

SENATE—Thursday, February 24, 1994

(Legislative day of Tuesday, February 22, 1994)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the Honorable RUSSELL D. FEINGOLD, a Senator from the State of Wisconsin.

PRAYER

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

Let us pray:

Jesus called them unto him, and said, "Ye know that the princes of the Gentiles exercise dominion over them, and they that are great exercise authority upon them. But it shall not be so among you: but whosoever will be great among you, let him be your minister; And whosoever will be chief among you, let him be your servant: Even as the Son of man came not to be ministered unto, but to minister, and to give his life a ransom for many."—Matthew 20:25-28.

Eternal God, Lord of Heaven and Earth, Ruler of the nations, we have learned in our contemporary culture that power begets power, that the powerful sometimes forget they are the servants of the people who elected them. In the words of former Senator John Stennis as he spoke to junior Senators, "Some who come here grow; others just swell."

Grant to Your servants in the Senate the relevance of the word from Jesus: " * * * whosoever will be chief among you, let him be your servant * * * ." Save Your servants from preoccupation with power and infuse them with the full meaning of being a public servant.

In His name Who is the Servant of servants. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 24, 1994.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 12 noon, with Senators permitted to speak for up to 10 minutes each.

The Chair, in his capacity as a Senator from Wisconsin, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(Mrs. FEINSTEIN assumed the chair.)

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

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

FACES OF HEALTH CARE

Mr. FEINGOLD. Madam President, I rise to continue my floor statements on the need for long-term care reform as part of the health care reform effort.

I am proud to be part of an effort that we are making on the floor, those of us who support health care reform and universal health care, to portray in a very human way the faces of health care, the faces of those who often do not get health care.

As I have noted in earlier statements, establishing consumer-oriented and consumer-directed flexible benefits, as well as making fundamental reforms to the linkages between the long-term care and acute care systems, are absolutely necessary if we are to realize the goals of health care reform.

President Clinton's home- and community-based long-term care proposal goes further than any other in achieving this needed reform. It lays the groundwork for creating a system of community- and home-based flexible services that respond to individual consumer choice and preference.

Madam President, I am proud to note that much of the basis for the President's long-term care reform provisions flow from a program established in Wisconsin in the early 1980's—the Community Options Program, known as COP.

COP has been an enormous success by any measure. It has provided long-

term care consumers with an alternative to institutional care by establishing a program of flexible benefits that are consumer-oriented and directed. It has saved State taxpayers hundreds of millions of dollars, and has been instrumental in actually lowering the number of Medicaid nursing home beds being used in the State at a time when the rest of the country was experiencing significant increases in Medicaid nursing home bed use.

President Clinton's long-term care reform proposal can achieve the same success for the entire country.

Madam President, more than any other group, advocates of long-term care reform like to tell stories and give examples. Part of this desire comes from the advocates themselves—people committed to helping others.

But it also stems from the need to emphasize the uniqueness of every long-term care situation, and to stress the need for a system that is flexible enough and consumer friendly enough to respond to those unique situations.

Recently I had the privilege of holding a field hearing of the Senate Special Committee on Aging in my home State of Wisconsin. The hearing was on the President's long-term care plan, and we invited a variety of people to testify.

Madam President, I want to talk today about two of the witnesses that appeared at the field hearing. Better than any list of statistics, the story of these two people demonstrates both the promise of and the need for long-term care reform.

First, let me tell you about a man named Robert Deist. Bob was left a quadriplegic as a result of a bullet wound at the age of 14. He has experienced just about every facet of the long-term care system. He was institutionalized at age 15 because there were no community services available to him or his family, and, at that time, his parents could not afford to quit their jobs and provide him care in their home.

Eventually, though, at great financial loss to her family, Bob's mother quit her job to take care of Bob at home.

Bob eventually went to college, got married, and is currently the director of two personal care programs at an independent living center in Wisconsin. He hopes to work until retirement age, but his wife is his only caregiver.

Even though both Bob and his wife work, they cannot afford to pay for a personal care attendant to come to

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

their home and assist Bob with his care needs. And because he works, Bob is not eligible for government funding to pay for his daily care needs.

As Bob noted, in his testimony to our committee, his wife provides his care 7 days a week, 52 weeks a year, every year, whether she is ill or injured. If she were not able to provide Bob's personal care needs for some reason, even for just a few weeks, their savings would be gone and they would probably lose their home.

Bob and his wife live at the edge every single day of their lives.

As I mentioned earlier, Bob is the director of two personal care programs. One of those programs serves long-term care consumers who use Wisconsin's Community Options Program. So even though Bob actually runs a program that uses COP funds, Bob himself is unable to get on the program because it has a long waiting list. There are a lot of people that need these services. Because of the huge demand for services, he is unlikely to become eligible for years.

With President Clinton's long-term care proposal in place, Bob would be eligible for services almost immediately. The very real threat to Bob and his wife of imminent financial disaster would begin to ultimately disappear, and he could begin to utilize the kinds of flexible services available through the very program he runs.

Another long-term care consumer, Jettie Jones of Milwaukee also testified before our committee. Her husband Launcelot has been a COP recipient for 4 years.

Launcelot has been an active community advocate on behalf of seniors for some time. Retired from the Department of Housing and Urban Development, he is now in frail health, having heart trouble, is visually and physically impaired, and is a borderline diabetic. Jettie is not able to provide all the care Launcelot needs.

Launcelot was a classic candidate for a nursing home.

But because of the Community Options Program in Wisconsin, Launcelot and Jettie have been able to remain together. As Jettie said, COP has enabled them to maintain our dignity and our love and relationship as a family unit.

COP provides Launcelot adult day care at Village Church in Milwaukee, where he receives meals and socializes with others. COP also provides transportation to and from the day care as well as transportation to and from the doctor.

COP provides a personal care attendant who comes to the Jones home 4 hours per week, and a homemaker who helps Jettie maintain the home.

Jettie and Launcelot Jones are an example of what can be achieved with a flexible, consumer oriented long-term care program. Without COP, Launcelot and Jettie would not be able to live together.

Madam President, thousands of elderly couples like the Joneses are forced to separate and impoverish themselves in order to get needed long-term care services in the only setting available to them—a nursing home.

Thousands of disabled consumers who could live and work productively in a home or community setting are forced to live out their days without that opportunity.

And thousands more like Bob Deist, who is able to live and work in the community only while his wife is able to provide him care, live with the daily threat that the least disturbance or misfortune could bankrupt them in days or weeks.

In some of the most eloquent testimony I have heard on long-term care, Chuck McGlaughlin, a county long-term care administrator, testified at our hearing that prior to the Community Options Program, elderly and disabled people had few choices. Unless they were wealthy enough and had a sufficient natural support system to remain in their home, they had no alternative but to enter a nursing home.

McGlaughlin noted that these people were torn from familiar places and familiar people, an lost the continuity of their lives. While some eventually adjusted to leaving their homes and communities, others never did.

And some he saw simply willed their own death because they saw no reason to continue living.

In contrast to the grim lack of choice for the elderly and disabled, McGlaughlin recalled thinking that when he went to the grocery store, there was an incredible choice available to consumers, even an entire aisle for various types of pet food.

It seemed a sad reality to McGlaughlin that society has been doing a much better job at providing meal diversity to cats and dogs than they were doing at offering choices to humans facing frailty.

Madam President, I can and have made arguments on this floor about the need for long-term care as a part of health care reform as a way to control costs, as a way to ensure that our acute care reforms can work, and as a guarantee that we can realize the goal of a reduced Federal budget deficit. And I believe all of that is the case.

But, Madam President, to me the most persuasive argument for long-term care reform is a human one.

We must provide our seniors and others with mental and physical disabilities with real choice. They are entitled to the opportunity to continue to live and contribute in the homes and communities they have helped build and sustain.

Madam President, to conclude, I am very glad to have the opportunity to join with other Senators in trying to show the faces of health care and, in particular, that many of those faces are ones who need long-term care.

I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that I be recognized to speak in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from California is recognized to speak for up to 20 minutes.

Mrs. FEINSTEIN. Thank you very much, Mr. President. I would like to speak this morning on two subjects. The first involves a piece of legislation I would like to introduce and the second an update on legislation which the Senate passed and is now before the House.

(The remarks of Mrs. FEINSTEIN, Ms. MOSELEY-BRAUN, and Mr. SIMON pertaining to the introduction of S. 1864 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

A PERIODIC UPDATE ON MILITARY-STYLE ASSAULT WEAPONS

Mrs. FEINSTEIN. Mr. President, last November the U.S. Senate considered and passed legislation to ban the sale, possession, and future manufacture of 19 semiautomatic assault weapons and their copycat versions. In addition, the legislation would ban ammunition devices that hold more than 10 rounds and specifically protect more than 670 guns used only for hunting and recreational purposes.

It made me proud to serve in the U.S. Senate when this body approved the amendment by a vote of 56 to 43. We did the right thing.

However, the House has not yet acted on the crime bill or on legislation to ban military-style assault weapons from the streets of America.

Beginning today, I would like to take the opportunity to periodically update the Senate on crimes that are being perpetrated on the streets of America with the very weapons that the Senate's legislation aims to stop. Some people feel that semiautomatic assault weapons are not really responsible for much crime in America. In fact, that picture is changing. So just as others comment regularly on issues of their concern, I am going to comment regularly on crimes taking place that are perpetrated with semiautomatic assault weapons, and on the people bearing those weapons of war.

The Atlanta Constitution found in a 1989 study that, although assault weapons make up only 2 to 3 percent of all guns owned by Americans, they show up in 30 percent of all firearms traced to organized crime, gun trafficking, and terrorism.

More recent statistics show that the number of assault weapons traced to all kinds of gun crime is also disproportionately large.

According to the Bureau of Alcohol, Tobacco and Firearms:

Of the 55,665 crime guns traced by ATF in 1993, 5,397—roughly 10 percent—were assault weapons.

The most popular: the AK-47, the Intratec TEC-9, the Colt AR-15, and the MAC SM10, SM11, and M11.

As uncommitted House Members continue to ponder this issue, the staccato of assault weapon gunfire continues to be heard across America—shattering bodies and families from California to New Hampshire by way of Texas, Louisiana, Minnesota, Georgia, and New York.

Mr. President, let me describe just a few incidents from just the last 4 months, and ask unanimous consent that a table of these and other incidents be printed in the RECORD immediately following my remarks.

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

(See exhibit 1).

On October 25 in Indianapolis, IN, a 16-year-old girl was killed, and a 7-year-old boy was shot in his apartment, after more than 50 rounds of AK-47 gunfire ripped through a housing project in a retaliatory gang shooting.

On October 30 in El Cajon, CA, a child-hating sniper used a Colt AR-15 to kill a woman, a 9-year-old child, and wound five others in a parking lot;

On November 1 in Newbury, NH, a man with a grudge and a replica of a Tommy gun murdered two people and wounded a third in an attack on a tax collector's office.

That same day in Houston, TX, a teenage boy was slain by an AK-47 at a Halloween party by rival gang members.

On November 23 in New Orleans, a jealous husband used an AK-47 and a MAC-11 to kill four: twin 4-month-old girls sleeping in their cribs, if you can believe it, their 8-year-old sister, and their mother. He also wounded their 10-year-old brother before committing suicide.

On December 17 in Hugo, OK, a grievance killer with a MAK-90 assault rifle, purchased in a pawn shop, opened fire on holiday shoppers in a Wal-Mart parking lot, killing two and wounding three others. And it goes on.

On December 30 in Dekalb County, GA, a grandmother was shot twice in the abdomen by her 13-year-old step-granddaughter wielding a MAC-11, hidden by the girl under her grandmother's bed for that purpose.

On January 17 in St. Paul, MN, a 17-year-old used an AK-47 to shoot and kill another teenager in a dispute over a stolen stereo.

I hope that it is not lost that the military style assault weapon is becoming the gun of choice for children.

On January 29 in Buffalo, NY, a 16-year-old and his 14-year-old accomplice carjacked a vehicle, persuading the driver to hand over the keys with an AK-47.

On January 31 in Seattle, WA, a teacher was shot in the back and killed by a former student armed with an AR-15 on school grounds.

On February 7, just a few weeks ago, in Minneapolis, MN, a fugitive from a Detroit murder investigation was apprehended with a small arsenal of assault weapons, including a Colt AR-15.

Just last week, on February 14 in the community of Rancho Palos Verdes, a masked gunman wearing a bullet proof vest burst unannounced into a hotel meeting room where a police management seminar was taking place.

Before being subdued by other policemen, the gunman fired several times with a semiautomatic handgun. This was just a semiautomatic handgun. He killed two police officers—Captain Michael Tracy, 50, and Sergeant Vernon Thomas Vanderpool, 57. But then what did the police find?

Police recovered an Uzi carbine assault rifle from the gunman's car—and found a Colt AR-15 assault rifle that had been illegally converted to fully automatic mode in the gunman's home. Imagine the mass destruction that would have occurred had the gunman used either of these assault weapons in that small conference room.

And just 2 days ago, in an early morning ambush, assault weapons took yet another life.

This time it was a 45-year-old mother of two.

She was the oldest rookie in her class at the Los Angeles Police Academy. Her father was a retired detective. And recently, Christy Lynn Hamilton's classmates in the Los Angeles Police Academy voted her the most inspirational new officer in one of the largest police departments of this Nation—an honor named after the only policewoman, up to then, to have died in the line of duty. Tragically, on Tuesday, 4 days after graduating from the police academy, Hamilton became the second woman in LAPD history to give her life on the job.

She was shot and killed Tuesday morning with a semiautomatic military-style assault weapon when she was one of the first officers to respond to a call from a woman in Northridge—just where the earthquake took place—who reported that a family member had a gun.

The 17-year-old gunman—again, 17-year-old—had already killed his father, who had simply asked him to turn

down his stereo. Armed with a Colt AR-15 semiautomatic assault rifle, he ambushed the police officers when they arrived at his home and opened fire at 1:20 in the morning.

Officer Hamilton had come prepared and well trained. She wore a bullet-proof vest. She crouched behind her police car's door, as she had been trained to do. The bullet that killed her, however, tore through the car door, passed through her arm, skirted the armhole of her vest, and lodged in her chest. She was pronounced dead at Northridge Hospital an hour later.

This is a clear example of how police all across this Nation are simply being outgunned by grievance killers, drive-by shooters, and assassins.

Let me briefly describe the Colt AR-15 that killed officer Christy Hamilton. It is a semiautomatic copy of the M-16, which has served as the standard rifle of the U.S. Armed Forces and many other countries' armies around the world. Several million automatic, and several hundred thousand semiautomatic, copies of this gun have been produced over the last 30 years. At least one version has a collapsible stock that facilitates concealability.

Now I ask you, should this weapon, the civilian model of a military gun designed and used to kill large numbers of people in close combat, be available legally over the counter, as it is in many States across the Nation? I believe that the answer is clearly "No," and that it is time to stop the flow of these weapons to the streets of America once and for all.

I know that every Member of this Senate extends their deepest sympathy to the family, friends, and coworkers of Christy Hamilton. It is true, the most dangerous job in the world today is being a police officer in a major city. In fact, the Los Angeles metropolitan area has lost eight police officers in just the last year, alone—all killed in the line of duty.

Officer Hamilton's murder, and the dozen other recent assault weapon incidents that I described earlier, make one thing very clear.

Nobody should say that semiautomatic assault weapons are not killing people. Nobody should say that these guns are not increasingly being used by young people throughout this Nation. And nobody should say that these guns do not figure in crime in America, because they do.

Mr. President, I am hopeful that—like the Senate—the House of Representatives will pass legislation to stop the future manufacture of assault weapons. The President has said that he fully supports such a measure and will sign one. I believe that Congress owes it to Officer Christy Hamilton, every other victim of an assault weapon, and to the American public who overwhelmingly support such a bill, to give the President that opportunity.

I thank you, Mr. President, and I yield the floor.

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

ASSAULT WEAPON INCIDENTS

(Partial Listing)

Date	Location	Gun(s)	Incident
Oct. 25, 1993	Indianapolis, IN	AK-47	Retaliatory gang shooting 50-shot fusillade kills teen and wounds 7 year-old watching TV at home.
Oct. 26, 1993	Waterbury, CT	TEC-9	Botched drive-by shooting leads to 10 mile high-speed police chase.
Oct. 30, 1993	El Cajon, CA	AR-15	"Child-hating" sniper kills woman and 9 year-old child in parking lot; wounds 5 others.
Nov. 1, 1993	Newbury, NH	1927A-1	Grievance killer slays 2 and wounds a third in attack on tax collector's office with "Tommy" gun replica.
Nov. 1, 1993	Houston, TX	AK-47	Teenage boy killed at Halloween party by rival gang members.
Nov. 23, 1993	New Orleans, LA	AK-47, MAC-11	Jealous husband kills 4 month-old twin girls in crib, 8 year-old sister, and their mother before wounding children's 10 year-old brother in the head and committing suicide.
Dec. 17, 1993	Hugo, OK	MAK-90	Two killed and 3 wounded in Wal-Mart parking lot attack with AK-47 rifle variation.
Dec. 30, 1993	Dekalb County, GA	MAC-11	A 13 year-old girl intentionally wounds her step-grandmother with two shots to the abdomen.
Jan. 23, 1994	St. Paul, MN	AK-47	17 year-old kills another teen in dispute over stolen stereo.
Jan. 29, 1994	Buffalo, NY	AK-47	A 16 year-old and his 14 year-old accomplice commit carjacking.
Jan. 31, 1994	Seattle, WA	AR-15	Teacher killed in early morning ambush on middle school grounds.
Feb. 7, 1994	Minneapolis, MN	AR-15	Fugitive from Detroit murder investigation apprehended with small arsenal.
Feb. 14, 1994	Torrance, CA	Uzi, AR-15	Car and home of masked killer of 2 police officers at motivational seminar yield, respectively, Uzi carbine and AR-15 illegally modified to fire as fully-automatic machine gun.
Feb. 22, 1994	Los Angeles, CA	AR-15	Drug-abusing 17 year-old kills LAPD rookie in 4th day on job, and his father, with gun from father's collection; fatal bullet passed through police car door and part of officer's "bullet-proof" vest; officers from three cars pinned down by hail of bullets.

REFORM OF THE SOCIAL SECURITY DISABILITY PROGRAM

Mr. COHEN. Mr. President, yesterday, I, along with Senators DOLE, KASSEBAUM, DOMENICI, THURMOND, KOHL, LUGAR, CHAFEE, WARNER, GRASSLEY, STEVENS, and BENNETT, introduced legislation to stop the flow of millions of Federal dollars into the hands of illegal drug users, many of whom are simply using the money to turn around and buy either more drugs or alcohol.

It is our intent to reform the Supplemental Security Income and Social Security Disability Program so as to encourage the actual treatment of those who are addicted to either alcohol or drugs, to get tough on those who manipulate the system, and to send a very strong message that the Federal Government no longer is going to be handing out checks to drug dealers, addicts, and others who are not seriously dedicated to helping themselves through the path of rehabilitation.

To explain the dimensions of the problem, currently, under Supplemental Security Income—or SSI—and our Social Security disability systems, there are roughly 250,000 known addicts and alcoholics. Of those 250,000, only 78,000 are required to seek treatment for rehabilitation from their particular addiction.

Of those 78,000, only approximately 9 percent are known by the Social Security Administration to be receiving treatment. So, in essence, out of the 250,000, only about 3 percent are known to be seeking treatment for their particular addiction.

The word on the street is that the Social Security disability programs are an easy source of cash for drugs and alcohol and that once the Government checks start to flow, the Government rarely, if ever, checks up to see if the addict is going to treatment or to be sure that the benefits are not being used to buy more drugs. This, in essence, means that out of the \$1.4 billion in benefits going to addicts and alcoholics, \$1.1 billion is being paid without

any supervision or monitoring on the part of the Federal Government.

What is clear is that tax dollars are being used to support illegal drug habits. I will give you one example.

Earlier this month, a drug bust took place in Williamsport, PA. It netted at least 28 packets of cocaine with a cutting agent for mixing cocaine, along with direct deposit receipts from Social Security disability checks. According to the local district attorney, two of the three suspects allegedly had been receiving Social Security benefits for their drug addictions but were not in any treatment program.

We also found, after a year-long investigation, conducted by the minority staff of the Senate Aging Committee, that in some cases, over \$20,000 is being paid in lump-sum benefits to drug addicts and alcoholics. Many of these recipients are taking that \$20,000 check and spending the money on drugs and alcohol, resulting in very dangerous consequences, including even death, to the claimants. Even when the benefits are paid to a third party, the money often finds its way back into the hands of the addicts or into a local bar or drug house.

I will give you another rather outrageous example, Mr. President. A liquor store owner in Denver was selected by the Social Security Administration to serve as a "responsible representative payee" for 40 alcoholics. He received \$160,000 a year from the Government to, in essence, run a tab for them. Under the Social Security Supplemental Income Program, those individuals who are addicted are required, number one, to seek treatment, and they are also required to have a representative payee. In this particular case, and quite a few others, the representative payees are either drug addicts themselves, or bartenders who are running tabs of \$160,000 a year.

Something is wrong with the system because the message is, right now: Show us that you are a hardcore drug addict and the Government is going to pay you, and as long as you continue to

either shoot up or drink up, the money is going to keep coming. Then, even if you tell us you are breaking the law to get your drugs, we are going to pay you. And finally, once we start the checks, they will probably never stop coming.

One of the other most graphic cases of abuse that I can point to is that some of the addicts are, in fact, engaged in the sale of drugs in order to continue to feed their habit. For example, as I indicated when I offered an amendment to the emergency supplemental appropriations bill just about 10 days ago, the ninth circuit recently ruled that a drug dealer was entitled to receive SSI benefits because his drug dealing was not "substantial gainful activity." Under current SSA rules, an applicant is not eligible for benefits if he or she engages in substantial gainful activity.

The Ninth Circuit Court of Appeals found the drug dealer eligible for benefits—which could have amounted to a \$19,500 lump sum payment plus monthly benefits.

The court reasoned that because he really only worked at dealing drugs for about 20 minutes a day, he was not engaged in substantial gainful activity. In other words, because it took only 20 minutes and he was not initiating the deals, but they were coming in to him, no heavy lifting was involved. Therefore, that individual was allowed to continue to receive disability insurance payments for his addiction at a time when he admittedly was engaged in the sale of illegal drugs. Something is wrong with this system.

Far from proposing reform, which is considered to be heartless, what we want to do is reform the system to help those who are in fact addicted, get the treatment they need and deserve and stop feeding a system whereby the money is simply going into a bottle or into a needle.

Psychiatrists and drug abuse counselors have told us that the laxity in the current system violates the basic rules of drug and alcohol treatment:

Never give cash to an addict. It is like giving him or her a key to the medicine cabinet.

Let me point to a chart, Mr. President. This chart shows the dramatic increase in those who are now going on to the rolls for addiction. From 1989 to 1990, we saw 22,634 new addicts added to the rolls, another 29,429 in 1990, another 38,686 in 1991, and another 58,045 in 1992. We have seen a 150 percent increase in the number of addicts going on the rolls just in the last 4 years, and yet most are not receiving the treatment that is required.

What we seek to do in this legislation is to stop the cash from flowing into the pockets of drug dealers and into the veins of drug addicts. Specifically, the bill would do the following. It would require that any individual who received disability benefits must undergo appropriate treatment for substance abuse if it is available. It sets up a strict disability review process for those whose disability is based on substance abuse. It requires representative payees for substance abuse recipients to be Government agencies or other nonprofit agencies or facilities that will not be subject to coercion or manipulation by the substance abusers. It requires that lump sum benefits payable to abusers on SSI or SSDI be paid to a representative payee—again, a Government or nonprofit agency. It requires the establishment of an agency to monitor treatment in each State, and it requires that any proceeds derived from criminal activity to support substance abuse shall be considered to be substantial gainful activity.

Mr. President, the amendment that I offered 10 days ago to the emergency supplemental was accepted by unanimous vote. It was dropped in the House-Senate conference. Apparently, the House conferees wanted the opportunity to take up legislation of their own in a more comprehensive fashion. In the meantime, millions of dollars continue to flow to drug abusers and alcoholics who are not getting treatment. We would put a stop to that.

It toughens penalties for fraudulent statements or misrepresentations made by applicants or recipients to obtain SSI or disability insurance benefits and by others who assist in such fraudulent activities. The Secretary of Health and Human Services is also given authority to exclude from all HHS programs anyone who defrauds the disability system.

Mr. President, far from abandoning substance abusers, this proposal stresses treatment and rehabilitation, and it closes the loopholes in the system that now invite abuse. Right now, the program is failing both taxpayers and substance abusers. We need to protect both.

Mr. President, I cannot urge my colleagues enough to focus on this problem. It seems to me that we are absolutely doing a disservice to the people

who are addicted and to the taxpayers who are helping to support them. This legislation would apply to SSDI as well as SSI disability programs because, Mr. President, we are told the disability insurance fund will run dry next year. It will then have to turn to the Social Security Retirement Trust Fund to be replenished. If we are going to do that, we have to assure the American taxpayers that their money is being spent for the purpose for which it is intended—rehabilitation and treatment—and not more booze and not more drugs.

I thank the Chair and request unanimous consent that the text of the bill be included at the conclusion of my remarks.

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

S. 1863

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Social Security Disability and Rehabilitation Act of 1994".

SEC. 2. REFORM OF MONTHLY INSURANCE BENEFITS BASED ON DISABILITY INVOLVING SUBSTANCE ABUSE.

(a) SOCIAL SECURITY DISABILITY INSURANCE.—

(1) IN GENERAL.—Section 223 of the Social Security Act (42 U.S.C. 423) is amended by adding at the end the following new subsection:

"Limitation on Payment of Benefits by Reason of Substance Abuse

"(j)(1)(A) Notwithstanding any other provision of this title, no individual whose disability is based in whole or in part on a medical determination that the individual is a drug addict or alcoholic shall be entitled to benefits under this title based on such disability with respect to any month, unless such individual—

"(i) is undergoing, or on a waiting list for, any medical or psychological treatment that may be appropriate for such individual's condition as a drug addict or alcoholic (as the case may be) and for the stage of such individual's rehabilitation at an institution or facility approved for purposes of this paragraph by the Secretary (so long as access to such treatment is reasonably available, as determined by the Secretary), and

"(ii) demonstrates in such manner as the Secretary requires, including at a continuing disability review not later than one year after such determination, that such individual is complying with the terms, conditions, and requirements of such treatment and with the requirements imposed by the Secretary under subparagraph (B).

"(B) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in subparagraph (A), in order to assure such compliance and to determine the extent to which the imposition of such requirements is contributing to the achievement of the purposes of this title. The Secretary may retain jurisdiction in the case of a hearing before the Secretary

under this title to the extent the Secretary determines necessary to carry out the preceding sentence. The Secretary shall annually submit to the Congress a full and complete report on the Secretary's activities under this paragraph.

"(C) The representative payee and the referral and monitoring agency for any individual described in subparagraph (A) shall report to the Secretary any noncompliance with the terms, conditions, and requirements of the treatment described in subparagraph (A) and with the requirements imposed by the Secretary under subparagraph (B).

"(D)(i) If the Secretary finds that an individual is not complying with the terms, conditions, and requirements of the treatment described in subparagraph (A), or with the requirements imposed by the Secretary under subparagraph (B), or both, the Secretary, in lieu of termination, may suspend such individual's benefits under this title until compliance has been reestablished, including compliance with any additional requirements determined to be necessary by the Secretary.

"(ii) Any period of suspension under clause (i) shall be taken into account in determining any 24-month period described in subparagraph (E) and shall not be taken into account in determining the 36-month period described in such subparagraph.

"(E)(i) Except as provided in clause (ii), no individual described in subparagraph (A) shall be entitled to benefits under this title for any month following the 24-month period beginning with the determination of the disability described in such subparagraph.

"(ii) If at the end of the 24-month period described in clause (i), the individual furnishes evidence in accordance with subsection (d)(5) that the individual continues to be under a disability based in whole or in part on a medical determination that the individual is a drug addict or alcoholic, such individual shall continue to be entitled to benefits under this title based on such disability.

"(iii) Subject to clause (iv), if such an individual continues to be entitled to such benefits for an additional 24-month period following a determination under clause (ii), clauses (i) and (ii) shall apply with regard to any further entitlement to such benefits following the end of such additional period.

"(iv) In no event shall such an individual be entitled to benefits under this title for more than a total of 36 months, unless upon the termination of the 36th month such individual furnishes evidence in accordance with subsection (d)(5) that the individual is under a disability which is not related in part to a medical determination that the individual is a drug addict or alcoholic.

"(2)(A) Any benefits under this title payable to any individual referred to in paragraph (1), including any benefits payable in a lump sum amount, shall be payable only pursuant to a certification of such payment to a qualified organization acting as a representative payee of such individual pursuant to section 205(j).

"(B) For purposes of subparagraph (A) and section 205(j)(4), the term 'qualified organization'—

"(i) shall have the meaning given such term by section 205(j)(4)(B), and

"(ii) shall mean an agency or instrumentality of a State or a political subdivision of a State.

"(3) Monthly insurance benefits under this title which would be payable to any individual (other than the disabled individual to whom benefits are not payable by reason of

this subsection) on the basis of the wages and self-employment income of such a disabled individual but for the provisions of paragraph (1), shall be payable as though such disabled individual were receiving such benefits which are not payable under this subsection."

(2) CONFORMING AMENDMENTS.—

(A) Section 205(j)(1) of such Act (42 U.S.C. 405(j)(1)) is amended by inserting " , or in the case of any individual referred to in section 223(j)(1)(A)" after "thereby".

(B) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking "legally incompetent or under the age of 15" and inserting "legally incompetent, under the age of 15, or a drug addict or alcoholic referred to in section 223(j)(1)(A)".

(b) SUPPLEMENTAL SECURITY INCOME.— Paragraph (3) of section 1611(e) of the Social Security Act (42 U.S.C. 1382(e)) is amended to read as follows:

"(3)(A)(i) No person who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1614(a)(3)) shall be an eligible individual or eligible spouse for purposes of this title with respect to any month if such individual's disability is based in whole or in part on a medical determination that the individual is a drug addict or alcoholic, unless such individual—

"(I) is undergoing, or on a waiting list for, any medical or psychological treatment that may be appropriate for such individual's condition as a drug addict or alcoholic (as the case may be) and for the stage of such individual's rehabilitation at an institution or facility approved for purposes of this paragraph by the Secretary (so long as access to such treatment is reasonably available, as determined by the Secretary), and

"(II) demonstrates in such manner as the Secretary requires, including at a continuing disability review not later than one year after such determination, that such individual is complying with the terms, conditions, and requirements of such treatment and with the requirements imposed by the Secretary under clause (i).

"(ii) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in clause (i), in order to assure such compliance and to determine the extent to which the imposition of such requirements is contributing to the achievement of the purposes of this title. The Secretary may retain jurisdiction in the case of a hearing before the Secretary under this title to the extent the Secretary determines necessary to carry out the preceding sentence. The Secretary shall annually submit to the Congress a full and complete report on the Secretary's activities under this subparagraph.

"(iii) The representative payee and the referral and monitoring agency for any individual described in clause (i) shall report to the Secretary any noncompliance with the terms, conditions, and requirements of the treatment described in clause (i) and with the requirements imposed by the Secretary under clause (i).

"(iv)(I) If the Secretary finds that an individual is not complying with the terms, conditions, and requirements of the treatment described in clause (i), or with the requirements imposed by the Secretary under clause (i), or both, the Secretary, in lieu of

termination, may suspend such individual's benefits under this title until compliance has been reestablished, including compliance with any additional requirements determined to be necessary by the Secretary.

"(II) Any period of suspension under subclause (I) shall be taken into account in determining any 24-month period described in clause (v) and shall not be taken into account in determining the 36-month period described in such clause.

"(v)(I) Except as provided in subclause (II), no individual described in clause (i) shall be entitled to benefits under this title for any month following the 24-month period beginning with the determination of the disability described in such clause.

"(II) If at the end of the 24-month period described in subclause (I), the individual furnishes evidence in accordance with section 223(d)(5) that the individual continues to be under a disability based in whole or in part on a medical determination that the individual is a drug addict or alcoholic, such individual shall be entitled to benefits under this title based on such disability.

"(III) Subject to subclause (IV), if such an individual continues to be entitled to such benefits for an additional 24-month period following a determination under subclause (II), subclauses (I) and (II) shall apply with regard to any further entitlement to such benefits following the end of such additional period.

"(IV) In no event shall such an individual be entitled to benefits under this title for more than a total of 36 months, unless upon the termination of the 36th month such individual furnishes evidence in accordance with section 223(d)(5) that the individual is under a disability which is not related in part to a medical determination that the individual is a drug addict or alcoholic.

"(B)(i) Any benefits under this title payable to any individual referred to in subparagraph (A), including any benefits payable in a lump sum amount, shall be payable only pursuant to a certification of such payment to a qualified organization acting as a representative payee of such individual pursuant to section 1631(a)(2)(A)(ii).

"(ii) For purposes of clause (i) and section 1631(a)(2)(D), the term 'qualified organization'—

"(I) shall have the meaning given such term by section 1631(a)(2)(D)(ii), and

"(II) shall mean an agency or instrumentality of a State or a political subdivision of a State."

(c) EFFECTIVE DATES; AUTHORIZATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to benefits payable for determinations of disability made 90 or more days after the date of the enactment of this Act.

(2) CURRENT DETERMINATIONS.—

(A) IN GENERAL.—With respect to any individual described in subparagraph (B), the Secretary of Health and Human Services shall provide during the 3-year period beginning after the date of the enactment of this Act for the application of the amendments made by this section to such individual with the time periods described in such amendments to begin upon such application.

(B) INDIVIDUAL DESCRIBED.—An individual is described in this subparagraph if such individual is entitled to benefits under title II or XVI of the Social Security Act based on a disability determined before the date described in paragraph (1) to be based in whole or in part on a medical determination that the individual is a drug addict or alcoholic.

(3) AUTHORIZATION OF APPROPRIATIONS.— There are authorized to be appropriated such sums as may be necessary to carry out the purposes of the provisions of, and the amendments made by, this section.

SEC. 3. PRIORITY OF TREATMENT.

The Secretary of Health and Human Services, through the Administrator of the Substance Abuse and Mental Health Services Administration, shall assure that every individual receiving disability benefits under title II or XVI of the Social Security Act based in whole or in part on a medical determination that the individual is a drug addict or alcoholic be given high priority for treatment through entities supported by the various States through any substance abuse block grant authorized under law.

SEC. 4. ESTABLISHMENT OF REFERRAL MONITORING AGENCIES REQUIRED IN ALL STATES.

The Secretary of Health and Human Services shall, within 1 year of the date of the enactment of this Act, provide for the establishment of referral and monitoring agencies for each State for the purpose of carrying out the treatment requirements under sections 223(j)(1) and 1611(e)(3)(A) of the Social Security Act (42 U.S.C. 423(j)(1) and 1382(e)(3)(A)).

SEC. 5. PROCEEDS FROM CERTAIN CRIMINAL ACTIVITIES CONSTITUTE SUBSTANTIAL GAINFUL EMPLOYMENT.

(a) SOCIAL SECURITY DISABILITY INSURANCE.—Section 223(d)(4) of the Social Security Act (42 U.S.C. 423(d)(4)) is amended by inserting the following after the first sentence: "If an individual engages in a criminal activity to support substance abuse, any proceeds derived from such activity shall demonstrate such individual's ability to engage in substantial gainful activity."

(b) SUPPLEMENTAL SECURITY INCOME.—Section 1614(a)(3)(D) of the Social Security Act (42 U.S.C. 1382(a)(3)(D)) is amended by inserting the following after the first sentence: "If an individual engages in a criminal activity to support substance abuse, any proceeds derived from such activity shall demonstrate such individual's ability to engage in substantial gainful activity."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disability determinations conducted on or after the date of the enactment of this Act.

SEC. 6. CONSISTENT PENALTY PROVISIONS FOR SSDI AND SSI PROGRAMS.

(a) FELONY PENALTIES FOR FRAUD.—

(1) IN GENERAL.—Subsection (a) of section 1631 of the Social Security Act (42 U.S.C. 1383a) is amended by striking "shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both" and inserting "shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both".

(2) REPRESENTATIVE PAYEES.—

(A) SSDI.—Subsections (b) and (c) of section 208 of such Act (42 U.S.C. 408) are amended to read as follows:

"(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse or an entity described in section 223(j)(2)(B)(ii)), shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both.

"(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"(3) Any person or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).

"(c) For the purpose of subsection (a)(7), the terms 'social security number' and 'social security account number' mean such numbers as are assigned by the Secretary under section 205(c)(2) whether or not, in actual use, such numbers are called social security numbers."

(B) SSI.—Subsection (b)(1) of section 1632 of such Act (42 U.S.C. 1383a) is amended by striking "(other than such person's spouse)" and all that follows through the period and inserting "(other than such person's spouse or an entity described in section 1611(e)(3)(B)(i)(II)), shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both."

(b) CIVIL ADMINISTRATIVE PENALTIES.—

(1) SSI.—Section 208 of the Social Security Act (42 U.S.C. 408) is amended by adding at the end the following new subsections:

"(e) For administrative penalties for false claims and statements with respect to which an individual or other entity knows or has reason to know such falsity, see chapter 38 of title 31, United States Code.

"(f) In the case of the second or subsequent imposition of an administrative or criminal penalty on any person or other entity under this section, the Secretary may exclude such person or entity from participation in any program under this title and titles V, XVI, XVIII, and XX, and may direct that such person or entity be excluded from any State health care program (as defined in section 1128(h)) and any other Federal program as provided by law."

(2) SSI.—

(A) IN GENERAL.—Section 1632 of such Act (42 U.S.C. 1383a) is amended by adding at the end the following new subsections:

"(c) For administrative penalties for false claims and statements with respect to which an individual or other entity knows or has reason to know such falsity, see chapter 38 of title 31, United States Code.

"(d) In the case of the second or subsequent imposition of an administrative or criminal penalty on any person or other entity under this section, the Secretary may exclude such person or entity from participation in any program under this title and titles II, V, XVIII, and XX, and may direct that such person or entity be excluded from any State health care program (as defined in section 1128(h)) and any other Federal program as provided by law."

(B) CONFORMING AMENDMENT.—The heading for section 1632 of such Act (42 U.S.C. 1383a) is amended by striking "FOR FRAUD".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective on or after the date of the enactment of this Act.

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

The assistant legislative clerk proceeded to call the roll.

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

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

TOBACCO AND CHILDREN

Mr. HARKIN. Mr. President, this morning the Surgeon General issued the 23d Surgeon General's Report on Smoking and Health, but the first, as far as I can recall, looking specifically on tobacco and children. The Surgeon General's report highlights the shocking extent to which our youngsters are now exposed to and use tobacco. As this report pointed out, fully one-third of all American youngsters now smoke or use smokeless tobacco.

Mr. President, I rise today to speak about this and about America's tobacco in our children and how we parents and grandparents are unwittingly subsidizing their addiction to this often lethal product.

There is, I believe, a great consensus in our Nation that smoking is bad for our kids and bad for our future, and yet we keep subsidizing the problem to a considerable degree.

The Surgeon General pointed out in her report this morning—and I will quote from some parts of it—"There has been a continuing shift from advertising to promotion largely because of banning cigarette ads from broadcast media." Clearly, the Surgeon General's report goes on to say, "young people are being indoctrinated to tobacco promotion at a susceptible time in their lives."

The Surgeon General's report continues:

Current research suggests that pervasive tobacco promotion has two major effects. It creates the perception that more people smoke than actually do, and it provides a conduit between actual self-image and ideal self-image. In other words, smoking is made to look cool. Whether casual or not, these effects foster the uptake of smoking, initiating for many a dismal and relentless chain of effects.

Mr. President, nearly 2 years ago I began an effort on the floor of the Senate to lower the tax deductibility of tobacco advertising. Since that time, the problem has only gotten worse, and the American taxpayer is still coughing up about \$1 billion a year as a silent partner in subsidies to promote smoking.

My legislation, which is cosponsored by Senators BRADLEY and BINGAMAN, will cut in half the taxpayer subsidy of tobacco promotion and will use 40 percent of the resulting revenues to finance a program of counteradvertising aimed at lowering the incidence of smoking especially among children. This measure would raise about \$1.9 billion over the next 5 years, and of that amount, \$764 million would go into counteradvertising to reach young people about the effects of smoking.

The need for this legislation has been made even clear by the Surgeon General's report this morning. Since we of-

fered our amendment last fall, the tobacco companies and their slick promoters have come up with a new gimmick that is sure to entice more of our children to smoke.

They have started what I have called the merchandise clubs in which you get cash to buy all sorts of gifts simply by buying cigarettes.

Let me show you what your tax dollars are paying for in this advertising. First of all, Mr. President, we have to say hello again to our old friend, Joe Camel. Joe Camel, of course, is very cool. And now what Joe Camel has in these clubs, and he has C notes. And if you smoke a certain number of cigarettes, you get C notes. And when you get the C notes, of course, then you can trade them in for gifts.

Mr. President, if you do not happen to recognize Joe Camel, I can assure you are in a distinct minority. If you do not recognize Joe Camel, ask your kids because your kids recognize Joe Camel.

In a recent study published in the Journal of the American Medical Association, more 6-year-old kids can identify old Joe Camel than adults. In fact, just as many kids can recognize old Joe Camel as they can Mickey Mouse. And his name recognition has really paid off. In the 3 years since the introduction of old Joe, sales of Camel cigarettes to children under 18 went from \$6 million to \$476 million per year. So the kids know old Joe. He is around.

Well, now he has the Camel cash catalog. Here is his brochure. Here is the latest one right here. It is the official Camel Cash Catalog, volume 4. I got this one out of Rolling Stone magazine, of course, which is targeted to young people. What old Joe Camel says is this. You smoke cigarettes, you get C notes, and you get two C notes on each pack of new Special Lights, and with these C notes of course you can buy all kinds of gifts—keyrings, wristwatches, sweatshirts, beach bags and sunglasses. Well, you name it. You can buy all kinds of things with Joe Camel's C notes.

Let me just tell you what it means. See, if you are smooth enough as Joe Camel says, if you have 175 C notes, you can get a fish and game club camouflaged thermos for 175 C notes. That means you only have to smoke 3,500 Camel cigarettes and then you can get that. At around \$1.90 a pack, that is \$332.50 for the thermos. It looks like a GI Joe thermos. You can get a cigarette lighter. For a cigarette lighter you have to smoke 400 cigarettes.

For young women who have not been able to identify with old Joe Camel, we have a new character now. We have Josephine. It is not old Josephine. It is young Josephine. So when you look in the Camel ads, there is old Joe Camel and there is his female counterpart.

Mr. President, I thought this ad was particularly striking. It is a promotion

for Camels. You have old Joe Camel in there, and you have Josephine. It is a great big place with a lot of young people in there socializing, shooting a little pool. They are talking. There is a band playing over here. This is a band playing, and young people are dancing. Just about everyone has a cigarette in their hand. All the men, and all the women have cigarettes in their hands. But there is no smoke in there. I find that fascinating; that you can have probably about 100 people in a nightclub all smoking cigarettes and there is absolutely no smoke. So maybe this is the answer to our ozone problem in America. If everyone smokes, they will clean up the air.

Well, this is the kind of advertising that Camels are doing with old Joe Camel cigarettes, to get young people hooked. It is cool. You can socialize. You are part of the crowd if only you smoke old Joe Camel cigarettes. If that is not enough, you get the C notes, and here is volume 2. You can just buy all kinds of nice things with the C notes from Joe Camel cigarettes.

I do not mean to pick just on old Joe Camel. He has some partners in this. Let us look at the Marlboro Adventure Team. If you do not happen to like old Joe Camels, you can smoke Marlboros. They have an official gear catalog. You can be a part of the Marlboro Adventure Team. What they do is they have miles. You go so many miles. If you go the distance, they say, you get all of these things. You can turn them in. You can buy all kinds of gear from your Marlboro Adventure Team.

Then, again for women, if you do not like Marlboro, they have Virginia Slims. The Virginia Slims, they have a new clothing that you can wear. They call it a "fashion collection with a street-wise attitude" from Virginia Slims. So for 225 of these certificates you get from smoking Virginia Slims, you can get a top-of-the-line leather backpack. Most kids have backpacks that they take to school. All you have to do is smoke 4,500 Virginia Slim cigarettes, send in your little seals that come on the package. That is about \$427.50 for the cigarettes. Then you can get a nice leather backpack that you can take to school.

So this is the kind of advertising that is going on. This is exactly what the Surgeon General's report talks about on page 8. I will read from that. The Surgeon General says, "Since reports from adolescents who begin to smoke indicate they have lower self-esteem and lower self-image than their nonsmoking peers, smoking can become a self-enhancement mechanism. The positive functions that many young people attribute to smoking are the same functions advanced in most cigarette advertising."

That is what the Surgeon General's report says. Let me read that again. "The positive functions that many

young people attribute to smoking are the same functions advanced in most cigarette advertising"—socializing, having fun, outdoor activities.

"Young people are a strategically important market for the tobacco industry," says the Surgeon General. "Since most smokers try their first cigarettes before age 18, young people are the chief source of new consumers for the tobacco industry which each year must replace the many consumers who quit smoking," and of course the many who die from smoking-related related diseases.

The Surgeon General's report goes on to say, "Cigarette advertising frequently use human models for human-like cartoon characters to display images of youthful activities; independence, helpfulness, and adventure seeking. In presenting attractive images of smokers, cigarette advertisements appear to stimulate some adolescents who have relatively low self-images to adopt smoking as a way to approve their own self-image."

Mr. President, these advertising campaigns are outrageous. They even violate the industry's own cigarette advertising code. The cigarette advertising code said, "well, we don't need to be regulated. We will adopt our own code." They adopted a code, and their own code says that, "Cigarette advertising shall not represent that cigarette smoking is essential to social prominence, distinction, success or sexual attraction."

Here it is right here, the tobacco industry's voluntary cigarette advertising code: " * * * shall not represent that cigarette smoking is essential to social prominence or sexual attraction."

"Cigarette advertising shall not depict as a smoker any person participating in, or obviously having just participated in, physical activity requiring stamina or athletic conditioning beyond that of normal recreation."

So what are we to make of the Marlboro Adventure Team? We are here today to say to the tobacco companies that it is time to call a halt to this. These ads make a great case for our amendment, and the Surgeon General's report I think really tops it off.

These campaigns of old Joe Camel are all part of over \$10 million a day, \$4 billion a year, that tobacco companies put into pushing their product. And you and I are helping to subsidize them because it is all tax deductible. At a time when the Government is spending \$114 million a year to stop people from smoking, the American taxpayers are providing a \$1 billion-a-year subsidy to promote smoking, especially among young people.

So today, along with the Surgeon General's report, we should call upon the cigarette companies to cease and desist with these promotions. We should pass this legislation to take

away the tax deductibility of advertising for smoking. Every day that we fail to act another 3,000 of our children start smoking. Every day we fail to act 1,200 more people die of smoking-related illnesses. And every day we fail to act, over \$200 million in decreased productivity is lost in our economy due to smoking.

So it is time to say goodbye to Joe Camel. It is time to get over the Marlboro Adventure Team. What we really need is some truth-in-advertising, Mr. President. These are the kind of ads that I would be running.

There was one run by the St. Louis Area Cancer Coalition sponsored by the American Lung Association. On the left you see a very attractive young female. On the right you see that same female with a lot of wrinkles, and aging marks.

The ad says, "I started smoking to look older. It worked." If we saw more ads like that in Rolling Stone Magazine and in the publications that go out, maybe we would send a clearer message to young people—that smoking is not necessary for social prominence, it certainly is not healthy, and this is what it is going to do to you.

I say the best way to get to that point is take away the tax deductibility for advertising for tobacco, and maybe we will not see Joe Tobacco around anymore. I think the Surgeon General in the 23d report has focused on this issue for the first time, on smoking and youth and what it means to young people to have these advertisements out there and how it hooks them on smoking. It is time to call a halt to it. It is time to make sure our young people get the facts.

The PRESIDING OFFICER (Mr. FORD). The Senator's time has expired.

EXTENSION OF MORNING BUSINESS

Mr. LEAHY. Mr. President, I ask unanimous consent that morning business be extended to 12:30 under the usual conditions and that I be recognized for not to exceed 13 minutes.

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

RUSSIAN AID

Mr. LEAHY. Mr. President, I want to speak about the former CIA agent who has been arrested as a spy here in the United States, charged with spying for Russia, and before that for the former Soviet Union. I want to speak about it in my capacity as the chairman of the subcommittee that has to deal with foreign aid and will have to present legislation to the United States Senate this year regarding foreign aid to Russia.

Having said that, Mr. President, I want my colleagues to know I am deeply disturbed by the exposure of such a

senior CIA official, who turns out to have been—if the facts are right in the indictment—a long-time spy for the former Soviet Union and then for Russia. I used to be the vice chairman of the Intelligence Committee, and I know what a penetration of the CIA of this magnitude can mean. Enormous damage has been done. Millions of dollars will be spent to try to determine what the damage is and, even then, this country will never know with certainty the extent of the damage.

I think the administration, and I know the intelligence community, and certainly the oversight committees here in the Congress will take a thorough look to find out how badly our capabilities have been damaged. But for years to come, because of this spy case, whoever is in charge of our intelligence apparatus will have to live with the knowledge that they are not absolutely sure of what they are basing things on.

But at the same time, Mr. President, as terrible as the spy case is, I greatly regret the connection some people in this body are making between this spy case and the Clinton administration's policy of providing aid to Russia. Anyone who is surprised by the fact that espionage continues, even though the cold war is over, does not know much about what goes on among the major nations of the world. Spying is a fact of life in international relations. Rivals do it to us; friends do it to us; and we do it to them. It went on long before the cold war, and it will go on long after the cold war.

Some who stand up now and seem surprised about it make me think about the character in "Casablanca" played by Claude Rains, who comes into Rick's Cafe and says, "I am shocked to find out gambling is going on here," as he pockets his winnings from that night.

As to Russian aid, I ask Senators to keep in mind the real reasons why we decided last fall to provide a major aid package to Russia. First and foremost, we are trying to help Russia become a democracy. Why? Because we Americans believe democracy is the best form of government and because history shows that democracies do not fight each other. The aid we are giving Russia is not a gift; it is an investment in our own national security. If we can help the forces for democratic reform win out in the power struggle now underway in Russia, we will have done far more to protect our national security than buying several more aircraft carriers or 100 more B-2 bombers or hundreds more intercontinental missiles.

Supporting reform through aid to Russia is not different in purpose than the nuclear arms control negotiations several administrations, Republican and Democratic, carried on with the former Soviet Union. We wanted nuclear arms control agreements because it increased our security by reducing

the threat to the United States. It was not done as a favor to the Soviets. And we kept on with those negotiations despite many ups and downs in United States-Soviet relations over the years. The reason we did so, despite confrontation and crisis, is because of a broad understanding that reducing Soviet nuclear weapons helped our national security.

Spies were discovered here in the United States, just as some of ours were discovered there during the negotiations, but they went on just the same. Afghanistan was invaded, and the negotiations went on just the same. Why? Because we knew it was in our best interest.

The same idea is at work here in the policy of Russian aid. The President, joined by a strong bipartisan consensus in Congress, adopted a policy of supporting the forces for democracy in Russia. That is a policy that has to be carried out for several years. We are not going to see success in a few months or a year. A revolution is being waged in Russia today, one fought in the political and economic areas rather than on the battlefield. We have chosen to help one side in that struggle—the side trying to build democracy.

We should not let the spy case go on without vigorous action to prevent a recurrence in the future. We should protest and try to root out whoever is involved. We should send them out of this country, and we should arrest them if we can. But, Mr. President, there has been one major error made by everybody who has talked about the aid we are spending to Russia. Everybody talks about cutting off aid to the Russian Government.

Mr. President, one fact that has been missed by practically everybody who has talked about this, written about this, commented on this, is that no aid money goes to the Russian Government. Let me underline that: No aid money goes to the Russian Government. The vast bulk—over 75 percent of our Russian aid package—goes directly to the private sector. It never reaches the hands of Russian Government officials. It is aimed at building a private sector in the Russian economy and bringing thousands of young Russians to the United States in exchange programs or cleaning up the environment or feeding the old, poor, and vulnerable sectors of the population. It is aimed at training farmers, economists, bankers, business men and women, and the thousand and one other things necessary to overcome the 70 years of communism.

The remaining aid, less than 25 percent, is used to provide technical assistance in building effective, workable democratic institutions at the Russian federal governmental level. None of that aid goes directly to the Russian Government. It is provided primarily to U.S. companies and individuals with

special expertise, who are contracted by the Agency for International Development.

So it is not a question of cutting off aid to the Russian Government. There is none to cut off. We can cut off some aid to the Russian people, and if we do, we stop helping the very things in Russia we want to win in this struggle: The democratic reformers and those who are trying to build a free-market economy.

I would rather see the United States in economic competition with a democratic Russia with a strong economy than to see us go back to the days of competition with a totalitarian government with enough nuclear power to destroy us and the rest of the world, even as we destroyed them. We are safer and the world is safer if we can help democracy really take hold in Russia.

So I urge my friends in the Senate to keep the national interests foremost and not to succumb to the temptation to make a partisan issue out of our policy on Russia. It is too important for our country to exploit for partisan advantages. I remind people: Do not act shocked that there are spies in the world. I am glad when we catch them. I hope if there are other Russian spies in this country—and I fully expect there are—we will catch them very soon. But let us not think that the national intelligence networks of our country, or any other country, suddenly folded up and went home when the cold war ended.

Finally, I know foreign aid is not popular with many Americans today. But I also know that the American people support the support of democracy and free market reform in Russia.

Our aid is not a gift to the Russian Government. It is an investment in our own national security. It is an investment in the security of the rest of the Democratic world. And we, as the leader of the Democratic world, have that responsibility.

Mr. President, I yield the floor.

Mr. JOHNSTON addressed the Chair. The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, what is the pending business?

The PRESIDING OFFICER. We are in a period for morning business with Senators recognized therein for up to 10 minutes.

Mr. JOHNSTON. Mr. President, would it be in order to speak on the balanced budget amendment at this point?

The PRESIDING OFFICER. The Senator may speak on any issue he desires during morning business. He has 10 minutes in which to do so.

EXTENDING MORNING BUSINESS
UNTIL 2 P.M. TODAY

Mr. FORD. Mr. President I ask unanimous consent that the time for morn-

ing business be extended until 2 p.m. today, under the same conditions and limitations.

The PRESIDING OFFICER (Mr. DORGAN). Is there objection?

The Chair hears none. It is so ordered.

THE BALANCED BUDGET AMENDMENT

Mr. JOHNSTON. Mr. President, I rise in support of a balanced budget but against the balanced budget amendment. The reason is that I believe this amendment, if passed, would have precisely the opposite effect of that for which it is intended. The amendment is not to go into effect, according to its terms, until 1999 at the soonest, and more probably somewhat later because it would take somewhat longer for the States to ratify the amendment.

In my judgment, if this amendment passed, the effect would be to postpone any real action on bringing the deficit down, pending the ratification of the amendment. In effect, Senators and Congressmen who voted for the amendment would be able to beat their breasts and say, "I voted for the balanced budget amendment," and therefore they would not need to do anything about the tough work of reducing the deficit.

Mr. President, to adopt this amendment is to take the general over the specific, the marginal steps toward budget reduction over real steps, to take an exhortation over a command. By that I mean, Mr. President, we have in place at the present time under the Gramm-Rudman-Hollings bill the machinery which is calculated to balance the budget. All Congress needs to do is set those limits for spending on a glide path that leads to a balanced budget.

Mr. President, that Gramm-Rudman-Hollings machinery is very specific. It is enforced by a whole series of points of order. Its definitions are very specific and very exacting. And, as my colleagues know, it constitutes a legislative straitjacket on spending.

Now, to be sure, the Gramm-Rudman-Hollings bill has not brought us to a balanced budget. And that is not because of the machinery of the Gramm-Rudman-Hollings bill. That is because of a number of things:

First of all, because of the failure of the will of the Congress to set the limits.

Second, because of the inability to estimate what the economy is going to do. It is one thing to estimate that the rate of growth next year is going to be 3 percent. It is another thing for the economy actually to grow at that rate.

It has also been caused, Mr. President, by various accounting gimmicks which have been used in the past. But the gate has been closed for those kinds of accounting gimmicks.

So, Mr. President, if this Congress is serious about balancing the budget, if

it is serious indeed about reducing the deficit, then what we ought to do is put in place a series of step reductions leading to a balanced budget at some specific time in the future, beginning with fiscal year 1995.

Mr. President, the silence is deafening about the proponents of this amendment proposing anything for fiscal year 1995. Do they propose that we spend less in 1995 than the President's guidelines, than the President's limits? The answer is a deafening "No." They do not propose any action for this year.

Any real action is to be put off, I submit to you, to sometime in the next century. Let things rock along in the meantime. If angry constituents write and say that you have done nothing to balance the budget, then all you have to do, Mr. President, is point to the fact that you have the balanced budget amendment.

Mr. President, I hear from many of my colleagues that the American people want the balanced budget amendment. Indeed, I have seen polls, I have seen polls in my own State, that say people want the balanced budget amendment.

But then you ask people, as I have in polling at home, do they want cuts in Social Security? Overwhelmingly they say, "No cuts in Social Security." You ask, do they want cuts in Medicare or Medicaid, and the answer overwhelmingly is "no." And if you put taxes on the list, the answer is always a resounding "no" on new taxes. If you want to cut retirement programs, the answer is "no." If you want to cut defense, the answer is "no."

What the American people, or at least those who say they want a balanced budget, want is a painless balanced budget; that is, a budget that is balanced by eliminating fraud, waste, and abuse.

Mr. President, those who would mislead themselves in believing that a balanced budget, and particularly the steps that would lead to a balanced budget, is sought by the American people are only kidding themselves. I think the buzzards would come home to roost if this matter was really passed and the court really began to order these cuts that it would take to have the balanced budget. I think there would be the biggest turnover in Congress you have ever seen.

What we really need is for the American public to be involved in this business of balancing the budget and to understand what it really takes, and to be involved with it in making the tough decisions to balance that budget. I, for one, am willing to do that, but it is going to take some cuts and some taxes. And not just some little taxes. It is going to take some big taxes in order to get this budget balanced.

Mr. President, we are caught on the horns of a dilemma. On the one hand, if this matter is really binding, if the

court is really going to order that the budget be balanced, then it is the worst of all possible worlds. If it can be avoided, it is also a very bad situation because it would lead to disrespect for the Constitution, it would render nugatory a provision of the Constitution, and it is hard to say whether it would be altogether avoided.

I believe when push came to shove, and when all of a sudden, in the year 2000, if that is the year of its taking effect, suddenly we had to cut \$200 billion from the deficit, I believe the Congress would summon up the 60 votes that it would take to do so. But you will notice that this amendment is skewed in favor of taxes. The reason I say it is skewed in favor of taxes is it takes 51 votes to increase taxes, but it takes 60 votes in order to spend more than you take in. So where is the natural majority going to come? It is going to come in favor of taxes.

Those who have a dream that by passing this amendment, you are somehow going to eliminate fraud, waste, and abuse, all of those easy cuts that nobody cares about—they do not involve Social Security, they do not involve somebody's medical provisions—they can forget that. They better get ready for a big tax increase, because you can increase taxes under this amendment by 51 votes whereas it takes a full 60 votes to spend more than you take in.

If we got to the situation where the court was going to order a cut, how would the court determine what cuts to order? I contend that the court would order taxes and cutting in retirement programs—spell that Social Security—and let me explain why I believe that is so.

It takes an enormous amount of bureaucracy to understand exactly how the Federal Government works, how it spends money, and how you would budget money. Let us say, for example, that you would want to cut the Corps of Engineers—which happens to be one of the agencies that is under my appropriations subcommittee. If you wanted to cut the Corps of Engineers, the court could not simply say to order a 6 percent cut in the Corps of Engineers, because all functions cannot be cut by the same amount. For example, contractual obligations have to be paid 100 percent. Property purchases, if you are going to purchase property to build a levy, for example—which the Corps of Engineers must do—must be paid 100 percent. You do not go out and make an offer for a piece of property or condemn a piece of property and pay only 90 percent; you have to pay 100 percent.

So then the question would come, how would the court know how to cut the Corps of Engineers? And the answer is, they would not, because they would not know what could be cut and what could not be cut.

They could cut employee salaries, perhaps. Could they close the division?

Or would they close a district? Or would they simply cut employees across the board—those needed and those not needed?

Or would they discontinue whole projects? Would they, for example, say the Corps of Engineers has 10 projects and we are just going to stop garrison diversion, for example? They could pick that out if they knew about garrison diversion. How would they know about garrison diversion? Or the Red River project? Or flooding on the Mississippi River? The answer is, they would not know and they would not have the machinery to find out. All they would have is a lawyer who would come up and argue a case on a legal principle, but they do not have the machinery to tell them how to cut. So what are they going to do? I can tell you what they would do, in my view. It is very clear.

They know about transfer payments. You do not have to be an expert to cut Social Security payments. You just enter a simple order and say we are going to cut Social Security payments or retirement payments by x dollars—so much per person, so much percentage per person. It is a mathematical thing. The appropriations and the outlays are 100 percent. It is easy to do.

The same thing is true for taxes.

Mr. President, this is an invitation to the court to order cuts in Social Security and the retirement programs, and to order taxes. How can it be otherwise? How is the court going to know? For example, let us say there is a *Trident* submarine being built that costs \$1 billion. They cost more than that, but let us assume they cost \$1 billion. The first year into that contract the court is not going to know what the termination costs are. They are not going to know how many of those people they can fire immediately in order to save money. They have no way of knowing how to run the Federal Government, and they have no machinery for bureaucrats or Senators to go and give them that information because they do not have the staff to do that. I think each Justice has three or four law clerks, and they are skilled in the law. They are dealing with death penalties and habeas corpus, and all that.

Mr. President, I think it is very, very clear the enforcement mechanism here really involves taxes and Social Security and other retirement payments.

I hear rumors, here on the floor, that there is going to be some amendment which would deprive the court of the power to enforce the amendment. Would that not be a new and interesting wrinkle for the Constitution of the United States, a constitutional amendment which could not be enforced? Mr. President, we might as well put a sense-of-the-Senate resolution into the Constitution. That is silliness. That is a perversion of the Constitution. If it is worthy of being in the Constitution,

then it must be enforced. And if it must be enforced, then you have to know how to enforce it.

Mr. President, we are told on the State level all of the States live under balanced budgets. Two things are wrong with that statement. The first thing is, States define their balanced budget in a totally different way than the United States does. If the United States defined its balanced budget as the States do, we would be balanced too, because they take their capital budget and they do not consider it in the budget, and they only deal with the operating budget on the State level. Every State in the United States would be unbalanced and would be in red ink—all of those who come up and beat their chests and tell us how responsible they are—they would all be unbalanced if they had the same bookkeeping methods that we have.

Would we change to that level of bookkeeping method? I do not know. You can read the language, as I can. The Congress is given the power and the mandate to enforce the article—that is the amendment—by appropriate legislation. Is that appropriate? We would have to wait for the court to tell us. I do not know how long it would take them to figure out whether that is appropriate, to differentiate as the States do between operating budgets and capital budgets. But I assume the Congress would have that power—which means the Congress would have the power, even if the court could enforce it, as they can under the present language—the Congress would have the power to write itself out of the amendment. And I would suppose that would happen.

The second thing wrong with saying that States operate under balanced budgets is that there is a whole body of law by which States avoid balanced budget requirements, even as to their operating budgets. They create taxing districts. They create—in Louisiana at one time, they created the Board of Liquidation of the State Debt. You know, that was separate so it did not involve going through these constitutional prohibitions. I myself was involved in litigation with respect to the Dome Stadium of Louisiana. The issue there was not the balanced budget, but it was a kindred question. The Constitution provided that no bond issued under the Dome Stadium constitutional amendment could be secured by the faith and credit of the State.

It said it just as clear as it could be. And yet they had this method, they created a stadium district which leased the property to the State and the State leased it immediately back, the amount of the lease being the debt service on the bonds. The Supreme Court said that is OK. It was a totally fictitious transaction, but it avoided this constitutional prohibition about the bonds bearing the faith and credit of the State.

Mr. President, you can look in the law books and there is a whole wealth of law about these kind of devices where States have avoided constitutional prohibitions. Would the Congress do that? I do not know, Mr. President. I am saying if they did not do it, then the effect would be to cut Social Security retirement payments and raise taxes. I think the American public would be shocked. Those people out there who say they want a balanced budget amendment, do you think they have in mind the kinds of taxes which it would take?

I calculated recently that it would take more than a doubling of the personal income tax in order to balance the budget this year—more than a doubling of the personal income tax to balance the budget this year. Is that the way we would balance the budget? I do not think it would be a good idea.

I think, in the first place, in addition to having a revolution out there among the people, among the voters—some of those who are for this amendment—I think you would also put this economy into a deep depression, more than a recession. I do not think there is any way you could balance the budget in 1 year. Indeed, if you balanced it over 5 years, you cannot do so without some real pain, some real revenues and some real cuts.

That is what the Clinton reduction plan was all about. It was real pain and real taxes and a lot of people said there were not enough real cuts.

I would like to see what the plan is, the so-called glide path between here and that balanced budget that my friends, the proponents of this amendment, have in mind. Do they have nothing in mind? Are they just going to throw the ball up and wait and see what happens? I think that is it. They will say, "Well, we passed the amendment, now somebody do something about it."

Mr. President, this quest for the magic asterisks, for the painless cut is nonexistent, it cannot happen. There is no such thing. It never has been and never will be that you can cut budgets without cutting budgets, without eliminating things or that you can raise taxes without extracting that money from someone. It just does not happen. Why does someone not tell us what they have in mind and let us vote on it? At least let us get started this year.

If those who are for the balanced budget amendment are really serious about it, I challenge them to put up a budget resolution and a spending plan that begins this year—let us say 5 years. The amendment says it takes effect not before 1999. It is 1994. Give us a 5-year plan and start off with this coming fiscal year with a 20-percent cut. If you are serious, show us where that 20 percent is going to come from, keeping in mind now that the first 20

percent is a lot easier than the last 20 percent. It is like losing weight. That first pound you lose is a lot easier to lose than 20 pounds from now when you are already skinny.

So let them at least give us a start with that first 20 percent in fiscal year 1995. What is it going to be? No, not Social Security. Everyone says, "No, we do not want to touch that radioactive issue called Social Security." Are we talking about civil service retirement? "No, that is akin. That should not be touched." OK, I agree. Taxes? "Oh, we already have too many taxes, retroactive taxes, big increase in taxes; we do not want those."

What the American people want is to cut fraud, waste, and abuse. Mr. President, if fraud, waste, and abuse existed in the amount some people think it does, we would have no problem and it would have been accomplished a long time ago.

This amendment leads inexorably to taxes and big taxes and cuts in Social Security and big cuts in Social Security, and it leads to those cuts that would be ordered by the court because that is all the court would know how to do.

The court does not have an army of hundreds who can interface with the people who are running these agencies. They do not. They have two and three or four law clerks is all they have. It is justice. They do not know how to do anything except cut transfer payments which are outlayed at the 100-percent rate; that is, you can tell exactly where that money is going and you can tell where that tax money is going.

So, Mr. President, those of my colleagues who believe as I do that the Congress needs to face up to its responsibility and cut budgets and say where we are going to cut budgets, and if it is necessary to raise taxes say which taxes we are going to raise and how much and what kind of bill, then I say it is time for the Congress to take that responsibility, and those who are not willing to do that, Mr. President, this balanced budget amendment is no answer to the problem. It is simply going to make the problem worse.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. JOHNSTON. Yes, I yield.

Mr. BYRD. Mr. President, I congratulate the distinguished Senator from Louisiana on the statement that he has just made and also on the stand that he has taken. He mentions the danger, the utter folly of doing something here that would allow the courts, that would result in the courts interjecting themselves into the balancing of Federal budgets.

Does he not also feel that the amendment not only runs the terrible risk of having the judiciary in this country get involved in levying taxes and appropriations, but also, under the amendment, the President, be he Re-

publican or Democrat or Independent, the Executive will decide matters of taxation and appropriations as well, the power of the purse?

The President's advisers would certainly advise him, I should think, not as they have heretofore, that he "has the inherent power as Commander in Chief," but once this amendment is welded into the Constitution, would they not then say, "Well, Mr. President, the Constitution now says that outlays shall not exceed receipts. Therefore, you now have a Constitution that says you have impoundment, rescission, and item veto powers."

He would say, "Well, you must have forgotten, Mr. Senior Counsel. You must have forgotten the 1974 Impoundment Act. That says I cannot impound money."

His counsel would say, "Oh, that was just a statute. Now we have the Constitution which trumps the statute. Now, Mr. President, you have the obligation to make outlays and receipts balance. You now have in the Constitution an amendment that says that you have the power, you have the inherent power, to impound money, to line-item veto, to rescind funds." I would add, may I say to Senator JOHNSTON, you not only have the judiciary, but also the executive branch which would aggrandize legislative powers. And furthermore, if the judiciary were somehow to be excluded by an amendment here, then the pressures would be all the greater on the Chief Executive.

Then his counsel would say, "Well, now, Mr. President, you have in the Constitution an amendment that says the judiciary cannot do it." They are powerless under the language of this amendment. They are powerless to do anything about taxation or to do anything about cutting funding.

"Now, Mr. President, the pressure is even greater. The responsibility is even greater on you. Your duty is even greater to cut funds for defense, for Social Security, for veterans' compensation, for military pay, for military retirement, for Federal employees' pay, Federal employees' retirement. You have the whole field now. You can choose wherever you think you need to, but you have to do something. You took an oath, Mr. President, to uphold the Constitution. And you have that duty.

"Congress, they all honor the Constitution, too, but Senator so-and-so wants to raise taxes in order to make outlays and receipts balance. But another Senator wants to cut the military. And then there is another group of Senators that want to cut domestic discretionary. Then there is another group that want to cut Social Security and veterans' benefits. They all want to honor this new constitutional amendment, but we have no mechanism to coordinate their differences and come up with a majority.

"So, Mr. President, you took the oath. And that Constitution is the basic law of the land. That is positive law. It is higher than any statutes. You have that responsibility."

My question then, may I say to my friend, Senator JOHNSTON—he is quite right about the courts and not only the possibility but the likelihood of the courts intervening in this—does he not also feel that the danger to the constitutional system of checks and balances and separation of powers is just as great when the executive gets into this situation and takes the steps that his advisers would tell him to take, and to keep his oath as President to uphold the Constitution he too would be saying what taxes ought to be increased, what taxes ought to be line-itemed out of revenue bills, what taxes ought to be negated, what funds ought to be cut, what funds ought to be impounded, what funds ought to be rescinded? Is that not the case?

Mr. JOHNSTON. Mr. President, my distinguished colleague with his piercing legal mind and his reverence for the Constitution has identified one of the core problems, which is that this amendment would not just rewrite budgetary matters in this country; it rewrites the whole formulation of the balance of power.

Now, what the extent of power of the Executive would be under this amendment, the full limits of that we cannot know. We would have to wait for years for the Court to decide about whether the President has the impoundment power, the impoundment duty; how can he exercise that; must he do so across the board or can he go in and eliminate individual projects; can he, for example, take all the money out of Social Security or must he treat all the retirement programs alike? This would be enormous power and discretion in the Executive.

The people out there say, well, we vote for the President and we can talk to the President. I wonder how my constituents who call me up and call their Congressman up—and they are able to get us and able to write us—would feel about writing the President to come out and fix a levee on the Red River. I wonder how they would feel about calling the President to get a Federal building or whatever in their district.

The point of the matter is that the President with his power of the bully pulpit, with his enormous knowledge, particularly this President, about everything that goes on cannot know all that detail and the people could not get to him. It would be an imperial—not just an imperial Presidency; it would be an Executive power that rewrites the Constitution. It would be greater power than the President of France has. I guess the President of France has among the democracies probably more unfettered authority to do things than most anybody.

Now, some people might like that. But, Mr. President, I say to my colleague that it would totally rewrite our Constitution, to rearrange that kind of power. It would be the Supreme Court not only ordering, in my judgment, increases in taxes and cuts in Social Security, because those are the only things that they have the ability to understand—I do not mean the smarts to understand; I mean they do not have the staff to understand how these other agencies work—but in addition to ordering those taxes and those cuts in Social Security, they would be acting as a referee on the limits of power of the President under this new amendment.

The PRESIDING OFFICER. The Chair advises the Senator from Louisiana that under the consent agreement Senators are recognized for up to 10 minutes in morning business. The Senator from Louisiana has just consumed his 10 minutes.

Mr. BYRD. I thank the distinguished Senator. I see the distinguished Senator from Kansas [Mrs. KASSEBAUM] is in the Chamber. I would pursue this further but for now I will not.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent to speak for up to 10 minutes.

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

Mrs. KASSEBAUM. Mr. President, I rise in strong opposition to the proposed constitutional amendment to balance the budget. This is an issue we have debated before. I opposed it then. I oppose it now. I may be wrong, Mr. President, but at least I have been consistently wrong. I still believe this remains a sham. I would like to go through a little bit of the history of the debate that I think is revealing and consider three events.

In 1982, the Senate passed a constitutional amendment to balance the budget by 69 votes. It failed in the House of Representatives at that time. Only 2 years later, I helped lead an effort on the Senate floor to freeze Federal spending across the board for 1 year. This included the COLA's, it included everything for just 1 year. We got 33 votes. That is revealing, I think, Mr. President, that 69 Senators would vote to declare in the Constitution that the budget should be balanced but fewer than half that many would vote even to temporarily stop the growth of the budget.

To put it another way, two-thirds of the Members of this body thought amending the Constitution was less painful than to freeze spending.

In 1986, the Senate again voted on a balanced budget amendment, this time narrowly rejecting it with 66 votes in

favor. One year later, I again helped propose a 1-year budget freeze. This time we got only 25 votes. Nearly two-thirds of the Senate would amend the constitution but only one-fourth would freeze the budget for 1 year.

Two weeks ago, the Senate voted on a package to cut \$94 billion in Federal spending over the next 5 years. This Kerrey-Brown amendment would have been painful. It would have reduced certain Medicare payments, deferred cost-of-living adjustments for military retirees. It would have cut our own pay and cut or eliminated dozens of other Federal programs. It was too painful for most Senators and it got only 31 votes, including mine.

Today, we are again preparing to vote on a balanced budget amendment to the Constitution of the United States.

I predict that, once again, a vote to promise restraint will win more than double the support of a vote to restrain.

Mr. President, there is an enormous gap between what we say must be done and what we are willing to do. I do not know of one Senator—not one—who said, "I would have voted for that budget freeze or for that Kerrey-Brown package if only a constitutional amendment had told me to." No, Mr. President, Senators opposed those measures because they were too politically painful. But those were pin pricks compared to the pain that will be needed to balance the budget now. Let me describe that pain.

The tough choices necessary to balance the budget today go far beyond merely freezing the growth of Federal programs, as we proposed in 1984 and 1987. It will require deep cuts or steep new taxes. In the reconciliation law passed last August, Congress promised to find roughly \$430 billion in deficit reduction through 1998. Beyond that, the Congressional Budget Office has issued an illustrative scenario showing that we would need roughly \$580 billion in additional deficit reduction to balance the budget by 2001, which will be the requirement under the balanced budget amendment. These numbers closely parallel a separate projection made by the Congressional Research Service. In other words, we must find \$1 trillion in deficit reduction over the next 6 years to balance the budget by 2001.

Yet, let us not forget the Kerrey-Brown amendment that we voted on only 2 weeks ago. It would have cut \$94 billion over 5 years—one-tenth of what will be needed to balance the budget by this amendment's target date. And it got only 31 votes.

The White House has turned this painful truth into scare tactics. In hearings last week, administration witnesses testified of gloom-and-doom hardship that would befall citizens if this amendment passes. The adminis-

tration has issued frightening State-by-State accounts of tax increases and service cuts that could result.

These scare tactics describe the tough choices necessary to balance the Federal budget. That is not the issue here—the issue is whether to amend the Constitution. The President opposes this amendment because he fears it might work; I oppose it because I am convinced it cannot.

Many support this amendment out of frustration. If this will not work, they ask, then what will? I do not have an easy answer to that, Mr. President, because there is none. But I do know that pandering to fears or falsely casting simple solutions does nothing to help us make tough choices.

Passing this do-nothing amendment will let us proclaim victory, vent built-up public pressure, and withdraw once again from the fight for a balanced budget. This amendment is a license to spend. It does not call for a balanced budget until at least 2001. The promise it makes today is that tough choices must be made—tomorrow. And we know from experience that in the world of the Federal budget, tomorrow never comes.

Mr. President, opposing a constitutional amendment that would call for balancing the Federal budget is risky business for those of us in public office. The amendment has taken on a symbolic significance that far surpasses any possible economic benefits.

But this debate should not be about symbolism or about political security. It should be about solving this Nation's addiction to debt and, specifically, whether amending our Constitution can wean us from that addiction. It cannot.

Let me make clear that I fully agree with my colleagues who believe that we must balance the budget and begin paying off our debt. I have worked with many of them over the years on sincere proposals to reduce spending or to reorganize and streamline programs. We have had more failures than successes, but we keep trying.

But I simply do not believe amending the Constitution will do one thing to balance the budget. If and when the Federal budget is ever again balanced, it will not be because of constitutional prohibitions against deficits. It will be because the public—and the Congress, which reacts to public opinion—stops believing in the free lunch.

Overwhelming majorities in this country oppose the steps necessary to achieve a balance budget. A majority opposes significant cuts in Social Security or other retirement programs; a majority opposes deeper cuts in national defense.

Let me just suggest, Mr. President, that we face an immediate problem because we have to find at last \$10 billion in a forecasted shortfall to meet our budgeted needs in the current defense spending.

A majority opposes cuts in health care including Medicare. We cannot default on interest payments on the national debt. Taken together, these spending categories represent well over three-fourths of all Federal spending.

At the same time, a majority also opposes higher taxes to pay for these services. The numbers that majorities support just do not add up. As long as the public calls for mutually exclusive goals, we will respond. Circumvention of the balanced budget amendment will not only be possible, it will be routine.

The most obvious way to avoid making those tough choices would be to do precisely what the amendment provides—waive its provisions by a three-fifths vote in Congress. I have no doubt, Mr. President, that Congress will invoke that three-fifths provisions frequently to waive a balanced budget requirement. We need look no further than the current procedures used under the Budget Act, which allows points of order to be lodged against certain spending provisions. Yet, it is not unusual to waive those points of order simply because Senators agree with the underlying policy objectives—and we waive them by three-fifths vote, just as we would under this amendment.

Even if we do not waive the amendment by vote, Congress will find other ways to circumvent it. The possibilities are endless. As just one example, consider the manner in which States have handled their own balanced-budget requirements.

My own State of Kansas, Mr. President, has a cash-basis law, which is similar to many State balanced-budget requirements. That law is dear to my heart, not only because it has given us responsible State government but also because it was enacted when my father was Governor. Since May 1, 1933, Kansas government agencies—State and local—have been required to operate on a cash basis, incurring debt only by referendum or for expenditures made by specific items.

Let me emphasize that last part, Mr. President—Kansas can borrow money for specific projects, and we often do. Our State issues bonds for highway construction, school renovation, sewer improvements, and various other infrastructure projects. In essence, we have created a capital-outlay budget, as have many other States. Our State's operating budget must balance, but we are constantly in debt to finance long-term capital projects. That is true with most States.

I believe Congress will do much the same thing to avoid the requirements of this amendment. We will redefine "outlays"—a crucial term used but not defined in the amendment—to set up separate funds, such as for capital outlays or for the savings and loan bailout, and use word games to avoid counting those expenses. We will move items off-budget to make the numbers

work on paper—but with no real effect on our indebtedness.

Indeed, we will surely move many items off the Federal budget entirely—and onto the budgets of the States. As Federal budget constraints have grown increasingly tighter over the past two decades, Congress has enacted a growing volume of legislation that orders business or State-and-local governments to act but provides no Federal money.

Within the past year there has been a backlash against these unfunded mandates. Indeed that is what they are, and they are troubling, Mr. President. Yet, nothing in this amendment prohibits this sort of mandate. I am convinced that its passing would result in a new way of passing the buck. These are but two of many ways that I think, in the creativeness and inventiveness of the U.S. Congress, that we, in the absence of political will to make tough choices, will circumvent a balanced budget amendment. And in the process, I suggest it will trivialize the trust in our Constitution.

A constitutional prohibition against deficits is not going to reduce the public demand for services or the public aversion to taxes; nor is it going to give Congress the courage to act against the mandate of the electorate. If Congress had the courage to balance the budget, and if the Nation agreed on how that should be done, we would have no need for a constitutional amendment. In the absence of such courage, an amendment would simply prove an embarrassment to our Nation.

I do not intend to sound like a scold, but I have grave reservations about this course of action, and I hope that the public will think carefully about what is involved in an action such as this proposed constitutional amendment.

I yield the floor.

(Ms. MOSELEY-BRAUN assumed the chair.)

Mr. BYRD. Will the Senator yield before she leaves?

Mrs. KASSEBAUM. Yes.

Mr. BYRD. Madam President, I have had the pleasant opportunity to serve with Senator KASSEBAUM for several years now, and I have observed her on many occasions when there were critical, controversial, very important votes in the Senate; and I have observed on many occasions that she has taken a path and chosen the unpopular approach and voted her convictions—after very careful study. I have noted that she reaches her decisions in matters of this kind after the most careful thought and reflection, weighing the pros and cons, and finally making her decision. She has the courage to stand up for her convictions, and I salute her.

There was another Senator, I believe, from Kansas, whom we often hear of as having demonstrated great courage during the impeachment trial of An-

drew Johnson, and there was a Senator from West Virginia who also took an unpopular course in that instance—Peter Van Winkle. Peter Van Winkle, in voting not to convict Andrew Johnson, sealed his own political doom. He never came back to the Senate. He was never successful in politics again. I have often wondered why he has not also been recognized as one of those Senators who demonstrated great courage.

Again, here is a Senator from Kansas, who has the intellectual honesty to carefully examine a matter and then reach what she thinks is the right decision and she takes her stand, regardless of its popularity or unpopularity. I admire her and congratulate her for her courage.

Mrs. KASSEBAUM. Madam President, I will respond to the Senator from West Virginia, whose leadership on constitutional matters is of the foremost guidance to many of us and to the Nation. I just suggest that I hope both the Senator from West Virginia and the Senator from Kansas have not sealed their political doom.

I yield the floor, Madam President.

Mr. CRAIG. Madam President, let me also—although I very much disagree with the Senator from Kansas—recognize without question her integrity as a Senator and as a legislator and her commitment to the service to her State in the last good number of years.

I would have hoped she would have spoken differently and as passionately about bringing an end to a process that is accumulating in our country at such an accelerated rate that I think today we are amiss if we fail to recognize what has occurred during my tenure in the U.S. Congress, which is considerably less than the tenure of the Senator from Kansas.

When I came to the House in 1981 and the deficit was somewhere in the \$40 or \$50 billion range, and the Federal debt was \$1.2 trillion, within about 12 months of service in the Congress it became very obvious to me that the appetite to spend here was so great that if we did not change the environment in which the budgeting process went forward, in which special interest groups preyed against us, or to us, or on us, as to expending the public Treasury for their benefits and their interests' benefits, that we some day would get into trouble in this country of a kind that we could not just summarily pass by.

I have joined in budget freezes. I, too, voted for the Kerrey-Brown amendment for a \$54 billion cut. I have never in my 14 years failed to vote for a budget cut. But what is the answer then to all of that effort? The Senator from Kansas has exerted that effort, and so have I. Our credentials on being fiscally responsible are probably as good as anybody's. Here is the answer: We no longer have a \$60 billion deficit; it is \$200 billion. We no longer have a \$1.2

trillion debt; we now have a \$4.5 trillion debt.

I do believe that the day has come when we can no longer stand here and say, "but I did all the right things. I voted to cut the budget." Because history says—and history is not often-times written in just a decade—but in the history I have been involved in, 14 years, the writing is very clear that this Congress cannot, nor will it try to, curtail its appetite to spend. Within a very short time after I had been here, the famous Gramm-Rudman-Hollings bill passed—a pathway to fiscal sanity. I voted for it, and I suspect the Senator from Kansas did. She indicates she did not. I will be happy to yield.

Mrs. KASSEBAUM. Madam President, at the time I expressed reservations about the Gramm-Rudman-Hollings bill because it excluded some significant spending. In fact, a major portion of the spending was excluded and I felt Gramm-Rudman-Hollings would not, as a matter of fact, accomplish what it was set out to do.

Mr. CRAIG. That was a concern about Gramm-Rudman-Hollings. I voted for it because it was one of those things I could reach for on cuts, and it did for a time.

The rate of growth slowed. If you were to graph it, it would have been a slight downward dip in the rate of Federal expenditure, although budgets were still larger the next year than they were the year before. Then times got tough. Or, I should say, times did not get tough, decisions got tough. Politicians got the heat put on them and they squirmed and they took just a little more off Gramm-Rudman-Hollings than had been the year before, and we know the rest of the story.

Gramm-Rudman-Hollings is now history. It is one of about six documents that are now gathering dust on the shelves of some library as to the good intentions of a Congress failed, and the debt clock ticks.

And what is the end result? Well, many are saying the Congress will not respond until there is a cataclysmic financial event where we no longer can pay for our bonds, where we no longer can accommodate or respond to our indebtedness. And that is when Congress will change things.

Let me tell you what happened, though, that is unrecorded, that is now the wolf at the door of the average American family, because there is something happening out there as a result of this profligate spending of our Government.

Starting in 1976 the average income of the American family as it related to buying power began to decline, and it has declined every year since then.

You say: "Senator CRAIG, how can that be? Families are making more money today than they ever were."

We are talking about buying power. From 1976 to 1986, dramatic things hap-

pened in the American family. The other spouse went to work. Why? Partly because he or she wanted to and found their fulfillment in the workplace, but also because they had to because their ability to pay for that which was average to the American family was rapidly declining.

I believe and economists believe that part of that and a major part of it was that the Federal Government was consuming more and more money, making it more and more difficult as a family to survive, and not rewarding the family as it had through past tax law. And we have seen the end result—or the progressive result, it is not the end result—of a \$4.35 trillion debt.

So there are very real consequences to what we do. The cataclysmic event has not occurred because we are still borrowing. We are allowed to borrow. We have not forfeited. We are not yet bankrupt. But we all know that a \$200-plus billion deficit at 1980 interest rates would not be \$200 billion today; it would be \$500 or \$600 billion. And we as a Government would be in astronomical trouble.

Alan Greenspan now once again has to use monetary policy to try to begin to manipulate the economy of this country because fiscal policy really is not working very well, and that is what we are in charge of.

Let us be cautious; let us be concerned; and let us not pass go, as we have passed go all through the decade of the eighties and now into the decade of the nineties, with one cut after another cut after another cut, most of them never passed.

We passed a great budget bill last year. I opposed a big tax bundle. Why? Because the cuts were promises. Bill Clinton did not cut \$500 billion out of the budget. He promised to cut it in the outyears. It is yet to be done. It has to be done by this Congress.

Will it be done? Probably not as much as must be done to meet those budgetary targets. And even if we meet them, we are still generating over \$200 billion every year in deficits.

In the Bill Clinton years, and I respect this President for his effort, but in his years as President, in the projected 5.5- to 6-year budget that he has laid before the Congress of the United States, there will be a new debt of \$1.94 trillion.

Ronald Reagan gets blamed for all the debt structure that we have right now, which in his 8 years as President he generated by his budgets. He has to take the blame for it. They were his budgets. NANCY KASSEBAUM from Kansas and I either voted for them or against them, but we worked with them. They are called the Reagan years, the Reagan budgets. How much total debt did his budgets accumulate? \$1.8 trillion in 8 years, versus a Bill Clinton budget of 6 years of \$1.9 trillion. That is not a blame on Bill Clin-

ton, because he inherited a debt structure that is requiring over \$200 billion a year just to finance.

Let us stop passing go. Let us do not play the horror games that were played here on the floor a few moments ago about Social Security being slashed. Who says it is going to be slashed? I would not vote for that. The Senator from Kansas would not vote for that.

We have to make budget priorities, though, where we can stand here on the floor of the U.S. Congress and say, prior to passage of this amendment, that this will be cut and that will be cut. The Appropriations Committee has not acted. We do not have an appropriations bill on the floor to say where those resources would go or where they would not go.

So let us quit using scare tactics and look at the real fear, and the real fear is \$4.5 trillion of debt and a \$200 billion annualized finance charge.

Madam President, today in Roll Call, 250 economists endorsed the balanced budget amendment. I ask unanimous consent that that article be printed in the RECORD.

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

250 ECONOMISTS ENDORSE BALANCED BUDGET AMENDMENT

It is time to acknowledge that mere statutes that purport to control federal spending or deficits have failed.

It is time to adopt constitutional control through a Balanced Budget Amendment. In supporting such an amendment, Congress can control its spending proclivities by setting up control machinery external to its own internal operations, machinery that will not be so easily neglected and abandoned.

Why do we need the Balanced Budget Amendment now, when no such constitutional provision existed for two centuries? The answer is clear. Up until recent decades, the principle that government should balance its budget in peacetime was, indeed, a part of our effective constitution, even if not formally written down. Before the Keynesian-inspired shift in thinking about fiscal matters, it was universally considered immoral to incur debts, except in periods of emergency (wars or major depressions). We have lost the moral sense of fiscal responsibility that served to make formal constitutional constraints unnecessary. We cannot legislate a change in political morality; we can put formal constitutional constraints into place.

The effects of the Balanced Budget Amendment would be both real and symbolic. Elected politicians would be required to make fiscal choices within meaningfully-constructed boundaries; they would be required to weigh predicted benefits against predicted tax costs. They would be forced to behave "responsibly," as this word is understood by the citizenry, and knowledge of this fact would do much to restore the confidence of citizens in governmental processes.

It is important to recognize that the Balanced Budget Amendment imposes procedural constraints on the making of budgetary choices. It does not take away the power of the Congress to spend or tax. The amendment requires only that the Congress and the Executive spend no more than what

they collect in taxes. In its simplest terms, such an amendment amounts to little more than "honesty in budgeting."

Of course, we always pay for what we spend through government, as anywhere else. But those who pay for the government spending that is financed by borrowing are taxpayers in future years, those who must pay taxes to meet the ever-mounting interest obligations that are already far too large an item in the federal budget. The immorality of the intergenerational transfer that deficit financing represents cries out for correction.

Some opponents of the Balanced Budget Amendment argue that the interest burden should be measured in terms of percentage of national product, and, so long as this ratio does not increase, all is well. This argument is totally untenable because it ignores the effects of both inflation and real economic growth. So long as government debt is denominated in dollars, sufficiently rapid inflation can, for a short period, reduce the interest burden substantially, in terms of the ratio to product. But surely default by way of inflation is the worst of all possible ways of dealing with the fiscal crisis that the deficit regime represents.

Opponents also often suggest that Congress and the Executive must maintain the budgetary flexibility to respond to emergency needs for expanding rates of spending. This prospect is fully recognized, and the Balanced Budget Amendment includes a provision that allows for approval of debt or deficits by a three-fifths vote of those elected to each house of Congress.

When all is said and done, there is no rational argument against the Balanced Budget Amendment. Simple observation of the fiscal record of recent years tells us that the procedures through which fiscal choices are made are not working. The problem is not one that involves the wrong political leaders or the wrong parties. The problem is one where those whom we elect are required to function under the wrong set of rules, the wrong procedures. It is high time to get our fiscal house in order.

We can only imagine the increase in investor and business confidence, both domestic and foreign, that enactment of a Balanced Budget Amendment would produce. Perhaps even more importantly, we could all regain confidence in ourselves, as a free people under responsible constitutional government.

Dr. James Buchanan, Nobel Laureate—Economics, George Mason University; Dr. Ogden O. Allsbrook, Jr., University of Georgia; Dr. Sheila Amin, Gutierrez de Pineres, University of Arkansas; Dr. Robert V. Andelson, Auburn University; Dr. Annelise Anderson, Hoover Institution Stanford University; Dr. Martin Anderson, Hoover Institution Stanford University; Dr. Terry L. Anderson, Montana State University; Dr. Peter H. Aranson, Emory University; Dr. D.T. Armentano, University of Hartford; Dr. Charles W. Baird, California State University, Hayward; Dr. Charles Baker, Sr., Northeastern University; Dr. Badi H. Baltagi, Texas A & M University; Joseph L. Bast, Heartland Institute; Dr. Nicholas Beadles, The University of Georgia; Dr. Richard Bean, University of Houston; Dr. John H. Beck, Gonzaga University; Dr. Joseph A. Bell, Southwest Missouri State University; Dr. Don Bellante, University of South Florida; Dr. James T. Bennett, George Mason University; Dr. Bruce Benson, Florida State University; Dr. John E. Berthoud, Amer. Legislative Exchange Council; Dr. Walter Block, College of the Holy Cross; Dr. Peter J.

Boettke, New York University; Dr. Cecil E. Bohanon, Ball State University; Dr. Thomas E. Borcherding, Claremont Graduate School; Dr. Samuel Bostaph, University of Dallas; Dr. Donald J. Boudreaux, Clemson University; Dr. William Breit, Trinity University (Texas); Dr. Dennis Brennan, Harper College; Dr. Charles R. Britton, University of Arkansas; Dr. Edgar K. Browning, Texas A & M University; Dr. Barry Brownstein, University of Baltimore; Dr. Herbert Brubel, Simon Fraser University (Burnaby, B.C., Canada).

Dr. Richard C. K. Burdekin, Claremont McKenna College & Claremont Graduate School; Dr. Glenn Campbell; Hoover Institution, Stanford University; Dr. P. Rao Chatrathi, College of Business & Public Administration, Old Dominion University; Dr. David K. W. Chu, College of the Holy Cross; Dr. J. R. Clark, University of Tennessee-Chattanooga; Dr. Will Clark, University of Oklahoma; Dr. Kenneth W. Clarkson, Law & Economics Center, University of Miami; Dr. R. Morris Coats, Nicholls State University; Dr. Richard B. Coffman, University of Idaho; Dr. Elchanan Cohn, University of South Carolina; Dr. John W. Cooper, The James Madison Institute for Public Policy Studies; Dr. Michael Copeland, Political Economy Research Center; Dr. John F. Copper, Rhodes College; Mr. Wendell Cox, Wendell Cox Consultancy; Dr. Mark Crain, George Mason University; Dr. Ward S. Curran, Trinity College (Hartford, CT); Dr. Albert L. Danielson, University of Georgia; Dr. Patricia Danzon, The Wharton School, The University of Pennsylvania; Dr. Audrey Davidson, University of Louisville; Dr. Otto A. Davis, Carnegie Mellon University; Dr. Ted E. Day, University of Texas at Dallas; Dr. Henry Demmert, Santa Clara University; Dr. Arthur T. Denzau, Claremont Graduate School; Dr. Arthur De Vany, University of California, Irvine; Dr. Arthur M. Diamond, Jr., University of Nebraska at Omaha; Dr. Charles Diamond, University of Louisville; Dr. Thomas J. DiLorenzo, Loyola College (Baltimore, MD); Dr. James A. Dorn, Cato Institute; Dr. William M. Doyle, University of Dallas; Dr. Gerald P. Dwyer, Jr., Clemson University; Dr. Thomas R. Dye, Florida State University; Dr. Ross D. Eckert, Claremont McKenna College & Claremont Graduate School; Dr. Michael R. Edgmand, Oklahoma State University.

Dr. Robert B. Ekelund, Jr., Auburn University; Dr. Jerry Ellig, George Mason University; Dr. Kenneth G. Elzinga, University of Virginia; Dr. David Emanuel, University of Texas at Dallas; Dr. T.W. Epps, University of Virginia; Dr. Edward W. Erickson, North Carolina State University; Dr. David I. Fand, George Mason University; Dr. David J. Faulds, University of Louisville; Dr. Paul Feldstein, Graduate School of Management, University of California, Irvine; Dr. Burton W. Folsom, Murray State University; Dr. John Formby, University of Alabama; Dr. Andrew W. Foshee, McNeese State University; Dr. William J. Frazer, Jr., London School of Economics; Dr. Jann E. Freed, Central University of Iowa; Dr. Lowell Gallaway, Ohio University; Dr. James F. Gatti, University of Vermont; Dr. David E.R. Gay, University of Arkansas; Dr. Martin Geisel, Owen Graduate School of Management, Vanderbilt University; Dr. William D. Gerdes, North Dakota State University; Dr. Micha Gisser, The University of New Mexico; Dr. Fred R. Glahe, University of Colorado; Dr. Paul C. Goelz, A.H. Meadows Center, St. Mary's University; Dr. Scott Goldsmith, University of Alaska, Anchorage; Dr. Phillip D. Grub, George Washington University; Dr.

Gerald Gunderson, Trinity College (Hartford, CT); Dr. James Gwartney, Florida State University; Dr. Gottfried Haberler, American Enterprise Institute; Dr. Randy H. Hamilton, University of California, Berkeley; Dr. Claire Hammond, Wake Forest University; Dr. J. Daniel Hammond, Wake Forest University; Dr. Ronald W. Hansen, William E. Simon Graduate School of Business, University of Rochester; Dr. John R. Hanson II, Texas A & M University; Dr. Lowell Harris, Columbia University; Dr. Will C. Heath, University of Southwestern Louisiana.

Dr. Robert F. Herbert, Auburn University; Dr. Dale M. Heien, University of California, Davis; Dr. John M. Heineke, Santa Clara University; Dr. Ron Heiner, George Mason University; Dr. A. James Heins, University of Illinois, Urbana-Champaign; Dr. Davis R. Henderson, Hoover Institution, Stanford University; Dr. Alan Heslop, Claremont McKenna College; Dr. Robert Higgs, Seattle University; Dr. P.J. Hill, Wheaton College (Wheaton, IL); Dr. Mark Hirschey, University of Kansas; Dr. Randall G. Holcombe, Florida State University; Dr. Steven Horwitz, St. Lawrence University; Dr. James L. Hudson, Northern Illinois University; Dr. David Huettner, University of Oklahoma; Dr. William J. Hunter, Marquette University; Dr. Laurence R. Iannaccone, Santa Clara University; Dr. Thomas R. Ireland, University of Missouri at St. Louis; Dr. Joseph M. Jadow, Oklahoma State University; Dr. Gregg A. Jarrell, William E. Simon Graduate School of Business Administration, University of Rochester; Dr. Jerry B. Jenkins, Sequoia Institute; Dr. M. Bruce Johnson, University of California, Santa Barbara; Dr. Ronald N. Johnson, Montana State University; Dr. Thomas Johnson, North Carolina State University; Dr. David L. Kaserman, Auburn University; Dr. W.F. Kiesner, Loyola Marymount University-Los Angeles; Dr. Robert Kleiman, Oakland University; Dr. Daniel Klein, University of California, Irvine; Dr. David C. Klingaman, Ohio University; Dr. Charles R. Knoeber, North Carolina State University; Dr. Michael I. Krauss, George Mason University; Dr. David Kreutzer, James Madison University; Dr. Michael Kurth, McNeese State University; Dr. David N. Laband, Salisbury State University; Dr. Everett C. Ladd, University of Connecticut.

Dr. J. Clayburn LaForce, Anderson School of Management UCLA; Dr. William E. Laird, Florida State University; Dr. Harry Landreth, Centre College; Dr. Dwight R. Lee, The University of Georgia; Dr. Kenneth Lehn, University of Pittsburgh; Dr. Stan Liebowitz, University of Texas at Dallas; Dr. Cotton Lindsay, Clemson University; Dr. Charles A. Lofgren, Claremont McKenna College; Dr. Dennis E. Logue, Tuck School, Dartmouth College; Dr. James R. Lofthian, Fordham University; Dr. Robert F. Lusch, University of Oklahoma; Dr. Rufus Ashley Lyman, University of Idaho; Dr. Paul W. MacAvoy, Yale University; Dr. Paul Malatesta, University of Washington; Dr. Yuri Maltsev, Carthage College; Dr. Allan B. Mandelstamm, Virginia Polytechnic Institute & State University; Dr. J. Stanley Marshall, The James Madison Institute; Dr. John Mathys, DePaul University; Dr. Merrill Matthews, Jr., National Ctr. for Policy Analysis; Dr. Margaret N. Maxey, The University of Texas at Austin; Dr. Thomas H. Mayor, University of Houston; Dr. Donald McCloskey, University of Iowa; Dr. Robert E. McCormick, Clemson University; Dr. Paul W. McCracken, University of Michigan; Dr. Roger E. Meiners, University of Texas at Ar-

lington; Dr. Larry J. Merville, University of Texas at Dallas; Dr. John H. Moore, George Mason University; Dr. Stephen Moor, The Cato Institute; Dr. John C. Moorhouse, Wake Forest University; Dr. Laurence S. Moss, Babson College; Dr. J. Carter Murphy, Southern Methodist University; Dr. Charles Murray, American Enterprise Institute; Dr. Gerald Musgrave, Economics America, Inc.; Dr. Ramon H. Myers, Hoover Institution, Stanford University.

Dr. Sheridan Nichols, American Enterprise Forum; Dr. William A. Niskanen, The Cato Institute; Dr. Geoffrey E. Nunn, San Jose State University; Dr. Tim Opler, Southern Methodist University; Dr. Dale K. Osborne, University of Texas at Dallas; Dr. Allen M. Parkman, Anderson School of Management University of New Mexico; Dr. E.C. Pasour, Jr., North Carolina State University; Dr. Judd W. Patton, Bellevue College; Dr. Ellen Frankel Paul, Bowling Green State University; Dr. William Peirce, Case Western Reserve University; Dr. Steve Pejovich, Texas A & M University; Dr. Sam Peltzman, University of Chicago; Dr. Charles R. Plott, California Institute of Technology; Dr. Jeffrey Pontiff, University of Washington; Dr. Philip K. Porter, University of South Florida; Dr. Barry W. Poulson, University of Colorado; Dr. Jan S. Prybyla, Pennsylvania State University; Dr. Gary M. Quinn, St. Vincent College; Dr. Alvin Rabushka, Hoover Institution Stanford University; Dr. Donald P. Racherter, Central University of Iowa; Dr. Robert Reed, University of Oklahoma; Dr. William Reichenstein, Baylor University; Dr. Barrie Richardson, Frost School of Business Centenary College; Dr. James R. Rinehart, Francis Marion University; Dr. Mario J. Rizzo, New York University; Dr. Jerry Rohacek, University of Alaska, Anchorage; Dr. Simon Rottenberg, University of Massachusetts, Amherst; Dr. James Roumasset, University of Hawaii; Dr. Roy J. Ruffin, University of Houston; Dr. John Rutledge, Rutledge & Company, Inc.; Dr. Joel W. Sailors, University of Houston; Dr. Katsuro Sakoh, Institute for Pacific Studies; Dr. Thomas R. Saving, Texas A&M University; Dr. David Schap, College of the Holy Cross.

Dr. Loren C. Scott, Louisiana State University; Dr. G. William Schwert, William E. Simon Graduate School of Business Administration University of Rochester; Dr. Gerald W. Scully, University of Texas at Dallas; Dr. Richard T. Selden, University of Virginia; Dr. Larry E. Shirland, University of Vermont; Dr. William F. Shughart II, University of Mississippi; Dr. Randy T. Simmons, Utah State University; The Honorable William E. Simon, Former United States Secretary of the Treasury; Dr. Gene R. Simonson, California State University, Long Beach; Rev. Robert A. Sirico, CSP, The Acton Institute For The Study of Religion and Liberty; Dr. Daniel Slottje, Southern Methodist University; Dr. William Gene Smiley, Marquette University; Dr. Barton A. Smith, University of Houston; Dr. Lowell C. Smith, Nichols College; Dr. David L. Sollars, Auburn University, Montgomery; Dr. John C. Soper, John Carroll University; Dr. Frank G. Steindl, Oklahoma State University; Dr. James A. Stever, University of Cincinnati; Dr. Hans R. Stoll, Financial Markets Research Center Vanderbilt University; Dr. Richard L. Stroup, Montana State University; Dr. W. C. Stubblebine, Claremont McKenna College & Claremont Graduate School; Dr. David J. Teece, University of California, Berkeley; Dr. Clifford F. Thies, Shenandoah University; Dr. Henry Thompson, Auburn University; Dr. Walter N. Thurman, North Carolina

State University; Dr. Richard Timberlake, University of Georgia; Dr. Robert D. Tollison, George Mason University; Dr. Robert H. Trent, University of Virginia; Dr. Charlotte Twilight, Boise State University; Dr. Jon G. Udell, University of Wisconsin—Madison; Dr. Hendrik van dem Berg, University of Nebraska; Dr. Terry Wm. Van Allen, Oregon Health Sciences University.

Dr. T. Norman Van Cott, Ball State University; Dr. Charles Van Eaton, Hillsdale College; Dr. Karen I. Vaughn, George Mason University; Dr. Richard Vedder, Ohio University; Dr. George J. Viksnins, Georgetown University; Dr. Warren R. Wade, North Park College; Dr. Richard E. Wagner, George Mason University; Dr. Alan Rufus Waters, California State University, Fresno; Dr. Bernard L. Weinstein, University of North Texas; Dr. John T. Wenders, University of Idaho; Dr. E. G. West, Carleton University (Ottawa, Canada); Dr. Lawrence H. White, University of Georgia; Dr. G. C. Wiegand, Southern Illinois University; Dr. Thomas D. Willett, Claremont Graduate School & Claremont McKenna College; Dr. Walter E. Williams, George Mason University; Dr. Michael K. Wohlgenant, North Carolina State University; Dr. Alexander Worniak, Catholic University of America; Dr. Gene C. Wunder, School of Business, Washburn University; Dr. Thomas L. Wyrick, Southwest Missouri State University; Dr. Bruce Yandle, Clemson University; Dr. Keith M. Yanner, Central University of Iowa; Dr. Steven Ybarrola, Central University of Iowa; Dr. Jerrold L. Zimmerman, William E. Simon Graduate School of Business Administration, University of Rochester; Dr. Thomas S. Zorn, University of Nebraska.

Mr. CRAIG. Madam President, those economists are representing almost every major economic school in the United States. They are not politicians. They are not legislators. They are not crafters of a constitutional amendment. That is not their business. Their business is to crunch numbers, to look at the whole of the U.S. economy in a microsense or macrosense and say: Here is what it is, and here is what it is going to do.

What they are saying is that we are in trouble, and they are endorsing a balanced budget amendment. Why? As a court of last resort. Maybe some of them are there. But I think most of them really do recognize the fact, as the Senator from Kansas and I recognize, that what we have done is not working, that there is without question, without any measurement of the mind or the imagination, the fact that we have failed and we are continuing to fail. And the debt gets bigger and the obligation on future generations becomes astronomical.

Even this administration admits that a child born in 1994 must pay 82 percent of his or her gross pay over their lifetime to finance Government. That is a testimony of tragedy. Without question, it is. And so, we are a Third World nation. Oh, we have beautiful Government buildings and we have millions of Federal employees. But the average taxpaying citizen could well begin to live as if he or she were living in a Third World nation, with no ability to

spend and no ability to provide a roof over their head, and most importantly no ability to say to their children: You are going to live in a world, in an environment that was better than the one I lived in, because that has always been the promise of every generation of Americans, to be able to say we have made a better world for our children.

Today, we are not doing that. The world we craft out of the public policy that is created on the floor of this Senate is saying that the world will be worse—not that we do not care, not that we are not going to try to have a new health care system, not that we are not going to try to address the people who are out on the streets and the people who are truly in need—but for the masses who pay the bills, the world will be worse. Or it will be less from a standpoint of opportunity, from a standpoint of the future that we would want to hand to our children.

This is not just a technical constitutional amendment. In my opinion, this is an expression of phenomenal compassion. This is an expression that this Congress, after over 200 years, will have learned that it too makes mistakes and owns up to them and admits them and turns to the taxpayers and says, "You know as a Representative under the Constitution, you are the ones in charge, and we are going to give you the power to assume that charge again."

So while all of that is being debated, we are going to be wringing our hands and saying the Court can do this or this or that, or the Executive cannot or will not or should not or could not.

Who cares? I care about the future. And those who have brought this amendment to the Senate, Senate Joint Resolution 41, care that we will plan for a future world in this country that is greater than the one we left.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I ask unanimous consent to speak for 10 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator has that right.

THE BALANCED BUDGET AMENDMENT

Mr. DORGAN. Madam President, I mentioned on the floor yesterday that I have a special reverence, as I am sure everyone here does, to the Constitution. During our debates on constitutional measures, such as this balanced budget amendment, I have been very reluctant to change the Constitution in any way.

Every time somebody says, "Let's have a constitutional amendment," we have a lot of folks who say, "Sign me up. Where is the wagon? I'll jump on."

It does not matter what the amendment is about. People like the idea of changing the Constitution.

To give one example, one of the toughest votes I cast in Congress was a vote on flag burning. It was not tough morally—I knew what was right and I did what was right. It was tough politically.

Somebody burned a flag somewhere, and he did it in front of the TV cameras. He got a lot of coverage, which I suppose was his goal. His case went to Court, and the Court determined that a law that prohibited flag burning was unconstitutional.

So in the House of Representatives, the question was: Should we change the U.S. Constitution to prohibit flag burning? Is there anybody who is not disgusted when somebody burns the American flag? I do not think so. We all are disgusted by that.

But it was a tough vote because the vast majority of the American people demanded that we change the U.S. Constitution to prohibit flag burning. I voted against that change.

I point that out because this has been a troublesome period with respect to the question of how and when do you change the Constitution.

We must, however, today consider that question in the context of trying to improve our economic future.

We look at where we are economically and we discover that we are deep in debt. I do not think anybody denies that the current debt load in this country is deeply troubling. We have been adding to it at an alarming rate every year. We will, by the year 2004 have at least an \$8 trillion public debt. In 1980, it was less than \$1 trillion. But to repeat, in the year 2004 we will have a public debt of over \$8 trillion.

Now, that is the honest debt. They will say it is less than that if you deduct the assets that we are accumulating in Social Security, and other trust funds for future years. We want to save that money to use it when we need it. If you take that and reduce the deficit, which you should not do because that is dishonest budgeting, then you can show a lower debt. But the honest public debt will be \$8 trillion 10 years from now.

Also, we are living in a time when the American people have a great distrust for institutions. The media spends most of the week showing us the blemishes and the difficulties of institutions, especially the problems of Congress. And people say to us, "We want you to be more responsible in fiscal policy. Shape up. Balance your budget. Behave. Do what we do as a family or as a business."

And yet, after saying this, the American people then send other signals. People want all the spending. Do you think they want deep cuts in Medicare? No. Do they want cuts in Social Security? No. Do they want cuts in their fa-

vorite programs? No. They want somebody else to have the cuts, but they will fight to preserve their own interests.

They say, "We don't like Government. We don't like taxes. But, of course, we want a good school to send our kids to. If our house is on fire, we want the fire department to respond quickly. We sure want a police force that is good and responsible and well trained."

So there is a contradiction in our country.

Let me bring it down to one case, a Medicare case. A doctor told me awhile ago in North Dakota, "I have a patient that has been drinking all of his life. It destroyed his liver and he is going to die. He is on Medicare and now wants a liver transplant. He said he is still drinking. Should I, as his doctor, try to get him a liver transplant paid for with Medicare funds?"

About 6 months later, I saw the same doctor. The doctor said to me at the time, "If I do not try to get him a new liver, he will either sue me or go to another doctor."

Someone was drinking himself near to death, destroying his liver, demanding a new liver paid for by Medicare.

So I saw the doctor later. I said, "Whatever happened to that case? Did the fellow get a new liver?"

He said, "Yes."

I said, "Is he still drinking?"

"Sure."

This case illustrates our problem. Is there any limit to what people want spent when it is for them, or their families, or their communities? We as a country, have an appetite for spending. That desire simply manifests itself in Congress, but it does not originate here.

People want us to increase funding for the Veterans Administration, Medicare, Medicaid, the farm programs, and more.

If people want these programs, and yet we are spending more on these programs than we have in revenue, what do we do? How do we reconcile that?

In physics there is the law of inertia. A body in motion stays in motion. A body at rest stays at rest.

That law would suggest that we just keep plugging away. The problem is, if we keep doing what we are doing, we are never going to deal with this crippling debt.

I do not want my kids by the year 2004 to look at the size of the public debt and say, "Do you know, Dad, you participated in all of this. This country is \$8 trillion in debt." Eight trillion dollars.

I do not want to leave my children with this problem.

So the question is, what do we do?

Will the constitutional amendment to balance the budget balance the budget? No, not by itself, of course not. It will not change the deficit by one

penny. But, it will require the President to submit a balanced budget and Congress to enact a balanced budget.

Will that be tough? It will be excruciatingly tough. Can it be done? I do not know. Should we do something to see if we can change the inertia of our country? Of course, we should.

To sum up, I do not relish this discussion about changing the Constitution. And yet we must find ways to change what has been happening with this country's fiscal policy. I have for a decade described it as a dangerous and irresponsible fiscal policy. I have not changed my mind on that.

I compliment this President. I supported this President in some tax increases and spending cuts that a lot of the American people did not like. A lot of people in this body did not vote for it. But, even after the deficit reduction bill, all of the numbers demonstrate we have not yet conquered our financial problems.

Lastly, as my colleagues know, I will try to offer an amendment to remove the Social Security computation under this constitutional amendment offered by Senator SIMON.

In the 1983 Social Security reform bill we began to build surpluses in the Social Security trust fund because we are going to need them when the baby boomers retire.

If we allow those surpluses to be used continually to offset operating budget deficits, we will not be honest. We must in my judgment perfect this constitutional amendment to balance the budget at least in this respect: By being honest with the American people about how we are using the Social Security funds. We should put the Social Security funds aside in a trust fund. They ought to be saved for the purpose for which they are collected and they ought not be under any condition used to show as an offset against the operating budget deficits.

The commonly used budget deficit figures that we now use are not accurate. Those numbers are the deficits after you subtract the Social Security surplus. The deficit is really about \$70 billion higher than is now quoted on the floor of the Senate. I do not mean to be a bearer of bad news, but that is a fact and it is time all of us recognize that and respond to it. My amendment will allow all of us to respond to that under the constitutional amendment offered by Senator SIMON.

As soon as the floor situation permits, I intend to offer that amendment. I hope my colleagues will support that amendment for the reasons I have discussed.

BALANCED BUDGET AMENDMENT

Mr. DECONCINI. Madam President, I want to comment on the statements of the Senator from North Dakota. I agree with him that the bad news is

really upon us. The history of the Senator when he was in the House has clearly demonstrated he was foretelling that bad news for a long time.

Relating to his amendment on Social Security, I have the greatest desire to see that we deal with it. But I have to say in this process, it has not been without a great deal of compromise. The constitutional amendment that I offered over 17 years ago was an amendment that had some Social Security protections but it also had an automatic tax that would go in effect, across the board, on income to offset any deficit that existed at the end of the year. I remember the senior Senator from Louisiana at the time, Senator Long, ridiculing that and making quite a point of how unworkable that would be.

I felt very strongly about it, that a price had to be paid when Congress did not respond responsibly to a deficit. To me the best way to do that was with a constitutional provision that would increase your taxes if the Congress did not balance the budget. Anyway that fell by the wayside. The only reason I raise it is because I have agreed, in this process, to try to find a road, to try to build a coalition, that would pass this amendment.

The Senator from Illinois, Senator SIMON, has worked a long time, as have many others, trying to forge a coalition of at least 67 Senators who would support a balanced budget constitutional amendment that will bring some sanity to the deficit expenditures that we have had over the last 30-some years. I do not think anything is so ironclad it cannot be considered for some modification. But I think it is important that we attempt to build on this coalition the Senator from Illinois has so carefully put together. He has not done this in an autocratic or dogmatic way. Just the contrary, he has extended himself time and time again in an effort to ensure that everybody has input and that we consider everyone's position. Yet it is necessary to build a coalition in order to get 37 votes. The Senator from Utah, Senator HATCH, has been supportive of this effort, as well.

Having managed the bill in 1982 from the Democratic side, and the Senator from Utah handled it on the Republican side, it was an interesting process. We had some very attractive amendments that were offered. They were defeated. They caused some political consternation I am sure. But the point was we needed to pass a constitutional amendment, we needed to get enough votes to carry it over to the House. Unfortunately, in that case it was defeated by the House.

I think we have to be very careful. We should not shut the door completely but we need to be cautious on opening the door. The constitutional

amendment before us has gone through the Judiciary Committee, has gone through public hearings, and has tremendous support throughout the country. People who are paying attention to this issue understand what is in this amendment. Those opposed to it are certainly exploiting, in my judgment, every word that is in there to try to point out an example of how it will not work.

We know from 200 years of arguments before the Supreme Court over the interpretation of constitutional provisions, just how much you can exploit or represent the interpretation of certain clauses and certain words. To me, we need to pass this balanced budget amendment and to do it as soon as we can.

Deficit spending is nothing more than a continuation of a mortgage, a mortgage that our children and grandchildren, and perhaps their children are going to have to pay unless we do something this year. Even if we do it this year, the debt is \$4.5 trillion. That is a lot of money and I will not go into the details of how many stacks of money or how far such a debt would reach to the sky, because we have heard all that. Later in the debate I will have some charts to point out some of the significance of how bad this debt is.

We are saddling future generations with a burden they will never be able to dig themselves out of if we do not do something and do something now.

In 1980, for instance, interest on the debt was \$75 billion. In 1983 that number had increased 400 percent, to \$295 billion. By 1996, interest on the debt is expected to exceed Social Security payments as the single largest Government expense in the budget of this Government. And right now, every single day, our Government is spending \$800 million—that is right, Madam President—\$800 million on interest payments alone.

I remember coming to this body in 1977, and I remember at the end of President Carter's term the debt was something in the neighborhood of \$994 or \$995 billion. There was a tremendous campaign throughout this country lodged by then Governor Reagan of California, concerned about how this debt had grown.

I think our enormous debt has brought the country down. The increase in the debt under 8 years of President Reagan, and then 4 years of President Bush where that debt, as bad as it was in 1978 and 1979, of nearly \$1 billion, has grown almost five times that amount, in 13 years. That is not something we can be proud of. Some people might say—well, the country has not been brought down. It has not been destroyed. But indeed it has been damaged severely. The standard of living here in this United States is not what it was 20 years ago, we know this

just by how many people within a family have to work today to maintain the economic standards that they need.

Since coming to the Senate I have continuously sought and supported a constitutional amendment to balance the budget. I have not done this for political reasons, though in my State it is popular. I have done it because I truly believe the Congress will not do it, the Presidents that we have in the future will not do it. Not that they are not well-intended, and not that there will not be efforts to do so. This President has brought to the floor of this body, and the House, a package we passed where we actually reduced the growth of the deficit. To my recollection this is the only time in my term of office where we have actually seen a real reduction in the growth of the deficit. But nothing is long term even under the Clinton proposal. Yes, health care, if adopted as proposed by the Clinton administration, might continue the downward trend of the deficit. But those are big "ifs". We must not allow the debt to skyrocket as it has in the last 25 to 30 years.

What kind of legacy, Madam President, are we leaving for our children? As the debt stands now a child or young adult on average can expect to pay well over \$100,000 in extra taxes to cover interest payments on the debt during his or her lifetime.

Each year that we run a \$200 billion deficit, another \$8,000 is added to that figure. Over the last 20 years, the net annual interest payment has risen from \$14 billion in 1970 to over \$180 billion in 1990, money which could have gone to vital domestic programs or to pay off the Federal debt. Much too much of Government spending is needed to pay off past debts instead of investing in our future.

Despite the need to control deficit spending, collectively, however, Congress lacks the necessary self-discipline to balance the budget. I do not know who could argue differently.

Congress has attempted on several occasions without success to control deficit spending through legislation. The only solution remaining, in my judgment, is a constitutional amendment. We tried to control it through the Gramm-Rudman-Hollings sequester approach. We revised it again and again when it was too tough to meet the deficit targets; we could not do it. In its place, we enacted the 1990 budget summit agreement, which was really a disaster because we started off with figures and the numbers that were not really what the true figures turned out to be.

The amendment before us today is a simple amendment. There is nothing here that would establish any permanent level of expenditures or taxes. There is nothing here that would prevent the Congress from approving any particular item of expenditure or taxation.

We, collectively, not just those who oppose this constitutional amendment, have not been able to balance the budget and nobody can dispute that fact. There is no plan out here that will put this country on sound fiscal ground and bring a balanced budget. We are kidding ourselves to think that there is.

This amendment would simply mandate that total spending of the United States for any fiscal year not exceed total revenues for that year unless 60 percent of the Congress approves specific amounts of deficit expenditures. I cannot think of a better solution than to force this body to balance the budget and, if you cannot get the 60 votes for deficit spending, well and good. Then you have to cut spending or raise taxes to bring about a balanced budget. This amendment would require the President to submit a balanced budget, thus placing the responsibility for honest budgeting on both the executive and legislative body.

The Senator from Nebraska, Senator EXON, has argued this point so well on the floor, time and time again, that the President should submit a balanced budget. I happen to be a strong supporter of that provision.

The requirement for a balanced budget could be waived in time of war or military conflict. However, under the amendment, it will take a majority of the full membership of each House to raise taxes. We all know how unpopular that is. I do not see any reason not to require a constitutional majority to raise taxes. A balanced budget amendment demands accountability. In an effort to strike a balance between flexibility and enforceability, this amendment allows the Congress in times of recession or national emergency, to authorize specific deficit spending or increase taxes. However, they must go on record as having voted to do so. The voters can then decide if their representatives in Congress are serious about fiscal responsibility.

At present, Members avoid accountability through deficit spending, failing to make the tough political decisions required to choose between too many programs competing for too scarce dollars.

Critics argue that the amendment lacks the necessary enforcement mechanism and claims that Congress' tendency to manipulate deficit reduction laws such as Gramm-Rudman, in the context of a constitutional amendment, would result in the trivialization of the Constitution. However, elevating a balanced budget requirement to the level of a constitutional amendment provides the necessary teeth to ensure that concrete steps are taken to balance the budget.

The President and the Members of Congress are sworn to uphold the Constitution. Failure to abide by the amendment would constitute a violation of public trust. I think the Amer-

ican public will react strongly if Congress just manipulates the figures, as we have done previously. The American people will decide through their electoral process whether the Congress and the President have lived up to the Constitution of the United States. We have seen Presidents and Members of Congress voted out of office because of accusations, and because of valid charges, that they have not lived by the Constitution to which they are sworn.

The ultimate proof that a balanced budget amendment can work is in the experience of almost all States, which have some constitutional provision limiting their ability to incur budget deficits. Consequently, more States run budget surpluses than deficits.

While the economic demands and available resources may be different for States and the Federal Government. The overall success of State constitutional budget limitations illustrates that a balanced budget amendment can provide the incentive and discipline necessary to place our Nation on the road to fiscal responsibility.

This amendment and the whole idea of a constitutional amendment to balance the budget has been the subject of countless congressional hearings and numerous articles. The Senate approved such an amendment in 1982 and in 1986, the Senate failed by one vote to pass a balanced budget amendment.

Gramm-Rudman was used as the reason to defeat the amendment. Members were urged to give Gramm-Rudman a chance. Well, Gramm-Rudman didn't work.

Clearly the public wants a balanced budget amendment to the Constitution. 32 States have passed resolutions calling for a balanced budget amendment convention. Only 2 more States for a total of 34 are needed. Unfortunately, 3 States have passed resolutions of rescission because of concerns over the possible scope of any constitutional convention. However, the legality of these rescission resolutions is questionable.

Despite the apparent success of the State effort, it does not seem likely that the magic number of 34 will be forthcoming any time soon. Therefore, it is up to the Congress to get the process moving.

After passage in both Houses, three-fourths of the States must ratify the amendment before it can be incorporated into the Constitution.

Our bottom line is immersed in red ink. Drastic action is needed. However well intentioned we may be in trying to reduce the deficit we have failed.

A constitutional amendment is needed because legislative rules can always be waived and the next Congress can always reject the procedures and/or laws of its predecessors. If Congress adopts and three-fourths of the States ratify, this amendment will become part of the fundamental law of the land

impacting on generations far into the future.

I urge my colleagues to support Senator SIMON's amendment. It is time to say no to deficit spending and reimpose fiscal responsibility into the budget process.

Mr. SARBANES addressed the Chair. The PRESIDING OFFICER. The Senator from Maryland.

BALANCED BUDGET AMENDMENT: RISK OF PROMOTING INSTABILITY

Mr. SARBANES. Madam President, I believe that adding a balanced budget amendment to the Constitution of the United States would be economically impractical, indeed under some circumstances dangerous and constitutionally irresponsible.

The amendment would have the very substantial risk of promoting instability, retarding economic growth, and shifting the basis of our democracy from majority to minority rule.

The amendment raises unanswerable questions concerning implementation. It would invite either fiscal paralysis or court intervention in the conduct of economic policy.

Madam President, the Constitution is the guiding charter of our Government defining the basic structure of our democracy and the political and civil liberties of our citizens. It does not establish specific policies out of a belief that those policies should be shaped by the people and their elected representatives in the times in which they live. Because the Constitution distinguishes between universal principles and the specific policies of the day, the Constitution has endured for over two centuries, despite dramatic changes in American society.

The Federal budget, on the other hand, is rewritten on a yearly basis to address evolving national goals. During the eighties, both the budget and the process by which we made economic decisions fell short of what was required. Large deficits, which should not have been experienced, increased. That is a problem that needs to be addressed.

The question is not whether you want to get deficits down. The question is how do you go about doing it. It is a little bit like the question, if you have a headache, do you shoot yourself in the head in order to get rid of your headache? I submit the balanced budget amendment to the Constitution has that aspect to it.

There is nothing in the existing political arrangements that prevents the President and the Congress from addressing the Federal budget deficit. In fact, we did just that last August with a major deficit-reduction program which is working. It has changed the trend line of the Federal budget deficit and put it on a downward path for the first time in over a decade, which is

transforming the economic situation in this country.

The deficit-reduction package which was passed last August and which has paid such dividends regarding deficit reduction and economic growth would not have been passed if this amendment was law.

My colleague who just spoke said that this provision has a requirement in it that any taxes would have to be passed by a constitutional majority of the Members of the House.

No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by rollcall vote. However, we did not have a constitutional majority for the President's economic plan because the votes were split 50-50. The deciding vote was made by the Vice President.

It is not the Constitution that needs changing. What needs to be done is for the President and the Congress, working together, as they have just done successfully, to enact a program which will bring the budget deficit under control.

Let me just address what I consider to be the main defects in this proposal. First, a balanced budget requirement in the Constitution which had to be followed at all times could have a devastating impact on the economy during an economic recession. In fact, the application of this measure during an economic recession might well drive the economy into a depression.

When we go into an economic slowdown, people lose their jobs, no longer pay taxes into the Treasury, and draw support payments from the Treasury. The disparity between receipts and outlays widens in a recessionary period. The outlays go up and the receipts go down by the very nature of the economic turndown.

If at that point you further seek to cut back, you will only succeed in driving the economy further down, and you will transform a recession into a depression.

In fact, the lower economic growth would create higher deficits. Each 1 percent added to the unemployment rate is about \$50 billion added to the deficit. So, the whole exercise might be counterproductive; you would be engaging in an effort of trying to balance the budget, the consequence of which would be to drive the economy further down from recession into depression. The consequences of recession and depression is an increase in the deficit, not a decrease.

This amendment would severely limit the ability of the Government to address economic downturns and it might well doom our country to a series of depressions—not just recessions but depressions.

Second, this proposal to alter the Constitution does not recognize the important economic distinction between consumption and investment spending.

Running deficits to pay for today's consumption, while leaving the bill for future generations, is not responsible conduct. But borrowing now to pay for capital investments that increase future economic growth may make sense.

Under this balanced budget amendment, you would have to pay for all investment entirely in one fiscal year. If households followed such a budget strategy, only a tiny minority of American families would own houses, cars, or major appliances.

Most businesses borrow prudently to enhance their business, expand their sales, and strengthen their economic enterprise. If they fail to do so, their competitors will do so and gain a market advantage over them.

People say that the ordinary family has to balance its budget every year, so should the Federal Government. The ordinary family does not balance its budget every year. The year it buys a house, it takes out a mortgage, it is in tremendous imbalance. Yet, if the income flow projected for the future and the cost of the mortgage and the home is all within reasonable means, everyone regards that as a wise and prudent step because you go ahead and acquire the home and then you pay it off over the next 20 to 30 years. That is how most Americans operate, and it works very well indeed.

Now, one of the superficial appeals of this amendment is that it appears to be doing something about balancing the budget without any pain. There are no specific spending cuts or tax increases in this proposal. You are just going to put a provision into the Constitution without providing any indication of how the deficit reduction should be achieved.

There are a number of ways to make it work. One way to make it work is for the Congress to enact legislation to carry out what the amendment says. Of course, the Congress can enact that legislation without the amendment, just as we did last summer.

In addition, this amendment will have a serious impact on Social Security. It is no wonder people on Social Security are apprehensive regarding this amendment. They ought to be apprehensive because, I submit to you, one of the prime targets, once you put this balanced budget amendment in the Constitution, will be the Social Security System. The amendment specifically includes Social Security in its calculations of receipts and outlays. In my view, the Social Security surplus ought to be kept for Social Security recipients. That is to whom it is committed and it ought not to be used in some effort to achieve this balanced budget amendment.

Now, the amendment does have a so-called escape clause which allows it to be waived by a three-fifths vote in both Houses. Two-fifths plus one in one House can thwart any action. I have

never heard of a constitutional principle that is waivable. The Constitution is a statement of fundamental principle, not matters to be waived away. Other constitutional principles of free speech, individual rights, equal protection cannot be waived by a three-fifths vote of both Houses. In fact, this is an admission that this is not an enduring principle but a matter of current judgment.

In effect, what this amendment would do is shift the balance of power from majorities to minorities in our society, violating the democratic principles upon which our Government is based. It would effectively give control of fiscal policy to a minority in one House or the other.

None of the proposals contain any detail concerning how such provisions would be implemented or enforced. Fiscal policy is a complex task which would likely be disrupted or paralyzed by struggles over implementing a vague constitutional balanced budget requirement. If, in fact, outlays exceeded revenues, if revenues fell short, would we have to bring the whole Government to a halt toward the end of the fiscal year, stop paying benefits to Social Security, abrogate contracts under the Agriculture Stabilization Program? There are no answers in this amendment.

It is almost certain that this lack of clarity would lead to court involvement in both defining and implementing economic policy. You now have a constitutional requirement, and the courts have been consistently prepared to fashion remedies in order to implement constitutional requirements so that they are not rendered meaningless. So this amendment offers a real opportunity for the courts to get into the job of managing fiscal policy.

Let me just turn very quickly to the analogy that is made with the States. People say, the States balance their budgets; the Federal Government ought to balance its budget.

If the States kept their budgets on the same basis the Federal Government keeps its budget, they, in fact, would not be in balance. Most States have an operating budget and a capital budget, and the capital budget is funded by borrowing, by selling bonds in the marketplace. We do not do that at the Federal level. We do not separate out a capital budget, which represents long-term investment in the future where we borrow the money because we are going to have the use of the asset for 20, 30, 40 years and pay it back over that period of time.

In conclusion, let me just say that the Constitution is a relatively brief general statement defining the political structure of our Nation and the civil liberties of our citizens. It has endured for two centuries because it focuses on universal principles, and in thinking about amending the Constitu-

tion we should proceed with great caution.

The desire to put this amendment in the Constitution is frequently justified in the name of political expediency. It is put forward as a response to the deficit. But it is not a response to the deficit. We would still have to enact the tough measures on spending and revenues that are necessary to bring down the deficit, just as we did in August.

This amendment is yet another promise to do something about the deficit in the future masquerading as a tough choice today. We do not need any more masquerades. We need to take the issue head on.

Instead of a constitutional amendment, the President and the Congress should continue to work together for deficit reduction. We have seen we can make a significant impact on the deficit by working together.

Let me close with this observation. Much of today's alienation of voters with their Government comes from the practice of passing so-called "hollow laws," laws which purport to change things but which through loopholes and waivers result in nothing really happening, unlike the tough deficit reduction measure we passed last August.

If hollowing out the law creates political cynicism and alienation, imagine what hollowing out the Constitution would do.

I urge the defeat of this resolution.

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

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

The legislative clerk proceeded to call the roll.

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

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

EXTENSION OF MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that morning business be extended until 3 p.m. under the same terms and conditions.

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

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa [Mr. GRASSLEY] is recognized.

Mr. GRASSLEY. Mr. President, I will speak on the constitutional amendment on a balanced budget, and I would like to have my remarks placed in the RECORD where any debate on that subject may have taken place during the course of today's legislative session.

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

Mr. GRASSLEY. Mr. President, I support, along with Senator SIMON, the chief sponsor, Senate Joint Resolution

41, the balanced budget amendment to the Constitution. I think it is very vital that Federal deficit spending be controlled. Of course, we always put this argument in an economic context, saying that an unbalanced budget is not good for the economy. And I think deficit spending has gone on long enough now, 25 years in a row. Even more essentially, there are very good moral reasons that we ought to have a balanced budget. I think those override even the economic arguments for a balanced budget amendment.

We are borrowing from our future, and that of our children and grandchildren, when we deficit spend. I think we must put an end to this practice. And because every other means has failed to produce a balanced budget, we must enact an amendment to our U.S. Constitution, just as well over 40 States have for their individual constitutions.

A balanced budget amendment fits appropriately within the design of the original document. I do not accept the arguments of those who say that an amendment of this type is contrary to what the constitutional writers may have intended, because it seems to me that they took this into consideration in the writing of the preamble when it sets out not law, but the purpose of the Constitution.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity * * *

There is that word "posterity." It is a word we do not hear much anymore. We run our Government as if the only thing relevant for consideration is what is in today's newspapers: In other words, living for today and not worrying about tomorrow. We consider the consequences of our acts in short timeframes. Rarely do we take into account the real, longterm effects that our actions will have on posterity's ability to enjoy the blessings of liberty as this generation has.

Among the blessings of liberty that our constitutional system has maintained is a standard of living that rises with each successive generation. Keys to this enhanced economy have been productivity, growth, and investment. In recent years, productivity and investment and the savings rate have declined. The 25-year continuous string of unbalanced budgets has contributed to these economic results. I do not think it coincidental that the stagnation in average wages over the last 20 years has been accompanied by high Government budget deficits.

Moreover, economic growth in the last 25 years of continuing deficits has fallen short of the prior 25 years. Budget deficits have been running up to fund our current consumption. Again,

living today and paying for it tomorrow.

The effects of these deficits already are negatively affecting our budget. When we last balanced the budget—that was way back in 1969—9 cents of every dollar of Federal spending went to payment of interest on the national debt. Now, however, 26 cents of every dollar goes towards paying the interest on the national debt. And we have seen in the President's budget document that future generations can pay somewhere between 71 and 89 percent of income just to fund the interest.

We cannot have that. Not only is that bad economics, but most importantly, it is going to steal from future generations' ability to experience growth and job creation. We receive nothing for the payment on interest on the national debt. But we force future generations to pay an even greater proportion of the budget in interest unless we act.

Moreover, we will have to tax future generations at an incredibly high rate just to pay the interest on the national debt, if nothing is done. The figures vary depending upon the assumptions made. Future generations will pay the vast majority of their lifetime earnings in Federal taxes. Two-thirds, three-quarters, or even as high as I have already said.

It is unacceptable that we live high on the hog by masking the real costs of programs and leaving future generations to pay these costs, and also future interest costs. That was not done to us by the generations that preceded us. We owe our future generations the same respect.

I am concerned that some people think that the deficit and the national debt are issues of declining importance. While it is true that the deficit will fall this year, we cannot afford to declare victory and stop worrying about the deficit. When I say it falls this year, I mean that because we were anticipating a \$190 billion deficit, some people would say "only"—and I put that in quotes—it is "only" a \$170 billion deficit. But whether it is \$190 billion or \$170 billion, it is still a tremendous cost to unload onto the young people today.

It seems to me that as we look at this issue of a constitutional amendment requiring a balanced budget, that we ought to keep in the back of our minds that there is not a plan out there by anybody, including the President, that can show us with certainty that we are going to have a balanced budget at any time. We can go out 20 years and nobody is willing to say we will have one. That is bad policy in itself. But it does demonstrate, and it ought to demonstrate, the need for this constitutional amendment.

Obviously, even this administration's estimates of the deficit will show rising deficits and greater deficits than what

I just mentioned of \$170 billion to \$190 billion in future years, starting in 1998. I also believe that the administration's interest rate forecasts on what the interest on that deficit will be are too low. Higher interest rates, of course, are going to mean even a greater portion of the budget spent on interest on the debt. Moreover, deficits themselves increase interest rates in the long run, and higher interest rates harm renters, home buyers, and business people of all sorts, particularly, very capital-intensive industries like the family farmers in my State.

Deficit spending has produced other negative consequences as well. Last week, at hearings held on the amendment to the Judiciary Committee, the former Chief Actuary for Social Security testified that deficit spending has led to lax Government accounting. If the balanced budget amendment were enacted, he testified, Congress would have to examine Government accounting. And, according to his testimony, one account at the Department of Defense has been mismanaged for 30 years. The State Department has lost account of billions of dollars worth of property. The Comptroller General said that some Government bills are being paid twice. A balanced budget amendment will force us to take a tough look at Government accounting, as well as Government spending. This, obviously, is all to the very good, because we will, in the process, root out wasteful spending. Rooting out waste is one of the best ways to make headway against the deficit.

Since the deficit itself is a significant problem, why not just cut the deficit now? Why bother to enact a constitutional amendment to balance the budget? Well, it is because we tried a lot of other ways, and no other way seems to work. We know that Congress has passed statutes to reduce the deficit. I just think of working with the former Senator BYRD from Virginia in the late 1970's. He got through this body a law saying, "Congress shall not spend more than it takes in in future years." I think that was in 1978. I worked with him in the House to get that through the House of Representatives. What good did that do? We had Gramm-Rudman, and we saw all sorts of ways of trying to get around that. We saw the deficits rise even after the 1990 budget deal when we were supposed to have a balanced budget by today.

We cannot ever eliminate the deficit if we continue on our present path. If we are to reduce the deficit, we must put a binding obligation on Congress to balance the budget gradually, until the deficit is eliminated early in the next century. Those who believe we can cut the deficit down to zero without this amendment should offer an effective plan that will accomplish that result. There is none out there from the Con-

gress, and none out there even from the White House.

The recent rejection in the House of Representatives late last fall of the Penny-Kasich resolution only confirms that Congress will not cut spending to reduce the deficit unless forced to do so by the constitutional stipulation.

We have heard it said that section 6 of the amendment, which gives Congress the power to enforce a statute, is inconsistent with the claim that statutes alone will not end deficits. But there is no contradiction, Mr. President. Many amendments are given life by provisions extending to Congress the power to enforce them. The 14th amendment contains one constantly used by the Congress.

Implementing legislation is necessary to make the balanced budget amendment function fully. But the difference between statutes enacted under this amendment and Gramm-Rudman is that the Constitution then will demand that these new statutes be adhered to, unlike earlier legislation lacking the constitutional imperative.

We cannot allow some opponents of this amendment to argue that the only way that the budget can be balanced under the amendment is through serious draconian budget cuts. This has been the strategy of the administration. I would like to examine that argument just for a minute.

The Attorney General, Janet Reno, testified last week that the balanced budget amendment would cause cuts in Federal funds to fight crime. She said that if this amendment became effective immediately, offenders would have to be released from Federal prisons. The parade of horrors included cuts of 4,400 FBI agents and 1,100 DEA agents.

She testified that without these FBI agents to match community policing funds, "It is going to be a long, long time before we get violent crime under control."

But during the last administration, some would have referred to this as a "Willie Horton" strategy: You and your families will be harmed by the convicted felons if somebody's political opponents are victorious.

There are many flaws with this testimony, and I am very disappointed that the Attorney General testified in this fashion.

First, the amendment will not take effect—but maybe it ought to—before 2001. It is irrelevant what cuts might or might not have to be made in order to balance the budget in 1 year. We can do it gradually, without inflicting that kind of pain. And no one should believe these scary scenarios that have no basis in fact.

Additionally, it is astonishing that the Justice Department opposes the balanced budget amendment based on these supposed spending cuts. The administration itself, I might add, is proposing to make cuts in law enforce-

ment. These are the same kinds of cuts the Attorney General said would have to be made if we had the constitutional amendment—cuts she used as an argument against the constitutional amendment. These cuts are being proposed right now by this administration, even in the absence of the amendment, because the administration has already proposed cuts in prison construction, refusing to spend money for prisons that has been voted for by the Congress. Just look at the administration's 1995 budget. It calls for cuts in the DEA and FBI personnel—the same cuts in fighting crime that Janet Reno says would come if we had this constitutional amendment.

Despite the tough crime rhetoric, the administration is cutting essential personnel in the Nation's fight against organized crime, drug trafficking, and other Federal crimes. It is cutting prosecutors and is cutting prison spending.

How can its arguments against the balanced budget amendment on the grounds that it will reduce law enforcement spending be given any weight? There is no truth that passing the balanced budget amendment will necessarily mean enormous cuts in Federal law enforcement. Nor will the administration successfully accuse the amendment of creating severe cuts in law enforcement. It is the administration that itself today is asking for cuts in law enforcement.

So, Mr. President, we do need this constitutional amendment to balance the budget. We can only balance the budget, in my judgment, if we pass this constitutional amendment. The American people are watching to see if we can make this commitment. The quality of the existence of the future generations is at stake. We cannot afford to fail again. We must enact this constitutional amendment to balance the budget.

I feel some certainty about what I say because I served in the State legislature of my State, where there is a constitutional amendment requiring a balanced budget. I thought it brought a great deal of discipline to that legislative body whether it be controlled by Democrats or Republicans.

So I think that it will bring the same sort of fiscal discipline to this body, as we are a body of men and women sworn to uphold the law, and we will carry that law out.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, the Senator from Ohio is informed that we are in morning business; the limitation of time is 10 minutes. I ask unanimous consent the Senator from Ohio be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. The Senator is recognized for 15 minutes.

Mr. METZENBAUM. I thank the Chair.

(The remarks of Mr. METZENBAUM and Mr. SIMON pertaining to the introduction of S. 1866 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SIMON. Mr. President, if no one seeks the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MATHEWS). The clerk will call the roll. The bill clerk proceeded to call the roll.

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

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

Mr. LEVIN. Mr. President, I ask unanimous consent that I be allowed to proceed in morning business for 15 minutes.

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

BALANCED BUDGET AMENDMENT

Mr. LEVIN. Mr. President, the major issue that we are discussing these days is the balanced budget amendment, and I want to spend a few minutes discussing my thoughts on that amendment.

I think everybody in this Chamber would agree that deficits are harmful; that the mountain of debt we have built up is nothing less than shameful. Surely, the Senator from Illinois and others are right on that issue. On whatever side of this constitutional amendment people happen to fall, I would think there is equal strength in feeling that the deficits we have allowed and the debt we have built up as a result of those annual deficits is something which has weakened our economy and is disgraceful in terms of representative government.

There is something else that would also be a terrible mistake, though, and that would be to place an illusion or gimmick in the Constitution to pretend that we are addressing something which cannot be addressed successfully in the way it is proposed. It can only be addressed through congressional and Presidential will.

So there would be great harm in telling the public now, in 1994, that 5 years from now something is going to happen on the deficit when in fact whether or not anything happens 5 years from now is still going to depend on congressional and executive will. It is not going to happen automatically. It is going to require us to take actions just

the way it requires us to take actions now.

Mr. Reischauer, who is the Director of the Congressional Budget Office, said the following about that issue. First he said that "a large reduction in Government borrowing is highly desirable." And I would think 100 of us would agree with that. But then he went on to say that "a balanced budget amendment on its own does not advance the chances for lowering Federal borrowing."

In his testimony he put it another way, that "a balanced budget amendment in and of itself is not a solution. Rather, it is only a repetition in an even louder voice of an intention that has been stated over and over again during the course of the last 50 years."

"In an election year," he said, "it would be a cruel hoax to suggest to the American public that one more procedural promise in the form of a constitutional amendment is going to get the job done. The deficit cannot be brought down without making painful decisions to cut specific programs and raise particular taxes. A balanced budget amendment in and of itself will neither produce a plan nor allocate responsibility for producing one."

That is the head of the CBO who gave us that wisdom, and I think he is right.

This constitutional amendment relies on the Congress to act to implement it. That is the bottom line. This is the same reed that proved so weak in the 1980's when Congress and the President amassed these deficits. We had opportunities to reduce the deficits, such as 1986, when we closed tax loopholes and chose not to use the revenue that we produced for deficit reduction. But last year this same Congress, which had been so weak in the eighties, finally got some strength and some backbone and passed the President's deficit reduction plan.

But nothing is going to change in that regard. The President and the Congress are going to have to act to implement the requirements of this constitutional amendment or nothing is going to happen. It is the same Congress and the same President which right now have that responsibility and finally exercised it last year after a decade or more of not exercising it.

If congressional weakness is the reason for this amendment—and it is—then Congress will use the loopholes in this amendment to evade the responsibility which it sets forth. My greatest fear, and I have many fears about this amendment, my greatest fear is that it will take us off the hook until 1999 when it could become effective at its earliest, and the deficit will become worse until then because we can always say, "Oh, heck, it"—the deficit-reduction budget amendment—"will take care of our problems starting in 1999." We will not have the pressure on us until then because it will do the job for

us in 1999. So as a result of having the pressure off us, off the hook until 1999, we will pile up greater deficits than we otherwise would. Then what will happen in 1999? Not much, because when this deficit-reduction budget-balancing amendment takes effect, if it ever does, there is not much of a hook. There are plenty of loopholes right inside that balanced budget amendment.

Again, let me quote from Mr. Reischauer's testimony about those loopholes. This is what he said about a year and a half ago.

Probably the most important difficulty with the balanced budget rule is that it offers many opportunities for avoidance or evasion. The President and the Congress could get around an apparently rigid balanced budget rule primarily in three ways. The first involves using timing mechanisms and other budget gimmicks to achieve short-run budget targets, including such actions as shifting pay dates between fiscal years.

And we have done that one.

Accelerating or delaying tax collections, delaying needed spending until future fiscal years, and selling government assets.

The second way, he points out, to evade the balanced budget constraint might be to base the budget on overly optimistic economic and technical assumptions. That is the second way.

Boy, have we done that one. That is the rosy scenario that Senator CONRAD and others were talking about yesterday. We had "Rosie the Riveter" in World War II. If this amendment passes, we will also have "Rosie Scenario" in the Constitution. And we have done it—these rosy scenarios.

David Stockman wrote a book about rosy scenarios and what they did in the eighties. Murray Weidenbaum, who was the Chairman of the Council of Economic Advisers, was tasked with coming up with a budget. And they cooked the numbers. Rosy scenario was born right there in the executive wing. They asked him where the numbers came from, after he came up with these rosy scenarios, these projections as to what the growth rate would be, what the interest rate would be, what the revenues would be, what the unemployment rates would be; all rosy to make the budget look better than it really was.

This is what David Stockman says.

Somebody finally taunted Professor Weidenbaum. "What model did this come out of, Murray?" Weidenbaum glared at the inquisitor for a moment, and he said, "It came right out of here," and with that he slapped his belly with both hands, "My visceral computer." He smiled.

Never before or since—

Stockman wrote—

has a single belly slap produced such devastating results. The new Weidenbaum forecast added \$700 billion in money, gross national product, over 5 years to our previous consensus forecast.

With that visceral computer, that rosy scenario, \$700 billion was added to the projection as to what the gross national product would be over what they

previously had, by consensus, forecast, believed the gross national product would be.

*** and nearly \$200 billion in phantom revenues tumbled into our budget computer in one fell swoop. The massive deficit inherent in the true supply-side fiscal equation was substantially covered up, and eventually—

Stockman wrote—

it would become the belly slap that was heard round the world.

What does the amendment before us say about estimates and rosy scenarios? It says we can use them. Section 6 of the amendment says that "Congress shall enforce and implement this article by appropriate legislation which may rely on estimates of outlays and receipts." Section 1 holds out the promise that we are going to balance income with outlays. But section 6 says that we can comply with section 1 by the use of estimates. That is what we did in the 1980's. That is exactly what we did in the eighties. We used estimates. Here are some of the estimates.

In 1981, our estimates were off by \$58 billion; 1982, our estimates were off by \$72 billion; 1983, our estimates were off by \$91 billion; and on and on. In 1990, they were off by \$119 billion—\$119 billion in 1990. But that is OK. We can rely on estimates we are told. You talk about a loophole. This one is big enough to drive a \$119 billion deficit through. That is how big this loophole is.

And then we are told in the report of the Judiciary Committee, well, these estimates are supposed to be in good faith. Who is going to decide that? Is that going to go to a court as to whether or not Congress adopted a good-faith estimate? And are the sponsors of the resolution telling us that when we made these estimates in the 1980's they were not in good faith? Was the 1981 estimates, which were \$58 billion off, were they made in bad faith? Most of the Members of this body voted for that. And every year through the 1980's, same thing. Were they bad-faith estimates? Is someone going to make that judgment now looking back? Or is a court going to make that judgment then looking forward?

Maybe we ought to add a little provision, a little language to section 6 and say that Congress may rely on estimates of outlays and receipts provided that the estimates allowed are not based on Murray Weidenbaum's visceral computer. Maybe we ought to put that in the Constitution to prevent the kind of shenanigans that went on during the 1980's. But do not believe for 1 minute that those shenanigans cannot happen again. But this time the evasion will not be a political evasion trying to fool the people. It will be an evasion of a Constitution which we are supposed to be living under.

This now will become a loophole right in the Constitution itself. The

sponsors of the amendment say: But it will take a 60 percent vote to increase the debt limit, so if our estimates are too rosy, if we follow the 1980's model of estimates, in order to evade the constitutional requirement, if the choices are too tough and we use that particular evasion, then we can fall back on another requirement of the constitutional amendment before us, which is that the debt limit can only be increased by a 60 percent vote in the Senate.

Well, history has proven that that is a weak reed to rely on, because by the time you vote or not vote to increase the debt limit, you are voting whether or not to bring down the Government of the United States. If we do not pay our debts, we are done economically. That is not a realistic way to produce any reliance on the section 1 promise of this amendment. We are not going to produce compliance by that provision because the choice is to use a nuclear weapon on the economy of this country. If we do not pay our debts, this country's economy is finished. So it is not a realistic alternative to simply point to the debt limit increase with a 60-vote requirement as the back up in case the rosy scenario is used, as it was almost every year during the 1980's.

So, Mr. President, I must say I am amazed that a constitutional amendment is offered because of the lack of confidence in the Congress, when the very language of this amendment, by its very terms, relies on Congress to implement the amendment and when there are so many loopholes that are open if the Congress and the President choose to use those loopholes. I have just discussed one today—just one of many—and that is the rosy scenario loophole, which is very obvious. We are experts at that.

Mr. President, this amendment has a double problem. It lets us off the hook until 1999. It gives us an excuse, if we choose to use it—and we have used it too often—not to act until the out-years, because by its own terms it will not be effective until 1999 at the earliest. The history of the politics of deficit reduction is such that Congress and the President, if they are let off the hook, will in fact take the easy way out. That is a very, very bad road to follow. I hope that we will not. I hope we will have the courage and wisdom to realize that the same Congress and the President which this amendment rely on to implement it are here now, and the deficit needs to be reduced now, and that we cannot have a loophole-filled constitutional amendment based on the ability of the Congress to use the rosy scenario, the estimate, as we did in the 1980's, as the way to balance the budget.

There is only one way now, or in 1999, or 2099, and that is willpower. I hope we show it and defeat this constitutional amendment and show the will to re-

duce the deficit with the hard decisions now.

I yield the floor.

Mr. CRAIG. Mr. President, I ask unanimous consent to speak as in morning business.

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

THE BALANCED BUDGET AMENDMENT

Mr. CRAIG. For the last several days, I have been on the floor talking about options that are available to us and the reality of what we are about in the consideration of a balanced budget amendment to our Constitution. I thought for a little bit of time this afternoon I would share with my fellow Senators an editorial that appeared in U.S. News & World Report on June 1, 1992, which I think is so very profound. Many of the arguments I have made, and Senator SIMON of Illinois and Senator HATCH and Senator STROM THURMOND have made as it relates to the very important debate that is at hand.

Let me read from that editorial:

In one of his pithier observations, Winston Churchill once said that "Americans can be counted on to do the right thing, after they have exhausted all other options."

The politicians of this country have now exhausted a raft of different options to bring Federal finances under control—deficit limits, tax increases, caps on domestic spending, cuts in defense spending—but the Nation's budget remains shamefully out of whack.

This editorial goes on, and we will leave this on the floor for other Senators to share. But it draws some very profound conclusions. So let me read the concluding paragraph:

But we can no longer flinch from reality; we can no longer afford the illusion that we can borrow our way to prosperity. President Bush, who shares responsibility with the Democratic Congress for the dreadful state of our finances, should now work with Capitol Hill to ensure that an amendment to the Constitution is carefully and wisely drawn, that the country is fully informed of the consequences, and that we move forward immediately—to restore our financial solvency. Somehow 49 out of our 50 States have learned to live within laws requiring balanced books; surely Washington can do the same.

The person who wrote this is David Gergen, a man who is becoming well known around Washington in his relationship to the Clinton administration. I agree with what he said. I guess my only reaction to it is: Oh, what a difference a day and a dollar can make. But more important, I wish David Gergen would whisper very loudly in the ear of his boss that he was not only right in June of 1992, but that this statement is phenomenally valid today as we deal with this issue.

So for a few more minutes let me discuss, once again, as I did the other day, the very essence of the amendment that has been 10 years in the crafting. This amendment was not dreamed up

in just a few hours in the leadership's office of the Republican or Democratic leadership here in the Senate. This amendment has been before the Judiciary Committee time and time again in full hearings; constitutional scholars from across this land have looked at this amendment, have argued every point of it; there is a full committee report out. While it is meager, there are volumes and volumes behind it that back up every section that we have assembled in Senate Joint Resolution 41.

Let us look at it section by section once again:

Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

In our terminology, a rollcall vote means a recorded vote. So, in other words, we have provided what is the very concern that many Senators have expressed here today, that in times of extraordinary circumstances—and there are those times in the history of nations.

Two weeks ago, we voted on an extraordinary circumstance, and that was money for Los Angeles or the Los Angeles basin after it had been rocked by a devastating earthquake. That particular vote passed this Senate by the three-fifths required in section 1 because it was an extraordinary event. It was not the screwing in of light bulbs or the vacuuming of carpets, the day-to-day operations of Government. It was a cataclysmic or extraordinary situation.

Section 2. States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

When we look at this amendment, it is important that we look at section 1 and section 2 together because they are in sync, and it is important to understand them in the whole and not in the separate.

What we are saying is that when the extraordinary event comes along, that there is an opportunity, if we choose not to raise taxes, to pay for it, but to recognize an alternative funding mechanism that we can in fact deficit spend. But we also say that it must be an extraordinary event, that it cannot come daily, that we should not be doing our—if you will—O&M budgets, the operation and maintenance budgets of our Government, in deficit. Today, we are doing that. Today we borrow over \$200,000 annually, at least under the current budget scenario, and it can be argued just to keep the lights on, just to vacuum the carpet, just to remove the snow. That is bad business. That is bad budgeting. That is financially risky.

Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Gov-

ernment for that fiscal year, in which total outlays do not exceed total receipts.

That is what Presidents should do.

Now, should President Clinton do it next year if this becomes constitutional law? The answer is no, because all of us are realistic enough to understand that he could not do it next year, that it is going to take a reasonable period of time of the Congress and the executive working together to bring this budget into balance. And we will say, when we finally reach a final vote on Senate Joint Resolution 41, that that should occur by the year 2001.

So anybody who stands on the floor today and says we are going to destroy Social Security, we are going to have to cut \$200-plus billion out of the budget next year either is ignoring the obvious; they are blind; or they did not pass the first grade in reading, because that is not what this amendment says at all.

This amendment is very clear that we will work through a 6-year scenario to arrive at a balanced budget, and it is also assumed that when a President submits a balanced budget, he will also submit a revenue statement. He will do exactly as Bill Clinton did just a few weeks ago when they sent their budget to the Hill. Not only are there total expenditures in it, but there are estimated receipts.

We have just heard the Senator from West Virginia and others talk about the impossibility of estimating receipts. We do it every day. We have done it for years, and we will continue to do it.

The only difficulty here, and they do not like it nowadays, if this is to pass, is that there is no fallback anymore. You have to be a lot better at doing what you are doing. You cannot say: If we miss it by a few billion, we will just go out and borrow the money. If you do that, it would take a three-fifths vote. In other words, we have to be better bookkeepers and better accountants and figure our estimated receipts in a much better way. Many State governments do it, and they are extremely accurate. Why cannot our system be more accurate? Well, it can, if that is our dedication.

Section 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

That is a constitutional majority. That is 51 votes. It is a rollcall vote. It does not happen in the dark of night with the yeas or the nays. It is: Stand up and be counted for. And the reason it is important that we say stand up and be counted for is that the ultimate pressure, the ultimate decider of who is or is not being responsible under the Constitution, is not this Congress, nor is it the judiciary. It is the individual voter in your State or my State, Mr. President, who is going to say, "Senator CRAIG violated the amendment."

That is why we want a rollcall vote, so that Senator CRAIG and every other Senator here can be held accountable.

Today, when we handle the finances of this Nation, there is always a good reason for having done what we did or did not do. The accountability is very tough for the average citizen. And it is not by coincidence that this amendment is not our law; it is the people's law. It is the Constitution. So we ought to clearly allow them to understand the mechanism at hand so it is their instrument by which to judge the performance of the individual Members of the U.S. Congress.

Section 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security—

And that is not just a judgment by the President.

and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

In other words, it is serious business. We have engaged our men and women in uniform by a vote of the U.S. Congress, and in that case, as we always have done in times of war, spent in an extraordinary way not only for the safety and security of those men and women whom we have asked to engage in the ultimate form of foreign policy, war or military action, but because we have also recognized that we are investing in our Nation's freedom and, therefore, it is legitimate in that instance to spend in an extraordinary way. We did that in World War I, and we paid for it. We did it in World War II, and we paid for it. But something happened after the Korean war. We quit paying for our wars. We kept deficit spending and borrowing.

This amendment brings us back to the kind of rationality that gave us the economic stability coming out of our first two World Wars. That is part of the responsibility of this amendment.

Section 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

Oh, my goodness. We heard a phenomenal amount of debate about estimates and receipts the last few days. The President is going to do it in his budget. We do it every year now.

Some will argue we were \$20 billion off. I will tell you the reason we were \$20 billion off. There were no consequences to being off. All we did was borrow the difference. If you miss it, so what? The "so what" ended up being \$4.5 trillion worth of debt and \$200 billion worth of deficit on an annualized basis. So the "so what" now makes a lot of difference. It does not mean we cannot do it better. We will do it better. But it does not mean we have to do

it. It is not a mystical game. It is not in smoke-filled rooms. It is a reasonable and responsible process.

This morning, I entered into the RECORD the statement by 250 economists around the country who believe it can be done in a responsible and rational way based on this amendment. So that section is responsible and it is reasonable.

Section 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

I think we are going to hear some interesting debate in the coming hours of the remainder of this week and into next week about taking certain items off the budget—removing them from the budget, putting them on autopilot. Is it wise? Well, that was the demise of Gramm-Rudman. We took just a few things off. And it worked pretty well for a little while. Then we took a little more things off when decisions got tough, and it fell apart. And the very pressure we had, the downward pressure on spending that Gramm-Rudman had produced for us went away.

There are some who are going to offer an amendment, I believe—or amendments—that would suggest that we take certain items off budget, and they will say if we do not, Social Security will be cut and slashed and destroyed.

I have never yet seen this Congress, in tough, decisionmaking environments, ever touch Social Security. They protect it because they believe it is a responsible covenant and agreement with the American people. Money has been invested in its trust funds, and it ought to be honored and respected. But why should it be off budget when it becomes such a major portion of consideration of the finances of Government? Of course, it should not be, and under this amendment it would not be.

Section 8. This article shall take effect beginning with fiscal year 1999—

We know there is an amendment out there that the authors of this resolution have accepted that will take that to the year 2001.

That is the 6-year window of implementation. That is when we move back up to the section that says that the Congress will be responsible for enforcing and implementing by legislation and doing so by estimating receipts and outlays or outlays and receipts.

Now some will say—and we have heard the argument before—where are you going to make the cuts? Well, we are suggesting, first of all, you create the environment in which cuts have to be made or revenues have to be raised before you begin that argument. We are not talking about a budget process here. We are talking about an arena in which a budget process goes forward.

And, yes, we are going to have to rewrite the budget rules of our Government because under this amendment to our Constitution, they must change significantly.

Senate Joint Resolution 41 is nearly 12 years now in the making. It has been looked at by constitutional scholars from all over the United States. It has been debated at least three times on the floor of this Senate and four times on the floor of the House. And it has been adjusted and crafted and changed a little bit in the course of that time to make it a more responsive document.

This is the product, the work product. Probably this effort has been given more time than any other piece of legislation that will come to the floor of the U.S. Congress this year. And it is deserving of that time because it is our Constitution. It is the law of the land. It is that document that we so love to talk about and are so proud of, that our Founding Fathers, in some divinely inspired way, crafted, that has guided us and directed us for so long.

But we also recognize that it is a document that, with time, can accept change—27 changes to date, and this would be the 28th amendment to the U.S. Constitution. So it is not a document that is rigid, unbinding, or unchangeable. Our Founding Fathers knew that it should be, that you had to change over time just a little bit because society would change. But once you have crafted an amendment and placed it in the Constitution, you would make it extremely difficult to change it once again.

So it is not unusual—and you heard Senator BYRD and me discussing the majoritarian approach the other evening, the three-fifths vote; a tremendous vote it will take here on the floor to even send an amendment out to the States. Our Founding Fathers clearly wanted to protect this document, and so do we.

And so, in the course of the next few days, as we continue this debate, let us recognize the importance of the work at hand, the time involved, the dedication, and the scholars who were involved with all of us in crafting this amendment.

It is simple. It is clear. It is a clarion directive to the budgeting processes of our Government but, most importantly, to developing the fundamental right that I believe is inherent within the budget, and that is the right of every American citizen to be unburdened by the deficits and debt generated by its Government in a profligate way.

So we are debating a fundamental right. And once embodied in the Constitution, I believe it will be every bit as strong a right as any of those embodied in the first 10 amendments or any other portion of our Constitution.

I yield back the remainder of my time.

REMEMBERING LEGENDARY NEWS PHOTOGRAPHER GEORGE TAMES

Mr. DOLE. Mr. President, I rise today to pay tribute to a Washington legend who passed away yesterday. George Tames was an award-winning photographer, a giant in the news business, and a fixture for years at the White House and on Capitol Hill. He was also a friend.

Most people may not have known this native Washingtonian, but they certainly knew George Tames' work. For more than 40 years, readers of the New York Times saw life in Washington, and 10 Presidents, through the lens of George's camera. Many of his finest photographs are contained in George's 1990 memoir "Eye on Washington: Presidents Who Have Known Me."

And many of us were fortunate enough not only to know George's extraordinary work, but to know the man behind the camera. The key to George's success—aside from his tremendous talent—was the charm, wit, and ability to tell a good story that earned him unusual access, everywhere from the Oval Office to Capitol Hill.

But perhaps the greatest tribute to George came from his colleagues and sometime competitors. Cornell Capa, a former Life magazine photographer, once said of George Tames: "He's the champion. He beats everybody."

Mr. President, I am proud to have known George Tames, and I am proud to have pictures he took hanging in my office. I know all my colleagues join me in sending our most heartfelt sympathies to George's wife, Frances, and to their five children.

Mr. SIMPSON addressed the Chair. The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business.

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

PHOTOGRAPHER GEORGE TAMES

Mr. SIMPSON. Mr. President, I, too, want to say a word about George Tames, who has gone from us now. He was a remarkable man. I met him when I first came to the Senate in 1979. He was the ace photographer for the New York Times, a very genial man, with bright eyes and a wide open face. He had a sparkling wit. He loved to talk about his heritage and his life in America. His family name was a contraction from an Old World name, and I cannot recall it, but it was quite a lengthy one.

He was not merely a skilled photographer. He was a decidedly positive human being. He was a real pro, and fun to be with, too! He had an "eye," and, of course, that is why he was so renowned in his profession. He will be greatly missed. He was truly a great photographer and was recognized by all

of his peers for his extraordinary abilities.

So for me, I am very pleased that our lives came together, and our paths crossed. It was my pleasure to have come to know him, and I extend my sympathy to his loved ones.

BALANCED BUDGET CONSTITUTIONAL AMENDMENT

Mr. SIMPSON. Mr. President, I wish to support the constitutional amendment to balance the budget as proposed by my very able colleagues, Senators SIMON, HATCH, CRAIG, and others.

Over the years I have been involved in this one, we have taken all the hard shots that they can fire at us. I can remember when we started, Senator HEFLIN, Senator DECONCINI, Senator THURMOND, Senator HATCH, when I was in my first year on the Judiciary Committee.

The arguments in favor of and against this amendment have, it seems, been repeated time and time again in this Chamber. I do not even have in front of me a large stack of remarks now because we have all heard everything. But I wish to commend Senator SIMON. He is persistent, genial, persevering, and he needs all these qualities together with his journalistic background that enables him to persevere here and to take on the hysteria which we often find in the opposition.

We now have the AARP geared up fully. There are 34 million people in the American Association of Retired Persons. I have said all this before. You need to be 50 years old and have \$8 and then you can become a member. You must have a common love of airline discounts, automobile discounts, and pharmacy discounts in order to prevail properly.

This organization has the power, once again, to not only knock off the balanced budget amendment, but health care reform, or anything else they gear up to do in. But the saddest part of it is that 95 percent of their members have no idea what their principal function is or their philosophy.

I have looked into their organization. I will be doing more of it in this Chamber. I will not take time now, but just to tell you again that they are a remarkable "nonprofit organization" that has a \$9 billion cash flow, the old AARP. They have their own law firm to which they pay \$2.5 million of retainer per year, with one of the founders involved there.

They have a little manual that goes out to their field people that if the field people cannot ascribe to the basic philosophy of the AARP as in the manual in headquarters, they are subject to immediate dismissal. They have a yield on their investments of \$37 million. Imagine what the principal would be on those investments. Seven percent yield, 6, what do they receive?

Ask for their forms. Read them. They receive 4 percent of every single penny they place with Prudential Life Insurance or Prudential anything or any insurer; they receive 4 percent of the premium into their own coffers. And they receive a \$80 million grant from the Federal Government for reasons that must be totally unknown to any sensible taxpayer because of that kind of cash flow.

If you were to look at their proposals for the future in America, it provides that this Government would be required to spend in excess of \$600 billion in the next 7 years to satisfy the basic legislative proposals or programs of the AARP.

I will be going into much more with regard to that organization in the future. Someone should because, as I say, they have the power to destroy whatever we try to do with regard to health care. And I saw them come into action these last few weeks. They are now fully geared up, along with the Committee for the Preservation of Social Security and Medicare, another group who are still looking to take care of the notch babies which would only cost \$200 billion or so, and it would all come out of the Social Security funds.

So here we now see them saying that people are going to lose their Social Security payments. They even picked a figure from the sky somewhere as to what folks would lose. I think it is egregious. Certainly Americans should begin a probe of this group and see just exactly, as we would do with any legislator or anyone in public life, what it is they do, from whence do they spring, and how do they make their money, and what do they do with their money other than provide these remarkable things to seniors and to their staff and to their field people at salary levels which would boggle the mind.

Well, other than that feeling there about that, of which I have now rid myself—any arguments I would repeat have been heard time and time again. I will not ask my fellow colleagues to listen to yet another repetition of the arguments so well advanced by my colleagues.

But I would instead wish to address my remarks to the nature of the debate itself. As so often happens around this Chamber, it is easy for individuals on one side of the debate to subtly impugn the motives on the other side. "Inconsistency" is something that we so often detect in the reasoning of others although, indeed, hardly ever, nearly never in our own positions. Inconsistency is often, of course, a polite way of alleging hypocrisy or worse, but I bring this up because I have heard it said that proponents of the balanced budget amendment, and I am one of them and have been from the beginning, have been "inconsistent."

It has been said that the Senators who favor the balanced budget amend-

ment at the same time are the ones who refused to cast votes in favor of spending cuts. I heard this charge. I asked myself, "Could this be so?" It certainly would cast doubt on the sincerity of the amendment's proponents if it were. So I decided to find out for myself.

There are a great number of organizations around this village that track the voting records of the Members of Congress from every philosophy. I was in touch with one of them, the National Taxpayers Union Foundation, and I wanted an index of every vote. I am not talking about cosponsorships—I am talking about every vote cast by Senators in this body, weighted by how much money we were voting to spend. I did not want some isolated instance here, some single anecdote to hurl at a colleague on the other side of the aisle, or my own side of the aisle like, "Remember when you voted for the Super Collider?"

That proves nothing. We have all been there. We have all voted to spend money at one time or another on things very near and dear to us without a qualm, and we will continue to do that forevermore.

But I wanted to find out what were the total spending habits of those Senators who supported this balanced budget amendment, and to compare them with the opponents of the amendment. So I took as my reference July 1, 1992, the cloture vote on the balanced budget amendment. On that date, 56 Senators voted in favor of cloture to cut off debate so that we could proceed to vote on the amendment, and 39 Senators voted in opposition. Then I looked up the spending records in the Second Session of the 102d Congress of the 56 Senators who voted for cloture, and of the 39 Senators who voted against cloture.

The National Taxpayers Union tabulates every vote cast in this body, not cosponsorships, and weights it according to how much money we are then voting to spend.

Let me quote from their pamphlet: "We analyzed every rollcall vote taken during the Second Session of the 102d Congress and selected all votes that could affect the amount of Federal spending." They produce an index on that basis. The better your record in voting to cut spending, the higher your rating on a scale of 1 to 100.

What I found, and I must tell my colleagues, is that the statement made here on the floor the other day is totally and simply wrong. There was an assertion made that the proponents of the amendment do not vote to cut spending. That was made in not only the forum here, but also in a different forum. In fact, that statement could not be more wrong. It is directly and wholly refuted by the facts. Just the opposite is true.

It is true, in fact, that the supporters of this amendment are the Senators

most likely to cut spending. Let us be very clear and up front about this. Fifty-six Senators voted to invoke cloture on the balanced budget amendment when it was last considered. The average "spending cut" score of these Senators was 54.6. This is the average "spending cut" score of those 56 Senators—54.6. The 39 Senators who voted against cloture, effectively voting against the amendment, obviously, had a score of 26.4, less than half as impressive or as good as the proponents. In fact, the opponents' collective score gives them an "F" grade on the National Taxpayers Union Foundation scale, putting them as a group in the "big spender" category.

So let us be very clear that this supposed internal inconsistency simply does not exist. The National Taxpayers Union Foundation ranks the various Members of the Senate according to how much they vote to spend, and I list the Senators who most consistently voted to cut expenditures: Senators SMITH, BROWN, CRAIG, SYMMS, and my colleague from Wyoming, my old friend, MALCOLM WALLOP. Every one of those Senators voted in favor of the balanced budget amendment, every single one of them.

Of the Senators who are listed as the biggest spenders, I will not give their names. I will not list them here, but every single one of them voted against the balanced budget amendment. Their names are in the literature to be reviewed, if anyone would wish to.

So I just think it is important to try to stay with the facts. The correlation at the extremes is absolutely perfect with what we see with spenders versus those who wish to cut the budget.

Then let us all remember. At least I was here in armed combat when we did the amendment in May of 1985 where we voted to get rid of 23 agencies of the Federal Government, voted to freeze the entire Federal Government except Social Security, which we could allow to rise only 2 percent. Everything was to be frozen in place. The vote was 50 to 49.

I can tell you, I call that heavy lifting. Oddly enough, that was a bipartisan vote. Our colleague, the Senator from Nebraska, the close friend of the Senator now occupying the chair, was the controlling vote. We all remember Senator Ed Zorinsky, a very wonderful addition to this place and a very principled man. He took a tough vote. It was a tough, tough time for those of us that took that vote because in the next general election six of the people in my party who voted that way were blown away by the electorate.

All the various interest groups, like the one I just named in the origin of these remarks, did the 30-second spots or helped pay for them, and said: "There is the slob that cut your Social Security;" this is the slob that took your veterans' benefits; there is the

guy that took your railroad retirement; this is the person who did this and this and this and this.

Who is to do the heavy lifting? We do not do it here. This amendment may be shock therapy. But it would be the kind that this country could use. Does anyone believe honestly that you are going to do something with a debt, which is \$4.5 trillion and a budget which is \$1.5 trillion, and a deficit—depending on who you choose to believe—between \$167 billion and \$287 billion, that it is all going to be resolved without some pain or some sacrifice from those of us here, in this Chamber? Whether it has to do with our own pension, whether it has to do with things with us and with those out there, there is going to be pain and sacrifice connected with this, or we will simply not get it done. No one needs to even guess as to how else we are supposed to do it.

But when the interest groups, whose sole function in life is to keep up their membership by terrorizing the Members, continue to range around the country distorting every facet of what we do—and many of such groups in this country now are functioning on the basis of first taking care of their executive directors, their staffs, and assuredly their pension plans, their investment proposals, their retirement proposals, and very little of the money really goes to what they say they stand for—that is now a unique and extraordinary thing in our country.

The sole purpose and the sole method then for them to continue their "good works" is to terrorize the Members by simply telling them that the Congress is inept, greedy, overreaching, picking their pocket, ripping off the trust fund, all the rest.

Please know there is no separate pot of money called Social Security Trust Fund. When are we going to quit listening to that garbage? The money presently in the reserves of the Social Security System is, by law, to be invested in the securities of the U.S. Government. That means T bills, that means U.S. Treasury securities, it means savings bonds. There is no separate "fund." We do not rob the fund. There is no fund to rob. If this Government ever had a pot like that they could dig into, and the tabulated "reserves" I think are about \$200-some billion now—we would have discovered a new door on Fort Knox.

All of the Social Security money is invested in Federal securities. The Federal securities are purchased by people in real life. They are purchased by union pension funds. They are purchased by teachers' funds. They are purchased by the AARP, probably. And they are valid obligations of the Federal Government, backed by the "full faith and credit" of the Federal Government.

Then when those are purchased, the interest on those issues is paid from

the General Treasury. It is not paid from some separate kitty. It is not paid by the Social Security Trust Fund. That interest is paid by the taxpayers of the United States of America separately.

So let us put that one to bed. I hear it all the time. I do know who spreads it. Indeed I do. But let us put that one away because that is another hysterical move to try to petrify the American taxpayers and the members of the special interest groups.

Keep that all in perspective as we get into the debate—that this is the truth about Social Security and that we have never continually raided the Social Security "fund." One time in my 15 years here, I think for 72 hours, there was an intrusion into the Social Security fund. We quickly remedied that and allowed that was never going to happen again and that we would not allow it to happen again, and it never happened again.

So there is much more that I will say in the days and the weeks to come as we deal with the really tough issues of the day. I have been honored to be selected to be on the Entitlements Commission as appointed by the President. It consists of a remarkable group of Democrats, Republicans, liberals, conservatives, businessmen, and special-interest-group personnel, and there is not one of us that does not know, who needs to be taught in any way, what the problem is. We all know what the problem is: It is whether we will ever do something about it.

I do hope we will not continue to hear that there is some great hypocrisy rampant in the land among those supporting the balanced budget amendment or some inconsistency between the proponents' positions on this issue and their voting records as a whole. There is not. It is not there.

Senators supporting this amendment are, for the most part, the same Senators who have been voting to cut spending, and historically that is so. The correlation is clear, and it is quite unambiguous. I hope this might put to rest any further aspersions on the sincerity of the proponents of the balanced budget amendment.

I thank the Chair.

Mr. SIMON. Mr. President, following the remarks of my colleague from Wyoming, I would like to make a few comments and then talk about an amendment we may be voting on before too long, or will be discussing before too long. First, on what Senator SIMPSON says about those of us who are sponsoring this, there was a release by the National Taxpayers Union that took co-sponsorship of legislation and added that up, and I looked like a huge spender because, among other things, I am cosponsoring two different health care bills. Total that up, and it is a huge amount.

I asked my staff to total the appropriations that we voted on and the ap-

propriations cuts last year for the total year. On that, I end up one of the top third in the Senate in terms of cuts in appropriations. It may be of interest to this body that the No. 1 person in the U.S. Senate in terms of voting for appropriations cuts is our colleague, Senator HERB KOHL, from Wisconsin, who is a cosponsor of the balanced budget amendment.

Second, Mr. President, I want to enter into the RECORD at this point a column by George Will that was printed this morning in the Washington Post. I will read the first paragraph because it kind of outlines where he is going:

Opponents of the constitutional amendment that would encourage—no more than that—balanced budgets rely on arguments that devour one another. They say the amendment is an inconsequential gimmick—and they say it would eviscerate government. They say the amendment is unnecessary because Congress can be trusted to act responsibly—and they say Congress cannot be trusted to respect the amendment if it is put into the Constitution.

Anyway, he says very clearly that we need a balanced budget.

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

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

[From the Washington Post]

ARGUMENTS OUT OF BALANCE

(By George F. Will)

Opponents of the constitutional amendment that would encourage—no more than that—balanced budgets rely on arguments that devour one another. They say the amendment is an inconsequential gimmick—and they say it would eviscerate government. They say the amendment is unnecessary because Congress can be trusted to act responsibly—and they say Congress cannot be trusted to respect the amendment if it is put into the Constitution.

The wizards in the White House, tightly in the grip of the conceit that the future is to them an open book, say the amendment would force grim choices costing the average Social Security or perhaps Medicare recipient at least \$1,000 a year, and they have listed the annual cost of the amendment to each state. Vermont? \$418 million. How does the White House know so much about choices the nation would make under a constitutional requirement to align revenues and outlays?

Besides, another argument made against the amendment is that instead of making grim choices, Congress would make a mockery of the Constitution. This argument, coming from members of Congress incapable of blushing, is: Trust us, not the amendment, to achieve fiscal discipline, because we are so untrustworthy we would treat the amendment as more loophole than bridle. "Emergencies" would be declared promiscuously, programs would be put "off budget," receipts and outlays would be redefined, cost and revenue projections would be cooked—in short, there would be even more of the trickery that now goes on.

Sen. Carl Levin, a Michigan Democrat opposed to the amendment, notes that it "relies on statutory definitions that can easily be changed," such as the definition of "fiscal

year." He warns that Congress might redefine "fiscal year" to mean "eleven months or three years." Oh, Congress is so cynical, don't bother trying to bind it with constitutional fetters? Does Levin have such a low opinion of his colleagues that he thinks it would be easier to fiddle the meaning of "fiscal year" than to get 60 percent of both houses of Congress honestly to authorize a deficit, as the amendment allows?

The word "crisis" has become another classification used so casually that it no longer classifies. Even so, it is peculiar to say (as does Lloyd Cutler, who was counsel to President Carter) that there would be a "constitutional crisis" if an "emergency"—say, many hurricanes and earthquakes—necessitated spending that required a constitutional super-majority to authorize a deficit. If the "emergency" could not catalyze 60 percent of Congress would it really be much of an emergency?

Opponents of the amendment warn that it deprives the government of "flexibility" needed to adjust fiscal policy to stages of business cycles. Of course this argument cannot be used by opponents who say the amendment would be too porous to inhibit the government. And this argument requires faith in the government's aptitude for fine-tuning fiscal policy to "manage" the economy. And the people making this argument must explain this: Flexible government, unconstrained by a balanced budget requirement, has run deficits at every stage of every business cycle since the last balanced budget, in 1969, and President Clinton, who opposes the amendment, projects deficits far into the future.

When the deficit was around \$300 billion, critics said the balanced budget requirement was ruinously Draconian. Now that the deficit has temporarily dipped below \$200 billion opponents say the requirement is unnecessary. And opponents say that projections of rising deficits by the end of the decade mean that the requirement soon would be ruinously Draconian.

Yes, if Congress passes the amendment, the states, which get about 20 percent of their money from Washington, might reject it. (Thirteen states can stop an amendment. That limit on majoritarianism is more substantial than the mild requirement of a 60 percent vote to run a deficit.) Yes, Congress might respond to a balanced budget requirement by stepping up its "spending by indirection"—imposing unfunded mandates on the states, regulating business, and so on. (Last year the Clinton administration regulations filled 69,688 pages of the Federal Register, the third highest total in history, behind only the last two Carter years.)

Which is to say, the balanced budget amendment can inconvenience legislative careerists but cannot make them virtuous. Which brings us to the source of the real passion against the amendment: deficit spending is, in effect, public financing or the campaigns of incumbents, enabling them to charge only 75 to 86 cents for every dollar of government they dispense. So the vote on the amendment is a referendum on a political style: borrow and borrow, spend and spend, elect and elect.

Mr. SIMON. Mr. President, I would like to put anybody on notice that there will be an amendment offered by my friend and colleague, Senator HARRY REID of Nevada. Senator REID, in my opinion, is one of the finest Members of this body. He has shown courage; he does his homework; he is a

hard worker. I have great respect for him. He is one of the people I have traveled with and have come to know, and I just have tremendous respect for him. He is willing to face new ideas.

But the amendment he is offering—no one should be fooled—is not a balanced budget amendment. I will go into more detail when we get into the debate after it is introduced, but it says: Estimated outlays have to match estimated receipts.

Now, we permit estimation in our amendment. You have to do that. But it says outlays have to match receipts; receipts have to match outlays. That is a very different thing than requiring that estimates be balanced.

Second, it says "estimated outlays of the operating funds of the Federal Government." That is suggesting that we would have a capital fund and an operating fund. We do not need that. The biggest public project program in the history of humanity was our interstate highway system. It was suggested, to his credit, by President Eisenhower. But he suggested we issue bonds for it, and to the credit of a United States Senator by the name of Albert Gore—Albert Gore, Sr.—he said: Let us increase the gasoline tax and do it on a pay-as-you-go basis. And we saved, believe it or not, over \$800 billion in interest by doing it that way.

What is the biggest single project we have today? It would be a nuclear carrier. That is done over several years. That would be \$1 billion, at the most. It is very interesting that GAO makes very, very clear, in study after study after study, that, yes, you should separate your investment from your consumption in the budget, but do not go to a capital budget where you use that as an excuse for deficits.

Second, things like the Congressional Budget Office are named in the amendment, or our Social Security System is named. We do not, in the Constitution, name the Department of Defense or the Secretary of Defense or the Secretary of Interior, or others, and then there is no muscle behind it. Just to make sure that games are not played in our amendment, we say that if you want to increase debt, you have to have a three-fifths majority. That puts real muscle in this thing. There is no muscle in this one. He has, for example, one provision that I would vote for statutorily. It says that Congress may, by appropriate legislation, delegate to an officer of Congress the power to order uniform cuts. I would vote for that as a statute, but we do not need it in the Constitution.

Let no one be deceived—this is designed as a way to give cover to Members of the U.S. Senate who want to both please the administration and my friend and colleague, Senator BYRD, and to go back home and say, "I voted for a balanced budget amendment." Anyone who votes for the Reid amend-

ment and votes against the Simon-Hatch amendment has not voted for a balanced budget amendment. Let no one be deceived on that score.

I know we are going to have a good debate, and I look forward to participating in that debate.

The PRESIDING OFFICER. Senator HATCH is recognized.

Mr. HATCH. Mr. President, I appreciate the cogent comments of my colleague, Senator SIMON, on this matter.

Look. We all have been in this legislative arena for a long time. When people have a tough issue, they try to get a facade amendment to pass so that people can vote for something so they do not have to vote for the real amendment.

Mr. President, that is what is happening here. The fact is that the real amendment is the Simon-Hatch amendment. Everyone hopes it will be enforced. Everyone knows it will work. Everyone knows it will put the fiscal discipline and the fiscal restraints on Congress that are appropriate under these circumstances of almost 60 years of not balancing the budget and running it into a debt of \$4.5 trillion.

Mr. President, the distinguished Senator from Illinois summed up our criticisms pretty well. We will take time either tomorrow or Monday and shred this amendment alive because it does not make sense. It certainly will not be needed to balance the budget. It certainly is not a balanced budget amendment. It is a mere cover-your-backside amendment that will allow people to vote for an amendment, and then vote against the real balanced budget amendment. I do not want anyone to misconstrue it.

The amendment we have to pass is the Simon-Hatch amendment if we want a balanced budget amendment to the Constitution and we want to get it through both Houses of Congress. If we do not do that, everyone knows this is just a game and there is no question about it.

We will have more to say about it later.

Mr. President, I ask unanimous consent that my next remarks be as if in morning business.

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

DEATH PENALTY FOR ESPIONAGE

Mr. HATCH. Mr. President, the Senate crime bill's death penalty provisions provide the death penalty for, among other crimes, espionage. There are efforts underway in the other body to defeat the death penalty or attach gutting amendments that will make the death penalty virtually impossible to impose.

For years, many of my colleagues and I have been fighting for passage of a true, workable Federal death penalty that will appropriately punish and

deter capital crimes against our Nation. For years these efforts have been thwarted by death penalty opponents.

As a result, there is no death penalty for espionage, and the maximum penalty Aldrich Ames faces, if convicted for selling our country's secrets—all for \$1.5 million and a more comfortable lifestyle—is life imprisonment. That is the most that he would suffer. And that is taking into consideration that it appears at least 11 people who have worked for the United States have been murdered as a result of his espionage and of his treason to our Government.

The Senate-passed crime bill authorizes the imposition of the death penalty in espionage cases where "in the commission of the offense the defendant knowingly created a grave risk of death to another person." It is clear from court records that Mr. Ames compromised the safety of U.S. operatives overseas, and the prevailing wisdom is that several agents may have been murdered as a result of intelligence that he crassly sold to a foreign government.

Mr. President, when a potential turncoat calculates whether he will betray his country for profit, the prospect that he or she may be sent to the electric chair should be part of his or her calculation. The death penalty is a strong deterrent to such crimes. For crimes like espionage and treason for profit, the likelihood of such a crime being committed will be diminished if the potential punishment includes the death penalty. This is a price some criminals will not want to pay for a new Jaguar.

I believe we need an enforceable, comprehensive Federal death penalty for espionage, and we need the President's leadership on this issue. So I strongly urge President Clinton to announce his support for a Federal death penalty contained in the Senate bill.

We not only have the death penalty there, we resolve the procedural conflicts that have made it unenforceable over all these years. I cannot think of a better instance where it should be enforceable than in those cases where a person sells out his or her country, and does so for a cheap profit by putting lives in jeopardy and causing the death of other people.

I cannot determine the Ames case in advance, nor do I want to. But if the facts are as they have been explained to me by governmental law enforcement leaders, then this is an appropriate time to pass the Senate bill with the Federal death penalty intact, enforceable, and written well.

WHAT THE FCC FORGOT TO TELL AMERICA WHEN IT CUT CABLE RATES

Mr. DOLE. Mr. President, I read with interest yesterday in the Washington Post, and others papers, about the roll-

back of cable rates. I just want to set the record straight.

I call this "What the FCC Report Forgot to Tell America When It Cut Cable Rates."

Mr. President, the Federal Communications Commission's appetite for Government intervention has opened a big pot-hole in the information highway, and could short-change cable TV consumers. Earlier this week, the FCC announced that cable TV companies with fewer than 15,000 customers are subject to have their rates rolled back by 7 percent. This sounds good if you stop right there. It sounds very good. But no one has told the American people what they will sacrifice in the process. For starters, we should expect two things. First, it will stifle private business efforts to build the so-called information highway. And second, rapid introduction of new channels and services will not occur. In short, Americans should expect an inferior product because the cable TV legislation has stagnated competition and innovation. Unfortunately, only a few of us anticipated this outcome when Congress passed this law in 1992.

Mr. President, these rollbacks hurt more than the cable TV industry, and nobody would defend some in the industry for some of the egregious practices in the past. In fact, major communications deals have been ruined by the FCC's actions. Chairman Hundt's economist, Michael Katz, said these additional cuts won't hurt. The stock market said otherwise. Citing the rate rollbacks, Bell Atlantic last night called off its bid to acquire TCI. Originally this acquisition was valued at \$26 billion and would have arguably created the most powerful and progressive communications company in the world. Bell Atlantic's stock took a nose dive when Chairman Hundt indicated last December that he would roll back rates and thereby restrict TCI's revenue stream. As my colleagues may recall, Bell Atlantic was cautious and did not strike a deal until after the FCC had set its original rate cut regulations. I can only guess that constant changing of the rules will discourage similar deals from being negotiated in the future.

The administration's says it supports the establishment of an information superhighway, but seems eager to throw up roadblocks in the way of its development. Vice President GORE's says that promoting competition will accelerate construction of the highway. He envisions the cable industry as the major competitor to the phone companies. Let us face it, that is not likely. As one of the principle architects of the cable TV bill, the Vice President is responsible for hamstringing the cable TV industry to the point that it is no longer a credible competitor. If we continue to pursue such short-sighted policies in the name

of consumer protection, Americans will never see the benefits of competition.

HAZARDS OF CABLE RATE CUTS

Mr. President, rate cuts are not a free ride. When the Commission originally rolled rates back 10 percent last September, approximately two-thirds of all consumers realized some savings. But have subscribers seen any new channel additions since then? Of course not. In fact, many have actually experienced a reduction. Why is this when there are 51 new cable channels ready to go right now? It is simple. Cable operators just can't afford them.

Updating old cable TV systems and construction of new ones have also been practically non-existent. These upgrades would accelerate the development of the information highway and create thousands of high skill, high-paying jobs—the kind of jobs Vice President GORE says he wants. But the actions of current FCC Chairman, Reed Hundt, say otherwise.

These are only a few problems that were created by the first rate cut. It seems to me that things will not improve with another 7-percent rollback. While pro-regulators have let their revisionist tendencies get the best of them, let me set the record straight. It was never Congress's intention to punish all cable TV companies, only the abusive companies.

REPUBLICAN FCC NOMINEE

Mr. President, I am also concerned that the Republican FCC seat vacated by former Chairman Al Sikes more than a year ago remains empty. This is completely unreasonable. We have been advised by Howard Paster that this would not happen. In fact, I thought the White House recognized this fact when it agreed to quickly name a nominee. That was 3 months ago. What is the hold up? After all, we have had two nominees for Secretary of Defense, and one confirmed, in the same time period, as well as countless other nominees.

7-PERCENT ROLLBACK NOT JUSTIFIED

Mr. President, in closing this brings me to another issue. How did the Commission determine that a 7-percent rollback was in order? They say a study will be released in 2 weeks which will justify everything. It seems to me that the study should have come first—before any changes were made.

For instance, it is my understanding that Chairman Hundt's office said that cable TV operators got off easy—the Commission could have ordered a 15-percent rollback. Well, if the data supported a larger rollback, why did not the Commission stand strong for the American consumer? As I have said all along, this entire debate has been more about politics than consumer protection.

CONCLUSION

No doubt about it, the cable TV bill fiasco is a vivid example of the Govern-

ment tinkering with something that it clearly didn't understand. Now don't get me wrong. Consumers should get the most bang for their buck. As I said before, there were some bad practices with some cable TV operators. But when Government gouges consumers more than business, it is time for Government to get out of the way and let competition take over.

I ask unanimous consent the Washington Post article which I referred to be printed in the RECORD.

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

[From the Washington Post, Feb. 24, 1994]

BELL ATLANTIC, TCI CALL OFF MERGER—FIRMS BLAME LATEST FCC CABLE RATE CUTS; REGULATORS AND ANALYSTS SKEPTICAL

(By Sandra Sugawara and Paul Farhi)

Bell Atlantic Corp. and Tele-Communications Inc., yesterday called off their plans for the biggest telecommunications merger ever, blaming the Federal Communications Commission decision Tuesday to scale back cable TV rates.

Bell Atlantic Chairman Raymond W. Smith and TCI President John C. Malone decided to call off the deal at a meeting in New York after they failed to agree on the price that the regional telephone company would pay for the cable properties, according to a Bell Atlantic official.

Smith argued that the FCC actions reducing cable prices would significantly reduce the value of the cable properties, but Malone refused to accept the lower price. The merger initially was valued at \$26 billion.

Smith had said the deal, by creating economies of scale, would speed up the arrival of the so-called information highway. This enhanced network promises to deliver services such as video on demand, interactive home shopping, video conferencing and remote education to millions of homes across the country.

On the face of it, the failure of the merger would seem to slow down this process. But some analysts said competition between telephone, cable and entertainment companies—not mega mergers—ultimately will provide these services. Consumer acceptance and willingness to pay also will be key factors in what services are provided, and when.

"There is no change in our overall vision, which is to be a major player in the communications, information and entertainment world. We're just going to do that in a different way than we planned on Monday," Bell Atlantic President James Cullen said last night.

"Of course we are disappointed, but the unsettled regulatory climate made it too difficult for the parties to value the future today," Smith said in a statement.

"Given the market and regulatory uncertainties, Ray and I concluded that this is not the time to bring our companies together," Malone said in the same statement.

But FCC Chairman Reed Hundt challenged the companies' explanation, and Clinton administration officials and industry analysts also expressed skepticism about whether regulators were to blame for the deal's collapse. The commission's cable decision "did not in any way make the future of the cable industry more unsettled," Hundt said in a statement released by the FCC. He said that instead the rules clarified the industry's future.

The cancellation of the deal may also slow the merger mania among cable, telephone and other companies, according to industry analysts, who said the high-profile Bell Atlantic and TCI deal had put other companies under pressure to find partners.

"We are going to have to rethink everything," said Robert B. Wilkes, an analyst with Brown Brothers Harriman & Co. in New York. "I think there is less likelihood that all these industries will come together."

Wilkes also said it may lessen the pressure for legislation to deregulate the telecommunications industry. But an aid to Rep. Edward Markey (D-Mass.), chairman of the House telecommunications subcommittee, said he did not expect the announcement to slow plans to pass such legislation.

"Whatever the real reason this deal fell through, no deal should survive if it is premised on a cable company charging monopoly rates," Markey said.

The companies' decision came a day after the FCC voted unanimously to cut cable companies' programming prices by 7 percent. Ten months earlier, the FCC ordered a 10 percent rate rollback.

While many analysts expect TCI, the world's largest cable company, to weather the FCC's move better than others in its business, the ruling is likely to curtail the company's monthly cash flow. That is crucial, since the price Bell Atlantic would have paid for TCI was predicated on a formula of 11.6 times the cash flow of TCI's cable systems. Cash flow is the cash available to a company before taxes and depreciation are deducted from revenue. As this cash flow declined, so did the price Bell Atlantic was willing to pay for the assets.

TCI has not estimated how much the latest 7 percent rollback will affect cash flow, but it said last fall that the initial 10 percent rollback would diminish it by 4 percent to 5 percent annually, assuming the company did not find new sources of unregulated revenue, such as increased advertising. All told, however, most analysts did not expect TCI to be severely harmed by either of the FCC's rate rollbacks.

An administration official last night discounted the claim that the FCC was to blame. "The idea that all of a sudden this shook these two giant companies to the core is hard to believe," the official said. "... The search for external forces may be convenient, but the real cause may lie within."

The companies had already missed several deadlines for closing the deal.

George Dellinger, analyst for County NatWest Securities, also was skeptical. "It was compounded by the cable regulations, but I don't think [Smith and Malone] can look each other in the eye and say FCC did it. . . . It was ego. It was fine print. It was power. It was price."

But Cullen flatly denied that the deal fell apart for any other reason than the FCC rate cuts. "I can tell you absolutely that could not be further from the truth," he said of speculation that factors such as ego and culture clashes played a role. "The chemistry could not have been better."

Cullen said that over the past four months, numerous issues had threatened to derail the talks, but that each of these was resolved. "It was the deal with nine lives," he said.

He said the two companies are discussing joint ventures, including the creation of a full-service network and a joint venture in programming.

The administration had in principle given the merger a green light, another adminis-

tration official said, provided that the combined company sold cable TV systems located in the Bell Atlantic telephone service area, such as Washington's District Cablevision. Those were needed so that the merged company would not have monopoly control over phone and cable systems in a single neighborhood.

However, some Washington officials and legislators have expressed concern that a wave of mergers would bring monopolistic lethargy to an emerging market that they hoped would host many companies and be vibrantly competitive.

Bell Atlantic stock, which was trading at nearly \$68 a share when the deal was announced, has declined steadily since and closed yesterday at \$52.75 a share. TCI shares closed at \$24.25 yesterday, down from \$31.37½ last fall.

Mr. DOLE. I yield the floor.

TRIBUTE TO KRISTIN HYDE

Mr. DOLE. Mr. President, I rise today to express my gratitude to a member of my staff who is leaving my office at the end of this week. As my press assistant, Kristin Hyde has been an important part of my press team for more than a year.

At a young age, Kristin has made quite a name for herself, working at the Republican National Committee, for President Bush, in the Office of the Senate Republican leader, and now Kristin is moving on to a new challenge as press secretary for our colleague, Senator JUDD GREGG.

From her duties as a spokesperson to doing all the unglamorous things that make a press office work, Kristin has been a tremendous asset to my office. Her talents will serve her well in her new position as she works with the media from her native "Granite State."

While Kristin is leaving my staff, I take some consolation in knowing she will be working in two places I know well—the U.S. Senate and the State of New Hampshire. I wish her all the best.

JUSTICE ROSEMARY BARKETT

Mr. DOLE. Mr. President, last November, Senate Republicans and Democrats put aside our partisan differences and passed one of the toughest crime bills we have ever considered.

Will this bill put an end to the crime epidemic? Of course not, not by a long shot. But after years and years of congressional inaction, and after more chaos and slaughter on the streets of America, this bill—if adopted by the full Congress—would represent a good first step in the right direction. It would be progress.

President Clinton is now on the rhetorical offensive, talking tough on crime as he tries to refashion himself as a new democrat. Although the President has not fully embraced every detail of the Senate-passed crime bill, including the \$6.5 billion it devotes to incarcerating violent criminals, it ap-

pears that each day he is inching closer to an endorsement.

AN OPPORTUNITY FOR THE PRESIDENT

If President Clinton musters up enough political courage to say "No" to the liberals in the House of Representatives and throws his unqualified support behind the Senate-passed crime bill, it will be a credit to his administration and a boon for the American people.

When it comes to fighting crime, the American people do not indulge in muddled thinking: Criminals are not the victims of society, as the root-cause liberals would have us believe. On the contrary: Society is the victim of criminals. And the most effective antidote to violent crime, at least in the short-term, is to arrest the violent offenders, convict them, lock them up, and then slam-shut the revolving prison door. The simple truth is: A criminal kept behind bars will not terrorize a single law-abiding citizen. Not one.

Of course, actions speak louder than words. We can toughen the criminal laws. We can put more police on the streets. We can give more resources to law enforcement. We can keep violent criminals behind bars through truth-in-sentencing and by building more prisons. But these efforts, no matter how worthwhile, will quickly unravel if the Federal bench is dominated by judges who seek to substitute their own liberal policy preferences for a neutral application of the criminal laws.

Judges, and the rulings they make, can have an enormous impact on our criminal justice system. Like a hefty credit card bill, America is still paying the price for the Warren court years—and Warren happened to be a Republican—a period of unparalleled judicial activism during which the rights of criminal defendants were expanded and the ability of law enforcement to protect the public tragically diminished.

BARKETT RECORD DOES NOT MATCH PRESIDENT'S RHETORIC

One judicial nominee whose record of liberal activism is curiously at odds with the President's tough-on-crime rhetoric is Florida Supreme Court Chief Justice Rosemary Barkett. Justice Barkett has been nominated to fill a vacancy on the 11th Circuit Court of Appeals.

Last year, when she was first nominated, I publicly expressed some reservations about Justice Barkett's record. During the past few months, I have had the opportunity to examine this record more fully.

Justice Barkett is, no doubt, an intelligent and capable person. But, time after time during her tenure on the Florida Bench, Justice Barkett has shown a willingness to find excuses for criminal behavior and an eagerness to indulge in the criminal-as-the-victim-of-society approach that does so much to erode public confidence.

First, the death penalty. The death penalty is one area in which Justice Barkett's liberal activism has flourished.

Yes, it is true that Justice Barkett has, on numerous occasions, joined with her colleagues on the Florida Supreme Court in voting to uphold the imposition of the death penalty. But it is also true that she is the most antideath penalty member of the Florida court, having dissented more than 100 times—and often without explanation—from the court's decision to enforce a capital sentence. By contrast, Justice Barkett has never—not once—dissented from a majority decision of the Florida Supreme Court that granted relief to a convicted capital murderer.

In one case involving a brutal, racially motivated killing—Dougan versus State—Justice Barkett joined a dissenting opinion that offered the following criminal-as-a-victim-of-society analysis. Criminal as victim—do not worry about the victim, worry about the criminal. "This case is not simply a homicide case, it is also a social awareness case. Wrongly, but rightly in the eyes of the criminal defendant, this killing was effectuated to focus attention on a chronic and pervasive illness of racial discrimination and of hurt, sorrow, and rejection. His impatience for change, for understanding, for reconciliation matured to taking the illogical and drastic action for murder. The victim was a symbolic representation of the class causing the perceived injustices."

Although Dougan stabbed his victim repeatedly, shot him twice, laughed at the victim while he pleaded for his life, and sent several tape recordings bragging about the murder to the victim's mother, Justice Barkett and her colleagues insisted that the defendant had some positive qualities.

In comparing what kind of person Dougan is with other murderers in the scores of death cases that we have reviewed, few of the killers approach having the socially redeeming values of Dougan.

Is that not a great statement? There are a lot of murderers out there, but this is a good murderer so we should not do anything to him.

In another case, Foster versus State, Justice Barkett adopts the statistical-evidence defense that was explicitly rejected by the U.S. Supreme Court in McCleskey versus Kemp. In Foster, a white defendant brutally murdered a white victim. After his conviction, the defendant sought to overturn his capital sentence by claiming that the death penalty was unconstitutional since it was imposed more often on defendants whose victims were white than on defendants whose victims were black. The Florida Supreme Court rejected this argument, insisting that the defendant had to show actual, purposeful discrimination for his claim to succeed.

In a dissenting opinion Justice Barkett concluded that statistical evidence showing a discriminatory impact in capital sentencing that can not be traced to "purposeful and deliberate discrimination" could, nonetheless, establish a violation of Florida's equal protection clause. In other words, if the numbers don't add up—and that is all—Justice Barkett could see a constitutional violation, justifying the rejection of a capital sentence.

Justice Barkett's fuzzy reasoning is almost identical to the theory behind the so-called Racial Justice Act, which the Senate has considered—and repeatedly rejected. Like the Racial Justice Act, Justice Barkett's view that statistical evidence alone subjects a capital sentence to constitutional challenge would paralyze the enforcement of the death penalty. As my colleague from Florida, Senator GRAHAM, has explained: "The very nature of the criminal justice [system] does not lend itself to statistical precision—the constitution requires an individualized determination as to the appropriateness of the death penalty, taking into account the character and record of the murderer and the circumstances of the offenses."

In other words, individual justice is what matters—not justice-by-the-numbers.

There are other examples of Justice Barkett's activism: In *Hodges versus State*, Justice Barkett dissented, using sloppy reasoning to oppose the imposition of a capital sentence on a person who had committed a premeditated murder of a 20-year-old witness at a criminal trial. And in another case—*Porter versus State*—Justice Barkett appears to argue that a spurned lover who stalks and kills his former mate almost never merits a capital sentence.

Mr. President these cases are not decided in a legal vacuum. They have real-world consequences: For if Justice Barkett's views had prevailed, convicted cold-blooded murderers would have been spared the punishment the citizens of Florida believed they deserved.

Second, search-and-seizure. A distrust of the police also runs through some of Justice Barkett's opinions.

For example, she has written a number of unduly restrictive fourth amendment search-and-seizure opinions that would hamstring the police. Two of these opinions have been reversed by the U.S. Supreme Court, and one has been criticized by it.

For example, in *Bostick versus State*, Justice Barkett ignored established Supreme Court precedent and ruled categorically that a police drug search of a passenger on a commercial bus violated the fourth amendment, even though the passenger had consented to the search. In her opinion, Justice Barkett compares the search to the "roving patrols and arbitrary searches

conducted in Nazi Germany, Soviet Russia, and Communist Cuba." Even Florida Attorney General Bob Butterworth, a supporter of Justice Barkett, criticized her inflammatory rhetoric, saying that "such language is simply not appropriate, and we should expect more from—[Florida's] highest court." Not surprisingly, the Bostick ruling was later overturned by the U.S. Supreme Court.

Another area, obscenity and antiloitering laws. Justice Barkett has also demonstrated a hostility to criminal obscenity and antiloitering laws, even when these laws are narrowly drawn. Local communities often depend upon these laws to maintain basic standards of decency and to enhance the personal safety of their residents.

In Justice Barkett's view, criminal obscenity laws violate due process. As she explained in one of her opinions, and I quote:

A basic legal problem with the criminalization of obscenity is that it cannot be defined * * *. Thus, this crime, unlike all other crimes, depends, not on an objective definition obvious to all, but on the subjective definition, first, of those who happen to be enforcing the law at the time, and second, of the particular jury or judges reviewing the case. Such a principle runs counter to every principle of notice and due process in our society.

In this sweeping denunciation, Justice Barkett did not even acknowledge the Supreme Court's 1973 decision, *Miller versus California*, which defined criminal obscenity. This definition has been approvingly cited by lower Federal and State courts on hundreds of occasions.

Justice Barkett has also written opinions striking down local ordinances prohibiting loitering for the purpose of prostitution and engaging in drug-related activity. In both instances, she resorted to legal analyses that appear designed to advance her own policy preferences rather than neutrally apply existing law.

Mr. President, as Americans everywhere fear they will become the next crime statistic, it is vital that the President nominate judges to the Federal bench who view "law-and-order" as something more than just a slogan.

Slogans, of course, do not stop crime; tough law enforcement and credible punishment do. The citizens of Florida have certainly learned this lesson the hard way: Florida has one of the highest crime rates in the country. Yet, according to one analysis, 95 percent of the criminals sentenced to prison in Florida serve less than 15 percent of their sentences. So 95 percent of the criminals sentenced serve about 15 percent of their sentences.

Unfortunately, Justice Barkett too often has found excuses for criminal behavior and has substituted sociology for the neutral application of the law. Although I don't question Justice Barkett's intellect or integrity, I will

vote against her confirmation. I urge my colleagues on both sides of the aisle to do the same.

Mr. President, I thank you for this time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

BALANCED BUDGET AMENDMENT—UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senator REID now be recognized to offer a substitute amendment to Senate Joint Resolution 41; that the time for debate between now and 3 p.m. on Tuesday, March 1, be divided between Senators REID, BYRD, SIMON, and HATCH, or their designees; that no other amendments or motions be in order with respect to Senate Joint Resolution 41; that at 3 p.m. on Tuesday, March 1, the Senate, without any intervening action or debate, vote on Senator REID's substitute amendment; that if two-thirds of the Senators present and voting do not vote for Senator REID's substitute amendment, then the amendment shall not pass; that if Senator REID's amendment is defeated, Senator SIMON then be recognized to modify Senate Joint Resolution 41, the modification changing the effective date from 1999 to 2001 and incorporating the language of Senator DANFORTH's judicial restriction amendment, which is attached to this agreement; that there then be 4 hours for debate on Senate Joint Resolution 41, equally divided between the proponents and the opponents, with Senators SIMON and HATCH, or their designees, controlling time for the proponents and Senator BYRD, or his designee, controlling time for the opponents, with 25 additional minutes under the control of Senator GRAMM of Texas; that at the conclusion or yielding back of time, the Senate, without any intervening action, vote on passage of Senate Joint Resolution 41; that if Senator REID's amendment is agreed to, then the Senate, without any intervening action or debate, vote on passage of Senate Joint Resolution 41, as amended.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The text of the agreement is as follows:

Ordered. That during the further consideration of S.J. Res. 41, a joint resolution proposing an amendment to the Constitution of the United States to require a balanced budget, no other amendments or motions be in order with respect to S.J. Res. 41, and that all time for debate on this measure until 3

p.m. on Tuesday, March 1, 1994, shall be divided between the Senator from Nevada (Mr. Reid), the Senator from West Virginia (Mr. Byrd), the Senator from Illinois (Mr. Simon), and the Senator from Utah (Mr. Hatch), or their designees.

Ordered further, That at 10 a.m. on Friday, February 25, 1994, the Senate resume consideration of S.J. Res. 41, with the time for debate on Friday to extend until 6 p.m. and to be controlled under the provisions above.

Ordered further, That at 3 p.m. on Tuesday, March 1, 1994, the Senate, without any intervening action or debate, vote on the Reid substitute amendment, and that if two-thirds of the Senators present and voting do not vote for the Reid substitute amendment, then the amendment shall not pass.

Ordered further, That if the Reid amendment is defeated, the Senator from Illinois (Mr. Simon) be recognized to modify S.J. Res. 41, which modification shall change the effective date from 1999 to 2001, and incorporate the language of the Danforth judicial restriction amendment.

Ordered further, That there then be 4 hours for debate on S.J. Res. 41, to be equally divided between the proponents and the opponents, with the Senator from Illinois (Mr. Simon) and the Senator from Utah (Mr. Hatch), or their designees, controlling time for the proponents, and the Senator from West Virginia (Mr. Byrd), or his designee, controlling time for the opponents, with 25 additional minutes under the control of the Senator from Texas (Mr. Gramm).

Ordered further, That at the conclusion, or yielding back, of time, the Senate, without any intervening action, vote on passage of S.J. Res. 41.

Ordered further, That if the Reid amendment is agreed to, the Senate, without any intervening action or debate, vote on passage of S.J. Res. 41, as amended.

Mr. MITCHELL. Mr. President, and Members of the Senate, I thank my colleagues for their cooperation.

This agreement is the culmination of many long hours of discussion involving several Senators, those mentioned in the agreement and others. I thank each of them for their courtesy and cooperation in this process, as well as all of the other Senators who have agreed by unanimous consent to permit this agreement to be entered.

Mr. President, under this agreement, Senator REID will now be recognized to offer a substitute amendment. There will be no amendments to that amendment in order or motions with respect to that amendment. Debate will continue today, tomorrow, and Monday. It is agreed among all of the principals that the time will be equally divided by agreement among the proponents and opponents, with the time to be controlled by Senators REID and BYRD and HATCH and SIMON.

There will be no rollcall votes on this or any other matter until 3 p.m. on next Tuesday. At 3 p.m., a vote will occur on the Reid substitute amendment.

Under the agreement, in order for that substitute amendment to pass, two-thirds of the Senators present and voting will have to vote for it. If it does pass, meeting that two-thirds requirement, then, without any interven-

ing action or debate, the Senate would vote on passage of the underlying resolution which will then have been amended by the adoption of the Reid substitute. In that event, disposition of this matter will then be concluded.

In the event that Senator REID's amendment fails to obtain the votes of two-thirds or more of the Senators present and voting, the Reid substitute amendment shall have been defeated and, pursuant to this agreement, the Senate will debate for up to an additional 4 hours, with that time to be divided between Senator BYRD in behalf of the opponents and Senators HATCH and SIMON in behalf of the proponents of the underlying Simon resolution.

There will be an additional 25 minutes under the control of Senator GRAMM of Texas. And then, we will vote on the Simon amendment, which, pursuant to this agreement, will be in the form now pending, with the exception of two modifications agreed to and specifically identified in the agreement.

The first is a modification that changes the effective date from the year 1999 to the year 2001; and the second incorporates the language of Senator DANFORTH's judicial restriction amendment in precisely the language contained in a document which will be attached to this agreement and be incorporated by reference into this agreement.

Mr. President, I believe I have stated accurately the process by which we have agreed but I invite Senator SIMON and other Senators present, first to correct me if I have in any way misstated the agreement, or if they wish to make any other comment.

Mr. SIMON. If the majority leader will yield?

Mr. MITCHELL. Yes.

Mr. SIMON. Mr. President, he has stated it properly and I commend him for pulling very disparate forces together here. We do need, as I understand what we have agreed to—we need some kind of an understanding of how long we are going to go today, how many hours, as well as tomorrow and Monday, so we can somewhat plan our schedules. I assume the leader will be suggesting something before too long about that?

Mr. MITCHELL. My suggestion is that the Senate remain in session so long as there are Senators wishing to debate on this subject. This is a very important matter. This is a grave matter. This involves amending the Constitution of the United States, an event which has occurred only a few times in our Nation's history. I do not want any Senator to in fact or in perception have been shut out or not have had full opportunity to debate. When we get to this vote on 3 p.m., no Senator will be able to say, I have not had a chance to get up and speak my piece.

I am saying right now we will stay in session this evening for as long as any

Senator wants to speak. We will be in session tomorrow for as long as any Senator wants to speak. We will be in session Monday for as long as any Senator wants to speak. So that there will be full and ample opportunity for every Senator to express himself or herself on this very important matter.

I cannot predict what that timing will be and I recognize that imposes somewhat of a burden on the managers. But I hope they will agree, in view of the importance of this matter, we must be prepared to debate for so long as Senators wish to do so.

Mr. SIMON. I agree. If the majority leader will yield again?

Mr. MITCHELL. Yes.

Mr. SIMON. I agree with that. But practically, in order to work out the time, it seems to me we ought to agree tentatively on 2 hours today and 7 hours tomorrow—whatever it may be—and 4 hours or 5 hours before the vote on Monday. And then if others want to speak, it is with the understanding that we will extend additional time so long as both sides can be heard equally.

So, if it is possible for the leader or his staff to kind of pull together a rough outline along that line, I think it is desirable.

Mr. MITCHELL. I will be pleased to do that, but I am going to instruct the staff to err on the side of accommodating any Senator who wants to speak and not shutting anyone off or cutting anyone off in fact or in perception. But I will ask the staff to do that and to be of assistance to the managers as the debate proceeds.

Mr. SIMON. I thank the majority leader.

Mr. BYRD. Mr. President, will the majority leader yield?

Mr. MITCHELL. I certainly will, yes.

Mr. BYRD. I congratulate the majority leader on this agreement. I should state that those of us who oppose the Simon amendment gave up some of our rights, as did those who support it, but I think that this is the best conclusion. I think it will bring us to an earlier conclusion. I think that conclusion under the parameters of the agreement will certainly be protective of all concerned.

I would only ask, may I say to the leader, that before he sits down or immediately after he does sit down—or immediately after he gives up the floor—I would like to hear the Danforth amendment read. I would ask that the clerk read the Danforth amendment.

INTENDED AMENDMENT NO. 1470

The PRESIDING OFFICER (Mr. WELLSTONE). Without objection the clerk will report.

The legislative clerk read as follows:

Amendment numbered 1470 intended to be proposed by Mr. DANFORTH:

On page 3, at the end of section 6 add the following:

"The power of any court to order relief pursuant to any case or controversy arising

under this article shall not extend to ordering any remedies other than a declaratory judgment or such remedies as are specifically authorized in implementing legislation pursuant to this section."

Mr. BYRD. I thank the majority leader. I thank him for the fairness to all concerned and I thank him for the efforts he has put in to bringing this matter to this conclusion.

Let me say just parenthetically, I have often wondered how Shakespeare could have come to know and understand human nature as well as he obviously did, probably more so than any other man—any man other than Jesus Christ—who ever walked this planet; and how he came to understand human nature so comprehensively without having been first majority leader of the U.S. Senate. I am at a loss to explain.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, we now have gotten the agreement. I want to make a comment on the substance of the matter and I ask Senator BYRD if I could have some time off his time to make comment on this agreement?

Mr. BYRD. Yes.

Mr. CRAIG. Will the majority leader yield briefly for a comment?

Mr. MITCHELL. Yes.

Mr. CRAIG. Let me say for those of us on this side of the aisle, we appreciate the effort the majority leader has put into this and the accommodation. I think we have had a very productive debate thus far and this now gives us an opportunity to continue, but I think in a very defined way, which I think is for both sides very important since it gives us the time to effectively argue it. This Senator is prepared to stay on the floor for the balance of the day and Friday and Monday, as I think others should be. It is very important, I think, to have this debate in this timeframe.

Having said that, there is no objection on this side. I am glad we were able to work out those matters and to give other Members who had other amendments the opportunity to consider them in a constructive fashion. The Reid amendment—certainly those concerns we had—and we were led to believe it would refine the Simon amendment—have now been accommodated and we appreciate that accommodation.

Mr. MITCHELL. Mr. President, I will have much more to say on the substance of this amendment which I strongly oppose. But I want now to comment specifically on the changes that the sponsors have insisted on making to their amendment, and what I believe this means in terms of the amendment itself.

The first is of course to push it into the next century, a time when many if not most of the sponsors will not be here to face the consequences. That is the first point.

If this was such a great idea, why do those who support it want to push its

implementation into the next century? The answer is obvious. This amendment is a gimmick. It is an effort to suggest action when those involved are refusing to take action. It is no coincidence that of the 55 Senators who are sponsors of this amendment which purports to balance the budget, 40 of them voted against the deficit reduction plan proposed last year, the single most important and effective action in dealing with the Federal budget deficit that this Senate has taken.

I repeat that. This amendment says we have a serious deficit problem, so serious that we have to amend the Constitution. And yet 40 of the 55 sponsors of this amendment voted against the single most important action to deal with the deficit ever taken by this Senate.

And the second modification says that this amendment cannot be enforced. The sponsors of the amendment are demanding that it be changed to make certain that it cannot ever, under any circumstances, be enforced. If the President and the Congress fail to comply with this amendment, then no one can do anything about it, and it is the sponsors who are insisting that no one be able to do anything about it, to take the only institution in our society which would otherwise have the authority to insist on enforcing this amendment and writing them out of the act, saying, as that amendment we just heard read up here says, that Federal judges can do nothing—nothing—about this matter if it is not complied with.

I can think of no single action which better characterizes what is going on here than that those who are proposing the amendment are insisting that before a vote occurs on it, it be modified in a way to make certain that it can never be enforced. That is like us passing a criminal law and saying that the district attorney has no authority to indict anyone and the jury has no authority to convict anyone and the judge has no authority to sentence anyone if they break this law.

I think that these actions of the supporters of the amendment, of the sponsors of the amendment, have exposed what is going on here in a way that no words of any opponent could have done. When the sponsors say, "We don't want to have a vote on our amendment; we won't permit a vote on our own amendment unless we can do two things: unless we can push it off into the next century and unless we can make absolutely certain, clear beyond any doubt, that if we do not comply with it, no one can ever do anything about it."

I ask Members of the Senate and I ask the American people to search their memories and search the history books and find an example when someone who proposes a law says, as an absolute requirement before they would permit a vote on their own proposal to

say we have to insist, before you let us vote on our proposal, before we will let you vote on our proposal, we have to insist on language that makes certain that it cannot be enforced. And that is exactly what has happened here. The provision providing for the modification of this amendment was insisted upon by the supporters of this amendment.

They said, "We won't agree; we won't agree to this, Mr. Majority Leader, unless you let us change our amendment in a way that pushes it off until the next century and in a way that makes it certain that it can never be enforced."

Those two actions, better than any words any opponent of this amendment can utter, tell us and the American people what is going on here.

Mr. President, I yield the floor.

Mr. SIMON. Will the majority leader yield?

Mr. BYRD. The majority leader has the floor on my time. I ask, will he yield to me briefly to comment on what he just said?

Mr. MITCHELL. Yes.

Mr. BYRD. Mr. President, the majority leader has hit the nail right on the head. By extending this date, no Senator in here who supports the amendment will have the absolute assurance that he will be here to give an accounting for what has transpired as a result, in part, of his vote. So, it is a good way for us to vote for the amendment and never have to worry about having to face the music.

Second, when the barons forced King John, in the year 1215, to sign the Magna Carta, that charter said that no freeman may be disseized of property, or banished or imprisoned except by the lawful judgment of his peers and by the law of the land. That "law of the land" phrase, as Senator MITCHELL will know, he having been a Federal judge, that "law of the land" phrase is the mother of language from which has derived the "due process" phrase in our own Constitution and in the amendments thereto.

What is being done by the Danforth amendment is simply that it is a taking of due process away from those persons who might have reason to challenge this constitutional amendment in the courts to secure remedies for perceived wrongs. They will have no way of enforcing their due process rights under the Constitution if the Danforth proposal were adopted.

Mr. SIMON addressed the Chair.

Mr. MITCHELL. Mr. President, if I can make one more comment and I will yield the floor. The Senator has been at it for 3 days. He has had plenty of time to speak.

Just in case any American has missed the obvious, the terms of U.S. Senators are for 6 years. The way this amendment was drafted, it would have taken effect in 5 years. So what the

sponsors wanted to make sure to do was to change that to 7 years. Let us be clear about that. Under the original amendment, the consequences would have been felt within less than the terms of Senators. Some Senators here might actually have had to do something about the consequences of this action. By pushing it off into the next century, 7 years, the sponsors have guaranteed that no Senator now serving in the Senate will still be serving that term when the consequences descend upon this institution.

Of course, they can run if they want. Maybe some of them will seek reelection, maybe some of them will want to come back, but what this does, Mr. President, is makes absolutely certain that if, in fact, the Constitution is changed, no one here will be required to confront the consequences.

Several Senators addressed the Chair.

BALANCED BUDGET AMENDMENT

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 41) proposing an amendment to the Constitution of the United States to require a balanced budget.

The Senate resumed consideration of the joint resolution.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Nevada is to be recognized to offer his amendment.

AMENDMENT NO. 1471

(Purpose: In the nature of a substitute)

Mr. REID. Mr. President, I have an amendment which I send to the desk. This is on behalf of myself, Senator FORD, and Senator FEINSTEIN.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. REID] for himself, Mr. FORD and Mrs. FEINSTEIN, proposes an amendment numbered 1471.

The amendment is as follows:

Strike all after "Assembled" and insert the following:

(two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission to the States for ratification:

ARTICLE

"Section 1. Total estimated outlays of the operating funds of the United States for any fiscal year shall not exceed total estimated receipts to those funds for that fiscal year, unless Congress by concurrent resolution approves a specific excess of outlays over receipts by three-fifths of the whole number of each House on a roll-call vote.

"Section 2. Not later than the first Monday in February in each calendar year, the

President shall transmit to the Congress a proposed budget for the United States Government for the fiscal year beginning in that calendar year in which total estimated outlays of the operating funds of the United States for that fiscal year shall not exceed total estimated receipts to those funds for that fiscal year.

"Section 3. This article shall be suspended for any fiscal year and the first fiscal year thereafter if a declaration of war is in effect or if the Director of the Congressional Budget Office, or any successor, estimates that real economic growth has been or will be less than one percent for two consecutive quarters during the period of those two fiscal years. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and it is so declared by a joint resolution, adopted by a majority of the whole number of each House of Congress, that becomes law.

"Section 4. Total estimated receipts of the operating funds shall exclude those derived from net borrowing. Total estimated outlays of the operating funds of the United States shall exclude those for repayment of debt principal; and for capital investment. The receipts (including attributable interest) and outlays of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as receipts or outlays for purposes of this article.

"Section 5. This article shall be enforced only in accordance with appropriate legislation enacted by Congress. The Congress may, by appropriate legislation, delegate to an officer of Congress the power to order uniform cuts.

"Section 6. Sections 5 and 6 of this article shall take effect upon ratification. All other sections of this article shall take effect beginning with fiscal year 2001 or the second fiscal year beginning after its ratification, whichever is later."

Mr. HATCH and Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. I recognize that the distinguished Senator from Nevada does want to talk about his amendment, and I only intend to take 1 minute or 2, but I was unable to speak earlier in response to the comments of the distinguished majority leader. I feel as if they do deserve just a short response. They deserve a longer one, but I will only give a short one here today.

Frankly, to stand here and say the reason we are putting the due date when we should reach a balanced budget to the year 2001 is so we can avoid responsibility, if I interpreted the majority leader's comments correctly, would be an insult to every Member of this body because what it is saying is that none of us really is going to take a constitutional amendment seriously for the next 7 years, assuming that this amendment passes, assuming that it is submitted to the States, and let us assume that it is ratified within the average period of time that constitutional amendments are ratified. That is 20 months.

I do not think Members of this body would fail to take that amendment,

once it passes the Senate, and once it passes the House, from that minute on, I do not think there is a person in this body who would not be interested in living up to his oath of office, which requires fealty to the Constitution of the United States, who would not take it seriously and who would not realize that the game is up around here, and that we have only 7 years on a glide-path to reach a balanced budget.

For anybody to stand here and say that this is a gimmick, when they realize that this would put fiscal restraint into the Constitution and into the hearts of every Member of this body, I think is wrong.

I have to tell you, I cannot imagine a Member of this body, if this resolution passes both Houses of Congress, who would not take their responsibilities very, very seriously to start that day and do what is right. I hope the majority leader did not mean that, and I will give him the benefit of the doubt with regard to it.

But the reason that the year 2001 is put in there is because we do not believe these two bodies, the Senate and the House, can reach a balanced budget amendment, even with everybody working on it, in less time than that. And it also provides for some time for ratification.

This is important. We take our oath seriously around here. There is nothing in the Constitution right now that requires a balanced budget. By the way, our amendment does not require it. It just puts the mechanism in so that we have to face the music if we do not reach it. And that is important language.

Second, I think it is important to note that the amendment will make a difference. It is not a gimmick. OLYMPIA SNOWE, Congresswoman from Maine, said if this were a gimmick, Congress would have passed it long ago and gotten rid of it, and they would not have this embroilment where we are here fighting every year trying to get a balanced budget amendment passed. Congress does that with gimmicks.

The reason we are fighting so hard is it is not a gimmick. It is something that would put the fiscal restraints on every Member of Congress to have to at least consider doing what is right around here.

Furthermore, to say that by putting our declaratory judgment language in the amendment we are preventing enforcement also could be construed as an insult to every Member of Congress, because if we are obligated to meet the terms of this constitutional amendment, that alone is enforcement, and the ballot box is going to be even more enforcement.

There will not be any more voice votes around here hiding who is breaking the budget. We are all going to have to face the music. So do not say that we should turn over the enforce-

ment to the courts of this country. It would destroy the judiciary if they had to do that. We, the Congress, have to do what is right.

Then to stand here and say that Members ought to be doing what is right anyway I think ignores 60 years of history, because we are not doing what is right.

I might also add as to that budget reconciliation of last year, 40 of us did vote against it but for very good and valid reasons. I do not agree that it was the best deficit reduction package in history. Many did not like an awful lot of the provisions in that particular package, and many still do not feel it is a deficit reduction package, but merely another tax and spend package. There were legitimate and good reasons to vote against that. I agree 40 did vote against it in this body.

There is no question in my mind that the way to enforce this constitutional amendment is by fealty to the Constitution and by having to stand for election and face the voter who might vote against you if you do not live up to your fealty to the Constitution.

I do not want the majority leader to be misconstrued. The fact is if he believes people around here are trying to escape responsibility by putting it off for a length of time that everybody around here agrees it is going to take, then that is ignoring the fealty and the responsibility and the good faith of every Member of this body. I happen to believe more in this body than that. I believe that we will do what is right if this passes. If it does not pass, we will continue doing what is wrong the way we have for 60 years.

I apologize to my good friend and colleague from Nevada, but I just had to make these comments. There are others I would like to make but I will make those Monday.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Idaho be recognized for purposes of making an announcement, and that I have the floor back after that.

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

Mr. CRAIG. Mr. President, I appreciate the Senator from Nevada yielding only briefly. I think we are going to engage in a very important debate with this alternative or substitute amendment.

Let me also say that just minutes ago, in 6 hours and 50 minutes, the House has just discharged their balanced budget amendment. That is the fastest discharge in the history of the House since the Speaker's discharge of the original Fair Labor Standards Act in 1938.

So for Senators who believe that this is merely an exercise in debate, this

issue is now in full bloom in both Houses, the House having acted today with these issues on the floor before us.

I hope Senators will come to the floor and engage themselves in debate, whether it is for the Simon approach or whether it is for the Reid approach. This becomes, in my opinion, a most significant debate that must be resolved.

I thank my colleague for yielding.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have supported the concept of the balanced budget amendment since coming to Congress, and even before coming to Congress. This has been something that I have worked very hard on, especially the last several weeks, to arrive at something that is meaningful but yet responsible.

The Simon amendment on its face seems to accomplish that. That is why a number of individuals thought it was the way to solve the financial problems of this country. But under the spotlight of any scrutiny, the Simon amendment will not solve any of our fiscal problems. Instead, Mr. President, as many of my colleagues and a multitude of economic experts across the country fear, this amendment, as written, and as it will be modified, will create more problems than it will solve.

As I indicated, I spent a great deal of time wrestling with this issue. I, like the speeches we have heard on this Senate floor over the years, do not want to leave a legacy of debt to my five children and my three grandchildren. I do not want to leave a legacy of debt for the children of Nevada nor the children of this Nation, because I represent, as we all do who are Members of the U.S. Senate, not only the children of our State, but we represent the individuals and the children of this country. I do not want to heap a burden of debt on any future generation of the American people.

Mr. President, let us talk about some of the things we have done fiscally in recent months. We have a huge budget. This country is growing, with over 250 million people. We now have a deficit of \$176 billion, a huge amount. I do not in any way trivialize that amount of money because it is a huge amount of money. But it is the lowest deficit we have had in 9 years. It is the lowest percentage pertaining to the gross national product of debt since 1979—15 years. That is not perfect. But we have been making progress in recent years.

What has the President suggested to us—we the Members of the U.S. Senate, with our colleagues and friends in the House—what has the President told us we must do? We must eliminate entirely 115 programs. We are going to cut 300 others, by direction of the President in this budget.

For example—and I know the Senator who is presiding presently is very

concerned about agriculture; the State of Minnesota is much more agriculturally bound than the State of Nevada—the President has suggested, in spite of the great agricultural power of this country, that there be a 24-percent cut in agriculture expenditures this year. That is a tremendous cut, but it is something we are demanding be done. And the cuts I am going to be talking about, Mr. President, are not cuts in increases. These are real dollar cuts.

As an example, in 1994, agriculture spending was \$16.9 billion. We have been directed to cut that to \$12.8 billion, 24 percent; energy, a cut of 8 percent; international affairs, a cut of 6 percent; defense—as much as it has been squeezed—we are going to squeeze it 3 more percent; science, space—something that I believe is the future of this country—are being cut 2 percent; discretionary spending will be cut by \$16.5 billion to meet the spending caps that we need to make.

That is a lot of cutting. Twelve years ago, domestic discretionary spending in this country was 25 percent of our budget. Last year, it was about 12 percent. Next year, it is going to be even less.

We, Mr. President, are cutting the heart out of the programs of this country that are so meaningful—research and development at the National Institutes of Health, education. But we are doing it because there is an agreement that we need to do that.

Also in this budget is something called reinventing government, similar to the Grace Commission, done by a different individual, by Vice President GORE. Approximately 85 percent of Vice President GORE's reinventing government proposals are reflected in the budget request. That is very good, Mr. President.

So we have done a pretty good job compared to the last dozen years, when the debt was skyrocketing. We are beginning to recognize the real world that we live in.

I believe Senator SIMON's heart is in the right place. He is a fine man. I think the world of my friend from Illinois. But, as I have struggled with the arguments of those who say the amendment as written will harm the country, I have come to the conclusion, after significant thought, that they are right.

Let us see what a few of those people say. These are people who are scholars. These are not people who suddenly say, "Well, I do not like the balanced budget amendment." These are thoughtful people.

For example, Assistant Attorney General Walter Dellinger:

In the absence of any specific mechanism for achieving a balanced budget, once part of the Constitution, it may be read to authorize, indeed mandate, extensive judicial involvement in the budget process. This would constitute a serious distortion of our constitutional system.

He also says:

Perhaps most alarming of all of the aspects of the proposed amendment is that by constitutionalizing the budgeting process, the proposal appears—

He is talking about Senator SIMON's proposal.

To mandate the extraordinary expansion of judicial authority. State and Federal judges may well be required to make fundamental decisions about spending and taxing, issues that judges lack the institutional capacity to cite in any remotely satisfactory manner.

Mr. President, we do not have that problem in my amendment.

Dellinger proceeds to say:

The failure to specify any enforcement mechanisms for the amendment could result in the transfer of power over fundamental political questions of taxing and spending to the courts.

There are individuals here, Mr. President, who in their States have had the school systems run by the courts in recent years. Why? Because governments have not lived up to their responsibilities, so the courts have taken over. If we want the courts to take over all responsibility, that is what would happen if the amendment of my friend from Illinois is passed.

Dellinger says:

It would be wonderful if we could simply declare by constitutional amendment that from this day forward, the air would be clean, the streets free of drugs, and the budget forever in balance. But merely saying those things in the Constitution does not make them happen.

That is why, Mr. President, that I could not in good conscience support the amendment of my friend from Illinois.

Prof. Charles Fried of Harvard, former Solicitor General, a scholar by anybody's calculation, said, among other things: "Majority rule is so basic a principle of our Constitution that it is nowhere stated explicitly, but it pervades the whole document."

Archibald Cox, also a professor from a prominent law school, said, "I am convinced that adoption of this amendment,"—the Simon amendment—"described by its supporters as a sign of fiscal responsibility, would intrude, be an act of congressional irresponsibility."

I believe that, Mr. President. That is why I cannot, in good conscience, support the Simon amendment.

The amendment will erode the protections of the checks and balances that the framers, in their wisdom, placed in the Constitution. My amendment does not do that.

Here are some things, Mr. President, that I think are important to consider. The amendment offered by my friend from Illinois places the courts in an unequal position of power. When the Founding Fathers developed this great Government that we have, they wanted three separate but equal branches of Government. We have done a pretty good job in maintaining that. Over the

years, there has been difficulty, and part of what they built into this framework is there would be a fight for power among the three branches. The three separate branches actually advocate and fight for power. That is the way it has worked for over 200 years. We have had times in the history of this country when one branch of Government, it seems, is stronger than the other two, and there comes a balancing.

Well, if the amendment that my friend from Illinois has offered passes, it will place the judiciary in a situation where they have all of the power.

It is my understanding—and I think clearly that the sponsors of this amendment recognize that, and that is why the Danforth amendment to the Simon amendment is placed into being—but I do not think that solves the problems of the basic amendment. We have done that in, I think, a more logical, consistent way in the amendment offered by me, my friend Senator FORD, and the Senator from California.

Mr. President, we have had cyclical depressions. It happens. It has not happened in the last 70 years. We have had a few recessions, but never a depression. But, Mr. President, if you look at what has happened in the past, we have had a number of times where we have had some very significant depressions. I would like to list those here. We will not go into two centuries ago where they had a few. Let us talk about the last century. When Martin Van Buren was President, in 1837, pre-Civil War—there was a very significant depression right before the Civil War. Some scholars say one of the reasons the Civil War came about, in addition to all of the problems with North versus South, was the financial problems they had in 1857 when Franklin Pierce was President. There was another depression in 1873, when Ulysses S. Grant was President; Chester Arthur, in 1884; Benjamin Harrison, in 1893; Teddy Roosevelt, in 1907; and the granddaddy was in 1929, Herbert Hoover.

So we have had the ability in the last 70 years to do a pretty good job of making it so this country does not have depressions. We have been able to fight out of depressions and have recessions.

Mr. President, one reason we have been able to do this is because there has been a new theory in economics that has been accepted by our country and all of the economists and it has worked well—the Keynesian theory with modifications by a number of different individuals. Basically, the Keynesian theory has allowed the Government, in times of oncoming depression, to spend their way out of it. We have done a pretty good job. Remember that part of the Keynesian theory also said when you are in good times, you should save money, as we had some good times in the 1980's. But we did not do that. Instead of doing what we were

supposed to do, we spent ourselves into the biggest debt in the history of the world, by far—trillions of dollars, when we should have been saving that money.

My amendment, of course, would allow us, in times of economic downturn, to do something so that the downturn does not result in a depression in this country.

Mr. President, if State-balanced budgets were drafted in the same manner that the amendment my friend from Illinois has offered, every State would go broke. Why? Because we hear this talk about States balancing their budgets, and they do. The State of Nevada has a balanced budget, and I think that is great. But they balance it by placing capital expenditures off-budget, as we have done in this amendment that I have offered. That is not allowed in the Simon amendment. The State of Illinois could not live under the amendment he is asking the United States to live under. The State of Illinois could not live by that. There is no State like Illinois that has as much unfunded pension liability. I believe that is right. If not, it is in the top tier.

Mr. President, changing the subject, and I will get back to my text in a little bit, I have just watched walk into the Chamber here somebody I want to mention, because the amendment that is now before this body—and I will talk about Social Security at some length—has a provision in it dealing with Social Security. The reason the language is in this amendment dealing with Social Security is because of my friend from North Dakota, Senator DORGAN. It is in there because I had some language in my original amendment, but I had the good fortune and the experience to sit down and talk to somebody that most of us look to as a person that really understands finances. I served in the House with my friend from North Dakota, and I looked to him then as a member of the Ways and Means Committee as somebody to seek advice from on fiscal matters. I did so here. He studied the language—as he does—that I had in my amendment relating to Social Security. He called me, and we talked. He said, "I have some language I think is better." I reviewed this, had my staff review it, and had people from the Budget Committee look at it, and he was right. So that is the reason that I was willing to change the language in my amendment to what I referred to as "the Dorgan and Reid amendment." The Social Security language in my amendment is the Dorgan language.

Mr. DORGAN. Will the Senator from Nevada yield to me?

Mr. REID. I will be happy to yield for a short time.

Mr. DORGAN. I have a very brief question.

Let me say how much I appreciate the courtesy of the Senator from Ne-

vada in including my language in the amendment he offers.

I had indicated on the floor that I intended to offer an amendment to exempt the Social Security system in a constitutional amendment to balance the budget. I would have liked to have offered it to both of the constitutional amendments that we are going to discuss. For a number of reasons, including the massive number of amendments that opponents of the balanced-budget amendment were prepared to offer, I have had to waive my right to offer my own amendment.

However, I would thank the Senator from Nevada for including the language of my amendment in his own.

By the way, let me mention to the Senator from Nevada that he has offered a constitutional amendment that I will support. I say to my friend from Nevada that I will not necessarily support it to the exclusion of Senator SIMON's amendment. I reserve the right to consider voting for the Simon amendment if the amendment of the Senator from Nevada fails.

I did want to say that Senator REID has served the Senate's interest by bringing an amendment which is thoughtful. It has provisions that are interesting and useful, such as the establishment of a capital budget. He is trying to address the serious deficit and enormous debt that we face.

To conclude, I will support the amendment of the Senator from Nevada and I thank him very much for adding my amendment on Social Security to it. I hope the Senate will give favorable consideration to Senator REID's amendment.

I thank the Senator from Nevada for yielding to me.

Mr. REID. Mr. President, as I was speaking earlier before my friend came in from other places to the Senate floor, I wanted to recognize him because I failed to do so earlier. I was talking about the Simon amendment and the fact that almost every State in the Union would go broke if they had to live by what this amendment is asking the Federal Government to live by because every State has off-budget capital expenditures, and some of these expenditures that are off budget are more than capital expenditures, as I see them. Pension liabilities are off budget. So let us not get lost in this argument here in the next few days about, "We do it in my State. Why cannot we do it here?"

Those who make that statement should understand they better check with their Governor and their legislature because if those States had to live by the Simon amendment, they could not do it. Something similar to the Reid amendment they could because it is reasonable, it is rational, and it is doable.

So States could not live by it. Mr. President, Members of this Senate,

who, generally speaking, are above the mean as far as average wages in this country, to say the least, I will bet most every Senator who has bought a home is paying for it on time. There may be a few in this body who can pay cash for a home, but not too many.

Under the Simon amendment, if we asked families throughout America to live by it, they could not. They would have to pay cash for their house and have to pay cash for their car, and certainly no plastic.

In effect, what we have with the Simon amendment would be a growth business for lawyers, and I will talk about that at some length later.

If you want to really understand why I cannot vote for this amendment, in all due respect, and I think if my friends really analyze the Simon amendment, I do not see how they could vote for it, because I believe that the Simon amendment, as well-intentioned as it might be, I believe the Simon amendment is so easy to avoid.

How could we avoid the Simon amendment? We could change the fiscal year date. We could change the fiscal year. It says "fiscal year." Who says what is the fiscal year? Can we change it a day, a month, or 3 months?

My friends in the U.S. Senate should carefully look at the Simon amendment because I think, if they do and study it seriously, they will find that they cannot support the Simon amendment.

Mr. President, the Simon amendment as drafted creates an additional danger to our economic well-being. As I indicated—and I think it is worth repeating—in times of economic recession, such as the one we recently passed through, the Federal Government can help ease the burden on the economy. It cannot wipe it out, but it can help ease the burden. That is why I gave the examples of Presidents in the last century who were overburdened with problems, mainly debt. Depression came. They had not the economic apparatus in the Government to do anything about it. So, as a result of that, we had depression after depression after depression.

We have avoided depressions because we have the flexibility to increase investments while decreasing the tax burden in times of economic slowdowns. This is the very heart of the economics which has served this country well since the time of the Great Depression and has been utilized by both Republican and Democratic administrations since that time.

Mr. President, the unreasonable restrictions contained in the amendment of the Senator from Illinois, if in place during the recent recession, could have resulted in a depression today instead of the beginnings of a stable growth pattern that is now facing this country.

Looming depression could well be the albatross we pass on to our children if

the Simon amendment is adopted because history indicates that we have periods of boom and bust, and unless you are allowed somehow to temper that, a depression is what you have.

I have often heard from people that the Federal Government should operate like State governments and family budgets, and I agree, as I have indicated. But under this amendment, as I have said, a family who would want to buy a car or home simply would be lost. They could not do it. If States were saddled with the same restrictions contained in the amendment, their ability to build roads, sewer, or water systems would be drastically limited. There is no question about that. Rapid-growth States like Nevada would be severely hampered in their ability to borrow—and they do—to finance infrastructure which would be prohibited in the Simon amendment.

Not a single State with so-called budget requirements are hamstrung by such a broad-brush restriction as we find in the Simon amendment. In many States the balanced budget amendment applies only to the State operating fund. That is those expenses not related to costly capital investment such as roads or universities, those things which States need.

Instead, these States are able to sell bonds to borrow on to pay for these essential services. In fact, one study showed that of 42 States with capital budgets, 37 finance those budgets through borrowing.

So, Mr. President, when I again gain the floor tomorrow, I am going to spend a considerable amount of time in more detail going through what has happened across the country in newspapers. I will touch on some of them now.

Mr. President, an editorial in the Las Vegas Sun newspaper, "A Bitter Pill Worse Than the Disease," in effect talking about the Simon amendment.

From another newspaper article in Las Vegas, "Cosmetic Budget Amendment"; " * * * because they don't mean it," is what they say about the Simon amendment.

"What would happen if they failed to agree? Would the Supreme Court end up as a referee, raising a tax on truck tires here, laying off the staff of the Columbus, OH HUD office there? Oh, joy."

Or a columnist for one of the Las Vegas newspapers, where he says:

Many Members of Congress today nurture the idea by supporting a balanced budget, they can change Social Security from an entitlement program to welfare benefits. This would enable them to use Social Security funds to balance the budget by taking benefits away.

That is what the opponents are saying about my amendment. Why should we have Social Security off budget? Why, Mr. President? Because in 1983, President Reagan sat down with Tip O'Neill and other leaders of the Congress, and they bailed out Social Secu-

ity for the next century, at least 70 to 75 years.

But what have we done in the ensuing period? We have not used the Social Security Trust Fund. We have used it as a slush fund. That is why my amendment takes it off budget, as it should be off budget. Why should the budget be balanced on the backs of senior citizens, people who have paid into this account freely, willingly, with their employers?

Mr. BYRD. Will the distinguished Senator yield?

Mr. REID. I am happy to yield.

Mr. BYRD. With the understanding that I do not seek the floor.

I merely want to propound an inquiry of the Chair.

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

Mr. BYRD. Mr. President, I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state the inquiry.

Mr. BYRD. Under the agreement, it is my understanding that Senators SIMON, HATCH, BYRD, and REID have time equally shared among us today.

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I do not propose to take my time today. As I understand, Senator SIMON has inquired earlier as to the prospect of having a deadline of 7:30 p.m. today.

Mr. SIMON. That is correct.

Mr. BYRD. That is perfectly agreeable with me.

I ask unanimous consent that my portion of that time be under the control of Mr. REID. I do not propose to stay around and take the time today.

The PRESIDING OFFICER. Is there objection?

Mr. SIMON. I have no objection. I was hoping the Senator would yield it to me, Mr. President, but he has not done that, so I have no objection to that at all.

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

Mr. BYRD. I would be happy to yield half of it to Mr. SIMON and half to Mr. REID.

Mr. SIMON. I said that only in jest, Mr. President. I certainly have no objection.

Mr. BYRD. I thank the Senator. I yield my time, then, to Mr. REID.

Mr. REID. I thank the Senator.

Mr. SIMON. Mr. President, I ask unanimous consent that the time between now and 7:30 p.m. this evening be divided as under the existing agreement.

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

Mr. HATCH addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Nevada has the floor.

Mr. REID. Mr. President, we also have here a column written by William Buckley in which he talks about the

amendment. Among other things, he says there are weaknesses in the proposed amendment. That is an understatement.

I see in the back of the Chamber someone else has certainly pointed to the editorial by Michael Ruby in the U.S. News and World Report. I am going to take a lot of time tomorrow or the next day, whenever I again get the floor, to talk about these newspapers around the country that, in effect, are trashing the Simon amendment. And they do it, Mr. President, for obvious and good reasons, because the Simon amendment, as it is written, simply will not work. It will not work for a lot of different reasons, some of which I have already enumerated.

I have here, Mr. President, a side-by-side Simon balanced budget amendment and the Reid balanced budget amendment. It is my understanding that this first issue will soon be the same, because they want to amend their amendment to the year 2001.

The Simon amendment includes Social Security. In effect, what the Simon amendment will do is attempt to balance the budget on the back of the Social Security trust funds. I think that is wrong. That is why my amendment excludes Social Security.

I have also felt that we need a budget that is comparable and similar to what we do on a State level. States are generally pretty healthy. If they are not, as happened in Nevada, the Governor of the State of Nevada had to call back the State legislature because they were spending more money than they should. They had to balance their budget. But remember, that budget excludes capital expenditures. We are going to do the same. I think that is appropriate.

Wartime national security—of course, we need an exemption there. That is why we have the same.

I have in my amendment a recession exemption, not one that is easily obtained. You have to have growth of less than 1 percent for two consecutive quarters. If that happens, then we can practice the economics that has kept us out of depression for this century. And, Mr. President, we have to do that. We cannot revert back to boom and bust like we had last century and the century before.

Now, under the terms of the unanimous consent agreement—after all these years, we have heard that this amendment is so good—they are going to amend the amendment to allow court preemption, but watch very closely what their preemption amendment does.

We do not do that with ours, even though we have court preemption, because we outline what Congress must do, including a provision that absolutely, Mr. President, allows the cuts to take place automatically if we do not do it. We can assign an agency of

the legislative branch the ability and the power to cut. That is the way it should be. That is why we have that exemption in there.

Enforcement legislation subject to implementing legislation—we have that also. But we also state that the legislation will allow us to determine what a capital budget is. That is not a difficult thing to do, because the President has been doing it in his budgets for years; CBO has done reports on it; GAO has done reports on it. This is no magic. You will hear the opponents raise objections to what the capital budget is. It is a way that the Federal Government can act like a State government, act responsibly.

Mr. President, with the deepest respect I have for the Senator from Illinois, I must oppose his amendment as it is written and as it will be modified for its dubious constitutional effects and its creation of a legal quagmire—and when I say "legal quagmire," Mr. President, that is what I mean: A legal quagmire. We will have a business for lawyers if this amendment passes and its potential choke hold on the American economy and future generations.

I do not believe the Simon amendment will accomplish that which we had originally hoped. I think the amendment offered by Senators REID, FORD, and FEINSTEIN will do that. I think it is an honest attempt to arrive at a way to balance the budget and not on the backs of seniors. And to allow the Federal Government the same leeway States have. That does not seem unreasonable.

For these reasons and others, I am introducing a balanced budget amendment that I believe will accomplish the goals of those of us here who responsibly want to balance the budget. This is my desire.

I would at this time yield. Senator SIMON controls time and I control time. Mr. President, how much time do we have left?

The ACTING PRESIDENT pro tempore. The Senator has approximately 18 minutes under his control this evening.

Mr. REID. I yield 10 minutes, if the Senator from Illinois will allow me, to the Senator from California and reserve 8 minutes until the Senator from Illinois and whoever else wants to speak on their behalf have finished.

Mr. SIMON. If my colleague will yield, I understand the Senator from New Mexico wants to leave and Senator HATCH wants to yield 2 minutes to him first and then I will be happy to agree.

Mr. REID. Agreed.

Mr. HATCH. I yield the Senator 2 minutes.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico is recognized for 2 minutes.

Mr. DOMENICI. Mr. President, I have been listed as undecided on the constitutional amendment, but today I un-

derstand a very significant amendment has been agreed to and that has to do with judicial review. It is a Danforth amendment. I believe it clarifies that if we get into a bind and gridlock up here as we seek the implementing legislation, that during that gridlock, if it occurs, we do not have the courts of America deciding how to balance the budget of the United States. That is very important to me. I have read a few decisions where the courts have in fact ordered taxes imposed. I think they may go beyond that in the future. So I think it is important that amendment be accepted.

Having said that, I have come to the conclusion, having heard all of the administration witnesses as to why we should not adopt this constitutional amendment, that many of the reasons that they state we should not adopt it are the very reasons we must. Because from this Senator's standpoint it is not the appropriated accounts of this Government, the domestic part of that is about 17 percent of the budget on our side for all the programs that everybody says are breaking the bank.

Mr. President, 17 percent is not causing this constitutional amendment to be an important issue with our people. What is really causing it is the plethora of entitlement programs that grow, willy-nilly, frankly with no relation to means, no relation to who really needs them, no oversight—which is beginning to concern me as much as anything. So I frankly believe we will never get those under control unless we are confronted with a situation where the balanced budget amendment says you must control them.

Obviously there is nothing perfect. There are some downsides to the amendment. The one that worries me the most is the business cycle of the United States. We do not like to think of a business cycle as being a reality but it just seems that since the Second World War our economy flows and ebbs in tides, with what we have all chosen to say is the business cycle. Frankly, I do not think we have ruled that out yet.

So the downside is I am going to rely on the 60 votes that are necessary to permit us, in serious times when we really need not have a balanced budget, that 60 votes will come to the forefront and we will exercise that 60 votes with good judgment. So if indeed we need some deficit spending we will find a way, between the two parties and a President, to see that takes place.

My last point is if anyone is voting against this amendment because they think we have the deficit under control, my good friend PAUL SIMON has borrowed a graph of where the deficit is going. He now calls it the Domenici graph. It is actually the President's. It shows the deficit is going to go up substantially from where it is today. Just give it a couple of years.

If we put health care insurance on top of it and do not pay for that but rather spend all the savings, then we are right back in the middle again in about 7 or 8 years with the deficit being \$300 billion, \$350 billion, \$400 billion.

Next week I will give a more detailed explanation if I can get time. I ask the managers if they would, as they are seeking time next week, if we could find time, 15 or 20 minutes, for the Senator from New Mexico to do an analysis of the past and the future.

I yield.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. REID. Mr. President, I yield 10 minutes to the Senator from California.

The ACTING PRESIDENT pro tempore. The Senator from California is recognized for 10 minutes.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Nevada for the time.

I am here to speak on behalf of the Reid amendment. I believe it is improved over the Simon amendment. This amendment would protect Social Security. I do not believe that the trust fund should be used to balance the budget. It would allow the creation of a capital budget, just as many cities and States do now. It would allow flexibility in time of recession. And it would keep the courts from mandating actions that are legislative prerogatives. These changes make this amendment a much more workable balanced budget amendment.

There are many in this body who believe that amending the Constitution is very strong medicine, perhaps too strong. I have listened very carefully to those arguments. But I have come to the conclusion that without the strong medicine the patient is not going to heal.

People have said to me: You come from California and you supported an amendment for earthquake disaster relief that was off budget.

Yes, I did. Disaster relief for floods was off budget. Disaster relief for Hurricane Iniki was off budget. Disaster relief for Hurricane Andrew was off budget. So why should California be treated any differently? That is why we need an amendment to make everyone play by the same rules.

I think this is the heart of the matter. If people believe that under our present way of doing business we can balance this budget, then they should vote against a balanced budget amendment. If in their heart of hearts they believe we are not going to be able to balance the budget under the current process, then I believe they should support the balanced budget amendment. At least that is the conclusion to which I have come. Without a constitutional amendment, a balanced budget just is not going to be achieved.

I hearken back to the debate on the reconciliation bill, where Congress took the biggest bite in history out of the deficit—nearly \$500 billion over 5 years. Yet that was only achieved because the Vice President broke a tie vote in this Chamber. I remember the discussion: If Medicare is cut anymore I will not vote for it. If Social Security is touched, I will not vote for it.

In a way, that, too, was the heart of the debate. Because it is not an argument over discretionary spending, whether that discretionary spending be defense or nondefense. Both are either frozen or they are being cut. The argument over whether a budget can be balanced in the future is over two things: Reducing interest on the debt instead of allowing it to continue to expand and, second, either coming to grips with premiums or programs that are related to entitlements.

As other graphs have shown, entitlements and interest on the debt are going to eventually eat everything we do with respect to discretionary spending—whether that be defense or non-defense—and unless we deal with entitlements and interest, we will never be able to balance the budget.

The question becomes, can we deal with these things? I have reluctantly come to the conclusion that under the present system we cannot. We have to develop a prospective system and then be able to stick to it and do those things which, indeed, are difficult to do.

There are many people that I respect very deeply on both sides of this debate. I submit that the vote on this is probably as personal a vote as any of us are going to cast. It really is going to end up how we see the future and how we think this body can do the difficult things which must be done if balancing the budget is important.

To me, there is just one single thing that makes me believe that balancing the budget really is important, and that is our grandchildren are going to have to pay 65 percent of their income in taxes if we do not. My belief is that the way we are going, we will bankrupt our Nation unless we make significant changes.

Since 1960, the Federal Government has balanced its budget exactly twice: Once in 1960, a surplus of \$300 million, and again in 1969, a surplus of \$3.2 billion.

In the last 25 years, the Federal Government has run up trillions of dollars of debt without once balancing the budget. And during this time, this Nation has experienced both economic booms and recessions. Yet, never did this Government balance a Federal budget.

The Federal Government now spends over \$200 billion annually just to pay interest on its \$4 trillion debt. If current policies continue, the CBO estimates that net interest payments will

reach \$334 billion by the year 2004. To put spending on interest into perspective, this year the Federal Government will spend only \$43 billion more on domestic discretionary spending than it will on interest and the debt; \$244 billion in discretionary spending to \$201 billion in net interest. So that is what is happening. That is the story of all of this, and that is the story of just doing business as usual. True, this is not going to shrink the debt. This is going to give us an opportunity to, in essence, change the way business is done.

Let me speak for a moment about this interest because \$200 billion does not buy a new highway or bridge, a plane or a ship. It does not provide medical care to a child or a grandparent or education to our Nation's students. It does nothing positive by way of infrastructure. It simply pays out interest and it increases and increases and increases.

Most Americans incur debt for major purchases, and I think they confuse Federal interest with interest on a home mortgage. When you pay interest on a home mortgage, the interest payments go down over time and your equity increases. When the Federal Government pays interest on the Federal debt, it does not. Interest costs just keeps increasing.

What has 25 years of accumulated debt meant to our economy? The Federal Reserve Board states that the low national savings rate—and I am speaking about national savings rate—is now under 3 percent. It is the lowest of any major industrialized country in the world. They say it is largely attributable to Federal deficits; that it has resulted in a loss of 5 percent growth in our national income during the decade of the eighties alone.

I have listened just as carefully as I can to debate on this issue. Some have pointed out that we have frozen discretionary spending, and that is true. But the largest escalating part of the debt, the part that I have talked about—entitlements and interest—by the year 2004 will rise to nearly \$6 trillion, despite this freeze on discretionary spending.

Some hold out hope that health care reform, as big a package as it now seems to be, is going to cut the debt substantially. Maybe yes, maybe no. But I am convinced that without a constitutional amendment, this body and any body, no matter who is in it, is going to be unable to balance the budget.

The Reid amendment requires Congress and the President to balance the budget by the year 2001. It excludes Social Security. It creates a capital budget. It includes an exception for war and recession to preserve the Federal Government's ability to operate effectively in times of need, and it provides that enforcement of this amendment will only be in accordance with congress-

sional legislation. I believe this is a good amendment that provides the strong medicine necessary for Congress to do what is needed and balance the Federal budget. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator's 10 minutes have expired.

Mrs. FEINSTEIN. I thank the Chair, and I yield the time.

Mr. SIMON addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. SIMON. Mr. President, first, I hope not to use my full 30 minutes. The Senator from Utah indicated he may not use his full time, so we can get some rest this evening before we start on the debate tomorrow.

First, I want to comment on the observations of the majority leader, for whom I have great respect, when he said we are putting this off to the year 2001 so no one here will have to act on it. Senator FEINSTEIN was one of those who talked to me about extending the date. People in the administration talked about extending the date. The Concord Coalition, and some other groups, said if you have this by the year 2001, you can have a gradual glide path down and it will work.

But no one is going to wait until the year 2001. I am not going to wait until the year 2001. Senator FEINSTEIN is not. My good friend from Wisconsin, who is presiding, is not going to wait until the year 2001. ORRIN HATCH is not going to. LARRY CRAIG is not going to. ROBERT BYRD is not going to. And GEORGE MITCHELL, who is a responsible United States Senator, is not going to wait until the year 2001. If this is adopted, we are going to move very quickly.

Second, he said it cannot be enforced. Just the day before yesterday, the majority leader made a speech in the caucus about how the courts were going to be enmeshed in this thing. The reality is he is going to criticize these provisions no matter what.

But our provision says that the courts can be involved but not in terms of telling us we have to cut back on this or raise taxes. It is interesting. We have another provision saying that we can give the courts additional authority if we see things are not working out. But when Gramm-Rudman was the law, we did not have some courts coming down here telling us what to do. Forty-eight of the 50 States have some kind of constitutional provision and, with rare exception, the States have not had any problems with the courts. So I think that simply does not hold any water at all.

Let me look at the Reid amendment, offered by my colleague. And I mentioned earlier that I have great respect for my colleague from Nevada.

What this amendment says, and it has loopholes—if people are criticizing the amendment that Senator HATCH and I have in for not being tight

enough, this has gargantuan loopholes in it. First of all, there is no requirement that outlays and revenues have to match, only that estimated outlays and estimated receipts have to match. That is a very, very different thing. I recognize estimates have to be part of the process, but ultimately you have to have outlays and receipts match.

Second, it permits a capital budget. That may have some superficial appeal because a school district or a family may need to have capital budgets. The United States of America does not. The biggest single project in the history of humanity was a U.S. project recommended by President Eisenhower, the Interstate Highway System, and he recommended that we issue bonds for that Interstate Highway System. A U.S. Senator who sat on this floor by the name of Albert Gore, Sr., said: "Let us not issue bonds. Let us increase the gas tax and pay for this Interstate Highway System on a pay-as-you-go basis." And we saved over \$800 billion in interest doing it that way.

We do not need that. Four percent of our budget goes for capital outlays. What is the biggest single project we have? It is a nuclear carrier. We could pay for that over a 6-year period. We will not pay more than \$1 billion any one year. We do not need to issue bonds for that. We do not need a capital budget.

It is very interesting that the General Accounting Office has warned us again and again and again while we should have a division within the budget between investment and consumption and operating expenses, do not have a capital budget that gives you an excuse for bonds.

Second, how do you enforce this provision in the Reid amendment? There is no enforcement mechanism. In ours, we have a very powerful one that Senator BYRD described as giving us "no wiggle room." We do not have "wiggle room." What we say is to raise the debt, you have to have a three-fifths vote. That puts muscle in the amendment. There is no muscle in the Reid amendment.

Next, the Reid amendment would put the Director of the Congressional Budget Office in the Constitution, the Federal Old Age and Survivors Trust Fund in the Constitution, and the Federal Disability Trust Fund in the Constitution. The Constitution right now does not even mention Secretary of State, Secretary of Defense, or any of these other offices. We do not do that in the Constitution. The Constitution deals in general principles and whatever provisions we need to force us to protect ourselves from abuses by Government.

What about the problem of a recession, which was mentioned? In fact, Senator DOMENICI, who announced he was going to be supporting our amend-

ment, mentioned this. Since 1962, we have passed 11 stimulus packages to deal with recessions. Every one of those has passed by more than 60 votes. We can deal with this.

Now, where we are in trouble is that we are getting so deep into the red it is hard to get the votes right now, and last year we were not able to get the votes for an \$11 billion stimulus package—\$11 billion in a \$6.7 trillion economy. But we did last year get 60 votes for extending unemployment compensation. When it comes to a specific thing that really is needed, we are able to do something.

Fred Bergsten, one of the finest economists in the Nation, who was Assistant Secretary of the Treasury under Jimmy Carter, said we can do much more to stimulate the economy with the balanced budget amendment than we are able to do with the present restrictions that we have and the present huge debt, because the debt really reduces the possibility of our responding.

He said we ought to try to get a \$15 or \$30 billion surplus each year and then have that available to use in a time of recession.

The other part of the recession thing that is so important is our reliance on foreign debt and what that does. Instead of being countercyclical, it is precisely the reverse; 17 percent is the publicly acknowledged amount of debt held by foreign individuals and foreign governments. The actual number is higher than that because some people hide it. But unlike people who are on Social Security, for example, who will spend that money, those who are more affluent will save money. And so you do not have that countercyclical effect, plus with that 17 percent plus that goes overseas it means you have \$60 billion of interest that goes to Japan, to Great Britain, to the Netherlands, to Saudi Arabia, to other countries. That does not do one thing to help this country, and if we do not pass this constitutional amendment those numbers are going to rise and we harm our ability to respond.

Now, let me respond to the Social Security aspects of this, and I appreciated the comments of Senator DORGAN. As some of my colleagues know, I have been the principal fighter for the Medicare provisions in the Budget Committee, and I am strongly in favor of protecting Social Security. But we have to ask, with this kind of an amendment, what about veterans' pensions? What about veterans' benefits? Are we going to protect them? Or what about the WIC Program?

Once you start down this road of saying we are going to protect this program and not others, we get into deep, deep trouble, plus we are really not protecting Social Security with this amendment because right now Social Security is running a surplus. I agree

with Senator DORGAN completely. I would like to see us not count that surplus as we put our budget together, do it without that. But I do not want to put it in the Constitution.

But the interesting thing is in the year 2024—right now Social Security runs a surplus. In the year 2024, it starts to go into the red. And with this kind of an amendment, we no longer protect the Social Security trust funds with the overall budget. That means anyone 35 years or less will not be protected with the Reid amendment as they are with the Simon-Hatch amendment.

I would point out also that Bob Myers, who was the Chief Actuary for Social Security for 23 years, was Executive Director of the Legislative Commission that was identified with the late Congressman Claude Pepper, has written to me saying the only way to protect Social Security is with a balanced budget amendment. Otherwise, we are going to end up monetizing the debt.

There are other points to be made, and I will make them tomorrow. At this point, Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. HATCH addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, I do not intend to take all my time. I would like our colleagues to be able to leave this evening, but I do want to say just a few words about this amendment.

I appreciate the comments of my distinguished colleague from Illinois. I think he explained the problems with the Reid amendment about as well as they can be explained. I just have to call this proposal a sham. I called it upstairs the "cover your backside" amendment because basically that is all it is there for. It relies on estimates, but it does not have the backup of a debt limit like Senate Joint Resolution 41, which requires a three-fifths vote to waive the debt ceiling. Like the distinguished Senator from Illinois said, that is where the teeth of this amendment is. That is the strength of Senate Joint Resolution 41. It is what will make the difference. It is what really will enforce this. And this one just ignores that possibility.

Mr. SIMON. If my colleague will yield.

Mr. HATCH. I will be glad to yield.

Mr. SIMON. I think he has made an important point; this amendment is introduced for political cover only.

Mr. HATCH. That is right.

Mr. SIMON. It is designed so that Members of the Senate who under pressure from the administration or because of persuasion from Senator BYRD or whatever other reason, they want to vote against Senate Joint Resolution 41, the real thing, but they want to go

back home and say, "I voted for a constitutional amendment for a balanced budget." And so this gives them a way to cover themselves.

If there was any real desire on the part of the majority leader or anyone to pass this, there would not have been a suggestion that we have to have 67 votes to adopt this amendment. I can never remember in now my 19th year in Congress anyone ever suggesting for any amendment you have to have 67 votes to pass it. The proponents would not have suggested that if they believed it was desirable to pass it.

Mr. HATCH. That is a good indication also that they do not want it passed. They know it is bad themselves. They know that it is just a subterfuge to give people some cover so they do not have to vote for the real balanced budget amendment, which is the Simon-Hatch amendment.

Look, we know the game. We have been at this the full 18 years I have been here and all of the time the distinguished Senator from Illinois has been here. We know that if we are going to pass a balanced budget constitutional amendment it has to be Senate Joint Resolution 41 or something awfully close to it because it is the consensus vehicle to get Congress to do what has to be done.

I have to compliment all of those who have worked on this because we have worked very hard to get this consensus, and we have the consensus of the majority of the House of Representatives. I think we are very close to having that consensus here. I hope our colleagues will consider that.

Mr. President, the Reid amendment exempts capital investments from balanced budget requirements. "Capital investments" is not defined. Who knows how broadly that is going to be construed or what it might include? It could cover everything from education to transportation expenditures. Virtually anything could be excluded from being subject to a balanced budget requisite under this provision.

So it is crazy to call this Reid amendment a balanced budget amendment. Anybody who thinks they are going to get away with that subterfuge I think is in for a surprise. Mr. President, some opponents have argued that Senate Joint Resolution 41 is a paper tiger. Well, the Reid amendment prohibits any judicial review or other enforcement unless Congress at some time in the future so provides.

Unless Congress provides for enforcement, the Reid amendment is a real paper tiger. I do not know how they can tell us that ours is bad when they have this language in the Reid amendment.

Stunningly, the amendment—this is really stunning to me—the amendment also provides that the Director of the Congressional Budget Office, the CBO, may estimate that the country's eco-

conomic growth has been or will be less than 1 percent for two consecutive quarters. And if the Director of the CBO makes that determination, the balanced budget requirement is suspended. Can you imagine? They are now proposing that a very minor official in Government, really of the Congress, the Director of the CBO, be authorized under the Constitution to make deficit spending decisions. And they call our amendment undemocratic.

To me, this is the first time in the history of constitutional deliberation that someone has proposed to have one person in Government make these decisions for all of us. Let us be honest about it. If you are going to have a recession provision, with the cyclical economic cycle that we go through, it just means basically you can never really enforce the balanced budget amendment written by Senator REID.

As a matter of fact, you would have an excuse every time you turned around. The loopholes are so large that any truck could go through them. It is a sham. It is a facade.

I am sorry to call it that because I know the distinguished Senator from Nevada is sincere. But personally, I think he is being used on this matter because his amendment just does not make sense. There is no way you could ever reach a balanced budget amendment with the Reid amendment. There is no real mechanism to do it, nor is there the pressure on Congress, nor is there institutional reform, nor is there institutional discipline necessary to do it.

To be honest with you, I do not see how anybody can argue that this is a balanced budget amendment with a straight face.

Look, it comes down to this. Senator SIMON and I do not believe that there is any perfect balanced budget amendment right now.

We have to do the art of the possible. It really is the art of the impossible in some ways to pass an amendment through the Congress. But we have to do the art of the impossible if necessary. We have to bring people together—and we have done that over a period of 14 years or 12 years—bring people together in a way that will accomplish getting to a balanced budget and getting this country to live within its means.

Our amendment definitely will do that. That is why it is being fought so hard against, because it will curtail the profligacy of the Congress which has been going on for 60 years. We just simply have to pass this constitutional amendment.

I am hoping the American people out there will raise such Cain about it that we will all do what is right and pass the balanced budget amendment that is called the Simon-Hatch amendment, Senate Joint Resolution 41, which also has a counterpart in the House.

There are many things I would like to say. But I do not want to take much longer.

There is one other thing I would like to mention; that is, it was no small thing today for 218-plus Members of the House of Representatives to go in and sign a discharge petition. It was the second quickest discharge in history.

That is how important these people feel this issue is. And they are right; it is extremely important.

This pressure is not going to go away. If we fail to do it this year, I have to tell you, it will be back again. And as this economy goes more and more into the garbage can, which is where it is going, the balanced budget amendment is going to become more radical. Senate Joint Resolution 41 is reasonable. We can live with it. We can work with it. It does not require a balanced budget. But it certainly puts all of the institutional mechanisms into place to get us there. And it will be very tough not to get there. People who vote "no" to get there are going to have to really face the electorate for the first time in their lives. That is the theory of accountability.

We who have sworn to uphold the Constitution, every one of us, are going to work to make it work. Frankly, that is what needs to be done. I want to thank my friend and colleague from Illinois for his valiant work on this.

I want to thank everybody else who has worked hard on this, too, because we have a chance of doing it this year. Frankly, I hope everybody will consider that and really come to the conclusion, as the distinguished Senator from California did, that nothing short of a real balance-the-budget amendment is going to get us into an appropriate mode here that will help save this country.

That is all I care to say. I am prepared to yield back the remainder of my time if we can get everybody else to do it.

Mr. SIMON. Mr. President, I want to thank Senator HATCH again for all he has done, and also our colleagues, Senator LARRY CRAIG and Senator DENNIS DECONCINI. Both have been just great throughout this.

ORDER OF PROCEDURE

Mr. SIMON. We have cleared this with Senator BYRD, and with the understanding we have with him, I ask unanimous consent that the time, when we come in at 10 o'clock tomorrow, that we be in session until 6 tomorrow on this. That does not preclude the majority leader or anyone else from working out morning hour, or anything else, at any other time. But this is the understanding we have worked out with Senator BYRD. I ask that the time be allocated according to our previous agreement.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. Mr. President, under that previous agreement, all four of us are each entitled to 2 hours. Is that right?

Mr. SIMON. That would be correct.

Mr. REID. Senator SIMON and I and the other Senators will work it out tomorrow, not subject to unanimous consent, when we will be here, to make it as easy on each other as possible.

Mr. SIMON. We will work that out; yes.

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

Mr. SIMON. Mr. President, I yield the remainder of my time.

Mr. HATCH. I am prepared to yield mine, if the distinguished Senator from Nevada will yield his.

Mr. REID. I am prepared to yield back my time, yes.

Mr. HATCH. I yield my time, as well. The ACTING PRESIDENT pro tempore. All time is yielded back.

Mr. GRAHAM. Mr. President, could the Chair inform me as to what the pending business is on the floor?

The PRESIDING OFFICER. The matter before the Senate is Senate Joint Resolution 41.

Mr. GRAHAM. I ask unanimous consent to proceed for up to 10 minutes as in morning business.

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

THE NOMINATION OF ROSEMARY BARKETT

Mr. GRAHAM. Mr. President, earlier today, the distinguished minority leader delivered a statement relative to the nomination of Justice Rosemary Barkett, currently serving as chief justice of the Florida Supreme Court, to the 11th Circuit Court of Appeals. In that statement today, the minority leader made reference to certain cases in which Chief Justice Barkett has participated at the State level, one of which was Foster versus State.

In that case—I quote from the statement of the minority leader—he states:

Justice Barkett adopts the statistical evidence defense that was explicitly rejected by the U.S. Supreme Court in McCleskey versus Kemp.

The minority leader goes on to state:

Justice Barkett's fuzzy reasoning is almost identical to the theory behind the so-called Racial Justice Act, which the Senate has considered and repeatedly rejected. Like the Racial Justice Act, Justice Barkett's view that statistical evidence alone subjects a capital sentence to constitutional challenge would paralyze the enforcement of the death penalty.

As my colleague from Florida, Senator GRAHAM, has explained, "The very nature of the criminal justice system does not lend itself to statistical precision. The Constitution requires an individualized determination as to the appropriateness of the death penalty, taking into account the character and record of the murderer and the circumstances of the offenses."

Mr. President, since my name was used in this statement, I felt it appro-

priate to use this opportunity to set the record straight both as to what I said, what I intended, and also as to what Justice Barkett intended in her dissent in the case of Foster versus State. This happens to be a case with which I am very familiar. As Governor of Florida, I signed the death warrant that led to this case coming to the Florida Supreme Court.

Mr. President, the issue that brought Justice Barkett's dissent in Foster versus State was the question of an allegation made by the defendant under the State of Florida equal protection clause. As do many State constitutions, Florida has a State equal protection clause, as there is a similar clause in the U.S. Constitution.

In his appeal, Mr. Foster raised the issue, and he raised it in the context in which he stated that there had been a discriminatory pattern by a specific Florida State prosecutorial official, in which that official, allegedly, had sought the death penalty more frequently in cases in which the victim was white than in cases in which the victim was black. The question before the Florida Supreme Court was the interpretation of Foster's charge that there had been a violation of the State's protection under the equal protection provision.

Justice Barkett, in those circumstances, was taking the position that Foster deserved an opportunity within which to raise that specific case.

I ask unanimous consent that the dissenting opinion be printed in the RECORD immediately after my remarks.

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

(See exhibit 1.)

Mr. GRAHAM. Justice Barkett, in her dissent suggested, first, the fact that there was a different standard under State equal protection than under the Federal equal protection. She makes, frankly, a point which I as a Floridian am very proud—that the Florida Supreme Court was dealing with the question of racially discriminatory selection of juries prior to the time that the U.S. Supreme Court recognized that as an impediment under Federal equal protection standards. She cites that as an example of the fact that State constitutional standards are not necessarily intended to just mimic Federal standards.

She proceeds on to therefore reason that it is appropriate for the State to have a process by which claims of denial of equal protection under the State constitution can be appropriately determined.

She suggests the following standard:

A party asserting racial discrimination in the State's decision to seek the death penalty should make a timely objection and demonstrate on the record that the discrimination exists and that there is a strong like-

lihood that influences the State to seek the death penalty. Such discrimination conceivably could be based on the race of the victim or the race of the defendant. Once the trial court determines that the initial burden has been met by the defendant, the burden then shifts to the State to show that the practices in question are not racially motivated. If the trial court determines that the State does not meet the burden, the State then is prohibited from seeking the death penalty in the case.

I have quoted that in order to then distinguish this situation from the McCleskey case and the Racial Justice Act, which this Senate has debated on a number of instances. The racial justice case does not go to the allegation that there was a specific act of racial discrimination by a person involved in the case that has brought the death penalty to be applied. In this case, the allegation is that there was a specific prosecutor who was using racially discriminatory standards as to when to seek the death penalty. Rather, the Racial Justice Act goes to the broader question of whether an entire judicial jurisdiction, such as a State, has been applying the death penalty in a discriminatory manner.

To quote from the Racial Justice Act as it was considered by the Congress in 1991, it states:

No person shall be put to death under color of State or Federal law in the execution of a sentence that was imposed because of, or based on, race or inference of race as the basis of a death sentence. An inference that race was the basis of a death sentence is established if valid evidence is presented demonstrating at the time the death sentence was imposed race was a statistically significant factor in decisions to seek or impose a sentence of death in the jurisdiction in question.

So what the Racial Justice Act did was to go at the entire criminal justice system of a State and attempt to overturn that State's use of the death penalty based on statistical evidence as to a wide variety of cases that had come before that State. That is a different application than the highly specific one which Chief Justice Barkett felt was appropriate as it related to claims of equal protection under the specific provisions of the State of Florida constitution. To use that case to establish the broad principle which the minority leader sought to do in his statement earlier today, which was that the chief justice of the Florida Supreme Court was in some way less than vigilant in her enforcement of the death penalty and in her conduct of her responsibilities as the highest judicial officer of the State, I find to be a gross misreading of the facts of the case that was utilized and the specific circumstances to which he attempted to analogize it in the Racial Justice Act.

Mr. President, the fact is that Chief Justice Barkett has been a thoughtful, strong supporter of the death penalty in Florida. No, she has not rubberstamped every case in which the

death penalty had been imposed, but she has found for the majority in the overwhelming number of cases that have come before her as a justice of the Florida Supreme Court. She has shown a steady willingness to enforce the death penalty where that death penalty was appropriate.

She has stood the test of another statistical study. Our State uses a judicial retention procedure whereby judges of the State Supreme Court are periodically subject to the vote of the people of Florida to determine whether their tenure has been such that they justify continued service. Justice Barkett was subjected to that process in 1992. Sixty-one percent of the people of Florida found that her service justified a continuation of her term on the Florida Supreme Court.

The very charges that are being made now against her nomination to serve on the 11th Circuit Court of Appeals were the charges raised in a campaign against her continued service on the Florida Supreme Court. Three out of 5 Floridians rejected those charges and voted to retain her as a member of the Florida Supreme Court.

Mr. President, this is a jurist of distinction, a human being of intellect and compassion, a person of great judicial qualification. I am proud that she is serving my State as its chief justice. I am proud that the President of the United States has nominated her to high Federal office. I hope that this Senate will soon confirm that nomination and place Justice Barkett at the service of the people of the United States of America.

EXHIBIT 1

[No. 76639, Supreme Court of Florida, Oct. 22, 1992, Rehearing Denied April 1, 1993]

CHARLES KENNETH FOSTER, APPELLANT, V.
STATE OF FLORIDA, APPELLEE.

Defendant was convicted in the Circuit Court, Bay County of murder and sentenced to death and he appealed. The Supreme Court affirmed, 369 So.2d 928. Denial of first and second postconviction motions were affirmed by the Supreme Court, 400 So.2d 1, and 518 So.2d 901, but resentencing was ordered. Denial of federal habeas corpus petitions was affirmed by the Court of Appeals, 707 F.2d 1339, 823 F.2d 402. On remand from resentencing, the Circuit Court, Bay County, Don T. Sirmons, J., entered sentence of death and defendant appealed. The Supreme Court held that: (1) defendant had not received ineffective assistance of counsel; (2) jury was adequately instructed on mitigating circumstances; (3) court properly overruled challenges for cause; but (4) sentencing order was defective for failing to state whether court had found certain mitigating circumstances to exist.

Affirmed in part and vacated and remanded in part.

Barkett, C.J., concurred in part and dissented in part and filed an opinion in which Shaw and Kogan, JJ., concurred.

Kogan, J., concurred in part and dissented in part and filed an opinion.

1. Criminal Law 998(21).

Successive postconviction motion may be dismissed if it fails to allege new or different

grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the failure to raise those issues in prior motion constitutes an abuse of process. West's F.S.A. RCrP Rule 3.850.

2. Criminal Law 998(21).

Postconviction motion alleging ineffective assistance of counsel was an abuse of process where there was no showing of justification for the failure to raise it in either of the two prior motions. West's F.S.A. RCrP Rule 3.850.

3. Criminal Law 641.13(6).

In view of defendant's confession, there was no reasonable probability that outcome of trial would have been different had counsel obtained additional evidence, so that defendant did not show ineffective assistance of counsel.

4. Criminal Law 996(3).

Witness' unavailability at resentencing hearing, so as to make her prior testimony admissible, was established by evidence that investigators had been unable to locate her or her former husband, that they had called a telephone number given to them a number of times and have left messages for the witness, who never returned the calls, and that attempts to subpoena her were unsuccessful.

5. Criminal Law 662.60.

Defendant's right to confrontation was not abridged when prior testimony of witness was admitted at resentencing hearing where court admitted the witness' cross-examination testimony in addition to her direct testimony.

6. Witnesses 337(4).

It was not an abuse of discretion to exclude evidence of witness' 1989 convictions when admitting at resentencing hearing testimony which she had given at the first trial in 1975.

7. Criminal Law 996(3).

There was no *Brady* violation by state's failure to provide defendant with mental health records of witnesses at resentencing hearing where the state denied having the records.

8. Homicide 357(3, 11).

Finding that murder was especially heinous, atrocious, or cruel, and cold, calculated, and premeditated, thus authorizing imposition of death penalty, was supported by evidence that victim was severely beaten prior to having his throat slit, that victim was pulled from vehicle by his genitals and stabbed in the throat a second time, that he would have lived 20 to 30 minutes after the wound was inflicted, that defendant then cut the victim's spine with a knife, and that victim would have lived three to five minutes after the spinal cord was severed. West's F.S.A. §921.141(5)(h, i).

9. Homicide 311.

Jury was adequately instructed that it could consider any relevant evidence in determining whether to impose the death penalty where court informed the jurors that they could consider, in addition to other factors, "any other factor of defendant's character or record and any other circumstance of the crime or offense," and defense counsel discussed mental health mitigation in detail.

10. Homicide 341.

Error in failing to give defendant's requested instruction containing an expanded definition of the aggravating factor that the homicide was heinous, atrocious, and cruel was harmless where defendants' killing of victim was especially heinous, atrocious, and cruel by any standard.

11. Jury 90, 105(1), 108.

Court was not required to strike for cause at resentencing hearing in capital murder prosecution juror who indicated bias against

persons who have had numerous appeals, person who went to junior high school with defendant and "had a couple of fights" with him, and person who was allegedly predisposed to imposing death penalty for all premeditated murders.

12. Jury 108.

Court properly excused venire member who stated on voir dire before resentencing hearing in capital murder prosecution that she did not believe that she could vote to impose the death penalty in any situation other than murder within a prison setting.

13. Homicide 358(1).

In the absence of evidence that state's attorney acted with purposeful discrimination in seeking death penalty in defendant's case, court was not required to hold evidentiary hearing on claim that use of the death penalty in the county was racially discriminatory, based on statistical evidence indicating that persons whose victims were white were more likely to be charged with first-degree murder and convicted of first-degree murder.

14. Homicide 358(3).

Court's statement in sentencing order imposing death penalty in murder case that it had considered the evidence in support of mitigating factors and that the mitigating circumstances were outweighed by the aggravating factors did not demonstrate that it had determined whether the two statutory mental mitigating circumstances existed or whether any mitigating circumstances were found to exist or what weight was given to them, so that the sentencing order was defective; error was not harmless.

Richard H. Burr and Steven W. Hawkins of NAACP Legal Defense and Educational Fund, Inc., New York City, and Steven L. Seliger, Quincy, for appellant.

Robert A. Butterworth, Atty. Gen., and Mark C. Menser, Asst. Atty. Gen., Tallahassee, for appellee.

Per curiam.

Charles Kenneth Foster appeals the sentence of death imposed upon him after resentencing. He also appeals the denial of his motion for postconviction relief. Our jurisdiction is based upon article V, section 3(b)(1), Florida Constitution.

Foster was convicted of murder and sentenced to death in 1975. This Court affirmed the conviction and death sentence in *Foster v. State*, 369 So.2d 928, 929 (Fla.), cert. denied, 444 U.S. 885, 100 S.Ct. 178, 62 L.Ed.2d 116 (1979). The following facts are set forth in that opinion:

"Anita Rogers, 20 years of age, and Gail Evans, 18 years of age, met defendant and the victim, Julian Lanier, at a bar. They knew defendant, but the victim was a stranger.

"The girls, after a discussion, agreed to go to the beach or somewhere else to drink and party with the men. The victim bought whiskey and cigarettes, after which the four of them left in the victim's Winnebago camper. The victim was quite intoxicated and surrendered the driving chore to Gail. The defendant and the girls had planned for Gail to have sex with the victim and make some money. Gail parked the vehicle in a deserted area and, after some conversation concerning compensation, the victim and Gail began to disrobe.

"Defendant suddenly began hitting the victim and accusing him of taking advantage of his sister. Defendant then held a knife to the victim's throat and cut his neck, causing it to bleed profusely. They dragged the victim from the trailer into the bushes where they laid him face down and covered him with pine branches and leaves. They could hear

the victim breathing so defendant took a knife and cut the victim's spine.

"The girls and defendant then drove off in the Winnebago and found the victim's wallet underneath a mattress. The defendant and the girls split the money found in the wallet and left the vehicle parked in the parking lot of a motel.

"The next morning Anita Rogers went to the Sheriff's Department and reported what had happened. . . ."—*Foster*, 369 So.2d at 928-29.

The trial court denied relief on Foster's first postconviction motion, and this Court affirmed. *Foster v. State*, 400 So.2d 1 (Fla. 1981). In addition, federal courts denied Foster relief on two federal habeas petitions. *Foster v. Dugger*, 823 F.2d 402 (11th Cir. 1987), cert. denied, 487 U.S. 1241, 108 S.Ct. 2915, 101 L.Ed.2d 946 (1988); *Foster v. Strickland*, 707 F.2d 1339 (11th Cir. 1983), cert. denied, 466 U.S. 993, 104 S.Ct. 2375, 80 L.Ed.2d 847 (1984). In *Foster v. State*, 518 So.2d 901 (Fla. 1987), cert. denied, 487 U.S. 1240, 108 S.Ct. 2914, 101 L.Ed.2d 945 (1988), we affirmed the denial of Foster's second postconviction motion, but we granted his habeas petition and ordered resentencing due to *Hitchcock*¹ error.

On remand for resentencing, Foster filed a 3.850 motion. The trial court refused to continue the resentencing hearing until resolution of the 3.850 motion. Following the jury's 8-4 recommendation, the trial judge imposed the death penalty.¹ Thereafter, the court summarily denied the 3.850 motion without an evidentiary hearing.

We address first Foster's claim that the trial court erred in denying his 3.850 motion without an evidentiary hearing. Foster's motion alleged a violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), and ineffective assistance of trial counsel. The *Brady* claim centers around Foster's allegation that the state failed to disclose that it offered Gail Evans and Anita Rogers deals in exchange for their testimony at trial. Although the court did not hold an evidentiary hearing on this claim, Foster presented the evidence on which he relies to support the claim at a hearing on his motion, to preclude admission of Rogers' and Evans' 1975 trial testimony. Rogers' ex-husband testified that several years after the trial, Rogers told him that the state had promised not to prosecute her in return for her testimony.

In his claim of ineffective assistance of counsel, Foster asserts that trial counsel failed to discover that Rogers and Evans believed that Foster was "crazy" at the time of the attack. Had counsel been aware of this, Foster reasons, he would have pursued mental health defenses that would have precluded a finding of premeditated murder. He also alleges that counsel failed to discover, or alternatively the state failed to disclose, that Foster cut off the victim's penis during the course of the attack.

[1] This is Foster's third postconviction motion. A successive motion may be dismissed if it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the failure to raise those issues in a prior motion constitutes an abuse of process. Fla. R. Crim. P. 8.850. To overcome this bar, a movant must allege that the grounds asserted were not known and could not have been known to him at the time of the earlier motion. *Christopher v. State*, 489 So. 2d 22, 24 (Fla. 1986). The movant must show justification for the failure to raise the issues in the prior motions. *Id.*

Footnotes at end of article.

[2] Foster alleged ineffective assistance of trial counsel in his initial postconviction motion. We rejected that claim on the merits.³ *Foster*, 400 So. 2d 1. Foster has not previously raised a Brady claim. Although he alleges the discovery of new facts in order to avoid application of the abuse of process doctrine, he has failed to demonstrate or even allege that the facts could not have been known to him at the time of his earlier motions. We note that Foster has been represented by the same counsel since at least the time of the appeal of the denial of his first post conviction motion in 1981. Having failed to show any justification for his failure to raise the present claims in his earlier post conviction motions, the instant motion constitutes an abuse of process. *Spaziano v. State*, 545 So.2d 843 (Fla. 1989); *Tafero v. State*, 524 So.2d 987, 988 (Fla. 1987); *Booker v. State*, 503 So.2d 888, 889 (Fla. 1987); *Christopher v. State*, 489 S.2d at 25.⁴

[3] Even if there were no procedural bar, Foster's claim would not prevail. At trial, Foster made a witness stand confession in which he stated:

I reckon I'll just cop out. I have done it, killed him deader than hell. I ain't going to set up here, I am under oath and I ain't going to tell no ——— lies. I will ask the Court to excuse my language. I am the one that done it. They didn't have a damn thing to do with it. It was premeditated and I intended to kill him. I would have killed him if he hadn't had no money and I know I never told you about it, but I killed him."—369 So.2d at 929.

In light of Foster's confession, there is no reasonable probability that the outcome of the trial would have been different had any of the evidence Foster now asserts was not disclosed or not discovered been presented. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (one alleging ineffective assistance of counsel must show deficient performance and prejudice); *Hegwood v. State*, 575 So.2d 170, 172 (Fla.1991) (to establish Brady violation, one must prove that had the evidence been disclosed, a reasonable probability exists that the outcome of the proceedings would have been different).

[4] Gail Evans personally testified at the resentencing hearing. However, over Foster's objection, the court allowed the state to introduce the testimony of Anita Rogers from the 1975 trial. Foster claims that the court failed to conduct an appropriate inquiry into Rogers' unavailability before admitting her prior trial testimony and that the use of her testimony abridged his right of confrontation.

We find no error in the trial court's determination that Rogers was unavailable. According to the assistant state attorney, in 1989, in an effort to find Rogers, investigators from that office attempted to locate her ex-husband. They were unsuccessful. In late May of 1990, shortly before the resentencing proceeding, defense counsel gave the state attorney Rogers' address and telephone number in Tampa. The state attorney called the number several times. He left messages on an answering machine as well as with a man who answered the telephone and said that he was Rogers' former brother-in-law. Rogers never returned the phone calls. At the state attorney's request, the Hillsborough County Sheriff's Department attempted to subpoena Rogers but were unsuccessful. A deputy attempting to serve the subpoena was advised by someone at Rogers' address that she was out of town at an unknown location. This was sufficient to establish Rogers' unavailability for purposes of the resentencing hearing.

[5] Further, Foster's right of confrontation was not abridged. The court admitted Rogers' cross-examination in addition to her direct testimony. The court also allowed Foster to rebut Rogers' testimony with other witnesses. Under these facts we find no error in the admission of Rogers' trial testimony. See *Hitchcock v. State*, 578 So.2d 685, 690 (Fla.1990) (upholding the admission in resentencing proceeding of trial transcript where the state was unable to locate the witness and the court admitted the witness's entire trial testimony, including cross examination), *cert. denied*, — U.S. —, 112 S.Ct. 311, 116 L.Ed.2d 254 (1991).

[6] At resentencing, Foster sought to impeach Rogers' trial testimony by introducing evidence that she had been convicted of false reporting of a crime and grand larceny in 1989. The trial court excluded evidence of the convictions, apparently finding that the 1989 convictions were not probative of Rogers' truth and veracity at the time of the 1975 testimony. We find no abuse of discretion in the exclusion of this evidence. *Teffeteller v. State*, 495 So.2d 744, 745 (Fla. 1986). ("[I]t is within the sound discretion of the trial court during resentencing proceedings to allow the jury to hear or see probative evidence which will aid it in understanding the facts of the case in order that it may render an appropriate advisory sentence.").

[7] One day before the resentencing proceeding was scheduled to begin, Foster filed a motion pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, asking the court to require the state to disclose Rogers' and Evans' mental health records. The state attorney objected, indicating the state did not have the records and had no better access to the records than did defense counsel. Foster challenges the trial court's denial of his motion.

Foster has not shown a *Brady* violation. The state denied having the records. Further, Foster made no showing that he could not have obtained this evidence with reasonable diligence. See *Hegwood v. State*, 575 So.2d 170, 172. Foster cites no case for his proposition that it was the state's obligation, rather than his own, to obtain such records.

[8] Foster also claims that the trial court erred in finding the murder to be especially heinous, atrocious, or cruel⁵ and cold, calculated and premeditated.⁶ The court relied on the following evidence to find the aggravating factor of especially heinous, atrocious, or cruel;

"The circumstances of the killing indicate a consciousness and pitiless regard for the victim's life and was unnecessarily tortuous to the victim, Julian Franklin Lanier. The victim did not die an instantaneous type of death. The victim was severely beaten prior to death. His nose was fractured, his face was severely bruised and his eyes were swollen shut from edema from hemorrhage and swelling resulting from the beating. After beating the victim, the defendant took out a knife and told the victim 'I'm going to kill you; I'm going to kill you.' There is evidence that one of the girls present asked the defendant not to do it. The defendant then proceeded to stab the victim in the throat. There is evidence of a defensive wound to the victim's hand which indicates the victim attempted to fend off the knife as the defendant stabbed him in the throat.

"After stabbing the victim in the throat, the defendant grabbed the victim by his testicles, or genitals, in order to move the victim outside. The victim groaned or moaned and the defendant stabbed the victim in the throat a second time. This second wound cut

the victim's internal and external jugular veins. The victim could have lived from 20 to 30 minutes after this wound was inflicted.

"Neither of these wounds to the neck severed the victim's vocal cords. There is evidence that the victim asked the defendant not to do it again before he was stabbed a second time.

"After the second stab wound, the victim was dragged into the woods where he was covered with bushes. The marks on the victim's body indicated to the medical examiner, that the victim was either alive or dead a very short time before he was being dragged. It is consistent with what happened next to assume the victim was alive.

"After the victim was covered in the woods, one of the girls accompanying the defendant reported to the defendant that she could hear the victim breathing. The defendant then went back to the victim, who was lying face down, uncovered him and cut the victim's spine with a knife. As described by one witness, there was no air coming from the body of the victim after she heard "the cracking" of the spine. The medical examiner indicated the victim could have lived 3 to 5 minutes after his spinal cord was severed."—This evidence establishes that the murder was especially heinous, atrocious, or cruel.

The trial court relied on these same facts to find the murder to be cold, calculated, and premeditated. In addition, the court relied on Foster's witness stand confession and Anita Rogers' trial testimony. Rogers testified that prior to the attack, Foster asked her to exchange class rings with him. Foster's ring bore the initial "K." He told Rogers that he wanted to switch rings because his ring would have left "K" impressions on the victim, thus identifying him as the perpetrator. As the prosecutor argued to the jury, if Foster had not intended to kill the victim, it would have made no difference if there were "K" impressions on the victim because he would have been alive to identify Foster. These facts establish the existence of a careful plan or prearranged design to kill.⁷ *Rogers v. State*, 511 So.2d 526, 533 (Fla.1987), *cert. denied*, 484 U.S. 1020, 108 S.Ct. 733, 98 L.Ed.2d 681 (1988).

[9] Next, Foster claims that the jury charge and the prosecutor's closing argument limited the jury's consideration of mitigating evidence in violation of *Cheshire v. State* 568 So.2d 908 (Fla.1990) (state may not restrict consideration of mitigating circumstances solely to "extreme" emotional disturbances; any emotional disturbance relevant to the crime must be considered). The court gave the following special instruction:

"Among the mitigating circumstances which you may consider are the following. First, the crime for which the defendant is to be sentenced was committed while he was under the influence of extreme mental or emotional disturbance.

"Second, that the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

"Third, that the defendant had an abusive family background.

"Fourth, the defendant's poverty.

"Fifth, the physical illness of the defendant.

"Sixth, the defendant's love for and love by his family.

"Seventh, any alcohol or drug addiction of the defendant.

"Eighth, a troubled personal life including depression and frustration.

"Ninth, physical injuries suffered by the defendant.

"Tenth, the defendant's lack of childhood development.

"Eleventh, the effect of death of loved ones on the defendant.

"Twelfth, the learning disability suffered by the defendant.

"Thirteenth, the defendant's potential for positive sustained human relationships.

"Fourteenth, any other aspect of the defendant's character or record and any other circumstance of the crime or offense."

Foster argues that this instruction created a substantial risk that the jury believed that they could only find the mental health evidence to be mitigating if it rose to the statutory level. In addition to being given the quoted instruction, the jury was informed that it must consider any aspect of the defendant's character and background or any other circumstance presented in mitigation and that there was no limitation on the mitigating factors which could be considered. Viewing the instructions as a whole, we find no reasonable likelihood that the jurors understood the instruction to preclude them from considering any relevant evidence. *Robinson v. State*, 574 So.2d 108, 111 (Fla.), cert. denied, —U.S.—, 112 S.Ct. 131, 116 L.Ed.2d 99 (1991). Further, in closing argument, defense counsel discussed the mental health mitigation in detail. He argued that the evidence rose to the statutory level but nevertheless argued that Foster was clearly under an emotional disturbance even if it did not meet the level required by statute. Accordingly, we reject this claim.

Next, Foster asserts that the court erred in refusing to give certain jury instructions. The rejected instructions deal with the following subjects: (1) the determination of the aggravating factor of especially, heinous, atrocious, or cruel; (2) the determination of the aggravating factor of cold, calculated, and premeditated; and (3) the jury's pardon power. He also alleges that the jury instructions on these two aggravating circumstances were inadequate.

[10] The instruction given on heinous, atrocious, and cruel was the same as the one held to be inadequate in *Shell v. Mississippi*, 498 U.S. 1, 111 S.Ct. 313, 112 L.Ed.2d 1 (1990). Therefore, the court erred in failing to give Foster's requested instruction which contained an expanded definition of that aggravating factor. We conclude, however, that the error was harmless. As may be seen from that portion of the trial judge's order previously quoted, Foster's killing of Julian Lannier was especially heinous, atrocious, and cruel by any standard. The jury could not have been misled by the inadequate instruction. We further hold that the court did not abuse its discretion in refusing to give the other jury instructions which Foster had requested.

[11] Next, Foster asserts that the court erred in failing to strike three venire members for cause. He argues that: (1) Carol Ann Pope should have been excused because she indicated bias against persons who have had numerous appeals; (2) Thomas Martin should have been excused because he went to junior high school with Foster and the two of them "had a couple of fights"; (8) Marion Pelland should have been excused because she was predisposed toward imposing the death penalty for all premeditated murders. Foster exercised peremptory challenges to excuse these three jurors.

The test for determining juror competency is whether the juror can lay aside any bias or prejudice and render his verdict solely upon

the evidence presented and the instructions on the law given to him by the court." *Lusk v. State*, 446 So.2d 1038-1041 (Fla.), cert. denied, 469 U.S. 873, 105 S.Ct. 229, 83 L.Ed.2d 158 (1984). The record does not support Foster's allegations regarding these potential jurors. We have reviewed the transcript of jury selection and do not find any basis for excusing these jurors for cause.

Next, Foster claims that the trial court improperly excused venire member Deluzain for cause in violation of the principles established in *Witherspoon v. Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968), and *Wainwright v. Witt*, 469 U.S. 412, 105 S.Ct. 844, 83 L.Ed.2d 841 (1985).

[12] A juror may be excluded in a death case if his views on capital punishment "would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Adams v. Texas*, 448 U.S. 38, 45, 100 S.Ct. 2521, 2526, 65 L.Ed.2d 581 (1980). The record evinces Deluzain's inability to set aside her own beliefs in deference to the law. *Randolph v. State*, 562 So.2d 881, 337 (Fla.), cert. denied, 498 U.S. 992, 111 S.Ct. 538, 112 L.Ed.2d 548 (1990). She said that she did not believe that she could vote to impose the death penalty in any situation other than a murder within a prison setting. When asked whether she could set aside her feelings against the death penalty if the murder were sufficiently aggravated, she responded that she was not sure that she could. The trial court did not abuse its discretion in excusing her for cause.

[13] Further, Foster challenges the circuit court's refusal to allow him to show that the use of the death penalty in Bay County, Florida, is racially discriminatory. Foster moved to preclude the state attorney's office from seeking the death penalty in his case based on his assertion that the Bay County State Attorney's Office pursued prosecution much more vigorously and fully in cases involving white victims than in cases involving black victims.

In support of his claim, Foster proffered a study conducted by his counsel of some of the murder/homicide cases prosecuted by the Bay County State Attorney's Office from 1975 to 1987. Analyzing the raw numbers collected, Foster concluded that defendants whose victims were white were 4 times more likely to be charged with first-degree murder than defendants whose victims were black. Of those defendants charged with first-degree murder, white-victim defendants were 6 times more likely to go to trial. Of those defendants who went to trial, white-victim defendants were 26 times more likely to be convicted of first-degree murder. The court refused to hold an evidentiary hearing, finding that the alleged facts did not make out a prima facie claim of discrimination.

The United States Supreme Court rejected a similar challenge in *McCleskey v. Kemp*, 481 U.S. 279, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987). *McCleskey* claimed that the imposition of Georgia's death penalty was racially discriminatory in violation of the Eighth and Fourteenth Amendments. He relied on a statistical study, the Baldus study, which purported to show a disparity in the imposition of Georgia's death penalty based on the race of the victim and the race of the defendant. The raw figures collected by Professor Baldus indicated that defendants charged with killing white victims received the death penalty in 11% of the cases, but defendants charged with killing blacks received the death penalty in only 1% of the cases. Baldus further found that the death penalty was as-

sessed in 22% of the cases involving black defendants and white victims; 8% of the cases involving white defendants and white victims; and 3% of cases involving white defendants and black victims. The figures indicated that prosecutors sought the death penalty in 70% of the cases involving black defendants and white victims; 32% of the cases involving white defendants and white victims; 15% of the cases involving black defendants and black victims; and 19% of the cases involving white defendants and black victims.

After accounting for numerous variables that could have explained the disparities on other than racial grounds, the Baldus study found that defendants charged with killing white victims were 4.3 times as likely to receive a death sentence as defendants charged with killing black victims. Black defendants were 1.1 times as likely to receive a death sentence as other defendants. As a black defendant who killed a white victim, *McCleskey* argued that the Baldus study demonstrated that he was discriminated against because of his race and the race of his victim.

The Court held that *McCleskey* "must prove that the decisionmakers in his case acted with discriminatory purpose." *McCleskey*, 481 U.S. at 292, 107 S.Ct. at 1767. The Court rejected *McCleskey's* claim because he offered no evidence specific to his own case to support as inference that racial considerations played a part in his sentence. The Court found the Baldus study to be insufficient to support an inference that the decisionmakers in *McCleskey's* case acted with purposeful discrimination.

Foster's claim suffers from the same defect. He has offered nothing to suggest that the state attorney's office acted with purposeful discrimination in seeking the death penalty in his case. See *Harris v. Pulley*, 885 F.2d 1354, 1875 (9th Cir. 1988), cert. denied, 493 U.S. 1051, 110 S.Ct. 854, 107 L.Ed.2d 848 (1990); *Byrd v. Armontrout*, 880 F.2d 1, 10 (8th Cir. 1989), cert. denied, 494 U.S. 1019, 110 S.Ct. 1326, 108 L.Ed.2d 501 (1990); *Kelly v. Lynaugh*; 862 F.2d 1126, 1135 (5th Cir. 1988) cert. denied, 492 U.S. 925, 109 S.Ct. 3263, 106 L.Ed.2d 608 (1989). The trial court was not required to hold an evidentiary hearing on this claim. *Harris*, 885 F.2d at 1375 (defendant not entitled to evidentiary hearing where he offered no proof that decisionmakers in his case acted with discriminatory purpose).

Foster argues that *McCleskey* does not foreclose his challenge because his evidence focuses solely on the practices of one prosecutor's office, whereas the Baldus study consisted of generalized statistics covering every aspect of Georgia's death penalty scheme. The *McCleskey* Court questioned whether a state "policy" of discrimination could be deduced by studying the combined effects of hundreds of decisionmakers.

The Court in *McCleskey* held that: [T]he policy considerations behind a prosecutor's traditionally "wide discretion" suggest the impropriety of our requiring prosecutors to defend their decisions to seek death penalties "often years after they are made." Moreover, absent far stronger proof, it is unnecessary to seek such a rebuttal, because a legitimate and unchallenged explanation for the decision is apparent from the record: *McCleskey* committed an act for which the United States Constitution and Georgia laws permit imposition of the death penalty.

"... Implementation of these laws necessarily requires discretionary judgments. Because discretion is essential to the criminal justice process, we would demand exceptionally clear proof before we would infer

that the discretion has been abused."—*McCleskey*, 481 U.S. at 296-97, 107 S. Ct. at 1769-70 (citations omitted).

The figures proffered by Foster do not constitute "exceptionally clear proof" of discrimination. See *Harris v. Pulley*, 885 F.2d at 1375. Foster's figures do not account for any of the myriad of nonracial variables that could explain the disparity. See *McCleskey*, 481 U.S. at 295, n. 15, 18 S.Ct. at 1769, n. 15 ("decisions whether to prosecute and what to charge necessarily are individualized and involve infinite factual variations. . ."). Even assuming the validity of Foster's study,⁸ the raw numbers analyzed by Foster do not show a significantly greater disparity than figures proffered by the Baldus study which had taken into account numerous nonracial variables.⁹

[14] Finally, Foster claims that the trial court's sentencing order fails to evaluate the proposed mitigating factors as required by *Rogers v. State*, 511 So.2d 526 (Fla 1987), cert. denied, 484 U.S. 1020, 106 S.C. 733, 98 L.Ed.2d 681 (1988). In discussing the manner in which the trial court should consider mitigating circumstances in a case in which the state seeks the death penalty, we said:

"[T]he trial court's first task in reaching its conclusions is to consider whether the facts alleged in mitigation are supported by the evidence. After the factual finding has been made, the court then must determine whether the established facts are of a kind capable of mitigating the defendant's punishment, i.e., factors that, in fairness or in the totality of the defendant's life or character may be considered as extenuating or reducing the degree of moral culpability for the crime committed. If such factors exist in the record at the time of sentencing, the sentencer must determine whether they are of sufficient weight to counterbalance the aggravating factors."—*Id.* at 534.

In addressing mitigation in the sentencing order, the trial court first listed thirteen mitigating factors that Foster had offered for consideration. The court then stated:

"The Court must note that there is a conflict in evidence on the questions of whether the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance and the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was substantially impaired (emphasis supplied)."

After discussing the conflict in the evidence, the court then concluded:

"The Court will therefore consider this conflict in the weight to be given these two factors in relating to the aggravating circumstances."

The Court has considered the evidence presented in support of each of these mitigating factors and, in weighing these factors against the aggravating factors, finds that the aggravating circumstances outweigh the mitigating circumstances in this case.¹⁰

While it is evident that the court considered the mitigating circumstances, we cannot tell whether the court determined whether either of the two statutory mental mitigating circumstances existed. In fact, we are unable to say whether the court found any of the mitigating circumstances to exist or what weight was given to them. Unlike *Rogers*, we cannot say that this defect in the sentencing order was harmless error.¹⁰

Accordingly, we vacate the sentence of death and remand the case for the trial judge to enter a new sentencing order following the dictates of *Rogers* and *Campbell v. State*, 571 So.2d 415 (Fla.1990).¹¹ See *Lucas v. State*,

568 So.2d 18 (Fla.1990). We affirm the denial of Foster's motion for postconviction relief. It is so ordered.

OVERTON, McDONALD, GRIMES and HARDING, JJ., concur.

BARRETT, CJ., concurs in part and dissents in part with an opinion, in which SHAW and KOGAN, JJ., concur.

KOGAN, J., concurs in part and dissents in part with an opinion.

BARRETT, Chief Justice, concurring in part, dissenting in part.

"I concur in the majority's resolution of all the issues except for Foster's claim regarding the discriminatory use of the death penalty in Bay County, Florida.

"The majority concludes that Foster "Has offered nothing to suggest that the state attorney's office acted with purposeful discrimination in seeking the death penalty in his case." Majority op. at 463. My disagreement is not so much with that statement as with a standard that requires showing something that is virtually impossible to show: purposeful discrimination. *McCleskey v. Kemp*, 481 U.S. 279, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987).

"In *McCleskey*, the U.S. Supreme Court dismissed *McCleskey's* analogous federal equal protection claims, holding that a defendant must establish both "the existence of purposeful discrimination" and a "discriminatory effect" on that particular defendant. *Id.* at 292, 107 S.Ct. at 1767. I agree that under the federal precedent *McCleskey* would control this case.

"Foster, however, claims a violation of the Equal Protection Clause of the Florida Constitution. Art. I, §2, Fla. Const. Despite the principles adopted in *Traylor v. State*, 596 So.2d 957 (Fla. 1992), establishing the primacy of the Florida Constitution, the majority completely ignores Foster's state constitutional challenge. I believe that Foster's claim deserves full consideration.

Despite earlier transgressions,¹² Florida in recent years has clearly established its commitment to equality of treatment in the courts. See, e.g., *Report and Recommendations of the Florida Supreme Court Racial and Ethnic Bias Study Commission* (1990 & 1991); *The Florida Supreme Court Gender Bias Study Commission Final Report* (1990). Indeed, while the U.S. Supreme Court was still requiring a defendant to meet the impossible burden of proving that discriminatory jury selection practices were employed systematically in a number of similar cases or contexts, *Swain v. Alabama*, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965), this Court took the lead in *State v. Neil*, 457 So.2d 481 (Fla. 1984), clarified by *State v. Castillo*, 486 So.2d 565 (1986), and established guidelines under the Florida Constitution to guard against the racially discriminatory use of peremptory challenges.¹³ The U.S. Supreme Court followed suit two years later in *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), when it overruled the *Swain* standard and acknowledged that it imposed a "crippling burden of proof" that rendered a prosecutor's peremptory challenges largely immune from constitutional scrutiny. *Id.* at 92-93, 106 S.Ct. at 1720-21. The Court found that a prosecutor's use of peremptory challenges is subject to the constraints of the Equal Protection Clause when there is some basis for believing that the challenges are used in a racially discriminatory manner.¹⁴

"The U.S. Supreme Court in *Batson* recognized the invidious nature of discrimination. *Id.* at 93-96, 106 S.Ct. at 1721-23. Justice Marshall, in a concurring opinion, noted that discrimination is not often blatantly expressed, and in many cases it is subliminal:

"A prosecutor's own conscious or unconscious racism may lead him easily to the conclusion that a prospective black juror is 'sullen,' or 'distant,' a characterization that would not have come to his mind if a white juror had acted identically. A judge's own conscious or unconscious racism may lead him to accept such an explanation as well supported."—*Id.* at 106, 106 S.Ct. at 1728 (Marshall, J. concurring).

Studies of unconscious racism have shown that the perpetrator does not feel particularly punitive toward minorities, rather, he or she wants to remain distant and is less likely to feel empathy because of the distance. Sheri Lynn Johnson, Comment, *Unconscious Racism and the Criminal Law*, 78 Cornell L. Rev. 1016, 1020 n. 27 (1988). While society has largely rejected blatant stereotypes and overt discrimination, more subtle forms of racism are increasing: "A burgeoning literature documents the rise of the 'aversive' racist, a person whose ambivalent racial attitudes leads him or her to deny his or her prejudice and express it indirectly, covertly, and often unconsciously." *Id.* at 1027-28 (footnotes omitted).

"Discrimination, whether conscious or unconscious, cannot be permitted in Florida courts. As important as it is to ensure a jury selection process free from racial discrimination, it is infinitely more important to ensure that the State is not imposing the ultimate penalty of death in a racially discriminatory manner. The U.S. Supreme Court may eventually recognize that the burden imposed by *McCleskey* is as insurmountable as that presented by *Swain*. In the meantime, defendants such as Foster have no chance of proving that application of the death penalty in a particular jurisdiction is racially discriminatory, no matter how convincing their evidence.¹⁵

"I suggest the following standard: A party asserting racial discrimination in the State's decision to seek the death penalty should make a timely objection and demonstrate on the record that the discrimination exists and that there is a strong likelihood it has influenced the State to seek the death penalty. Such discrimination conceivably could be based on the race of the victim or on the race of the defendant. Once the trial court determines that the initial burden has been met by the defendant, the burden then shifts to the State to show that the practices in question are not racially motivated. If the trial court determines that the State does not meet that burden, the State then is prohibited from seeking the death penalty in that case.

"Accordingly, because the majority has applied a federal constitutional standard in Foster's case that is impossible to meet and has missed the opportunity to craft a state constitutional standard such as that discussed above, I dissent from that portion of the opinion."

FOOTNOTES

¹Hitchcock v. Dugger, 481 U.S. 393, 107 S.Ct. 1821, 95 L.Ed.2d 347 (1987).

²The trial court found three aggravating circumstances: (1) the murder was committed during the course of a robbery; (2) the murder was cold, calculated, and premeditated; and (3) the murder was especially heinous, atrocious, or cruel. Foster offered thirteen mitigating circumstances. The trial court found that the mitigation did not outweigh the aggravating circumstances.

³In addition, we note that Foster raised ineffective assistance of counsel claims in his two federal habeas petitions. The claims were denied after evidentiary hearing and the denials were affirmed on appeal. *Foster v. Dugger*, 823 F.2d 402 (11th Cir. 1987), cert. denied, 487 U.S. 1241, 108 S.Ct. 2915, 101 L.Ed.2d 946 (1988); *Foster v. Strickland*, 707 F.2d 1339 (11th Cir.

1983), cert. denied, 466 U.S. 993, 104 S.Ct. 2375, 80 L.Ed.2d 847 (1984).

"In addition, we note that the motion was filed outside of the limitations period established by rule 3.850. The motion fails to allege that the facts upon which his claims are based "could not have been ascertained by the exercise of due diligence." Fla.R.Crim.P. 3.850.

5. §921.141(5)(h), Fla.Stat. (1989).

6. §921.141(5)(f), Fla.Stat. (1989).

7. Foster also contends that the application of the cold, calculated, and premeditated aggravating factor to his crime violates the Ex Post Facto Clause because the factor did not exist at the time of this crime. We have repeatedly rejected this claim. See *Sireci v. State*, 587 So.2d 450, 454 (Fla. 1991), cert. denied, —U.S.—, 112 S.Ct. 1500 117 L.Ed.2d 639 (1992); *Zeigler v. State*, 580 So.2d 127 (Fla.), cert. denied—U.S.—, 112 S.Ct. 390, 116 L.Ed.2d 340 (1991); *Combs v. State*, 403 So.2d 418, 421 (Fla. 1981), cert. denied, 456 U.S. 984, 102 S.Ct. 2258, 72 L.Ed.2d 862 (Fla. 1982).

8. The weight to be given to the results of such a small statistical sample as this is questionable. See *McCleskey*, 481 U.S. at 295, n. 15, 107 S.Ct. at 1768, n. 15.

9. The figures indicating that of the defendants who went to trial, white-victim defendants were 26 times more likely to be convicted of first-degree murder than were black-victim defendants cannot be attributed to a decision by the Bay County State Attorney's Office and thus are not relevant here.

10. In view of our disposition of this issue, we do not address Foster's argument with respect to proportionality.

11. While *Campbell* did not become final until after the original sentencing order was entered, its additional requirements will obviously be applicable to any new sentencing order.

12. See, e.g., *State ex rel. Hawkins v. Board of Control*, 93 So.2d 354 (Fla.), cert. denied, 355 U.S. 839, 78 S.Ct. 20, 2L.Ed.2d 49 (1987); *State ex rel. Hawkins v. Board of Control*, 83 So.2d 20 (Fla. 1955), cert. denied, 350 U.S. 413, 76 S.Ct. 464, 100 L.Ed. 486 (1956).

13. See also *State v. Slappy*, 522 So.2d 18 (Fla.) cert. denied, 487 U.S. 1219, 108 S.Ct. 2873, 101 L.Ed.2d 909 (1988) (holding that any doubt as to whether the complaining party has met its initial burden, should be resolved in that party's favor).

14. The U.S. Supreme Court recently held that the Equal Protection Clause also prohibits a criminal defendant from engaging in purposeful discrimination on the basis of race in the exercise of peremptory challenges. *Georgia v. McCollum*, —U.S.—, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992). This Court held in *Neil* that both the State and the defense may challenge the allegedly improper use of peremptories. 457 So.2d at 487.

15. In this case, Foster presented statistical evidence showing that even though blacks constituted 40% of the murder victims in Bay County cases between 1975 and 1987, all 17 death sentences that were imposed were for homicides involving white victims.

Mr. GRAHAM. Mr. President, I ask unanimous consent to print in the RECORD a colloquy between Chief Justice Barkett and Senator HATCH on the occasion of her confirmation hearing before the Senate Judiciary Committee on February 3 of this year.

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

Justice BARKETT. My only concern in Foster, Senator, is that there would be a vehicle by which a defendant could assert that the law was being discriminatorily applied against a racial minority. My reading of Supreme Court cases and my reading of our own cases in my State preclude the use of a law to be applied in a racially discriminatory manner.

I did not purport to suggest what proof would be sufficient to overcome that burden, although I recognize that it would have to be a substantial burden of proof, if that claim were to prevail. But the essence of my concerns in Foster revolved around providing a process when there was an occasion that a defendant could assert that a particular prosecutor, for example, was only applying

the death penalty against black defendants or only when the victims were white or things of that nature.

Senator HATCH. I think that is different from applying statistical disparity. If you read your opinion carefully—well, let me just say I am very concerned that your approach would paralyze the implementation of the death penalty.

Now, I myself have lots of qualms about the death penalty. I would use it very sparingly, and then only in cases where there is absolute proof of guilt, where there is no evidence of discrimination, and where the murder is a particularly heinous murder. There may be other factors, but those are three that I would want to find in every case.

Let me just add that I am hardly alone in this concern. Many of my Senate colleagues, for example, have voiced similar concerns in opposition to legislation labeled by its advocates as the Racial Justice Act. That legislation, which also developed in reaction to the McCleskey case decided by the Supreme Court, takes the same or virtually the same statistical approach as your dissent in Foster.

During the debate on the so-called Racial Justice Act in 1991, Senator Graham, who spoke eloquently on your behalf today and influentially to me, as did Senator Mack, but Senator Graham had this to say: "The reality is that, by enacting the Racial Justice Act, this Congress in a bill designed to enhance Federal criminal justice standards, procedures and laws would destroy the right of a State to impose the death penalty in a constitutional manner. The Racial Justice Act of 1991 might more appropriately be called the Death Penalty Abolition Act of 1991. Seldom has a proposed Federal law gone so far at one time as to unravel first the interest of the States in protecting citizens from murderers, second, to unravel the prosecutorial discretion recognized in every State, and, third, to unravel the jury system."

He goes on to say: "The very nature of the criminal justice program does not lend itself to statistical precision. Each death-eligible decision is inherently individualized and not necessarily subject to being categorized."

Now, as you can see, he and I share the same view on the Racial Justice Act, and we have defeated it consistently in our debates over the crime bills that we have had. Let me just ask you to respond to some criticisms of what I felt was your theory in that case.

For instance, Justice Powell noted in McCleskey that implementation of murder statutes inherently requires discretion, which he said "is essential to the criminal justice process." He explained that this process is unique, and that "the nature of capital sentencing decision and the relationship of the statistics to that decision are fundamentally different from the corresponding elements in jury pool selection and employment discrimination cases. In those cases, the statistics relate to fewer entities and fewer variables and are relevant to the challenged decisions.

For example, from the time of his arrest until the time of sentencing, you have independent entities functioning, the prosecutor who decides to seek the death penalty, a defendant who may or may not choose to plea bargain, a jury or jury who have to impose it. It is not the same as one employer hiring plumbers or a court administrator seeking a jury pool or other cases where decisions are readily attributable to one entity.

Justice Powell also said this. He said: "Another important difference between the cases

in which we have accepted statistics as proof of discriminatory intent in this case is that, in the jury pool selection and employment discrimination cases, the decision-maker has the opportunity to explain the statistical disparity. Here the State has no practical opportunity to rebut the statistical study. Controlling considerations of public policy dictate that jurors cannot be called to testify to the motives and influences that led to their verdict."

Now, he added even further. He said: "Similarly, the policy considerations behind a prosecutor's traditionally wide discretion suggest that the impropriety of law requiring prosecutors to defend their decisions to seek death penalties often years after they were made."

Now, one study—I am sorry this is so long. Justice BARKETT. That is all right.

Senator HATCH. It is important, because it is a matter of great debate here, as well. Many of us who believe that the death penalty is provided by the Constitution and is important know that the reason for the Racial Justice Act is to knock out the death penalty.

One study you pointed to found, "That prosecutors sought the death penalty 27 percent of the time when white victims were involved, and only 14 percent of the time when minority victims were involved." But each and every one of those cases had different facts and different circumstances. They do not seem susceptible to those who really study this area to statistical comparison such as you called for in the Foster case.

Go ahead.

Justice BARKETT. I do not think that there is anything in this opinion nor in anything I have written nor in anything I have ever said or feel that suggests that discretion is not a part of this process and has to be a part of the process for many of the reasons that you have enumerated, Senator.

What I think I am saying in this case, however, and what I think the United States Supreme Court has said in other contexts, for example, the whole *Swain v. Alabama* and *Batson v. Kentucky* context, is that discretion cannot be used to selectively enforce the law in a racially discriminatory manner. And I do not think there is any dispute about that principle.

The second aspect of your question which I would address is that I have not suggested in this opinion or anywhere else that statistics is the be-all and the end-all of the inquiry. I do believe that perhaps statistics may be something that could be submitted to be included in an offer of proof on this question, but I clearly do not believe that some questions can be resolved only by use of statistical analysis.

And I think that the passage that you read indicates why it would be so troublesome, if you attempted to challenge a whole State's use of statistics or statistics which impact an entire State as dispositive of anything. There are many prosecutors in a State, there are many districts, and so on and so forth.

But when an allegation is made that there is one prosecutor who is unambiguously using his or her discretion in a way to only selectively enforce the law or apply the law in a racially discriminatory manner, there has to be a vehicle in which a person can raise this claim and in which it can be decided.

Senator HATCH. But that was not the claim in the Foster case. In this case, you said—I have a LEXIS/NEXIS, I do not know whether you have the same thing I do, so I cannot really tell you the page, but it is near the

end of your opinion, I would say about five paragraphs before the end—you say: "I believe that statistical evidence of discrimination in capital sentencing decisions should similarly establish a violation of Article I, section 2 of the Florida Constitution. Statistical evidence should be construed broadly to include not only historical analysis of the disposition of first-degree murder cases in a particular jurisdiction, but also other information that could suggest discrimination, such as the resources devoted to the prosecution of cases involving white victims as contrasted to those involving minority victims—

Justice BARKETT. Exactly.

Senator HATCH. —"and the general conduct of a State attorneys office, including hiring practices and the use of racial epithets and jokes, when racial bias, whether conscious or unconscious, exists in an environment where decisions about seeking the death penalty are made, all aspects of that bias should be available for evaluation by the court in reviewing evidence of discrimination."

That may be in reviewing evidence of discrimination, but not in making the final decision as to whether capital punishment should be imposed.

Justice BARKETT. I think if you continue in the opinion, Senator, you will find that what I am talking about is using all of these things, certainly not exclusively. And as I point out at the very end of the opinion, it is impossible to anticipate the circumstances in which it may be manifested, the trial judge should make a determination, and I suggest a vehicle which provides a specific standard, that is, the defendant has the burden of showing a very strong likelihood of discrimination, and the trial court would then hear whatever evidence, which would not be simply statistical evidence as the only evidence to be considered.

Senator HATCH. As I read the opinion, your standard is very open-ended. For example, prosecutor's decision as to how much resources to put into the case turns on many subjective factors, amount of investigation, trial preparation, attorney resources needed in the case, as well as available resources.

And since the facts of any set of cases are never alike, how is it possible to draw meaningful comparisons for that kind of statistical analysis?

Justice BARKETT. Suppose, Senator, I guess if you take the best case scenario, that there had been 100 murders in a particular county and 90 of them were against black victims, only 10 against white victims, and the death penalty was sought only in those 10 or only in the one case, where there may be many, many others. All I am trying to suggest to you is I believe there would be a scenario where it would be clear that the death penalty was being applied in a racially discriminatory manner.

The only thing I was suggesting in *Foster* is that there be a vehicle by which one can bring that claim to the court and the court can evaluate it. I was not attempting to suggest, nor do I suggest now, that there is a particular way of making that proof. I was suggesting different ways that certainly would be considered by the trial court.

Senator HATCH. The point I was making is that your standard is a vague, manipulable standard that would absolutely paralyze the death penalty, if it were adopted by courts, under which the burden would be placed upon the State to prove a negative, and that is what bothered me about that case.

Like I say, every murder case is unique. You cannot compare, for example, resources

applied between cases or the decision to seek the death penalty in those cases in a meaningfully statistical way and come to a conclusion about racial discrimination. Comparing what happens in two murder cases is like comparing an apple to an orange.

Justice BARKETT. Absolutely.

Senator HATCH. So you feel that if you go on the Circuit Court of Appeals, you would be bound by the McCleskey case?

Justice BARKETT. I do not think there is any question of that, Senator.

Mr. GRAHAM. Thank you, Mr. President.

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

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

The bill clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. PELL. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein.

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

STEADY SUPPORT FOR RUSSIA: LOOKING BEYOND THE BUMPS IN THE ROAD

Mr. PELL. Mr. President, I am concerned by the calls that I have heard during the last few days for an abrupt change in United States policy toward Russia, including for an end to United States assistance. I agree that there are some disturbing sounds and images emanating from individuals in Russia: Provocative claims that Russia has a special interest in neighboring countries and nationalist cries for the unity of all Russians.

The revelation that one of our senior CIA officials was spying for Russia is the latest bit of troublesome news. However, I believe that calls for us to disengage and to end our assistance program are hasty, counterproductive, and dangerous.

I, like everyone else, am deeply troubled by the alleged activities of the CIA officer in question, including the possibility that he may have been responsible for the loss of lives. As I suggested to the Secretary of State at yesterday's Foreign Relations Committee hearing, however, it is naive to think that countries—even friends—do not spy on one another. While the United States should pursue the Ames case vigorously with the Russians, it would be inappropriate to retaliate by writing off Russia and shutting down our assistance program.

At this delicate point in Russia's development, it is critical that we not lose sight of the big picture. Reformers

are confronting uphill battles as they try to change fundamentally the way their economy and government operate, seek consensus on arms control issues that are of vital importance to the United States, and attempt to balance domestic concerns in making foreign policy decisions.

Precisely because the reformers are facing challenges to their agendas, our continued commitment to support their reforms becomes even more crucial. Russia, left to its own devices, very well could become a loose cannon. If we want to prevent the emergence of a Russia that is hostile to the West, we must remain engaged.

It is irrational to suggest that we put the brakes on a process that is in our national interest. At his appearance before our committee yesterday, Secretary of State Christopher testified that "one of President Clinton's top national security priorities has been to ensure that the breakup of the former Soviet Union does not produce new nuclear states." He spoke of the progress we have made in this regard, and of our continued interest in controlling the spread of both nuclear and advanced conventional weapons. There are, as he reminded us, many challenges ahead, including the extension of the non-proliferation treaty in 1995, the negotiation of a comprehensive test ban, and the creation of a replacement regime for COCOM, all of which will require Russian cooperation. He outlined other areas of high priority for the United States—such as combatting terrorism and illegal narcotics—where Russian engagement is crucial.

In 1992, when the Congress passed the Freedom Support Act, we did so because we recognized that helping the New Independent States was in our national interest. This past fall, although we were facing difficult budgetary times, we fully funded the President's request of \$2.5 billion in assistance for the NIS because we understood that reform in Russia and the other New Independent States needed our support during the difficult months and years ahead.

I would argue that nothing has changed since Congress made those decisions: it is still in the national interest to operate programs with goals that include supporting privatization, the creation of a market for U.S. goods, democratization, and the transition from a defense-oriented to a civilian-based economy.

It is important to remember that our bilateral aid program does not consist of cash handouts. Rather, under the Nunn-Lugar program, a major portion of our assistance effort, we are helping the Russians dismantle the very nuclear weapons which threatened us during the cold war. Under our technical assistance program, United States citizens are offering their expertise to Russian firms struggling to privatize, phy-

sicians modernizing health care, mayors implementing municipal reform, and farmers trying to improve production. United States private voluntary organizations, Peace Corps volunteers, and retired U.S. executives are among those working to support reforms at the grass roots level that will lay the foundation for further economic transformation. Our assistance package also includes programs, such as the American Business Centers, and the Russian American Enterprise Fund which directly benefit United States companies seeking to do business in Russia. Why on earth would we want to terminate or curtail U.S. involvement in and support for these activities?

United States assistance efforts have just begun, with AID launching its technical assistance program a little more than a year ago. Our aid efforts are just starting to gain some momentum and show some preliminary results. But real results will only be evident over the long-term, and will require uninterrupted support. To cut back our assistance now would only ensure that our efforts to date have been a waste. I would strongly urge colleagues to stick by the commitment we have made to reform in Russia.

HOLY NAME OF JESUS MEDICAL CENTER

Mr. SHELBY. Mr. President, I rise today to tell a story of a vision of hope and unending health care by the Missionary Servants of the Most Blessed Trinity in the city of Gadsden, AL.

During the mid-1920's, the Sisters brought the hope of medical care to Gadsden. The Sisters first came to Gadsden to staff a small 25-bed hospital which Mother Boniface, the superior of the community, had purchased in late 1924 and named the Holy Name of Jesus Hospital. A year later, the hospital attained the needed support of a young surgeon, Dr. J.O. Morgan. Dr. Morgan was so respected in the community that other physicians joined the staff of the hospital or recommended the facility to their patients fostering acceptance and assistance for the hospital from area residents.

After only 3 years of service, it was apparent that a larger medical facility was necessary. In November 1927, the cornerstone of a new hospital was laid. In September 1931 the new state-of-the-art hospital was dedicated.

Meeting the medical needs of the sick and suffering with modern technology, the Holy Name of Jesus Hospital provided the first open heart surgery units, cardiac catheterization unit, and renal dialysis facility in the area. By 1977, the Holy Name of Jesus Hospital grew to a 200-bed medical facility. In the same year, a 12-year expansion plan began. With this program, the hospital grew to the status of a medical center offering numerous

types of medical assistance such as inpatient care, day surgery, inservice programs, and also an upgrading in the training of paramedical personnel.

During the 1980's the Holy Name of Jesus Hospital was hailed as one of the most advanced medical centers in northeast Alabama. Yet, the care of the Missionary Sisters reached far beyond the hospital walls to the sick at home. They cooked, cleaned, and clothed those in need. The poor who could not afford hospital care received aid through the generosity of the Sisters. No one was denied aid from the Sisters at the Holy Name of Jesus Hospital.

For the 60 years, from 1928 to 1991 the Sisters also operated a nursing school in conjunction with the Holy Name of Jesus Hospital. The U.S. Army trained its nurses in the region at the school prior to serving their country during World War II.

As we near the turn of the century, we can look to the Holy Name of Jesus Medical Center, now Riverview Medical Center, as a vision of a hope which provided excellent health care to the county. I salute all the Sisters who have served the sick and needy in their community while constantly striving to equip the hospital with modern, state-of-the-art technology. I would also like to congratulate the Sisters and all those involved with developing the Holy Name of Jesus Medical Center over the decades. The Missionary Servants of the Most Blessed Trinity will inspire the people of Gadsden, Etowah County, and the State of Alabama for many years to come.

MAKING A DIFFERENCE

Mr. LEAHY. Mr. President, over the years I have had a chance to meet an extraordinary conservationist and ornithologist, Dr. Liao Weiping. Dr. Liao is a Chinese professor from the Guangdong Institute of Entomology, but he is also a man who has worked extremely hard to improve and maintain the environmental balance of Guana Island in the British Virgin Islands. He has done this under the sponsorship of Henry and Gloria Jarecki, the owners of that island and dedicated environmentalists.

In talking with Dr. Liao you can easily see his dedication to his family and to the environment and to the opportunities people should have to achieve a full life based on their work.

I ask to have the enclosed article from the July 1993 issue of the *Wellcome* printed in the RECORD at this point.

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

MAKING A DIFFERENCE

Why is a wiry 61-year-old ornithologist from China planting hundreds of trees on Guana Island?

Professor Liao wants to make a difference to the ecology of both the British Virgin Islands and Hainan, his native province. They share the same latitude and the same problem: erosion.

What can be achieved on Guana Island applies equally to all other islands in the B.V.I., but Guana, being a nature preserve of 850 acres, rich in fauna but with few human inhabitants, is the ideal place for scientific study.

Here Liao, a professor at both Guangdong Institute of Entomology and the South China Institute of Endangered Animals, is working to improve the ecosystem. Shaded by his red and white baseball cap, he propagates and transplants seedlings. At the same time he makes tidy notes in Chinese and in English which he taught himself in his forties. (He also speaks five Chinese dialects.)

Sponsored by Dr. Henry Jarecki the island's owner, Liao stays on Guana up to eight months at a time; 1994, will mark his fifth visit.

Every October, scientists from the Conservation Agency based in Rhode Island and others from all over the world descend on Guana. Dr. Jarecki, a conservationist, bought the island which contained a small hotel in 1974; he maintained the hotel, but also established a nature preserve. Sponsored by Dr. Jarecki, scientists from the Conservation Agency catch, mark and track animals; study flora; take inventory and discuss how best to make beneficial changes. They have reintroduced the flamingo to both Anegada and Guana Island and are working on ways to protect the endangered Anegada rock iguana (*Iguana pinguis*) through introducing it to Guana as well as through conservation efforts on Anegada.

Liao's contribution includes a comprehensive plan to increase bird and plant life. He explained that if the tall shade trees which used to grow on Guana Island could be restored, their roots would hold water, improving the soil. Further, if other trees and shrubs could be established which provide nesting sites as well as fruits and berries for birds throughout the year, birds such as the red-necked pigeon could be brought back to the island in good numbers.

These birds eat and disperse seeds of some of the best shade trees. Simply put, the birds need the trees and in order to increase, the trees need the birds. The shade and improved soil which result from more trees and more birds eventually lower the temperature slightly and produce more rainfall strictly locally—that is only in places which are shadier.

And what will happen if this plan is not carried out? Essentially, the opposite. Soil will erode further and rainfall will decline, making it harder to grow anything. Trees which die will be replaced by scrub. Finally cactus will replace scrub and topsoil will be lost. Such an occurrence would obviously be detrimental to the B.V.I. Although most people are aware of the importance of preserving the marine ecosystem, not everybody recognizes the need to protect the land. To Liao it's a burning issue.

An example of what one person can do: in 1992 he wrote a proposal to create protected areas throughout Guangdong Province in China. After obtaining signatures from 107 other noted scientists, he presented the proposal to the government, which has just passed it into law.

How fortunate that the man whose goal is to make a difference has adopted the B.V.I. as his second home.

CHINESE SCIENTIST STUDIES BVI'S BIRDS,
CLIMATE

(By Chris Bergeron)

A Chinese scientist, studying ecology on Guana Island, feels that environmental planning based on the beneficial relationship between native birds and forestation could reverse local climatic changes that may be reducing the BVI's rainfall and vegetation.

Prof. Liao Wei-ping, of the South China Institute of Endangered Animals, believes that changes in the territory's bird and tree population directly influence local weather patterns. The replacement of tropical forests by smaller scrub vegetation initiated a gradual chain reaction over the last several decades, raising the territory's temperature and causing a consequent decline in rainfall, he said.

Former agricultural practices, like plantation farming and the free grazing of animals, as well as excessive burning of timber for charcoal, also significantly depleted local vegetation and forests, according to Prof. Liao.

Some local birds, like the red-necked pigeon, stimulate positive growth patterns by eating and passing seeds of certain trees, which are instrumental in providing shade, a cooler climate and, ultimately, increased rain.

Prof. Liao, 59, is in the midst of his fourth extended visit to Guana Island. He is sponsored by Dr. Henry Jarecki of New York, the island's owner.

Dr. Jarecki sponsors The Conservation Agency, an organization that supports environmental studies by noted international scientists. He met Prof. Liao through the Agency's founder, Dr. James Lazell, presently affiliated with Harvard University, who met Prof. Liao in China in 1983.

Prof. Liao's experience in Chinese ornithology gives his work particular relevance for ecological studies in the BVI.

Prof. Liao is a native of Hainan Island, in the South China Sea, which is on precisely the same latitude as the BVI.

KEY HUMAN CHOICES

The similarities in climate and flora and fauna between Hainan and Guana Island provide Prof. Liao with a basis for his comparative studies, which focus on the inter-relationship between birds, vegetation and climate.

"I want to make a special contribution to both the BVI and my motherland through this research that Dr. Jarecki has sponsored," said Prof. Liao, a trim, nimble man with bright brown eyes.

"I believe that humans can institute policies to restore the environment and provide long-term benefits.

"Scientific research can identify critical choices. But humans are the key. They must be willing to support policies that will finally benefit their home, their children, their future."

Prof. Liao said that discussions with local farmers, several in their 70s, indicate that the territory's annual rainfall has been declining, raising temperatures and making agriculture more difficult.

"If rainfall declines, inevitably ecological quality will deteriorate. As scrub, which requires less rainfall, replaces the tropical trees still found on Sage Mountain, topsoil is lost.

"Cactus will replace scrub. The island will become hotter and the whole negative cycle starts again. Only thoughtful implementation can reverse these troubling tendencies," Prof. Liao said.

He cited the relationship between pearl-eyed thrashers, which prey on red-necked pi-

geons, as an example of the bird population's impact on vegetation and climate. Cycles within cycles.

Red-necked pigeons eat, partially digest and scatter the seeds of the tall trees where they nest, stimulating tree growth, which cools the local climate, encouraging further rainfall and growth.

Yet pearl-eyed thrashers, which nest in scrub brush, feed on pigeon eggs and kill the young, lowering the pigeon population, reducing seed dispersal, leading to the replacement of tropical forests by scrub vegetation. This heightens temperatures, further reducing rainfall.

Prof. Liao suggests that reforestation would initiate a chain reaction that would gradually increase the bird population and vegetation, ultimately prompting beneficial climatic changes within the territory.

Further research is required before he can recommend specific trees to plant.

He spends his days scrambling through trails, making meticulous notes in English and Chinese and collecting samples to chronicle the natural struggles that make Guana Island a laboratory that may provide a key to the BVI's environmental future. "Safeguard for peace."

Prof. Liao rose from abject poverty to become one of Guanadong province's most renowned ornithologists at a time when China was convulsed by invasion, civil war and revolution.

He received no formal schooling until age 13, later attending middle school by day while labouring long into the night. After years of struggle, he was elected president of the student union, earning a scholarship to one of China's most prestigious universities.

Following World War Two, Prof. Liao changed his personal name to Wei-ping, which means "safeguard for peace."

After learning Russian as a young man, he taught himself English in his forties by studying a dictionary and a grammar text.

While studying under Dr. Jarecki's sponsorship, Prof. Liao presented scholarly papers at ornithological conferences in the U.S. and Canada.

In 1986 he had an audience with then BVI Governor David Barwick and gave him a copy of his book.

"China is my true motherland, but I love the BVI as my adopted home" said Prof. Liao recently.

"It is important for people to consider the future, the next 50 or 100 years. Not just the short view.

"Taking protective measures for the long view will help everything—the economy, the environment, peoples' lives," he said.

"Maybe man can't control nature, but he can do his share. He must."

JOHN HUME'S 25TH ANNIVERSARY
OF PUBLIC SERVICE

Mr. KENNEDY. Mr. President, it was 25 years ago today that John Hume won his first election in Northern Ireland. Many of us in Congress who have come to know John well throughout the years know him to be an extraordinary man of peace. I have great admiration for his achievements and his leadership, and I congratulate him on his 25th anniversary in public service.

On February 24, 1969, John was elected to the Northern Ireland parliament. In the years since then, he has also been elected to the European Parliament and the British Parliament.

Throughout the long and difficult years of civil strife and turmoil in Northern Ireland, John Hume has dedicated his life to achieving a peaceful, just and lasting settlement of the conflict. As the founder and leader of the Social Democratic and Labour Party in Northern Ireland, he has demonstrated time and again the success and wisdom of peaceful negotiations and institution-building between Protestants and Catholics as the only acceptable method of achieving a solution of the crisis in his native land.

In the past 25 years, the violence on both sides of the conflict has caused the death of more than 3,000 people; many thousands more have been maimed or injured; and untold millions of dollars in damage to property has occurred.

He is one of the greatest apostles of nonviolence of our time. Throughout these turbulent years in Northern Ireland, John Hume has never lost faith in the belief that violence and terrorism are wrong and a negotiated settlement is the only realistic hope for peace, and that ancient antagonisms cannot be settled by bombs and bullets. He has an enduring vision of reconciliation based on equal respect and recognition for both the Protestant and Catholic traditions in Northern Ireland. His uncompromising defense of justice and human rights has undoubtedly reduced the level of violence, encouraged restraint and reason, and served as an inspiration to those seeking peaceful resolution of conflicts in many other corners of the world.

It is remarkable that a man of such deep commitment to peace has risen to leadership of an oppressed minority in a divided country. Yet, surrounded by repressive measures and bitter frustration, John Hume has never yielded to rancor or intolerance. He has courageously and constructively challenged the presumptions and prejudices not only of the Protestant tradition in Northern Ireland—but also of his own Catholic tradition.

In challenging the one-sided society of Protestant domination and intolerance, pervasive discrimination in employment, housing and education, and the constant threat of violence and terrorism, John Hume fashioned a non-violent civil rights movement based on community action and cooperation.

Beginning with the launching of a credit union to provide assistance to the minority community to purchase housing, he fought consistently for the rights of the members of his community. His weapons were effective programs and peaceful deeds—at a time when others in his own community increasingly urged the path of bombs and bullets. His ideas and eloquence lit a candle in the darkness of Northern Ireland, kindled an increasing sense of hope in the minority community, and created new possibilities for under-

standing between the two opposing sides of the conflict.

John Hume's community activity and involvement led directly to his long and distinguished political career. He brought together a broad coalition of leaders in his community who advocated nonviolence, and together they founded the Social Democratic and Labour Party. Under his skillful guidance as leader of the Party, the SDLP has been at the forefront of every significant effort to achieve a peaceful settlement in Northern Ireland.

Largely because of the vision and diligence of John Hume, the SDLP and Unionist leaders achieved the landmark Sunningdale Agreement in 1973, an unprecedented power-sharing experiment between the Nationalist and Unionist traditions.

When the Sunningdale Agreement collapsed the following year in the face of extremist Protestant resistance, John Hume encouraged the parties to explore other avenues of peace. It was John Hume who first—and for many years alone—argued the necessity for establishing an ongoing Anglo-Irish framework as the cornerstone for institutionalizing a process of reconciliation to heal the divisions within Northern Ireland, between north and south in Ireland, and between Britain and Ireland.

In 1983, largely as a result of his efforts, the main Irish political parties and the SDLP established the far-reaching New Ireland Forum, which considered alternatives for progress and whose report laid the groundwork for an unprecedented new dialog on Northern Ireland between Britain and Ireland. This dialog culminated in November 1985 with the signing of the historic Anglo-Irish Agreement by Prime Minister Margaret Thatcher of Great Britain and Prime Minister Garret FitzGerald of Ireland, representing the best hope in more than a decade for peace in Northern Ireland.

Today, the Anglo-Irish Agreement still serves as a daily avenue of communication between the British and Irish Governments on matters affecting Northern Ireland. In implementing the agreement, the two governments have also established an effective on-the-ground mechanism to consider specific grievances of the two communities in Northern Ireland on a day-to-day basis.

Britain and Ireland deserve great credit for their commitment to this process of reconciliation, but it could not have happened without the extraordinary leadership of John Hume. In so many ways, he is the glue that has held Northern Ireland together, halted the descent into anarchy and civil war, and produced the hope we see today for further progress.

In recent years, and especially in recent months, John Hume has conducted talks with Gerry Adams, the

leader of the Sinn Fein party in Northern Ireland. Once again, he has shown great courage by taking a great personal, political risk in an effort to achieve a lasting peace. All those who know John Hume well, know that peace has been his only motivation throughout his long and distinguished career and it is our hope that his current leadership will contribute to a permanent end to the violence.

John Hume is well respected in the United States and he has had an important influence on United States policy and on the American dimension of the conflict in Northern Ireland. In his many visits to this country, he has been a constant ambassador of peace, urging the cause of reconciliation, educating the Congress and the country that American dollars for Irish violence are destroying, not uniting, Ireland.

In sum, John Hume is a courageous leader of unusual achievement. He has dedicated and risked his life for the cause of human rights and peace in his native land. His efforts give immense encouragement to his supporters, who have borne a heavy burden against great odds in the struggle for peace, democracy and justice in their country.

His work also serves as an encouragement to those in other divided societies, who suffer from oppression and violence while seeking the dream of democracy, economic progress, and social justice.

I am sure that my colleagues in the Congress join me in congratulating John Hume on his 25th anniversary. It is our sincere hope that the goal of his life's work—peace and reconciliation in Northern Ireland—will be achieved soon.

I ask unanimous consent that an excellent recent article by John Hume on the current situation in Northern Ireland which appeared in the Irish Times last month may be printed in the RECORD.

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

[From the Irish Times, Jan. 31, 1994]

NEW WAYS OF COMING TOGETHER IN PEACE
(By John Hume)

There has been a lot of public discussion, a lot of careless language and indeed a lot of personal views by politicians, both British and Irish, about their views in relation to our future or indeed their preferences about that future. However, at this crucial point it is essential that we concentrate on the facts of our situation in Ireland and the facts of the Joint Declaration, facts which to myself are very clear and facts which have already made me declare that it is the most comprehensive declaration by British and Irish governments in 70 years on our relationships within this island.

Let us stay with the facts. The facts are that the people of Ireland have the right to self-determine their future. The facts are that the people of Cyprus have the right to self-determine their future. The facts are that the people of the world have the right

to self-determine their future. But the fact that gets consistently forgotten as people make emotional declarations about such rights is that it is people who have rights and not territory. Without people this earth is only a jungle. Humanity is what it is all about and how humanity settles its differences. The essence of settling differences is to respect them. There is not a single stable society in the world that is not based on respect for diversity.

The facts are that the people of Ireland are divided as to how to exercise that right, so are the people of Cyprus, so are the people in the former Yugoslavia, so are the people of the world. It is the search for agreement and the means of reaching agreement that is the real task facing those who want to solve such problems. It is also surely a fact that such agreement among divided peoples anywhere cannot be solved by any form of coercion or force. Victories, as history has sadly taught us, are not solutions; they simply leave legacies from which subsequent generations also suffer.

On our island the facts are that the people who share this island are deeply divided. The facts are that their divisions were not caused by partition; they were intensified, as indeed they are intensified today by violence. The facts are that the basic divisions among our people go back far beyond partition and the challenge of facing up to them by reaching agreement has never been faced up to by either of our traditions. That is the challenge that faces us today; that is the challenge that the Joint Declaration has thrown down to everyone, both governments and all parties.

Let us now look at the facts of the Joint Declaration. The facts are that the British government has made clear, not for the first time, that, whatever about the past, it no longer has any selfish or strategic interests in Ireland. The facts are that it has stated its primary interest very clearly and the meaning of the word primary seems to have been ignored by a lot of people. Its primary interest is not the status quo; its primary interest is not in any imposed settlement. Its primary interest, to quote the Joint Declaration, "is to see peace, stability and reconciliation established by agreement among all the people who inhabit the island".

In addition, the facts are that the British government makes clear its views on the rights to self-determination, recognising the fact of which we are all aware that at this point in time the people of Ireland are deeply divided as to how that right is to be exercised. The problem cannot be solved if we ignore the essential facts. The British government states: "The British government agree that it is for the people of Ireland alone by agreement between the two parts respectively to exercise their right to self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland if that is their wish." In addition, "They reaffirm as a binding obligation that they will, for their part, introduce the necessary legislation to give effect to this, or equally to any measure of agreement on future relationships in Ireland which the people living in Ireland may themselves freely so determine without external impediment". Ourselves alone!

Nothing could be clearer, and neither could the challenge to both main traditions on our island to face up at last to the challenge of achieving lasting stability and peace on our island for the first time by reaching such agreement. It is surely self-evident that anyone who genuinely wants such agreement

would recognize that agreement can never be achieved by any form of coercion or force. The task is for all involved to commit their energies to working for such agreement.

There has been the usual talk of vetoes. Again, the facts are that when you have a divided people, each section of it has a veto. That is the negative way of looking at it and we have never had any shortage of negative attitudes on this island. Surely the time has come to be positive and to seek and work for agreement, the challenge of which is to persuade one another that neither side wants victory but rather an agreement which respects our different heritages and identities, which is the only basis for stability in any society.

Indeed, once again in the Declaration the British government commits itself "to encourage, facilitate and enable the achievement of such agreement over a period through a process of dialogue and co-operation based on full respect for the rights and identities of both traditions in Ireland". If we do not want them to impose a solution, which is not self-determination, what more can they do? Indeed, could we reflect on the question, when at any time in the past 70 years have both governments been so committed to using all their influence, energy and resources towards such an objective?

The challenge to both traditions is clear. To the unionist tradition, who have a genuinely different heritage from the rest of us in this island and who have every right to protect that heritage, the challenge is to recognize for the first time that their real strength rests in their own numbers and their own geography and the problem cannot be solved without them. Have they the self-confidence to recognize that and to stand on their own feet, recognizing that the only people that they need to trust in such a process is themselves and for the first time (apart from Brian Faulkner) to agree to a relationship with those with whom they share this island? It is self-evident that they have consistently distrusted British governments. Now they are being asked to trust themselves and to recognize that the objective is an agreement which must earn the allegiance and agreement of all our traditions, including their own.

The challenge to the nationalist tradition is equally clear. It is people who have rights and not territory. It is a particular challenge to Sinn Fein and the IRA. Have they the self-confidence in their own convictions to come to the table armed only with those convictions and their powers of persuasion, as everyone else will have to do, given that the British government is now committed not only to encouraging agreement but to implementing and legislating for whatever agreement emerges. Is all of this not totally in keeping with the peace process defined in my joint statements with Mr. Adams as involving both governments and all parties, the objective of which would be agreement among our divided people, an agreement that would have to have the allegiance of all our traditions as well as their agreement?

We have reached a historic moment in our island history and my hope is that the moral courage will be there on all sides to seize it. It is to me self-evident that no instant package will end our differences forever, but whatever form our agreement takes, once our quarrel is over and all the talents of our diverse people are committed to working together to build our country North and South, the healing process will have begun and the old prejudices and distrusts will be progressively eroded.

Down the road in the future, out of that process will emerge a New Ireland, built on respect for our diversity whose model will probably be very different from any of our past traditional models. Will Catholic, Protestant and Dissenter finally come together in our small island and as we approach the 21st century of our now post-nationalist and interdependent world, will we at last remove the gun and the bomb from our island people?

THE 25TH ANNIVERSARY OF JOHN HUME'S TERM IN PUBLIC OFFICE

Mr. DODD. Mr. President, I rise today to inform my colleagues of the fact that today is the 25th anniversary of the day that John Hume, the leader of Northern Ireland's Social Democratic and Labour Party, first took public office in Northern Ireland. Not enough members of this Chamber, I suspect, are familiar with John Hume or are aware of the crucial role he has played over the years in the peace process in Northern Ireland. But I am quite confident that if more people were to listen to his words and to follow his example when it comes to Northern Ireland, the prospects for peace there would be far brighter indeed.

Mr. President, John Hume occupies a central and, in truth, a unique role in the political landscape of Ulster. He was an early leader of the movement to bring civil rights and equality to the long-oppressed Catholic community in Northern Ireland, and through his seats in the British Parliament and the European Parliament he has continued to play an instrumental role in speaking out for justice in the north. His party, which received approximately one-quarter of the votes in the most recent general elections, is committed to the long-held nationalist ideal of a united Ireland. At the same time, he has condemned the Irish Republican Army and he has often spoken out against the ruthless ways of the IRA. This willingness to confront both extremes of the Ulster reality has given him a crucial role in the peace process now underway in Northern Ireland.

Mr. President, last year John Hume helped to set the pace of peace negotiations forward when he engaged in a series of meetings with Gerry Adams, the controversial leader of Sinn Fein. While these meetings—and the agreement they reportedly produced—were regrettably not supported by the British Government, they nonetheless had an important impact in advancing the notion that if the conflict in Northern Ireland is to be solved, it must be solved through negotiation. In fact, as Mr. Hume told an interviewer last fall, "Given that the British Government has stated it cannot defeat the IRA and that the IRA has stated it cannot defeat the British Government, my simple Irish mind tells me the logic of that is that the only thing that'll solve the problem is dialogue."

Mr. President, John Hume has it absolutely right. What is needed in Northern Ireland today is more discussion, less violence; more listening, and less posturing. John Hume has taught us this lesson over the past 25 years and for that we should all be thankful.

THE NORTH KOREAN NUCLEAR WEAPONS PROGRAM

Mr. BENNETT. Mr. President, the issue of North Korea's nuclear weapons program has been of public interest for over a year. On some days it appears on the front page of every major newspaper in America.

After conducting a recent energy committee fact-finding tour in Asia last month, officials in all the countries I visited raised the seriousness of a nuclear Korean peninsula.

What has not been made clear, Mr. President, is the risk which the North Korean nuclear weapons program poses for all of us. That is, why should we be so concerned? After all, we learned to live with the threat of nuclear weapons from the now-defunct Soviet Union. How is the anticipated behavior of North Korea any worse?

A geopolitical answer would suggest that a nuclear device in the hands of North Korea raises the prospect that it would be used or threatened to be used against South Korea. Further, some might suggest that a frightened Japan would reverse almost 50 years of policy prohibition against the development of nuclear weapons.

Frankly, I do not buy either argument. North Korea knows that use of a nuclear weapon anywhere would have the most dire consequences. And, I have faith in the good judgement of the Japanese people. As the only country to suffer from a nuclear attack, a democratic government in Japan will not choose the nuclear option.

What then is the problem?

The problem is, Mr. President, was ably set out by Washington Post columnist Lally Weymouth in her column of February 17. As she notes, extracted plutonium is "a lot more valuable than cocaine." For a desperate regime like North Korea, with a history of selling every major weapons system it has ever produced, the temptation to sell to the highest bidder could be too much. The danger to our national security from a North Korean nuclear device in the hands of one of the anti-democratic regimes in the Middle East is clear-cut and unassailable.

Ms. Weymouth also points out that the distinguished Senator from Mississippi, Senator COCHRAN, the distinguished Senator from South Dakota, Senator PRESSLER, and the distinguished Senator from Colorado, Senator BROWN, recently visited the headquarters of the International Atomic Energy Agency to discuss the North Korean problem with IAEA Chairman

Hans Blix. Our colleagues deserve enormous credit for their personal concern over this vital issue.

Finally, Ms. Weymouth recounts Chairman Blix' statement to our colleagues: his agency wants to be able to go "anywhere, anytime" to inspect suspected North Korean nuclear weapons sites. His demand is both reasonable and prudent and deserves to be supported by the administration. To his credit, Assistant Secretary of State Winston Lord has made it clear that the recent reluctant agreement by North Korea that it will allow the IAEA back on a limited basis is just that: limited. There is more to come and the Congress anticipates that the administration will not make any final agreement with North Korea which allows it to escape its full obligations under the Nuclear Non-Proliferation Treaty.

Mr. President, I ask unanimous consent that the February 17, 1994, Washington Post column by Lally Weymouth be printed in the RECORD.

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

[From the Washington Post, Feb. 17, 1994]

NORTH KOREA'S HARD BARGAINING

(By Lally Weymouth)

Last December the director of the International Atomic Energy Agency, Hans Blix, was talking to three conservative senators about the threat posed by North Korea's nuclear program. In describing what the IAEA needs to make certain that North Korea doesn't violate the Nuclear Nonproliferation Treaty—to which it is a party—Blix told Sens. Larry Pressler (R-S.D.), Thad Cochran (R-Miss.) and Hank Brown (R-Colo.) that the IAEA must have the right to go "anywhere, anytime" to inspect North Korean nuclear facilities. Nothing short of this would do, said the former Swedish foreign minister, begging the senators not to let Washington undercut the IAEA during U.S.-North Korean bilateral talks.

Since November, there had been no progress in achieving Blix's goal. North Korea kept the IAEA inspectors out of the country. IAEA cameras installed at North Korean nuclear facilities actually stopped functioning. As a result, Blix issued a statement a few weeks ago that all but said the Democratic People's Republic of Korea had violated IAEA safeguards. It had been widely expected that at the upcoming IAEA board of governors meeting in Vienna, which starts on Monday, Blix would declare safeguards broken and ask the United Nations to impose economic sanctions.

Then, just as the international community appeared prepared to unite on the need for sanctions against North Korea, the IAEA suddenly declared a breakthrough this week. After eight rounds of talks between IAEA and North Korean officials in Vienna, North Korea agreed to what U.S. officials describe as "a bridging deal." It amounts to this: North Korea consents to let the IAEA verify that no nuclear material has been diverted from officially declared nuclear facilities since its last inspection in August 1993. Also, the IAEA will be allowed to replace its batteries, reload its cameras and change the seals on the seven nuclear facilities involved to ensure "continuity of safeguards." The

key North Korean facilities in question are a plant for reprocessing plutonium and a nuclear reactor.

By giving the IAEA this limited access to its nuclear facilities, North Korea—according to one U.S. official—has bought "a ticket to attend the third round of the bilateral talks." (During the Clinton administration, the United States and North Korea have held two rounds of bilateral talks.)

What Clinton administration officials, anxious to claim total victory, play down is that the IAEA doesn't usually limit itself to inspections of this type. It mounts "regular" inspections of declared nuclear sites in member countries—inspections of sites the host country declares to be relevant to its nuclear program. The IAEA also pursues "special" inspections—which involve facilities the IAEA asks to inspect, based on its suspicion that these locations may somehow be involved with the country's nuclear program.

But North Korea hasn't even agreed to allow regular inspections to resume—nor is it considering the so-called "special inspections." Pyongyang has merely agreed that these two types of inspection will be on the agenda at the third round of U.S.-North Korean talks.

If this week's announcement is really a "step"—as Clinton administration officials claim—toward persuading North Korea to rejoin the Nuclear Nonproliferation Treaty as a full member, it should be welcomed. But the dangers, can't be ignored. The administration originally declared its policy was to make sure North Korea would not develop a nuclear weapon. Thus it's worth addressing a question posed by a recent Rand Corp. study: Has the administration moved from prevention to containment?

North Korea bargains hard. It agreed to join the Nuclear Non-proliferation Treaty in 1985, but not until April 1992 did it sign and ratify the safeguards agreement. (NPT usually gives a country 18 months to sign the safeguards agreement.) IAEA subsequently conducted six "regular" inspections to check on the declared materials. The agency concluded there were inconsistencies in the information it was receiving, and sought to send a team of experts to visit two suspect sites. The purpose was to see whether there were traces of plutonium there. How much plutonium, in short, had North Korea produced?

Pyongyang rejected this request and suspended its membership in the NPT. Having threatened to withdraw from the NPT last March, North Korea claims it currently has a "special status" as an NPT member—a status the IAEA is refusing to recognize.

The U.S. intelligence community and others endeavoring to combat proliferation deem it imperative that North Korea comply with its NPT obligations. Aware that Pyongyang is hard-pressed for cash and that its best hope for securing hard currency consists in arms sales, American officials and experts note with concern that North Korea has sold every weapons system it has manufactured. One fear of U.S. experts is that Pyongyang may sell either a nuclear device, fissile material or the nuclear technology and know-how to rogue states like Iran. The extracted plutonium, notes one U.S. official, "is a hell of a lot more valuable than cocaine."

The IAEA must not be bludgeoned into accepting a phony deal on North Korea. America, meanwhile, needs to remember that North Korea is playing for time to complete its nuclear program. In his December meeting with the three U.S. senators, Blix ex-

plained that if North Korea is allowed to block special inspections and fails to comply in full with the NPT's provisions, other countries will feel they can follow its lead. Blix's warnings should not be ignored.

FEDERAL FIREARM LICENSE FEE

Mr. BURNS. Mr. President, the President delivered his \$1.5 trillion budget last month, and as we all know, the devil is in the details.

I would like to comment on one specific part of this budget. Included in the budget is an increase in the Federal firearm license [FFL] fee. The proposal would increase to \$600 annually.

Before the President signed the Brady bill into law, an FFL license cost \$30 for 3 years. The Brady Act increased the fee to \$200 for new applicants and \$90 for renewals for the same period. The new proposal would increase this fee to \$1,800 for the 3-year period. This is a 1000-percent increase.

This is a new tax which will put in jeopardy individual Montana gun dealers. In Montana, there are almost 3,000 individuals who hold FFL's. A large majority of these individuals, about 2,700, sell and trade guns as a hobby and for extra income. If this unrealistic increase is put into effect, they will not be able to cover their costs. The end result will be that many of these small dealers will be put out of business.

I believe this is yet another attempt at overtaxing individuals and imposing gun control measures. Gunowners in Montana, including myself, are tired of our rights being trampled. Taxing law-abiding gun sellers and traders, who go through the process of getting an FFL, is not going to curb crime.

As we continue with the budget process, I will be working to have this proposal dropped. Montana's gunowners, and those throughout America, are tired of getting attacked by Washington.

Mr. President, I yield the floor.

THE COMMUNITY HEALTH IMPROVEMENT ACT OF 1994

Mr. HOLLINGS. Mr. President, I join my colleagues Senators, MCCAIN and BROWN, today in introducing the Community Health Improvement Act which will provide greater access to high quality health care for underserved populations more efficiently and at lower cost. This will be accomplished by permitting States to develop 5-year demonstration projects in which community health authorities would contract with State Medicaid agencies to enroll and care for Medicaid recipients and expand services to uninsured low-income individuals as savings from efficiencies accrue.

Let me say up front that this bill does not compete with any health care reform proposal; it can be implemented

upon enactment to give States that choose to participate a running start in implementing more comprehensive reforms. The approach simplifies rather than complicates, adds no new government bureaucracy, restrains Medicaid cost increases, and just plain makes sense.

A market-based system that counts on competition to restrain costs is just not a reality in far too many communities in this Nation. These communities, largely rural and inner-city, have neither incomes nor population to attract large managed care corporations to compete for their care; and most for-profit HMO-type plans that receive a per-participant capitated rate do not want this population which is often comprised of individuals and families that require more extensive care due to age, language barriers, homelessness, lack of transportation, and other factors than the general population. Typically care has been received from a very fragmented nonsystem of health departments, badly strained hospital emergency rooms, free clinics that depend on volunteers, and in those communities fortunate enough to have them, from federally funded community, migrant, and homeless health centers. What these communities need is the ability to organize existing resources for maximum efficiency and to be able to fill holes in service delivery to create case-managed, integrated systems of care that serve the needs of their particular community.

Under this bill the Federal Government and States can limit Medicaid increases while experimenting with new service delivery and financing mechanisms, communities would be empowered to determine and address their unique needs, all providers would be encouraged to participate and to negotiate a fair reimbursement with friends and neighbors they know and trust, families that have had no medical home would be provided one and coverage for services would be affordable. What the Community Health Improvement Act would do is create an environment in which all are winners, and I urge your consideration and passage of this bill.

CAPT. RONALD ARTHUR ROUTE

Mr. SHELBY. Mr. President, I rise today to commend an outstanding American and Naval officer, Capt. Ronald Arthur Route, U.S. Navy. Captain Route is currently serving as executive assistant and naval aide to the Assistant Secretary of the Navy, Manpower and Reserve Affairs. I believe his consistently outstanding performance and dedication while serving in a difficult and influential position of responsibility are deserving of special and immediate recognition.

As the executive assistant and naval aide to the Assistant Secretary of the

Navy, Manpower and Reserve Affairs, since June 1992, Captain Route has served superbly with unsurpassed loyalty, intelligence, and an extraordinary capacity for organization and work. His exceptional performance directly supported the Assistant Secretary of the Navy and contributed significantly to the overall mission of the Department of the Navy.

On a daily basis, Captain Route expertly performed the myriad administrative functions of a principal deputy. Acting as staff director, he coordinated the work of 4 Deputy Assistant Secretaries and their staffs, totaling over 50 officers, senior civilians, and enlisted personnel. His knowledge of the Navy staff and grasp of Washington procedures coupled with his ability to work closely with the other services and agencies was instrumental in the successful accomplishment of the Department's agenda. An outstanding organizer, Captain Route was the officer behind the scene who provided direction and critical comment in the development of policy issues relating to military manpower, women in combat, Equal Opportunity Program Review, Navy medical issues, civilian manpower, and Reserve issues.

Captain Route was a stabilizing influence on the staff during a time of dynamic changes within the Department of the Navy, helping to provide program direction in a period when the appointment of the new Assistant Secretary was pending. His efforts led to a flawless turnover of leadership and uninterrupted support to the secretariat. He was the focal point and communications manager with a remarkable appreciation for the checks and balances of our military-civilian system.

One of the greatest policy issues faced by the Manpower and Reserve Affairs staff during Captain Route's tenure as executive assistant has been the continued and dramatic drawdown of personnel, the reshaping of military roles and missions, and the incorporation of a new policy of women on combat ships. Captain Route's understanding of personnel policies and their implications in the Fleet was vital to executing successful programs.

Mr. President, as Captain Route departs for Pearl Harbor, HI, where he will assume command of an Aegis cruiser, the U.S.S. *Lake Erie*, CG-70, it is indeed an honor for me to join his wife, Kip, and son, James, along with his many friends and colleagues in congratulating him on his past distinguished accomplishments and wish him every good fortune in his future command.

CLINTON FOREST PLAN

Mrs. MURRAY. Mr. President, yesterday the Clinton administration announced the release of its revised forest management plan for the Pacific

Northwest. This announcement marks the near culmination of a yearlong effort by the administration to resolve the protracted controversy in my region over forest ecosystem health.

Last summer, when the plan was proposed, I came to the Senate floor to express my views on this issue. On several important points, my views have not changed. First, I believe all of us in the Northwest owe a debt of gratitude to this administration for investing an extraordinary amount of time and energy in resolving what is essentially a thorny regional conflict. Second, I want to express my strong feeling that this plan is not perfect; I am particularly concerned about its short-term economic implications. Third, I want to remind my colleagues, and the citizens of the Pacific Northwest, how little progress was made on this issue since the spotted owl was added to the Threatened/Endangered Species List in 1989.

Inevitably, with issues as divisive as Northwest forest management, the path to reconciliation is difficult, and compromise can be sour. We spent 5 years in gridlock as consensus eluded Congress and an unconcerned administration allowed the crisis to fester. During this time, very little timber was sold, uncertainty dominated the debate, and fingers were pointed in every direction. Absent any compromise, the courts dictated forest policy, and the region suffered.

Yesterday's announcement reaffirmed what the Clinton forest plan represents: the best attempt yet to balance competing needs and make the law work. It is an honest effort to bring forest management out of the courts and put it back into the hands of the Forest Service, the Bureau of Land Management, and the Fish & Wildlife Service.

The policy underpinning this plan is one with which I agree: our land management should be ecologically sound; it should emphasize the highest legal integrity; and, in the best sense of the words multiple-use, it should ensure a long-term, sustainable timber supply for businesses and communities.

The revised plan, issued yesterday in the form of a final environmental impact statement, has been pronounced legally sound by several of the President's key advisors. I certainly hope this is the case, and look forward to the plan's progress beyond the appellate court.

Now, I am aware that parties are lining up on all sides and preparing their lawsuits. Some lawsuits have already been filed. It is clear that many people on all sides of this issue are dissatisfied with the nature of this compromise. But I would caution all of them against hasty action.

Let me be very clear about this: Our region suffered because of legal and political gridlock. A return to conflict

will not help heal our wounds. Given the extraordinary effort dedicated to producing this plan, I hope everyone involved with the issue will give it a chance to work.

Equally important now is the need for the Federal agencies involved to work together to implement this plan. In the past, we saw agencies at odds with one another, working actively to disrupt each other. The Pacific Northwest cannot tolerate such behavior in the future. I am impressed by what I've heard from the agencies to date, but the proof will be in seeing results.

Mr. President, the road ahead will be tough. In the words of Assistant Secretary of the Interior George Frampton, "We inherited a train wreck. This plan puts the train back on track." It will take a while for this train to get up to speed; but if we all give it a chance, it might reach the station intact. Thank you.

FEDERAL EMPLOYEE BUYOUT LEGISLATION

Mr. ROTH. Mr. President, the Federal Workforce Restructuring Act is an important legislative initiative. The administration has testified, and I am persuaded, that the legislation is urgently needed so that we can downsize and rightsize the Federal work force.

On February 10, 1994, the House passed its version and on February 11, 1994, the Senate responded promptly by passing its version. The bill with the Senate substitute was returned to the House so that the House could either agree with the Senate or disagree and ask for a conference.

The administration says that it will have to start firing Federal employees soon in order to meet budget constraints unless this legislation is immediately enacted. What puzzles me is that the House leadership has taken no action. I am informed that the House leadership plans to take no action. Why?

There are two noteworthy differences between the House version and the Senate version. The first flows from the Senate's desire to comply with the 1990 Budget Enforcement Act. The House version contains a \$519 million pay-as-you-go violation, as scored by the Congressional Budget Office. It should be noted that it was Chairman GLENN who insisted that this budget problem be solved before floor consideration of the bill. To allay the concerns of several Senators, the Vice President's office provided language to the Senate to satisfy the pay-as-you-go problem.

Today I read in the newspapers that certain House leaders and the head of OPM are very critical of the Roth amendment.

It seems to me that the administration needs to have a conversation with itself. I hold no particular interest in

the pay-as-you-go solution proposed by the Vice President's office. I am sure that there are equally valid alternative solutions to the pay-go problem. Why doesn't the House leadership offer one?

The answer lies in the second difference between the two versions. I cannot say that I wrote this language either. That distinction goes to the President pro tempore of the Senate, the Senator from West Virginia. The Senate substitute contains the Byrd amendment to the Senate's crime bill. Since the Federal Workforce Restructuring Act is the legislation that creates the savings that will fund the crime bill, it is entirely appropriate that it also contain a provision how that savings is to be spent. For if we do not downsize the work force, there will be no savings to apply to fighting crime.

It should be noted that last November the Senate adopted this provision 94-4 and that President Clinton has personally endorsed the provision as recently as last week.

Is the House leadership unwilling to confer on this issue? I hope that what I hear is not true.

I urge the House Democratic leadership to recognize the critical need for passage of this bill and either accept the Senate version or call for a House-Senate conference immediately.

COAST GUARD AUTHORIZATION ACT OF 1993

Mr. STEVENS. Mr. President, it has come to my attention that a statement made by our House colleagues in the CONGRESSIONAL RECORD misinterpreted a Senate amendment to H.R. 2150, the Coast Guard Authorization Act of 1993, Public Law 103-206, passed during the last Congressional session. Section 309 of the Senate substitute to H.R. 2150 amended section 4283B of the Revised Statutes—46 App. U.S.C. 183c—to allow the use of forum-selection clauses in cruise ship passenger contracts as upheld by the U.S. Supreme Court in *Carnival Cruise Lines v. Shute* 499 U.S. 585 (1991). A statement on the House floor which appeared in the November 22, 1993, CONGRESSIONAL RECORD contradicted our intent with regard to section 309, and I believe we should clarify the meaning of section 309 today. Mr. President, I ask Senator BREUX, can he provide background information about section 309?

Mr. BREUX. Yes. In 1992, the House added a provision to the Oceans Act of 1992—Public Law 102-587—which amended clause (2) of section 4283B of the Revised Statutes—46 App. U.S.C. 183c—and added the word "any" immediately before the words "court of competent jurisdiction." This provision, section 3006 of the Oceans Act, apparently was intended by the House to overturn the Supreme Court decision in *Shute* by making it unlawful for

cruise ship operators to use provisions in passenger contracts to limit a claimant's right to a trial in any court of competent jurisdiction.

While it is perfectly legitimate for the Congress to overturn a Supreme Court decision within the bounds of the Constitution, we do not believe such changes should be made without notification to, and careful consideration by, the Members of Congress responsible for enactment of the legislation. As part of this consideration, we believe that the interested parties should have an opportunity to comment on any changes. At no time prior to the passage of the Oceans Act of 1992 was legislation introduced or did the House or Senate hold hearings on the cruise ship venue concern addressed by section 3006 of the Oceans Act. It is for this reason that the Senate supported a provision in the Coast Guard Authorization Act of 1993 to restore section 4283B to the wording as it read prior to the passage of the Oceans Act of 1992. Section 309 reinstates the Supreme Court decision in the *Shute* case as the applicable law for interpreting forum selection clauses.

Mr. STEVENS. The House section-by-section analysis of the Coast Guard Authorization Act states that "Section 309 of H.R. 2150 should not be construed to mean that a vessel owner may enforce a forum selection clause in a passenger ticket." This statement contradicts what we intended. Our intent was that section 309 should be interpreted to allow vessels to enforce such clauses, as upheld by the Supreme Court in the *Shute* case. I ask Senator HOLLINGS, does he agree with my interpretation?

Mr. HOLLINGS. Absolutely. As both Senator STEVENS and Senator BREUX have stated, the intent of the Senate amendment made in section 309 of the Coast Guard Authorization Act of 1993 was to reverse the action taken by Congress in section 3006 of the Oceans Act of 1992. By passing section 309, Congress has reinstated the decision in the *Shute* case, carefully recognizing that, in doing so, vessel owners may enforce a forum selection clause in a passenger ticket subject to the standards enunciated by the Supreme Court in *Shute*.

Mr. STEVENS. Mr. President, we have one further clarification. The House section-by-section analysis stated that by not restoring the term "a" prior to the word "court" in section 4283B, we did not intend to restore the standard set forth in the *Shute* decision. This comment is not only wrong with regard to our intent, but also incorrect with regard to the statute prior to the amendment in the Oceans Act of 1992. I ask Senator HOLLINGS, is this his understanding as well?

Mr. HOLLINGS. Yes. The other distinguished body made a mistake with regard to the statute. The word "a" never appeared before the word "court"

in section 4283B of the Revised Statutes. The language in the Senate amendment restores the statute to exactly how it appeared prior to the Oceans Act of 1992.

It is unfortunate that the House included an explanation of the Senate amendment, section 309, that differs so greatly from what we intended and from the clear meaning of the provision. We disagree with the November 22, 1993, statement made by the House regarding section 309 of the Coast Guard Authorization Act of 1993.

COCOM ENDS—WHAT ABOUT U.S. NATIONAL SECURITY?

Mr. D'AMATO. Mr. President, I rise today to discuss the administration's position in the Cocom successor regime negotiations.

From the start of the debate over the EAA reauthorization, I have been dismayed at the administration's lack of attention to the importance of this bill. The administration has been slow to respond with their proposal, and in my opinion, has been lacking in our diplomacy in negotiations for the successor regime to Cocom. Simply put, I would like to know what has happened to American diplomacy. We seem to have become followers, not leaders in areas that are of crucial importance to our international security. Yet, I am not surprised by this lack of leadership, owing to the administration's past record on crucial international security issues.

On more than one occasion, I have expressed my concerns to the President on a successor regime to Cocom. On December 16, 1993, I wrote to the President expressing my deep concerns about the end of Cocom. I stated to him that "I think that we have reached a critical moment for our nation's ability to conduct an international regime to deal with threats of proliferation and terrorism in the 1990's." On March 31, 1994, Cocom will expire leaving the world with no clear international multilateral export control regime. I believe that this will endanger our national security.

On January 10, 1994, I, along with some of my colleagues, again wrote to the President on the same issue. After endless delays, I received a response from President Clinton which did not answer the tough questions but stated that he would have the State Department respond to me in detail.

While the President committed to continue to pursue an "effective multilateral regime that includes prior information exchange among members when needed to ensure that sensitive goods can be prevented from reaching dangerous destinations," I remained immediately concerned about the specific progress that has or has not been made in achieving commitments from our allies to establish an effective

international multilateral control regime by March 31, 1994.

As stated in the January 10 letter, it is my understanding that the core of the U.S. proposal for a successor regime to Cocom is that supplier nations agree on a list of militarily critical products and technologies that would be denied to a handful of rogue regimes. It is also my understanding that some of our allies oppose this principle and instead propose that such controls be left to "national discretion," effectively replacing multilateral export controls with a loose collection of unilateral export control policies. This approach would obviously be adverse for the U.S. security and economic interests.

With Cocom gone and no comprehensive multilateral controls in place, Iran, Iraq, North Korea, Libya, and other rogue regimes will be able to accumulate the technology to build weapons of mass destruction with increased speed and greater quality. Are we going to allow another nation to grow into a monster like Iraq did and are we prepared to deal with this eventuality?

While I continue to wait for detailed answers from the President, the clock is ticking. Within the next month, the President needs to achieve a clearly defined and enforceable agreement with allies of the United States which establishes a multilateral export control system or the proliferation of products and technologies that would jeopardize the national security of the United States.

The President should persuade allies of the United States to promote mutual security interests by preventing rogue regimes from obtaining militarily critical products and technologies. Our diplomacy must be better. We must make our allies understand that there are still many threats still out there. While the administration talks about nonproliferation, it seems to be allowing proliferation. We do not have to look any farther than North Korea and Iran, to see that without such an agreement, the President risks the national security interests of the United States and subjects the United States export community to inevitable unilateral export controls putting them at a competitive disadvantage worldwide.

The administration must not repeat the mistakes of its recent past in allowing other nations to decide what is best for the United States. If we allow this to happen again, we will place our Nation and our people at risk.

Mr. President, I ask unanimous consent that the text of my and colleagues letters to the President, as well as the preliminary response to my letter from the President be printed in the RECORD.

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

U.S. SENATE,

Washington, DC, December 16, 1993.

PRESIDENT CLINTON,
The White House,
Washington, DC.

DEAR PRESIDENT CLINTON: It would seem that the United States Government and its allies have begun the process of dismantling the international structure for export controls with no clear replacement identified to take its place. I think that you would agree that with all its flaws CoCom provided coherence and predictability to the Western effort to control the flow the dual-use goods and technology to potential adversaries. Yet, the Congress has been informed that CoCom is scheduled to cease its operations as of March 31, with only an ambiguous commitment from other governments that there will be anything created to take its place.

It is my understanding that it was the U.S. delegation to the Hague "High Level" talks in November that proposed the deadline for the dismantling of CoCom. However, despite the utility and value of CoCom and its well organized secretariat in Paris over the past four decades, no institutional structure was proposed to take its place. I support the idea that the successor regime will be dealing with the problem of preventing the proliferation of weapons of mass destruction. But I am disappointed that apparently so little thought went into this critical decision to end CoCom and join with our allies to form a successor regime.

I am very concerned about the danger of unilateralism. In a world with no clear international export control regime of rules to identify prohibited exports and prohibited end-users, the United States Government is likely to control exports more restrictively than everyone else. Mr. President, I think that we have reached a critical moment for our nation's ability to conduct an international regime to deal with threats of proliferation and terrorism in the 1990s. I would respectfully suggest that the current efforts have not set a course that is likely to achieve a regime that we both desire.

Please advise me as to who your key representative is on this issue. Also, I have enclosed a number of questions to help me better understand your objectives and your strategy. Thank you for your urgent attention to this issue.

Sincerely,

ALFONSE D'AMATO,
U.S. Senator.

QUESTIONS REGARDING THE NEW MULTILATERAL REGIME TO REPLACE COCOM

1. I would like to know what the Administration views as the successor regime to CoCom? What do you envision with regard to structure and membership?

2. In this regard, what will the United States attempt to accomplish in regard to unified lists, both for nations and technology, and at what levels?

3. Has the United States deferred to our allies and withdrawn the request for prenotification? Why?

4. Has the United States given up its veto power in the CoCom successor regime? Why?

5. Are there any plans to create an international export registry so that there is shared knowledge of exports and their destinations?

6. In light of the outcome of the recent High Level talks in the Hague, what effect will they have on the Administration's plans regarding the Export Administration Act? And when will we see the Administration's plans in this regard?

THE WHITE HOUSE,

Washington, DC, February 23, 1994.

DEAR SENATOR D'AMATO: Thank you for your letter on COCOM. The United States and its partners decided to phase out the existing COCOM arrangements and, at the same time, to create a successor export control regime. The new regime would be aimed at meeting new threats and covering transfers of both armaments and sensitive dual-use goods. Negotiations are continuing to define the scope and procedures of this new control regime. Progress has been made, but tough issues remain.

I can assure you that our objective in these negotiations remains an effective multilateral regime that includes prior information exchange among members when needed to ensure that sensitive goods can be prevented from reaching dangerous destinations. The existing nonproliferation export control regimes will continue to operate; the new regime will complement, not supplant, them.

I agree that COCOM provided a valuable coherence and predictability to export controls, and that we need an effective follow-on global dual-use arrangement that will not disadvantage U.S. exporters. I share your view that any future export control regime must hold all its members to the same high standard. We are working hard to promote that aim.

Thank you again for sharing your views on this important issue. I have asked the State Department, which is responsible for negotiations on the successor regime, to respond in detail to the questions you provided.

Sincerely,

BILL CLINTON.

U.S. SENATE,

Washington, DC, January 10, 1994.

HON. BILL CLINTON,
The White House,
Washington, DC.

DEAR PRESIDENT CLINTON: In your speech to young Europeans yesterday in Brussels you warned regarding the spread of weapons of mass destruction that "the danger is clear and present", and said that countering this threat will require "close cooperation, honesty and discipline, and a willingness of some not now willing to do it to forego immediate financial gain."

We share your concern and wish to highlight a related matter that deserves your attention: the end of COCOM and its replacement. We and our allies have agreed that as of March 31, 1994, COCOM, the multilateral body that controlled strategic exports to the former Soviet bloc, will cease to exist. It is our understanding that the U.S. has proposed a new export control regime that will target the proliferation threats of today—rogue regimes that support terrorism as a matter of national policy.

Our concern is that the proposal put forward by the United States is in danger of being rejected by our allies. The core of the U.S. proposal is that supplier nations agree on a list of militarily critical technologies that will be denied to a handful of rogue regimes. Some of our allies oppose this concept and are instead proposing that such controls be left to "national discretion", effectively replacing multilateral controls with a loose collection of unilateral control policies.

With COCOM gone and with no ironclad, multilaterally agreed upon controls, Iran, Iraq, North Korea, and Libya will be able to accumulate the technology to build weapons of mass destruction with impunity. We, as a nation, will be put in a difficult situation, forced to choose between unilateral controls

and allowing exports that could seriously harm our national security interests.

We urge you to impress upon our allies in the strongest possible manner the necessity of clearly defined and jointly enforced multilateral controls on the critical technologies that, in the hands of rogue regimes, would jeopardize the security of all of us. We appreciate your attention to this matter and wish you success in representing our nation on the remainder of your trip.

Sincerely,

ALFONSO M. D'AMATO,
Ranking Minority
Member, Committee
on Banking, Housing,
and Urban Affairs.

CONNIE MACK,
Ranking Minority
Member, Subcommittee
on International
Finance and Monetary
Policy.

DONALD W. RIEGLE, Jr.,
Chairman, Committee
on Banking, Housing,
and Urban Affairs.

JIM SASSER,
Chairman, Subcommittee
on International
Finance and Monetary
Policy.

MANAGED COMPETITION: MAKING THE MARKET WORK TO CONTAIN COSTS

Mr. DURENBERGER. Mr. President, the phrase managed competition has achieved a great deal of currency in the debates on health care reform. It is therefore regrettable that the concept of managed competition is often misrepresented and misunderstood.

Managed competition is not about Government. It's about markets, and making markets work. In its essence, managed competition is a simple concept. It is based on the fact that competition among providers of services for the business of informed consumers drives prices down, and drives quality and innovation up. That's the definition of a market.

Under managed competition, Government is used to facilitate the market through incentives, not replace the market with regulation.

I cannot stress enough, Mr. President, that managed competition is not just a theory. It is up and working in communities all over America. Minnesota happens to be one of the leaders in competitive health care delivery systems on the managed competition model. By reducing costs and improving quality, Minnesota's market is providing health care at a cost 15 percent below the national average.

And the California Public Employees Retirement System—Calpers—has shown that a large health care purchasing agent can succeed in putting downward pressure on premium costs. After 4 months of negotiations with California HMO's, Calpers has concluded a deal that will reduce health

care premiums for its members by an average of 1.1 percent.

This debate is going to be won on the basis of facts—and the facts prove that markets, not mandates, are the key to health care cost containment. I ask unanimous consent that an article from Business & Health outlining Minnesota's experiment in managed competition be included in the RECORD, along with a news story from the Wall Street Journal describing the achievement of Calpers in reducing premium costs, and an important American Spectator article by Fred Barnes entitled "Health Care Costs Are Going Down."

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

HOW TWIN CITIES EMPLOYERS ARE RESHAPING HEALTH CARE

(By Marion Torchia)

Last January, nine members of the Business Health Care Action Group, a coalition of employers in the Minneapolis-St. Paul metropolitan area, began offering their workers a new health plan. The coalition adopted a plan that operated as an integrated system of care because its members believed such a system had the greatest potential to deliver high-quality, cost-effective care.

This year, BHCAG's founding companies have just completed their first re-enrollment and are happy with the results. The per-employee costs are about 10% below the average cost of the HMO options offered previously, and costs have increased 4% to 5% in the past year, compared with average increases of 7% to 8% in the greater Minneapolis market, reports BHCAG's Executive Director Steve Wetzell. On average, employers are paying \$2,900 per family and \$1,200 per individual.

The plan, called Choice Plus, is a typical point-of-service plan, allowing enrollees to choose care from a network of participating providers and go outside the network for coverage at a lower reimbursement rate. But it is also unusual in many ways. The network is large and can therefore offer its enrollees a considerable degree of choice among providers. It is highly standardized—all participating companies have agreed to use a standard benefit design.

Technically, an ISC coordinates care provided by groups of doctors and hospitals and accepts financial risk for the population. Choice Plus borrows features of an ISC by using a primary gatekeeper physician as the coordinator for all care, financial incentives to improve the delivery of care and contain costs, and a range of continuous quality improvement techniques.

Choice Plus is a first step in the coalition's effort to reform health care by demonstrating that improved quality, increased provider competition, increased consumer responsibility, and enhanced efficiency of health care delivery are compatible goals. These goals can best be accomplished within an ISC, BHCAG members believe.

When Choice Plus was created, a statewide health care reform movement was under way, and the coalition members wanted to influence its outcome by creating their own health care financing and delivery system. "This is not just a purchasing activity. It's an effort to change the basic structure of health care through an ongoing dialogue

among payers, providers, and consumers," says Larry Schwanke, vice president for human resources of The Bemis Co. Inc., a packaging manufacturer.

Adds Dee Kennitz, vice president of the Minneapolis-based Carlson Cos. Inc., "When the coalition's effort to get cost containment features incorporated into the state's health reform legislation was not successful, the companies decided to demonstrate that they could contain costs themselves." Carlson Cos., a hospitality services company that includes Radisson Hotels and TGI Friday's restaurants, has 5,300 covered lives in the Twin Cities area.

ASSESSING CHOICE PLUS

Benefits managers of participating companies say their employees are happy with the new plan. Paula Roe, vice president for compensation and benefits for Norwest, a nationwide financial services company headquartered in Minneapolis, says 70% of the bank's employees chose Choice Plus over the other alternatives the company offered, and this year's enrollment has increased to 87%. The company has 14,300 covered lives participating in Choice Plus.

Such numbers and the coalition's growth mean BHCAG now possesses sufficient purchasing power to exert a significant influence on the area's health care market. Now numbering 22 members, the coalition includes most of the major employers in the Twin Cities.

Collectively, the companies are responsible for some 250,000 covered lives, about 10% of the population of greater Minneapolis, Wetzell estimates. Enrollment in Choice Plus in 1994 is expected to be about 100,000, and it will continue to grow as member companies adopt to the plan.

In developing the network of providers, "The coalition's founders wanted to find a group of providers who were committed to conservative, cost effective medical practice and who were willing to engage in an ongoing dialogue with employers about health care delivery issues," says Schwanke. "They were convinced that efficient delivery of health care was achievable. They wanted to bring a greater degree of vertical integration to the health care system."

So the coalition considered the multispecialty group practices in the area because "these large groups have the administrative sophistication to support the development of integrated systems of care," says James L. Reinertsen, M.D., a rheumatologist with Healthsystem Minnesota, the parent organization of Park Nicollet Medical Center and Methodist Hospital. "They also have a capacity for collective action impossible among many small independent practices."

Early in 1992, BHCAG invited bidders to develop a health plan meeting their specifications. The winning bid came from a consortium that consisted of HealthPartners, an entity formed from two HMOs (Group Health and MedCenters) that had counted many of BHCAG's employees among their members; the Park Nicollet Medical Center; and the Mayo Clinic.

Careful to structure its arrangements so members can retain their self-insured status under the Employee Retirement Income Security Act of 1974, BHCAG individual member companies signed a three-year contract with HealthPartners, which became the administrator of Choice Plus. Since they are not technically insurance plans, self-insured plans come under ERISA, which preempts state law. Such plans are thereby exempt from state regulation. Minnesota failed this summer to get an ERISA waiver, which

would have allowed the state to tax self-funded plans.

FINANCIAL INCENTIVES

During 1993, the first year of operation, members companies paid physicians a fee-for-service. Though the coalition hopes to move away from fee-for-service, it chose this payment method during start-up because it needed to collect baseline information on the cost of treating patients, says Wetzell. This information can then be used to set rates and to quantify cost savings.

To meet its goal to change the way health care is delivered, BHCAG has devised a complex strategy of gain and loss sharing to influence providers' behavior. Under its contract, HealthPartners receives bonuses for efficiently accomplishing administrative functions such as claims adjudication, for containing the utilization of services, and for the quality of its guideline development and research activities. The physician groups also share the savings when their expenditures fall below a certain level.

This year, each clinic will be given a monthly budget for each enrollee. The budget limits will be different for each employer. The clinic will be liable for the part of costs it incurs in excess of the monthly budget limit. Catastrophic care, however, is not included in the risk-sharing arrangement.

Ultimately, BHCAG wants to create a series of risk adjustments—for patient characteristics and for local economic conditions—that will eliminate cost variations among clinics resulting from factors outside their control. It is considering using the ambulatory patient group patient classification system to adjust for the risk of treating costlier cases. (The APG system was developed by 3M Health Information Systems, Murray, Utah. It classifies patients according to the medical or surgical outpatient treatments they receive.) Eliminating all cost variations among medical groups may be impossible, however, Wetzell says. "If we can't scientifically adjust for all cost variations that do not reflect the efficiency of medical practice, we may consider using variable premiums and allow the employee to select a higher cost clinic and pay the difference."

Roe of Norwest, who serves on BHCAG's provider payment committee, says that much more work needs to be done to devise proper payment incentives for physicians. "Pure capitation is not the answer," she wants. "We need to reward physicians for their cognitive work, for the counseling they provide to patients, and for preventive services."

As far as hospitals are concerned, says Wetzell BHCAG members pay hospitals at per diem rates based on diagnostic-related groups. ERISA prevents self-insured companies from capitating payments to entities such as HealthPartners, which would, in turn, pay the hospitals.

Only for Healthsystem Minnesota, which owns a clinic (Park Nicollet Medical Center) and a hospital (Methodist Hospital), is BHCAG negotiating a single payment for physician and hospital care, explains Wetzell.

IMPLEMENTING CQI

As envisioned by BHCAG, integrated systems use practice guidelines as a basis for standardizing health care delivery, and engage in continuous quality improvement efforts based on outcomes information generated while delivering health care. Competing integrated systems, of which Choice Plus is the first, will be encouraged so that consumers could use objective data to choose among them.

Therefore, following the ISC model, BHCAG's contract with HealthPartners commits both employers and providers to an active continuous quality improvement program based on best practice guidelines developed by the clinical professionals, the monitoring of provider performance based on data gathered in the course of practice, and on outcomes research. This effort is coordinated through a separate non-profit entity, the Institute for Clinical Systems Integration.

ICSI Chairman Reinertsen explains that the institute, which is funded by BHCAG at a level of approximately \$225,000 a year—10% of the institute's budget—facilitates development of guidelines, analyzes data the providers submit on the costs and outcomes of treatment, and reports the information to providers and to member companies. In effect, adds Larry Schwanke, "The Institute is the Coalition's R&D arm."

The practice guidelines are the key to the process, says Reinertsen. Sixteen sets were distributed for pilot testing in July, and all clinics received them in November.

While clinical guidelines, as expressions of the standard of good medical practice, should be applicable universally, the clinics are encouraged to develop their own implementation protocols, adds Kennitz. "Our relationship with the providers is built on a high level of trust," she says. "People tend to support policies they had a share in creating."

To maintain this climate of trust and cooperation, explains Reinertsen, the plan's information handling policy is designed to "drive out fear." No information will be released identifying an individual physician, practice, or employer without explicit permission. The coalition also has rejected as counterproductive the idea of publishing rankings of providers' performance. Any reports with physician-specific data remain inside the clinics. Companies will receive information on their own enrollees' costs and utilization patterns compared with the group. And providers will be entrusted with the responsibility of internally identifying outliers.

To support CQI, ICSI has a variety of projects under way, says Wetzell. The institute is planning a survey of enrollees' health status, so that each company can see whether its employees' health is improving. It has developed a prototype automated medical record. And it has research projects planned on the cost effectiveness of several new technologies used in the clinics.

FUTURE PLANS

Now the Choice Plus has completed its first year, the coalition must decide whether to allow the network to add more companies and accept more enrollees, or whether BHCAG should begin developing a competing ISC, Wetzell says. Choice Plus has already expanded geographically, accommodating employers in Rochester, Minn., 90 miles south of Minneapolis, via a contract with the Mayo Clinic's primary care group.

Rather than allow the network to grow indefinitely, BHCAG may prefer to develop competing provider networks, using essentially the same benefit structure, Wetzell says. To do so would promote competition and allow for a greater degree of consumer choice. Not coincidentally, it also would be more compatible with the managed competition proposals being considered. "What our board decides," says Wetzell, "will depend to some extent on what decisions are made in D.C."

Meanwhile, reports Wetzell, BHCAG's board of directors has taken a significant

step to counter criticism that coalitions of large employers do not contain health costs but simply shift them to smaller companies that lack buying power. It has decided to offer an insured product for small businesses, using community rating within the risk pool of the businesses that choose to participate.

The small group plan's structure will be significantly different from that of Choice Plus, since it will be subject to state regulation and must include all of state-mandated benefits. Wetzell also expects that the project will face problems of adverse selection, since competitors will no doubt market lower priced products to attract the companies' healthier employees.

IS IT TRANSPORTABLE?

Although the BHCAG views its project as proof that provider competition, quality of care, and cost efficiency are compatible, Wetzell concedes that the Twin Cities is an ideal location for the experiment. It has several distinct advantages: a physician community already used to standardized practice in large multispecialty groups; managed care penetration on the order of 70% to 80% hospital bed capacity already reduced through mergers and consolidations in the 1970s and 1980s; and a population healthier, more prosperous, and more homogeneous than the national average.

Nevertheless, Wetzell believes the Choice model is transportable, though elsewhere it may first be necessary to lay the groundwork of integrated systems. He believes the effort is definitely worthwhile. "How can you argue that a piece-rate system of health care, with dispersed providers and primitive communication among them, does a better job than a vertically integrated health care system?"

CALPERS PROVES INSURANCE COSTS CAN BE REDUCED

(By Marilyn Chase and Carrie Dolan)

After four months of negotiations with 18 health-maintenance organizations, one of the nation's largest group purchasers of health insurance has secured an average 1.1% premium reduction for \$920,000 public employees and family members.

The California Public Employees Retirement System (Calpers) won the one-year contracts yesterday. The process and its result may be seen as a model for Clinton health-care reform: A large public health-care purchasing agent squeezing even low-cost providers, like HMOs, into making extra savings. But Calpers' success may also show that an elaborate government bureaucracy isn't needed to lower health-care costs.

The reduction "shows managed competition can bring down the cost of health care," particularly in areas like California where HMOs are well-developed, said Alain C. Enthove, a professor at Stanford University's Graduate School of Business and a Calpers advisory committee member. "Competition works, not compulsion," he said.

Calpers said it has kept premium increases over the past three years to 6.4% compared to the national average of 30.1%. For the 1994-95 contract year, when the rate reduction takes effect, Calpers said its savings will be about \$321 million. While not all the contracts met its demand for a 5% rate cut, Calpers said it hopes to achieve that goal in the next several years.

Calpers—once known as a languid and not particularly choosy buyer of health care—has recast itself as a tiger in recent years. In 1991, after California's budget crises, Calpers froze its contributions to health care, making its HMOs responsible for cost variations.

Last October, Calpers demanded that its 18 HMOs cut health-care premiums 5% effective Aug. 1, the start of the 1994-95 contract year. It called the demand "modest," given California's stagnant economy. But that demand followed two years of strict cost containment. So Calpers' demand left some HMOs a little testy.

"They're a 900-pound gorilla, and they know it," grumbled one HMO negotiator who asked not to be identified. "They don't have to be real sophisticated. They know the volume they represent. Bottom line is, they are holding most of the cards."

About a third of the HMOs doing business with Calpers offered premium reductions, said Tom Elkin, the agency's assistant executive officer. Others—with lower base rates or older, sicker patient populations—asked for "modest, single-digit" premium rises, while a few argued for double-digit increases, he said. The latter group got little sympathy.

"We're out of cash," Mr. Elkin said he told them. "And we can't entertain increases of that magnitude. We'd like some sign that you can, in fact, manage care."

Among the key issues, Mr. Elkin said, were the price of prescription drugs, surgeries and administrative expenses—including profit margins and consultants' fees.

As an example, he noted, "There's a 30% difference between what one plan is paying for drugs and another," Mr. Elkin told the HMOs this can be corrected by buying in bulk and changing vendors, then passing on the savings.

"If they'd succeeded in pushing us to the absolute wall, we'd have said no. We're not in the business of charity. We'd have gone without their business," said one health-care officer. "But the ultimatum never occurred."

Mr. Elkin conceded that negotiations "can get a little lively. If the expectation is much higher than we can pay, it gets a little tense. On average, though, we get good cooperation." And in the end, Calpers relented on the 5% rollback demand, as many had predicted.

Mr. Elkin said Calpers was impressed by the efforts of Kaiser Permanente, the Oakland, Calif., HMO that cares for 320,000 Calpers subscribers. A year ago, Kaiser's northern California region considered increasing its premiums 6% for all its customers, including Calpers. Instead, it looked hard at results of its cost-cutting programs and raised premiums an average of 2%.

Kaiser spokesman Jerry Fleming said it wasn't simply prodding by Calpers that led to Kaiser's change of heart. "We're doing better with our cost targets than we'd budgeted for," he said.

Kaiser's most potent cost controls are simple things: lowering hospital inpatient rates, substituting outpatient surgeries when possible and aggressively keeping Kaiser members out of more expensive, non-Kaiser institutions.

"At the same time, the satisfaction of our members was going up, so we knew [these savings] weren't because we were skimping on care," he added.

Other HMOs said they cracked down on high diagnostic test prices charged by certain hospitals trying to offset losses on inpatient business.

HMOs said they're also trying to limit the budget havoc wrought when hospitals buy costly new psychiatric drugs.

"They're a significant piece of the total pharmaceutical cost, and the trend has been very steep," said one HMO officer, adding that his group plans more seminars on cost-effective alternative drugs.

HEALTH CARE COSTS ARE GOING DOWN

(By Fred Barnes)

President Clinton has a story and he's sticking to it. "Rampant medical inflation," he declared last September in unveiling his health-care plan, "is eating away at our wages, our savings, our investment capital, our ability to create new jobs in the private sector and this public Treasury." A month later, he sent the plan to Congress and said ominously: "If we do nothing, almost one in every five dollars spent by Americans will go to health care by the end of the decade." Don't sugarcoat it, Clinton was advised just before Christmas by William Cox, vice president of the Catholic Health Association. It's worse than that. "Sometime in the next thirteen years we're going to be spending 22 to 25 percent of our income on health care," Cox said. At that rate, "if you want to go out for dinner and a movie, you're going to have to check into a hospital." Clinton chuckled at the joke. "That's pretty good!" he said.

It was hogwash. There's a new direction in health-care costs—down, down, down. No, spending isn't actually declining. That will never happen in a nation with rapid population growth and lifesaving but costly advances in medical science. But the rate of growth in medical spending is dropping precipitously. Every month brings a fresh decrease in what the U.S. Labor Department calls "price inflation for consumer medical goods and services." It was 5.8 percent for the year ending last August, 5.7 percent for October, 5.5 percent for November. That's still nearly twice the rate of general inflation, but a lot better than 1989 (8.5 percent) or 1990 (9.6 percent). In fact, the 5.5 percent increase is the lowest since January 1974. Better yet, the 4.9 percent rise in the third quarter of 1993 was the lowest quarterly hike since 1973. And it's a good bet medical inflation will fall further.

Don't thank Bill and Hillary Clinton. The downward trend is the product of a revolution in health-care financing caused by market forces, not government. It started several years before the Clintons arrived in Washington and began harping on "skyrocketing" (Hillary's favorite adjective) medical cost increases. It was triggered by businesses and consumers confronted in the late 1980s with annual health benefit increases of up to 20 percent or more. Corporate health plans cover roughly 140 million Americans. Something had to give, and it has. For the first time in years, the percentage of payroll costs devoted to health and dental insurance dropped from 8.4 percent in 1991 to 8.1 percent in 1992, according to a U.S. Chamber of Commerce study of 1,100 firms.

Such signs of downward pressure on health-care costs are largely the result of two changes. One is the willingness of businesses—especially insurance companies and firms that self-insure—to challenge medical bills. Dan Clark, a benefits consultant in Seattle for Howard Johnson and Co., recently advised a client whose employee had been murdered to balk at a \$75,000 hospital bill (the victim had lingered near death for five days). The mere threat of hiring a firm that aggressively scrutinizes medical bills prompted the hospital to slash the bill by \$15,000. This process, once rare, is now routine. "The thing the large employer did early on, the small employer is now doing," says Clark. One result: growth of the total cost of private health insurance premiums decreased from 18.6 percent in 1988 to 12.1 percent in 1991 and 10.1 percent in 1992, the consulting firm Foster Higgins found.

More important, companies are steering employees away from fee-for-service medi-

cine (with each doctor visit billed) and into managed care particularly health maintenance organizations (doctor groups charging an annual fee per patient). This lowers insurance payments. HMO membership has doubled since 1986, from 25 million people to an expected 50 million this year. Not only are HMOs less expensive than fee-for-service medicine, their premium hikes have fallen for five straight years, from 16 percent in 1990 to 5.6 percent in 1994. A 1993 study concluded that if all Americans went to HMOs the 19 percent chunk of GDP projected for health care in 2000 would shrink to 15 percent. Then there are "preferred provider organizations" (PPOs), networks of doctors who agree to discounted fees. Clark surveyed fifteen Seattle-area companies at random recently and found every one was part of a PPO network with cut-rate fees. One result of the surge in managed care: fewer patients hospitalized and a decline in the growth of hospital expenses nationally, from 10.2 percent in 1992 to 8.1 percent in 1993.

What's striking about the revolution in health costs is the absence of government. "This revolution has been driven by frustrated employers," says Michael Bromberg, executive director of the Federation of American Health Systems. "They've forced the insurance industry to change from an indemnity industry to a managed-care industry. It's all happened without legislation." The real question, he adds, is whether Washington "will accelerate that trend or screw it up."

Don't get your hopes up. While the private sector has begun to get a grip, the federal government allows its health-care programs to roar out of control. "Medicare and Medicaid have tripled since 1982," Clinton correctly told an entitlements summit in Bryn Mawr, Pennsylvania, in December. Medicare spending jumped 12 percent in 1992. Medicaid is expected to grow 16.6 percent in 1993. That's just at the federal level. State outlays for Medicaid rose 30 percent from 1991 to 1992. By 1996, states will spend more on Medicaid than on education.

If you suspect the cost revolution in the private sector undermines health-care reform, you're right. "There's a torpedo heading for the great ship health-care reform," says Democratic Senator Bob Kerrey of Nebraska. By mid-1994, he says, HMO cost increases will have dropped to the rate of inflation (about 3 percent) and non-HMO price hikes will be well under twice the inflation rate. Numbers like those alarm the Clinton administration, since they knock out the overarching rationale for Clinton's sweeping plan. "They can't let the public think this has gone very far, because it takes the steam out of what they want to do," insists Paul Elwood, the respected health-care expert at the Jackson Hole Group and father of the managed care movement. (Elwood's son David, by the way, is an assistant secretary of health and human services in the Clinton administration. As a Harvard professor, he came up with the idea of cutting off welfare recipients after two years on the dole.)

The administration and its allies are desperately seeking to minimize the new trend, particularly because it's beginning to draw press attention (from *Business Week* to *Fortune* to *Time* to columnists James K. Glassman and George Will). Clinton offered this putdown: "A couple of times before when an administration's made a serious effort at health-care cost control, health-care costs have moderated for a year or so, then they start up again." He cited the Nixon administration as an example. HHS Secretary Donna

Shalala echoes Clinton. "We clearly have had some experience," she said in December. "Every time a president starts talking about health-care reform, there has been some moderation, probably a mixture of politics and economics going on." Butting up Clinton at Bryn Mawr, she added, "Certainly there has been some moderation under your administration." She credited the "Hillary factor."

Clinton and Shalala are dead wrong. Their implication, of course, is that insurance companies, doctors, and hospitals hold down cost increases when Washington is threatening to impose controls, then jack up prices wantonly once the crisis passes. This hasn't happened. National health-care expenditures have risen less in some years than others, but for economic, not political, reasons. When President Nixon put on price controls, the rise abated. When controls were lifted, its rapid climb resumed. Chatter about reform hasn't been a factor. Consider 1986, the year national health expenditures rose by the lowest percentage (7.6) since 1961. Was President Reagan jawboning the health-care industry in 1986? Get serious.

The Washington Post suggested in a December editorial that health-care providers are purposely defusing the crisis atmosphere as Clinton's legislation moves through Congress. This makes superficial sense. "Nobody wants to invite special attention while restrictions and ceilings are being written into the bill," the Post said. True, but nobody wants an artificially low floor for health-care prices as price controls are being enacted, either. This means health companies have an incentive to get large price increases now, because they won't be able to impose them later under the Clinton plan.

Contrary to the Administration's line, the current dip in health cost increases reflects what Paul Elwood calls "a fundamental and permanent change." It's structural, not temporary. There are, Elwood says, "very basic differences in provider and purchaser behavior." Take HMOs, which didn't exist on any scale before the mid-eighties. They've gained from experience, becoming leaner and more cost-effective as they've had to compete for customers. Many HMOs participating in the Federal Employees Health Benefits Program, which covers nine million federal workers and their dependents, offered dramatically reduced fees for 1994. That's actual cuts, not merely cuts in the growth rate. For example, U.S. Healthcare slashed the employee payment for its "high family" plan by 29 percent. Overall, the 300-plus plans competing for the business of federal bureaucrats this year averaged fee hikes of 3 percent.

What's been done in the private sector? The examples are many and spectacular. But first, a question: Why hasn't all this free-market cost-trimming been reflected in the government's projections on national health expenditures? The Congressional Budget Office last October predicted health spending at 18.1 percent of GDP in 2000, down from its June projection of 18.9 percent, but still quite high. Well, there's a simple explanation: the government is operating off of old numbers. The most recent year for which it has calculated national health expenditures is 1991. So that's its baseline for projections. But in 1991, the revolution in private health-care financing was just getting off the ground. Its full impact hadn't been felt.

That was the year Digital Equipment Corporation began offering a new series of health plans. Employees can go to an HMO that's part of the company's program or outside the HMO network. But they pay a bigger

share of their medical expenses if they go outside. By 1993, 70 percent of Digital's employees were enrolled in HMOs, up from 30 percent in 1990. And the yearly increase in HMO fees paid by the company has fallen from 12 to 14 percent in 1992 to 9 percent in 1993 and 4.5 percent this year. It paid a higher rate for fee-for-service insurance, but fewer employees chose that option.

It wasn't until 1992 that International Paper, whose medical costs had been rising at better than 20 percent a year, gave its employees an incentive to be cost-conscious in buying health care. It boosted the level at which the company would pay 100 percent of expenses and began informing employees how much it would pay for each medical procedure and how much physicians in their area charge. The idea was to encourage employees to shop around. The firm has also shown employees a video on how to negotiate lower fees with recalcitrant doctors. One emboldened employee got \$400 shaved off the cost of his knee operation, according to the *Wall Street Journal*. Overall, the firm's annual increases in medical costs have fallen to 9 percent—not a breathtaking improvement, but good for starters.

IBM has produced even more impressive savings from its mental health program. It negotiated fees with a network of 20,000 providers nationwide and cut its spending in half, saving \$30 million annually. Four corporations in Cincinnati—Procter & Gamble, Kroger, General Electric, and Cincinnati Bell—banded together to prod the city's fourteen hospitals to reduce wide disparities in treatment fees and hospital stays. This generated a 10 percent drop in the average hospital stay in 1992 from 1991 and a 5 percent decrease in the cost per case (an average saving per hospital admission of \$350). After health insurance premiums soared 30 percent in 1990, *Forbes* magazine gave its employees an incentive to avoid filing claims for routine medical care. They'd be refunded twice the difference between their major-medical and dental claims and \$500. The results are eye-popping. In 1992 claims fell by 23 percent and the magazine's insurer, CIGNA, gave it a \$200,000 rebate. Premiums were then cut 17.6 percent for major-medical and 29.7 percent for dental. In 1993, *Forbes* boosted the refund to twice the difference between their claims and \$600.

I could go on and on, citing both companies and health-care organizations that have increased efficiency and cut costs while maintaining quality. (The Washington Business Group on Health has published such a list, in a booklet called "The Health Reform Challenge: Employers Lead the Way.") It's not the private sector but the federal government that has failed to curb exploding costs.

There's an obvious solution here: extend the managed-care revolution to Medicare and Medicaid. This, rather than reforming the entire health-care system; should be Clinton's first priority. Billions could be saved simply by sending Medicaid patients to HMOs, a step implemented thus far only in Arizona, and billions more by encouraging Medicare beneficiaries to try managed care. The savings in Arizona haven't been epic—6 percent less than traditional Medicaid costs—but with its large number of retirees the state had start-up problems other states won't face. Elwood is convinced that, through HMOs, Medicaid costs can be stabilized at the level of general inflation and patients can get better care.

Medicare is trickier. The Clinton administration backed away from steering the Medicare elderly into HMOs after a study found

the government was losing money by doing so. Only 2.5 million of the 36 million Medicare beneficiaries had signed up for HMOs, and these tended to be the younger, healthier ones. The government was paying HMOs too much for their care. The answer is either to pay HMOs less or get more Medicare patients, including the older, less healthy ones who need more care, enrolled. Or both.

Bringing managed care to government programs is the brainchild of David Harrington, vice president of Chicago's Grant Hospital and former chief strategic planner for Aetna Insurance. "Energy and creativity are already producing results in the private market," he told columnist Morton Kondracke. They can do the same with Medicaid and Medicare. More broadly, Harrington insists, market forces, if left alone, will gradually push down insurance costs far enough so that small employers can afford to cover workers. And if the government chooses to let the uninsured join HMOs, perhaps with subsidies, we'd have universal coverage. Of course, there would still be medical inflation. Heavy demand for care, the intensive brand of medicine practiced in the United States, pharmaceutical research, technological innovation, union contracts with lavish health benefits, a growing and aging population—these guarantee some inflation. But it would stay near the general rate of inflation.

One thing stands in the way: the Clinton administration. Its health-care plan would remove the force driving the downward trend in health costs—businesses that insure employees—from the game. Under Clinton's scheme, companies would pay a set amount to a "health alliance" and have no further involvement. They would have no financial incentive to curb the health costs of their employees. Their bottom line wouldn't be affected if workers rang up heavy medical expenses.

In fact, Clinton's scheme would spur individuals to do exactly that. And this would drive up medical inflation, not control it. Clinton's plan, as he put it at a White House meeting in January, would guarantee "comprehensive benefits that can never be taken away." The benefits—including thirty psychotherapy sessions a year, treatment for drug abuse and alcoholism, eye exams, and so on—would be much broader than most Americans now have. My guess is folks would take advantage, as they have in Germany and Japan (where doctor visits occur three to six times more often than here). This would increase national health expenditures. Or, if a cap were put on health-care spending, inflation would take another form, waiting lines for medical care, as it has in Canada.

Don't count on preventive care, Hillary's favorite solution, to hold down costs either. True, patients would get more preventive care, because the Clinton plan includes it, free. But there's no evidence this would lead to lower medical costs later as a result of early detection. More likely, it would create a large increase in costs—just to pay for the burst of preventive care. And, sorry to say, more preventive care will have only a marginal impact on the serious diseases like cancer and heart trouble that generate huge health-care costs.

In his first chat with White House staffers in 1994, the president set the stakes very high in the fight over health-care reform. It's a question, he said, of "whether we are going to be able to maintain a health-care system and still have the money that we need to invest in a growing and highly com-

petitive global economy so that America will be strong." Clinton has the right question, but the wrong answer. Instead of accelerating the revolution in health-care financing that has contained costs while protecting the best medical system in the world, he would end it. Not smart.

DIPLOMACY'S GUNBOAT

Mr. WARNER. Mr. President, almost every evening on the news we see the U.S. military protecting American interests around the globe. More often than not these American military forces include naval forces.

A year ago, it was Navy carrier-based aircraft that were keeping the pressure on Saddam Hussein in Iraq. A few months later it was an American aircraft carrier sent to the coast of Somalia to provide protection to American and other U.N. peacekeeping troops. That same aircraft carrier also operated off the coast of the former Yugoslavia, ready to provide military muscle to back up diplomatic efforts to achieve a ceasefire in war-torn Bosnia.

For more than 50 years, America's interests have been served by aircraft carrier battle groups deployed around the globe.

I am pleased that President Clinton has included a request for funds to build a new aircraft carrier in this year's defense budget. The President and the Secretary of Defense understand the military and diplomatic necessity of maintaining strong naval power to protect America's interests into the next century.

This week's edition of U.S. News and World Report contains a cover story on one U.S. aircraft carrier and follows the ship through its most recent deployment. The article is entitled: "The Big Mean War Machine" and is subtitled: "Diplomacy's Gunboat."

Mr. President, this article provides great insight not only into the military and diplomatic capabilities of an aircraft carrier, but also into the tremendous dedication and commitment of the men and women who serve aboard our Navy ships.

I urge my colleagues to read this article and I ask unanimous consent that it be printed in full at this point in the RECORD.

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

DIPLOMACY'S GUNBOAT

(By Bruce B. Auster)

AUGUST 10, 1993—GOODBYE

Petty Officer José Mora and his wife, Loretta, finish a late dinner at McDonald's and slowly walk the few blocks to the pier where his floodlit ship is docked. He hugs her, feeling her swollen belly pressed up against him. They part, and he begins walking toward the towering ship, waving his pass at the sentry and crossing over to the other side of the chain-link fence separating sailors and their families. He tries to look back over his shoulder but his sea bag blocks his view, so

he keeps on. His wife—eight months pregnant, her hands resting on her stomach, fingers interlocked—watches and then starts walking, alone, back to the car.

The next morning, the aircraft carrier USS America pushes away from the Norfolk pier, turns up Hampton Roads amid a flotilla of small craft that have come out to see it depart, passes the Chesapeake Bay Bridge-Tunnel and sets out across the Atlantic. The ship carries a crew of 4,700 sailors, including 20-year-old petty Officer 3rd Class Mora, who services the ship's 14 F-14A fighters. During the next six months, the America's pilots will crisscross the skies over Bosnia, its crew will pass through the Suez Canal en route to Somalia, and its planes will enforce the United Nations no-fly zone over southern Iraq. For different intervals during this 39,982-mile cruise, the America also will play host to a U.S. News reporter, photographer and graphic artist, who in the following pages examine one of the most powerful warships ever built, its crew and its changing missions.

For 50 years, the United States has counted on big carriers like the America to show the flag, to respond to crises and, until recently, to keep the Soviet Navy at bay. Carrier-based aircraft bombed Korea, Vietnam, Lebanon, Libya, and Iraq. Helicopters launched from the USS Nimitz tried to rescue the U.S. hostages in Iran; fighters from the Saratoga, which now patrols the Balkan skies, helped nab the terrorists who hijacked the cruise ship Achilles Lauro in 1985.

War machine

To an adversary, an aircraft carrier, its seven-story island protruding from the flight deck that sits 65 feet above the water, is an imposing offshore city that can appear overnight. Its 70-plane air wing is equipped to kill in many different ways: A single A-6E Intruder, small enough to take off and land on a ship, can carry 9 tons of bombs—more than twice as much as World War II B-17s, the Flying fortresses, could carry—and deliver them to a target 500 miles away without refueling. F-14 Tomcats can fly 600 miles, then shoot down enemy planes 60 miles away with their Phoenix missiles. The airborne jammers aboard an EA-6B Prowler can wreak electronic havoc on enemy command centers and communications, turning television screens to snow.

Aegis guided-missile cruisers, part of a carrier battle group that also includes attack submarines, destroyers and supply ships, have sophisticated air defense radars, anti-aircraft missiles and 122 tubes capable of launching unmanned Tomahawk cruise missiles. "It has the most awesome war-making potential in any one place," says Rear Adm. Arthur Cebrowski, the commander of the America's 14-ship task force. "And we're ready to fight on arrival."

New missions

All this firepower does not come cheap: A new carrier costs taxpayers \$4.4 billion; its operating costs are \$440 million a year. And with the United States no longer facing a global rival, defense spending declining and the nation more concerned with foreign markets than with foreign militaries, the Navy is scrambling to find new roles for its carriers. In order to keep 12 of them in service, the Navy is cutting its force of surface ships by 65 through 1999, letting go about 100,000 sailors and changing the way it uses aircraft carriers. The blue-water Navy that once prepared to fight the Soviets on the high seas now sends its carriers along coastlines and into confined spaces such as the Persian Gulf and Adriatic Sea.

The Navy's efforts to adapt to new circumstances will produce a number of firsts on this cruise of the America: It is the first carrier to sail with a three-ship Marine Expeditionary Unit, or MEU, as part of its 14-ship battle group; it is carrying more than 200 marines; and before it returns to Norfolk it will, mostly by happenstance, have become the first carrier to bring women into a combat area.

But on this August day in Norfolk, the sailors, aviators and marines aboard the America are not thinking about politics or military strategy. They know that while they are gone, babies will be born, parents will die, Christmas and Thanksgiving will come and go, cars will break down and wives will give up on Navy life and leave their absent husbands. But as sailors have always done, the America's crewmen are turning their backs on the land to face life at sea.

It is a hard life for the officers and aviators whose work revolves around the America's flight deck and a harder one for the crew members who will spend most of the next six months below decks, away not only from home but also from fresh air and sunlight. With its 1,048-foot length and 80,000-ton displacement, the America is bigger than the average oceangoing cruise ship, but there are no portholes and it is claustrophobic.

Below the open, sunlit expanse of the 4½-acre flight deck is a small city: Most sailors eat, work and sleep on one of the ship's 10 decks, surrounded by white-painted steam pipes, water lines and air ducts that run along bulkheads and hang above desks and beds. Only two passageways run the length of the ship; 250 bulkheads, the walls that form the ship's skeleton, divide the America into the cramped, watertight, fireproof compartments that are its offices, mess decks, bathrooms and berths. Even the huge hangar bay can be partitioned by steel doors that are so big they echo throughout the ship when they close.

The ship's sailors and aviators divide their lives into compartments, too. It is their way of passing the months at sea, far from home. Pilots must block out fear and land a plane with one engine. Fathers who miss their families and sailors whose wives move and leave no forwarding address must forget about home. A month before the cruise, says Capt. Bill Deaver, the America's air wing commander, he begins distancing himself from his family, immersing himself in flying and shipboard life. "You start building the wall, one brick a day," he says.

Thoughts of home are reserved for bedtime: In cramped berthing spaces throughout the America, sailors, aviators and marines tape photos of their families near their pillows. Before they turn out the light, those pictures are the last thing they see.

Navy families back home also must cope. Two days before Chaplain Gil Gibson set sail in August, his wife found a lump in her breast. She didn't tell him about it until after he was at sea and the lump had been declared benign.

SEPTEMBER 13, 1993—LIFE AT SEA

As they go about shrinking the Navy and the Marine Corps, Pentagon officials are mindful of the morale and well-being of sailors, marines and aviators. The Navy and Marines fought then Secretary of Defense Les Aspin's proposal to cut the Navy from 12 to 10 carrier task forces and Marine troop levels from 177,000 to 159,000: Fewer ships and people would mean sea tours longer than six months for the remaining ships and people. "If we go to eight-months cruises, we'll lose a lot of people," says Lt. Cmdr. Brian Scott, an aviator on the America.

Slimming down

The Navy insists that peacetime deployments will be held to six months. "Forces won't stay ready if you deploy them too much," says Adm. Jeremy Boorda, NATO's southern forces commander in Europe, who came up through the enlisted ranks to earn his four stars and is now a leading candidate for the Navy's top job, chief of naval operations. "Six months is an arduous amount of duty; it's a long time away from home if you have a family." Aspin was convinced.

Even so, there is not room for everyone in the new Navy. On this September day, Lt. Jerry Leekey, an F-14 pilot with the America's Diamondback squadron, is waiting to learn whether a personnel board will let him stay in the Navy. "This is the best possible job, even with all the time spent away from my wife," the lanky, freckled redhead says after a morning of dogfighting with an F/A-18 "I signed up to race around at Mach 1."

Although he serves on active duty, Lieutenant Leekey received his commission through the Naval Reserve rather than the Naval Academy or the Naval Reserve Officers Training Corps. It cost the Navy \$800,000 to teach him to fly his Mach 2 fighter, but now it is letting go its active-duty reservists. Cmdr. Steven Collins, Lieutenant Leekey's squadron commander, has orchestrated a letter-writing campaign, endorsed by the task force commander, to retain his young officer. Leekey can only fly and hope.

Below decks

For a pilot, getting up in the morning means another day to break the sound barrier. For most of the America's crew, however, especially the 18-year-old enlisted sailors, the shrill whistle of the boatswain's pipe that announces reveille each morning at 6 o'clock ushers in another day of drudgery. Time stands still in the 120-degree heat of the engine rooms. Seaman Ryan Hall sits on a bucket under an air vent for two four-hour shifts a day, struggling to stay awake as he monitors a generator in one of the engineering spaces, where oil-fired boilers make steam to turn the shaft of one of the ship's four 69,000-pound propellers.

The America needs constant attention. Commissioned in 1965, it is showing its age. A month before leaving Norfolk, a senior enlisted crew member complained to his congressman: The ship was operating on only two of its six electric generators, without radar and unable to pump fuel. This would be its third six-month cruise in three years, and without the standard 18 months at home for repairs, salt water and full steaming had taken their toll.

Seaman Hall, and the men who spend three months at a stretch cleaning clogged toilets or working mess duty, say the cruise is like the movie *Groundhog Day*. Each morning begins the same day all over again. A sailor can let a week pass without climbing the steep ladders to the flight deck and squinting at the sun. Sometimes the menu serves as a calendar: Pizza for dinner means it must be Friday.

Crewmen learn to beat the boredom. Petty Officer 1st Class James "Elvis" Alexander doesn't always wait for reveille to get up in the morning; with 20 showers in his 296-man berthing, he sometimes rises at 5 to beat the lines. After working 16 hours in the ship's jet engine shop, Alexander tunes his guitar and props open his songbook. The Memphis native, who grew up 6 miles from Graceland and worked as an Elvis impersonator—he even kept his long sideburns as a Navy recruiter—leads a bluegrass trio with fiddle and banjo.

Most nights they make music on the ship's fantail, surrounded by finicky, foil-wrapped jet engines waiting to be repaired. Here, at the stern, the musicians can look at the ship's wake and see where they've been; in the daytime when the carrier steams at full power, the wake lingers all the way to the horizon. As shipmates gather, Petty Officer Alexander sings of a journey by train: "Engineer reach up and pull the whistle, Let me hear that lonesome sound. For it blends with the feeling that's in me, The one I love has turned me down."

At the far end of the America's wake, in Virginia Beach, Marita Cheney is lonesome, too. She is showing her two children a videotape before bed, one she made of her husband, Eric, a bombardier and navigator with the America's A-6E Intruder bomber squadron, reading bedtime stories to Michael, who is almost 3, and Kyle, nearly 1. "They love to watch Eric," she says. In the past year, Lieutenant Cheney has spent a total of 43 days at home. "The boys are growing," he says. "When I come back from this six monther, I'll be nothing but a picture."

In the Cheneys' family room, a chain of rings made from construction paper stretches around three walls. Every night, the children take down one link, shrinking the chain and getting that much nearer to the day their daddy comes home. "It gives the kids a concept of time, an end point," says Marita. But gimmicks that work for the children don't help their mother. "When he left, I came home and cried and cried and cried. It all of a sudden hit me. And since he's an aviator, you think the worst can happen," she says. "You have to put it in the back of your mind or you'd go crazy."

OCTOBER 18, 1993—MARINES

Eleven days ago, on October 7, Marine Col. Jan Huly was awakened by a telephone call at 4:30 a.m. in his stateroom aboard the helicopter carrier Guadalcanal. President Clinton had decided to reinforce U.S. forces in Somalia after the failed raid in Mogadishu that left 18 Army Rangers dead, and the Guadalcanal had been ordered to leave the America and speed south from the Adriatic through the Suez Canal to Mogadishu.

The marines had crossed the Atlantic in August as part of the America Joint Task Group—an early test of an effort to repack U.S. military might, mixing and matching the capabilities of carriers, marines, Army helicopters and Ranger units and even U.S.-based air forces. The America had left Norfolk with some 235 marines and their four CH-46 Sea Knight helicopters in place of three aircraft squadrons.

The marines ordinarily sail with five ships of their own, but this time they had left two ships and their equipment behind at Camp Lejeune, in North Carolina. In exchange, Huly had been promised that his marines would have air support from the America.

But integrating the carrier's and the marines' missions had proved difficult. It had been hard to fit Marine helicopter training into the carrier's busy flight schedule: The marines' CH-46s had to be launched from the carrier's landing area, and a breakdown could shut down Navy flight operations for precious minutes. Some Marine missions, such as the rescue of a downed pilot, could not be launched from the carrier because the America did not carry the right mix of helicopters. Finally, says Bravo Company 1st Sgt. George Mason, a carrier typically operates too far from shore, so the marines and their helicopters would have had to leapfrog to shore via other ships.

Now, arriving off the coast of Mogadishu without the America, Colonel Huly is having

fresh doubts about the Joint Task Group concept. As he ponders the prospect of leading his men into war-torn Mogadishu, Colonel Huly misses the two ships he left behind. His battalion is without many of its wheeled and tracked vehicles, it is short of attack helicopters and half its artillery pieces are back in North Carolina.

Sharks in the water

But the ship Colonel Huly misses most is the one that would be carrying his air-cushioned landing craft, or LCACs, which can drive onto a beach and unload men and equipment. Somalia's beaches are very shallow, so the landing craft the marines have brought will bottom out 200 yards from shore, forcing the men to wade through 3-foot-deep water. And as Huly's staff scout the coastline for amphibious landing points, they discover that the Russians once operated a slaughterhouse along Somalia's coast and dumped carcasses in the water. The area is shark infested. "We are going to be running around in rubber boats and wading through all this," says Huly.

As Huly's dilemma suggests, the shrinking U.S. military is facing a choice: It can either send smaller, less capable units abroad or deploy larger units less often. "We're going to have fewer forces, less money," says Huly. "But over here where you're getting ready to go into harm's way, whatever you have is not enough. You always want more."

Adm. Paul David Miller, the architect of the Joint Force Packages at the U.S. Atlantic Command in Norfolk, says the America Joint Task Group is just a "steppingstone." The real test, he says, will come later this year, when another Joint Task Group, this one headed by the carrier Dwight D. Eisenhower, will sail. Admiral Miller will propose that for the first time since World War II, the United States not keep a carrier in the Mediterranean. Instead, the carrier and a Marine Expeditionary Unit may sail separately.

The Eisenhower may precede the marines by as much as two months. After six months, when the carrier is ready to head home, the marines may remain. Admiral Miller proposes that the marines sail with an attack submarine, armed with Tomahawk cruise missiles, and an Aegis cruiser; with its sophisticated command and control systems, to provide them with added firepower after the Eisenhower departs.

DECEMBER 13, 1993—LIBERTY

After 47 days at sea, the F-14 Diamondback pilots from the America, fresh from flying missions and taking cold Navy showers, are not about to go ashore and take a tour. Traditionally, at a liberty port, squadrons set up an "admin," a home base ashore, where fliers can spend nights away from the ship. The Tailhook sexual harassment scandal has tamed aviator admins. So when they arrive in Tel Aviv, the Diamondbacks find a hotel through the U.S. Embassy. An embassy staffer takes the squadron representative to a small hotel nearby; 20 guys lay out \$50 each and the owner gives them an entire six-room floor.

But the owner fails to tell the night manager about the new guests. Early one morning, after the last of the pilots roll in at 5 a.m., the night manager is appalled by what she finds in one room: clothes and bottles strewn everywhere, a half-dozen junior officers sprawled in chairs and beds. She protests to the embassy, but an official there sides with the fighter pilots. "You don't understand," he tells the night manager. "These guys are just like a rock band."

Liberty for the men is no fun for their loved ones at home, who wonder what their husbands and boyfriends are doing. The rule is: What happens on cruise stays on cruise. Unspoken fears are bound to be magnified as the Navy prepares to allow women to serve on combat vessels, including aircraft carriers, later this year.

"I think it's going to be a big adjustment for the wives at home," says Marita Cheney, who finds a letter in the mailbox from husband Eric, the A-6 navigator, every other day. "Their husbands are on the ship and they're at home thinking: 'There are other women out there, what's going on, is my husband going to still want to be married to me when he gets home?' If I had any doubts about Eric, that would drive me out of my mind."

Tracy Carr's husband doesn't want his wife, a petty officer first class, serving on a ship with 4,700 men. But that's where she is. Although the Navy says women will not begin sailing on carriers until later this year, the first eight women assigned to a carrier in a combat zone are members of the squadron that flies the America's on-board delivery aircraft, which bring mail and visitors. They are usually stationed in Italy, but when the America left for Somalia at the end of October, the squadron with its eight women was brought on board.

One deck below the ship's hanger bay, a sign announces: "Female Berthing." Until the eight moved in, the rooms were used for medical isolation; the four-person spaces have showers and toilets but no lockers for the women to stow their belongings. "They weren't ready for us," Petty Officer Carr says of the ship's crew. Men in towels walk past the women's berths on the way to the showers. "If we went out in the passageway in a towel, we'd be called up to see the skipper," says Petty Officer 2nd Class Laura Leigh Johnson. And they still endure catcalls from some men.

But conditions have improved since the women came aboard. "There's still a lot of guys who haven't worked with women," says Petty Officer Johnson. When an engine panel on the C-2 aircraft pops open, Johnson, an electrician, turns down offers of a ladder and pulls herself up through the hatch in the top of the plane. Then she crawls out onto the wing and fixes the panel. "Once you earn respect and trust, the attitude starts to change," says Carr.

DECEMBER 24, 1993—CHRISTMAS EVE

Petty Officer "Elvis" Alexander, his guitar tuned and ready, has brought a little bit of Nashville to France. With the America in port for the holidays, 80 people gather around a Christmas tree in the lobby of a Marseille hotel to hear Alexander's trio play three hours of bluegrass Christmas carols. On the way back to the ship for the night, Alexander skips down the stairs of a subway station to the train platform and finds a pay phone. He dials home and reaches his wife, Barbara, and their new baby, Taylor, who was born in September—a month after her father sailed.

In one ear Alexander hears a loudspeaker announcing something in French. He finally hangs up the phone, depressed to be missing his daughter's first Christmas, and climbs the stairs to the street. A locked gate blocks his way out. It is Christmas Eve and the subway has shut down for the night. After two hours of calling French police, Elvis finds someone who can speak English and is released from the subway.

Christmas in port and good food at Thanksgiving—turkey, ham, roast beef and

fixings—only remind the men that they are far from home. Back in Norfolk, the families of the F-14 Diamondbacks held their children's Christmas party during the first week of December, allowing time to mail videos to the dads at sea before the holidays.

Loretta Mora, who had been eight months pregnant on the night her husband, José, boarded the ship in the heat of August, was there smiling, dressed as Santa and cradling 11-week-old Justice Antonio Mora, dressed as a very tiny Santa. Her pregnancy had been hard; Loretta developed toxemia, and her labor lasted 27 hours before the doctors performed an emergency Caesarean. But she was buoyant amid the din of children waiting to see Santa. The Moras had picked the name Justice together; he wanted his child's name to begin with the same letter as his own but figured there are enough José's in the world.

Loretta offers another reason. "We had a lot of problems when we first got together because he's Puerto Rican and I'm white," she says. "José always wanted to serve his country." The name Justice fit. On the America, tacked on the ceiling 1 foot above the pillow in José's rack, are his son's first booties. "I don't know the boy," he says. "I want to see my wife. I want to meet my son."

JANUARY 11, 1994—EMERGENCY

Cruises run in cycles. In the first weeks, sailors learn to leave home behind. During the holidays, they feel they may never get home. On this January day in the Adriatic, five months after setting sail from Norfolk, Capt. William W. Copeland Jr., the America's skipper, senses that his crew members think they're home already. They are scheduled to leave the Adriatic in three days, turning over responsibility for enforcing the Bosnian no-fly zone to the Saratoga, which is steaming across the Atlantic to relieve them. During flight operations, planes are touching down on the 750-foot landing area every 37 seconds. It is all becoming too routine, and the captain fears his crew may be getting complacent.

Even in peacetime, flying jets off carriers is hazardous duty: Every year there are 50 to 60 major accidents involving Navy aircraft. "We're out here just trying to keep guys focused so they don't fly into the back end of the ship and kill themselves," says Commander Collins, the leader of the Diamondback F-14 squadron.

January 11 does seem snakebit, a day of minor woes and near misses. An F/A-18 loses its radio. After catching the wire that jolts them to a halt, two aircraft blow tires as they skid across the landing area. Two more planes, including one of Collins's F-14s, lose the ability to control their wing flaps. The Diamondback Tomcat has to land with its flaps up rather than down. When the flaps are down, they allow the plane to fly at a slower speed; this time the fighter has to approach the ship too fast. To compensate, the America steams hard into the wind. As the plane touches the deck, the ship-made breeze slows the 50,000-pound F-14, preventing it from tearing the arresting wire and hurtling over the bow of the ship into the water. Later in the day, another F-14 touches down safely after its primary and backup visual landing guides fail.

Into the danger zone

Lt. David "Boog" Powell's January 11 begins routinely enough. Ten minutes before launch, he runs through a preflight checklist as his F-14 idles at the most powerful of the ship's four catapults. A former high school baseball player, Powell liked playing catcher

because he wanted to be in on every play. Now all eyes on deck are on him. A red light on the carrier's seven-story island signals four minutes to launch; two minutes later, when the light turns amber, a green-shirted crewman, crouching alongside the jet's nose wheels, signals for Powell to inch the plane forward and locks it into the catapult's shuttle. The light turns green.

Lieutenant Powell looks out to his left at the yellow-shirted catapult officer, the shooter. With his right hand pointing at the pilot, the shooter holds his left hand aloft, two fingers extended, signaling Powell to go to full power. Then, his stomach rumbling from the force of the fighter's engines, the shooter holds his hands open, palm out, as if to slap a high-five, the sign to go to full afterburner. In the seat of his pants, Lieutenant Powell can feel each of the five stages of his afterburner ignite, one at a time.

Ready to fly, he snaps a quick salute and leans his head forward, bracing for the catapult shot; the shooter salutes back, bends his knees, touches two fingers of his left hand to the deck of the ship and gestures forward, like a hunting dog pointing to its prey. On the shooter's signal, a goggled crewman on the catwalk to the plane's left presses the button that fires the catapult, hurtling Powell's F-14 from a standstill to 150 mph in two seconds. "It's the one time you don't have control of your airplane," Lieutenant Powell says.

Midflight, during a mapping mission over Bosnia, a light in Powell's cockpit signals a stall in his left engine, a routine annoyance in the F-14. He clears it, finishes his mission and heads back to the ship. It is late afternoon and the clouds are heavy, so the planes follow nighttime, low-visibility landing procedures. Circling 8,000 feet above the Adriatic, 23 miles from the ship, Lieutenant Powell sees ice, like frost in a freezer, forming on the leading edge of his plane's wings.

Powell hates circling in this stack of planes, four at 8,000 feet, another four 1,000 feet above that, and on up, with no radio communications or radar. Earlier in the cruise, when he had barely 25 carrier landings under his belt, he would spend the 20 long minutes in the holding pattern thinking about landing his jet on the tossing deck of a ship at sea at night: "Why the hell did I ask to do this job? I want to be home with my wife," he remembers thinking. "I kicked myself in the ass every night to go do it." For the first two months, his knees shook after every night landing.

Five months into the cruise, he is confident. He begins his approach to the ship, slowly descending to 1,200 feet 8 miles out. Four miles from the ship he hears a bang, like a balloon popping. Immediately the stall warning light flashes and the plane yaws sharply left. He has lost power in his left engine.

Powell thinks of everything that could go wrong: He is low on fuel, the weather is bad, it is a long way to an alternate landing field. Taught to fly first, then navigate, then communicate, he pulls the plane's nose up, corrects the yaw that has taken him off course and begins talking to his radar-intercept officer (RIO) in the back seat. Together, they run through the Navy checklist for single-engine landings and prepare to land their plane. He flies a slow right turn, 360 degrees, to get the plane back in line with the ship, alerts the America of their situation, then stays off the radio the rest of the way in. "We treated it like a normal approach," Powell says later.

Rather than slowing him down, the loss of an engine means Lieutenant Powell is going

to have to land at high speed, with full afterburner on his good right engine. That way, if he misses one of the four wires that will bring his plane to a halt, he will have enough power to get airborne again. But in the F-14, with a good 9 feet between the two engines, throttling to full power in the right engine with none in the left could make the jet swerve dangerously to the left.

A good pass

The landing isn't just safe; it looks good, too. Powell and his RIO step out of the jet, which is surrounded by flight-deck crew ready to tow it out of the landing area. "I flew a good pass," he later recalls. "It was awesome, I was on deck."

Good pilots crave the chance to beat the odds. "There's a satisfaction when something happens and you're the one who's going to have to bring it down safely," says veteran pilot Andy "Slim" Whitson, the America air wing's landing signal officer and a former flight instructor whose green Jaguar, bought with his flight bonus, carries vanity tags that read BLWN BKS, for blown bucks.

"They've all got big egos and big watches," Captain Copeland, an F-14 pilot himself, says of the pilots he commands. In the Diamondback's ready room, a tailhook bolt hangs by a string from the ceiling over one pilot's seat; he was the last to "bolter" that day, meaning he missed the wires while landing and had to make another pass. On one wall is the "greenie" board, where each pilot's every landing is graded. "They're so competitive, they like being graded," says A-6 navigator Eric Cheney.

Lieutenant Leekey, the red-haired pilot, flew some 75 flights without boltering. When he finally missed, he was overheard on his radio: "Impossible," he said in a mock Spanish accent. Commander Collins, the Diamondback squadron commander who flies in the back seat, ribs his pilot if they bolter: "Hey, wasn't that our stop back there?" Television sets throughout the ship carry live pictures of flight operations. Pilots, waiting to fly, sit and razz other pilots for ugly landings.

But the challenge is making the extraordinary look routine, not making the routine look extraordinary, and veteran aviators calculate how much slack to give junior officers. "If you go to war thinking you might get shot down, you're going to be overly cautious," says Capt. Vance Toalson, a former wrestler and the America's yellow-shirted Air Boss. "The confidence is necessary, but also the professionalism. If you have some cavalier aviator out there, then he needs to find another job. We don't have Tom Cruise in naval aviation."

While the lieutenants are battling to land safely, the captains and admirals have been dusting off plans to conduct airstrikes in Bosnia if NATO leaders in Brussels give the order. Later tonight, two of the carrier's four E-2C Hawkeyes will begin monitoring Bosnia's skies around the clock. Half the day's flight operations have been canceled so that pilots and flight-deck crew members who might have to work all night can sleep during the day.

Captain Copeland and his air wing commander, Capt. Bill Deaver, have just sat down to dinner about 9 p.m. when the phone hidden under the dining table in Copeland's quarters rings. There is a fire in the hangar bay: An E-2C Hawkeye aerial surveillance plane, the type that is to fly later tonight, is reported to be spitting sparks. Copeland and Deaver scramble down three ladders and find the fire extinguished. It has not reached the E-2C.

FEBRUARY 5, 1994—HOME

After six months at sea, the time has come to start tearing down the walls between shipboard life and home, one brick at a time.

For some, it will be hard to let go. "When I'm out here," says Chaplain Gil Gibson, "I miss home. When I'm home, I miss here." Home cannot supply the camaraderie or the challenges of life at sea.

For Marine Colonel Huly's operations officer, Lt. Col. Jeff Christman, the six months away from home have been an eternity: He has numbered each of his 70 letters home, and when he felt low, he played "Danny Boy" on the bagpipes in a corner of the Guadalcanal's flight deck. But he wouldn't trade the life: "I guess there's always people who wanted to be a professional soldier. I have a realistic but a romantic view of what I do. I have no illusions. But still, I like the life. I've gotten to do what I wanted to do when I was a little boy."

For Lieutenant Leekey, the red-haired F-14 fighter pilot, the end of the America's cruise means he must give up the life he has always wanted. The Navy has rejected his appeal to stay in. Leekey is slated to be discharged in June; his wife, Iris, is due to give birth to their first child on March 29. Leekey has flown since he was 13 and earned his pilot's license at 17. He doesn't know what he will do next. "My lifelong dream was to fly fighters," he says. "I don't do anything else."

As the America steams toward Norfolk, these warriors must become fathers and husbands again. Navy counseling teams came aboard in Spain to remind the men that loved ones change, grow independent, in six months without husbands and fathers. "It's pretty tough to go steaming into the house and say, 'You, get a haircut; you, clean up the back yard,'" says Colonel Huly. "There has to be some sensitivity. I know that. Of course my family will say I don't, but I know that." His wife, Patti, a veteran Marine spouse, takes a more philosophical approach: "If Robert Redford didn't get on the boat," she advises young wives, "Robert Redford isn't getting off the boat."

Too late

Six months can be a lifetime. Almost three weeks after his father underwent routine surgery, Cmdr. Vic Cerne, the executive officer of the carrier's squadron of EA-6B electronic-warfare aircraft, received an emergency Red Cross message from his wife, Cindy: There were complications. He packed a small bag and flew home from the carrier to Norfolk, where he telephoned his mother at the hospital in Oklahoma. His father came on the line, the husky man's voice sounding weak. Cerne told his dad he loved him and promised he'd see him the next day. "I'll never forget what he said next," recalls Cerne. "He said, 'Vic, hurry.'" The Cernes caught the first flight out of Norfolk the next morning, but his father died before they landed in Oklahoma. "I never left on this deployment thinking I wouldn't see him again," says Cerne.

Cerne's parents had planned to meet the ship when it came in; his father had thought surgery would make him strong enough to travel. Cerne returned to the ship after burying his father. His mother will meet him at the pier.

Norfolk still seems very far away. Every other day during the 11-day Atlantic crossing, at 7 p.m., the crew must set their watches back and relive 6 o'clock all over again. Even two days before the ship is due in Norfolk, Petty Officer 1st Class Grant Gorton, the F-14 flight-deck coordinator, cannot

relax: He is responsible for preparing all 14 of his squadron's aircraft for the next day's fly-off, when the aviators will head home a day before the ship docks. "I won't be able to sleep tonight," he says. "We have to get every one off."

Gorton has learned all the ways 50 planes idling or taxiing can kill a person: He avoids walking near an F-14's air intakes or an E-2C's propellers. He leans his body into the hot jet exhaust that can blow one overboard. His hearing has worsened in his 12 years in the Navy, despite wearing the Mickey Mouse-ear headgear required on the flight deck; after a 14-hour day of flight operations, his ears are sore from the gear. Gorton is nervous: If any of his F-14's can't fly tomorrow, a crane will have to lift them off in Norfolk.

The next day, every plane gets off as planned, the flight-deck crew waving good bye as the last A-6 Intruder departs. In the bright sunshine, with the crew wandering about the suddenly empty flight deck, the booming voice of Air Boss Vance Toalson orders them to clear Catapult 3. The America's senior shooter, Lt. Bill Clock, unties and removes his boots and in his stocking feet walks to the catapult, where his boots are tied to the catapult's shuttle. On the Boss's order—"Shooting the boots"—the catapult, which has just launched a 60,000-pound bomber, propels Bill Clock's boots, tied together, off the carrier and into the Atlantic. The America is almost home.

Loretta Mora has written José that she will wear red to the homecoming so he can find her on the crowded pier. She does: a red winter coat, a short-sleeved, tailored red dress and red high heels. Standing in the heated "mommy tent," where many of the 85 women who have given birth since their husbands sailed in August wait, Loretta stays dry in the driving rainstorm that has soaked the more than 5,000 people waiting for the America.

The big ship is tantalizingly close, with hundreds of enlisted crew members standing shoulder to shoulder along the bow and the starboard side in dress blue uniforms, and six tugboats puffing black smoke turning it toward the pier. After the America pulls alongside and the lines are fired to secure it, Loretta leaves the warmth of the mommy tent, pushing the baby carriage through shoe-deep puddles, and waits alongside the ship. In the hangar bay, José musters with the other new fathers, all weighed down by the clothes and souvenirs stuffed into their duffels. In his pocket, José carries his new son's first blue booties.

An hour passes. On the pier, Loretta removes her red coat, places it like a tent over the baby carriage and stands in the downpour in her short-sleeved red dress before finally retreating for shelter. Finally, the new fathers pass the quarterdeck, salute their ship and walk the length of the pier, through the crowd, to the mommy tent, where José Mora embraces his wife and meets his son.

The America has brought home every one of its sailors and aviators, a remarkable feat: An F-14 and an F/A-18 from the carrier Saratoga will collide in midair a week after the America reaches Norfolk. Two of the America's sailors will die in a late-night auto accident on the day it docks in Norfolk. The ship is scheduled to sail again in August 1995, on what may be its last cruise before it is taken out of commission. José Mora will spend his son's second birthday at sea.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt stood at \$4,541,171,125,410.40 as of the close of business Thursday, February 24. Averaged out, every man, woman and child in America owes a part of this massive debt, and that per capita share is \$17,418.41.

TRIBUTE TO JERRY HENDRICKS

Mr. GORTON. Mr. President. A good friend and colleague of mine, Jerry Hendricks, is retiring as the Port of Port Angeles' executive director after 26 years of public service. His dedication and commitment to the Port of Port Angeles and Clallam County has been exceptional, and he will be greatly missed.

I remember a few years back when Jerry and I had dinner at the Bushwhacker Restaurant. The warm hospitality he showed me by inviting me back to his home to continue our discussion is indicative of the generosity and warmth he has shared with his community over the years. His hard work was always backed with genuine sincerity and passion for the issues of importance to his community. For this reason, I am certain he opened doors that otherwise would have remained closed.

As President of Washington Citizens for World Trade and board member of the Export Assistance Center, Jerry helped cinch Washington State's role as a leading center of international trade. Jerry will be remembered by many people in Clallam County for whom he found and created numerous jobs and economic opportunities through his work at the Port of Port Angeles. He set standards in this field that few will be able to meet. His contributions to organizations such as United Way and the Port Angeles Chamber of Commerce have exemplified what it really means to be a community leader.

I, and many others, have come to rely on Jerry's input and advice. Through numerous trips to Washington, DC, as an advocate for his community and the Port, he made sure that Washington's congressional delegation was always on top of the events that have shaped life on the peninsula. He worked to keep me apprised of the community's needs, but he also worked hard to vocalize the community's feelings and temper on key issues. No one every had to guess how families on the peninsula were affected by the cards their government dealt.

More communities should be so lucky as to have a Jerry Hendricks representing their needs and their concerns. Although he is retiring from the Port of Port Angeles, I am certain that he will continue to find opportunities to represent the voice and spirit of families and communities on the peninsula. I wish him the best.

HUGH L. WILLCOX

Mr. THURMOND. Mr. President I rise to pay tribute to Mr. Hugh L. Willcox, an able attorney and one of the leading citizens of Florence, SC, who recently passed away.

While Mr. Willcox's passing is indeed unfortunate, he lived a long and productive life. In his almost nine decades on this earth, Mr. Willcox established a well deserved reputation as both an able and respected lawyer and a dedicated civic leader, serving on a number of boards and associations. He was president of both the South Carolina and Florence Country Bar Associations and was recognized by the University of South Carolina with an honorary doctor of laws degree for his many contributions to the profession. He was also awarded the South Carolina bar's prestigious Durant Award.

The list of community activities in which Mr. Willcox was active is too lengthy to cite here, but included businesses, schools, charities, and churches. I do not believe that I am exaggerating when I say that there was not a corner of Florence that did not benefit from Hugh Willcox's interest and involvement.

Mr. President, Hugh Willcox was a personal friend of mine, and we are all saddened by his death. His family are in my thoughts and prayers at this most difficult time. He is survived by his wife, Polly Robinson Willcox; son, Hugh L. Willcox, Jr.; daughter, Julia W. Buyck; daughter in law, Henrietta W. Willcox; stepson, William Odell; stepdaughter, Alexander Odell; seven grandchildren; two great-grandchildren; and a brother, E. Lloyd Willcox.

I ask unanimous consent that a copy of Mr. Willcox's obituary from the Florence Morning News be inserted into the RECORD following my remarks.

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

[From the Florence Morning News, Feb. 5, 1994]

(By Hugh L. Willcox)

Hugh Labarbe Willcox, 88, a native of Florence and a link to this city's earliest days, died Friday, Feb. 4, 1994.

He was a son of the late Frederick L. and Clara Chase Willcox. His grandfather, Jerome P. Chase, was one of Florence's pioneer residents and its first mayor.

Funeral services are scheduled for 3 p.m. Sunday, Feb. 6, 1994, at St. John's Episcopal Church followed by burial in Mount Hope Cemetery, directed by Waters-Powell Funeral Home.

He was educated in the public schools of Florence and at Bingham Military School in Asheville. He took his undergraduate degree from the University of North Carolina and his law degree from the University of South Carolina School of Law. He was first married to the late Julia Johnson Willcox of Florence, who died in 1986.

He is survived by his widow, Polly Robinson Willcox, a son, Hugh L. Willcox Jr. of Florence; a daughter, Julia W. Buyck of

Florence; a daughter-in-law, Henrietta W. Willcox, wife of the deceased son Fred L. Willcox, of Florence; a stepson, William Robinson Odell of Charlotte, N.C.; a stepdaughter, Alexander Patterson Odell of Palm Desert, Calif., seven grandchildren including Mark W. Buyck III, Julie B. McKissick, Hugh W. Buyck, E. Lloyd Willcox II, Henrietta W. Dotterer, Hugh L. Willcox III and Walker H. Willcox; two great-grandchildren; and a brother, E. Lloyd Willcox of Charleston.

A distinguished and highly acclaimed lawyer, his legal career was interrupted by service in the U.S. Army from 1940 to 1946. He was stationed for a period with the 263rd Coast Artillery at Ft. Moultrie as adjutant to Florence legendary Col. Frank Barnwell, who commanded the Florence National Guard unit he had joined shortly after college. He was discharged from the army following World War II with the rank of lieutenant colonel. Since that time, he has been a senior member of the law firm of Willcox, McLeod, Buyck & Williams, the firm which was established by his father in 1895 as Willcox & Willcox.

He is past president of the S.C. Bar Association and the Florence County Bar Association, permanent member of the Judicial Conference of the U.S. 4th Judicial Circuit and member of the American Bar Association, in which he served on numerous committees including most recently the committee on state legislation.

He was honored by the University of South Carolina in 1986 when he received an honorary doctor of laws degree recognizing his long-time and exemplary public service and his distinguished legal career spanning six decades. He was trustee emeritus of the university having served on the Board of Trustees for 20 years representing the 12th Judicial Circuit.

Past chairman of the Board of Directors of Peoples Federal Savings and Loan Association and former member of the Florence Advisory Board of South Carolina National Bank, he was a director and vice president of Motel Associates Inc.

Interested in civic and educational affairs, he was past president of the board of trustees of the Florence Museum and the Florence County Historical Society and was treasure of the Florence Memorial Stadium Commission for four decades. He was a former member of the board of trustees of St. Mary's College in Raleigh, N.C., and served as chairman of the S.C. State Library Board and a member of the Tricentennial Commission for South Carolina. When the Florence public school system was governed by an annual residents meeting, he presided over the assemblage for many years.

He served as a member of the board of trustees of McLeod Regional Medical Center for more than 35 years and was recently named the hospital's first trustee emeritus. He was a former director of Mount Hope Cemetery Association and he also served on the board of Pawleys Island Civic Association and the board of directors Litchfield Country Club and was a former member of the board of the Florence Country Club.

He took great interest in St. John's Episcopal Church, where he was a life-long member and served as past senior and junior warden and in many diocesan capacities.

Other memberships include Theta Chi Fraternity at the University of North Carolina, past president of Florence Kiwanis Club, past state vice commander and judge advocate of the American Legion, board of directors of the American Cancer Society and Florence

United Way, Florence Heritage Foundation, National Association of Railroad Trail Counsel, past S.C. director of the Judicature Society, Palmetto Club and Centurion Society.

He received the 1986 Friends of the Florence Museum Award. In 1985, the South Carolina Bar Association presented him the Durant Award, its highest honor in recognition of his long and distinguished service to this state.

The family is at Bannockburn, his residence at 500 Howe Springs Road.

Memorials may be made to St. John's Episcopal Church, Florence Museum or University of South Carolina Education Foundation.

MARTHA RIVERS

Mr. THURMOND. Mr. President, I rise today to pay tribute to one of my State's leading citizens and a pioneer in the South Carolina broadcasting industry, Mrs. Martha Rivers, who recently passed away.

The 1950's was a decade of great changes for our Nation. In those years, the suburbs replaced cities as America's home address and radio was quickly overtaken by television as the favorite form of family entertainment. In South Carolina, Mrs. Rivers' late husband, John, introduced television to Charleston when he started WCSC-TV. For more than 30 years, Mrs. Rivers worked at the station, helping to create and expand what has turned into a very lucrative and important media market. Mrs. Rivers, along with her son, John Rivers, Jr., one of Charleston's most prominent businessmen, carried on the fine work of John Rivers, Sr., until WCSC was sold in 1987.

While working at WCSC was a full-time job, Mrs. Rivers always had time to devote to the community. Her activities included serving as president of the Charleston County Association for the Blind and the Garden Club of Charleston. She was also a member of the Junior League and was very active in St. Philip's Episcopal Church.

Mr. President, Martha Rivers and her family have been friends of mine for a long time, and we are all saddened by her passing. She was a warm and outgoing woman, who was admired and respected by all. While she will be missed by those who knew her, her memory will live on through a park named in her honor in her hometown of Gastonia, NC and the Martha Robinson Rivers scholarship at Converse College, her alma matter. Mrs. Rivers is survived by her son, John M. Rivers, Jr.; daughters, Martha R. Ingram and Elizabeth R. Lewine; four grandchildren; two stepgrandchildren; and a great-grandchild.

I ask unanimous consent that a copy of Mrs. Rivers' obituary from the Charleston Post and Courier be inserted into the RECORD following my remarks.

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

[From the Charleston Post and Courier, Feb. 6, 1994]

LOCAL TELEVISION PIONEER MARTHA RIVERS DIES AT 83

By Robert Behre

Martha Robinson Rivers, who helped her late husband run Charleston's first radio and television stations and who supported many charitable and civic groups, died Thursday at her residence. She was 83.

Mrs. Rivers was born in Gastonia, N.C., to John Craig Robinson and Ola Stowe Craig Robinson, and graduated from Converse College in Spartanburg. She married the late John Rivers, who then was working in Greenville.

When the couple moved to Charleston, Rivers became head of corporate financing for the investment firm of McAlister, Smith and Pate. In 1937, he acquired control of WCSC radio, and he started WCSC-TV—the city's first television station—in 1953.

Mrs. Rivers served as WCSC Inc.'s secretary for more than three decades. She retired in 1987 when her son, John M. Rivers Jr., sold the station to Crump Communications Inc.

Mrs. Rivers, who resided at 41 Meeting St., also was past president of the Charleston County Association for the Blind, past president of the Garden Club of Charleston and was a member of the Junior League of Charleston.

She and her husband were avid travelers and twice made trips around the world. Former College of Charleston president Theodore S. Stern said he first got to know Mrs. Rivers during a trip to South America in the early 1970s.

"She was just the most stunning and warm individual," he said.

He noted she was instrumental in giving WCSC's early radio and television memorabilia to the college. "She had a great interest in community activities and was a great asset to the community."

Former Charleston mayor J. Palmer Gaillard Jr. said he knew Mrs. Rivers well from all her work with St. Philip's Episcopal Church and charitable groups.

"Charleston has really lost a great citizen. She was indeed a lady. In fact, the description of her is the definition of a lady," he said.

The city of Gastonia honored Mrs. Rivers by naming a park after her. She also established the Martha Robinson Rivers scholarship at Converse.

The family, through WCSC Inc., contributed to several causes in the Charleston area, including Ashley Hall school, the Gibbes Museum of Art, the Charleston Symphony Orchestra, the College of Charleston and the Charleston County School District.

She is survived by a son, John M. Rivers Jr. of Charleston; two daughters, Martha R. Ingram of Nashville, Tenn. and Elizabeth R. Lewine of New York; four grandchildren; two stepgrandchildren; and a great-grandchild.

The funeral will be at 11 a.m. today in St. Philip's Episcopal Church. Burial, directed by Stuhr's Downtown Chapel, will be in the church cemetery.

CARROL H. WARNER

Mr. THURMOND. Mr. President, I rise today to pay tribute to a dedicated public servant and a good friend, Mr. Carrol H. Warner, who passed away recently.

A graduate of Clemson University, Mr. Warner was very involved in his ca-

reer and community. An agricultural businessman, Mr. Warner served as a member of the Aiken County Board of Commissioners and since 1977 as the Chairman of the Aiken County Council. Additionally, he was a member of a number of civic organizations, including the Clemson University IPTAY Club, the Silvertown Agriculture Club, the Aiken Rotary, the Aiken County Republican Party, the Wagener Lions Club, and the Kitchings Mill Community Club.

Mr. President, Carrol Warner was a personal friend of mine and I will remember him as an individual who set a high standard for civic-mindedness. He was a dedicated and patriotic individual who will be greatly missed by those who knew him. He is survived by his wife, Judy; sons, Bryan, Joey, and Kevin; and a daughter, Angie. My thoughts and prayers are with his wife and children at this most difficult time.

I ask unanimous consent that a copy of Mr. Warner's obituary from the Aiken Standard be placed in the RECORD following my remarks.

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

OUR VIEW—CARROL H. WARNER

Residents of Aiken County are fortunate to have had a leader of the caliber of Carrol H. Warner. Mr. Warner, who served for 17 years as chairman of the Aiken County Council, died Feb. 5 as a result of stroke.

Friends, fellow county officials and leaders from around the state were saddened at the news of his passing.

Mr. Warner was one of the original Aiken County Council members following the institution of the South Carolina Home Rule Act of 1975.

After becoming chairman, Mr. Warner led Aiken County from a fractious, warring body to one that worked together, a leadership accomplishment he was most fond of.

In recent years the county found itself in a position of fiscal instability, but Mr. Warner's faith in elected officials and county employees never wavered. He predicted that the county would regain its financial health and it did so last year after three years of austerity.

Throughout the years, Mr. Warner was a consistent supporter of fiscal conservatism—and correctly so in our view. He backed the hard economic choices that promise stability at the end of the struggle: employee hiring freezes, a freeze on pay raises and tight limits on county purchasing.

Mr. Warner knew such decisions would not always be popular, but were necessary for the county to regain financial strength and security. In regards to his viewpoint and actions, he once said, "The buck stops here."

He lived to see the fruits of his financial positions. As a result of these measures, he pointed out in subsequent budget sessions that the county's cash flow was healthy. He said the county was building a \$3 million reserve fund, with plans to increase that into a \$5 million fund.

Mr. Warner was a long-time Republican, farmer and businessman. He was married to the former Judith Van Buren and was the father of four—Bryan, Joey, Angie and Kevin. The 63-year-old was a lifelong resident of

Aiken County and attended public schools in Wagener. He also attended Clemson University. Warner served his country in the U.S. Air Force and was a veteran of the Korean Conflict.

Central to Mr. Warner's success as the leader of the Aiken County Council was the fact that he was always looking out for the best interest of his beloved county and the welfare of its people. And no matter the topic, he was always known to operate fairly and would listen patiently to the points of view of various citizens, even those who disagreed with his positions.

County Administrator William Shepherd, his colleague in county government and good friend, has praised Mr. Warner's ability to steer the county with an open mind.

Shepherd called the late chairman "a servant of the people. He always let them (citizens) speak their mind, even when they were criticizing him and county government."

Carrol Warner will be fondly and appreciatively remembered, and no doubt sorely missed. It is our sincere hope that Aiken County will be so blessed as to have other Warner-like "servants of the people."

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 2:24 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2339. An Act to revise and extend the programs of the Technology-Related Assistance for Individuals with Disabilities Act of 1988, and for other purposes.

H.R. 3617. An Act to amend the Everglades National Park Protection and Expansion Act of 1989, and for other purposes.

At 5:57 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 1804) to improve learning and teaching by providing a national framework for education reform; to promote the research, consensus building, and systemic changes needed to ensure equitable educational opportunities and high levels of educational achievement for all American students; to provide a framework for reauthorization of all Federal education programs; to promote the development

and adoption of a voluntary national system of skill standards and certifications; and for other purposes, with an amendment and asks for a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints the following Members as managers of the conference on the part of the House:

For consideration of all provisions of H.R. 1804 and the Senate amendment thereto except for title II of H.R. 1804 and sections 901-914 of the Senate amendment: Mr. FORD of Michigan, Mr. KILDEE, Mr. MILLER of California, Mr. SAWYER, Mr. OWENS, Mrs. UNSOELD, Mr. REED, Mr. ROEMER, Mrs. MINK, Mr. ENGEL, Mr. BECERRA, Mr. GREEN of Texas, Ms. WOOLSEY, Ms. ENGLISH of Arizona, Mr. STRICKLAND, Mr. PAYNE of New Jersey, Mr. ROMERO-BARCELÓ, Mr. GOODLING, Mr. GUNDERSON, Mr. MCKEON, Mr. PETRI, Ms. MOLINARI, Mr. CUNNINGHAM, Mr. MILLER of Florida, Mrs. ROUKEMA, and Mr. BOEHNER.

For consideration of title II of H.R. 1804 and sections 901-914 of the Senate amendment: Mr. FORD of Michigan, Mr. OWENS, Mr. PAYNE of New Jersey, Mr. SCOTT, Mr. SAWYER, Mr. GOODLING, Mr. BALLENGER, Mr. BARRETT of Nebraska, and Mr. FAWELL.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2212. A communication from the Federal Housing Finance Board, transmitting, pursuant to law, the report on the low-income housing and community development activities of the Federal Home Loan Bank System for calendar year 1992; to the Committee on Banking, Housing, and Urban Affairs.

EC-2213. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report on monetary policy for calendar year 1993; to the Committee on Banking, Housing, and Urban Affairs.

EC-2214. A communication from the Federal Housing Finance Board, transmitting, pursuant to law, the report of the salary rates for graded and executive level employees for 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC-2215. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, the report on compensation of employees; to the Committee on Banking, Housing, and Urban Affairs.

EC-2216. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on appropriations legislation within five days of enactment; to the Committee on the Budget.

EC-2217. A communication from the Director of the National Science Foundation, transmitting, pursuant to law, the report on metrication for fiscal year 1993; to the Committee on Commerce, Science, and Transportation.

EC-2218. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report on the preliminary spectrum reallocation; to the Committee on Commerce, Science, and Transportation.

EC-2219. A communication from the Deputy Associate Director for Compliance of the Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-2220. A communication from the Acting Chief Financial Officer, Department of Energy, transmitting, pursuant to law, notice relative to the report on uncosted obligation balances; to the Committee on Energy and Natural Resources.

EC-2221. A communication from the Chairman of the Pennsylvania Avenue Development Corporation, transmitting, a draft of proposed legislation to authorize operating and administrative expenses of the Pennsylvania Avenue Development Corporation; to the Committee on Energy and Natural Resources.

EC-2222. A communication from the Administrator (Energy Information Administration), Department of Energy, transmitting, pursuant to law, the report of performance profiles of major energy producers for calendar year 1992; to the Committee on Energy and Natural Resources.

EC-2223. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report of land for supplemental certification; to the Committee on Energy and Natural Resources.

EC-2224. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report of a review of Federal Authorities for Hazardous materials accident safety; to the Committee on Environment and Public Works.

EC-2225. A communication from the President of the United States, transmitting, pursuant to law, notice of an intention relative to Kazakhstan and Romania; to the Committee on Finance.

EC-2226. A communication from the Assistant Legal Adviser (Treaty Affairs), Department of State, transmitting, pursuant to law, a report of the texts of international agreements and background statements, other than treaties; to the Committee on Foreign Relations.

EC-2227. A communication from the Executive Secretary of the National Security Council, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2228. A communication from the Director of the Peace Corps, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2229. A communication from the Chairman of the U.S. International Trade Commission, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2230. A communication from the Assistant Secretary (Human Resources and Administration), Department of Energy, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2231. A communication from the Chairman of the U.S. Merit Systems Protection Board, transmitting, pursuant to law, the re-

port under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2232. A communication from the Chairman of the Harry S. Truman Scholarship Foundation, transmitting, pursuant to law, the annual report for calendar year 1993; to the Committee on Labor and Human Resources.

EC-2233. A communication from the Assistant Secretary of Education (Office of Special Education and Rehabilitative Services), transmitting, pursuant to law, the report of final regulations—rehabilitation services administration programs; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted on February 23, 1994:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments and an amendment to the title:

H.R. 1134: A bill to provide for the transfer of certain public lands located in Clear Creek County, Colorado, to the United States Forest Service, the State of Colorado, and certain local governments in the State of Colorado, and for other purposes (Rept. No. 103-228).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation:

Ginger Ehn Lew, of California, to be general counsel of the Department of Commerce, vice Wendell Lewis Willkie II, resigned;

Greg Farmer, of Florida, to be Under Secretary of Commerce for Travel and Tourism, vice John G. Keller, Jr., resigned;

Graham R. Mitchell, of Massachusetts, to be Assistant Secretary of Commerce for Technology Policy, vice Deborah Wince-Smith, resigned;

Thomas R. Bloom, of Michigan, to be an Assistant Secretary of Commerce, vice Thomas Jones Collamore, resigned;

Thomas R. Bloom, of Michigan, to be chief financial officer, Department of Commerce, vice Preston Moore, resigned;

Ann Brown, of Florida, to be a commissioner of the Consumer Product Safety Commission for a term of 7 years from October 27, 1992, vice Carol Gene Dawson, term expired;

Ann Brown, of Florida, to be chairman of the Consumer Product Safety Commission, vice Jacqueline Jones Smith;

Linda Joan Morgan, of Maryland, to be a member of the Interstate Commerce Commission for a term expiring December 31, 1998, vice Edward J. Philbin, term expired; and

Rear Adm. Robert E. Kramek, U.S. Coast Guard, to be Chief of Staff, U.S. Coast Guard, with the grade of vice admiral while so serving.

The following officer of the U.S. Coast Guard to be a permanent commissioned officer in the grade of lieutenant (junior grade) in the Regular Coast Guard: Stephen M. Midas.

Mr. HOLLINGS, Mr. President, for the Committee on Commerce, Science, and Transportation, I also report favor-

ably two nomination lists in the Coast Guard, which were printed in full in the CONGRESSIONAL RECORD of February 3 and 4, 1994, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

By Mr. NUNN, from the Committee on Armed Services:

The following named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a): Maj. Gen. Marc A. Cisneros, 461-60-0361, U.S. Army.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. FEINSTEIN (for herself, Mrs. MURRAY, Mr. KENNEDY, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mr. SIMON, and Mr. METZENBAUM):

S. 1864. A bill to prohibit sexual harassment by employers with fewer than 15 employees; to the Committee on Labor and Human Resources.

By Mr. MCCAIN:

S. 1865. A bill to amend title XIX of the Social Security Act to promote demonstrations by States of alternative methods of more efficiently delivering health care services through community health authorities; read the first time.

By Mr. METZENBAUM (for himself, Mr. DECONCINI, Mr. SIMON, and Mr. REID):

S. 1866. A bill to amend the National Security Act of 1947 to improve personnel measures that enhance security for classified information, and for other purposes; to the Select Committee on Intelligence.

By Mr. DURENBERGER (for himself, Mr. MURKOWSKI and Mr. JEFFORDS):

S. 1867. A bill to expedite the naturalization of aliens who served with special guerrilla units in Laos; to the Committee on the Judiciary.

By Mrs. BOXER:

S. 1868. A bill to amend the Internal Revenue Code of 1986 to allow the casualty loss deduction for disaster losses without regard to the 10-percent adjusted gross income floor; to the Committee on Finance.

By Mr. COHEN (for himself and Mr. BOREN):

S. 1869. A bill to amend the National Security Act of 1947 to improve counterintelligence measures through enhanced security for classified information, and for other purposes; to the Select Committee on Intelligence.

By Mr. BINGAMAN:

S. 1870. A bill to provide State programs to encourage employee ownership and participation in business decisionmaking throughout the United States; to the Committee on Labor and Human Resources.

By Mr. KENNEDY (for himself and Mr. KERRY):

S. 1871. A bill to establish the New Bedford Whaling National Historical Park in New Bedford, Massachusetts, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER:

S. 1872. A bill to expand United States exports of goods and services by requiring the development of objective criteria to achieve market access in Japan, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. WOFFORD (for himself, Mr. LEVIN, Mrs. FEINSTEIN, Mr. LAUTENBERG, Mr. KOHL, Mr. RIEGLE, and Mr. SARBANES):

S. Con. Res. 61. A concurrent resolution expressing the sense of the Congress in support of the President's actions to reduce the trade imbalance with Japan; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself, Mrs. MURRAY, Mr. KENNEDY, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mr. SIMON, and Mr. METZENBAUM):

S. 1864. A bill to prohibit sexual harassment by employers with fewer than 15 employees; to the Committee on Labor and Human Resources.

HARASSMENT-FREE WORKPLACE ACT

Mrs. FEINSTEIN. Mr. President, I am proud to introduce the Harassment-Free Workplace Act of 1994, which is cosponsored by my colleagues Senators BOXER, MURRAY, MOSELEY-BRAUN, KENNEDY, SIMON, and METZENBAUM.

Mr. President, current Federal law contains one glaring loophole; and that is, at present, title VII of the 1964 Civil Rights Act applies only to businesses with 15 or more employees. However, an employee of a company with fewer than 15 workers has no protection against sexual harassment under current Federal law.

This loophole essentially omits some 18 million workers—which comprise 20 percent of the American work force—from protection against sexual harassment.

In order to eliminate that loophole, we are proposing legislation which is modeled on legislation now in place in the State of California which protects all workers from sexual harassment in the workplace. This legislation would simply expand current Federal protection to cover workers in businesses with fewer than 15 employees.

I think there is no question in anybody's mind that sexual harassment is a serious and ongoing problem. Since the Anita Hill-Clarence Thomas hearings of more than 2 years ago, the num-

ber of sexual harassment claims processed by the Equal Employment Opportunity Commission, believe it or not, has increased by more than 50 percent.

The 1990 Census Bureau found that roughly 18 million workers, comprising 20 percent of the American work force, as I said, are not protected by Federal law.

A survey of the National Association of Female Executives found that 53 percent of all women surveyed report being harassed at some time in their working life.

Almost 90 percent of Fortune 500 companies report receiving complaints.

So ignoring sexual harassment is not only bad policy, it is also bad business.

A 1988 study of 160 Fortune 500 companies found that sexual harassment costs the average company a total of \$6.7 million a year due to absenteeism, low productivity, and high turnover, because an employee cannot continue to function at the same level when she is subjected to sexual harassment.

Many States—including my own State of California—recognize this problem.

Thirty-five States and the District of Columbia have adopted fair employment laws that offer more protection against sexual harassment for workers, according to the Congressional Research Service.

Yet, 15 States still offer no coverage beyond the Federal cutoff of 15 or more employees.

This legislation aims to level the playing field for all employees in America and create some basic laws which extend to every employee. It will mean that any employee, whether in corporate America or in small business in America, will be protected by laws against sexual harassment. It clearly defines what sexual harassment is, and it says the employer has a responsibility if it is brought to his attention to do something about it.

Much has been said about 1992 being the "Year of the Woman," but I am hopeful that 1994 will be the year for all women in the workplace to once and for all put this issue behind us.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1864

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 "Harassment-Free Workplace Act".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to provide Federal protection to small business employees from sexual harassment in their workplaces;

(2) to extend the sexual harassment provisions of current civil rights laws to private sector employers who are not currently cov-

ered by Federal law relating to sexual harassment; and

(3) to authorize the Equal Employment Opportunity Commission to enforce sexual harassment laws with respect to small businesses in the same manner as the Commission currently enforces employment discrimination laws with respect to other businesses.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) COMMERCE.—The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication—

(A) among the several States;

(B) between a State and any place outside thereof;

(C) within the District of Columbia, or a possession of the United States; or

(D) between points in the same State but through a point outside thereof.

(2) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established under section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(3) COMPLAINING PARTY.—The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this Act.

(4) EMPLOYEE.—The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) EMPLOYER.—The term "employer" means a person engaged in an industry affecting commerce who has fewer than fifteen employees for each working day in each of 33 or more calendar weeks in the current and in the preceding calendar year.

(6) EMPLOYMENT AGENCY.—The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

(7) INDUSTRY AFFECTING COMMERCE.—The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, and further includes any governmental industry, business, or activity.

(8) LABOR ORGANIZATION.—The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay,

hours, or other items or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(9) LABOR ORGANIZATION DEEMED TO BE ENGAGED IN AN INDUSTRY AFFECTING COMMERCE.—A labor organization shall be deemed to be engaged in an industry affecting commerce if—

(A)(i) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer; or

(ii) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organizations) is fewer than 15; and

(B) such labor organization—

(i) is the certified representative of employees under the provisions of the National Labor Relations Act or the Railway Labor Act;

(ii) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce;

(iii) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of clause (i) or (ii);

(iv) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of clause (i) or (ii) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(v) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of clauses (i), (ii), (iii), or (iv).

(10) PERSON.—The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, United States Code, or receivers.

(11) RESPONDENT.—The term "respondent" means—

(A) an employer, employment agency, labor organization; or

(B) a joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, that serves an employer or an employee.

(12) STATE.—The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

SEC. 4. SEXUAL HARASSMENT.

(a) IN GENERAL.—It shall be an unlawful employment practice for a respondent to engage in a practice that constitutes sexual harassment, within the meaning of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) (including any regulation or administrative guideline issued under such title, or any applicable case law issued by a Federal

court with respect to such title, regarding such harassment) against an employee or an applicant for employment with an employer.

(b) ANTI-RETALIATION.—It shall be an unlawful employment practice for a respondent to discriminate against any such employee or applicant because the employee or applicant has opposed any practice made an unlawful employment practice by this Act, or because the employee or applicant has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

SEC. 5. ENFORCEMENT, REMEDIES, AND RELATED PROVISIONS.

(a) ENFORCEMENT AND REMEDIES.—

(1) IN GENERAL.—This Act provides the powers, remedies, and procedures set forth in sections 705, 706, 707, 709, 710, 713, and 714 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, 2000e-9, 2000e-12, and 2000e-13) to the Commission, to the Attorney General, or to any person alleging a violation of any provision of this Act, as appropriate.

(2) DAMAGES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in an action brought by a complaining party under paragraph (1) in accordance with section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) against a respondent who engaged in a practice that violates a provision of this Act, the complaining party may be awarded compensatory and punitive damages as allowed in section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

(B) LIMITATIONS.—If—

(i) a complaining party is awarded, under this paragraph, compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, or other nonpecuniary losses, or punitive damages; and

(ii) on the day on which the complaining party is awarded damages described in clause (i) there is in effect under section 1977A of the Revised Statutes a limit on the sum of the amount of such damages that may be awarded under such section in an action in which the respondent has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year,

the sum of the amount of such damages that the complaining party may be awarded under this paragraph may not exceed the sum described in clause (i).

(C) JURY TRIAL.—If a complaining party seeks compensatory or punitive damages under this paragraph—

(i) any party may demand a trial by jury; and

(ii) the court shall not inform the jury of the limitations described in subparagraph (B).

(b) EXTRATERRITORIAL APPLICATION.—Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) shall apply with respect to the application of this Act to an employer, employing agency, labor organization, or committee, in the same manner and to the same extent as such section applies with respect to the application of title VII of such Act (42 U.S.C. 2000e et seq.) to an employer, employing agency, labor organization, or committee, respectively, as such terms are used in such Act.

(c) EFFECT ON STATE LAWS.—Section 708 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-7) shall apply with respect to the construction of this Act in the same manner and to

the same extent as such section applies with respect to the construction of title VII of such Act.

SEC. 6. POSTING NOTICES.

(a) NOTICE.—Every respondent shall post and keep posted, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10), a notice describing the applicable provisions of this Act, to be prepared or approved by the Commission and to appear in an accessible format, for employees and applicants for employment with employers.

(b) PENALTY.—A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

SEC. 7. EFFECTIVE DATE.

This Act shall take effect 6 months after the date of enactment of this Act.

Ms. MOSELEY-BRAUN. Mr. President, I am proud to be an original co-sponsor of the Harassment-Free Workplace Act. This legislation is important because it will extend legal protections against sexual harassment to every workplace in America. I believe it is critical to expand civil rights legislation to protect every American.

Under current law, the Civil Rights Act of 1964 as amended, an employee who has been the victim of sexual harassment in the workplace has the right to sue an employer for back pay and emotional distress only if she works for a company with greater than 15 employees. The law comes into play not based on the degree of harassment, or the injury caused, but as a function of the size of the company.

Mr. President, I believe this is the wrong standard. It is an arbitrary standard. I believe that all women and men should have the right to work in an environment free from harassment. Women who work in small companies are entitled to the same civil rights protections as women in large companies. That is what this bill does.

I would like to talk for a moment about the women that this bill will protect. Many of these women are the main providers for their families. They work hard and play by the rules and raise their children. They are our mothers, our sisters, and our daughters. And they have every right to equal protection under the law.

It is not enough to say that a woman working for a small company can change jobs if she is being harassed. Oftentimes, changing jobs is not a good option for a woman. For example, her employer may provide health benefits. But without portability of health care benefits, a woman with a preexisting condition might not be able to obtain affordable health care coverage at a new job.

This bill is not going to funnel money to lawyers. It will not produce unnecessary litigation. This bill will protect women who need our help. These women look to the Congress and the legal system as their last resort. Our laws must be responsive. Our country must respect the work of women at all levels, in every business, in every community.

Mr. President, small businesses are growing many times faster and creating many more jobs than corporate America. As a member of the Small Business Committee, I welcome the extension of Civil Rights Act protections to the most dynamic sector of our economy. More and more women are working in small businesses, and they deserve the protections the Congress has already awarded to women in big business.

I am proud that in my State of Illinois, the legislature reformed the Illinois Human Rights Act in 1992 to protect from sexual harassment any person who works in a company of more than one employee. In Illinois, we recognize that every person has the right to work in a harassment-free environment. But most States do not have legislation which protects all employees. That is why this Federal legislation is so important.

Mr. President, I was sent to the Senate by women and men across Illinois who thought I could make a difference. This legislation, if passed, will make an enormous difference in the lives of millions of women in Illinois and across America. I want to commend my colleague from California, Senator FEINSTEIN, for her leadership on this legislation. I intend to work closely with her to ensure passage of this bill.

Mr. SIMON. Mr. President, as chair of the Subcommittee on Employment and Productivity, which has oversight jurisdiction over the Equal Employment Opportunity Commission, I am pleased to be an original cosponsor of a measure that will provide recourse for the millions of women and men employed in the small business sector who currently have no protection under Federal sexual harassment law. While many States such as my home State of Illinois have enacted legislation to extend protection to small businesses, the increased incidence of sexual harassment in the workplace demands congressional action. Mr. President, my colleague, Senator FEINSTEIN, is introducing legislation to provide protection and recourse to those employed in businesses with fewer than 15 employees.

For the past two decades, we have seen a remarkable evolution in Federal sexual harassment law. In 1986, the Supreme Court in *Meritor Savings Bank versus Vinson* ratified the consensus emerging among the Federal circuits and the Equal Employment Opportunity Commission by recognizing a title VII cause of action for sexual harassment, even where the victim suffers no tangible or economic loss. Since the enactment of the Civil Rights Act of 1991, sexual harassment plaintiffs for the first time are entitled to compensatory and punitive damages, and have the right to a jury trial. More recently, the Supreme Court revisited sexual harassment issues in *Harris versus*

Forklift Systems, Inc. and held that workers need not show severe psychological injury to prevail in sexual harassment cases.

Despite these recent developments and increased media attention to the subject of sexual harassment, sexual harassment in the workplace continues to be a pervasive problem. Some 70 percent of working women have been the victims of sexual harassment, according to several recent surveys. According to the National Institute of Business Management, 1 out of 2 women reports having been sexually harassed in the workplace within the past 2 years. The Equal Employment Opportunity Commission reports that sexual harassment complaints have increased 125 percent nationwide since 1990.

While the reported increase is significant, it does not tell the entire story. Sexual harassment is significantly underreported. In a 1992 Working Women survey, more than 60 percent of those surveyed responded that they had been harassed; however, only 1 out of 4 reported the harassment to their employers. Many women do not feel that they can safely report the problem, and many fear retaliation. Only 1 of 5 women surveyed by Working Women believes companies and the government treat complaints of harassment justly. Over 90 percent think that companies and government must do more to prevent and stop the abuse. Harassment in any workplace, whether in the public or private sector, must not be tolerated.

Sexual harassment is discrimination. Sexual harassment is about power and fear. Harassment often stems from an outdated attitude about the proper role of women, and is one way to keep women in their place. Harassment creates an onerous barrier that prevents women from reaching their potential in the workplace. Those who are harassed experience many serious ill effects such as being fired or forced to quit, undermined self-esteem, impaired health, and long-term career damage. Emotional turmoil affects work performance and forced career detours all too often translate into decreased earning power.

Harassment hurts employers and our Nation also. An earlier Working Women survey reported harassment costs a typical Fortune 500 company \$6.7 million a year in absenteeism, turnover, and lost productivity. In order to compete in a global economy, all barriers that keep women and men from reaching their potential in the workplace must be removed.

Currently, title VII covers only employers of 15 or more employees. According to the Small Business Administration, approximately 89 percent of all employers operated businesses with less than 20 employees in 1990. These small businesses employed approximately 20 percent of the private work

force. These statistics mean that over 18 million women and men have no recourse under Federal sexual harassment law. The proposed legislation will help ensure a nondiscriminatory workplace for all.

I urge my colleagues to join me in support of the Harassment-Free Workplace Act.

By Mr. MCCAIN:

S. 1865. A bill to amend title XIX of the Social Security Act to promote demonstrations by States of alternative methods of more efficiently delivering health care services through community health authorities.

THE COMMUNITY HEALTH IMPROVEMENT ACT OF 1994

• Mr. MCCAIN. Mr. President, I am pleased to introduce the Community Health Improvement Act of 1994, which is being cosponsored by Senators HOLLINGS and BROWN. The purpose of this legislation, which is similar to H.R. 3573 sponsored by Representative ROWLAND and cosponsored by Representative BILIRAKIS, is to enhance access to quality care for underserved populations, such as residents of rural areas and inner cities. It is strongly supported by the National Association of Community Health Centers.

As we debate health care reform, it has become increasingly apparent that millions of Americans have inadequate access to health care services as a result of where they live. A report from the National Association of Community Health Centers and George Washington University found that there are 43 million Americans who are considered medically underserved—people who can't get care when they need it. These people live in all areas of the country, but they are particularly located in rural communities and inner-city neighborhoods in which health care delivery systems are poorly developed. While some are uninsured, many have coverage but are still not able to obtain the efficient, integrated health care services they need.

The Community Health Improvement Act of 1994 will allow us to meet the needs of our medically underserved populations by building our national capacity of integrated service delivery systems. I want to emphasize that this is not a health reform bill, in the sense that it does not attempt to comprehensively address the way in which health care services are financed and delivered in this country. Of the various health reform bills that we are considering, some attempt to improve the service delivery capacity in underserved areas and some do not. Yet, all of these bills will entail some phase in and none will benefit underserved people immediately. This bill will allow us to address their problems while we are waiting for reform to go into effect. Moreover, it will not conflict with whichever health reform proposal is ultimately enacted.

Specifically, the Community Health Improvement Act would promote demonstrations by States of alternative methods of delivering health care services to underserved populations under Medicaid. It would authorize States to apply to the Secretary of DHHS to develop 5-year renewable demonstration projects establishing Community Health Authorities [CHA's]—vertically and horizontally integrated health service networks consisting of community health centers, rural health clinics, public health agencies, hospitals, and other local providers. The CHA's would enroll and care for underserved Medicaid recipients, and, to the extent financially feasible, would expand coverage to uninsured and underinsured low-income individuals.

States would obtain Federal matching funds to support the planning, development, and operation of the CHA's. The bill caps Federal payment for services provided by CHA's to the previous year's costs plus CPI, thereby funding them on a capitated basis. The CHA, not the Federal or State government, would be at financial risk for costs incurred above the capitation payment per enrollee. The National Association of Community Health Centers has advised us that the administrative costs of establishing the networks will be offset by program savings, and that the bill is likely to be graded budget neutral by CBO. It projects program savings of \$2,150,000 annually for each State that has a demonstration, after the first 2 years of \$250,000 in startup costs.

The bill also amends the Public Health Service Act to authorize grants to community health centers to support the planning and development of integrated health service networks that serve medically underserved areas and populations. This provision is independent of the Medicaid provision in the bill, and would allow community health centers to develop networks that are less comprehensive than the CHA's if they choose. Unlike H.R. 3573, our Senate bill does not grant malpractice protection under the Federal Tort Claims Act [FTCA] for CHA providers. This provision in the House bill would create an open-ended Federal liability for negligent actions of providers. Community health centers will maintain their FTCA coverage under current law.

While we are debating different health care reform proposals, and waiting for whatever reform plan that is ultimately enacted to go into effect, we should do everything that we can to make health care services more accessible and affordable for Americans, particularly underserved populations. The Community Health Improvement Act of 1994 offers one important way in which we can do this now. It will enhance our health care infrastructure where it is inadequate, enhance the ef-

iciency of services in underserved areas, and enhance the affordability of care of uninsured and underinsured people.

Mr. President, I ask for unanimous consent that the text of our bill, as well as a recent New York Times article entitled "Finding, Not Paying, Doctors is Top Rural Health Concern" that indicates the need for this legislation, be included in the RECORD.

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

S. 1865

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 "Community Health Improvement Act of 1994".

SEC. 2. COMMUNITY HEALTH AUTHORITIES DEMONSTRATION PROJECTS.

(a) IN GENERAL.—Title XIX of the Social Security Act, as amended by section 13631(b) of the Omnibus Budget Reconciliation Act of 1993, is amended—

(1) by redesignating section 1931 as section 1932; and

(2) by inserting after section 1930 the following new section:

"COMMUNITY HEALTH AUTHORITIES DEMONSTRATION PROJECTS

"SEC. 1931. (a) IN GENERAL.—In order to test the effectiveness of various innovative health care delivery approaches through the operation of community health authorities, the Secretary shall operate a program under which States establish projects to demonstrate the effectiveness of such approaches in providing access to cost-effective preventive and primary care and related services for various areas and populations, including low-income residents of medically underserved areas or for medically underserved populations. A State may operate more than 1 such project.

"(b) SELECTION OF STATE PROJECTS.—

"(1) IN GENERAL.—A State is eligible to participate in the program, and establish a demonstration project, under this section only if—

"(A) the State submits to the Secretary an application, at such time and in such form as the Secretary may require, for participation in the program; and

"(B) the Secretary finds that—

"(i) the application contains assurances that the State will support the development of a community health authority that meets the requirements of this section,

"(ii) the community health authority will meet the requirements for such an authority under subsection (c),

"(iii) the State provides sufficient assurances that the demonstration project of a community health authority meets (or, when operational, will meet) the requirements of subsection (d), and

"(iv) the State will comply with the requirements of subsections (g) and (h).

"(2) CONTENTS OF APPLICATION.—Each application submitted under paragraph (1) for a demonstration project shall include at least the following:

"(A) A description of the proposed community health authority and of the area or population that the authority will serve.

"(B) A demonstration that the CHA will serve at least 1 geographic area or population group that is designated as medically

underserved under section 330 of the Public Health Service Act or as having a shortage of health professionals under section 332 of such Act.

"(C) An assessment of the area's or population's need for services and an assurance that the services of the CHA will be responsive to those needs.

"(D) A list of the items and services to be furnished by the CHA under the project, broken down by those items and services that are treated as medical assistance under the State plan under this title and other items and services that will be provided by the CHA (either directly or through coordination with other entities).

"(E) An assurance that the CHA has entered into (or plans to enter into) written participation agreements with a sufficient number of providers to enable the CHA to furnish all of such items and services to enrolled individuals.

"(F) An assurance that the State plan under this title will provide payment to the authority in accordance with subsection (e).

"(G) Evidence of support and assistance from other State agencies with responsibility for providing or supporting the provision of preventive and primary care services to underserved and at-risk populations.

"(H) A proposed budget for the CHA.

"(3) PRIORITY.—The Secretary shall give priority to those applications proposing to support a CHA that includes as participating providers all Federally-qualified health centers serving the area or population or (in areas for which there are no Federally-qualified health centers) all entities that would be Federally-qualified health centers but for the failure to meet the requirement described in section 329(f)(2)(G)(i) of the Public Health Service Act or the requirement described in section 330(e)(3)(G)(i) of such Act (relating to the composition of the entity's governing board).

"(4) PERIOD OF APPROVAL.—Each project approved under this section shall be approved for a period of not less than 5 years, subject to renewal for subsequent periods unless such approval is withdrawn for cause by the Secretary or at the request of the State.

"(c) COMMUNITY HEALTH AUTHORITY (CHA) DEFINED.—In this section, the terms 'community health authority' and 'CHA' mean a nonprofit entity that meets the following requirements:

"(1) The entity serves (or will serve at the time it becomes operational under a project) a geographic area or population group that includes those designated—

"(A) under section 330 of the Public Health Service Act as medically underserved, or

"(B) under section 332 of such Act as a health professions shortage area.

"(2) The entity enrolls—

"(A) individuals and families who are Medicaid-eligible;

"(B) within the limits of its available resources and capacity, other individuals who have incomes below 200 percent of the Federal official poverty level; and

"(C) within the limits of its available resources and capacity, other individuals and families who are able to pay the costs of enrollment.

"(3) Through its participating providers, the entity provides or, through contracts, arranges for the provision of (or, by the time it becomes operational, will so provide or arrange for the provision of) at least preventive services, primary care services, inpatient and outpatient hospital services, and any other service provided by a participating provider for which payment may be made

under the State plan under this title to enrolled individuals.

"(4) The entity must include (to the maximum extent practicable) as participating providers any of the following providers that furnish services provided by (or arranged by) the entity that are located in or serve the area or population to be covered:

"(A) Federally-qualified health centers.

"(B) Rural health clinics.

"(C) Local public health agencies that furnish such services.

"(D) A hospital (or other provider of inpatient or outpatient hospital services) which has a participation agreement in effect with the State under its plan under this title, which is located in or serving the area or population to be served.

"(5) The entity may include as participating providers other providers (which may include private physicians or group practice offices, other community clinics, limited service providers (such as prenatal clinics), and health professionals teaching programs (such as area health educational centers)) and take other appropriate steps, to the extent needed to assure that the network is reasonable in size and able to provide (or arrange for the provision of) the services it proposes to furnish to its enrollees.

"(6) The entity must maintain written agreements with each participating provider under which the provider agrees to participate in the CHA and agrees to accept payment from the CHA as payment in full for services furnished to individuals enrolled with the CHA (subject to the requirements of subsection (g)(4), in the case of services furnished by a provider that are described in subparagraph (B) or (C) of section 1905(a)(2)).

"(7) Under the written agreements described in paragraph (6), if a majority of the board of directors of the entity has determined that a participating provider is failing to meet any of the requirements of the participation agreement, the board may terminate the provider's participation agreement in accordance with the following requirements:

"(A) Subject to subparagraph (B), prior to any termination of a provider's participation agreement, the provider shall be entitled to 30 days prior notice, a reasonable opportunity to correct any deficiencies, and an opportunity for a full and fair hearing conducted by the entity to dispute the reasons for termination. The provider shall be entitled to appeal the board of directors' decision directly to a committee consisting of representatives of all of the entity's participating providers.

"(B) If a majority of the board of directors of the entity determines that the continued participation of a provider presents an immediate threat to the health and safety of patients or a substantial risk of improper diversion of funds, the board may suspend the provider's participation agreement (including the receipt of funds under the agreement) for a period of up to 60 days. During this period, the entity shall take steps to ensure that patients who were assigned to or cared for by the suspended provider are appropriately assigned or referred to alternative participating providers. The suspended provider shall be entitled to a hearing within the period of the suspension to show cause why the suspension should be lifted and its participation agreement restored. If dissatisfied with the board's decision, the provider shall be entitled to appeal the decision directly to a committee consisting of representatives of all of the entity's participating providers.

"(C) For all other disputes between the entity and its participating providers (including disputes over the amounts due or interim rates to be paid to a provider), the entity shall provide an opportunity for a full and fair hearing.

"(8) The entity must be governed by a board of directors that includes representatives of the participating providers and, as appropriate, other health professionals, civic or business leaders, elected officials, and residents of the area or population served. Not less than 51 percent of such board shall be composed of individuals who are enrolled in the CHA and who are representatives of the community served.

"(d) DEMONSTRATION PROJECT REQUIREMENTS.—The requirements of this subsection, with respect to a demonstration project of a CHA under this section, are as follows:

"(1)(A) All services furnished by the CHA under the project shall be available and accessible to all enrolled individuals and, except as provided in subparagraph (B), must be available without regard to an individual's ability to pay for such services.

"(B) A CHA shall prepare a schedule of discounts to be applied to the payment of premiums by individuals who are not medicaid-eligible individuals which shall be adjusted on the basis of the individual's ability to pay.

"(2) The CHA shall take appropriate steps to emphasize the provision of preventive and primary care services, and shall ensure that each enrolled individual is assigned to a primary care physician (to the greatest extent appropriate and feasible), except that the CHA shall establish a process through which an enrolled individual may be assigned to another primary care physician for good cause shown.

"(3) The CHA must make reasonable efforts to reduce the unnecessary or inappropriate use of hospital or other high-cost services through an emphasis on preventive and primary care services, the implementation of utilization review or other appropriate methods.

"(4) The State must regularly provide the CHA with information on other medical, health, and related benefits that may be available to individuals enrolled with the CHA under programs other than the State plan under this title, and the CHA must provide its enrolled individuals with enrollment information and other assistance to assist such individuals in obtaining such benefits.

"(5) The State and the CHA must meet such financial standards and requirements and reporting requirements as the Secretary specifies and must prepare and submit to the Secretary an annual independent financial audit conducted in accordance with requirements specified by the Secretary.

"(6) In collaboration with the State, the CHA must adopt and use community-oriented, patient-responsive quality assurance and control systems in accordance with requirements specified by the Secretary. Such systems must include at least an ongoing quality assurance program that measures consumer satisfaction with the care provided under the network, stresses improved health outcomes, and operates a community health status improvement process that identifies and investigates community health problems and implements measures designed to remedy such problems.

"(e) CAPITATION PAYMENTS.—

"(1) IN GENERAL.—Under a demonstration project under this section, the State shall enter into an annual contract with the CHA under which the State shall make monthly

payments to the CHA for covered services furnished through the CHA to individuals entitled to medical assistance under this title in the amount specified in paragraph (2). Payment shall be made at the beginning of each month on the basis of estimates of the amounts payable and amounts subsequently paid are subject to adjustment to reflect the amounts by which previous payments were greater or less than the amount of payments that should have been made.

"(2) AMOUNT OF CAPITATION PAYMENT.—The amount of a monthly payment under paragraph (1) during a contract year, shall be equal to $\frac{1}{2}$ of the product of—

"(A)(i) the average per capita amounts expended under this title under the State plan for covered services to be furnished under the demonstration project for similar medicaid-eligible individuals for the most recent 12-month period ending before the date of the enactment of this section, increased by (ii) the percentage change in the consumer price index for all urban consumers (all items; U.S. city average) during the period that begins upon the expiration of such 12-month period and ends upon the expiration of the most recent 12-month period ending before the first month of the contract year for which complete financial data on such index is available, and

"(B) the number of medicaid-eligible individuals enrolled under the project as of the 15th day of the month prior to the first month of the contract year (or, in the case of the first year for which a contract is in effect under this subsection, the CHA's reasonable estimate of the number of such individuals who will be enrolled in the project as of the 15th day of such month).

"(f) ADDITIONAL STATE ASSISTANCE FOR PLANNING, DEVELOPMENT, AND OPERATIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), in addition to the payments under subsection (e), demonstration projects approved under this section are eligible to have approved expenditures described in paragraph (3) treated, for purposes of section 1903(a)(7), as expenditures found necessary by the Secretary for the proper and efficient administration of the State plan under this title.

"(2) SPECIAL RULES.—

"(A) LIMITATION WITH RESPECT TO ANY COMMUNITY HEALTH AUTHORITY.—The total amount of expenditures with respect to any CHA that may be treated as expenditures for administration under paragraph (1) for any 12-month period shall not exceed \$250,000.

"(B) LIMITATION ON NUMBER OF YEARS.—The number of 12-month periods for which expenditures are treated as expenditures for administration under paragraph (1) for a CHA shall not exceed—

"(i) 2 for expenditures for planning and development assistance, described in paragraph (3)(A), and

"(ii) 2 for expenditures for operational assistance, described in paragraph (3)(B).

"(C) NO RESULTING REDUCTION IN AMOUNTS PROVIDED UNDER PHSA GRANTS.—No grant to a CHA or 1 of its participating providers under the Public Health Service Act or this Act may be reduced on the ground that activities of the CHA that are considered approved expenditures under paragraph (3) are activities for which the CHA or the participating providers received funds under such Act.

"(3) APPROVED EXPENDITURES.—The approved expenditures described in this paragraph are as follows:

"(A) PLANNING AND DEVELOPMENT.—Expenditures for planning and development with respect to a CHA, including—

"(i) developing internal management, legal and financial and clinical, information, and

reporting systems for the CHA, and carrying out other operating activities of the CHA;

"(ii) recruiting, training and compensating management staff of the CHA and, as appropriate and necessary, management and clinical staff of any participating provider;

"(iii) purchasing essential equipment and acquiring, modernizing, expanding, or (if cost-effective) constructing facilities for the CHA and for participating providers (including amortization costs and payment of interest on loans); and

"(iv) entering into arrangements to obtain or participate in emerging medical technologies, including telemedicine.

"(B) OPERATIONS.—Expenditures in support of the operations of a CHA, including—

"(i) the ongoing management of the CHA, including daily program administration, recordkeeping and reporting, assurance of proper financial management (including billings and collections) and oversight of program quality;

"(ii) developing and operating systems to enroll eligible individuals in the CHA;

"(iii) data collection, in collaboration with the State Medicaid agency and the State health department, designed to measure changes in patient access to care, the quality of care furnished, and patient health status, and health care outcomes;

"(iv) ongoing community outreach and community education to all residents of the area or population served, to promote the enrollment of eligible individuals and the appropriate utilization of health services by such individuals;

"(v) the establishment of necessary reserves or purchase of stop-loss coverage; and

"(vi) activities relating to health professions training, including residency training at participating provider sites.

"(g) ADDITIONAL REQUIREMENTS.—

"(1) MANDATORY ENROLLMENT OF MEDICAID-ELIGIBLE INDIVIDUALS.—Notwithstanding any provision of section 1903(m), a State participating in a demonstration project under this section may require that each Medicaid-eligible resident in the service area of a CHA operating under the project is not eligible to receive any medical assistance under the State plan that may be obtained through enrollment with the CHA unless the individual receives such assistance through enrollment with the CHA.

"(2) CONTINUED ENTITLEMENT TO ADDITIONAL BENEFITS.—In the case of a Medicaid-eligible individual enrolled with a CHA under a demonstration project under this section, the individual shall remain entitled to medical assistance for services which are not covered services under the project.

"(3) HMO-RELATED REQUIREMENTS.—A CHA under this section shall be deemed to meet the requirements of section 1903(m) (subject to paragraph (1)) in the same manner as an entity listed under section 1903(m)(2)(G).

"(4) TREATMENT OF FEDERALLY-QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS.—Payments under a demonstration project under this section to a Federally qualified health center or rural health clinic which is a participating provider shall be made consistent with section 1902(a)(13)(E) for all services offered by the CHA which are provided by such a center or clinic.

"(5) OUTSTATIONING ELIGIBILITY WORKERS.—Under the project, the State may (in addition to meeting the requirements of section 1902(a)(55)) provide for, or pay the reasonable costs of, stationing eligibility workers at appropriate service sites under the project, and may permit Medicaid-eligible individuals to be enrolled under the State plan at such a CHA or at such a site.

"(6) PURCHASE OF STOP-LOSS COVERAGE.—The State shall ensure that the CHA has purchased stop-loss coverage to protect against default on its obligations under the project. If an entity otherwise qualified to serve as a CHA is prohibited under State law from purchasing such coverage, the State shall waive the application of such law to the extent necessary to permit the entity to purchase such coverage.

"(h) EVALUATION AND REPORTING.—

"(1) CHA.—Each CHA in a State with a demonstration project approved under this section shall prepare and submit to the State an annual report on its activities during the previous year.

"(2) STATE.—Taking into account the reports submitted pursuant to paragraph (1), each State with a demonstration project approved under this section shall prepare and submit to the Secretary an annual evaluation of its activities and services under this section. Such evaluation shall include an analysis of the effectiveness of the project in providing cost-effective health care to enrolled individuals.

"(3) REPORT TO CONGRESS.—Not later than 3 years after the date of the enactment of this section, the Secretary shall submit to Congress a report on the demonstration projects conducted under this section. Such report shall include an analysis of the effectiveness of such projects in providing cost-effective health care for the areas or populations served.

"(i) COLLABORATION IN ADMINISTRATION.—In carrying out this section, the Secretary shall assure the highest possible level of collaboration between the Health Care Financing Administration and the Public Health Service. Such collaboration may include (if appropriate and feasible) any of the following:

"(1) The provision by the Public Health Service of new or increased grant support to eligible entities participating in a CHA, in order to expand the availability of services (particularly preventive and primary care services).

"(2) The placement of health professionals at eligible locations and collaboration with Federally-assisted health professions training programs located in or near the areas served by community health authorities.

"(3) The provision of technical and other nonfinancial assistance.

"(j) DEFINITIONS.—In this section:

"(1) MEDICAID-ELIGIBLE INDIVIDUAL.—The term 'Medicaid-eligible individual' means an individual described in section 1902(a)(10)(A) and entitled to medical assistance under the State plan.

"(2) PARTICIPATING PROVIDER.—The term 'participating provider' means, with respect to a CHA, a provider that has entered into an agreement with the CHA for the provision of covered services under a project under this section.

"(3) PREVENTIVE AND PRIMARY CARE SERVICES.—'Preventive' and 'primary' services include those services described in section 1905(1)(2)(A) and included as Federally-qualified health center services."

(b) CONTINUED MEDICAID ELIGIBILITY FOR UP TO 1 YEAR.—Section 1902(e)(2) of such Act (42 U.S.C. 1396a(e)(2)) is amended—

(1) in subparagraph (A)—

(A) by inserting "or with a community health authority under a demonstration project under section 1931" after "section 1876", and

(B) by striking "such organization or entity" and inserting "such organization, entity, or authority"; and

(2) in subparagraph (B), by striking "effective." and inserting the following: "effective

(or, in the case of an individual enrolled with a community health authority under a demonstration project under section 1931, of not more than 1 year beginning on the date the individual's enrollment with the authority becomes effective)."

(c) EXCEPTION TO ANTI-KICKBACK LAW.—Section 1128B(b)(3) of such Act (42 U.S.C. 1320a-7b(b)(3)) is amended—

(1) by striking "and" at the end of subparagraph (D),

(2) by striking the period at the end of subparagraph (E) and inserting "; and", and

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

"(F) any remuneration paid, or received, by a Federally qualified health center, rural health clinic, or other entity which is a participating provider under a demonstration project under section 1931 as part of an arrangement for the procurement of goods or services or the referral of patients or the lease or purchase of space or equipment."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar quarters beginning on or after October 1, 1994.

SEC. 3. HEALTH CENTER PROGRAM AMENDMENTS.

(a) AUTHORIZATION OF GRANTS FOR NETWORK DEVELOPMENT.—

(1) MIGRANT HEALTH CENTERS.—Section 329 of the Public Health Service Act (42 U.S.C. 254b) is amended by adding at the end the following:

"(j)(1) The Secretary may make a grant, to an entity receiving a grant under this section or to a group of such entities, to support the planning and development of health service networks (as defined in paragraph (3)) which will serve high impact areas, medically underserved areas, or medically underserved populations within the area they serve (or propose to serve).

"(2) A grant under this subsection for the planning and development of a health service network may be used for the following costs:

"(A) The costs of developing the network corporate entity, including planning and needs assessment.

"(B) The costs of developing internal management for the network, as well as costs of developing legal, financial, clinical, information, billing, and reporting systems, and other costs necessary to achieve operational status.

"(C) The costs of recruitment, training, and compensation of management staff of the network and, as appropriate and necessary, the management and clinical staff of any participating provider.

"(D) The costs of developing additional primary health and related service sites, including costs related to purchase of essential equipment, acquisition, modernization, expansion, or, if cost-effective, construction of facilities.

"(3) In this subsection, the term 'health service network' means a nonprofit private entity that—

"(A) through its participating providers (which may provide services directly or through contract) assures the provision of primary health and related services and, as appropriate, supplemental health services to residents of the high impact area or medically underserved area or members of the medically underserved population covered by the network,

"(B) includes, as participating providers, at least all recipients of grants under this section or section 330, 340, or 340A that provide primary health and related services to the residents of the area it serves (or proposes to serve), and that may include, at the

entity's option, any other providers of primary health or supplemental health services to residents of the high impact area or medically underserved area or members of the medically underserved population covered by the network, but only if such participating providers agree to provide services without regard to an individual's ability to pay, and

"(C) is governed by individuals a majority of whom are patients, employees, or board members of its participating providers that receive grants under this section or section 330, 340, or 340A."

(2) **COMMUNITY HEALTH CENTERS.**—Section 330 of such Act (42 U.S.C. 254c) is amended by adding at the end the following:

"(1)(1) The Secretary may make a grant, to an entity receiving a grant under this section or to a group of such entities, to support the planning and development of health service networks (as defined in section 329(j)(3)) which will serve high impact areas, medically underserved areas, or medically underserved populations within the area they serve (or propose to serve).

"(2) A grant under this subsection for the planning and development of a health service network may be used for the costs described in section 329(j)(2)."

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(b) **EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.**—

(1) **MIGRANT HEALTH CENTERS.**—Section 329(h)(1)(A) of such Act (42 U.S.C. 254b(h)(1)(A)) is amended—

(A) by inserting "and subsection (j)" after "through (e)", and

(B) by striking "1994" and inserting "1999".

(2) **COMMUNITY HEALTH CENTERS.**—Section 330(g)(1)(A) of such Act (42 U.S.C. 254c(g)(1)(A)) is amended by striking "1994" and inserting "1999".

[From the New York Times, Feb. 19, 1994]

FINDING, NOT PAYING, DOCTORS IS TOP RURAL HEALTH CONCERN
(By Adam Clymer)

PARKSTON, SD, Feb. 19.—The big problems of health care sound very different in small farming towns than they do in Washington. The issues that Congressional subcommittees will begin voting on in a few days are remote, often irrelevant and frequently unknown in the rural Midwest.

Several days of conversations here made it clear that the big problem is less how to pay for health care than to make sure that there is health care to pay for.

Few people concentrate on worries about bureaucracies and health insurance purchasing alliances, though they have their doubts. Instead they talk about recruiting doctors and using other medical workers more efficiently.

Gale Walker, the administrator of the 30-bed St. Benedict's Hospital in Parkston, 60 miles west of Sioux Falls, said: "Here, it's not 'Do I have a choice?' it is, 'What do I do to find a doctor or a nurse practitioner?'"

Or, said Linda Guthmiller, the assistant administrator and laboratory chief at the 25-bed Landman-Jungman Hospital in Scotland, 24 miles to the southeast, "Doctors have to start dropping their egos, and they have to let the nurses and the physicians' assistants do more."

The health care issue has hit South Dakota with full force with Hillary Rodham Clinton's visit to Lennox on Friday, a preemptive Republican attack that morning in Sioux Falls by Senator Phil Gramm of Texas, and a sudden surge in news coverage of the subject.

It was clear from comments by people who heard Mrs. Clinton, conversations with people here and in Scotland, and in a discussion with nine South Dakotans assembled on Friday evening to talk about the subject, that there seems to be a consensus on one crucial issue: the United States ought to see to it that everyone has health insurance.

After the group discussion, Kate Heligas, executive director of the South Dakota Nurses Association said, "I think until we have universal coverage, the rest of the pieces will not fit."

FEARING 'ONE SIZE FITS ALL'

Lots of people do have a vague idea of how President Clinton's plan might affect them, at least in some meaningful particular. Roy D. Nyberg, who runs the Ace Hardware Store in Sioux Falls, thinks he could not afford to increase his health insurance payments for workers to the level the plan demands, although he thinks the nation needs universal coverage. Cecelia Humphrey, an 85-year-old resident of a Sioux Falls nursing home, told Mrs. Clinton: "One thing I'm pleased about is we get to keep our doctor. I couldn't live without mine.

But as to the alternative plans from Republicans and other Democrats, hardly anyone knows what is in them. Dr. Phillip Barker, a family practitioner at St. Benedict's, dismisses them because "most of them fail to provide universal coverage," even though he thinks universal health insurance could greatly increase the demand for medical care and lead to more 90-hour weeks for isolated doctors like himself.

The one profound shared concern among South Dakotans is a fear that Republicans like Senator Gramm have capitalized on: that Washington uses a "one size fits all" approach, as Mr. Gramm, the Clinton plan's severest critic, puts it.

That concern came through, perhaps more tentatively, around the table in a motel meeting room on Friday where the nine South Dakotans gathered. Evelyn Peterson, a retired nursing educator who likes the Clinton plan's emphasis on preventive care, still worries that "every model that we've been given for rural health care has been developed in an urban area, so it doesn't fit."

LITTLE COMPETITION TO MANAGE

Vince Crawford, the director of the Veterans Administration Hospital in Sioux Falls, said, "One size fits all is nuts." If there was one message he could send to Washington, Mr. Crawford said, it would be "there needs to be a great deal of flexibility so that South Dakota and New York City can each solve their own problems."

One principle of the Clinton plan seems irrelevant here. A basic hope of the Administration is that the philosophy behind its proposals will lower costs. That philosophy, known as managed competition, requires different groups of doctors and hospitals to compete for patients' business. But South Dakota has only three cities of more than 25,000 people and only in Sioux Falls is there a big enough medical center for competition to be imaginable.

Even without managed competition, the Clinton plan, if it worked, would save money for South Dakotans. It would bring them together in an alliance that would have enough purchasing power to negotiate rates with insurance companies that now, Mr. Nyberg said, simply announce how much higher the rates will go each year.

That power of alliances has not got through here, though Mrs. Clinton tried to stress it during her visit. Even a basic sup-

porter of her plan, Steven J. Simonin, the administrator at Landman-Jungman, mutters caustically about "this invisible alliance up in Sioux Falls or somewhere."

To much of South Dakota, Sioux Falls with its population of 100,836 and two major hospitals, is the big city. In great swaths of the state, medicine means small hospitals and the clinics they run in outlying hamlets. It is hard to get doctors. It is even hard to get physicians' assistants and nurses.

Mr. Walker, the St. Benedict's administrator, calls that his biggest problem. He spends 20 percent of his time on recruitment and retention. Last month he sent out 50 letters and got one postcard in return, asking for more information. He uses recruiting agencies that he calls "bounty hunters." He finds that small-town medicine may be attractive enough but small-town living can be a drawback.

"We don't have the opera," Mr. Walker said. "We don't have professional sports. We don't have a shopping mall." He looks for people interested in hunting, fishing and cross-country skiing.

On Friday, Mrs. Clinton spoke of how the Administration plan would stress financial incentives and tax credits to lure medical workers to rural areas. The South Dakotans in the discussion group thought that was a good idea.

'DON'T SEE A CRISIS HERE'

But Dr. Barker, whom Mr. Walker recruited, had his doubts about whether money or anything else the Federal Government might offer would bring more doctors to small towns.

Clearly there are South Dakotans who do not want the Government doing more. Introducing Senator Gramm on Friday, Dr. Walter Carlson, chairman of the professional activities committee of McKennan Hospital, said: "I guess we just don't see a crisis here. I know of no physician or hospital that has ever denied anybody health care."

And supporters of the Clinton plan or some variant have their doubts about whether the Federal Government can be relied on, too. Mr. Walker fears that pressure to cut Medicare reimbursement rates to pay for other programs will hit his hospital hard, since it has few other patients to shift costs to.

In the discussion group, several people wondered whether the Government would provide all the money it promised, recalling other programs that had been cut. And Mr. Crawford feared "too many checkers" looking over shoulders, wasting time and money. Mr. Nyberg asked, "If this program starts, where does it end?" He recalled that in 1937 employers had to pay a 1 percent Social Security tax but that now they pay 7.65 percent.

There was pessimism about the people, too. Karen Pettigrew, a nurse-midwife from Rapid City, complained: "People all seem unwilling to change from the best of all possible ideal plans, but they don't want to pay for it. Everyone wants the Cadillac for them and their children.

But strongest of all were their doubts about Washington's ability to deal with the issue. Morris Magnuson, a retired school administrator, spoke for many when he said, "It's getting so fragmented with the doctors and the hospitals and the Republicans and the Democrats."

Mr. Nyberg added: "There is a solution. It will not occur if we have partisan politics as usual."

And Ms. Pettigrew said she thought all that would result would be "a few Band-Aids,

nothing that will really bother people too much."•

By Mr. METZENBAUM (for himself, Mr. DECONCINI, Mr. SIMON, and Mr. REID):

S. 1866. A bill to amend the National Security Act of 1947 to improve personnel measures that enhance security for classified information, and for other purposes; to the Select Committee on Intelligence.

PERSONNEL SECURITY ACT OF 1994

Mr. METZENBAUM. Mr. President, we were all shocked on Wednesday to learn that a senior CIA case officer had been arrested and charged with being a spy for the Soviet Union and later for the Russian Federation. It is almost beyond belief that he had allegedly been getting away with it for nearly 9 years.

Some of my colleagues, including the Republican leader and some on my side of the aisle as well, have suggested we should retaliate against Russia for engaging in espionage against us by cutting off our economic aid to them. I do not follow that logic. "I don't get it." Are my colleagues telling us that they are outraged, or surprised, or disappointed, or dumbfounded to learn that the Soviet Union, and now the Russians, have spies working for them? Is that news to them?

Are you telling me there is a Member of this body who is naive enough to believe that Russia had gotten out of the espionage business? Of course not. Did they think that the day the Soviet Union fell, we all shook hands and called home our spies?

Of course not. Whom are we kidding. We all know that was not the fact. It was not the Russians who betrayed us. It was an American CIA officer who betrayed his country for cash, and exposed our spies in Russia. The Russians are doing what we have been doing for decades in the spying business.

What riles me is the fact that they seem to be doing a better job of it than we are. The protesting Republican leader and his allies from my party could use a little reality check. Retaliation against Russia would be self-defeating.

I am frank to say that on the whole aid-to-Russia package, this Senator was not a player. I was not involved in promoting it or speaking for it or advocating it. I voted for it; I did not vote against it. But it was not something I considered a particular issue of my concern. To hear now, however, that we ought to be denying the Russians that aid because of the betrayal committed by one of our intelligence officers, to me that is absolutely absurd.

Our aid to Russia is intended to enhance our own national security. Whether Russia spies on us or not, it remains in our national security interests for them to dismantle the greater part of their missiles and nuclear war-

heads. Likewise, whether Russia spies on us or not, it remains in our national security interests for Russia to persevere in its economic and political reforms. Our aid is designed to assist in those areas, and it remains in our own national interest to provide it.

We have a right to be upset by the Aldrich Ames case. Every American has a right to be distressed, disturbed, and also questioning—asking, "How could this happen? How could this happen, in the Central Intelligence Agency on which we spend billions upon billions of dollars a year?" We cannot state the exact amount, because this is prohibited by law—because the administration and the Director of the Central Intelligence Agency are unwilling to make the fact known—but everybody knows it is billions upon billions of dollars. We have a right to say, "Are we getting our money's worth?" What are we getting for it if, in this particular case, something was going on for 8 or 9 years and the CIA did not know about it?

We should not be surprised, however, by the fact that the Soviets and the Russians after them used the information which Ames made available to them. We may not like spying, but that is certainly one of the so-called games that nations play. We play with game, our allies play that game and, naturally, our adversaries do so as well.

The first lesson that spies learn, moreover, is that you have to know what the other guy is doing to you. That is precisely what the Soviets and Russians were doing when they reportedly paid Mr. Ames \$1.5 million to tell them about United States espionage operations and the identity of our secret sources in that country. The real concern that we should have in the CIA's failure to know what Mr. Ames had apparently been doing for all these years. For an agency on which we spend billions of dollars a year to spy on other countries not to know what is going on in their own shop is embarrassing, it is humiliating, and it is absolutely unacceptable.

A \$70,000-a-year Government worker buys a half million dollar house with cash, drives a Jaguar to work, uses his charge cards as if he were the Sultan of Brunei, and nobody figures it out? How can this be? It is incredible.

Some Members of this body, instead of putting the blame where it belongs—on our own intelligence agency—want to blame Russia for having spied on us; therefore, they argue, we ought to not let them have any more aid. I do not understand that line of reasoning. There is an argument as to whether we should make aid available to Russia, but this case has nothing to do with it. While I support the aid package, I understand an argument against it. But there is no logic in cutting off our aid because the Soviet Union did a better job of breaking through our spy net-

work than we did in breaking through theirs.

Our spies in the U.S.S.R. were getting arrested and executed for treason because of Mr. Ames's actions, and our intelligence body did not know what was going on. It is shameful; it is embarrassing; it is humiliating. But it is a reality.

What can we do about it? There is one thing we can do immediately, if we want. It would not help on the Ames case—that is behind us—but it might help on tomorrow's case or next year's case. It would help our intelligence agencies and other agencies that handle top-secret information. We can pass legislation that was proposed by the leadership of the Intelligence Committee 3 years ago giving agencies access to the financial and travel records of their employees who get top-secret access.

It is a sobering fact, Mr. President, that the modern American spy rarely betrays our country for ideological reasons and even more rarely because of blackmail. The major goals of American spies in recent years have been money—money and excitement.

In the really damaging long-term espionage cases, there were often large amounts of money changing hands, and it would be a great benefit to our counterintelligence security units if they could routinely monitor the financial status of employees and recent employees who have access to top-secret information. This would be a new intrusion upon those employees, but I think it would be a reasonable one. I would normally be protective of the privacy of all employees; but in this limited area alone, I think there is reason to make certain exceptions.

Thanks to the good work of U.S. security services and especially of the FBI, foreign intelligence services rarely have face-to-face meetings with American spies in the United States. Rather, communications in the United States is generally through the use of "dead drops" or coded radio broadcasts or through prearranged signals in classified ads.

But foreign intelligence services do have American spies travel to foreign meeting places like Mexico City, Vienna, Geneva, Berlin, Bogota, or Bangkok to meet their foreign handlers face to face. If an employee's agency would routinely check the records of airlines and other travel companies to see where its employees were traveling, that would make it much more difficult for a spy to run around the world for 5 or 10 years without the agency catching us.

Today I am introducing a bill, the Personnel Security Act of 1994, to provide U.S. agencies with access to financial and travel records that they need to do a better job of protecting themselves against foreign espionage. I invite my colleagues, especially those on

the Senate Intelligence Committee, to work with me to make a sensible contribution to combating espionage, rather than pretending that we have either the right or the ability to stop other countries from engaging in espionage efforts that we and every other state view as a normal national security protection.

Let us stop the breast beating and the Russia bashing and admit that if we want to combat foreign espionage, we have to improve personnel security at home. Let us get on with that job.

Mr. President, I send a copy of the legislation to the desk and I ask unanimous consent that a copy be printed in the RECORD.

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

S. 1866

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 "Personnel Security Act of 1994".

SEC. 2. AMENDMENT TO THE NATIONAL SECURITY ACT OF 1947.

The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by inserting at the end thereof the following new title:

"TITLE VIII—ACCESS TO TOP SECRET INFORMATION

"ELIGIBILITY FOR ACCESS TO TOP SECRET INFORMATION

"SEC. 801. (a) The President and Vice President, Members of the Congress, Justices of the Supreme Court and judges of other courts of the United States established pursuant to Article III of the Constitution, shall, by virtue of their elected or appointed positions, be entitled to access to Top Secret information needed for the performance of their governmental functions without regard to the other provisions of this title.

"(b) Among employees of the United States Government, access to Top Secret information shall be limited to employees who—

(1) have been granted access to such information pursuant to this title;

(2) are citizens of the United States who require access to such information for the performance of official governmental functions; and

(3) have been determined to be trustworthy based upon a background investigation and appropriate reinvestigations and have otherwise satisfied the requirements of section 802, below.

"(c) Access to Top Secret information by persons other than those identified in subsections (a) and (b) shall be permitted only in accordance with the regulations issued by the President pursuant to section 802 below.

"IMPLEMENTING REGULATIONS

"SEC. 802. The President shall, within 180 days of enactment of this title, issue regulations to implement this title which shall be binding upon all departments, agencies, and offices of the Executive branch. These regulations shall, at a minimum provide that—

"(A) no employee of the United States Government shall be given access to Top Secret information owned, originated or possessed by United States, after the effective date of this title, by any department, agency, or entity of the United States Government unless such person has been subject to

an appropriate background investigation and has—

"(1) provided consent to the investigative agency responsible for conducting the security investigation of such person, during the initial background investigation and for such times as access to such information is maintained, and for 5 years thereafter, permitting access to—

"(a) financial records concerning the subject pursuant to section 1104 of the Right to Financial Privacy Act of 1978;

"(b) consumer reports concerning the subject pursuant to section 1681b of the Consumer Credit Protection Act; and

"(c) records maintained by the commercial entities within the United States pertaining to any travel by the subject outside the United States: *Provided*, that—

"(i) no information may be requested by an authorized investigation agency pursuant to this section for any purpose other than making a security determination, unless such agency has reasonable grounds to believe, based upon specific and articulable facts available to it, that such person may pose a threat to the continued security of the information to which he or she had previously had access; and

"(ii) any information obtained by an authorized investigation agency pursuant to this section shall not be disseminated to any other department, agency, or entity for any purpose other than: (A) for making a security determination; or (B) for foreign counterintelligence or law enforcement purposes;

"(2) agreed, during the period of his or her access, to report to the department, agency, or entity granting such access in accordance with applicable regulations, any travel to foreign countries which has not been authorized as part of the subject's official duties; and

"(3) agreed to the Federal Bureau of Investigation, or to appropriate investigative authorities of the department, agency, or entity concerned, any unauthorized contacts with persons known to be foreign nationals or persons representing foreign nationals, where an effort to acquire classified information is made by the foreign national, or where such contacts appear intended for this purpose. For purposes of this subsection, the term "unauthorized contacts" does not include contacts made within the context of an authorized diplomatic relationship. Failure by the employee to comply with any of the requirements of this subsection shall constitute grounds for denial or termination of access to the Top Secret information concerned.

"(B) all employees granted access to Top Secret information pursuant to this subsection shall also be subject to—

"(1) additional background investigations by appropriate governmental authorities during the period of access at no less frequent interval than every 5 years, except that any failure to satisfy this requirement that is not solely attributable to the subject of the investigation shall not result in a loss or denial of access; and

"(2) investigation by appropriate governmental authority at any time during the period of access to ascertain whether such persons continue to meet the requirements for access;

"(C) access to Top Secret information by categories of persons who do not meet the requirements of subsections (A) and (B) of this section may be permitted only where the President, or officials designated by the President for this purpose, determine that such access is essential to protect or further

the national security interests of the United States; and

"(D) a single office within the Executive branch shall be designated to monitor the implementation and operation of this title within the Executive branch. This office shall submit an annual report to the President and appropriate committees of the Congress, describing the operation of this title and recommending needed improvements. A copy of the regulations implementing this title shall be provided to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives thirty days prior to their effective date.

"WAIVERS FOR INDIVIDUAL CASES

"SEC. 803. In extraordinary circumstances, when essential to protect or further the national security interests of the United States, the President (or officials designated by the President for this purpose) may waive the provisions of this title, or the provisions of the regulations issued pursuant to section 802, above, in individual cases involving persons who are citizens of the United States or are persons admitted into the United States for permanent residence: *Provided*, that all such waivers shall be made a matter of record and reported to the office designated pursuant to subsection 802(D), above, and shall be available for review by the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

"DEFINITIONS

"SEC. 804. For purposes of this title—

"(a) the term "national security" refers to the national defense and foreign relations of the United States;

"(b) the phrases "information classified in the interest of national security" or "classified information" means any information originated by or on behalf of the United States Government, the unauthorized disclosure of which would cause damage to the national security, which has been marked and is controlled pursuant to the Executive Order 12356 of April 2, 1982, or successor orders, or the Atomic Energy Act of 1954;

"(c) the term "Top Secret information" means information classified in the interests of national security, the unauthorized disclosure of which would cause exceptionally grave damage to the national security;

"(d) the term "employee" includes any person who receives a salary or compensation of any kind from the United States Government, is a contractor of the United States Government, is an unpaid consultant of the United States Government, or otherwise acts for or on behalf of the United States Government, but does not include the President or Vice President of the United States, Members of the Congress of the United States, Justices of the Supreme Court or judges of other federal courts established pursuant to Article III of the Constitution; and

"(e) the term "authorized investigative agency" means an agency authorized by law or regulation to conduct investigations of persons who are proposed for access to Top Secret information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

"EFFECTIVE DATE

"SEC. 805. This title shall take effect 180 days after the date of its enactment."

Mr. SIMON. Mr. President, Senator METZENBAUM has just illustrated why it is going to be a great loss not to have him in the U.S. Senate. I hap-

pened, back many years ago, to have served in military intelligence when I was in the Army. I think the bill he offers makes a great deal of sense. I have never been on the Intelligence Committee. I will be pleased to cosponsor it.

But I rise primarily because there is a kind of an unreality to some of the conversations about what is going on with spies. Let us face it, Russia spies, we spy—we should. If tomorrow we hear a rumor that Great Britain, our good friend, is developing some special kind of weapon, we are not going to sit back and wait until we read it in the *London Times*. We are going to have espionage operations. That applies to our friends; it applies to our potential foes. That is the way the intelligence community operates.

For us not to look at the big picture and not to do what we can to see that Russia has a viable democracy and a stable situation, and to get all wrought up over this one instance of their spying is not in our national interest. What we have to do on the floor of this body is to serve the national interest, not the national passion. We are responding to the national passion.

Is this a tragedy? Yes. Is this going to be repeated in the future? I hate to say it, but even with the Metzbaum legislation, it is going to happen again in the future. We are going to have double spies; other countries are going to have double spies. That is part of life today.

I am pleased to join as a cosponsor of the legislation, and I am pleased that someone brought some reality to this whole business. I have heard some of the speeches of our colleagues condemning Russia for spying. That is part of life in the world today, and we should recognize that.

By Mr. DURENBERGER (for himself, Mr. MURKOWSKI, and Mr. JEFFORDS):

S. 1867. A bill to expedite the naturalization of aliens who served with special guerrilla units in Laos; to the Committee on the Judiciary.

HMONG VETERANS' NATURALIZATION ACT OF 1994
 • Mr. DURENBERGER. Mr. President, today I am introducing legislation that will relax certain immigration and naturalization requirements for Hmong veterans who served with United States forces during the Vietnam war. The bill will also relax requirements for spouses or widows of Hmong veterans.

This act recognizes the extremely important contributions and sacrifices made by thousands of Hmong and other Laotian highland groups who served in CIA-directed special guerrilla units in the Vietnam war from 1961 to 1978.

The Hmong and other highland peoples served bravely and sacrificed dearly during the war. Between 10,000 and 20,000 Hmong were killed in combat and over 10,000 had to flee their homeland in order to survive.

Although the Hmong served admirably in support of United States efforts in the Vietnam war, many of those who did survive and made it to the United States are separated from other family members and are having a difficult time adjusting to life here. Family reunification remains a vexing problem for the Hmong, one that concerns this Senator greatly.

The Hmong Veterans' Naturalization Act of 1994 will make an important contribution to efforts at reuniting families. The act will make it easier for those who served in the special guerrilla units to attain U.S. citizenship by waiving the English language and residency tests.

The single greatest obstacle for the Hmong in becoming U.S. citizens is passing the English test. Why is this so? Principally because the Hmong language is verbal, not written. Additionally, formal education is rare in the highland region of Laos where the Hmong come from. Written characters for Hmong have only recently been introduced, and whatever chances most Hmong may have had for learning the written language were disrupted by the war.

In addition to the language requirements, this bill would also waive the residency requirement for those who served, to speed up the process of family reunification. Current law permits aliens or noncitizen nationals who served honorably during World War I, World War II, the Korean war, and the Vietnam war to be naturalized, regardless of age, period of residence, or physical presence in the United States. There is a well-established precedent of relaxing naturalization requirements for military service.

The Hmong served the United States for 17 years. They suffered and sacrificed a great deal in that service. This bill recognizes the brave contribution of the Hmong people and the extreme difficulty that the Hmong have in learning English.

It is the hope of this Senator that my colleagues will join me in supporting this legislation. It gives appropriate recognition and assistance to a group in our society that has earned it in serving U.S. interests when it mattered for us. •

By Mrs. BOXER:

S. 1868. A bill to amend the Internal Revenue Code of 1986 to allow the casualty loss deduction for disaster losses without regard to the 10-percent adjusted gross income floor; to the Committee on Finance.

DISASTER LOSSES DEDUCTION ACT OF 1994

• Mrs. BOXER. Mr. President, today I am introducing legislation that will provide relief for thousands of Californians who suffered serious damage in the January earthquake. My bill will help citizens who otherwise are out of luck under current law by removing

the 10-percent adjusted gross income threshold for casualty loss deductions. This legislation will apply to losses attributable to disasters occurring on or after January 17, 1994—the day of the devastating Northridge quake.

Under current law, taxpayers may deduct casualty losses only when they exceed 10 percent of adjusted gross income. Because of this threshold, many who suffer damage find themselves without recourse. In California, for example, most people do not have earthquake insurance. And those who do often have deductibles as high as \$5,000 to \$10,000.

We have all seen the devastating images of collapsed structures on television. But it is important to remember that most Californians affected by the earthquake suffered serious, but moderate, damage. Their windows shattered and their televisions smashed on the ground. They may have cracks in their walls or fireplace damage, but their homes still stand. These people have \$5,000 in damage, or maybe \$10,000. These are the taxpayers who may not get the relief they need.

Consider a simple hypothetical example. Suppose a middle-class family with adjusted gross income of \$50,000 sustains \$4,000 in earthquake damage. Under current law, the family has nowhere to turn because only losses in excess of \$5,000 can be deducted. But under my bill, that family could deduct all losses. And where would that tax refund go? It would go back into the economy as a direct stimulus. It would create jobs for contractors and those who produce the raw materials they use. The economic benefits would ripple throughout the community.

I hope my colleagues realize that California is still lingering in the midst of a very serious recession. It seems that in the past year we've seen it all—fire, flood, earthquake, and most recently, mudslides. I believe that our Nation cannot sustain a full economic recovery without strong support from our largest State—California.

Mr. President, this legislation will ease the suffering of victims of natural disasters, and at the same time, will provide a much needed infusion of capital into damaged local economies. I hope my colleagues will join me in supporting this legislation.

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

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

S. 1868

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

SECTION 1. ELIMINATION OF 10-PERCENT FLOOR FOR DISASTER LOSSES.

(a) GENERAL RULE.—Subparagraph (A) of section 165(h)(2) of the Internal Revenue Code of 1986 (relating to net casualty loss allowed only to the extent it exceeds 10 per-

cent of adjusted gross income) is amended by striking clauses (i) and (ii) and inserting the following:

"(i) the amount of the personal casualty losses for the taxable year,

"(ii) the amount of the federally declared disaster losses for the taxable year (or, if lesser, the net casualty loss), plus

"(iii) the portion of the net casualty loss which is not deductible under clause (ii) but only to the extent such portion exceeds 10 percent of the adjusted gross income of the individual."

"For purposes of the preceding sentence the term 'net casualty loss' means the excess of personal casualty losses for the taxable year over personal casualty gains."

(b) **FEDERALLY DECLARED DISASTER LOSS DEFINED.**—Paragraph (3) of section 165(h) of such Code is amended by adding at the end the following new subparagraph:

"(C) **FEDERALLY DECLARED DISASTER LOSS.**—The term 'federally declared disaster loss' means any personal casualty loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act."

(c) **CLERICAL AMENDMENT.**—The heading for paragraph (2) of section 165(h) of such Code is amended by striking "NET CASUALTY LOSS" and inserting "NET NONDISASTER CASUALTY LOSS".

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to losses attributable to disasters occurring on or after January 17, 1994, including for purposes of determining the portion of such losses allowable in taxable years ending before such date pursuant to an election under section 165(i) of the Internal Revenue Code of 1986.●

By Mr. COHEN (for himself and Mr. BOREN):

S. 1869. A bill to amend the National Security Act of 1947 to improve counterintelligence measures through enhanced security for classified information, and for other purposes; to the Select Committee on Intelligence.

COUNTERINTELLIGENCE IMPROVEMENTS ACT 1994

● Mr. COHEN, Mr. President, I ask unanimous consent that a summary of the bill be printed in the RECORD.

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

SUMMARY OF PROVISIONS

Section 1. Gives the bill the short title of the Counterintelligence Improvements Act of 1994.

Section 2. Adds a new title to the National Security Act of 1947 to govern access to particularly sensitive classified information. To be granted access to such information, a person would be required, among other things, to permit access by U.S. Government investigative agencies to financial records, consumer credit reports, and records maintained by commercial entities within the U.S. pertaining to travel by the person outside the U.S.

Section 3. Adds a new title to the National Security Act of 1947 to provide special requirements for the protection of cryptographic information.

Section 4. Amends the Right to Financial Privacy Act of 1978 by adding a new subsection to permit a person being considered for access to particularly sensitive classified information to provide his or her consent to

U.S. Government investigative agencies to obtain access to his or her financial records. This would apply for the period of the person's access to such information and for five years thereafter.

Section 5. Provides for a new criminal offense for the possession of espionage devices where the intent to use such devices to violate the espionage statutes can be shown.

Section 6. Provides for a new criminal offense for any person who knowingly sells or transfers for any valuable consideration to a person whom he knows or has reason to believe to be an agent or representative of a foreign government any document or material classified Top Secret.

Section 7. Provides that any officer or employee of the US who knowingly removes documents or materials classified Top Secret without authority and retains them at an unauthorized location shall be fined not more than \$1000 or imprisoned not more than one year, or both.

Section 8. Establishes jurisdiction in certain U.S. federal courts to try cases involving violations of the espionage laws where the alleged misconduct takes place outside the U.S.

Section 9. Amends title 18 of the U.S. Code to provide for expansion of the forfeiture provision to certain espionage offenses that are not enumerated in the existing law.

Section 10. Provides that a person may be denied annuity or retired pay by the U.S. if convicted in a foreign country of offenses for which such annuity or retired pay could have been denied had such offense occurred within the U.S.

Section 11. Amends the Consumer Credit Protection Act to provide the FBI access to records sought in connection with an authorized foreign counterintelligence investigation when there are specific and articulable facts giving reason to believe the person to whom the records relate is an agent of a foreign power.

Section 12. Authorizes the FBI to obtain subscriber information from telephone companies on persons with an unlisted number who are called by foreign powers or their agents.

Section 13. Provides the Attorney General with discretionary authority to pay rewards, up to \$1 million, for information leading to the arrest or conviction of espionage against the U.S. or the prevention of such acts.

Section 14. Subjects physical searches in the U.S. to the same court order procedure that is required for electronic surveillance.●

By Mr. KENNEDY (for himself and Mr. KERRY):

S. 1871. A bill to establish a Whaling National Historical Park in New Bedford, MA, and for other purposes; to the Committee on Energy and Natural Resources.

NEW BEDFORD WHALING NATIONAL HISTORICAL ACT OF 1994

Mr. KENNEDY, Mr. President, today Senator KERRY and I are introducing a bill to establish a Whaling National Historical Park in New Bedford, MA. Congressman BARNEY FRANK is introducing an identical bill in the House.

The legislation follows the recommendations of a National Park Service special resource study begun in 1990, which evaluated the historic resources of New Bedford for possible inclusion in the National Park System. That study, completed in November

1993, noted the important role of whaling in 19th century American history. It found that this theme is not currently presented in the National Park System, and that New Bedford would be the ideal site for a park commemorating that history. As the former whaling capital of the world, New Bedford provided the oil that fueled the Nation's lamps and kept the wheels of the Industrial Revolution turning. So prosperous was the whaling industry that, by mid-19th century, it had made New Bedford the wealthiest city, per capita, in the world.

New Bedford's whaling history raises many social and economic themes that are essential to a full understanding of our American heritage. Among these are the spirit of technological progress, the entrepreneurial drive that motivated daring men and women to risk their lives and fortunes on the seas, and the many cultures that took root here, brought by immigrants drawn from every corner of the globe. It was this diversity which contributed to New Bedford's position as a center of the Abolitionist Movement and made it a key stop for fugitive sales on the underground railroad. Frederick Douglass spent his first 3 years of freedom in New Bedford, working as a calker on the hulls of whaleboats.

New Bedford is also the port from which Herman Melville set sail aboard the whaler *Acushnet* in 1841, the voyage which inspired "Moby Dick," one of the greatest of all American novels. The streets that Melville and Ishmael wandered can still be visited in New Bedford today, as can the famous Seamen's Bethel, where the whalers attended religious services before setting off on their voyages.

Much of New Bedford's whaling waterfront still exists in the city's National Historic Landmark District, and the 20-acre site has become a model for historic preservation. Businesses, residents and tourists move comfortably in an environment of restored buildings, cobblestone streets, and brick sidewalks from the whaling era.

New Bedford also is the site of the Rotch-Jones-Duff House and Garden Museum, one of the finest examples of Greek Revival residential architecture in the country and the only surviving whaling-era mansion open to the public complete with its original gardens and grounds.

New Bedford's historical and cultural assets are not limited to its streets and buildings. They also include outstanding collections of artworks and archives associated with the whaling era located at the city's public library and at its renowned whaling museum. The museum houses a half-size model of the whaling bark *Lagoda* that can be boarded by visitors.

The city is also home port to the restored, 100-year-old National Historic Landmark vessel *Ernestina*, which is

the oldest Grand Banks schooner in existence and which has had a distinguished maritime career as a fishing vessel, as an Arctic explorer under Capt. Bob Bartlett, and as a packet plying the route between the Cape Verde Islands and the United States. In her packet role, she was the last sailing vessel to bring immigrants to our shores.

National park designation will be a valuable economic stimulus for tourism and associated development for the city. A report prepared to evaluate the economic impact of the proposed national park indicates it will lead to the creation of hundreds of jobs in the coming years and add millions of dollars annually to the local economy.

The Whaling Park in New Bedford will protect a nationally significant historic treasure and stimulate the economy of a city in need. It is an investment in America's past and in a city's future, and I urge my colleagues to support this legislation.

Mr. KERRY. Mr. President, I am pleased to join my good friend and colleague Senator KENNEDY in introducing legislation to establish a Whaling National Historical Park in New Bedford, MA. Our initiative is based upon a special resource study completed by the National Park Service last fall which found that the New Bedford area meets the criteria for inclusion in the National Park System.

The city of New Bedford, tucked by the sea in the southeast corner of Massachusetts has a rich and diverse history. For decades it was the center of our Nation's whaling industry. Although the whaling industry collapsed by the turn of the last century, New Bedford is to this day remembered for its seafaring heritage.

As a national park, the New Bedford National Historic Landmark District and surrounding area would enhance the National Park System by expanding its maritime history theme to include a focus on our Nation's whaling past. Particularly noteworthy are the historic town center, the waterfront with the national historic landmark schooner *Ernestina* and an array of over three dozen historically rehabilitated buildings which combine to provide a cultural resource that reflects the era of whaling.

Since 1962, a public/private partnership—initiated by the Waterfront Historic Area League of New Bedford in cooperation with the Bedford Landing Taxpayers Association, the Old Dartmouth Historical Society, private property owners, and the city of New Bedford—has raised \$3.7 million in public funding and \$2.7 million in private investment, rehabilitated 36 buildings, and created over 40 new businesses and 200 new jobs. Creating a New Bedford Whaling Park will preserve an important piece of seafarer heritage while simultaneously permitting the public/

private partnership to expand and grow.

I am hopeful that the Senate will look favorably upon this initiative and I encourage my colleagues to support this important addition to our National Park System.

By Mr. ROCKEFELLER:

S. 1872. A bill to expand U.S. exports of goods and services by requiring the development of objective criteria to achieve market access in Japan, and for other purposes; to the Committee on Finance.

FAIR MARKET ACCESS ACT OF 1994

• Mr. ROCKEFELLER. Mr. President, today, I am joining House Majority Leader RICHARD GEPHARDT in introducing legislation designed to create a more constructive, mutually beneficial relationship between the United States and Japan. The Fair Market Access Act of 1994 proposes a way to open up Japan's economy to United States products and services. It lays out the steps to ensure that Japan fulfills promises that it has already made and responds to a rational, reasonable expectation that their markets should be accessible just like they have access to ours. This bill responds to a clear need for the extra work that it will take to break down barriers in Japan that unfairly hurt industry and workers here in America and throughout the world.

The last 8 months have been difficult ones for the United States-Japan bilateral relationship. Our failure to reach an agreement on February 11 further implementing the Framework Agreement of July 1993, has led to considerable speculation on the future of the relationship and on what each party should do to restore it to an even keel.

In contrast to much of that analysis, Mr. President, I am among those who believe that what has happened is good, that it will lead to a more mature relationship, and that the President, in contrast to his predecessors, has handled a very difficult problem properly. We have clearly gone beyond the "senior-junior partner" relationship that existed throughout so much of the post-war period and moved into a more mature relationship of equals whose interests sometimes diverge but often converge. That does not mean there are not difficult challenges ahead or that there will not be many opportunities to make mistakes. The United States-Japan relationship is full of those, and there is no particular reason to believe the future will be any different. However, I believe there have been some significant structural changes in both our countries that provide some basis for optimism—provided we are able to understand those changes and handle them skillfully. Explaining that first demands some comments on precisely what those changes are.

In Japan, I believe it is accurate to say that both political and economic

fundamentals are moving in the direction we have both advocated and predicted for some time. Last summer's election in Japan, which produced a government without the Liberal Democratic Party for the first time in some 40 years, made clear the shift in political power in the country that has meant the effective break up of the LDP, as numerous members moved to other parties or started new ones, some of which are participating in the current coalition government.

The LDP's problems are a graphic illustration of the gradual erosion of the coalition of farmers, small shopkeepers, and professionals that has been its backbone since the early 1950's. Demography—the aging of Japan's population and these sectors in particular—and economics—first the industrialization and now the "technological transformation" of the country—have a lot to do with it.

Obviously, the numerous financial scandals that embroiled LDP members as well as the previous government's inability to pull the economy out of its recession were decisive factors in the election, but it is the long-term erosion of the LDP's base that is most noteworthy.

This erosion was not ignored in Japan. Both new Prime Minister Hosokawa and his ex-LDP partners, Tsutomu Hata and Ichiro Ozawa, are all careful students of Japanese politics. They recognized this trend and are building a new coalition that better reflects current demographic realities and economic priorities. That coalition will depend on urban and suburban office workers—"salarymen"—and their families as its backbone. This will have major implications for the United States, as this part of the population is more consumer-oriented and more outward-looking. It will have less of a stake in Japan's over-complex distribution system or in the protection of agriculture or manufacturing, and eventually, the politicians will follow suit.

After the election, the conventional wisdom was that the new coalition government would not last long. It was expected to pass long overdue political reform legislation and then disintegrate over fundamental policy disagreements in other areas.

In fact, the conventional wisdom is proving to be wrong. We should not underestimate the desire of people who have been out of power for 40 years to stay in now that they have finally risen to the top. Though there are serious differences between the Socialists, the former LDP parties, and Hosokawa's Japan New Party—most recently reflected in the tax cut debate—we should not rule out their ability to subordinate those differences to their common interest in maintaining themselves in power.

The long-term survival of a Hosokawa government will, I believe,

have major implications for United States-Japan relations. We are all well aware of the long list of bilateral trade frustrations. From beef and citrus to baseball bats, lawyers, semiconductors, and supercomputers, the litany of trade disputes seems endless. Some, like construction, have ultimately become national scandals in Japan before action was taken—and the jury is still out on the effectiveness of that action. The new government and the changed political environment, however, is likely to lead over the long term to change that will benefit us.

First, there appears to be some interest on the part of ministers to actually govern and make decisions. That may seem an odd statement in the wake of the collapse of the framework talks that many observers blamed on the Government's surrender to the bureaucrats. That blame was correctly placed, in my judgment, but it may in retrospect turn out to be the bureaucracy's last stand. During my visit to Japan in January, I had numerous meetings with politicians, bureaucrats, and ex-bureaucrats. I sensed a realization that major structural change was taking place in Japan and that the old methods, which had been remarkably successful in the past, could not deal with it. Beyond strong support for far-reaching political reform, there was no clear consensus on what should be done; but without question, as the recession deepened, a growing desire to do something different emerged.

Second, in the face of that recession, I believe that the Hosokawa government has begun to recognize the truth of what the Clinton administration has been telling it—that change in the Japanese economy is inevitable, that historic growth rates cannot be regained using traditional methods, and that the solution is the liberalization and decontrol of the economy we have been advocating.

It is interesting to observe the Japanese response to the recent appreciation of the yen. When this event, known there as *endaka*, occurred in 1985-87, Japan's manufacturers responded by tightening their belts, improving their productivity, keeping prices low, and capturing even more market share with their export-led growth strategy. This time, with the yen rising to 105, the response is different—a growing pattern of outsourcing manufacturing production to the United States and to low-wage countries in Asia. Instead of export-led growth, we are seeing the export of jobs. If it continues, this will mean an unemployment problem in Japan more serious than anything they have experienced in years. Already, their official unemployment rate is the highest in over 6 years—only 2.9 percent, but a serious problem in Japanese terms.

Prime Minister Hosokawa understands that the key to avoiding that

disaster, with all its political implications, is to promote more domestic growth, which can only be obtained by major structural changes in the Japanese economy. Further reductions in interest rates, for example, when the real rate is close to 1 percent, or public works stimulus packages that are invariably too little too late, will not do the job. The Japanese economy simply has to begin operating on a real market basis. The cozy credit relationships or *keiretsu*-based procurement practices of the past will not restore growth.

The recent controversy over a major tax cut demonstrates that not all parts of the Japanese political system have learned this lesson yet. It also proves that a tax increase—which would have followed the cut—is not popular anywhere in the world—not a surprising conclusion.

Ultimately, the Japanese Government will have no choice but to do what we have been urging. It is the only thing that makes any sense. The real questions for the bilateral relationship are:

First, whether they do it in the context of the ongoing framework negotiations in recognition of what we have been saying, or whether they do it with a gloss of anti-American rhetoric to serve domestic political purposes; and

Second, how long it will take them to act.

With respect to the first question, it appears that the Prime Minister is finding it politically expedient to be perceived as standing up to the Americans at the same time he is telling his countrymen they need to import more and open up their economy. He may not be politically strong enough to do anything else. While the United States no doubt would prefer to claim victory in the framework negotiations, quite frankly, a results-oriented administration, as this one is, should take it either way because, after all, the issue for the United States is market access and the jobs that go with it.

That means the important question is the second one—how long these changes will take. This is a particularly awkward question because of the disjuncture in timing at which the two countries find themselves. The United States has had a large and growing trade deficit with Japan for years, and we have, at least since the Nixon administration, been pressing them to open their economy. While the deficit is related to macroeconomic factors as well, it is apparent from the economic history of the past decade that the Japanese economy does not respond to macroeconomic changes like exchange rate shifts in the ways our economists and their textbooks predict.

Indeed, if we have learned anything in the past 15 years it is that this economy is unique. There is no other developed economy in the world so relent-

lessly geared to export-led growth and the limitation of imports. It is precisely that uniqueness as well as the exhaustion of our patience after so many years of trying so many different approaches that has brought us to the present point.

Our patience is exhausted not only because of the duration and difficulty of the battle, but because its price has been paid by the American worker. There are hundreds of thousands, if not millions, of Americans who lost their jobs in the past 15 years because of Japanese imports and our inability to access their market. Automobiles, steel, machine tools, computers, semiconductors, televisions—the list seems endless. Many of those Americans have found other jobs but rarely better ones. The Clinton administration has embarked on a program to restore our competitiveness, particularly in critical technology areas, that has helped to restore national confidence and reduce unemployment, but so much damage has been done that it will be years before we fully recover.

The Japanese Government, in turn, is only beginning to recognize the magnitude of the problem and the extent to which it is now hurting their people just as it has hurt ours for so long. Their response is predictable—essentially a plea for more time and the chance to deal with things their way. In the abstract, that is not an unreasonable plea, but it comes at an unreasonable time—when America has no more patience left to give.

This dilemma is nowhere better illustrated than in the recent battle over United States access to the Japanese construction market. The Japanese construction industry has been notorious for its corruption and closed doors for years. American efforts to penetrate the *dango* system have gone on for years with virtually no success. Finally, after the system became a domestic political scandal in Japan, the Government began to move under the threat of American sanctions. It did so with a plea for more time—a reasonable request from Japan's perspective because they were just beginning to deal with the problem, but an outrageous one from our perspective because they should have been dealing with it for the last 10 years.

The Framework negotiations have featured the same disjuncture. Prime Minister Hosokawa argues that Japan should, in effect, have time to do it their way. We argue it is too late for further delay, and, in any event, the record of successful implementation of his predecessors' promises is bleak.

In the long run, this will work itself out. But also in the long run, as Keynes said, we are all dead. President Clinton's obligation is to meet our needs, and to insist on the restoration of some equity in the trading relationship. Doing so, of course, will help Japan as well, as I have noted.

The question the Congress faces right now is how best to assist the President in his effort to put meat on the bones of the Framework Agreement, because it is clear that in the short run, Japan is unwilling or unable to honor the commitments it made last July. A useful approach, in my judgment, is embodied in the legislation that Congressman GEPHARDT and I are introducing today. Essentially it is an effort to reinforce the President's efforts by creating a mechanism for the development of the objective criteria the Framework Agreement calls for, a process for negotiating to achieve those goals, and a process for taking action in the event the goals are not reached, either by failure to reach agreement or failure to comply with obligations that have been undertaken.

In brief, the bill would require the Commerce Department to prepare annual competitive assessments of selected sectors—initially those identified in the Framework Agreement and subsequently those that involve critical technologies, are important elements of our economy or the bilateral trade deficit, or which are requested by the U.S. Trade Representative. These assessments would estimate how well we would be doing in the Japanese market in that sector if that market were truly open.

Those assessments, in turn, would become negotiating objectives for the U.S. Trade Representative, who would decide, at 6 month intervals, which of the various sectoral objectives he wanted to pursue in bilateral negotiations. The goal of the negotiations would be to reach agreements that are designed to achieve the objectives.

In turn, there would be two circumstances under which subsequent action might be taken. An agreement could be reached but its provisions not adequately implemented, and the bill sets up a monitoring process to help make that judgment. Second, the parties could fail to reach agreement. In either case, the result becomes a cause of action under section 301 of the Trade Act of 1974.

This is a carefully developed, nuanced approach designed to further the President's goals. Its beauty is its cumulative nature. The Commerce Department will be regularly reviewing sectors and analyzing their competitiveness in Japan. USTR will be just as regularly undertaking the negotiations envisioned in the Framework Agreement with respect to those sectors. The Department's studies will serve as the foundation and goal for those negotiations. The use of section 301 is warranted in the event of failure. Indeed, use of section 301 in the case of agreements that have not been complied with is similar to the approach taken by the proposed Trade Agreements Compliance Act, which the Senate passed in 1992 and which many Sen-

ators have cosponsored again in this Congress.

The result of this mechanism will be an ongoing effort to open the Japanese market through negotiations that use an established analytical method to set goals. Negotiating priorities are left to the U.S. Trade Representative, as is the decision on final action, as in current law.

This bill creates a barometer of sorts to measure trade successes between Japan and the United States, translating the vague language of trade frameworks into the specific language of balance sheets and growth. If standards are set and reached, then clearly both nations are living up to their commitments and policies are working. If not, then agreements need to be revisited and problems worked out.

It's time for Japan to tear down its economic walls, to end protectionism, open its markets, and accept the responsibilities that come with being a world economic power. This bill is a significant step toward that end.

Will this kind of an approach solve all our problems? History would suggest that is too much to expect. At the same time, it is critical that we move forward with some action. To those who say this is managed trade, I would say that it is not intended that way. It is intended as a market-opening strategy. At the same time, however, I would reiterate the point I made earlier—the Japanese economy is unique. Every tactic we have pursued for more than 15 years has failed, notwithstanding the validity of our complaints, which most economists now agree with. Under the circumstances, it is not only appropriate but the only responsible course of action to try something new before more time passes and more jobs are lost. Such an approach is neither required nor recommended with respect to other parts of the world where we do compete—win or lose—on a market basis.

Having said that, Mr. President, I continue to be optimistic that this story will ultimately have a happy ending. In the first place, we have an administration here that understands it and is pressing the Japanese on the right issues in the right way. In the second place, we may now have a Japanese Government which, at least privately, understands that what we have been asking is good for them as well as for us; indeed, it is good for the trading system. Getting from there to real results promises to be difficult, as nearly any change in Japan is, but there is less reason for gloom now than there has been in some time.

I also want to take this chance to commend President Clinton and his team on these issues for providing leadership and direction at this critical juncture. In his refusal to reject inaction on the Framework Agreement, he also made his commitment to strength-

ening this country's short-term and long-term relationship with Japan abundantly clear. We share that goal very deeply.

I also applaud Congressman GEPHARDT for his continued thoughtful leadership in trade policy and the partnership we have forged to help pave the next road in the United States-Japan relationship. We share a sense of obligation to America's families and industries, and the belief that this legislation can benefit them and the people of Japan.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 1872

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 "Fair Market Access Act of 1994".

SEC. 2. REPORTS ON ACCESS TO JAPANESE MARKETS.

(a) INITIAL REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the Congress a report assessing the access to the Japanese market of goods and services produced or originating in the United States in each sector specifically identified in the Framework Agreement.

(2) CONTENTS OF REPORT.—The Secretary shall include in the report under paragraph (1) the following:

(A) An assessment of the market access opportunities that would be available in the Japanese market for goods and services in each sector referred to in paragraph (1) in the absence of barriers to achieving access to such market in both the public and private sectors in Japan. In making such assessment, the Secretary shall consider the competitive position of such goods and services in similarly developed markets in other countries. Such assessment shall specify the time periods within which such market access opportunities should reasonably be expected to be obtained.

(B) Objective criteria for measuring the extent to which those market access opportunities described in subparagraph (A) have been obtained. The development of such objective criteria may include the use of interim objective criteria to measure results on a periodic basis, as appropriate.

(b) SUBSEQUENT ANNUAL REPORTS.—

(1) IN GENERAL.—Not later than the date which is 1 year after the last day of the 90-day period referred to in subsection (a)(1), and annually thereafter, the Secretary shall submit to the Congress a report containing the following:

(A) An assessment of the market access opportunities that would be available in the Japanese market, for goods and services produced or originating in the United States in those sectors selected by the Secretary, in the absence of the barriers to achieving access to such market in both the public and private sectors in Japan. In making such assessment, the Secretary shall consider the competitive position of such goods and services in similarly developed markets in other

countries. Such assessment shall specify the time periods within which such market access opportunities should reasonably be expected to be obtained.

(B) Objective criteria for measuring the extent to which those market access opportunities described in subparagraph (A) have been obtained. The development of such objective criteria may include the use of interim criteria described in subsection (a)(2)(B).

(C) An assessment of whether, and to what extent, Japan has materially complied with—

(i) agreements and understandings reached between the United States and Japan pursuant to section 3, and

(ii) existing trade agreements between the United States and Japan.

Such assessment shall include specific information on the extent to which United States suppliers have achieved additional access to the Japanese market and the extent to which Japan has complied with other commitments under such agreements and understandings.

(D) An assessment of the effect of the agreements and understandings described in subparagraph (C) on the access to the Japanese markets of goods and services produced or originating in the United States.

(2) SELECTION OF SECTORS.—In selecting sectors that are to be the subject of a report under paragraph (1), the Secretary shall give priority to those sectors—

(A) in which access to the Japanese market is likely to have significant potential to increase exports of United States goods and services;

(B) in which access to the Japanese market will result in significant employment benefits for producers of United States goods and services; or

(C) which represent critical technologies, including those identified by the National Critical Technologies Panel under section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683).

The Secretary shall include an assessment under paragraph (1) of any sector for which the Trade Representative requests such assessment be made. In preparing any such request, the Trade Representative shall give priority to those barriers identified in the reports required by section 181(b) of the Trade Act of 1974.

(3) INFORMATION ON ACCESS BY FOREIGN SUPPLIERS.—The Secretary shall consult with the governments of foreign countries concerning access to the Japanese market of goods and services produced or originating in those countries. At the request of the government of any such country, the Secretary may include in the reports required by paragraph (1) information, with respect to that country, on such access.

SEC. 3. NEGOTIATIONS TO ACHIEVE MARKET ACCESS.

(a) NEGOTIATING AUTHORITY.—The President is authorized to enter into agreements or other understandings with the Government of Japan for the purpose of obtaining the market access opportunities described in the reports of the Secretary under section 2.

(b) DETERMINATION OF PRIORITY OF NEGOTIATIONS.—Upon the submission by the Secretary of each report under section 2, the Trade Representative shall determine—

(1) for which sectors identified in the report the Trade Representative will pursue negotiations, during the 6-month period following submission of the report, for the purpose of concluding agreements or other un-

derstandings described in subsection (a), and the time frame for pursuing negotiations on any other sector identified in the report; and

(2) for which sectors identified in any previous report of the Secretary under section 2 the Trade Representative will pursue negotiations, during the 6-month period described in paragraph (1), in cases in which—

(A) negotiations were not previously pursued by the Trade Representative, or

(B) negotiations that were pursued by the Trade Representative did not result in the conclusion of an agreement or understanding described in subsection (a) during the preceding 6-month period, but are expected to result in such an agreement or understanding during the 6-month period described in paragraph (1).

For purposes of this Act, negotiations by the Trade Representative with respect to a particular sector shall be for a period of not more than 12 months.

(c) SEMI-ANNUAL REPORTS.—At the end of the 6-month period beginning on the date on which the Secretary's first report is submitted under subsection (a)(1), and every 6 months thereafter, the Trade Representative shall submit to the Congress a report containing the following:

(1) With respect to each sector on which negotiations described in subsection (b) were pursued during that 6-month period—

(A) a determination of whether such negotiations have resulted in the conclusion of an agreement or understanding intended to obtain the market access opportunities described in the most recent applicable report of the Secretary, and if not—

(i) whether such negotiations are continuing because they are expected to result in such an agreement or understanding during the succeeding 6-month period; or

(ii) whether such negotiations have terminated;

(B) in the case of a positive determination made under subparagraph (A)(i) in the preceding report submitted under this subsection, a determination of whether the continuing negotiations have resulted in the conclusion of an agreement or understanding described in subparagraph (A) during that 6-month period.

(2) With respect to each sector on which negotiations described in subsection (b) were not pursued during that 6-month period, a determination of when such negotiations will be pursued.

SEC. 4. MONITORING OF AGREEMENTS AND UNDERSTANDINGS.

(a) IN GENERAL.—For the purpose of making the assessments required by section 2(b)(1)(C), the Secretary shall monitor the compliance with each agreement or understanding reached between the United States and Japan pursuant to section 3, and with each existing trade agreement between the United States and Japan. In making each such assessment, the Secretary shall describe—

(1) the extent to which market access for the sector covered by the agreement or understanding has been achieved; and

(2) the bilateral trade relationship with Japan in that sector.

In the case of agreements or understandings reached pursuant to section 3, the description under paragraph (1) shall be done on the basis of the objective criteria set forth in the applicable report under section 2(a)(2)(B) or 2(b)(1)(B).

(b) TREATMENT OF AGREEMENTS AND UNDERSTANDINGS.—Any agreement or understanding reached pursuant to negotiations conducted under this Act, and each existing

trade agreement between the United States and Japan, shall be considered to be a trade agreement for purposes of section 301 of the Trade Act of 1974.

SEC. 5. TRIGGERING OF SECTION 301 ACTIONS.

(a) DETERMINATIONS BY TRADE REPRESENTATIVE.—

(1) FAILURE TO CONCLUDE AGREEMENTS.—In any case in which the Trade Representative determines under section 3(c)(1)(A)(ii) or (B) that negotiations have not resulted in the conclusion of an agreement or understanding described in section 3(a), each barrier to access to the Japanese market that was the subject of such negotiations shall, for purposes of title III of the Trade Act of 1974, be considered to be an act, policy, or practice determined under section 304 of that Act to be an act, policy or practice that is unreasonable and discriminatory and burdens or restricts United States commerce. The Trade Representative shall determine what action to take under section 301(b) of that Act in response to such act, policy, or practice.

(2) NONCOMPLIANCE WITH AGREEMENTS OR UNDERSTANDINGS.—In any case in which the Secretary determines, in a report submitted under section 2(b)(1), that Japan is not in material compliance with—

(A) any agreement or understanding concluded pursuant to negotiations conducted under section 3, or

(B) any existing trade agreement between the United States and Japan,

the Trade Representative shall determine what action to take under section 301(a) of the Trade Act of 1974. For purposes of section 301 of that Act, a determination of non-compliance described in the preceding sentence shall be treated as a determination made under section 304 of that Act.

SEC. 6. DEFINITIONS.

As used in this Act—

(1) EXISTING TRADE AGREEMENT BETWEEN THE UNITED STATES AND JAPAN.—The term "existing trade agreement between the United States and Japan" means any trade agreement that was entered into between the United States and Japan before the date of the enactment of this Act and is in effect on such date. Such term includes—

(A) the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Semiconductor Products, signed in 1986;

(B) the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Semiconductor Products, signed in 1991;

(C) the United States-Japan Wood Products Agreement, signed on June 5, 1990;

(D) Measures Related to Japanese Public Sector Procurements of Computer Products and Services, signed on January 10, 1992;

(E) the Tokyo Declaration on the U.S.-Japan Global Partnership, signed on January 9, 1992; and

(F) the Cellular Telephone and Third-Party Radio Agreement, signed in 1989.

(2) FRAMEWORK AGREEMENT.—The term "Framework Agreement" means the Japan-United States Framework for a New Economic Partnership, signed on July 10, 1993.

(3) SECRETARY.—The term "Secretary" means the Secretary of Commerce.

(4) TRADE REPRESENTATIVE.—The term "Trade Representative" means the United States Trade Representative.

FAIR MARKET ACCESS ACT OF 1994

GOAL

To expand United States exports of goods and services by requiring the development of

objective criteria to achieve market access in Japan.

BACKGROUND

Starting in the early 1980's, the United States has seen its trade deficit with Japan increase dramatically, to a level of approximately \$60 billion in 1993. Despite repeated negotiations to achieve access to the Japanese market during this period, access for many U.S. products—particularly high value-added products—has been severely limited.

In April of 1993, President Clinton and Japan's Prime Minister met and directed their Administrations to begin discussions with the goal of resolving a number of longstanding trade disputes. Many of these disputes had been subject to negotiated agreements in the past; however, specific results in terms of market access were minimal at best.

At the Tokyo Economic Summit in July, President Clinton and then-Prime Minister Miyazawa signed the Joint Statement on the United States-Japan Framework For A New Economic Partnership, which created a process as well as a specific framework for negotiations between our two countries. While negotiations are continuing, there is some skepticism as to whether concrete milestones for success will be contained in any agreements. These milestones are necessary if we are to be able finally to achieve real access to the Japanese market. Indeed, prior to the Economic Summit Prime Minister Miyazawa indicated that outside pressure is necessary if Japan is to change.

The Japanese Government's willingness to negotiate under the framework is an acknowledgement of the problems U.S. companies face. Further investigation of barriers to our exports isn't necessary—we've examined this problem long enough. Accordingly, the legislation will short-circuit the investigation phase and go immediately to consultations. If an agreement can't be reached, action could occur.

SPECIFICS

First, the legislation will require a report by the Department of Commerce and the USTR on the trade agreements currently in force between the United States and Japan, and the operations of those agreements. The report will include specific information on the extent to which U.S. and world suppliers have been able to achieve additional access to the Japanese markets pursuant to those agreements.

Second, the legislation will require that the Department of Commerce compile an annual report on market access opportunities for U.S. firms in the Japanese market. In compiling this report, the Department of Commerce shall examine the competitive position of U.S. firms in similarly developed third country markets. The report will define objective criteria for each industry necessary to gain the access to the Japanese market that U.S. firms would have but for the existence of market access impediments.

The first report under the legislation is required 90 days after enactment. In this first report, the Department of Commerce is to give priority to developing objective criteria to those industries which are contained in the "Framework For A New Economic Partnership" agreed to by the Governments of Japan and the United States in 1993.

In defining which industries shall be included in each report, the Department of Commerce shall give priority to:

(1) Those industries where the United States can maximize the economic gain for its farmers, workers and businesses by expanding exports;

(2) Those industries which will result in the greatest employment benefits for the United States, or;

(3) Those industries which represent critical technologies.

In compiling these reports, the Department of Commerce shall include any industry which the USTR requests be included in the report. Additionally, the Department of Commerce shall consult with foreign governments, at their request, and include information on market access opportunities for world suppliers in the Japanese market.

During this period, the Administration is expected to continue its efforts to negotiate agreements in each of these areas. The goal, of course, is to achieve agreements that will result in definable market access for U.S. companies. However, if agreements aren't reached, then the targets set by the Department of Commerce could provide the basis for action under Section 301 of the trade law.

Each report is to contain information on the operations of agreements and understandings entered into before as well as after the date of enactment.

Finally, the legislation will extend the President's trade negotiating authority specifically for Japan. This is to make it clear that the unique nature of the Japanese market requires a different approach than has been used in the past in trade negotiations. ■

ADDITIONAL COSPONSORS

S. 549

At the request of Mr. DOMENICI, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 549, a bill to provide for the minting and circulation of 1-dollar coins.

S. 993

At the request of Mr. KEMPTHORNE, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 993, a bill to end the practice of imposing unfunded Federal mandates on States and local governments and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations.

S. 1440

At the request of Mr. BURNS, the names of the Senator from Alaska [Mr. MURKOWSKI], the Senator from Mississippi [Mr. COCHRAN], the Senator from Wyoming [Mr. SIMPSON], the Senator from Tennessee [Mr. MATHEWS], and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 1440, a bill to amend the Endangered Species Act of 1973 with common sense amendments to strengthen the act, enhance wildlife conservation and management, augment funding, and protect fishing, hunting, and trapping.

S. 1458

At the request of Mrs. KASSEBAUM, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 1458, a bill to amend the Federal Aviation Act of 1958 to establish time limitations on certain civil actions against aircraft manufacturers, and for other purposes.

S. 1576

At the request of Mr. COATS, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 1576, a bill to provide a tax credit for families, to provide certain tax incentives to encourage investment and increase savings, and to place limitations on the growth of spending.

S. 1594

At the request of Mr. SHELBY, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1594, a bill to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to require a reduction in the discretionary spending limits in each fiscal year by an amount equal to the total of any reductions made in existing programs for the previous fiscal year.

S. 1669

At the request of Mrs. HUTCHISON, the names of the Senator from Idaho [Mr. CRAIG], the Senator from New Hampshire [Mr. SMITH], the Senator from Utah [Mr. HATCH], the Senator from Wyoming [Mr. SIMPSON], the Senator from Mississippi [Mr. COCHRAN], the Senator from New York [Mr. D'AMATO], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Delaware [Mr. ROTH], the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Alaska [Mr. STEVENS], the Senator from Maine [Mr. COHEN], the Senator from Virginia [Mr. WARNER], the Senator from Utah [Mr. BENNETT], the Senator from Missouri [Mr. BOND], the Senator from Kentucky [Mr. MCCONNELL], the Senator from North Carolina [Mr. HELMS], the Senator from South Carolina [Mr. THURMOND], the Senator from Oklahoma [Mr. NICKLES], the Senator from Arizona [Mr. MCCAIN], the Senator from Georgia [Mr. COVERDELL], the Senator from Texas [Mr. GRAMM], the Senator from Kansas [Mr. DOLE], the Senator from Florida [Mr. MACK], the Senator from Montana [Mr. BURNS], the Senator from Indiana [Mr. COATS], the Senator from New Hampshire [Mr. GREGG], the Senator from Arkansas [Mr. BUMBERS], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Iowa [Mr. GRASSLEY], and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of S. 1669, a bill to amend the Internal Revenue Code of 1986 to allow homemakers to get a full IRA deduction.

S. 1690

At the request of Mr. PRYOR, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 1690, a bill to amend the Internal Revenue Code of 1986 to reform the rules regarding subchapter S corporations.

S. 1698

At the request of Mr. BURNS, his name was added as a cosponsor of S.

1698, a bill to reduce the paperwork burden on certain rural regulated financial institutions, and for other purposes.

S. 1703

At the request of Mr. SARBANES, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 1703, a bill to expand the boundaries of the Piscataway National Park, and for other purposes.

S. 1715

At the request of Mrs. HUTCHISON, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 1715, a bill to provide for the equitable disposition of distributions that are held by a bank or other intermediary as to which the beneficial owners are unknown or whose addresses are unknown, and for other purposes.

S. 1805

At the request of Mr. WARNER, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 1805, a bill to amend title 10, United States Code, to eliminate the disparity between the periods of delay provided for civilian and military retiree cost-of-living adjustments in the Omnibus Budget Reconciliation Act of 1993.

S. 1819

At the request of Mrs. KASSEBAUM, the names of the Senator from Iowa [Mr. GRASSLEY] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1819, a bill to prohibit any Federal department or agency from requiring any State, or political subdivision thereof, to convert highway signs to metric units.

SENATE JOINT RESOLUTION 146

At the request of Mr. WOFFORD, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of Senate Joint Resolution 146, a joint resolution designating May 1, 1994, through May 7, 1994, as "National Walking Week."

SENATE JOINT RESOLUTION 150

At the request of Mr. SARBANES, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of Senate Joint Resolution 150, a joint resolution to designate the week of May 2 through May 8, 1994, as "Public Service Recognition Week."

SENATE JOINT RESOLUTION 151

At the request of Mr. LIEBERMAN, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of Senate Joint Resolution 151, a joint resolution designating the week of April 10 through 16, 1994, as "Primary Immune Deficiency Awareness Week."

SENATE JOINT RESOLUTION 158

At the request of Mr. WOFFORD, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Joint Resolution 158, a joint

resolution to designate both the month of August 1994 and the month of August 1995 as "National Slovak American Heritage Month."

SENATE JOINT RESOLUTION 162

At the request of Mr. SPECTER, the names of the Senator from Alaska [Mr. STEVENS], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Georgia [Mr. NUNN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Tennessee [Mr. SASSER], the Senator from Wyoming [Mr. SIMPSON], the Senator from Massachusetts [Mr. KERRY], the Senator from Wisconsin [Mr. KOHL], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Indiana [Mr. LUGAR], the Senator from Ohio [Mr. METZENBAUM], the Senator from Oregon [Mr. HATFIELD], the Senator from Alabama [Mr. HEFLIN], the Senator from North Carolina [Mr. HELMS], the Senator from Hawaii [Mr. INOUE], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Georgia [Mr. COVERDELL], the Senator from Idaho [Mr. CRAIG], the Senator from Missouri [Mr. DANFORTH], the Senator from Arizona [Mr. DECONCINI], the Senator from New Mexico [Mr. DOMENICI], the Senator from California [Mrs. BOXER], the Senator from Colorado [Mr. BROWN], the Senator from Montana [Mr. BURNS], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Indiana [Mr. COATS] were added as cosponsors of Senate Joint Resolution 162, a joint resolution designating March 25, 1994, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy."

SENATE CONCURRENT RESOLUTION 59

At the request of Mr. BURNS, the names of the Senator from Florida [Mr. MACK], the Senator from Utah [Mr. HATCH], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of Senate Concurrent Resolution 59, a concurrent resolution expressing the sense of the Congress that any Federal Government mandated health care reform should be on-budget.

SENATE CONCURRENT RESOLUTION 61—RELATIVE TO THE TRADE IMBALANCE WITH JAPAN

Mr. WOFFORD (for himself, Mr. LEVIN, Mrs. FEINSTEIN, Mr. LAUTENBERG, Mr. KOHL, Mr. RIEGLE, and Mr. SARBANES) submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 61

Whereas the United States and Japan have a long, deep, and rich relationship;

Whereas the security alliance between the United States and Japan is stronger than ever and essential to the Asian Pacific and the rest of the world;

Whereas the United States and Japan have also embraced a common agenda for cooperation on global issues such as population,

transportation technology, and the environment;

Whereas in order to strengthen the relationship, the United States and Japan must have a mutually beneficial economic partnership, which will result in more jobs and economic opportunities for Americans;

Whereas even though the United States and Japan have negotiated over 30 trade agreements since 1980, Japan still remains less open to imports than any other G-7 nation and its regulations and practices screen out many United States products, even our most competitive products;

Whereas over the last 10 years our trade deficit with Japan has increased by 200 percent, resulting in a current trade deficit of \$59,000,000,000;

Whereas last year the United States and Japan agreed to seek market opening arrangements containing objective criteria that would result in tangible progress; and

Whereas in recent negotiations Japanese representatives refused to agree to such market opening arrangements: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress supports the efforts of the President of the United States to open Japanese markets and to obtain measurable increases in Japan's import either through continued negotiation or enforcement of United States law.

AMENDMENTS SUBMITTED

BALANCED BUDGET
CONSTITUTIONAL AMENDMENT

DANFORTH AMENDMENT NO. 1470

(Ordered to lie on the table.)

Mr. DANFORTH submitted an amendment intended to be proposed by him to the joint resolution (S.J. Res. 41) proposing an amendment to the Constitution of the United States to require a balanced budget; as follows:

On page 3, line , at the end of Section 6 add the following:

The power of any court to order relief pursuant to any case or controversy arising under this article shall not extend to ordering any remedies other than a declaratory judgment or such remedies as are specifically authorized in implementing legislation pursuant to this section.

REID (AND OTHERS) AMENDMENT
NO. 1471

Mr. REID (for himself, Mr. FORD, and Mrs. FEINSTEIN) proposed an amendment to the joint resolution, Senate Joint Resolution 41, supra; as follows:

Strike all after "Assembled" and insert the following:

(two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission to the States for ratification:

ARTICLE

"Section 1. Total estimated outlays of the operating funds of the United States for any

fiscal year shall not exceed total estimated receipts to those funds for that fiscal year, unless Congress by concurrent resolution approves a specific excess of outlays over receipts by three-fifths of the whole number of each House on a roll-call vote.

"Section 2. Not later than the first Monday in February in each calendar year, the President shall transmit to the Congress a proposed budget for the United States Government for the fiscal year beginning in that calendar year in which total estimated outlays of the operating funds of the United States for that fiscal year shall not exceed total estimated receipts to those funds for that fiscal year.

"Section 3. This article shall be suspended for any fiscal year and the first fiscal year thereafter if a declaration of war is in effect or if the Director of the Congressional Budget Office, or any successor, estimates that real economic growth has been or will be less than one percent for two consecutive quarters during the period of those two fiscal years. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and it is so declared by a joint resolution, adopted by a majority of the whole number of each House of Congress, that becomes law.

"Section 4. Total estimated receipts of the operating funds shall exclude those derived from net borrowing. Total estimated outlays of the operating funds of the United States shall exclude those for repayment of debt principal; and for capital investments. The receipts (including attributable interest) and outlays of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as receipts or outlays for purposes of this article.

"Section 5. This article shall be enforced only in accordance with appropriate legislation enacted by Congress. The Congress may, by appropriate legislation, delegate to an officer of Congress the power to order uniform cuts.

"Section 6. Sections 5 and 6 of this article shall take effect upon ratification. All other sections of this article shall take effect beginning with fiscal year 2001 or the second fiscal year beginning after its ratification, whichever is later."

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. PELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet jointly with the Committee on Governmental Affairs on Thursday, February 24, 1994, at 10 a.m., in open session, to receive testimony on S. 1587, the Federal Acquisition Streamlining Act of 1993.

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

COMMITTEE ON ARMED SERVICES

Mr. PELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, February 24, 1994, at 3 p.m., in open session, to consider certain pending nominations.

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

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Mr. PELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, February 24, to conduct a hearing on the semi-annual report of the RTC Oversight Board. The hearing will begin at 10 a.m.

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

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. PELL. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to conduct a hearing on the nomination of Linda Joan Morgan to be a member of the Interstate Commerce Commission on Thursday, February 24, 1994, beginning at 10 a.m.

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

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. PELL. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to conduct an executive session immediately following the 10 a.m. hearing on the nomination of Linda Joan Morgan to be a member of the Interstate Commerce Commission on Thursday, February 24, 1994.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. PELL. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., February 24, 1994, to receive testimony on the fiscal year 1995 budget requests for the Department of the Interior and the U.S. Forest Service.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. PELL. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be authorized to meet during the session of the Senate on Thursday, February 24 to resume consideration of the Graham substitute amendment to S. 1114, the Water Pollution Prevention and Control Act of 1994.

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

COMMITTEE ON FINANCE

Mr. PELL. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet today at 10 a.m. to hear testimony on the subject of health care alliances.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. PELL. Mr. President, I ask unanimous consent that the Governmental

Affairs Committee be authorized to meet on Thursday, February 24, 1994, for a joint hearing with the Armed Services Committee on the legislation: S. 1587, the Federal Acquisition Streamlining Act of 1993.

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

COMMITTEE ON JUDICIARY

Mr. PELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, February 24, 1994 to hold a hearing on the nominations of Samual F. Biery, Jr., to be a U.S. district court judge for the Western District of Texas, William Royal Ferguson, Jr., to be a U.S. district court judge for the Western District of Texas, Orlando L. Garcia, to be a U.S. district court judge for the Eastern District of Texas, John H. Hannah, Jr., to be a U.S. district court judge for the Eastern District of Texas and Janis Ann Graham Jack, to be U.S. district judge for the Southern District of Texas.

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

COMMITTEE ON JUDICIARY

Mr. PELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, February 24, 1994.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. PELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, February 24, 1994 at 2:30 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON CHILDREN, FAMILY, DRUGS AND ALCOHOLISM

Mr. PELL. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources' Subcommittee on Children, Family, Drugs and Alcoholism be authorized to meet for a hearing on Child Care for Working Families: True Welfare Reform, during the session of the Senate on February 24, 1994 at 10:00 am.

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

SUBCOMMITTEE ON INTERNATIONAL FINANCE

Mr. PELL. Mr. President, I ask unanimous consent that the Subcommittee on International Finance of the Senate Banking, Housing, and Urban Affairs Committee be authorized to meet during the session of the Senate on Thursday, February 24, to conduct a hearing on Export Administration Act. The hearing will begin at 2:00 p.m.

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

ADDITIONAL STATEMENTS

SOCIAL SECURITY DISABILITY AND REHABILITATION ACT OF 1994

• Mr. CHAFEE. Mr. President, yesterday Senator COHEN introduced legislation that makes important reforms to two Social Security programs that provide benefits to the disabled. I applaud him in his effort to restore credibility to these important programs and am pleased to join as a cosponsor of the legislation.

The Social Security Disability Insurance [SSDI] and Supplemental Security Income [SSI] Programs were designed to support individuals who cannot work because of physical or mental disabilities. Included in the definition of qualifying disabilities are drug addiction and alcoholism. Indeed, 250,000 addicts receive benefits to the tune of \$1.4 billion under these programs. The rationale behind this is that drug addicts and alcoholics must be supported financially while they are undergoing treatment.

Shockingly, a year-long investigation by Senator COHEN's staff on the Senate Special Committee on Aging and by the General Accounting Office [GAO] has brought to our attention that instead of helping drug addicts and alcoholics seek treatment, the programs are in many instances merely subsidizing their addictions. Because the Government has not required addicts to seek treatment, or held them accountable for how the money is spent or who manages it, the program has spun out of control and is now operating as a cash assistance program for drug addicts and alcoholics—with no strings attached.

To be certain, Congress has tried to put some restraints on the SSI Program. Addicts receiving benefits under this program may not get the money directly. Instead, the money is paid to a supposedly third party, such as a family member or friend. This so-called representative payee is supposed to be a responsible member of society who will oversee how the money is spent. Regrettably, the investigation revealed that too often this third party is also an addict, unable to manage his own life, let alone that of a fellow addict. While this provision has not been well enforced, at least there was an attempt. No such attempt is made in the SSDI Program, where the money goes directly into the hands of the addict.

The treatment requirements are also ineffective—where they even exist. Supposedly, drug addicts and alcoholics who receive SSI benefits must participate in a substance abuse treatment program—if available. Senator COHEN's investigation shows that the Social Security Administration does a sorry job of overseeing this requirement. As a result, many addicts are never held to this requirement. Again,

at least the Government showed an interest in trying in the SSI Program—the SSDI Program does not even bother to make treatment a condition of benefits.

One of the ways that the Social Security Administration determines eligibility for these programs is if an individual is unable to engage in substantial gainful activity because of his or her mental or physical impairment. Yet, many addicts are engaged in substantial gainful activity that is illegal, namely drug dealing. They will admit this to the authorities to prove that they are addicts, and then will be deemed eligible for benefits.

Clearly, Mr. President, the time has come for Congress to take action. This legislation would put into place some tough new requirements. First, and most important the legislation will require that all substance abusers seek treatment, and it will increase the availability of substance abuse treatment programs. Second, addicts will no longer be allowed to designate a fellow addict as their representative payee. Instead, the money will be paid to an approved community agency which will oversee its distribution. Third, drug dealers, who are now on the rolls, will no longer be eligible for benefits.

Mr. President, we have all been trying to find ways to save money and to make Congress more accountable for the programs it authorizes. Taxpayers have been most generous in their support for the truly needy, and we should make every effort not to exploit that generosity. Individuals who are truly disabled, or addicted to drugs or alcohol and trying to change your ways should be supported. But we will no longer help those who are not trying to help themselves. This legislation puts that message into law, and I urge my colleagues to enact it as soon as possible. Thank you, Mr. President.●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. PELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Order No. 698, Calendar Order No. 699, Calendar Order No. 700, Calendar Order Number 701, Calendar Order No. 702, Calendar Order No. 704, and Calendar Order No. 705.

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

Mr. PELL. I further ask unanimous consent that the nominees be confirmed en bloc; that any statements appear in the RECORD as if read; that, upon confirmation, the motions to reconsider be laid upon the table en bloc; and that the President be immediately notified of the Senate's action.

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

The nominations considered and confirmed en bloc are as follows:

U.S. ENRICHMENT CORPORATION

Greta Joy Dicas, of Arkansas, to be a Member of the Board of Directors of the United States Enrichment Corporation.

Frank G. Zarb, of New York, to be a Member of the Board of Directors of the United States Enrichment Corporation.

Kneeland C. Youngblood, of Texas, to be a Member of the Board of Directors of the United States Enrichment Corporation.

Margaret Hornbeck Greene, of Kentucky, to be a Member of the Board of Directors of the United States Enrichment Corporation.

William J. Rainer, of Connecticut, to be a Member of the Board of Directors of the United States Enrichment Corporation.

DEPARTMENT OF THE INTERIOR

Gordon P. Eaton, of Ohio, to be Director of the United States Geological Survey, vice Dallas Lynn Peck.

DEPARTMENT OF LABOR

Bernard E. Anderson, of Pennsylvania, to be an Assistant Secretary of Labor, vice Carl M. Dominguez, resigned.

STATEMENT ON THE NOMINATION OF MEMBERS OF THE BOARD OF DIRECTORS OF THE U.S. ENRICHMENT CORPORATION

Mr. WALLOP. Mr. President, nearly 10 years ago, a group of Senators on the Energy Committee began a diligent effort to save the Department of Energy's Uranium Enrichment Enterprise from extinction. The Department was faced with declining demand for its product, rapidly increasing competition in the market, and the effects of a series of improvident bureaucratic decisions. Finally, in the Energy Policy Act of 1992, we succeeded in creating a Government Corporation with the hope that freedom to operate in businesslike manner would save this enterprise. Today's confirmation of the Board members charged with making a success of the new Corporation should gratify those of us involved in this effort. Instead, I find myself plagued by a gnawing suspicion that the administration may thwart our efforts to save this venture and maximize returns to U.S. taxpayers.

In the Energy Policy Act of 1992, this committee insisted on the transfer of the foundering Uranium Enrichment Enterprise to a newly created Government Corporation with the ultimate goal of privatization. Implicit in that undertaking was the notion that a direct correlation would exist between the success of the Corporation and the absence of Government interference in its operations.

Through capable, efficient management, the new Corporation began its operations on schedule and under budget. My concerns today lie not with the Corporation's management, but with the ominous signals from the administration that it intends to exert over the management a degree of influence that, if unchecked, will eventually result in the Corporation's demise.

For example, the HEU deal concluded last month with Russia sets a purchase price that is above the cost at which the Corporation can produce the product itself. Such an arrangement does not appear to be related to any sensible business practice.

More recently, the administration's budget proposal for 1995 includes a provision that requires operational changes at the Corporation in order to offset the administration's objectives for other programs. Both of these events demonstrate exactly the kind of bureaucratic malaise we sought to eliminate by directing that the new Corporation operate in a businesslike, profit-motivated manner.

The nominees before us today all profess to have the same goals for the Corporation that we envisioned. That is encouraging. It is also encouraging that each of the nominees has proven capabilities in a wide variety of business arenas. However, if they are to succeed, they must be uniformly unwavering in their resolve to keep the administration out of the affairs of this Corporation. Otherwise, the Corporation's customers will remain distrustful of its ability to be competitive in such a challenging market and the Corporation will surely fail.

I have supported the confirmation of these nominees because they have convinced me of their singleminded purpose to make this Corporation a successful business venture and that they will not permit the administration to thwart that goal through micromanagement of the Corporation's business decisions. I wish the Directors well in accomplishing this task and will keep a watchful eye on their progress.

STATEMENT ON THE NOMINATION OF GORDON P. EATON

Mr. WALLOP. Mr. President, I rise in support of the nomination of Mr. Gordon Eaton to be Director of the U.S. Geological Survey.

Mr. Eaton has a distinguished background as an Earth scientist as well as good experience as an administrator which will stand him in good stead to take on the responsibilities of this important information-gathering agency. Mr. Eaton holds an M.S. and Ph.D. in geology from the California Institute of Technology and currently serves as the director of the Lamont-Doherty Earth Observatory of Columbia University. From 1963 to 1981, he served in a variety of high-level positions at the Survey.

I believe Mr. Eaton to be a dedicated public servant and well qualified for the position to which he has been nominated.

U.S. ARMY

Mr. PELL. Mr. President, I ask unanimous consent that the Senate proceed

to the immediate consideration of the following nomination reported today by the Committee on Armed Services: Maj. Gen. Marc A. Cisneros, to be lieutenant general.

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

The clerk will report the nomination. The assistant legislative clerk read the nomination of Maj. Gen. Marc A. Cisneros, to be lieutenant general.

Mrs. HUTCHISON. Mr. President, Gen. Marc Cisneros is going to participate tomorrow in the changing of command at Fort Sam Houston in San Antonio, TX. He is being promoted from major general to lieutenant general so that he can take command of a very important base located in San Antonio.

Major General Cisneros is a native of Brownsville, TX. He is a graduate of St. Mary's University. He entered the Army in 1961 when he was commissioned as a second lieutenant in field artillery. During his distinguished career, he served two combat tours in the Republic of Vietnam. He was commander, U.S. Army South, for the liberation of Panama during Operation Just Cause in 1989.

Tomorrow, he will assume command of the 5th U.S. Army at Fort Sam Houston, a position for which he is extremely well qualified. I wish to be the first to congratulate him on his promotion and to welcome him back to Texas.

I would especially like to thank Senator SAM NUNN, the chairman of the Senate Armed Services Committee, and the ranking member, Senator STROM THURMOND, for agreeing to expedite this nomination. Also, I would like to thank the two distinguished leaders, Senators MITCHELL and DOLE, for allowing us to agree to this promotion for General Cisneros so that he can take part in the change of command ceremony tomorrow in San Antonio, TX.

I thank the Chair. I yield the floor.

Mr. PELL. I ask unanimous consent that the nominee be confirmed; that any statements appear in the RECORD as if read; that the motion to reconsider be laid upon the table; and that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

INDEPENDENT COUNSEL REAUTHORIZATION ACT OF 1994

Mr. PELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives

on S. 24, a bill to reauthorize the Independent Counsel Law for an additional 5 years, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

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

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) REAUTHORIZATION 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: "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."

(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 appears 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.—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."

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.

Mr. PELL. I ask unanimous consent the Senate disagree to the House amendment and agree to the request for a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees.

There being no objection, the Presiding Officer appointed Mr. GLENN, Mr. LEVIN, Mr. PRYOR, Mr. COHEN, and Mr. STEVENS, conferees on the part of the Senate.

MEASURE READ FOR THE FIRST TIME

Mr. PELL. Mr. President, I understand that S. 1865, the Community Health Improvement Act of 1994, introduced earlier today by Senator MCCAIN, is at the desk.

The PRESIDING OFFICER. That is correct.

Mr. PELL. I ask for its first reading. The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 1865) to amend title 19 of the Social Security Act to promote demonstrations by States of alternative methods of more efficiently delivering health care services through community health authorities.

Mr. PELL. I now ask for the second reading of the bill.

The PRESIDING OFFICER. Is there objection?

Mr. PELL. I object on behalf of the Republican leader.

The PRESIDING OFFICER. Objection is heard.

The bill will lay over and will receive its second reading on the next legislative day.

ORDERS FOR FRIDAY, FEBRUARY 25, 1994

Mr. PELL. Mr. President, on behalf of the majority leader, I ask unani-

mous consent that when the Senate completes its business today, it stand in recess until 10 a.m., Friday, February 25, that following the prayer, the Journal of proceedings be approved to date and the time for the two leaders reserved for their use later in the day; that the Senate then resume consideration of Senate Joint Resolution 41, the balanced budget constitutional amendment, with the time for debate on Friday, extending until 6 p.m., with the time controlled as provided for under the provisions of a previous unanimous-consent agreement.

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

RECESS UNTIL 10 A.M. TOMORROW

Mr. PELL. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 7:17 p.m., recessed until tomorrow, Friday, February 25, 1994, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate February 24, 1994:

DEPARTMENT OF STATE

RYAN CLARK CROCKER, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE STATE OF KUWAIT.

ARVONNE S. FRASER, OF MINNESOTA, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE COMMISSION ON THE STATUS OF WOMEN OF THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS.

EDWARD S. WALKER, JR., OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ARAB REPUBLIC OF EGYPT.

NATIONAL COUNCIL ON DISABILITY

MARCA BRISTO, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1995, VICE SANDRA SWIFT PARRINO, TERM EXPIRED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. JOSEPH W. RALSTON, 270-40-9172, U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. LAWRENCE E. BOESE, 408-68-6649, U.S. AIR FORCE.

IN THE NAVY

THE FOLLOWING NAMED REAR ADMIRALS (LOWER HALF) OF THE RESERVE OF THE U.S. NAVY FOR PERMANENT PROMOTION TO THE GRADE OF REAR ADMIRAL IN THE STAFF CORPS, AS INDICATED, PURSUANT TO THE PROVISION OF TITLE 10, UNITED STATES CODE, SECTION 5912:

MEDICAL CORPS OFFICER

To be rear admiral

REAR ADM. (LH) JAMES RAYMOND FOWLER, 252-58-3354/2105, U.S. NAVAL RESERVE.

JUDGE ADVOCATE GENERAL'S CORPS OFFICER

To be rear admiral

REAR ADM. (LH) FRED STEPHEN GLASS, 242-56-2365/2505, U.S. NAVAL RESERVE.

SUPPLY CORPS OFFICER

To be rear admiral

REAR ADM. (LH) LYLE ROSS HALL, 574-12-0730/3105, U.S. NAVAL RESERVE.

CONFIRMATIONS

Executive Nominations Confirmed by the Senate February 24, 1994:

DEPARTMENT OF LABOR

BERNARD E. ANDERSON, OF PENNSYLVANIA, TO BE AN ASSISTANT SECRETARY OF LABOR.

U.S. ENRICHMENT CORPORATION

GRETA JOY DICUS, OF ARKANSAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE U.S. ENRICHMENT CORPORATION FOR A TERM OF 2 YEARS.

FRANK G. ZARB, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE U.S. ENRICHMENT CORPORATION FOR A TERM OF 2 YEARS.

KNEELAND C. YOUNGBLOOD OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE U.S. ENRICHMENT CORPORATION FOR A TERM OF 3 YEARS.

MARGARET HORNBECK GREENE, OF KENTUCKY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE U.S. ENRICHMENT CORPORATION FOR A TERM OF 4 YEARS.

WILLIAM J. RAINER, OF CONNECTICUT, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE U.S. ENRICHMENT CORPORATION FOR A TERM OF 5 YEARS.

DEPARTMENT OF THE INTERIOR

GORDON P. EATON, OF OHIO, TO BE DIRECTOR OF THE U.S. GEOLOGICAL SURVEY.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. MARC A. CISNEROS, 461-60-0361, U.S. ARMY.