investigations

62. An NIS "Tailhook Task Force" was established by RADM Williams to deal with the voluminous number of anticipated interviews among the thousands of attendees at Tailhook 91. This included the appointment of LCDR Henry F. Sondag, JAGC, USN, as a special counsel responsible for marshalling evidence for use in any resulting criminal prosecutions.

63. The scope of the NIS investigation was strictly limited to allegations of criminal assault on LT Coughlin and other female attendees. The investigation did not include an inquiry into the personal involvement of any of the numerous flag officers and senior civilian DON officials in attendance at Tailhook 91, nor were any of these attendees ever interviewed by NIS special agents during the course of the investigation.

The exclusion of flag officers and senior DON officials from the focus of the NIS investigation led to conflict between RADM Williams and RADM Davis. One reason for the conflict was the number of personnel assigned to the Navy IG's staff was diminutive in comparison to the large world-wide cadre of NIS special agents available to RADM Williams. Thus, RADM Davis looked to NIS for assistance in interviewing flag and other senior officers concerning possible violations of the Standards of Conduct. Another reason for conflict stemmed from RADM Williams' apparent desire to dominate the interview process to ensure full compliance with required investigative procedures and thus protect future prosecutions. Secretary Garrett and ADM Kelso were aware of the disparity in investigative manpower and the fact that flag officers and senior DON officials were not being interviewed. However, despite warnings by LCDR Sondag that both the NIS and Navy IG investigations should address the accountability of flag officers and senior DON officials, the evidence does not reveal that any action was ever taken by either Secretary Garrett or ADM Kelso to expand the scope of the NIS or Navy IG investigations to include flag officer accountability, or to remedy the disparity in investigative manpower. This court specifically finds this inaction was part of a calculated effort to minimize the exposure of the involvement and personal conduct of flag officers and senior DON officials who were present at

Tailhook 91. See Transcript at pp. 747-786; ADM Kelso's Statement of 23 July 1992, Appellate Exhibit LXXII at pp. 49-50.

The Allen Report of Interview

64. The effort to shield high ranking Tailhook 91 attendees, including ADM Kelso, from the investigative process is further evidenced by RADM Williams' handling of an ROI placing Secretary Garrett in one of the suites on Saturday night. During an oral interview with NIS special agents on 19 February 1992, Capt Raymond Allen, USMC, stated he recalled that Secretary Garrett visited one of the suites (later identified by LCDR Sunday as the Rhino suite). See Enclosure (7) to Appellate Exhibit CXCIX. However, the Allen ROI was not included in the original NIS Report of Investigation by RADM Williams. A later discovery of this omission forced RADM Williams to issue a fifty-five page supplemental report containing the Allen ROI and other revealing statements obtained during the investigation. See Appellate Exhibit CXCIX. The omission of the Allen ROI ultimately led to RADM Williams being relieved as Commander, NIS, and it was a contributing factor to the later resignation of Secretary Garrett. It would also eventually result in the Tailhook 91 investigation being removed from the jurisdiction of the Navy and assigned to the office of the DODIG. From that point the investigation finally focused on the involvement and personal accountability of senior officials in attendance at Tailhook 91, including ADM Kelso.

In describing the handling of the Allen ROI, LCDR Sunday testified that the ROI was received by NIS Headquarters in Washington on 20 February 1992. He then informed special agents Beth Iorio and Tim Danehy, who were working with him full-time on the investigation, on the content of the Allen ROI. He testified that he also informed Mr. Charles Lanham, RADM Williams' Deputy Director, and John Devanzo, NIS Director, Capital Region. He later briefed RADM Williams and RADM Gordon.

LCDR Sunday testified further he was not concerned at that stage of the investigation with the issue of ADM Kelso's activities or whereabouts during Tailhook 91. He assumed all along that ADM Kelso was present on the third floor on Saturday night based on the ROI of CDR Kathleen Ramsey who stated she observed Secretary Garrett, ADM Kelso, and VADM Dunleavy together on the pool patio that evening. See Find of Fact Number 27.

In explaining his interest in the Allen ROI, LCDR Sunday testified that LT Coughlin had earlier identified Capt Greg Bonham, USMC, as her assailant. In an effort to establish a case against Capt Bonham, he requested NIS special agents interview Capt Allen, who had been Capt Bonham's roommate during Tailhook 91. He stated that he had developed information that Capt Bonham may have been present in the Rhino suite that night. When he learned Secretary Garrett may have been present in the Rhino suite on Saturday night, he concluded Secretary Garrett might be able to provide information to establish Capt Bonham's presence in the suite. He stated that Mr. Lanham agreed to arrange an interview with Secretary Garrett to inquire about his visit to the Rhino suite on Saturday night. He stated the interview with Secretary Garrett never occurred because he obtained other credible information which he believed linked Capt Bonham to the alleged assault on LT Coughlin. He stated, however, that he instructed special agents Iorio and Danehy to include the Allen ROI in the final NIS report of investigation.

LCDR Sunday stated that following completion of the NIS investigation in late March 1992, he returned to Norfolk and resumed his regularly assigned duties. He stated that in early June, he was informed during a conference call from CDR Ronald Swanson, SJA to VADM Johnson, and CAPT Guter, SJA to ADM Kelso, that Secretary Garrett has made a formal statement reporting he did not visit any of the suites on Saturday night. CDR Swanson and CAPT Guter related they had received a report that the NIS investigation had developed information placing Secretary Garrett in the Rhino suite on Saturday night. LCDR Sunday stated he was informed by CDR Swanson that RADM Williams had briefed VADM Johnson on the Allen ROI, but never mentioned the reference in the ROI to Secretary Garrett visiting one of the suites. CAPT Guter indicated that RADM Williams had also personally briefed ADM Kelso on the results of the NIS investigation. During that briefing, according to CAPT Guter, ADM Kelso had asked RADM Williams point blank, "Is there anything in your investigation that's going to place the Secretary on the third floor at Tailhook?" or words to that effect. RADM Williams responded to the effect, "I've taken the pulse of all the agents in the field and there's nothing out there that's going to implicate the Secretary." This court finds while this statement expressed a direct interest in any information linking Secretary Garrett to misconduct that occurred in the third floor, it also signaled ADM Kelso's personal concern for any information that might link him to such conduct. It also discloses an early appreciation for the potential embarrassment should it become known that a senior Navy official was present on the third floor of the Hilton when the assaults took place. See Transcript at pp. 747-786.

LCDR Sunday's account of the NIS investigation and the missing Allen ROI is corroborated by ADM Kelso in his sworn statement of 23 July 1992. ADM Kelso stated that after being informed of the Allen ROI, he telephoned RADM Williams and demanded an explanation as to why the ROI had been left out of the investigation. He stated that RADM Williams explained that the ROI was not relevant to the investigation. ADM Kelso stated he expressed outrage that anyone would consider the ROI irrelevant. He was concerned that the original report had already been forwarded to Congress, and someone might get the idea that something was being hidden. He stated that he then discussed the ROI with Secretary Garrett and suggested the DODIG be requested to review the results of the NIS investigation. He also recommended RADM Williams be relieved. See Appellate Exhibit LXXII at pp. 50-57.

The preparation of ADM Kelso's itinerary

This court further finds:

65. A concerted effort to minimize ADM Kelso's personal involvement at Tailhook 91 is further evidenced by the circumstances surrounding the response of ADM Kelso and members of his staff to a press inquiry regarding his movements and activities while at Tailhook 91. In late May 1992, and almost simultaneously with similar press inquiries to Secretary Garrett, ADM Kelso's office received a press inquiry from Mr. David Evans of the Chicago Tribune requesting ADM Kelso's itinerary during Tailhook 91. A similar request was also made by Mr. Eric Schmidt of the New York Times. See Appellate Exhibit CXXIX.

In describing the handling of Mr. Evans' inquiry, LCDR Debra Burnett, ADM Kelso's Public Affairs Officer (PAO), testified she

was informed by Secretary Garrett's PAO that Mr. Evans had made a request for Secretary Garrett's schedule and he would be calling and making the same request concerning ADM Kelso's schedule. She testified that shortly thereafter Mr. Evans called her and requested a minute-by-minute, detailed account of ADM Kelso's movements and activities during his visit to Tailhook 91. She stated Mr. Evans desired a detailed account to determine if ADM Kelso had visited any of the squadron hospitality suites. She also stated that she was aware the question of whether Secretary Garrett had visited any of the suites was also at issue at that time.

LCDR Burnett testified she drafted a response to Mr. Evans based on ADM Kelso's planned itinerary, which had been prepared by Maj Edwards prior to ADM Kelso's visit to Tailhook 91. The planned itinerary contained only general entries such as, "2000, CNO Keynote Speaker." It did not contain a detailed account of events such as a visit to the casino. She stated that the planned itinerary did contain the entry, "2300, Check-out," referring to ADM Kelso's departure from the Hilton on Saturday night.

LCDR Burnett further stated that after drafting her proposed response, she asked Maj Edwards for verification. She stated Maj Edwards added detailed entries regarding ADM Kelso's activities following the Friday and Saturday evening banquets. These entries included ADM Kelso's visit to the pool patio on Friday evening and his visit to the casino on Saturday night. She then discussed the proposed itinerary with CAPT Howard, who agreed with the entries added by Maj Edwards. They then discussed the final draft, Appellate Exhibit XC, with ADM Kelso. ADM Kelso approved the itinerary. She stated that during the discussion of the itinerary with ADM Kelso, he only asked why Mr. Evans was interested in the information, and if she had cleared the account of events with Maj Edwards. Transcript at 951-956.

LCDR Burnett further testified she never discussed the issue of whether ADM Kelso visited the patio on Saturday with ADM Kelso, CAPT Howard, or Maj Edwards. However, when asked to explain the entry, "CNO did visit the pool/patio area of the third floor, where he spent about 40 minutes visiting with naval aviators," on Appellate Exhibit XC following the 07 September 1991 entries, she stated the thrust of Mr. Evans' question was not whether ADM Kelso had visited the patio, but whether he had visited any of the suites. She stated that Mr. Evans called her after she released the itinerary to him and asked if that entry pertained to Saturday night. She responded that ADM Kelso visited the patio on Friday evening, not on Saturday, evening. She further explained that she corrected the original itinerary to state ADM Kelso visited the patio on Friday evening prior to a second, later release in response to an inquiry from Mr. Greg Vista of the San Diego Union Tribune.

LCDR Burnett was then asked to explain the next entry, "He did not visit any of the squadron suites." She stated this entry pertained to both Friday and Saturday nights. She acknowledged that she discussed this entry with both Maj Edwards and ADM Kelso. She explained that she concluded the entry, "where he spent about 40 minutes visiting with naval aviators" pertained to Friday night since it matched the time (40 minutes) between the two entries listed under 06 September events, "2200—Depart Dinner; arrive pool/patio area, Hilton," and "2240—Depart pool/patio area; arrive hotel room." She again denied, however, that she ever asked

ADM Kelso if he visited the patio on Saturday evening. She stated that she only received an acknowledgment from ADM Kelso when she showed him the original draft stating he was on the patio only on Friday night. She also denied anyone ever stated during any of the discussions pertaining to the preparation of the itinerary that, "We were not on the third floor on Saturday evening." She stated that she did not recall that ever being an issue. The only issues were whether ADM Kelso ever visited any of the suites, and whether he observed any inappropriate conduct.

LCDR Burnett testified further she could not explain why the copy of the planned itinerary she used to prepare her response to the press inquiries was now missing. She stated that she obtained the copy she used from Maj Edwards' files, and to the best of her recollection she returned the copy to his files. She explained that when she went to retrieve the copy at a later time, the itinerary and ADM Kelso's travel file were missing. She stated, however, ADM Kelso's planned itineraries are normally maintained on file for only about one year. Thereafter, responses to inquiries concerning his past travel schedule are taken from a master calendar which did not reflect details of his activities. Transcript at pp. 948-970.

Maj Edwards testified he prepared a planned itinerary for ADM Kelso prior to their departure for Tailhook 91. He stated copies were given to everyone in the official party, including CAPT Howard and Master Chief Wise. He stated that he would not be surprised that a copy of the planned itinerary could not be found. In explaining the disposition of ADM Kelso's itineraries following an official trip, he stated: "[I]t's not required to maintain it. It's solely an information paper that I put together. In fact, if you ask them do they have other information papers from other trips, the answer is 'No.' There's no requirement to keep it. Usually they're discarded once a trip is complete other than trips outside the continental United States. Those are kept and maintained." (Transcript at 1073.)

In explaining his role in assisting Lcdr Burnett, Maj Edwards stated he recalled she was trying to reconstruct the events that actually occurred during ADM Kelso's visit to Tailhook 91, in response to some kind of news release. He stated that he provided Lcdr Burnett with the facts surrounding ADM Kelso's movements and activities that were not on the planned itinerary. This included entries regarding arrival and departure times from the patio and the casino, and the time regarding check out. He acknowledged, however, the check out time of 2300 was incorrect. He stated he checked ADM Kelso out of the Hilton during the time ADM Kelso was attending the Saturday evening banquet. He stated the 2300 entry might have referred to the time CAPT Howard checked out of the Hilton. See Transcript at pp. 1073-1075, 1107-1108.

CAPT Howard testified that no written itinerary was ever prepared prior to ADM Kelso's visit to Tailhook 91. He stated there was a schedule, but it was not in writing. He explained ADM Kelso's activities were a part of the schedule of events listed in a schedule prepared by CAPT Ludwig, President of the Tailhook Association. He stated further that during the visit to Tailhook 91, everyone in the official party made entries in a 3" x 5" booklet maintained by Maj Edwards. The purpose of the booklet was to provide a means of keeping each member of the party informed as to the whereabouts of other

members. He further stated that an itinerary depicting ADM Kelso's movements and activities was prepared some months following Tailhook 91 in preparation for ADM Kelso's initial interview with the DODIG.

In explaining his role in reconstructing ADM Kelso's itinerary, CAPT Howard stated the itinerary was reconstructed from the booklet maintained by Maj Edwards. He stated that he had discussions with Lcdr Burnett and CAPT Guter during morning staff meetings concerning the reconstruction process. He stated that he also had a discussion with ADM Kelso concerning his activities on Saturday evening prior to finalizing the itinerary.

In response to a question by defense counsel concerning whether ADM Kelso asked him if he had been on the third floor on Saturday evening, CAPT Howard responded that he could not recall ADM Kelso's exact words, but he stated words to the effect, "There's no way I could have gone on the third floor on Saturday night, right?" When asked why ADM Kelso would ask that question, CAPT Howard stated ADM Kelso depended on him and others with him at Tailhook 91 to be able to account for his whereabouts, and to ensure he was at the right place at the right time. He added, however, ADM Kelso was not unsure about whether he ever visited the patio on Saturday night. He stated that was never an issue during his discussions with ADM Kelso concerning his activities during Tailhook 91. Transcript at pp. 453-461.

ADM Kelso testified he approved the itinerary after it was presented to him by CAPT Howard, Maj Edwards and Lcdr Burnett. He also testified the itinerary was an accurate account of his activities and movements during Tailhook 91. Transcript at 350. ADM Kelso also used the itinerary during his interview with DODIG on 23 July 1992. See Appellate Exhibit LXXII at pp. 6,8.

Based on the above explanations, this court further finds the itinerary as submitted by the government lacks credibility for the following reasons:

a. It was prepared well after the events at issue.

b. It was prepared at a time when official concern and press interest had been raised concerning ADM Kelso's proximity to the third-floor improprieties which occurred on 07 September 1991.

c. The rationale for its creation as an assist during the DCIS interview is obviously incorrect and misleading. In fact, ADM Kelso's initial interview occurred some two months later.

d. Whether such an itinerary was ever prepared, and how and why it can no longer be located, are glaring omissions in the evidence presented. CAPT Howard testified no written itinerary was ever prepared prior to ADM Kelso's visit to Tailhook 91. Maj Edwards testified he prepared a planned itinerary for ADM Kelso and copies were given to everyone in the official party, including CAPT Howard.

For the above reasons, the document carries little weight in the resolution of the issues presented by the motion.

ADM Kelso's status as a suspect

This court further finds:

66. In late June 1992, Secretary Garrett requested that the DODIG review the NIS and NAVY IG investigations to ensure a thorough review of Tailhook 91 activities and events. Shortly thereafter, the DODIG assumed full responsibility for Tailhook 91 investigation and requested the Navy suspend all investigative activities and disciplinary actions.

67. The DODIG investigation continued through December 1992. During the approximate six months of investigation, DCIS investigators obtained hundreds of statements from Tailhook 91 attendees at numerous geographical locations. One of the main goals of the DODIG investigation was to determine the involvement of senior DON civilian officials and high ranking Navy and Marine Corps officers at Tailhook 91.

68. ADM Kelso was initially interviewed by DODIG investigators on 23 July 1992. As noted earlier, ADM Kelso denied he ever visited any of the squadron hospitality suites during his two-day visit to Tailhook 91. He also denied ever witnessing any inappropriate behavior, or that he ever visited the patio on Saturday evening.

69. During the ensuing months of investigation following the 23 July 1992 interview with ADM Kelso, DCIS investigators interviewed a number of Tailhook 91 attendees who stated ADM Kelso was present on the patio on Saturday evening, an issue which has already been addressed by this court in previous findings of fact. Based on these statements, Mr. Mike Sussman, DODIG's office, interviewed ADM Kelso a second time on 15 April 1993. Prior to the interview, ADM Kelso was advised of his rights as a suspect pursuant to Article 31(b), UCMJ. ADM Kelso was specifically advised that many of the attendees interviewed by DCIS investigators had stated that he was present on the third floor of the Hilton on Saturday evening. He was advised these statements were in conflict with his sworn statement of 23 July 1992 in which he denied ever visiting the third floor that evening. ADM Kelso was then advised that he was suspected of committing violations of Articles 107, UCMJ, Making False Official Statements, and Article 134, UCMJ, False Swearing, all stemming from his denial. During that interview, ADM Kelso again denied he was ever on the third floor of the Hilton on Saturday evening; or he ever visited any of the suites; or he ever witnessed any inappropriate behavior during Tailhook 91. See Appellate Exhibit LXXVII. *ADM Kelso's appointment of VADM Reason as the CDA*

This court further finds:

70. ADM Kelso served as the Acting Secretary of the Navy from 20 January 1993 to August 1993. During that time, he also continued to serve as the Chief of Naval Operations.

71. On about 30 January 1993, VADM Paul Reason, USN, Commander, Surface Force, U.S. Atlantic Fleet, received a telephone call from ADM Kelso informing him that he would be designated as the Navy CDA on 01 February 1993. ADM Kelso officially appointed VADM Paul Reason, USN, as the Navy CDA to handle all allegations of misconduct against Navy personnel stemming from Tailhook 91.

The CDA designation was formalized by CNO letter dated 01 February 1993. Appellate Exhibit LXVII. By this letter, the VCNO, acting on behalf of ADM Kelso, made it clear to VADM Reason that he was to exercise his authority as CDA "independently" and with "sole discretion" in deciding the appropriate disposition of all cases considered by him. Paragraph 2. states: "In exercising this authority, you, in your sole discretion, may take such administrative or disciplinary action you deem appropriate, within the guidelines of R.C.M. 306(c). * * * This includes, but is not limited to: no action, counseling, non-judicial punishment, or referral to trial by court-martial." In a subsequent letter dated 23 April 1993, Appellate Exhibit LXVII(A),

the VCNO reemphasized to VADM Reason that he was to act as CDA with "sole and unfettered discretion."

72. By appointing VADM Reason as the CDA, ADM Kelso withheld convening authority power from all other subordinate officers in command with the authority to dispose of alleged violations of the UCMJ stemming from Tailhook 91.

73. At the time ADM Kelso appointed VADM Reason as the CDA, VADM Reason was junior in rank and command to ADM Kelso.

Withholding of the Flag files from VADM Reason

This court further finds:

74. During the DODIG investigation, information was obtained regarding the personal involvement of some thirty-three flag officers, including ADM Kelso, who attended Tailhook 91. The information on flag officers was cataloged in separate "flag files" and delivered to ADM Kelso as Acting Secretary of the Navy. The "flag files" were sealed for delivery to the newly appointed Secretary of the Navy, the Honorable John Dalton. Following a review of the "flag files" by Secretary Dalton, ADM Kelso was issued a Letter of Caution citing his failure of leadership during his visit to Tailhook 91.

75. Information contained in the "flag files," including information on the involvement of ADM Kelso during Tailhook 91, was never provided to VADM Reason prior to his action in referring the cases at bar for trial. The release of information contained in the "flag files" was released only after this court issued an order permitting defense discovery of the information.

V. LEGAL ANALYSIS

The court now turns to the task of applying the findings of fact to the requirements of the law. This first involves determining whether ADM Kelso is an "accuser" as claimed by the defense, and, if so, the effect of such a status on VADM Reason, the convening authority.

Secondly, the court must determine if any unlawful command influence has been brought to bear upon VADM Reason by virtue of ADM Kelso's involvement in Tailhook 91, and ADM Kelso's subsequent actions surrounding his appointment of VADM Reason as the CDA.

Since the charges at issue against CDRs Miller and Tritt are different from the single charge alleged against LT Samples, the application of the law regarding the "accuser" concept and unlawful command influence will be first analyzed as to its application to CDRs Miller and Tritt, followed by an analysis of its application to LT Samples.

The Accuser Concept

An "accuser" is defined in Article 1(9), UCMJ, as any person who: (1) signs and swears to charges; (2) directs that charges nominally be signed and sworn by another; or (3) has an interest other than an official interest in the prosecution of the accused. The evidence presented primarily involves the third type of "accuser."

One prong of the government's argument is that even if the court were to find that ADM Kelso was exposed to untoward behavior during Tailhook 91, or that he even witnessed such behavior, no credible evidence has been presented showing that ADM Kelso has any personal interest in the prosecution of either CDR Miller, CDR Tritt, or LT Samples. More specifically, the government contends that the defense has failed to show a relevant nexus between ADM Kelso's involvement at Tailhook 91 and the actions of VADM Reason

in referring the cases at bar to trial by general court-martial.

The government is correct in its assertion that no evidence has been presented showing that ADM Kelso possessed a direct or specific interest in any of the cases at bar when applying a literal interpretation of the wording of Article 1(9), that is, "an interest other than official in the prosecution of the accused." However, the government's interpretation of Article 1(9), UCMJ, falls short of the interpretation given this Article by the U.S. Court of Military Appeals, which has consistently applied a much broader interpretation of the "type-three accuser" than the bare reading of the Article 1(9) would indicate.

In *United States v. Gordon*, 2 C.M.R. 161, (1952), the U.S. Court of Military Appeals rejected an argument by government counsel that an accused should be required to show that the convening authority had an actual and personal interest in his prosecution. The court states that: "We do not believe the true test is the animus of the convening authority. This undoubtedly was the early rule but, as we view it, the test should be whether the appointing authority was so closely connected to the offense that a reasonable person would conclude that he has a personal interest in the matter." (*Gordon* at 167 (emphasis added).)

During the past 41 years, the United States Court of Military Appeals has refused to narrow the expansive protection provided by its interpretation in *Gordon* of Article 1(9). In *United States v. Crossley*, 10 M.J. 376, 378 (CMA 1981), the court states that:

"We do not attempt here to psychologize the mind of the convening authority nor should this opinion be read as a criticism of this convening authority's animus or decision-making. We only perceive a reasonable probability that his review of the matter reflected personal interest. Cf. *United States v. Conn* [6 M.J. 351 (CMA 1979)]. We reiterate merely that "[c]onvening [authorities] should remember that there are easy and adequate means to have" reviewing functions performed by an authority with no personal feeling in the outcome of the litigation. *United States v. Gordon*" (citation omitted) (emphasis added).

In this case, Chief Judge Everett, in a concurring opinion, summarizes the reason the court has chosen to maintain a broad interpretation of the "type-three accuser":

"Among the most vehement complaints against military justice are those which concern the role of the military commander, who has the responsibility for maintaining discipline and yet appoints the court-martial members and reviews the findings and sentence. Congress has made the determination that in this situation a commander may "carry water on both shoulders." At the same time, however, by providing that an "accuser" may not convene a special or general court-martial [references omitted], Congress revealed its intention that, in a case where observers might reasonably conclude that a commander had more than a purely official involvement, he should turn over his responsibilities to a superior commander."

Crossley at 379. Chief Judge Everett also states that, "the Court remains aware that to give a narrow interpretation to 'accuser' would fan the criticism of the broad responsibilities Congress has assigned to military commanders." Id.

In its most recent decision involving a "type-three accuser," the U.S. Court of Military Appeals restates its prior interpretation of Article 1(9), UCMJ, and provides an objec-

tive test setting forth the criteria to be applied in determining whether a convening authority is an "accuser" within the meaning of Article 1(9), UCMJ:

"The test of a convening authority's status as an accuser is "whether, under the particular facts and circumstances * * * a reasonable person would impute to him a personal feeling or interest in the outcome of the litigation." *United States v. Gordon*, 1 USCMA 255, 260, 2 CMR 161, 166 (1952)." (*United States v. Jeter*, 35 M.J. 442, 445 (CMA 1992) (emphasis in original).)

In *Jeter*⁹, the court found the reviewing authority to be a "type-three accuser" even though his only possible bias was in favor of the accused and "even though [the court had] no doubt that, at all times involved, the general's motives were good." *Jeter* at 446. Thus, it is not some level of enmity or hostility against an accused that defines an "accuser," but rather any level of personal interest in the litigation.

Although Article 1(9), UCMJ, is silent on the subject, appellate court decisions, upon which R.C.M. 504(b)(2) is based, clearly provide that a military commander who is subordinate to an "accuser" will also be disqualified as a convening authority. It is for this reason that Articles 22(b) and 23(b), UCMJ, require, in instances where the convening authority is an "accuser," that the charges shall be forwarded to another convening authority who is both superior in grade and position in the chain of command. This procedure is mandated in both special and general courts-martial.

The disqualification of a military commander who is subordinate to an "accuser" is referred to as the "junior accuser" concept. The disqualification of the junior commander may occur when he or she stands in one of the following positions in relation to the superior "accuser":

1. Subordinate in the chain of command. See *United States v. Grow*, 11 C.M.R. 77 (1953); *United States v. Haygood*, 31 C.M.R. 67 (1961). But see *United States v. Avery*, 30 C.M.R. 885 (A.C.M.R. 1960); *United States v. Garcia*, 16 C.M.R. 674 (A.C.M.R. 1954).

2. Junior in rank and outside the chain of command. See *United States v. LaGrange*, 3 C.M.R. 76 (1952); *United States v. Burnette*, 5 C.M.R. 522 (A.B.R. 1952); *United States v. Navarro*, 20 C.M.R. 778 (A.B.R. 1955); *United States v. Chaves*, 23 C.M.R. 701 (C.G.B.R. 1957).

3. Successor in command, at least where junior in rank. See *United States v. Cocoran*, 17 M.J. 137 (C.M.A. 1984); *United States v. Kostas*, 38 C.M.R. 512 (A.B.R. 1967).

Further, the "junior accuser" concept is applicable whether or not the superior "accuser" ordinarily would act as convening authority. See, e.g., *United States v. Grow*, 11 C.M.R. at 77. Also, the application of the accuser law is primarily a question of "fact and must be resolved in light of each case." *United States v. Gilfilen*, 35 M.J. 699, 701 (NMC MR 1978). Finally, when a determination is made that the convening authority is an "accuser," or the convening authority is a "junior accuser," the law requires the dismissal of charges. *United States v. Crossley*, 10 M.J. 376, 379 (CMA 1981).

Having reviewed the body of law in the area, the court must now apply the *Gordon* standard to determine whether ADM Kelso is so closely connected to the three cases at bar that a reasonable person would impute to him a level of personal feeling or interest in the outcome of the litigation.

The court first notes that no military appellate court has ever addressed the "accuser" concept in a factual situation where

either the convening authority, or the immediate superior appointing the convening authority, has been allegedly involved in the same or similar misconduct as that alleged against the accused. However, in *United States v. Allen*, 31 M.J. 578 (NMCMR 1990), aff'd 33 M.J. 209 (CMA 1991), the Navy-Marine Corps Court of Military Review discusses the "accuser" concept in a situation where there existed the potential for the Secretary of the Navy to be designated an "accuser," and thus the disqualification of all of his subordinate convening authorities. The facts in *Allen* are worthy of discussion here in order to bring into perspective the circumstances surrounding ADM Kelso's interest in the cases before this court. Further, a comparison of some of the key aspects of the Navy Secretary's involvement in *Allen* to those involving ADM Kelso at Tailhook 91 is helpful to the determination of whether ADM Kelso's interest in the cases of CDRs Miller and Tritt is purely official or personal in nature.

The *Allen* case involved charges of espionage on behalf of the Philippine government and violations of security regulations. Prior to the *Allen* case, the Walker spy ring had been discovered and prosecuted. The ring leader, a retired Navy officer, Walker, had been convicted in a Federal District Court pursuant to his pleas. The Secretary of the Navy strongly and publicly criticized the handling and the sentence of the Walker case.

Although without jurisdiction in the Department of Justice arena, the Secretary took action within his naval sphere of control. He issued directives restricting both convening authority referral discretion and military judge assignment to cases involving national security issues. Subsequently, claims were made that the Secretary's vocal disapproval of the handling of the Walker spy case gave him a personal interest in all later courts-martial involving violations of law protecting national security. It was further claimed that his personal interest branded him a "type-three accuser" and disqualified both him and all subordinate convening authorities from referring any case involving national security violations, and in particular, Senior Chief Radioman Allen.

In addressing this issue, the Navy-Marine Corps Court of Military Review first agreed that if the Secretary of the Navy had any personal interest in the prosecution of Senior Chief Allen he would be an "accuser" within the meaning of Article 1(9), UCMJ. Further, that his status as an "accuser" would serve to disqualify all subordinate commanders under his command from convening these types of courts-martial. The Court then made two factual determinations. First, all national security directives were promulgated by the Secretary with legitimate statutory and regulatory authority. Second, in holding that the Secretary's interest was official only, the Court found no reasonable probability existed that the Secretary's displeasure with the Walker case so closely connected him to the *Allen* prosecution that it could be deemed to amount to a personal interest in the outcome of that litigation.

As noted in the above factual summation, the Secretary was, at best, displeased with the outcome of the Walker case, and equally embarrassed by the indignation suffered by the Navy, as well as the more critical matter of the immeasurable damage to the national security of the United States. In a similar vein, the revelation of inappropriate behavior and assaultive conduct at Tailhook 91 has

led to an unprecedented level of public embarrassment and a corresponding loss of confidence in the leadership of the Navy. These unfortunate circumstances were clearly at the heart of many of ADM Kelso's comments to DCIS investigators during his 23 July 1992 interview. During the interview ADM Kelso decried the misconduct of junior aviators at Tailhook 91 and reflected on actions that should have been taken to prevent such conduct.

Thus, as was asked of the Secretary's involvement in *Allen*, did ADM Kelso's obvious indignation and embarrassment amount to a personal interest in the ensuing investigations of Tailhook 91, and the litigation that followed? This court reasons that, standing alone, ADM Kelso's vehement disapproval would not amount to a personal interest. As in *Allen*, official indignation, no matter how strong, is not disqualifying when it is espoused in a purely official capacity.

However, unlike the Secretary's involvement in *Allen*, ADM Kelso was actually present and personally involved in the events at Tailhook 91. This court has determined that, as is alleged against CDRs Miller and Tritt, ADM Kelso actually observed sexually oriented misconduct on the patio and in the various squadron hospitality suites on Friday night, and on Saturday evening as well, and he failed to take action to stop such conduct.

Applying the objective "reasonable person" standard of the *Gordon* case to these circumstances, the critical issue is whether ADM Kelso's own presence and personal knowledge of some of the inappropriate conduct on the patio and in the hospitality suites, and his apparent failure to act to stop such conduct, would lead a reasonable person to conclude that he must therefore be so closely connected to these cases that his interest in the outcome of the instant cases is more than purely official. Based on the totality of evidence presented and this court's related findings of fact, the answer can only be yes. A reasonable person would have to conclude that ADM Kelso would have more than a purely official interest. Thus, under the *Gordon* standard, ADM Kelso is an "accuser" within the meaning of Article 1(9), UCMJ.

ADM Kelso's personal interest is further demonstrated by other aspects of his involvement as set forth in this court's findings of fact. First, this court found that the NIS investigation was limited only to the complaints of criminal assault against female attendees. The subsequent DODIG investigation was expanded to focus on the presence and behavior of flag and general officers, including ADM Kelso. During the course of the this DODIG investigation, Admiral Kelso was interviewed by DCIS investigators at which time he stated that he did not recall ever being present on the third floor of the Hilton on Saturday, 07 September 1991. During the ensuing months of investigation, large number of eyewitnesses stated to DCIS investigators that they observed ADM Kelso on the patio on Saturday evening.

Based on the inconsistencies between ADM Kelso account and the accounts given by the eyewitnesses, DODIG investigators interviewed ADM Kelso a second time. This interview was preceded by advisement pursuant to Article 31(b), UCMJ, that ADM Kelso was suspected of making a false statement to investigators regarding his presence on the third floor of the Hilton on Saturday. A number of eyewitnesses had contradicted his account of his activities and movements on

Saturday evening by reporting their observations of him on the patio and near the area where known assaultive conduct had allegedly occurred. Under these circumstances, a reasonable person would conclude that ADM Kelso's status as a suspect would make him personally interested in the investigation of his activities at Tailhook 91, and in the litigation of any case that might focus on this involvement as claimed by the eyewitnesses.

Secondly, in examining the trial itself, where numerous, credible witnesses came forward to testify that they saw ADM Kelso on the third floor pool patio area of the Hilton on Saturday evening in obvious contradiction to ADM Kelso's sworn denial before this court, a reasonable person would be forced to conclude that ADM Kelso had a personal interest in this litigation. The motive for ADM Kelso's denial that he ever witnessed any inappropriate conduct at any time during Tailhook 91, and his denial that he was ever present on the patio on Saturday evening, clearly define ADM Kelso's personal stake and interest in these cases.

Considering the totality of ADM Kelso's personal involvement in Tailhook 91, this court harbors no doubt that at the time ADM Kelso appointed VADM Reason as the CDA, he was so closely connected to the events surrounding the charges of omission against CDRs Miller and Tritt that his interest was primarily personal.

While it may be that ADM Kelso's took no direct action related specifically to the Miller and Tritt cases based solely upon his personal interest, the law makes no exception. Having a personal interest in the litigation, ADM Kelso is an "accuser" within the meaning of Article 1(9), UCMJ.

Finally, this court must analyze whether the "accuser" concept extends to LT Samples. The nexus that exists between ADM Kelso's actions and the charges against LT Samples is much less than that which exists in the cases of CDRs Miller and Tritt. LT Samples is not charged with failure to prevent misconduct. He is charged with actual, assaultive behavior. This misconduct allegedly occurred on the evening of 07 September 1991. Moreover, there is no convincing evidence (and the court does not believe) ADM Kelso personally witnessed any of the criminal assaults that allegedly occurred in the third floor hallway of the Hilton on Saturday evening.

It is apparent, however, from the charges in the Miller and Tritt cases that the government alleges a failure of leadership on the part of senior officers in attendance at Tailhook 91. The defense claims that this failure of leadership was displayed from the highest ranking officer to the lowest, and to lodge criminal charges of omission against two commanders, from a group of what admittedly is a large number of officers, is patently unfair and unjust.

Given what reasonable citizens would perceive to be a naval officer duty to intervene when faced with obvious improprieties by his subordinates, a failure to intervene would constitute abandonment of the leadership responsibilities entrusted to them by their station and rank. As noted earlier in the background discussion, if senior officers had intervened weeks, days, hours, or even minutes prior to these criminal assaults, a high probability exists that both the assaults and much of the Navy's embarrassment could have been avoided. The greatest responsibility must lie with the most senior officers, and ADM Kelso was the most senior military officer present.

This court has found that ADM Kelso was present on the third floor patio on both Fri-

day and Saturday evenings, near the location where alleged assaults on female attendees occurred. This court has also found that ADM Kelso witnessed improper conduct being committed by junior officers. Many other senior naval officers witnessed similar activity. It is clear from the record that no one attempted to intervene to end the lewd and improper sexually oriented behavior. Conduct which began as being merely in bad taste quickly escalated and finally ended in physical assaults. If proper leadership had been shown, the subsequent assaults and other inappropriate conduct might have been prevented.

All commanders who observed improprieties in officer conduct at Tailhook 91 and failed to act are consequently disqualified as convening authorities. All commanders who personally witnessed improper conduct at prior Tailhook symposiums and consequently knew personally of the history of these symposiums as opportunities for excessive alcohol consumption, rowdy behavior and immoral, sexually-oriented activities, and who voiced no protests, are similarly disqualified. This court harbors no doubt that their personal inaction in failing to intervene to prevent inappropriate conduct would be viewed by reasonable people as being a significant contributing factor in the unrestrained atmosphere which escalated to the sexual assaults on female attendees that ensued on the evening of 07 September 1991.

The circumstances can only be viewed as a personal embarrassment for all senior naval officers who could have acted, but did not. The opportunity to spare the Navy and the Marine Corps the chagrin and humiliation that has been heaped upon it was lost. Given the intense media interest, Presidential and Congressional condemnation, and the general loss of public confidence in the Navy, no senior officer who was personally involved in the Tailhook 91 can exercise that high degree of impartiality required as a convening authority in this situation.

For these reasons, although less direct, ADM Kelso has a personal interest in the outcome of the litigation involving LT Samples as well.

Irrespective of the rationale stated above for the denomination of ADM Kelso as a "accuser" in either of the cases at bar, this court strongly views the necessity to follow the spirit of Article 1(9), UCMJ, as an equally justifiable basis for disqualifying ADM Kelso as an "accuser" in all three cases at bar. Clearly, the protective spirit of this Article dictates that any military commander convening a court-martial calling a subordinate to account for an act of misconduct in violation of the UCMJ, must be free from any suspicion of involvement, directly or indirectly, in the same or any related act of misconduct. This is matter of fundamental fairness. Whenever even the appearance of personal involvement on the part of the military commander cannot be dispelled with reasonable certainty, that commander must be deemed to possess an interest "other than official" in the prosecution of his or her subordinate and must be disqualified as an "accuser" from acting as the convening authority.

Likewise, under such circumstances, any junior commander in the direct chain of command of a superior "accuser" must be disqualified. A junior commander in the chain of command simply cannot act with the degree of impartiality demanded by the UCMJ under the "chilling" effect of his or her senior's actual or suspected personal involvement.

This court's ultimate finding on this issue is that ADM Kelso is an "accuser" in all three cases joined for the purpose of this motion. Considering all the circumstances related above, one can ask the question Judge Cox proposes in the *Jeter* case to determine personal interest, "[s]hould I have removed myself as the judge in the case?" *Jeter*, 35 M.J. at 447. While this standard is too strict, there is no doubt that ADM Kelso could not under any circumstances judge either CDR Miller, CDR Tritt, or LT Samples, with the degree of impartiality mandated by the UCMJ.

As far as the cases of CDR Miller, CDR Tritt and LT Samples are concerned, this court has carefully reviewed the circumstances of ADM Kelso's activities relating to Tailhook 91. The court's inevitable conclusion is that the current convening authority, VADM Reason, as with all commanders subordinate to ADM Kelso, cannot function as the convening authority in the manner envisioned by Congress. Although VADM Reason's conduct has been above reproach, as an officer subordinate to ADM Kelso, he is a "junior accuser." Therefore, VADM Reason must be disqualified as a matter of law.

Command influence

To protect those responsible for administering the military justice systems from unlawful command influence in the exercise of their official Codal responsibilities, the Congress enacted Article 37, UCMJ, as a part of the 1951 Code. This Article states that:

"No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts."

One of the principal purposes of Article 37, UCMJ, is to ensure the impartiality of the military judicial process by protecting the convening authority from undue command influence in the exercise of his or her independent judgment in disposing of alleged violations of the UCMJ. In addition to ensuring the impartiality of the military justice process, it is also intended to convey a sense of confidence in the integrity of the military justice process in the public eye.

Military appellate courts have recognized two types of unlawful command influence, actual and apparent.

First, actual unlawful command influence occurs when there is an intentional or unintentional influence exerted by higher authority which works to undermine the impartiality of the military justice system. This may be an intentional effort to assist the prosecution or it may be an innocent action, such as a call to action to get tough on drug use, which inadvertently serves to bias members of the court. This is true for influence directed at the convening authority, for example, it is unlawful for a superior commander by personal persuasion to adversely interfere with the independent decision-making process of a subordinate commander.

Unlawful command influence can also occur by regulation, memorandum, or briefing, initiated or made by the convening authority, the staff judge advocate, trial counsel, or higher authority. For policy directives see *United States v. Brice*, 19 M.J. 170 (C.M.A. 1985) and *United States v. Treakle*, 18 M.J. 646 (A.C.M.R. 1984), where policy directives were interpreted by many as mandating a policy not to give character evidence for an accused at court-martial. The appear-

ance of unlawful command influence that existed in that case mandated reversal as to sentence.

The test for actual unlawful command influence is "figuratively" described by the Navy-Marine Corps Court of Military Review as being "whether the convening authority has been brought into the deliberation room." See *Allen* at 509 (quoting *U.S. v. Grady*, 15 M.J. 275 (C.M.A. 1983)).

Apparent unlawful command influence, on the other hand, is premised on the external perception of fairness in the military justice system. This form of unlawful command influence centers on the loss of confidence in the integrity of the process in the public eye as discussed above. The Navy-Marine Corps Court of Military Review provides a standard for this type of unlawful command influence. As formulated by that court, "the test for apparent unlawful command influence is whether a reasonable member of the public, if aware of all the facts, would have a loss of confidence in the military justice system and believe it to be unfair." *Allen* at 509 (citing both *U.S. v. Rosser*, 6 M.J. 267 (C.M.A. 1979); *U.S. v. Cruz*, 20 M.J. 873, 890 (ACMR 1985)).

Turning now to the application of the law to this court's findings of fact, the first issue is whether ADM Kelso's action in appointing VADM Reason as CDA amounted to unlawful command influence in any of the cases at bar.

Although tied more directly to the issue of ADM Kelso's status as an "accuser," the defense claims that ADM Kelso exerted actual unlawful command influence by appointing VADM Reason as the CDA, thereby withholding authority to convene courts-martial from all other commanders, including those in CDR Miller, CDR Tritt, and LT Samples chain of command who would ordinarily be responsible under the UCMJ for convening their respective cases.

The withholding of convening authority power from the immediate superior of an accused is rare. However, as acknowledged by the defense, such a withholding is not proscribed by the UCMJ. Further, it does not infer any unlawful infringement on the discretionary authority vested in the commanders from which the convening authority power is withheld. For example, in *Allen* at 591-592, the Navy-Marine Corps Court of Military Review held that it was proper to limit the discretion of Commander Naval Forces Pacific in the disposition of national security cases so long as the Secretary did not interfere with the exercise of that discretion once a case was in his hands. Thus, the issue is not whether it was unlawful for ADM Kelso to appoint VADM Reason as the CDA, the issue is whether VADM Reason was allowed to exercise his independent discretion following the CDA appointment.

Case law holds the existence of improper command influence must be determined on a case-by-case basis and is a factual decision to be made by the court. See *See v. Accodino*, 20 M.J. 870 (AFCMR 1985).

This court has found that ADM Kelso was cognizant of the narrow focus of the NIS investigation, i.e., excluded any inquiry into the personal involvement of flag officers at Tailhook 91, including his own personal involvement. The court has also found that following the DODIG investigation, ADM Kelso received the separately maintained files containing information describing the alleged failure of leadership and other personal involvement of a number of flag officers, including his own file. This court further found that none of these files were ever delivered

to VADM Reason for consideration in his referral decision process. This court also found that ADM Kelso attempted to shield his personal involvement at Tailhook 91 by denying that he ever observed any inappropriate behavior on the part of junior aviators during his visit to Tailhook 91. The court further found that ADM Kelso, despite his denial, was, in fact, present on the patio on Saturday evening at about the same time that the alleged acts of omission occurred supporting the allegations of dereliction of duty and conduct unbecoming that of an officer charged against CDRs Miller and Tritt.

During the course of the litigation of the motion at bar, this court determined that all of this information was withheld from VADM Reason prior to his decision to refer CDRs Miller and Tritt's cases to trial by court-martial. It was only after extensive litigation and numerous orders by this court that this information was finally disclosed and made available to VADM Reason.

Based on these circumstances, and despite ADM Kelso's 01 February 1993 written direction to VADM Reason that he utilize his independent discretion in disposing of Tailhook cases, this court finds that ADM Kelso manipulated the initial investigative process and the subsequent CDA process in a manner designed to shield his personal involvement in Tailhook 91. This manipulation of the process by ADM Kelso and others was for their own personal ends and not directed at these accused. However, this court further finds that ADM Kelso's actions, although not intentionally directed at either the prosecution of CDRs Miller or Tritt, had a significant influence on VADM Reason's decision to bring charges against them. In this respect, this court can only speculate as to what VADM Reason's referral decision may have been as to the charges alleged against CDRs Miller and Tritt had he known of the extent of ADM Kelso's personal involvement, and that of other senior flag officers, at Tailhook 91. This is particularly true in light of the fact that the evidence strongly suggests that ADM Kelso was present on the patio at the same time the alleged acts of misconduct took place which CDRs Miller and Tritt are charged with failing to stop.

The government suggests that the decision by VADM Reason to prosecute CDRs Miller and Tritt may have been the same even if he was aware of ADM Kelso's involvement. This may be true, but it is a matter of speculation at best. In any case it does not serve to cure the adverse impact on the referral process. Thus, this court finds that the totality of ADM Kelso's actions not only served to denigrate him an "accuser," his actions also amounted to actual unlawful command influence.

Even if it could be determined that ADM Kelso's actions also did not amount to actual unlawful command influence, it could not be denied that the totality of his actions amounted to at least apparent unlawful command influence.

The Court of Military Appeals held in *U.S. v. Karlson*, 16 M.J. 469 (C.M.A. 1983), that the public's confidence in a fair and impartial military justice system must be maintained, and the appearance of manipulation by superiors cannot be permitted to exist. The Court has also held:

"Nothing erodes public confidence in the military justice system as quickly as the perception that the outcome of a trial, be it findings or sentence, is preordained by the improper exercise of command position. One of the basic objectives of the Uniform Code of Military Justice is to eradicate the misuse

of command power." *U.S. v. Tucker*, 20 M.J. 863, 865 (AFCMR 1985) (citing *U.S. v. Cole*, 17 U.S.C.M.A. 296, 36 C.M.R. 94 (C.M.A. 1967)).

This public confidence would certainly be lost if this court were to allow ADM Kelso's obvious manipulation of the Tailhook 91 investigative process and the subsequent CDA appointment process to stand. This court has no doubt that any reasonable member of the public would view the military justice system as being unfair if he or she knew of the circumstances surrounding ADM Kelso's involvement at Tailhook 91, and his subsequent involvement in the investigative and CDA processes. The appearance of shielding senior officers while permitting the courts-martial of the more junior officers under the convening authority of VADM Reason cannot be denied. While this may not rise to the level of selective prosecution, the public would likely view it as such. At the very least, the public would perceive the military justice process as promoting an unfair double standard. Under the mandate of the court's holding in *Karlson*, such an appearance must be avoided, and cannot be allowed by this court to stand without providing a corrective remedy.

The Court of Military Appeals has held that where any doubt exist as to the presence of unlawful command influence, the doubt must be resolved in favor of the accused. See *U.S. v. Kitchens*, 12 U.S.C.M.A. 589, 31 C.M.R. 175 (1961). Moreover, the government must prove beyond a reasonable doubt that the existence of unlawful command influence will not adversely impact the right of CDR Miller and CDR Tritt to a fair trial on the merits. See *U.S. v. Dykes*, 38 M.J. 270 (CMA 1993). This court finds that in the cases of CDR Miller and CDR Tritt the government has not met that burden.

The issue of how ADM Kelso's actions impacted on VADM Reason's decision to refer LT Samples' case to trial is not as easy to discern as in the cases of CDRs Miller and Tritt. As previously stated, the charge against LT Samples involves only assaultive conduct, allegedly occurring in the third floor hallway of the Hilton on Saturday evening.

No direct evidence exists supporting that ADM Kelso was actually present in the hallway that evening, or that he witnessed any assaultive behavior in the third floor hallway at any time during Tailhook 91. Therefore, the nexus between ADM Kelso's actions as discussed above and the single offense charged against LT Samples, and any potential adverse impact on VADM Reason's deliberative referral process, is much less evident than in the cases of CDRs Miller and Tritt.

Had VADM Reason known of ADM Kelso's involvement in Tailhook 91, would the referral of charges against LT Samples be any different? This court cannot determine with reasonable certainty the extent of potential impact on the CDA's referral decision. This uncertainty must be resolved in favor of LT Samples. See *Kitchens*.

In light of all of the facts and circumstances which have been established during the five weeks of litigation on the motion at bar, many of which were unknown to VADM Reason at the time he referred LT Samples case to trial, this court finds that LT Samples' case should be reviewed *de novo* by a convening authority superior in rank and command to ADM Kelso to ensure that he has been given fair and impartial treatment in the critical referral process.

It is Hereby Ordered, based upon the findings of this court (1) that ADM Kelso is an "accuser" within the meaning of Article 1(9),

UCMJ, with regard to each accused and (2) that there has been both actual and apparent unlawful command influence in each case, the charges against CDR Thomas R. Miller, U.S. Navy, CDR Gregory E. Tritt, U.S. Navy, and LT David Samples, U.S. Navy are hereby DISMISSED WITHOUT PREJUDICE to the government's right to reinstate court-martial proceedings against the accused for the same offenses at a later date.

It is Further Ordered that VADM Reason is disqualified as convening authority pursuant to R.C.M. 504. In light of this order, VADM Reason may proceed with the following actions only:

(1) Make a decision to take no further adverse actions against any or all of the three accused, effectively ending the proceedings;

(2) Take administrative or non-judicial disciplinary action in any or all of the cases in lieu of further judicial proceedings;

(3) Forward the charges to an authority senior in rank and command to ADM Kelso pursuant to R.C.M. 401(c) and section 0129 of the JAG Manual for disposition by superior competent authority, which may include the reinstatement of charges against these accused.

WILLIAM T. VEST, Jr.,
Captain, JAGC, USN,
Circuit Military Judge.

FOOTNOTES

¹ CDR Gregory E. Tritt, U.S. Navy, an accused before a separate general court-martial, requested leave of court to join in this motion with CDR Miller on grounds that a similar motion had been filed with the court in his case. CDR Tritt and his counsel were present for each hearing on this motion. After the presentation of evidence on the motion, LT David Samples, U.S. Navy, likewise an accused before a separate general court-martial, requested to join in the motion. Although coming in later, LT Samples claimed similar issues of law and fact on the motion and waived presentation of further evidence. The government had no objection. This court granted both the request of CDR Tritt and LT Samples to join the motion in the interest of judicial economy.

² Article 1(9), UCMJ, reads in pertinent part: "Accuser" means * * * any other person who has an interest other than an official interest in the prosecution of the accused."

³ Article 37, UCMJ reads in part: "No person subject to this chapter may attempt to * * * by any unauthorized means, influence * * * the action of any convening, approving, or reviewing authority with respect to his judicial acts."

⁴ The Defense Criminal Investigative Service (DCIS) is a part of the Department of Defense Inspector General's Office (DODIG) and throughout this hearing witnesses have referred to them interchangeably.

⁵ The female leg shaving exhibition was positioned directly behind the full-length window in one of the hospitality suites. Those on the patio outside the window and those in the suite were encouraged to watch an elaborate shaving process that included having the woman sit in a barber chair and expose her legs as much as she would permit, then two Navy officers would massage oil on her legs, apply the shaving cream, and then shave the legs. Although less offensive, it was intended to draw people to the suite in the same way as professional strippers and other lewd exhibitions were employed by other hospitality suites.

⁶ These courts-martial have been consolidated for this motion only. All references to the transcript page numbers are to the unauthenticated record of *United States v. Miller*. If and when the record is fully reviewed and authenticated, the page numbers may be slightly different as a result of normal editing.

⁷ These Reports of Interview proved to be problematic throughout this hearing. The methodology for the DCIS investigators was to interview a witness and take handwritten notes, no audio or video recording was ever done, and then to prepare the ROI from the notes some days or even weeks later. The ROI was never shown to the witness and the witness was never asked to acknowledge the accuracy of the ROI, much less swear to the truth of the contents. This novice approach to criminal investigation re-

sulted in the wholesale repudiation of the reports by many of the witnesses. This court has given minimal weight to the ROIs unless they have been subsequently verified through stipulation, in-court testimony, or some other reliable means, such as clear and specific references in the handwritten notes of the investigator.

⁸It is important to note that not only has the U.S. Court of Military Appeals maintained a consistent interpretation of "accuser" for over 40 years, but given this long-standing interpretation, Congress has made no changes to the law.

⁹Judge Gierke, concurring in result, takes issue with the expansive interpretation of a type-three accuser. "I believe that the correct definition of 'accuser' is limited to anyone who has a personal interest in ensuring that the accused is prosecuted." *Jeter* at 448. Judge Cox, also in a concurring opinion, takes the opposite approach and would require the convening authority to have the highest level of judicial impartiality. "I ask only the question, 'Should I have removed myself as the judge in the case?'" *Jeter* at 447. Although this court did not employ either of these outermost standards, I will note that given the facts of this case, the current finding of this court would be the same.

INTRODUCTION OF LEGISLATION TO REPEAL THE CUBAN ADJUSTMENT ACT

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

Mr. KOPETSKI. Mr. Speaker, as you know, many people come to our country every year seeking asylum. We accept asylum-seekers for basically three reasons: family reunification, desirable economic benefits, and humanitarian concerns. We turn many people away if they do not fit into one of these categories.

Mr. Speaker, I visited refugee camps in Hong Kong, Thailand, India, and Turkey, and I heard the horror stories that people endured and learned how difficult it is to gain political asylum in the United States.

However, an exception to our immigration policy allows one group of people to come to this country no questions asked. If they stay here a year, they gain permanent-residency status. This exception is made not on the basis of political oppression, poverty, warfare, or to reunite families. Under this exception in 1991-92 more people were given permanent status in the United States than were accepted from Cambodia, El Salvador, Romania, Somalia, Haiti, and the former Yugoslavia combined.

The reason over 10,000 people were given permanent status in the United States was that they were born in Cuba. The Cuban Adjustment Act is indefensible and should be repealed, and that is why today I am introducing legislation to repeal the Cuban Adjustment Act so Cubans will be treated just as every other political asylum seeker in the world is treated.

Mr. Speaker, today I am introducing legislation to repeal the Cuban Adjustment Act of 1966.

Mr. Speaker, the Cuban Adjustment Act allows Cuban nationals who have been living in the United States for 1 year, under any circumstances, to become permanent residents

of the United States. In practical terms, the act creates an exception to our immigration law which is not available to any other people of any other nationality. In 1991-92 a total of 10,851 Cuban nationals adjusted to permanent resident status, this is in addition to 7,911 Cuban refugees for the same period. The number of Cuban nationals who adjusted under the act exceeds the total number of refugees in 1991-92 from Cambodia, El Salvador, Romania, Somalia, and the former Yugoslavia. Further, with travel restrictions being lowered in Cuba there is a greater likelihood that Cuban nationals may be overstaying their nonimmigrant visas and adjusting to permanent residence status under the act. The act enables presumably any Cuban national who arrives in the United States and finds some way to stay here, to become a permanent resident, whether or not he or she meets the definition of a refugee or fits within the legal immigration preference categories.

The act was passed in 1966, a time when we as a country had very different concerns and priorities. It has not accomplished the goal of sending a message to Cuba, even if the message was sent it was never heard. Fidel Castro is still in power in Cuba while many of those who oppose him now reside permanently in this country. Some have even argued that the act has prolonged the Castro regime. The act is a cold war relic and it should go the way of other vestiges of the cold war.

A greater issue raised by the act is its patently discriminatory effect. I cannot believe that we are willing to continue to support a law which gives this overly generous benefit to people leaving a country which is certainly no worse off than many Caribbean and Latin American countries. Further, Mr. Speaker because this law allows any person who is simply Cuban-born to gain permanent residence status in the United States. Cuban-born people who are currently living in Germany, Spain, or Canada can leave those countries and attain permanent residence status in this country if they so desire. How can we continue to justify this law when there are so many people fleeing desperate situations that we must refuse?

Mr. Speaker, the repeal of this obsolete law has enjoyed a large base of support. It has passed the Senate a number of times and has been favorably reported out by the House Judiciary Committee. The Cuban Adjustment Act creates the perception of unfairness. But more importantly, Mr. Speaker the act is in fact unfair to people throughout the world seeking political asylum in the United States. I urge swift consideration of this important legislation.

56 CUBANS REACH PUERTO RICO

SAN JUAN, PUERTO RICO.—Fifty-six more Cubans took advantage of a backdoor route into the United States, landing on a remote U.S. island and forcing immigration officials to ferry them to Puerto Rico.

All were expected to receive asylum in the latest case illustrating the different treatment refugees from Fidel Castro's communist state get from those fleeing political and economic turmoil elsewhere, such as in Haiti.

The Cubans apparently had flown from Havana to the Dominican Republic, then paid a boat owner to take them illegally on Monday

to Mona Island, about halfway across the channel that separates the Dominican Republic from Puerto Rico.

By late that afternoon, immigration officials had arranged for the Cubans to be flown by helicopter to Puerto Rico. The Mona route was rarely traveled by Cubans before October, but more than 340 have used it since, border patrol officials said.

FEDERAL RESERVE CHAIRMAN ALAN GREENSPAN'S CRYSTAL BALL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 5 minutes.

Mr. GONZALEZ. Mr. Speaker, when Federal Reserve Chairman Alan Greenspan chose to raise interest rates, did he look into his crystal ball and see something the rest of us did not? Before we chop more wood, stoke the furnace, and buy a new shovel, let us check the track record of this foul weather forecaster.

When Alan Greenspan was Chairman of the Council of Economic Advisors under President Gerald Ford, this country was suffering from rising oil prices. Due to OPEC, nominal oil prices tripled from 1973 to 1974 and then rose 30 percent in the next 4 years. This is what economists call an external shock to the U.S. economy.

This situation warranted a different economic policy than the one the administration chose. What should have happened is that the economy should have been stimulated to offset rising oil prices. Instead, Mr. Greenspan chose to concentrate on inflation resulting in the Ford administration's conferences on inflation in which conferees chanted against inflation. It left the Ford administration totally unprepared to fight a major recession.

If you have tunnel vision and see only inflation in your crystal ball, then you disregard the possibility of lower income and employment, and you will be blinded to the effects of rising oil prices.

The House Banking Committee recently examined the records former Federal Reserve Chairman Arthur Burns had donated to the Gerald R. Ford Presidential Library in Ann Arbor, MI. The committee discovered an article, "Ford Losing Confidence in Econ Aides," from which I will quote. It was written by J.F. terHorst, who was Assistant to the President in the Ford White House. It appeared in the December 16, 1974 New York Daily News:

Last fall, when he fashioned the anti-inflation package he presented Congress following his series of economic summit meetings, Ford relied heavily on the forecasts of his consultants, including Economic Council Chairman Alan Greenspan.

They, his advisors, assured him that rising prices and production costs were the prime enemy of a healthy America. He was advised that while recession lurked distantly on the

horizon, it was not an imminent prospect that would confront him immediately."

So today, Ford sits unhappily in the wreckage of his anti-inflation program while every economic barometer and authority outside the White House suggests he badly miscalculated the onslaught of a serious recession in the United States.

What disturbs the President is that his distinguished economic counselors could not have foreseen two months ago when he announced his anti-inflation program that America would enter 1975 in the throes of slumping auto sales, nationwide layoff in consumer products industries and dwindling production, the hallmarks of a recession sliding dangerously toward depression.

Well my colleagues, unlike the seasons, it is clear that some things don't change. By concentrating on inflation, which at the time was strongly influenced by the rising price of import oil, Ford's advisors evidently failed to see the fragile nature of the U.S. economy and the great harm that rising energy prices could bring. The unemployment rate hit 9 percent in May 1975 and did not fall below 7 percent until 2 years later, at the end of 1977.

Today, Federal Reserve Chairman Greenspan seems to be giving the same sort of advice. Rather than acknowledging the fragility of the nascent economic recovery, Chairman Greenspan is charting a risky course by raising interest rates when no inflation is in sight—anywhere. I would like to ask Chairman Greenspan a question: Is it wise that the Federal Reserve risk the misery of slowing down a fragile economy when, as you admitted on January 31, 1993 before the Joint Economic Committee, that the inflation rate for all of 1993 may have been 2 percent or less?

Chairman Greenspan and his colleagues at the Federal Reserve announced their pre-emptive strike in February 1994, at a time when more people are being laid off in any 1 month since 1989. But never mind this kind of news, especially if you have a good job. The spin master would like us to believe that these lay-offs are a good thing. They say showing part-timers and lower paid workers the door is a marvelous way to increase productivity.

This reminds me of some turn-of-the-century rhetoric from a business organization that maintained the best way to increase productivity is for workers to look out the window and see the long unemployment lines.

The truth is that the Federal Reserve held the money supply defined as M2 to a crawl after the 1990 recession, severely impairing the recovery. Nobel Laureate Milton Friedman has even suggested that slow money growth was a major factor in the election defeat of the last President.

The FED's actions have a great impact on the country's economic well-being. In May 1993, once the Federal Reserve finally realized it needed to give the economy a boost, it acceler-

ated money growth. Today, we see no such clear thinking. Many critics agree that the current action of the Federal Reserve to raise interest rates will slow down money growth and economic activity.

I believe the correct move at this stage of the recovery would have been to increase money growth to a 4-percent annual rate of increase. This action would have lowered short-term interest rates slightly and greatly aided the recovery without affecting inflation.

That sensible policy has been completely voided by a Federal Reserve that intends to bring the economy to its knees to achieve zero inflation. On top of all the pain and suffering that a tight monetary policy will now bring, the decisionmakers at the Federal Reserve continue to refuse to let the public know what goes into the individual Federal Open Market Committee [FOMC] member's thinking, even if it's detrimental to the country's best interest. My colleagues, I ask you to join with me in supporting legislation that will require full and complete records of the actions taken by the FOMC which sets the nation's monetary policy.

We must have complete accountability for the Nation's monetary policy at a critical time when Chairman Greenspan and his colleagues have mounted an attack on a mirage of inflation while record numbers of our fellow citizens are stuck in the reality of a deep freeze.

[From the Daily News, Dec. 16, 1974]

TERHORST

(By J.F. Terhorst)

WASHINGTON—President Ford's determination to move swiftly with new programs to combat the nation's growing recession stems not alone from the pressure of industry, labor and a worried citizenry. It results also from dismay with the economic forecast of some of his own advisers.

To be blunt about it, the President has lost confidence in their ability to predict the economic future. He feels he has received inaccurate advice and, having been burned politically and publicly because of it, Ford now has adopted a show-me attitude toward his economic counselors while listening more seriously to the advocates of direct federal action to overcome the country's economic crisis.

This fall, when he fashioned the anti-inflation package he presented Congress following his series of economic summit meetings, Ford relied heavily on the forecasts of his consultants, including Economic Council Chairman Alan Greenspan.

They assured him that rising prices and production costs were the prime enemy of a healthy America. He was advised that while a recession lurked distantly on the horizon, it was not an imminent prospect that would confront him immediately. Ford was further told that the warning signals from the business community, from Wall Street and from organized labor were probably exaggerated and, therefore, he should not be deterred from a major government assault on inflation.

Heeding their recommendations, Ford stuck to his desire to cut federal spending and bring the budget into balance for the first time in many years. Their advice also prompted him to recommend congressional passage of an income-tax surcharge to reduce the amount of money taxpayers would have available for spending on consumer goods. Ford was not totally surprised at Congress' predictable reaction to his proposals and, deep within, neither was the President convinced that a public campaign of voluntary action to "Whip Inflation Now" (WIN) would succeed. But he gave it the old college try trusting the advice of the professional economists in the White House, as well as the advisers he had largely inherited from the Nixon administration.

So, today, Ford sits unhappily in the wreckage of his anti-inflation program while every economic barometer and authority outside the White House suggests he badly miscalculated the onslaught of a serious economic recession in the United States.

What disturbs the President is that his distinguished economic counselors could not have foreseen two months ago when he announced his anti-inflation program that America would enter 1975 in the throes of slumping auto sales, nationwide layoffs in consumer products industries and dwindling production, the hallmarks of a recession sliding dangerously toward depression.

Ford is too much of a gentleman to put the blame on his predecessor in the White House. The country's economic woes were inherited by him from Richard Nixon. But Ford, as President, knows he is the man who will have to rectify the situation if governmental action can do it.

"John Kennedy had his Bay of Pigs in Cuba," one Ford aide remarked wryly, "and Gerald Ford is having his at home." Just as Kennedy had to learn quickly to rely on his own intuition and judgment in assessing the proposals of his advisers, so Ford has had to learn the difficult art of looking beyond his staff. This is not to suggest that expert advisers are not needed by Ford, but simply that he realizes that he and not any one of them is the President.

Just how Ford will respond in detail to the recession problem has not yet been decided by him, but some clues already are available. With the President's approval, Treasury Secretary William Simon has signaled the Democratic Congress that the Ford administration will cooperate in devising an extensive public-service employment program to deal with growing joblessness around the country.

The President's session with auto company officials and union leaders suggests a coming administration program to bolster auto sales and put thousands of laid-off workers back on the assembly lines. The auto industry is a vital part of the national economy, since one in every eight workers is employed in an auto-related field or is directly affected by auto plant cutbacks.

The Federal Government could help remedy the situation in Detroit and elsewhere by temporarily suspending installation of costly emission-control devices and by cutting income taxes on individuals and corporations.

Henry Ford 2d., one of those invited to the White House, already has advocated a 10 percent cut in income taxes, extended unemployment benefits for laid-off workers, relaxation of federal controls on credit and a system of federal loans to expansion-minded businesses that now cannot afford to borrow money on today's high interest market.

It is no longer a question whether Ford will embark on a full-scale government program to combat recession. He has gotten the message from those outside the White House that recession is a greater threat just now than inflation, despite what his economic advisers told him eight weeks ago. Whatever shape it takes in January, the new Ford economic package will mean at least two things:

It will signal that he has given up his long-cherished hope of balancing the federal budget for this fiscal year. Budget balancing had been a Ford obsession during his quarter century in Congress.

It also will mean that Ford has determined that his own judgment is more important sometimes than that of the best intentioned advisers.

The President's awareness of that precept is a good one, to all those who have been urging Ford to break out of the shadows of uncertainty that have bedeviled his young administration.

WHAT THEY'RE NOT TALKING ABOUT IN CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Vermont [Mr. SANDERS] is recognized for 5 minutes.

Mr. SANDERS. Mr. Speaker, as the only Independent in the U.S. Congress, I have the responsibility to raise issues that my Democratic and Republican colleagues choose not to deal with. Let me briefly touch upon three issues of enormous consequence which, while ignored in Congress, must be addressed by the American people.

The United States is, increasingly, an oligarchy. The richest 1 percent of our population now owns 37 percent of the wealth, more than the bottom 90 percent of the people. The CEO's of the Forbes 500 corporations earn 157 times more than their average worker, and the gap between the rich and the poor is wider than at any time since the 1920's. From 1983 to 1989, 55 percent of the increase in family wealth accrued to the richest half of 1 percent of families, while the lower-middle and bottom wealth classes lost over \$250 billion dollars' worth of wealth.

But oligarchy refers not just to the unfair distribution of wealth, but to the fact that the decisions which shape our consciousness and affect our lives are made by a very small and powerful group of people.

The mass media, television, radio, newspapers, magazines, book publishers, movie and video companies, for example, is largely controlled by a few multinational corporations who determine the news and programming which we see, hear, and read—and, ultimately, what we believe. While violence, scandal, horror, sports, and Rush Limbaugh are given much attention, we are provided with virtually no deep analysis of the problems facing working people, or possible solutions to those problems.

Economic decisions which wreck the lives of millions of American families

are made by a handful of CEO's. While these corporate leaders bemoan the breakdown of morality and law and order, they close down profitable companies, cut wages and benefits, deny retired workers their pensions and transport our jobs to third world countries. American workers, who have often given decades of their lives to these companies, have absolutely no say as to what happens to them on the job. They are powerless and expendable—which is what oligarchy is all about.

The United States is becoming a Third World economy. The standard of living of the average American worker continues to decline. The real wages of American production workers have dropped by 20 percent during the last 20 years, as millions of decent paying jobs disappear. The new jobs that are being created are largely temporary, part time, low wage, and with few benefits.

Twenty years ago, the United States led the world in terms of the wages and benefits our workers received. Today, we are in 12th place. Our wages, health care, vacation time, parental leave, and educational opportunity lag behind much of the industrialized world. On the other hand, much of our economic and social life is more and more resembling that of the desperate Third World.

Twenty-two percent of our children live in poverty. Five million kids go hungry. Some 2 million Americans now lack permanent shelter or sleep out on the streets—many of them mentally ill and 1 in every 10 American families now puts food on the table only with the aid of food stamps. Tens of millions more survive, on bare subsistence, from paycheck to paycheck.

In more and more abandoned neighborhoods in America, a lack of jobs, income, education and hope have created an extraordinary climate of savagery and violence which more than equals that of many communities in Latin America, Africa, and Asia.

The suffering and desperation in the Third World which we have distantly observed is now coming home as we become a Third World economy.

The United States is fast becoming a nondemocratic country. The United States has the lowest voter turnout of any major industrialized country on Earth. The 1992 Presidential election produced a 55 percent voter turnout. It is expected that the 1994 off-Presidential turnout will be about 36 percent. In local elections the turnout is often far lower.

The simple fact is that the majority of Americans, and the vast majority of poor and working people, no longer believe that their Government is relevant to their lives. They understand very clearly that real power rests with a wealthy elite, and that voting for tweedle-dee or tweedle-dum is not going to change that reality or improve their lives.

If democracy is going to survive in this country, tens of millions of poor and working people are going to have to see the connection between their economic condition and the political process. They must vote not for the lesser of two evils, but for jobs, income, health care, and the dignity to which they, as human beings, are entitled. Only when that occurs will American democracy become revitalized.

□ 1810

POSSIBLE DEVASTATING EFFECTS OF CLINTON HEALTH CARE REFORM PLAN ON SMALL BUSINESS

The SPEAKER pro tempore (Mr. CHAPMAN). Under a previous order of the House, the gentleman from California [Mr. KIM] is recognized for 5 minutes.

Mr. KIM. Mr. Speaker, I rise today to express my grave concerns about the devastating effect that the Clinton health care reform plan will have on the small businesses of this Nation.

Two weeks ago, the Administrator of the Small Business Administration, Mr. Erskine Bowles, stated before the Committee on Small Business that:

Small businessowners, when they examine the facts, will realize the value of the Health Security Act. They will realize that the act is good for small business.

Well, Mr. Speaker, I recently put that statement to a test, and I am here to tell you that nothing could be farther from the truth:

Several weeks ago, I held an open forum to discuss the effects of the Clinton plan on small business. After hearing the facts about the Clinton plan, not one—I repeat—not one of the small businessowners in attendance "realized the value of the President's plan." Let me read you what several of these businessowners said when presented with the facts about the President's proposal.

Mr. Chuck Keagle, a businessman who runs several small restaurants, testified that—

If the Clinton plan were enacted as it stands now, my problems as a small businessowner would go away because we simply would not survive. We would have to close. There is no question about it. Our margins are very thin now and adding the additional cost of the health plan would simply put our company out of business.

Debbie Matthews, of Everitt Charles Technologies, testified that—

We have about 300 employees located in seven different locations. It's unbelievable to us that we may have a reporting relationship with seven different entities or health alliances. We would have to add a significant number of staff just to handle the reporting requirements in this new health care initiative.

Barbara Price, owner of A-plus Mailing Systems, testified that—

The effect that the Clinton plan will have on my business is quite severe. We are already doing our best just to stay in business going up against the big boys and added taxes, added expense. The Clinton plan is going to mean one of two things: We're going

to close our doors entirely and go out of business; or we're going to severely reduce the number of people we have working for us. That's not good news.

These comments were not unique. In fact, at that forum small businessowner after small businessowner told me that if the Clinton plan passes, they would have to either lay off employees or close entirely. One small businessowner, using a cost estimation worksheet sent out by the Small Business Administration, estimated that under the Clinton plan his health care costs would increase from a current level of \$50,000 per year to \$252,800 per year, an increase of over 400 percent.

When you listen to this kind of testimony—which comes from real people running real businesses—it becomes extremely clear that the Clinton plan poses a life-or-death threat to this Nation's small businesses.

This threat stems, of course, from the employer mandate provisions of the Clinton plan. Requiring employers to pay 80 percent of their employees' health care premiums and subjecting these employers to payroll liabilities of between 3.5 and 7.9 percent will place a costly new financial burden on small businesses, many of whom do not—and cannot afford to—provide health care for their employees. This new financial burden will be enormous: Even with Federal subsidies, the Clinton plan will increase the health care costs of small businesses by more than \$24 billion in the first year alone.

Even more disturbingly, at the same time the President's plan targets small businesses, it gives big business a huge bailout. Large corporations, many of whom currently spend between 15 and 25 percent of payroll on health care for their employees, will enjoy an enormous financial windfall by having their health care premium liability capped at 7.9 percent of payroll. Big business is even more excited about the provisions in the President's plan which would force the Federal Government to pick up a large part of their costs of providing health coverage to early retirees. In short, the Clinton plan would not only place new costs on small business, but would shift a large part of already existing health care costs from big businesses to the owners and employees of small businesses.

To me, this situation is absolutely unacceptable. What the Clinton administration is attempting to do with this plan is to require small businesses to shoulder most of the responsibility and cost of bringing millions of uninsured individuals into the health care system. In doing so, the President's plan would deliver a fatal blow to many of this Nation's small businesses. If anyone has any doubt about this fact, just go out and listen to real businessowners. They will tell you as they have told me that the Clinton plan will destroy small business in this country.

For this reason, I urge my colleagues to oppose the Clinton plan and to support reasonable alternatives that do not contain an employer mandate. Doing so will be a matter of survival for American small businesses.

TWO AMERICAN STORIES

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

woman from Maryland [Mrs. BENTLEY] is recognized for 5 minutes.

Mrs. BENTLEY. Mr. Speaker, two stories were reported last week in the Washington Post that I would like to call to your attention. One is the Nissan Motor Corp., U.S.A. buy-back offer of its flawed 1987-90 minivans, the other is about Dr. Jeffrey Wilkerson, a native of Maryland, who discovered a lost city in Mexico.

The Nissan story is remarkable because of the people who have banded together to seek justice for the van owners who have suffered through four recalls and incurred financial loss with their vans. Remember this 1987-90 minivan had mechanical problems which led to excessive engine heat, including catching fire and burning while being driven. A few even caught fire and burned while parked.

It has been a tough job to attract Nissan's attention and that of the National Highway Traffic Safety Administration [NHTSA]. But all of us have persevered. From the Connecticut businessman, George Pasiakos, who first brought documentation of the burning vans to my attention, to the van owners, particularly those in Florida who demonstrated in the street to attract the attention of Nissan—and the attorney generals of 21 States who, early last spring, petitioned NHTSA to buy back the vans or conduct an independent test. Neither was done.

After working with the van owners, last spring I participated in a hearing of the Transportation subcommittee of Appropriations in order to ask specific questions of NHTSA. Recently, I requested a General Accounting Office [GAO] for an investigation of NHTSA and whether or not it adequately fulfilled its role to protect the public.

I also asked Attorney General Reno to investigate the relationship between Nissan and NHTSA since Nissan's counsel is the former general counsel for NHTSA. In addition, I wrote Secretary Peña to become involved in this issue because lives were at stake. So, with the combined efforts of public officials, private citizens, and van owners we now have a buy back. There will be more chapters to that tale in the future.

The second story about Dr. Jeffrey Wilkerson is particularly thrilling because it shows what the Members of Congress can do working together.

Dr. Wilkerson discovered an ancient port city, El Pital, in Mexico. A Washington Post article by Todd Robberson explained that the city flourished between A.D. 300 and 600. Its discovery is considered to be the most important find in Mexico in over 200 years.

A veteran of over 20 years of archaeological work in Mexico, Dr. Wilkerson's work is supported by the National Geographic Society, the New York-based Selz Foundation and the prestigious Mexico city-based Group of 100 of Mexico's leading scholars.

Last fall I worked with my former constituent Dr. Wilkerson by helping him secure a permit from the Mexican Government for his work. He has asked that I pass along his personal thank you to all those Members of this body who signed a Dear Colleague with me to the President of Mexico. I want to add my personal thank you to my colleague, the distinguished majority leader, RICHARD GEPHARDT. He and his staff quickly joined this effort recognizing the value of Dr. Wilkerson's work.

This story is a perfect example of how Congress works and what the members, working together, can accomplish.

It is a proud day for all of us who helped in this effort and for Dr. Wilkerson's mother Merna Wilkerson and his two sisters, Diana and Susan who worked with my office. This acknowledgment would not be complete without recognizing President Salinas of Mexico for intervening to make certain a permit was granted. Our efforts in aiding Dr. Wilkerson, both in the U.S. Congress and President Salinas's role have truly made it possible to add to the world's knowledge of man. It is a job well done. Jeff Wilkerson says, Thank you.

Both of these stories reflect the efforts of Americans making our system work for the benefit of the public. The van owners helped one another, and Members of Congress helped Jeff. America benefited in both stories.

NISSAN PLANS TO BUY BACK C-22 MINIVANS

(By Warren Brown)

Nissan Motor Corp. U.S.A. announced an unusual offer yesterday to buy back all 33,000 of the C-22 minivans it sold in the United States from 1987 to 1990 because they are vulnerable to engine fires.

It is only the second time that an auto company has volunteered to buy back all defective vehicles in a U.S. recall, according to federal safety officials. Nissan, which will crush the vans, said the campaign will cost \$231 million.

Owners will receive from \$5,000 to \$7,000 for the minivans, which originally sold for \$11,000 to \$18,000. The customers also will be offered a \$500 coupon good toward the down payment on a new or used vehicle at a Nissan dealer, the company said.

The C-22 minivans have been recalled by Nissan four times to fix engine problems that could lead to fires.

The most recent recall, last August, involved fan belts that could break, eventually causing engines to overheat and possibly burst into flame.

The National Highway Traffic Safety Administration did not think the fourth recall would work any better than the previous three efforts, and the agency was hinting that it might try to force Nissan to take back the vehicles, a Department of Transportation source said. That approach worked in 1981, when Italian automaker Fiat decided to buy back 4,000 of its 1972-74 Fiat 124 sports cars and sedans that had severe structural rust problems.

There have been 153 Nissan minivan fires in the United States, according to Nissan and federal safety officials. But there have

been no deaths or serious injuries related to those incidents, company and federal officials said.

The Nissan buyback program will work this way:

An owner of 1987-90 C-22 minivan must take the vehicle and the title to a Nissan dealer. The buyback price will be based on retail prices listed in the January 1994 issue of the National Automobile Dealers Association Official Used Car Guide. Washington area residents are advised to check the Eastern Edition of the guide.

For owners who reject the offer, Nissan said, the dealer will reinspect their vans to ensure that the fourth recall repair was done properly. Nissan has promised other services to these customers, including roadside assistance, towing, loaner car services and 100,000-mile warranties.

Fewer than 300 of the 1990 C-22 minivans were sold in the United States and owners of those cars presumably can expect the highest buyback prices, Nissan officials said.

In August Nissan initiated a "cash for equivalent repair value program." Under the program, C-22 minivan owners could have chosen a recall repair or the cash value of that repair. An estimated 1,000 C-22 minivan owners chose the cash payout. However, the cash value of a repair is not necessarily the same as the cash value of the minivan.

Some people who took the cash value of that repair might be eligible for more money, Nissan spokesman Mark Adams said.

"Let's say the cash-equivalent value of the repair was \$4,000, but that the cash value of the minivan was \$6,000. That customer would still be eligible for a \$2,000 check," Adams said.

"There has never been a buyback program of this scope or magnitude," said William A. Boehly, associate administrator of NHTSA for enforcement. Boehly said the agency had been monitoring Nissan's progress with the fourth recall and had expressed to the company "that we were hopeful that they would take further action."

Nissan officials said they acted because their customers were becoming angry.

"We felt that it would be easier to keep our customers happy than it would be to try to win them back," a Nissan official said. Nissan U.S.A. vice president and general manager Earl Hesterberg said, "Keeping our customers satisfied is our first priority. That's why we decided to offer this program."

[From the Washington Post, Feb. 3, 1994]

MOUNDS MAY YIELD VAST LOST CITY (By Tod Robberson)

EL PITAL, MEXICO.—An American archaeologist in this remote village on the Gulf of Mexico says that he has located the site of an ancient port city that is believed to have flourished more than 1,500 years ago, possibly having served as the largest coastal urban center in North America during its life span.

Although no ground has been broken on the 150 earthen pyramids and other structures at the site, it already is yielding surface artifacts and data indicating that it once served as a key political, cultural and trading center contemporary with the city of Teotihuacan, whose pyramids—up to 200 feet high—still stand near present-day Mexico City.

Archaeologists long have suspected something lay under the dense vegetation at El Pital, about 60 miles northwest of Veracruz. Now the first scientific survey has depicted it as a lost city whose size and coastal loca-

tion help fill a longstanding gap in the understanding of trade and migration among pre-Columbian civilizations in this part of Mexico.

They say the site, unlike other more fortress-like inland cities, appears to have had a distinct function as a center of commerce and food production. This suggests the ancient people who lived here had a more sophisticated social and economic structure than was previously known for the time period—at the dawn of the Mayan civilization some 500 miles to the southeast and 1,000 years before the Aztecs built their society around what is now Mexico City.

Thousands of people, possibly more than 20,000, may have inhabited the city and its suburbs at its peak of activity between A.D. 300 and 600.

In addition, scientists are investigating its probable use as a conduit for seagoing trade with pre-Columbian Indian civilizations as far north as the upper Mississippi River, and they say it may have been responsible for the introduction of crops such as corn into the north.

Archaeologists say they believe certain crops arrived in the Mississippi Valley, along with some native rituals and cultural practices, around the same period as when the El Pital site flourished, but they have never been able to determine whence they came. They say El Pital could yield some important clues.

Preliminary data are being gathered at the site by a team of archaeologists headed by S. Jeffrey K. Wilkerson, a Maryland native who has lived and worked here in the Gulf Coast state of Veracruz for more than 20 years.

"The impression we're getting is that this will turn out to be the largest urban center on the Gulf Coast for this time period," Wilkerson said while touring the site, named after a village that now sits atop some of the ruins. "I think this was the major terminus of a cultural corridor leading from Teotihuacan to the gulf. This is something of a missing link."

The core city, its suburbs and satellite communities measure at least 24 miles long and 12 miles wide, with some of its earth-and-stone pyramids reaching heights of 130 feet. Despite its massive size, the site is virtually invisible at ground level because of thick banana plantations and orange groves that now cover the area.

From a nearby highway, only the tops of three or four cone-shaped mounds are visible above the banana palms. Residents of El Pital—including a family whose house sits atop one earthen building—said they do not believe the mounds are pyramids or any other type of ancient structure, but rather are strange, natural lumps that inexplicably have shot up from the otherwise flat coastal plain.

Wilkerson said no known geological phenomenon could have produced the smooth faces and honed edges of the mounds. Earth and stones—hundreds of thousands of tons—were carried by hand to build the city, he said.

"It talks about a lot of power, power to compel people to live in a concentrated area when the natural tendency would be to spread out," he explained. "There was the power to compel people to move lots of earth and build all of this, and the power to manage food production to feed everyone who lived here. Whoever directed it may not have been very well-liked by his people."

Even to the untrained eye, the site's importance as a large urban center is unmistakable. On a tour with Wilkerson amid

heavy rains, hundreds of artifact fragments, potsherds and even slivers of human bone bubbled to the surface atop the pyramids.

On the surface, Wilkerson's team has found scores of items, including ceremonial sculptures, a sun-god plaque and a foot-long, leaf-shaped flint knife possibly used for human sacrifices. Beneath a canopy of banana palms at one section of the site, thousands of pieces of hand-worked pottery—some believed to date back hundreds of years before the time of Christ—litter the ground like discarded cigarette butts after a rock concert.

Farm tractors and an AT&T telephone crew digging in the area also are churning up relics daily.

"For us, this is like an archaeological orgasm," said Ramon Mariaca, a visiting archaeology student from Mexico City's Iberoamerican University. "I doubt I will ever investigate another site like this in my lifetime."

According to Wilkerson, preliminary studies indicate a 2,500- to 3,000-year human chronology around El Pital. Located nine miles west of the Gulf of Mexico, El Pital is directly linked to the ocean by two slow-moving rivers, the Tres Bocas to the north and the Nautla to the south, perfectly situating it for waterborne commerce along the Gulf Coast.

To test his theory that it served as an ancient port, Wilkerson traveled both rivers by raft and said they were easily navigable with oars in both directions. He described "gateway structures" at strategic junctures along both rivers that could have served as toll stations or other control points for boat traffic serving the city.

"You didn't even need to walk to it. You could take your canoe right up to the site," he said. "It is quite possible the city controlled coastal trade at a time we know the Mesoamerican civilization was reaching its zenith," said George Stuart, director of archaeological projects at the National Geographic Society in Washington. "Any time you find a huge ruin, unknown and undug, it adds another part to the larger mosaic. This is of far more than routine importance."

National Geographic, the New York-based Selz Foundation and the Mexico City-based Group of 100 have provided funding and support for Wilkerson's work, which he is conducting under authorization from the Mexican government's National Institute of Anthropology and History.

Wilkerson received permission from the Mexican institute to investigate El Pital only after a long controversy in 1992 that led to his expulsion from another archaeological site farther inland along the Nautla River. Supporters of Wilkerson had accused the Mexican institute of plagiarizing his work and distributing confidential information he had submitted as part of an application to investigate the previous site.

The controversy occurred just as Mexico was launching its lobbying campaign for U.S. congressional ratification of the North American Free Trade Agreement, and it prompted an outcry from members of Congress who claimed that Mexico could not be trusted to safeguard intelligence property rights.

President Carlos Salinas de Gortari intervened and ordered the institute to grant Wilkerson a permit. But instead of giving him access to his original site, it assigned him to the area of El Pital, which was not regarded as having major archaeological significance.

Wilkerson said he knew as far back as the 1960s that some ancient mounds existed at El

Pital, but he was unaware of its full significance when the Mexican government assigned him the site until he began surveying the extent of the ruins. "Did I know that it was this large, this extensive, this important? No, absolutely not," he said.

Wilkerson said El Pital almost certainly predated the gulf region's other major pre-Columbian city at El Tajin, 36 miles inland to the north, and "smothered it" in terms of size and geographical importance.

Although El Pital was contemporary with early Maya cities 500 miles to the east, the inhabitants of El Pital probably were not Mayan, Wilkerson said. No conclusive data have surfaced to pinpoint their ethnicity, but evidence exists they were indigenous speakers of the Huastec language or migrants speaking the Nahuatl language commonly found in the civilization of Teotihuacan.

El Pital also appears to have been contemporary with Teotihuacan, which arose early in the 1st millennium and dominated the Valley of Mexico for roughly 750 years.

Aside from the rich archaeological yield expected from the study of El Pital, scientists said they hope to answer another critical question: Why would a site of such importance fade out of existence the way it did?

Wilkerson and Betty J. Meggers, head of the Latin America archaeology section at the Smithsonian Institution, are investigating the possibility that a catastrophic series of floods led to the city's downfall.

Meggers is studying archaeological effects of "El Niño," the periodic, violent weather fluctuation brought about by sudden shifts of warm water currents into the eastern Pacific Ocean that can cause heavy flooding. She hopes to investigate El Pital as part of a study of a phenomenon called "mega-Niño," which theoretically occurs every 500 years and can disrupt weather patterns for decades.

Wilkerson said an ability to pinpoint a mega-Niño can help scientists predict the arrival of future cycles. "This is what I feel is of major importance about the site, that the past tells us about the present," he said.

A SACRED TRUST

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas [Mrs. MEYERS] is recognized for 5 minutes.

Mrs. MEYERS of Kansas. Mr. Speaker, today I introduce a resolution of inquiry in an effort to obtain factual answers to a few of the questions raised by a complicated web of prominent persons, events, and federally insured or licensed institutions. This growing embarrassment is now known simply as Whitewater.

As you know, a resolution of inquiry is a mechanism available to Members under the Rules of the House of Representatives to obtain information from the President of the United States and heads of executive departments. According to long-standing practice in this body, this resolution is considered privileged because it has special standing in the legislative process. We have protected that privilege by requesting factual answers to specific questions, not opinions, from the President.

My fellow cosponsors and I do not take this step lightly. We do have a constitutional obligation, however, to the American people to discover the truth—good or bad—and hold our public figures responsible for their actions. To that end, we must use the avenues provided to Members under the rules of the House to obtain facts otherwise made unavailable to us.

Mr. Speaker, as ranking Republican on the Small Business Committee, I have been working to investigate the activities of Capital Management Services, Inc., a specialized small business investment company [SSBIC] in Arkansas. The information we have obtained, to date, on the operations of this federally licensed entity has been extraordinarily disturbing. However, the information we have received has led to more questions than answers.

Unfortunately, the executive branch has not been forthcoming in responding to requests for information from certain Members of Congress. This stonewalling has provided fertile ground for sowing the seeds of intrigue and speculation. Adding fuel to this fire of speculation are the recent news reports alleging that the Rose Law Firm in Little Rock, AR has been destroying documents concerning the Whitewater Development Corp. I believe it is time that Congress and the American people receive answers to some simple questions, removing doubt and mystery from various events, and allow existing Congressional investigations to go forward.

Contrary to the assertions of some individuals in the executive branch, and some Members of Congress, the most important role of the Congress is that of oversight and investigation in the public interest. Those powers are not vested solely in a few committee chairmen, and that certainly was not the intention of the Founding Fathers.

Mr. Speaker, one of America's foremost students of government, the Honorable Woodrow Wilson, once said and I quote:

Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function * * *.

Throughout my public career, I have considered and held dear the sacred trust the citizens have placed upon me. I have tried to honor that trust through my actions, and I believe I am doing so today with the introduction of this resolution.

□ 1820

CALLING FOR AN END TO AMERICAN TOLERANCE OF SERBIAN AGGRESSION AND GENOCIDE

The SPEAKER pro tempore (Mr. CHAPMAN). Under a previous order of the House, the gentleman from Indiana [Mr. MCCLOSKEY] is recognized for 5 minutes.

Mr. MCCLOSKEY. Mr. Speaker, as we all know, it has been a week, or at least the last several days, 4 or 5 days, of great and ongoing tragedy in Bosnia, and to some degree, with the NATO events of recent days, a cause for more hope.

Particularly, I would like to commend President Clinton on his increased resolve resulting in the NATO mandate on the Serbs to evacuate the heavy artillery from Sarajevo. It appears that the tragic event of last Saturday's market, in which some 200 people were killed, wounded, and maimed, has focused the world's attention, and I might say, I think that event alone has caused one of the most massive turn-arounds in public opinion that I have ever seen in my public life, to the point that now a majority of the American people favor NATO bombing strikes, NATO air strikes to lift the siege of Sarajevo.

Nevertheless, the present situation, I think, poses concern as to how it would be handled immediately and over the long run. I think a major concern is about Western resolve and our ultimate political and moral leadership. Are we going to use our good office for a reasonably just peace? Do we believe in a lift and strike option if necessary to stem this ongoing debacle? Or is Western policy ultimately going to be bluff and partition?

I might note that anything close to the present radically unfair and most tragic and ugly, obscene partition of this sovereign state can only be the basis for ongoing disaster. Troops of no sort or troops of any country will not be able to do routine and positive peacekeeping there. It will continue to be a zone of war and strife.

Particularly, it would seem that even now much of the European community seems unhinged about any improvement in the Bosnian Government's ability to defend its people, and they even regard the Bosnians as a guilty, rather than an aggrieved, party. We should stand for the principles and ideas of America, the U.N. Charter, and the rights of oppressed peoples everywhere.

Particularly, the issue of arms embargo remains unsolved. I might say, I think it is illegal and immoral on its face for a people, a sovereign people, and I might note the people of a multi-ethnic society, Serb, Bosnian, Croat, Moslem, and so forth, including other nationalities, that they should be deprived of the basic inherent human right to defense.

I would also like to note that I will include for the RECORD a major statement from the Action Council for Peace in the Balkans released today, Mr. Speaker.

Quoting partially from it, and I would note that Hodding Carter, chairman of the Action Council, said:

NATO's ultimatum does not address the real issues and problems at stake, including the direct causes of last Saturday's brutal attack on Sarajevo's inhabitants. The Serbian siege of Sarajevo will continue, the Serbs will keep their weapons, the Bosnian government will remain gagged and bound by the arms embargo, and the victims, not the aggressors, are likely to be the ones to feel the "full weight" of U.S. diplomacy at the negotiating table."

I think this is very important. There is such an ongoing mess and such an ongoing tragedy that is still far from being resolved; my particular words in that last sense, not from the Action Council's statement.

Quoting from the Action Council's statement again, "On the humanitarian side, there appear to be no assurances from unrestricted access of humanitarian aid into Sarajevo, the other U.N.-mandated "safe havens," or other key areas of need, including Mostar," I might say that expert reports are that Mostar may be the most suffering community on the planet, particularly in the so-called Moslem east end. This was raised very well by Lionel Rosenblatt, president of Refugees International and a Council member:

"The plan also appears to actually disarm the Bosnian government, denying it the means to defend its own capital, actually increasing the overwhelming Serbian advantage and the Serbs' ability to continue the siege of Sarajevo indefinitely."

The statement also raises concerns: "There will be no retaliation for last Saturday's attack, despite U.N. and NATO agreements last August to use air strikes to stop the strangulation of Sarajevo, and Serb forces can opt to retain control of their heavy weapons, which can be repositioned or redeployed to continue the bombardment of other Bosnian 'safe havens'.

"The ultimatum calls for Serbian heavy artillery to be withdrawn only 12 to 13 miles from Sarajevo's center, despite the fact," and we all know this, the artillery has a range of 25 miles.

"There will be no withdrawal of Serbian forces that attack civilians on a daily basis, including snipers and those that use hand-held mortar.

"There will be no automatic response to future shelling of Sarajevo; initial authorization to launch air strikes rests, as before, with the U.N. Secretary General;

"The plan does not address the 'strangulation' of other 'Safe havens,' including Tuzla and Bihac, which were shelled on Wednesday;

"The ultimatum provides an exclusion for Serb forces in Pale, the 'cap-

ital' of the Bosnian Serb forces; as a result, the aggressors can keep their heavy weaponry in their 'capital' while the victims—the people and legitimate government of a U.N. member state, must surrender their meager means of defense."

Continuing the quote from the Action statement, "The diplomatic emphasis is clearly on pressuring the victims—the Bosnian government—to capitulate and sign the Serb-dictated partition plan.

"Current negotiations and mediators are part of the problems, not the solution.

"The current partition plan, even with slightly better redistribution of territories," and this is also very important, "will legitimize aggression and genocide and violates U.N. charter UNSC resolutions, and London Conference declaration."

Also, it still remains a fact that the Bosnian Government continues to be denied the right to defend itself and its citizens, and now is being denied the right to defend its besieged capital.

I might say, as so many of us know, in conclusion, the problem is Serbian aggression and genocide. The problem is the ongoing tolerance by the Western world of Serbian aggression and genocide. Let us do the right thing and stop it now.

Mr. Speaker, I include for the RECORD the full letter from the Action Council:

**ACTION COUNCIL SOUNDS NOTE OF CAUTION
TOWARD CLINTON'S BOSNIA INITIATIVE**

WASHINGTON.—Members of the Action Council for Peace in the Balkans voiced skepticism and concern regarding President Clinton's new initiative toward Bosnia. While Council members welcomed President Clinton's personal involvement in finding a solution to the two-year-old conflict, they voiced concerns that the nature of the military and diplomatic approach he has adopted falls well short of the steps necessary to end the genocide and aggression.

Hodding Carter, co-chairman of the Action Council, said, "NATO's ultimatum does not address the real issues and problems at stake here, including the direct causes of last Saturday's brutal attack on Sarajevo's inhabitants. The Serbian siege of Sarajevo will continue, the Serbs will keep their weapons, the Bosnian Government will remain gagged and bound by the arms embargo, and the victims, not the aggressors, are likely to be the ones to feel the "full-weight" of US diplomacy at the negotiating table."

"This plan, as well as President Clinton's remarks this week, treats the victim as harshly—perhaps more harshly—than the aggressor," Carter added.

On the humanitarian side, "There appear to be no assurances for unrestricted access of humanitarian aid into Sarajevo, the other UN-mandated "safe havens," or other key areas of need, including Mostar," noted Lionel Rosenblatt, President of Refugees International and a Council member. "The plan also appears to actually disarm the Bosnian Government, denying it the means to defend its own capital, actually increasing the overwhelming Serbian advantage and the Serbs' ability to continue the siege of Sarajevo indefinitely," Rosenblatt added.

The Clinton/NATO plan has several shortcomings, according to the Action Council:

There will be no retaliation for last Saturday's attack despite UN and NATO agreements last August to use air strikes to stop the strangulation of Sarajevo

Serb forces can opt to retain control of their heavy weapons, which can be repositioned or redeployed to continue the bombardment of other Bosnian "safe havens."

The ultimatum calls for Serbian heavy artillery to be withdrawn only 12-13 miles from Sarajevo's center, despite the fact that the artillery has a range of 25 miles.

There will be no withdrawal of the Serbian forces that attack civilians on a daily basis, including snipers and those that use hand-held mortar.

There will be no automatic response to future shelling of Sarajevo; initial authorization to launch air strikes rests, as before, with the UN Secretary General.

The plan does not address the "strangulation" of other "safe havens," including Tuzla and Bihac, which were shelled on Wednesday.

The ultimatum provides an exclusion for Serb forces in Pale, the "capital" of the Bosnian Serb forces; as a result, the aggressors can keep their heavy weaponry in their "capital" while the victims—the people and legitimate government of a UN-member state—must surrender their meager means of defense.

The diplomatic emphasis is clearly on pressuring the victims—the Bosnian Government—to capitulate and sign the Serb-dictated partition plan.

Current negotiations and mediators are part of the problem, not the solution.

The current partition plan, even with slightly better redistribution of territories, would legitimize aggression and genocide and violates UN Charter, UNSC resolutions, and London Conference declaration.

The Bosnian Government continues to be denied the right to defend itself and its citizens and now is being denied the right to defend its besieged capital.

THE UNITED STATES GOVERNMENT SHOULD RESPECT THE NEED BY THE PACIFIC TERRITORIES FOR PARTICIPATION IN SPREP AND APEC

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Guam [Mr. UNDERWOOD] is recognized for five minutes.

Mr. UNDERWOOD. Mr. Speaker, in the midst of admirable efforts by the administration to improve our economy and increase America's competitiveness overseas, there have been recent actions taken by the State Department which stifle economic advancement in the territories of the United States. In the same manner, while the administration makes valiant attempts to improve and sustain the integrity of the environment, the State Department rejects advances in environmental stewardship and economic growth in the South Pacific.

The rejection of Guam's participation in regional organizations, namely in Asian-Pacific Economic Cooperation [APEC] and the South Pacific Regional Environmental Protection Program [SPREP], are the reasons for these inconsistencies in national policy.

APEC is an organization dedicated to the strengthening of regional economic ties among its 15 members. It seeks to reduce trade barriers and encourage investment by coordinating economic policy. The members of APEC are liberally called member economies so that economies which are not completely sovereign, such as the crown colony of Hong Kong, may participate. Unfortunately, the State Department denies Guam the right to participate in the regional organization outside of the seat held by the United States. Their contention is that Guam can be adequately represented through the United States just like the States of the Union, despite the fact that we are economically entirely unlike the States. We are not part of the customs zone, and are not part of NAFTA, we are ignored regularly in all trade talks and considerations.

Guam, whose economy is closely tied to the Asian and the Pacific economies, is not treated as a State. So why are we denied the opportunity to represent our own interest? Is the United States uncomfortable with the possibility of having an equal seat on an organization with one of its territories or does it not like the possibility of a territory disagreeing with a policy as was the case in SPREP?

Many parallels can be drawn between Guam's treatment in APEC and its current situation in the South Pacific Regional Environmental Protection Program. What makes the denial of full participation in SPREP even more absurd, however, is the fact the Guam was a full member of the South Pacific Commission, the organization that gave birth to SPREP. Reasons given by the State Department cite concerns with the structure, membership, and funding of the organization. Could it be, however, that the Department of State fears further confrontation from the South Pacific governments over issues such as draft net fishing and nuclear dumping? Guam must be allowed to voice its concerns about such serious actions taking place in our own back yard.

Regrettably, on June 18, 1993, Guam withdrew from SPREP after being refused equal representation. This followed a plan approved by all members of SPREP—with the exception of the U.S. Delegation—that would have allowed Guam and dependant areas to participate.

This past week the National Governors Association met here in the District. Among those attending the NGA meeting were the Governors of the "off-shore" areas including Guam, American Samoa, the U.S. Virgin Islands, Hawaii, and Puerto Rico. During the Off-Shore Governors' Forum, a resolution was passed taking issue with the action of the Federal Government with regard to participation in APEC and asked for observer status for

Guam. Will this body and this administration ignore the sentiments of these Governors in their effort to maintain and develop their economic strength and to contribute to that of the United States? I trust that we will not disregard the plea for equal opportunity in being allowed to observe APEC activities in an independent fashion since Guam's economic viability is at stake.

APEC and SPREP offer disturbingly poignant demonstrations of how the Federal Government determines Guam's status in an arbitrary manner. The problems associated with region organizational participation also speak to the reasons why we must seek to better define Guam's political status and relationship to the United States.

Advances in economic and environmental policy must not be thwarted by unnecessary control over the territories. In order to develop the human, economic, and ecological potential of Guam and the Pacific region, the Federal Government must allow these areas to share in the responsibility and accountability of governing instead of being directed from the other side of the world. We must resolve the political status and relationship between Guam and the United States and we must allow the territories to participate fully in regional organizations whose activities directly affect the people and the economies of the Pacific. By this action, we can avoid further inconsistencies and questions of regional participation.

Trade and economic development opportunities have shifted to the nations in Asia and the Pacific Basin. The United States Government fully recognizes this reality and should respect the need for the Pacific territories to participate in SPREP and APEC.

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MORE PROBLEMS IN THE CLINTON HEALTH PLAN

The SPEAKER pro tempore (Mr. CHAPMAN). Under a previous order of the House, the gentleman from Florida [Mr. GOSS] is recognized for 60 minutes.

Mr. GOSS. Mr. Speaker, I know the hour is late and people are concerned about the weather, and I will try and accommodate those concerns. There are some things that have happened though that I think are worthy of attention.

I think a very important part of the debate on health care reform, a new round has been fired, as it were, new information is in. I think it will be the grist for the mill for days to come, and I wanted to sort of introduce the subject, because I think it is one of great import. And those interested in this subject I am sure will be interested. I want to refer them directly to an article in the New Republic by Elizabeth McCaughey that speaks as a return to

the criticism she has received from the White House with regard to her earlier comments on the Clinton health plan. It gets very specific.

The article is entitled "Clinton's Plan on the Ropes."

It is further entitled "She's Baaack," and it is from the New Republic edition of February 20.

The war of words has escalated regarding the chasm between what the spin doctors at the White House says about Clinton health plan and what the bill that's been submitted actually says. In a recent article for the New Republic a respected health care expert, Elizabeth McCaughey, spelled out a number of serious inconsistencies between the rhetoric of Clinton health and the actual requirements of the legislation the President has proposed. As the walls came tumbling down around the President's plan, with a series of negative reviews including a damning budgetary assessment by the Congressional Budget Office, the White House panicked and began an exercise of shooting the messenger. Elizabeth McCaughey's analysis was ridiculed and lambasted. Undaunted, Ms. McCaughey has responded again, this time citing chapter and verse—actual page numbers and verbatim references to the Clinton health bill to back up her assertions. I would like to share with my colleagues some of the high points of Ms. McCaughey's most recent critique, in the February 20 edition of the New Republic.

I would not want in any way to discourage anybody from reading the whole article because it is very complicated to try to interpose a three-way debate that is going on between her first article, the White House, and then her retort.

Mr. Speaker, I include that article for the RECORD.

[From the New Republic, Feb. 28, 1994]

CLINTON'S PLAN ON THE ROPES: SHE'S BAAACK!

(By Elizabeth McCaughey)

On January 31 the White House press office released a statement questioning the accuracy of my recent article in TNR ("No Exit," February 7, 1993). I welcome this opportunity to engage in a dialogue with the White House about the content of its health bill. As I did in my original article, I will be documenting my description of the bill—and my point-by-point rebuttal of their arguments—with page numbers from the November 20, 1993, version. If White House representatives challenge the accuracy of my description again, I hope they will provide page numbers, too, so that TNR readers can compare the evidence and decide for themselves.

Most of the White House challenge focused on this paragraph from my article:

If the bill passes, you will have to settle for one of the low-budget health plans selected by the government. The law will prevent you from going outside the system to buy basic health coverage you think is better, even after you pay the mandatory premium (see the bill, page 244). The bill guarantees you a package of medical services,

but you can't have them unless they are deemed "necessary" and "appropriate" (pages 90-91). That decision will be made by the government, not by you and your doctor. Escaping the system and paying out-of-pocket to see a specialist for the tests and treatment you think you need will be almost impossible. If you walk into a doctor's office and ask for treatment for an illness, you must show proof that you are enrolled in one of the health plans offered by the government (pages 139, 143). The doctor can be paid only by the plan, not by you (page 236). To keep controls tight, the bill requires the doctor to report your visit to a national data bank containing the medical histories of all Americans (page 236).

The White House responded:

"There is nothing in this Act to prohibit any individual from going to any doctor and paying, with their own funds, for any service." "Under the Act, you can pay 'out-of-pocket[sic]' for anything you want at any time, to any physician or hospital willing to treat you." Price controls on doctors' fees? "That is wrong," according to the White House. "There are no price controls. * * *

How accurate are these statements from the White House? The text of the bill proves they are untrue.

Can you pay any doctor any price for any service you want? Although it is possible to buy cosmetic surgery, psychotherapy or other uncovered services out-of-pocket, the bill prohibits doctors from accepting payments directly from you for the basic kinds of medical care listed in the Clinton benefit package. Below are the regulations barring doctors from taking your money. If you go to a doctor for treatment, the doctor will be paid by your health plan. That is true no matter what kind of health plan you are enrolled in. The doctor is prohibited from accepting payment from you (except fixed copayments) for any basic medical services listed in the Clinton benefit package. That applies to doctors treating patients in HMOs and doctors outside HMO networks. Doctors outside HMOs must submit charges for your care to your health plan, accept reimbursement based on the government's schedule of price-controlled fees and report your visit according to the requirement of title V of the bill, which establishes the national electronic data bank:

Sec. 1046(d)(2) DIRECT FILING.—A provider may not charge or collect from an enrollee amounts that are payable by the health plan * * * and shall submit charges to such plan in accordance with any applicable requirements of part 1 of subtitle B of title V (relating to health information systems).

Are you allowed to pay a surgeon more, in hopes of getting the most expert, experienced care? No:

Sec. 1406(d)(1) PROHIBITION ON BALANCE BILLING.—A provider may not charge or collect from an enrollee a fee in excess of the applicable payment amount under the applicable fee schedule [page 236]. * * *

(3) AGREEMENT WITH PLANS.—The agreements * * * between a health plan and the health care providers providing the comprehensive benefit package to individuals enrolled with the plan shall prohibit a provider from engaging in balance billing described in paragraph (1) [page 237].

The White House attacks the use of the phrase "price controls on doctors' fees" in my article. "Wrong," says the White House. "There are no price controls in the president's plan. Price controls—calling for government micromanagement of every health care service, doctor's fee, drug technology

and product—were considered and specifically rejected."

But the text of the bill proves there are price controls on health plan premiums, new drugs and doctors' fees. Here are the price controls on doctors' fees:

Sec. 1322(c) ESTABLISHMENTS OF FEE-FOR-SERVICE SCHEDULE (1) IN GENERAL.—Each regional alliance shall establish a fee schedule setting forth the payment rates applicable to services furnished during a year to individuals enrolled in fee-for-service plans (or services furnished under the fee-for-service component of any regional alliance health plan) [page 134]. * * *

(4) ANNUAL REVISION.—A regional alliance * * * shall annually update the payment rates provided under the fee schedule [page 135].

The White House says "it is not clearly why a patient would want to pay a doctor directly, for services that their [sic] insurance company is obligated to buy." One reason is privacy. Evading government regulations and paying the doctor directly would allow you to keep your personal medical problems out of the national data bank.

Will your personal medical history be stored in a national data bank? The White House says "not true" and "patently untrue" to my statement that "the bill requires the doctor to report your visit to a national data bank containing the medical histories of all Americans. The administration argues that although "physicians may be required to submit data * * * for the purpose of improving quality and assessing treatments and outcomes," the bill "prevents against tying this data to specific individuals."

The text of the bill proves that the administration is mistaken. Information about your physical and mental health and any treatments or tests you have will be entered in a national data network and linked to you through your health security number. Here is what the bill says: the National Health Board will establish an "electronic data network" with regional centers to collect, compile and transmit information. The information expressly includes "clinical encounters," that is, when a physician treats a patient (page 861). A doctor who treats you (except for an uncovered service such as dental work or cosmetic surgery) and does not record your "clinical encounter" on the standardized form and submit it to your health plan will be fined up to "\$10,000 for each such violation" (pages 236, 885-886). As the data about you travel from your doctor's office to the health plan, and then to the national electronic data network, this information continues to be tagged with your "unique identifier number."

The bill leaves no doubt that the network contains "individually identifiable health information," which is defined in the bill to include your "past, present or future physical or mental health" and health care provided to you (page 877). To protect your privacy, the bill offers this vagueness:

All disclosures of individually identifiable health information shall be restricted to the minimum amount necessary to accomplish the purpose for which the information is being disclosed [page 873].

and this:
[You] have the right to receive a written statement concerning * * * the purposes for which individually identifiable information provided to a health care provider, a health plan, a regional alliance, a corporate alliance or the National Health Board may be used or disclosed by, or disclosed to, any individual or entity [page 874].

It would be unfair to suggest that the bill's authors are unconcerned about privacy. The bill mandates that the National Health Board will "promulgate standards respecting the privacy of individually identifiable health information that is in the health information system" within two years and propose privacy legislation within three years (pages 871, 876). But contrary to the White House statement, doctors must report their patients' personal medical information to a national data bank or risk harsh penalties, and the information in the bank remains individually identifiable.

Price controls on premiums will mean too little money to care for the sick. Limiting how much money people can choose to pay for basic health coverage limits how much money is in the pot to take care of them when they are sick. That was the point of the ad on television that the First Lady criticized. A couple are discussing what price controls on premiums will mean, and the woman asks, "But what if there's not enough money."

The bill's authors anticipate that restricting dollars available for health care will produce shortages: when medical needs outpace the budget and premium money runs low, state governments and insurers must make "automatic, mandatory, non-discretionary reductions in payments" to doctors, nurse and hospitals to "assure that expenditures will not exceed budget" (pages 113, 137).

In a charge echoed by Michael Weinstein of *The New York Times*, the White House accused me of misleading readers by "implying that such a mechanism exists in the main proposal." The White House stated emphatically that "it does not." The White House and Weinstein argue that only under a single-payer system would payments to doctors and others be cut off if needs outpace the budget and premium money runs low. They expressly charge me with quoting the single-payer regulations and misrepresenting them to be rules for the "main" Clinton health proposal.

The text of the bill proves that the White House and Weinstein are wrong. Cutting or delaying payments to doctors, other health care workers and hospitals to stay in budget is an integral mechanism in the administration's bill, and one of the two passages I quoted (page 137) is from the "main proposal." It provides that if needs exceed budget and premium money runs low:

Sec. 1322 (c)(2) PROSPECTIVE BUDGETING DESCRIBED * * * the plan shall reduce the amount of payments otherwise made to providers (through a withhold or delay in payments or adjustments) in such a manner and by such amounts as necessary to assure that expenditures will not exceed budget.

The government will decide what is "necessary" and "appropriate" care. The White House attacks as "wrong" and "very misleading" my statement that "the bill guarantees you a package of medical services, but you can't have them unless they are deemed 'necessary' and 'appropriate.'" The administration also says it is "untrue" that that decision will be made by the government not by you and your doctor.

Let's look at the actual bill:

Sec. 1141. EXCLUSIONS

(a) MEDICAL NECESSITY.—The comprehensive benefit package does not include

(1) an item or service that is not medically necessary or appropriate; or,

(2) an item or service that the National Health Board may determine is not medically necessary or appropriate in a regulation promulgated under section 1134 [pages 90-91].

Sec. 1154. ESTABLISHMENT OF STANDARDS REGARDING MEDICAL NECESSITY

The National Health Board may promulgate such regulations as may be necessary to carry out section 1141(a)(2) (relating to the exclusion of certain services that are not medically necessary or appropriate).

The bill uses the word "regulations," not "recommendations," to describe the National Health Board's decisions. The bill also grants the National Health Board power to change the preventive treatments guaranteed in the benefit package and decide at what age and how often you are entitled to tests and screenings, immunizations and check-ups (page 94). Regarding practice guidelines, the bill makes it clear that the National Quality Management Council will develop measures of "appropriateness of health care services" (page 839) and "shall establish standards and procedures for evaluating the clinical appropriateness of protocols used to manage health service utilization" (page 848).

Racial quotas in medical training. The White House calls such a suggestion "ridiculous," but the bill shows it is true. Government will allocate graduate training positions at the nation's teaching hospitals based on race and ethnicity. In determining how many training positions teaching hospitals will have, the National Council on Graduate Medical Training will calculate the percentage of trainees at each teaching hospital "who are members of racial or ethnic minority groups" and which minority trainees are from groups "under-represented in the field of medicine generally and in the various medical specialties" (page 515).

Protecting consumers or HMOs? The White House calls it "deliberately inaccurate" to say that the bill pre-empts important state laws protecting the ability of patients to choose the hospital they think is best and make other choices about their health care. Here is what the bill provides:

Sec. 1407. PRE-EMPTION OF CERTAIN STATE LAWS RELATING TO HEALTH PLANS

(a) *** no state law shall apply *** if such law has the effect of prohibiting or otherwise restricting plans from—

(1) *** limiting the number and type of health care providers who participate in the plan;

(2) requiring enrollees to obtain health services (other than emergency services) from participating providers or from providers authorized by the plan;

(3) requiring enrollees to obtain a referral for treatment by a specialized physician or health institution. ***

(6) requiring the use of single-source suppliers for pharmacy, medical equipment and other health products and services.

Fee-for-service will be almost impossible to buy. The White House labels it wrong to predict that fee-for-service insurance will be extremely hard to buy. They point to the provision that "in general, each regional alliance shall include among its health plan offerings at least one fee-for-service plan." But many doctors, hospital administrators and health insurance experts say confidently that in practice, because of the broader provisions of the bill, fee-for-service will seldom be available. I cited these experts in my article. Here are their reasons:

(1) Regional alliances cannot permit the average premium paid in the region to exceed the ceiling imposed by the National Health Board (pages 1,000-1,005). Fee-for-service insurance, which allows patients to get a second opinion when they have doubts and see a specialist when they feel they need one,

generally costs more than prepaid health plans that control patient access to medical care.

(2) Regional alliance officials are empowered to exclude any plan that costs 20 percent more than the average plan (page 132). They will have to apply the 20 percent rule virtually all the time in order to keep total spending on health plans below the ceiling imposed by the National Health Board. In order to offer a plan that costs more than 20 percent above the average plan and still stay under the ceiling, there would have to be other plans offered at well below the average-priced plan. That is unlikely. The bill limits the annual increase in premium prices to the Consumer Price Index, which is significantly below current annual increases in medical spending. Insurers will have a difficult time staying under the premium ceiling, and certainly will not offer plans well below it.

(3) Regional alliance officials are empowered to set the fees for doctors treating patients on a fee-for-service basis, and it is illegal for doctors to take more. In addition, prospective budgeting limits what fee-for-service doctors can earn yearly, even if they see more patients and work longer hours to make up for reduced fees. As Cara Walinsky of the Health Care Advisory Board and Governance Committee, which advises 800 hospitals, explains, the Clinton bill contains "very strong incentives" against doctors practicing on a fee-for-service basis. For all these reasons, Dr. John Ludden, medical director of the Harvard Community Health Plan, predicts that fee-for-service will "vanish quickly."

Does supplemental insurance provide an "exit"? The bill requires you to buy one of the low-budget health plans offered by your regional alliance. You can't go outside the system to buy basic coverage you prefer, even after you pay the mandatory premium. Is supplemental insurance the way out? The White House states "there are no restrictions on the purchase of supplemental insurance." The fact is the bill contains two important restrictions that will effectively close the door to better basic medical care: supplemental insurance cannot duplicate any of the coverage in the comprehensive benefit package, and it must be offered to "every individual who seeks" to buy it, regardless of health history or disability (page 244). Those two restrictions mean that the seriously ill will line up to buy it; insurers will not line up to sell it.

Finally, it is important to note one of the points the White House did not challenge: the Clinton bill is designed to push people into HMOs, which aim to limit patient access to specialized medicine and high-tech care. The premium price controls will pressure HMOs to use even more stringent methods of restricting care, yet the bill omits any safeguards to protect patients from abusive cost-cutting practices such as the withhold.

These facts, straight from the text of the bill, demonstrate the accuracy of my article "No Exit," and the appropriateness of its title. The White House would have you believe that its bill can stop rising health care spending and extend coverage to millions of uninsured Americans, without changing the quality and choice of the medical care you have now. Common sense suggests otherwise. A close reading of the bill proves it is untrue. Several alternatives by other Democrats and Republicans offer promising health insurance reform without limiting what you can buy and how much you can pay for it. It's time to give those bills a close look.

I will begin by quoting from the February 20 New Republic. Ms. McCaughey has said this:

I will be documenting my description of the bill—and my point-by-point rebuttal of their arguments—with page numbers from the November 20, 1993, version. If White House representatives challenge the accuracy of my description again, I hope they will provide page numbers, too, so that TNR readers can compare the evidence and decide for themselves.

Most of the White House challenge focused on this paragraph from my article:

"If the bill passes, you will have to settle for one of the low-budget health plans selected by the government. The law will prevent you from going outside the system to buy basic health coverage you think is better, even after you pay the mandatory premium (see the bill, page 244). The bill guarantees you a package of medical services, but you can't have them unless they are deemed 'necessary' and 'appropriate' (pages 90-91)."

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Again, continuing:

That decision will be made by the government, not by you and your doctor. Escaping the system and paying out-of-pocket to see a specialist for the tests and treatment you think you need will be almost impossible. If you walk into a doctor's office and ask for treatment for an illness, you must show proof that you are enrolled in one of the health plans offered by the government (pages 139, 143). The doctor can be paid only by the plan, not by you (page 236). To keep controls tight, the bill requires the doctor to report your visit to a national data bank containing the medical histories of all Americans (page 236).

That was essentially the passage that stirred the White House's attention and retort.

Now, I am going to go to the current day and this article and speak what Ms. McCaughey has said in response to the White House's retort, and I will try and give fair justice to both what the White House has said and what Ms. McCaughey has said, because these are the issues that are out there on people's minds:

The White House responded:

"There is nothing in this Act to prohibit any individual from going to any doctor and paying, with their own funds, for any service." "Under the Act, you can pay 'out-of-pocket [sic]' for anything you want at any time, to any physician or hospital willing to treat you." Price controls on doctors' fees? "That is wrong," according to the White House. "There are no price controls ***"

How accurate are these statements from the White House? The text of the bill proves they are untrue.

Can you pay any doctor any price for any service you want? Although it is possible to buy cosmetic surgery, psychotherapy or other uncovered services out-of-pocket, the bill prohibits doctors from accepting payments directly from you for the basic kinds of medical care listed in the Clinton benefit package.

The doctor is prohibited from accepting payment from you.

Now, Ms. McCaughey goes on, and I will skip some of the words here and come to the section she has quoted:

"Sec. 1406(d)(2) DIRECT BILLING—A provider may not charge or collect from an enrollee amounts that are payable by the health plan . . . and shall submit charges to such plan in accordance with any applicable requirements of part 1 of subtitle B of title V (relating to health information systems)."

Are you allowed to pay a surgeon more, in hopes of getting the most expert experienced care? No:

"Sec. 1406(d)(1) PROHIBITION ON BALANCE BILLING—A provider may not charge or collect from an enrollee a fee in excess of the applicable payment amount under the applicable fee schedule [page 236]. . . ."

What we have got here is the White House spin doctors saying, "Oh, no problem," but the bill says, "Yes, a problem." Stop and read the fine print.

Going along to another section, another issue that Miss McCaughey particularly selects, and again I am quoting here:

The White House attacks the use of the phrase "price controls on doctors' fees" in my article. "Wrong," says the White House. "There are no price controls in the president's plan."

But the text of the bill proves there are price controls on health plan premiums, new drugs and doctors' fees. Here are the price controls on doctors' fees:

"Sec. 1322(c) ESTABLISHMENT OF FEE-FOR-SERVICE SCHEDULE

(1) IN GENERAL—each regional alliance shall establish a fee schedule setting forth the payment rates applicable to services furnished during a year to individuals enrolled in fee-for-service plans."

The White House says "it is not clear why a patient would want to pay a doctor 'directly' for services that their [sic] insurance company is obligated to buy." One reason is privacy. Evading government regulations and paying the doctor directly would allow you to keep your personal medical problems out of the national data bank.

Now, we will talk a little bit more about privacy and the confidentiality of your own medical records as we go along. But again, the point here about the price control, what is true and what is in the bill needs to be studied, and I think Miss McCaughey has pointed this out.

Going on to a third point:

Will your personal medical history be stored in a national data bank? The White House says "not true" and "patently untrue" to my statement that "the bill requires the doctor to report your visit to a national data bank containing the medical histories of all Americans. The administration argues that although "physicians may be required to submit data . . . for the purpose of improving quality and assessing treatments and outcomes," the bill "prevents against tying this data to specific individuals."

The text of the bill proves that the administration is mistaken. Information about your physical and mental health and any treatment or tests you have will be entered in a national data network and linked to you through your health security number. Here is what the bill says: the National Health Board will establish an "electronic data network" with regional centers to collect, compile and transmit information. The information expressly includes "clinical encounters," that is, when a physician treats a patient (page 861). A doctor who treats you (ex-

cept for an uncovered service such as dental work or cosmetic surgery) and does not record your "clinical encounter" on the standardization form and submit it to your health plan will be fined up to "\$10,000 for each such violation" (pages 236, 885-886).

The bill leaves no doubt that the network contains "individually identifiable health information," which is defined in the bill to include your "past, present or future physical or mental health" and health care provided to you (page 877). To protect your privacy, the bill offers this vagueness:

"All disclosures of individually identifiable health information shall be restricted to the minimum amount necessary to accomplish the purpose for which the information is being disclosed [page 873]." and this:

I do not know what the minimum-amount-necessary test really means, but if I were making a job application and that information were made available, I am not sure it would be relevant, and I am not sure whose decision it would be to make that determination about whether or not the minimum amount necessary revealed would include medical information on my job application.

Going back to the article and quoting further:

It would be unfair to suggest that the bill's authors are unconcerned about privacy. But contrary to the White House statement, doctors must report their patients' personal medical information to a national data bank or risk harsh penalties, and the information in the bank remains individually identifiable.

So there is yet another point we have got, the question of price controls we have discussed, we have discussed the question of whether or not you can pay extra fees for surgeons for things that you want or other doctors for things that you want, we have got the privacy issue, and now, going back to another issue that is often referred to as the rationing issue, Mr. McCaughey says this in her article:

"Price controls on premiums will mean too little money to care for the sick."

Continuing to read:

The bill's authors anticipate that restricting dollars available for health care will produce shortages: when medical needs outpace the budget and premium money runs low, state governments and insurers must make "automatic, mandatory, non-discretionary reductions in payments" to doctors, nurses and hospitals to "assure that expenditures will not exceed budget" (pages 113, 137).

The White House argues that only under a single-payer system would payments to doctors and others be cut off if needs outpace the budget and premium money runs low.

The text of the bill proves that the White House is wrong. It provides that if needs exceed budget and premium money runs low:

"SEC. 1322(c)(2) PROSPECTIVE BUDGETING DESCRIBED.—The plan shall reduce the amount of payments otherwise made to providers (through a withhold or delay in payments or adjustments) in such a manner and by such amounts as necessary to assure that expenditures will not exceed budget."

So it appears that we have two sides of the mouth speaking simultaneously,

the bill saying that we cannot exceed the budget, the White House saying, "Wait a minute, that is not so."

Going on to the next point, and this point has to do with who determines what health care is appropriate for you. Again, quoting the article:

The government will decide what is "necessary" and "appropriate" care. The White House attacks as "wrong" and "very misleading" my statement that "the bill guarantees you a package of medical services, but you can't have them unless they are deemed 'necessary' and 'appropriate.'" The administration also says it is "untrue" that that decision will be made by the government, not by you and your doctor.

Let's look at the actual bill:

"SEC. 1141. EXCLUSIONS

(a) MEDICAL NECESSITY.—The comprehensive benefit package does not include—

(1) an item or service that is not medically necessary or appropriate; or,

(2) an item or service that the National Health Board may determine is not medically necessary or appropriate in a regulation promulgated under section 1134 [page 90-91]."

"Sec. 1154. ESTABLISHMENT OF STANDARDS REGARDING MEDICAL NECESSITY

The National Health Board may promulgate such regulations as may be necessary to carry out section 1141(a)(2) (relating to the exclusion of certain services that are not medically necessary or appropriate)."

The bill uses the word "regulations," not "recommendations," to describe the National Health Board's decisions. The bill also grants the National Health Board power to change the preventive treatments guaranteed in the benefit package and decide at what age and how often you are entitled to tests and screenings, immunizations and check-ups page 94).

□ 1850

Mr. Speaker, I would unquote at that point and say we have already had a debate about how often we should have testing for certain procedures, preventive procedures, cancer particularly, women's cancer clinics. That has already been in debate, so I do not think there is any question that America is missing the point here that there is a debate on this subject and there is a very great difference between what the White House has been saying in its advertising, and what this legislation points to, and where the cuts will come, if there have to be cuts, and who will be making those decisions.

Getting into somewhat more subliminal points about this bill that are, I think, important, but perhaps not as compelling as some of the issues we have talked about, choice and rationing so far, I am going to quote now from a couple of other areas from the article specifically. Quoting:

Racial quotas on medical training. The White House calls such a suggestion "ridiculous," but the bill shows it is true. Government will allocate graduate training positions at the nation's teaching hospitals based on race and ethnicity. In determining how many training positions teaching hospitals will have, the National Council on Graduate Medical Training will calculate the

percentage of trainees at each teaching hospital "who are members of racial or ethnic minority groups" and which minority trainees are from groups "under-represented in the field of medicine generally and in the various medical specialties" (page 515).

Still quoting:

Protecting consumers or HMOs? The White House calls it "deliberately inaccurate" to say that the bill pre-empts important state laws protecting the ability of patients to choose the hospital they think is best and make other choices about their health care. Here is what the bill provides:

"Sec. 1407. PRE-EMPTION OF CERTAIN STATE LAWS RELATING TO HEALTH PLANS

(a) * * * no state law shall apply * * * if such law has the effect of prohibiting or otherwise restricting plans from—

(1) * * * limiting the number and type of health care providers who participate in the plan;

(2) requiring enrollees to obtain health services (other than emergency services) from participating providers or from providers authorized by the plan;

(3) requiring enrollees to obtain a referral for treatment by a specialized physician or health institution. * * *

(6) requiring the use of single-source suppliers for pharmacy, medical equipment and other health products and services."

Unquoting for a moment, Mr. Speaker, what that basically says is there is an awful lot of regulations being imposed by the Federal Government on the ability to choose and on the regulatory programs that States already have in place.

Going back to the article and continuing to quote:

Fee-for-service will be almost impossible to buy.

Many doctors, hospital administrators and health insurance experts said confidently that in practice, because of the broader provisions of the bill, fee-for-service will seldom be available. I cited these experts in my article. Here are these reasons:

(1) Regional alliances cannot permit the average premium paid in the region to exceed the ceiling imposed by the National Health Board.

Skipping some words, Mr. Speaker, I will continue with the quotation:

(2) Regional alliance officials are empowered to exclude any plan that costs 20 percent more than the average plan.

Again skipping a section:

(3) Regional alliance officials are empowered to set the fees for doctors treating patients on a fee-for-service basis, and it is illegal for doctors to take more.

For all these reasons Dr. John Ludden, Medical Director of the Harvard Community Health Plan, predicts that fee-for-service will vanish quickly.

There we have a lot of discussion going on. I have skipped some of the parts of the argument in this passage in order to save some time, but I recommended to everybody to read because it gets to that bottom line point that fee-for-service is going to be an endangered specie under this plan because the incentives clearly move it out of the way.

The final area I will quote from is:

Does supplemental insurance provide an "exit"? The bill requires you to buy one of the low-budget health plans offered by your regional alliance. You can't go outside the system to buy basic coverage you prefer, even after you pay the mandatory premium. Is supplemental insurance the way out? The White House states "there are no restrictions on the purchase of supplemental insurance." The fact is the bill contains two important restrictions that will effectively close the door to better basic medical care: supplemental insurance cannot duplicate any of the coverage in the comprehensive benefit package, and it must be offered to "every individual who seeks" to buy it, regardless of health history or disability (page 244). Those two restrictions mean that the seriously ill will line up to buy it; insurers will not line up to sell it.

Mr. Speaker, insurers will not line up to sell it.

What we have got here, I think, is a very interesting response on a number of extremely important points of the health care debate. I do not know who is actually totally right or who is actually totally wrong on all of these points. I do not think anybody does yet. But I do think, as this debate goes forward, the people who are trying to champion one cause or another are going to be particularly well served if they speak with a unified voice rather than having one message coming from spin doctors, one message coming from the White House, and one message coming from heaven knows where. We are all anxious to get to the bottom of this, and what the truth is and what is going to work best for the American people.

I very much suggest, Mr. Speaker, that we are going to be hearing lots of quotations and lots of references to Elizabeth McCaughey in the days ahead. She has really taken up this issue of health care reform and what is real and what is not in it. I think she is going to be in a position where she is going to be on the stump in public, and frankly I would welcome a debate between Ms. McCaughey and the First Lady, or anybody in the Clinton plan, spokespersons who would like to have that debate. I think the American public would profit. I know I would like to hear the debate.

There are many questions. I do not have the answer on this matter yet. These are the things that will happen in the days to come.

I thank my colleagues for bearing with me as I have tried to do something that is very difficult to do which is carry on a debate in surrogate, but I think that it is important to know that this debate has got to go on and we have to get to the bottom line.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ORTON (at the request of Mr. GEPHARDT) after 5 p.m. on February 10 and

the balance of the week, on account of official business.

Mr. BILIRAKIS (at the request of Mr. MICHEL) for today and the balance of the week, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. GOSS) to revise and extend their remarks and include extraneous material:)

Mr. ISTOOK, for 5 minutes each day, on today and February 11.

Mr. PORTMAN, for 5 minutes, today.

Mr. KINGSTON, for 60 minutes, today.

Mr. GOSS, for 60 minutes, today.

Mr. KIM, for 5 minutes, today.

Mrs. BENTLEY, for 5 minutes today, in lieu of 60 minutes previously ordered.

Mrs. MEYERS of Kansas, for 5 minutes, today.

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous material:)

Mr. MOAKLEY, for 5 minutes, today.

Mr. SANDERS, for 5 minutes, today.

Mr. STARK, for 5 minutes, today.

Mr. MCCLOSKEY, for 5 minutes, today.

Mr. MOAKLEY, for 5 minutes each day, on February 11 and 12.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. GOSS) and to include extraneous matter:)

Mr. BOEHLERT in two instances.

Mr. CLINGER.

Ms. SNOWE.

Mr. GOODLING.

Mr. SOLOMON in four instances.

Mr. STUMP.

Mr. ROTH.

Mr. MACHTLEY.

Mr. SCHAEFER.

Mr. LEWIS of California.

Mr. HYDE.

Mr. KING.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. MAZZOLI in two instances.

Mr. KANJORSKI.

Mr. ORTIZ.

Mr. REED.

Mr. GONZALEZ in three instances.

Mr. MONTGOMERY.

Mr. COYNE in two instances.

Mr. BARCIA of Michigan.

Mr. ACKERMAN.

Mrs. MEEK of Florida.

Mr. HAMILTON in five instances.

Mr. VISLOSKEY in three instances.

Mr. GIBBONS.

Mr. KOPETSKI.

Mr. COSTELLO.

Mr. STARK.
 Ms. KAPTUR.
 Mr. BROWN of California.
 Mr. BILBRAY.
 Mr. SCHUMER.
 Ms. FURSE.
 Mr. TRAFICANT.
 Ms. HARMAN.
 Mr. MURPHY.
 Mr. CHAPMAN.
 Mr. HOCHBRUECKNER in two instances.

(The following Members (at the request of Mr. GOSS) and to include extraneous matter:)
 Mr. MILLER of California.
 Mr. BORSKI.
 Mr. ENGEL.

S.J. Res. 119. Joint resolution to designate the month of March 1994 as "Irish-American Heritage Month."

ADJOURNMENT

Mr. GOSS. Mr. Speaker, I move that the House do now adjourn.
 The motion was agreed to; accordingly (at 6 o'clock and 59 minutes p.m.), under its previous order, the House adjourned until Friday, February 11, 1994, at 2 p.m.

SENATE ENROLLED JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to an enrolled joint resolution of the Senate of the following title:

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports and amended reports of various committees of the U.S. House of Representatives concerning the foreign currencies and U.S. dollars utilized for official foreign travel during the third and fourth quarters of 1993, an amendment to the third quarter 1993 consolidated Speaker report, and the consolidated report of foreign currencies and U.S. dollars utilized for official foreign travel authorized by the Speaker of the House of Representatives in the fourth quarter of 1993, pursuant to PL 95-384, as well as additional reports of various miscellaneous groups concerning U.S. funds utilized for official foreign travel in 1993, are as follows:

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON AGRICULTURE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. E de la Garza	8/29	9/1	Mexico		489.00						489.00
Commercial transportation							651.45				651.45
Mr. Marshall Livingston	8/9	9/1	Mexico		652.00						652.00
Commercial transportation							651.45				651.45
Committee total					1,141.00		1,302.90				2,443.90

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

E de la GARZA, Chairman, Nov. 30, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON ENERGY AND COMMERCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JULY 1 AND SEPT. 30, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Mr. David Finnegan	8/22	9/3	Switzerland		2,079.00		3,049.45				5,128.45
Mr. Charles Ingabartson	8/29	9/3	Switzerland		945.02		791.45				1,736.47
Ms. Cathrine Van Way	8/22	8/29	Switzerland		1,322.99		3,052.35				4,375.34
Mr. Gregory Wetstone	8/22	8/29	Switzerland		1,322.99		3,052.35				4,375.34
Mr. Arthur Endres	5/28	5/29	Denmark		467.00						467.00
	5/30	5/31	Germany		398.00						398.00
	6/1	6/3	France		592.00						592.00
	6/3	6/4	Spain		621.00		3,461.45				4,082.45
Mr. Eric Niles	5/28	5/29	Denmark		467.00						467.00
	5/30	5/31	Germany		398.00						398.00
	6/1	6/3	France		592.00						592.00
	6/3	6/4	Spain		621.00		3,461.45				4,082.45
Committee total					9,826.00		16,868.50				26,694.50

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JOHN D. DINGELL, Chairman.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON ARMED SERVICES, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 1 AND DEC. 31, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Visit to Denmark, Oct. 8-12, 1993:											
Hon. Ronald V. Dellums	10/8	10/12	Denmark		1,047.50						1,047.50
Hon. Marilyn Lloyd	10/8	10/12	Denmark		1,047.50						1,047.50
Hon. Floyd V. Spence	10/8	10/12	Denmark		1,047.50						1,047.50
Hon. Patricia Schroeder	10/8	10/12	Denmark		1,047.50						1,047.50
Hon. Norman Sisisky	10/8	10/12	Denmark		1,047.50						1,047.50
Hon. Owen B. Pickett	10/8	10/12	Denmark		1,047.50						1,047.50
Hon. H. Martin Lancaster	10/8	10/12	Denmark		1,047.50						1,047.50
Hon. Joel Hefley	10/8	10/12	Denmark		1,047.50						1,047.50
Hon. Don Johnson	10/8	10/12	Denmark		1,047.50						1,047.50
Mr. Ronald J. Bartek	10/8	10/12	Denmark		1,047.50						1,047.50
Ms. Georgia C. Osterman	10/8	10/12	Denmark		1,047.50						1,047.50
Mr. Thomas M. Garwin	10/8	10/12	Denmark		1,047.50						1,047.50
Mr. Robert B. Brauer	10/8	10/12	Denmark		1,047.50						1,047.50

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON ARMED SERVICES, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 1 AND DEC. 31, 1993—
Continued

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Visit to Somalia, Oct. 17-18, 1993: Hon. Robert K. Dornan	10/17	10/18	Somalia		33.00						33.00
Visit to Republic of Korea, Thailand, Singapore, and Hong Kong, Nov. 24-Dec. 4, 1993: Hon. Solomon P. Ortiz	11/24	11/27	Korea		762.00						762.00
	11/27	11/30	Thailand		639.00						639.00
	11/30	12/2	Singapore		452.00						452.00
	12/2	12/5	Hong Kong		987.00						987.00
	12/5	12/9	Taiwan		972.00						972.00
Commercial transportation							2,885.44				2,885.44
Hon. Herbert H. Bateman	11/24	11/27	Korea		762.00						762.00
	11/27	11/30	Thailand		639.00						639.00
	11/30	12/2	Singapore		452.00						452.00
	12/2	12/4	Hong Kong		658.00						658.00
Hon. Owen B. Pickett	11/24	11/27	Korea		762.00						762.00
	11/27	11/30	Thailand		639.00						639.00
	11/30	12/2	Singapore		452.00						452.00
	12/2	12/4	Hong Kong		658.00						658.00
Hon. Neil Abercrombie	11/27	11/30	Thailand		639.00						639.00
	11/30	12/2	Singapore		452.00						452.00
Commercial transportation							1,336.00				1,336.00
Mr. Williston B. Cofer, Jr.	11/24	11/27	Korea		762.00						762.00
	11/27	11/30	Thailand		639.00						639.00
	11/30	12/2	Singapore		452.00						452.00
	12/2	12/4	Hong Kong		658.00						658.00
Mr. Peter M. Steffes	11/24	11/27	Korea		762.00						762.00
	11/27	11/30	Thailand		639.00						639.00
	11/30	12/2	Singapore		452.00						452.00
	12/2	12/5	Hong Kong		987.00						987.00
	12/5	12/9	Taiwan		972.00						972.00
Commercial transportation							2,556.89				2,556.89
Ms. Rita D. Argenta	11/24	11/27	Korea		762.00						762.00
	11/27	11/30	Thailand		639.00						639.00
	11/30	12/2	Singapore		452.00						452.00
	12/2	12/4	Hong Kong		658.00						658.00
Mr. Ariel R. David	11/24	11/27	Korea		762.00						762.00
	11/27	11/30	Thailand		639.00						639.00
	11/30	12/2	Singapore		452.00						452.00
	12/2	12/4	Hong Kong		658.00						658.00
Visit to Germany, Dec. 10-16, 1993: Hon. Glen Browder	12/10	12/16	Germany		1,050.00						1,050.00
Commercial transportation							731.25				731.25
Mr. Stephen O. Rossetti	12/10	12/16	Germany		1,050.00						1,050.00
Commercial transportation							731.25				731.25
Committee total					37,020.00		8,240.83				43,798.83

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

RONALD V. DELLUMS, Chairman, Jan. 31, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON FOREIGN AFFAIRS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 1 AND DEC. 31, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Gary Ackerman	10/8	10/9	Japan		600.00						600.00
	10/9	10/12	North Korea								
	10/12	10/13	South Korea		260.00						260.00
Commercial transportation							5,322.75				5,322.75
R. Bush	12/4	12/16	China		2,220.00						2,220.00
	12/16	12/19	Hong Kong		987.00						987.00
Commercial transportation							3,367.45				3,367.45
Hon. Eni Faleomavaega	11/27	11/28	Fiji		176.00						176.00
	11/28	11/30	Solomon Islands		794.00						794.00
	11/30	12/1	Australia		202.00						202.00
	12/1	12/6	Thailand		1,065.00						1,065.00
Commercial transportation							5,544.00				5,544.00
Commercial transportation	12/16	12/19	Western Samoa		570.50						570.50
Hon. Alcee Hastings	10/11	10/12	Haiti		³ 125.00						125.00
Commercial transportation							578.45				578.45
R. Hathaway	10/8	10/9	Japan		600.00						600.00
	10/9	10/12	North Korea								
	10/12	10/13	South Korea		260.00						260.00
Commercial transportation							5,322.45				5,322.45
R. King	11/11	11/14	Cuba		330.00						330.00
Charter flight from Florida to Havana							225.00				225.00
Hon. Tom Lantos	11/11	11/14	Cuba		330.00						330.00
Charter flight from Florida to Havana							225.00				225.00
A. Pandya	12/9	12/12	Cuba		667.00						667.00
Charter flight from Florida to Havana							483.00				483.00
B. Poisson	11/16	11/11	Italy		1,340.00						1,340.00
Commercial transportation							73.78				73.78
R. Wilson	9/8	9/9	Japan		600.00						600.00
	9/11	9/12	North Korea								
	9/12	9/13	South Korea		260.00						260.00
Commercial transportation							5,322.75				5,322.75
Committee total											43,515.62

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
³ Represents refunds of unused per diem.

LEE H. HAMILTON, Chairman, Jan. 28, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON RULES, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 1 AND DEC. 31, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. David Dreier	12/9	12/11	Geneva, Switzerland		482.00						482.00
Military air transportation											
Committee total					482.00						482.00

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JOE MOAKLEY, Chairman, Jan. 26, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON SCIENCE, SPACE AND TECHNOLOGY, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 1 AND DEC. 31, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Mr. Richard Obermann	10/16	10/25	Austria		2,050.00						2,050.00
Commercial air							1,248.45				1,248.45
Mr. Anthony Clark	11/7	11/9	Canada	538.90	412.00					538.90	412.00
Commercial air							415.59				415.59
Hon. Tom Lewis	11/24	11/27	Korea	614.170	762.00					614.170	762.00
	11/27	11/30	Thailand	16,135	639.00					16,135	639.00
	11/30	12/2	Singapore		452.00						452.00
	12/2	12/4	Hong Kong	5,083.70	658.00					5,083.70	658.00
Mr. Frank Murray	11/28	12/1	Denmark	4,189.75	621.50					4,189.75	621.50
	12/1	12/3	France		457.00						457.00
	12/3	12/7	England	708.59	1,048.00					708.59	1,048.00
Commercial air							4,057.75				4,057.75
Ms. Katherine Van Sickle	11/28	12/1	Denmark	4,189.75	621.50					4,189.75	621.50
	12/1	12/3	France		457.00						457.00
	12/3	12/7	England	708.59	1,048.00					708.59	1,048.00
Commercial air							4,057.75				4,057.75
Hon. George E. Brown, Jr	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	1,378.02	238.00					1,378.02	238.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Hon. Rick Boucher	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/6	China	1,163.79	201.00					1,163.79	201.00
Hon. Ron Packard	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	1,378.02	238.00					1,378.02	238.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Hon. Joe Barton	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	1,378.02	238.00					1,378.02	238.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Hon. James A. Hayes	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	1,378.02	238.00					1,378.02	238.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Hon. Constance Morella	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	1,378.02	238.00					1,378.02	238.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Hon. E. B. Johnson	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	3,120.81	539.00					3,120.81	539.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Dr. Robert E. Palmer	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	3,120.81	539.00					3,120.81	539.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Mr. William A. Stiles	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	3,120.81	539.00					3,120.81	539.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Mr. Michael D. Quear	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	3,120.81	539.00					3,120.81	539.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Dr. William S. Smith	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	3,120.81	539.00					3,120.81	539.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Mr. David D. Clement	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	3,120.81	539.00					3,120.81	539.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Ms. Anne M. Marcantognini	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	3,120.81	539.00					3,120.81	539.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Ms. Karen H. Pearce	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	3,120.81	539.00					3,120.81	539.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Ms. Ruth G. Hogue	11/29	12/1	Czech Republic	16,598.4	560.00					16,598.4	560.00
	12/1	12/3	Kazakhstan		558.00						558.00
	12/3	12/10	China	3,120.81	539.00					3,120.81	539.00
	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Committee total					41,450.00		9,779.44				51,229.44

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

GEORGE E. BROWN, JR., Chairman, Jan. 25, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMITTEE ON WAYS AND MEANS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 1 AND DEC. 31, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Dan Rostenkowski	12/9	12/11	Switzerland	705.89	482.00					705.89	482.00
Transportation by military aircraft											
Hon. Sam Gibbons	12/9	12/11	Switzerland	705.89	482.00					705.89	482.00
Transportation by military aircraft											
Hon. Mike Kopetski	12/8	12/16	China		1,174.00				500.00		1,674.00
	12/16	12/18	Hong Kong		658.00						658.00
	12/18	12/22	China		749.00						749.00
Commercial transportation							3,093.45				3,093.45
Hon. Sander Levin	12/9	12/13	Switzerland	1,411.78	964.00					1,411.78	964.00
Commercial transportation							393.45				393.45
Transportation by military aircraft											
Hon. Robert Matsui	12/9	12/11	Switzerland	705.89	482.00					705.89	482.00
Transportation by military aircraft											
Hon. L.F. Payne	12/9	12/11	Switzerland	705.89	482.00					705.89	482.00
Transportation by military aircraft											
Hon. Nancy Johnson	12/9	12/11	Switzerland	705.89	482.00					705.89	482.00
Transportation by military aircraft											
Ms. Thelma Askey	12/9	12/13	Switzerland	1,411.80	964.00					1,411.80	964.00
Commercial transportation							1,779.00				1,779.00
Transportation by military aircraft											
Mr. Charles M. Brain	12/9	12/11	Switzerland	705.89	482.00					705.89	482.00
Transportation by military aircraft											
Ms. Janicy Mays	12/9	12/11	Switzerland	705.89	482.00					705.89	482.00
Transportation by military aircraft											
Mr. Charles Melody	12/9	12/11	Switzerland	705.89	482.00					705.89	482.00
Transportation by military aircraft											
Mr. Phil Moseley	12/9	12/11	Switzerland	705.89	482.00					705.89	482.00
Transportation by military aircraft											
Mr. Franklin Phifer	12/9	12/11	Switzerland	705.89	482.00					705.89	482.00
Transportation by military aircraft											
Mr. Tim Reif	11/30	12/16	Switzerland	6,212.25	4,141.50				2,299.45	6,212.25	6,440.95
Ms. Mary Jane Wignot	12/9	12/19	Switzerland		1,410.00						1,410.00
Commercial transportation							1,579.35				1,579.35
Transportation by military aircraft											
Mr. Bruce Wilson	12/9	12/16	Switzerland	2,470.61	1,687.00					2,470.61	1,687.00
Commercial transportation							1,779.00				1,779.00
Transportation by military aircraft											
Committee total							16,367.50	10,923.70	500.00		27,991.20

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

DAN ROSTENKOWSKI, Chairman.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, COMMISSION ON SECURITY AND COOPERATION IN EUROPE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 1 AND DEC. 31, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Frank McCloskey		12/17	United States				2,654.00				2,654.00
	12/18	12/23	Switzerland		955.00						955.00
Committee total					955.00		2,654.00				3,609.00

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

STENY HOYER, Jan. 31, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, PERMANENT SELECT COMMITTEE ON INTELLIGENCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 1 AND DEC. 31, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. David E. Skaggs	12/14	12/15	Asia		393.00						393.00
Hon. Bill Richardson	12/11	12/19	Middle East		1,577.00						1,577.00
Committee total					1,970.00						1,970.00

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

DAN GLICKMAN, Chairman, Jan. 28, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO HAITI, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN SEPT. 24 AND SEPT. 26, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Charles Rangel	9/24	9/26	Haiti		299.00						299.00
Hon. Tom Foglietta	9/24	9/26	Haiti		299.00						299.00
Hon. Major Owens	9/24	9/26	Haiti		299.00						299.00
Hon. Donald Payne	9/24	9/26	Haiti		299.00						299.00

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO HAITI, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN SEPT. 24 AND SEPT. 26, 1993—Continued

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Eva Clayton	9/24	9/26	Haiti		299.00						299.00
Hon. Corinne Brown	9/24	9/26	Haiti		299.00						299.00
Hon. Carrie Meek	9/24	9/26	Haiti		299.00						299.00
Hon. Cynthia McKinney	9/24	9/26	Haiti		299.00						299.00
Mr. Emile Milne	9/24	9/26	Haiti		299.00						299.00
Ms. Sherille Ismail	9/24	9/26	Haiti		299.00						299.00
Mr. Dan Restrepo	9/24	9/26	Haiti		299.00						299.00
Mr. Dan Fisk	9/24	9/26	Haiti		299.00						299.00
Ms. Andrea Martin	9/24	9/26	Haiti		299.00						299.00
Mr. Frank Kiahne	9/24	9/26	Haiti		299.00						299.00
Ms. Marian Douglas	9/24	9/26	Haiti		299.00						299.00
Committee total					4,485.00						4,485.00

¹ Per diem constitutes lodging and meals.² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

CHARLES RANGEL, Nov. 9, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO MEXICO, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 7 AND OCT. 11, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Mr. Steven Vincent Hall	10/7	10/11	Mexico		675.67						675.67
Mr. Carl LeVan	10/7	10/11	Mexico		675.67						675.67
Ms. Joanne Warwick	10/7	10/11	Mexico		675.67						675.67
Committee total					2,027.01						2,027.01

¹ Per diem constitutes lodging and meals.² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

STEVEN HALL, Dec. 14, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO MEXICO, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 22 AND OCT. 25, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Bill Richardson	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. Jim Kolbe	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. E "Kika" de la Garza	10/24	10/25	Mexico		196.45						196.45
Hon. Solomon Ortiz	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. John Spratt	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. Nancy Pelosi	10/24	10/25	Mexico	110	36.30					110	36.30
Hon. Mike Parker	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. George Sangmeister	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. Gene Green	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. Doug Bereuter	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. Herbert Bateman	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. Fred Upton	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. Mel Hancock	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. Bill Barrett	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. David Hobson	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. Bob Franks	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. James Greenwood	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Mr. David Gillette	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Ms. Isabelle Watkins	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Mr. Richard Kiy	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Mr. Sean Mulvaney	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Mr. Doug Nick	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Mr. Charles Brain	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Mr. Frank Phifer	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Ms. Kerri Lynn Sattler	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Mr. Dan Meyer	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Mr. Ed Kutler	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Mr. Greg Stein	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Hon. Jay Dickey	10/22	10/25	Mexico	1,174	377.25					1,174	377.25
Committee total					10,618.50						10,618.50

¹ Per diem constitutes lodging and meals.² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

BILL RICHARDSON, Nov. 24, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO ESTONIA, GERMANY, BULGARIA, SWEDEN AND SLOVAKIA, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 17 AND NOV. 2, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Ms. Cathy Brickman	10/18	10/22	Estonia		1,450.00						1,450.00
	10/22	10/24	Germany								
	10/24	10/27	Bulgaria								
	10/27	10/29	Sweden		176.00						176.00

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO ESTONIA, GERMANY, BULGARIA, SWEDEN AND SLOVAKIA, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 17 AND NOV. 2, 1993—Continued

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Commercial transportation											
Mr. William Freeman	10/18	10/22	Estonia		1,450.00		3,579.25				3,579.25
	10/22	10/24	Germany								1,450.00
	10/24	10/27	Bulgaria								
	10/27	10/29	Sweden		176.00						176.00
Commercial transportation							3,579.25				3,579.25
Mr. Henry Collins	10/24	10/28	Bulgaria		1,550.00						1,550.00
	10/28	11/2	Slovakia								
Commercial transportation							3,512.34				3,512.34
Committee total					4,802.00		10,670.84				15,472.84

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

KRISTI E. WALSETH, Nov. 15, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO MEXICO, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 5 AND NOV. 7, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Mike Kopetski	11/5	11/7	Mexico		315.25						315.25
Hon. David Dreier	11/5	11/7	Mexico		315.25						315.25
Hon. Bill Emerson	11/5	11/7	Mexico		315.25						315.25
Hon. Joe Barton	11/5	11/7	Mexico		315.25						315.25
Hon. Henry Bonilla	11/5	11/7	Mexico								
Hon. Ken Calvert	11/5	11/7	Mexico		315.25						315.25
Hon. Peter Hoekstra	11/5	11/7	Mexico		315.25						315.25
Hon. Ernest Istook, Jr.	11/5	11/7	Mexico		315.25						315.25
Hon. Y. Tim Hutchinson	11/5	11/7	Mexico		315.25						315.25
Mr. Brad Smith	11/5	11/7	Mexico		315.25						315.25
Mr. Vince Randazzo	11/5	11/7	Mexico		315.25						315.25
Ms. Shelly White	11/5	11/7	Mexico		315.25						315.25
Mr. Ben McMakin	11/5	11/7	Mexico		315.25						315.25
Mr. Richard Ky	11/5	11/7	Mexico		315.25						315.25
Ms. Cynthia Johnson	11/5	11/7	Mexico		315.25						315.25
Mr. Bill Frenzel	11/5	11/7	Mexico		315.25						315.25
Ms. Rachel Phillips	11/5	11/7	Mexico		315.25						315.25
Committee totals					5,044.00						5,044.00

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

MIKE KOPETSKI, Dec. 6, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO LITHUANIA AND DENMARK, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 15 AND NOV. 20, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Ms. Cathy Brickman	11/16	11/19	Lithuania		500.00						500.00
	11/19	11/20	Denmark								
Commercial transportation							3,318.45				3,318.45
Mr. William Freeman	11/16	11/19	Lithuania		500.00						500.00
	11/19	11/20	Denmark								
Commercial transportation							3,318.45				3,318.45
Committee total					1,000.00		6,636.90				7,636.90

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

KRISTI E. WALSETH, Dec. 1, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO GERMANY, RUSSIA AND BELARUS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN DEC. 4 AND DEC. 11, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Pete Peterson	12/4	12/5	Germany		184.00		3,047.25				3,231.25
	12/5	12/8	Russia		810.00						810.00
	12/8	12/10	Belarus		224.00						224.00
	12/10	12/11	Germany		184.00						184.00
Hon. Sam Johnson	12/4	12/5	Germany		220.12		5,503.25				5,723.37
	12/5	12/8	Russia		753.00						753.00
	12/8	12/10	Belarus		173.00						173.00
	12/10	12/11	Germany		184.62						184.62
Ms. Suzanne Farmer	12/4	12/5	Germany		184.00		729.25				913.25
	12/5	12/8	Russia		810.00						810.00
	12/8	12/10	Belarus		224.00						224.00
	12/10	12/11	Germany		184.00						184.00

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO GERMANY, RUSSIA AND BELARUS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN DEC. 4 AND DEC. 11, 1993—Continued

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Ms. Shannon L. Smith	12/4	12/5	Germany		220.12		5,503.25				5,723.37
	12/5	12/8	Russia		753.00						753.00
	12/8	12/10	Belarus		173.00						173.00
	12/10	12/11	Germany		184.62						184.62
Committee total					5,465.48		14,783.00				20,248.48

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

PETE PETERSON, Jan. 3, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO SWITZERLAND, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN DEC. 8 AND DEC. 12, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Norman Mineta	12/9	12/12	Switzerland	1,059.00	723.00						723.00
Frank V. Paganelli	12/8	12/12	Switzerland	1,411.80	964.02		³ 3,049.45				4,013.47
Committee total					1,687.02		3,049.45				4,736.47

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

³ Military (United).

NORMAN Y. MINETA, Jan. 11, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MR. MARK B. BENEDICT, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN OCT. 4 AND OCT. 8, 1993.

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Mark B. Benedict	10/4	10/8	Switzerland	1,371.40	956.01		³ 3,049.45				4,005.46
Committee total					956.01		3,049.45				4,005.46

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

³ United Airlines.

MARK B. BENEDICT, Oct. 20, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MR. MICHAEL J. O'NEIL, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN DEC. 5 AND DEC. 11, 1993.

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Michael J. O'Neil	12/6	12/7	Ireland	183.16	257.00		³ 3,822.45				
	12/7	12/11	United Kingdom		884.00						
Committee total					1,141.00		3,822.45				

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

³ Total air fare.

MICHAEL J. O'NEIL, Feb. 1, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MS. RUTH M. THOMAS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 29 AND DEC. 12, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Ruth M. Thomas	11/29	12/1	Czech Republic	16,598.4	560.00					16,589.4	560.00
Ruth M. Thomas	12/1	12/3	Kazakhstan		558.00						558.00
Ruth M. Thomas	12/3	12/10	China	3,120.81	539.00					3,120.81	539.00
Ruth M. Thomas	12/10	12/12	Hong Kong	5,083.70	658.00					5,083.70	658.00
Committee total					2,315.00						2,315.00

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

RUTH M. THOMAS, Jan. 13, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MR. HENRY COLLINS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN DEC. 5 AND DEC. 12, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Henry Collins	12/6	12/9	Albania		1,050.00						1,050.00
	12/9	12/12	Slovakia								
Commerical transportation											3,973.24
Committee total					1,050.00		3,973.25				5,023.25

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

KRISTIE E. WALSETH, Jan. 5, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MR. MICHAEL R. WESSEL, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN DEC. 7 AND DEC. 12, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Michael R. Wessel	12/8	12/8	Switzerland		964.02		3,049.45				4,013.47
Committee total					964.02		3,049.45				4,013.47

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

MICHAEL R. WESSEL, Dec. 20, 1993.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MR. CRAIG S. KRAMER, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN DEC. 8 AND DEC. 12, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Craig S. Kramer	12/8	12/12	Switzerland	1,411.80	964.00		³ 3,049.45				4,013.45
Committee total					964.00		3,049.45				4,013.45

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
³ Air travel (United).

CRAIG S. KRAMER, Jan. 13, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MS. ISABELLE WATKINS, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN DEC. 11 AND DEC. 19, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Isabelle Watkins	12/11	12/13	Egypt		³ 448.00						448.00
	12/13	12/14	Jordan		⁴ 69.30						69.30
	12/14	12/16	Syria		⁵ 412.00						412.00
	12/16	12/19	Israel		⁶ 800.00					300	800.00
Committee total					1,729.30						1,729.30

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
³ U.S. Air Force.
⁴ Military plane and Jordanian.
⁵ Helicopter to aidsite.
⁶ Military transportation.

ISABELLE WATKINS, Jan. 11, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MR. BEN McMAKIN, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN DEC. 6 AND DEC. 22, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Ben McMakin	12/8	12/16	People's Republic of China				3,219.25				3,219.25
Ben McMakin	12/16	12/18	Hong Kong		658.00						658.00
Ben McMakin	12/18	12/22	People's Republic of China		749.00						749.00
Committee total					1,407.00		3,219.25				4,626.25

¹ Per diem constitutes lodging and meals.
² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

MIKE KOPETSKI, Jan. 21, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO 90TH INTERPARLIAMENTARY CONFERENCE, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN SEPT. 12 AND SEPT. 18, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Eni Faleomavaega	9/16	9/19	Australia		637.00		3,166.45				5,803.45
William Cox	9/11	9/19	Australia		1,532.00		1,834.50				3,366.50
							74.00				74.00
Committee total					2,169.00		7,074.95				9,243.95

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

³ Commercial—Washington/Canberra/Washington.

⁴ Local transportation, round trip to Dulles Airport.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO THE NORTH ATLANTIC ASSEMBLY, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN DEC. 9 AND DEC. 13, 1993

Name of Member or employee	Date		Country	Per diem ¹		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²	Foreign currency	U.S. dollar equivalent or U.S. currency ²
Hon. Charlie Rose	12/10	12/13	Russia		950.00		1,736.80				2,686.30
Hon. Ron Coleman	12/10	12/13	Russia		950.00		1,931.20				2,881.20
Hon. Don Johnson	12/10	12/13	Russia		950.00		3,614.25				4,564.25
John Merritt	12/10	12/13	Russia		950.00		1,501.40				2,451.40
Peter Abbruzzese	12/09	12/13	Russia		1,300.00		3,357.45				4,657.45
	12/13	12/14	Norway		261.00						261.00
Delegation expenses—interpreting and transportation									1,400.00		1,400.00
Committee total					5,361.00		12,141.10		1,400.00		18,902.10

¹ Per diem constitutes lodging and meals.

² If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

³ Commercial.

CHARLIE ROSE.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2558. A letter from the Comptroller General and Director of Congressional Budget Office, transmitting their report on evaluating DOD's certification regarding expansion of the CHAMPUS Reform Initiative beyond the States of California and Hawaii, pursuant to Public Law 102-484, section 712(c) (106 Stat. 2435); to the Committee on Armed Services.

2559. A letter from the Auditor, District of Columbia, transmitting a copy of a report entitled "Audit of Contracts Between the Agency for HIV/AIDS and the Whitman Walker Clinic," pursuant to D.C. Code, section 47-117(d); to the Committee on the District of Columbia.

2560. A letter from the Vice Chairman and Chief Financial Officer, Potomac Electric Power Co., transmitting a copy of the balance sheet of Potomac Electric Power Co. as of December 31, 1993, pursuant to D.C. Code, section 43-513; to the Committee on the District of Columbia.

2561. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of the Deputy Secretary's Determination and Justification that it is in the national interest to grant assistance to Kenya, pursuant to 22 U.S.C. 2370(q); to the Committee on Foreign Affairs.

2562. A letter from the Comptroller General, General Accounting Office, transmitting the GAO's Annual Report for fiscal year 1993 and a supplement summary tables of GAO personnel assigned to congressional committees for fiscal year 1993, pursuant to 31 U.S.C. 719(a); to the Committee on Government Operations.

2563. A letter from the Acting Secretary, American Battle Monuments Commission, transmitting the annual report on the activities of the Inspector General for fiscal year 1993, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2526); to the Committee on Government Operations.

2564. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting a report on proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Natural Resources.

2565. A letter from the Paralyzed Veterans of America, transmitting a copy of the annual audit report of the Paralyzed Veterans of America for the fiscal year ended September 30, 1993, pursuant to 36 U.S.C. 1166; to the Committee on the Judiciary.

2566. A letter from the Acting Assistant Secretary of the Army (Civil Works), Department of Defense, transmitting a report on the review of need for modifications in water resource project structures and result of a demonstration program making modifications, pursuant to 33 U.S.C. 2294 note; to the Committee on Public Works and Transportation.

2567. A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to amend section 1004 of Public Law 102-240, and for other purposes; to the Committee on Public Works and Transportation.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. MINETA: Committee on Public Works and Transportation. H.R. 2442. A bill to reau-

thorize appropriations under the Public Works and Economic Development Act of 1965, as amended, to revise administrative provisions of the Act to improve the authority of the Secretary of Commerce to administer grant programs, and for other purposes; with an amendment; referred to the Committee on Banking, Finance and Urban Affairs for a period ending not later than April 22, 1994, for consideration of such provisions of the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(d), rule X (Rept. 103-423, Pt. 1).

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GONZALEZ (for himself, Mrs. ROUKEMA, Mr. NEAL of North Carolina, Mr. LAFALCE, Mr. VENTO, Mr. FRANK of Massachusetts, Mr. KANJORSKI, Mr. KENNEDY, Mr. FLAKE, Mr. MFUME, Ms. WATERS, Mr. BACCHUS of Florida, Mr. KLEIN, Mr. DEUTSCH, Mr. GUTIERREZ, Mr. RUSH, Ms. VELÁZQUEZ, Mr. WYNN, Mr. FIELDS of Louisiana, Mr. WATT, Mr. HINCHEY, and Ms. FURSE):

H.R. 3838. A bill to amend and extend certain laws relating to housing and community development, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. TAYLOR of Mississippi (for himself, Mr. PARKER, and Mr. MONTGOMERY):

H.R. 3839. A bill to designate the U.S. post office located at 220 South 40th Avenue in Hattiesburg, MS, as the "Roy M. Wheat Post

Office"; to the Committee on Post Office and Civil Service.

By Mr. CHAPMAN:

H.R. 3840. A bill to designate the Federal building and U.S. courthouse located at 100 East Houston Street in Marshall, TX, as the "Sam B. Hall, Jr. Federal Building and United States Courthouse"; to the Committee on Public Works and Transportation.

By Mr. NEAL of North Carolina (for himself, Mr. MCCOLLUM, Mr. LA-FALCE, Mr. VENTO, Mr. SCHUMER, Mr. FRANK of Massachusetts, Mr. KAN-JORSKI, Mr. KENNEDY, Mr. FLAKE, Mr. MFUME, Mr. LAROCCO, Mr. ORTON, Mr. KLEIN, Mrs. MALONEY, Ms. PRYCE of Ohio, Mr. LINDER, Mr. LAZIO, Mr. BACHUS of Alabama, Mrs. ROUKEMA, Mr. MCCANDLESS, and Mr. KING):

H.R. 3841. A bill to amend the Bank Holding Company Act of 1956, the Revised Statutes of the United States, and the Federal Deposit Insurance Act to provide for interstate banking and branching; to the Committee on Banking, Finance and Urban Affairs.

By Mr. MARTINEZ (for himself, Mr. FORD of Michigan, Mr. GOODLING, Ms. MOLINARI, Mr. GEPHARDT, Mr. CLAY, Mr. MILLER of California, Mr. MURPHY, Mr. KILDEE, Mr. WILLIAMS, Mr. OWENS, Mr. SAWYER, Mr. PAYNE of New Jersey, Mrs. UNSOELD, Mrs. MINK of Hawaii, Mr. SCOTT, Mr. ENGEL, Mr. GENE GREEN of Texas, Ms. WOOLSEY, Mr. ROMERO-BARCELO, Mr. CASTLE, Mr. DE LUGO, Mr. FALEOMAVAEGA, Mr. BAESLER, and Mr. UNDERWOOD).

H.R. 3842. A bill to amend the Head Start Act to extend authorization of appropriations for progress under that act, to strengthen provisions designed to provide quality assurance and improvement, to provide for orderly and appropriate expansion of such program, and for other purposes, to the Committee on Education and Labor.

By Mr. VISCLOSKEY (for himself, Mr. REGULA, Ms. KAPTUR, Mr. GALLO, Mr. LIPINSKI, and Mr. FINGERHUT):

H.R. 3843. A bill to require the Administrator of the Environmental Protection Agency to establish a program under which States may be certified to carry out voluntary environmental cleanup programs for low and medium priority sites; to the Committee on Energy and Commerce.

By Mr. VISCLOSKEY (for himself, Mr. REGULA, Mr. FINGERHUT, and Mr. LIPINSKI):

H.R. 3844. A bill to authorize the Administrator of the Environmental Protection Agency to provide loans to States to establish revolving loan funds for the environmental cleanup of sites in distressed areas that have the potential to attract private investment and create local employment; to the Committee on Energy and Commerce.

By Mr. VISCLOSKEY (for himself, Mr. DURBIN, Mr. EVANS, Mr. FOGLETTA, Mr. HANSEN, Mr. JACOBS, Mr. LA-FALCE, Mr. MEEHAN, and Mr. SLATTERY):

H.R. 3845. A bill to limit access by minors to cigarettes through prohibiting the sale of tobacco products in vending machines and the distribution of free samples of tobacco products in Federal buildings and property accessible by minors; to the Committee on Public Works and Transportation.

By Mr. ARMEY (for himself and Mr. JACOBS):

H.R. 3846. A bill to repeal the quota and price support programs for peanuts; to the Committee on Agriculture.

By Mr. CARDIN:

H.R. 3847. A bill to require the Secretary of Defense to release the requirements and reversionary interest on certain property in Baltimore, MD; to the Committee on Armed Services.

By Mr. COBLE:

H.R. 3848. A bill to suspend until January 1, 1996, the duty on certain machinery; to the Committee on Ways and Means.

By Mr. DUNCAN:

H.R. 3849. A bill to amend section 3730 of title 31, United States Code, to limit the amount a private party may be awarded in an action under such section; to the Committee on the Judiciary.

By Mr. GALLEGLY:

H.R. 3850. A bill to provide for a study of human health risks associated with National Weather Service doppler radar installations, and to prohibit the operation of such an installation in Ojai, CA, unless such study finds no significant health risk; jointly, to the Committee on Science, Space, and Technology and Energy and Commerce.

By Mr. ISTOOK (for himself, Mr. GILCHREST, Mr. EMERSON, Mr. DORNAN, Mr. CALVERT, Mr. PETE GEREN of Texas, Mr. DOOLITTLE, Mr. LIVINGSTON, Mr. GOSS, Mr. HASTERT, Mr. GREENWOOD, Mr. CALLAHAN, Mr. GALLEGLY, Mr. PETRI, Mr. ALLARD, Mr. MACHTELY and Mr. HUTCHINSON):

H.R. 3851. A bill to amend the Internal Revenue Code of 1986 to eliminate the marriage penalty; to the Committee on Ways and Means.

By Mr. JOHNSON of South Dakota:

H.R. 3852. A bill to amend title 18, United States Code, to prohibit a Federal firearms licensee from selling or delivering a firearm or ammunition to an intoxicated person; to the Committee on the Judiciary.

By Mr. KLEIN (for himself, Mr. FRANK of Massachusetts, Mr. SCHUMER, and Mr. DEUTSCH):

H.R. 3853. A bill to stimulate private investment, economic development, and the creation of jobs in the private sector by authorizing the Secretary of the Treasury to participate in loans, and guarantee a portion of loans, made by banks and other qualified lenders for businesses with potential for expansion and growth and for other viable economic development projects, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. KOPETSKI:

H.R. 3854. A bill to repeal the Cuban Adjustment Act; to the Committee on the Judiciary.

By Mr. LEACH:

H.R. 3855. A bill to suspend temporarily the duty on Halosulfuron-Methyl; to the Committee on Ways and Means.

By Mrs. MEYERS of Kansas:

H.R. 3856. A bill to suspend until January 1, 1997 the duty on 2-(4-chloro-2-methyl phenoxy) propionic acid; to the Committee on Ways and Means.

By Mr. OLVER:

H.R. 3857. A bill to permit the Administrator of the Environmental Protection Agency to enter into cooperative research and development agreements for environmental protection; to the Committee on Science, Space, and Technology.

By Ms. PRYCE of Ohio:

H.R. 3858. A bill to extend the suspension of duty on certain diamond tool and drill blanks, and for other purpose; to the Committee on Ways and Means.

By Mr. SCHUMER:

H.R. 3859. A bill to amend the Immigration and Nationality Act to provide for the com-

plete use of visas available under the diversity transition program; to the Committee on the Judiciary.

By Mr. SMITH of Texas (for himself, Mr. ARMEY, Mr. BAKER of California, Mr. BARTON of Texas, Mr. BURTON of Indiana, Mr. CANADY, Mr. COLLINS of Georgia, Mr. CUNNINGHAM, Mr. DELAY, Mr. DOOLITTLE, Mr. FISH, Mr. GALLEGLY, Mr. GILMAN, Mr. GINGRICH, Mr. GOODLATTE, Mr. GOSS, Mr. GREENWOOD, Mr. HUNTER, Mr. SAM JOHNSON, Mr. KIM, Mr. KINGSTON, Mr. LEVY, Mr. LEWIS of Florida, Mr. MCCOLLUM, Mr. MCKEON, Mrs. MEYERS of Kansas, Mr. MILLER of Florida, Ms. MOLINARI, Mr. MOORHEAD, Mr. ROHRBACHER, Mr. ROYCE, Mr. SHAW, Mr. STEARNS, and Mr. SHAYS):

H.R. 3860. A bill to amend the Immigration and Nationality Act and other laws of the United States relating to border security, illegal immigration, alien eligibility for Federal financial benefits and services, criminal activity by aliens, alien smuggling, fraudulent document use by aliens, asylum, terrorist aliens, and for other purposes; jointly, to the Committees on the Judiciary, Ways and Means, Energy and Commerce, Banking, Finance and Urban Affairs, Foreign Affairs, and Government Operations.

By Mr. STARK:

H.R. 3861. A bill to amend the District of Columbia Self-Government and Governmental Reorganization Act to permit the District of Columbia to subject the income of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association to taxation by the District of Columbia, to require the Federal National Mortgage Association to maintain its principal office in the District of Columbia, and to require the Mayor of the District of Columbia to submit a report to Congress on the economic impact of such entities on the District of Columbia; to the Committee on the District of Columbia.

By Mr. STUMP (for himself and Mr. CALLAHAN):

H.R. 3862. A bill to effect a moratorium on immigration by aliens other than refugees, priority workers, and the spouses and children of United States citizens; jointly, to the Committees on the Judiciary, Ways and Means, Agriculture, and Banking, Finance and Urban Affairs.

By Mr. THOMPSON:

H.R. 3863. A bill to designate the Post Office building located at 401 E. South Street in Jackson, Mississippi, as the "Medgar Wiley Evers Post Office"; to the Committee on Post Office and Civil Service.

By Mr. KLEIN:

H.J. Res. 322. Joint resolution to authorize the President to proclaim the last Friday of April 1994 as "National Arbor Day"; to the Committee on Post Office and Civil Service.

By Mr. RANGEL:

H.J. Res. 323. Joint resolution declaring May 19 a national holiday and day of prayer and remembrance honoring Malcolm X (Al Hajj Malik Al-Shabazz); to the Committee on Post Office and Civil Service.

By Mr. SARPALIUS (for himself and Mr. BREWSTER):

H.J. Res. 324. Joint resolution proposing an amendment to the Constitution of the United States to limit the number of years an individual may serve in certain positions in the Government of the United States, and for other purposes; to the Committee on the Judiciary.

By Ms. ROYBAL-ALLARD:

H. Con. Res. 205. Concurrent resolution expressing the sense of the Congress regarding

the use of census block group data, and data from low or no population census tracts or blocks, in the designation of empowerment zones and enterprise communities; to the Committee on Ways and Means.

By Mr. GEPHARDT:

H. Con. Res. 206. Concurrent resolution providing for the adjournment of the House from Thursday, February 10, 1994, through Friday, February 18, 1994 to Tuesday, February 22, 1994 and an adjournment or recess of the Senate from Thursday, February 10, 1994 through Friday, February 18, 1994, to Tuesday, February 22, 1994; considered and agreed to.

By Mr. CONYERS:

H. Con. Res. 207. Concurrent resolution providing for placement of a statue honoring African-American recipients of the Congressional Medal of Honor in the Capitol; to the Committee on House Administration.

By Mr. BROOKS:

H. Res. 358. Resolution providing amounts from the contingent fund of the House for expenses of investigations and studies by the Committee on the Judiciary in the 2d session of the 103d Congress; to the Committee on House Administration.

By Mr. LAFALCE:

H. Res. 359. Resolution providing amounts from the contingent fund of the House for expenses of investigations and studies by the Committee on Small Business in the 2d session of the 103d Congress; to the Committee on House Administration.

By Mrs. MEYERS of Kansas (for herself, Mr. COMBEST, Mr. BAKER of Louisiana, Mr. MACHTLEY, Mr. SAM JOHNSON, Mr. ZELIFF, Mr. COLLINS of Georgia, Mr. MCINNIS, Mr. HUFFINGTON, Mr. TALENT, Mr. KNOLLENBERG, Mr. KIM, Mr. MANZULLO, Mr. TORKILDSEN, and Mr. PORTMAN):

H. Res. 360. Resolution entitled, resolution of inquiry; jointly, to the Committees on Small Business the Judiciary, and Post Office and Civil Service.

By Mr. ROSE:

H. Res. 361. Resolution providing amounts from the contingent fund of the House for expenses of investigations and studies by the Committee on House Administration in the 2d session of the 103d Congress; to the Committee on House Administration.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII.

Mr. PETRI introduced a bill (H.R. 3864) for the relief of Thomas McDermott, Sr.; which was referred to the Committee on Natural Resources.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 65: Mr. MCCOLLUM.
H.R. 105: Ms. PRYCE of Ohio.
H.R. 467: Mr. EVANS, Mr. MINETA, Mr. PARKER, Mr. KOPETSKI, and Mr. FOGLIETTA.
H.R. 591: Mr. PORTMAN and Mr. GINGRICH.
H.R. 784: Mr. BREWSTER.
H.R. 794: Mr. RAHALL, Mr. SWIFT, Mr. OXLEY, and Mr. MCCREY.
H.R. 828: Mr. PARKER.
H.R. 1079: Mr. LEVY.
H.R. 1080: Mr. LEVY.
H.R. 1081: Mr. LEVY.
H.R. 1082: Mr. LEVY.

H.R. 1083: Mr. LEVY.
H.R. 1181: Mr. MCDADE.
H.R. 1191: Mr. LEVY.
H.R. 1231: Mr. MOAKLEY, Mr. GEJDENSON, Mr. RIDGE, and Mr. KLINK.
H.R. 1277: Mrs. JOHNSON of Connecticut.
H.R. 1349: Mr. HOKE and Mr. KINGSTON.
H.R. 1391: Mr. ANDREWS of Maine and Mr. JOHNSTON of Florida.
H.R. 1455: Mr. VALENTINE and Mr. CARDIN.
H.R. 1596: Mr. MANN.
H.R. 1718: Mr. BEILENSEN, Mr. BONIOR, Ms. BROWN of Florida, Mr. CONYERS, Mr. FILNER, Mr. FLAKE, Mr. FORD of Tennessee, Mr. GORDON, Mr. KASICH, Mr. LEWIS of Georgia, Mr. REYNOLDS, and Mr. SLATTERY.
H.R. 1823: Mrs. SCHROEDER.
H.R. 1980: Mr. EVANS.
H.R. 2019: Mr. DELLUMS.
H.R. 2043: Ms. VELAZQUEZ.
H.R. 2070: Mr. FOGLIETTA.
H.R. 2418: Mr. PORTMAN, Mr. GINGRICH, Mr. LEWIS of Georgia, and Mrs. JOHNSON of Connecticut.
H.R. 2565: Mr. OBERSTAR and Mr. VIS-CLOSKY.
H.R. 2566: Mr. OBERSTAR and Mr. VIS-CLOSKY.
H.R. 2586: Mr. MURPHY and Mr. BEILENSEN.
H.R. 2623: Mr. SARPALIU.
H.R. 2663: Mr. GEJDENSON and Mr. JOHNSON of South Dakota.
H.R. 2671: Mr. GORDON.
H.R. 2710: Mr. EVANS, Mr. BRYANT, Mr. KOPETSKI, Ms. DELAURO, Mr. LEWIS of Georgia, Mr. HUGHES, Mr. NEAL of Massachusetts, Mr. FRANK of Massachusetts, Mr. CONYERS, Mr. PETERSON of Minnesota, Mr. DELLUMS, Mr. MILLER of California, Mr. PENNY, and Mr. TRAFICANT.
H.R. 2720: Mr. COOPER, Mr. MANN, and Mr. WOOLSEY.
H.R. 2803: Mr. SLATTERY, Ms. PRYCE of Ohio, Mr. MCCLOSKEY, Mr. BORSKI, Mrs. UNSOELD, Mr. KREIDLER, and Mr. HUTCHINSON.
H.R. 2872: Mr. ROYCE and Mr. FAWELL.
H.R. 2873: Mr. RIDGE, Mr. ABERCROMBIE, Mr. DIXON, Mr. MANZULLO, Mr. FRANK of Massachusetts, Mr. MCDERMOTT, and Mr. WISE.
H.R. 2969: Mr. KENNEDY and Mr. KING.
H.R. 3005: Mr. LEVY, Mr. ARCHER, Mr. ISTOOK, Mr. EMERSON, Mr. MCMILLAN, Mr. KNOLLENBERG, Mr. KOLBE, Mr. LINDER, Mr. HASTERT, and Ms. PRYCE of Ohio.
H.R. 3023: Mr. HAMBURG, Mr. TORKILDSEN, Mr. JOHNSON of South Dakota, Mr. WAXMAN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. BONIOR, Mr. HORN, Mr. CALLAHAN, Mr. BOEHLERT, Mr. HAYES, and Mr. EVANS.
H.R. 3086: Mr. PARKER and Mr. SHAYS.
H.R. 3087: Mr. POMEROY, Mr. ROSE, and Mr. STUDDS.
H.R. 3102: Mr. BARRETT of Wisconsin.
H.R. 3145: Mr. SPENCE, Mr. GILCREST, and Mr. UPTON.
H.R. 3146: Mr. POMBO.
H.R. 3222: Mr. BISHOP.
H.R. 3232: Mr. EMERSON.
H.R. 3256: Mr. PARKER.
H.R. 3288: Mr. LAFALCE.
H.R. 3290: Mr. WISE, Ms. WATERS, Mr. ACKERMAN, Mr. ROMERO-BARCELO, and Mr. SANDERS.
H.R. 3293: Mrs. BENTLEY.
H.R. 3306: Mr. HINCHEY.
H.R. 3309: Mr. LANTOS and Mr. SABO.
H.R. 3328: Ms. PRYCE of Ohio, Mr. HUTCHINSON, and Mr. BISHOP.
H.R. 3360: Mr. BATEMAN, Mr. BARCIA of Michigan, Mr. PICKETT, Mr. GILCREST, Mr. GILLMOR, and Mr. YATES.
H.R. 3363: Mr. JOHNSTON of Florida.

H.R. 3392: Mr. PENNY and Mr. KINGSTON.
H.R. 3421: Mr. LEVY, Mr. ARCHER, Mr. ISTOOK, Mr. MCMILLAN, Mr. KNOLLENBERG, Mr. HASTERT, and Ms. PRYCE of Ohio.
H.R. 3434: Mr. RANGEL.
H.R. 3500: Mr. FISH.
H.R. 3507: Mr. MINGE and Mr. TALENT.
H.R. 3513: Mr. KREIDLER.
H.R. 3523: Mr. BARTLETT of Maryland, Mr. CASTLE, Mrs. MORELLA, Mr. DEUTSCH, Mr. DOOLITTLE, Mr. LIGHTFOOT, Mr. GREENWOOD, Ms. DANNER, and Mrs. FOWLER.
H.R. 3527: Mr. DELAURO.
H.R. 3563: Mrs. FOWLER and Mr. CUNNINGHAM.
H.R. 3564: Mr. FOGLIETTA.
H.R. 3569: Mrs. LLOYD and Mr. TRAFICANT.
H.R. 3600: Mr. BISHOP.
H.R. 3614: Mr. BEILENSEN and Mr. FOGLIETTA.
H.R. 3633: Mr. EWING, Mr. KYL, Mr. INHOFE, Mr. CALLAHAN, Mr. UPTON, Mr. KINGSTON, Mr. ZIMMER, Mr. SOLOMON, and Mr. BONILLA.
H.R. 3660: Mr. EVANS, and Mr. STOKES.
H.R. 3663: Mr. ANDREWS of Maine, Mr. REYNOLDS, and Mr. OLVER.
H.R. 3695: Mr. ARCHER, Mr. MCMILLAN, and Mr. KOLBE.
H.R. 3699: Ms. MCKINNEY, Mr. FIELDS of Louisiana, Mr. FLAKE, Mr. BLACKWELL, Mrs. COLLINS of Illinois, Mr. SCOTT, Mr. RANGEL, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. WATERS, Mr. OWENS, Mrs. CLAYTON, Mr. WASHINGTON, Mr. PAYNE of New Jersey, Mr. RUSH, Mr. CLYBURN, Mr. WYNN, Mr. CONYERS, Mr. WATT, Mr. TUCKER, Mr. WHEAT, Mr. REYNOLDS, Ms. BROWN of Florida, Mr. HASTINGS, Mr. DIXON, Mr. FORD of Tennessee, and Ms. VELAZQUEZ.
H.R. 3725: Mr. DORNAN, Mr. BARRETT of Wisconsin, Mr. LEVY, Mr. TORKILDSEN, Mr. BARTLETT of Maryland, Mr. KIM, Mr. MANZULLO, Mr. LINDER, and Mr. COX.
H.R. 3727: Mr. COX, Mr. GREENWOOD, Mr. FRANKS of Connecticut, Mr. PAXON, Mr. MICA, Mr. THOMAS of California, and Mr. PORTMAN.
H.R. 3771: Mr. DEUTSCH and Mr. FOGLIETTA.
H.R. 3808: Mr. BISHOP.
H.R. 3814: Mr. LIVINGSTON, Mr. WELDON, Mr. MANN, Mr. GOSS, Mr. BATEMAN, and Mr. WALKER.
H.R. 3827: Mr. ABERCROMBIE, Mr. GENE GREEN of Texas, and Mrs. MORELLA.
H.J. Res. 9: Mr. CANADY and Mr. HUTCHINSON.
H.J. Res. 22: Mr. ROBERTS and Mr. LINDER.
H.J. Res. 129: Mr. LEVY.
H.J. Res. 131: Mr. GREENWOOD, Mr. DEUTSCH, and Mr. REED.
H.J. Res. 253: Mr. LIGHTFOOT.
H.J. Res. 254: Mr. ANDREWS of New Jersey.
H.J. Res. 278: Mr. FALCOMA, Mr. JOHNSON of South Dakota, Mr. BACCHUS of Florida, and Ms. DELAURO.
H.J. Res. 302: Mr. ANDREWS of New Jersey and Mr. HOCHBRUECKNER.
H.J. Res. 310: Mr. SABO, Mr. LANCASTER, Mr. MARTINEZ, and Mrs. MORELLA.
H. Con. Res. 37: Mr. BARRETT of Wisconsin.
H. Con. Res. 68: Mr. INGLIS of South Carolina.
H. Con. Res. 93: Mr. TORKILDSEN.
H. Con. Res. 110: Mr. BARTLETT of Maryland and Mr. SKELTON.
H. Con. Res. 124: Mr. KILDEE, Mr. WILSON, and Mr. SAWYER.
H. Con. Res. 147: Mr. SARPALIU and Mr. ANDREWS of New Jersey.
H. Con. Res. 199: Mr. BACCHUS of Florida, Mr. HANSEN, Mr. RAVENEL, Mr. HALL of Ohio, Mr. DEUTSCH, Ms. DELAURO, Ms. NORTON, Mr. GALLEGLY, Mr. KING, Mr. BARRETT of Wisconsin, Mr. LINDER, Mr. SISISKY, Mr. SOLOMON,

