United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 103d CONGRESS, SECOND SESSION

## SENATE—*Tuesday, March 22, 1994*

*(Legislative day of Tuesday, February 22, 1994)*

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable BEN NIGHTHORSE CAMPBELL, a Senator from the State of Colorado.

### PRAYER

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

Let us pray:

*And whosoever will be chief among you, let him be your servant*—Matthew 20:27.

Gracious God our Father, we pray this morning with profound gratitude for all the men and women who, though invisible to the public, provide the Senate with services without which it could not function. We thank Thee for their dedication, for the long hours many of them work, often reporting long before the Senate opens and remaining long after it recesses. We thank You for their faithful labors when the Senators return to their States to respond to constituent needs. We thank You that often they serve as shock absorbers against exploitation of the Senators. We ask Thy blessing upon these faithful men and women, hard at work behind the scenes. Help us to be sensitive to their needs and the needs of their families, and to remember how indispensable they are to the business of the United States.

We pray this in the name of Him who was 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, March 22, 1994.*

*To the Senate:*

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

ROBERT C. BYRD,
*President pro tempore.*

Mr. CAMPBELL 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 10 a.m. with Senators permitted to speak therein for not to exceed 5 minutes each.

The Senator from Pennsylvania [Mr. WOFFORD] is recognized to speak for up to 20 minutes. The Senator from Pennsylvania is recognized.

### WELFARE REFORM

Mr. WOFFORD. Mr. President, this Congress is ready to move forward on proposals to change our Nation's welfare system as we know it. It has been a long time coming. For years, I have been pressing the idea that the current welfare system is not working. We have had too many well-meaning but costly and ultimately ineffective social programs—programs that too often promote dependency, not responsibility; complacency, not initiative; make work instead of real work.

In my first speeches as a Senator I said it is a scandal that a society with so much work to do is paying able men and women to sit idle—that people on welfare deserve the dignity of a job. For at the core of what we are as people is the dignity of work—the independence and self-respect that come from having a job, doing it well, supporting a family.

I am glad to say that we have finally reached a point when almost all of us—Democrat and Republican, people of all races, colors, and economic circumstances—agree: The welfare system is broken. It is not working for those who are trapped in it. And it is not working for those who have to pay for it.

The incentives in the current system are wrongheaded. Instead of encouraging families to stay together, it rewards them for splitting apart. Instead of encouraging work, it rewards idleness.

A lot of people in Washington—on both sides of the aisle, in the White House, and the Congress—now are talking about how to achieve welfare reform. That is an important development. As someone who has already put into action the principle of moving people from the welfare rolls to the job rolls, I intend to bring the Pennsylvania experience into the thick of this debate.

For over 4 years before I came to the Senate I was Pennsylvania's Secretary of Labor and Industry in Governor Casey's cabinet. One of my key efforts was to turn upside down the very idea of the State's unemployment offices. We turned them into a network of one-stop-shop job centers.

The point was not just a change in name, but a fundamental change in direction. We did not want a bureaucracy that was satisfied with maintaining people on unemployment. We wanted to create one-stop shops that brought together in one team under one roof the many Federal and State job training, job search, and placement programs. A team that would not be satisfied until they helped a person achieve one goal: a new job. And as a result, we helped a lot of people keep off welfare.

We applied the same idea in moving people already on welfare into the world of work. Three different State agencies came together to form a Single Point of Contact Program. You would think it was common sense to bring all the needed services together in a single office. But I cannot even count the number of people who told

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



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me about having to go from one government office to another, waiting on line, filling out forms and using up valuable time that they could have used looking for a job.

The program is an important model for producing real success in helping people move from welfare to work.

So when I got to Washington, one of the first things I did was go to my colleague from the Kennedy and Johnson administrations, Senator MOYNIHAN, who is our creative and experienced leader on welfare issues in the Senate. I told him that I wanted to be an active partner in taking the next critical steps on the road Congress began when it enacted the 1988 Family Security Act.

Since then, Senator BOREN and I have also worked together—with bipartisan support—to create a pilot program that provides work for welfare recipients and keeps others from ever going on welfare. We built on one of the most successful work programs this country has every known: Franklin Roosevelt's Civilian Conservation Corps. At the height of the Great Depression, the CCC took millions of unemployed young men off the streets and put them to work in our parks and forests, building facilities we still use and enjoy to this day.

Senator BOREN and I want to enable young people today get the kind of rigorous work experience that provides skills, training, personal responsibility, and self-respect, while at the same time meeting our most pressing community needs. That is the National Civilian Community Corps just now being launched as part of the new national service program we enacted last summer.

That is another key pilot program that helps keep people off of welfare. But the purposes of a pilot light is to ignite the whole furnace. Now, as we prepare to reform the welfare system as a whole, it is essential that we use these working models to guide us; to lead us back to what should have been the first principle of welfare all along: work.

Over the past several months, I have been consulting my former colleagues on the front lines. And learning from the experiences of the welfare recipients themselves. Both from those who have succeeded in lifting themselves off of the dole, and from those who have not.

Experience teaches me that effective reform rests on five basic propositions:

First, welfare must be changed from long-term income support into job preparation and placement. Second, whenever possible, the work should be in the private sector. And any public service work must be disciplined and well structured. Third, we have to turn upside down the current incentives that discourage work and that especially means health care reform. Fourth, we have to upgrade the education and job training programs. And fifth, we have to insist that parents take greater responsibility for themselves and their children.

Let me start by going back for a moment in history:

When President Roosevelt created aid to families with dependent children as part of the Social Security Act in the 1930's, it was to help widows and orphans. The program was intended to provide temporary relief—not to create a permanent way of life.

But today the majority of long-term welfare beneficiaries enter the program not as widows and orphans, but as teenagers. And, for far too many of them, it is not a short-term transitional program, but a long-term income support program. That has to change.

So the first change is make jobs, not benefits, the focus of welfare. Intensive job training and job search should be the expectation, not the exception. And after a reasonable period—the two years President has proposed—people who are able to work should be required to work.

Better yet, from the day anyone applies for welfare, we must emphasize that the period on welfare should be as short as possible, preferably much less than 2 years. That is the kind of new direction we took in our Single Point of Contact Program in Pennsylvania.

Before we created the Single Point of Contact Program, the main concern of our State's welfare system was giving out benefits. It was a bureaucracy geared to determining who qualifies for the program and writing out checks. It was, in a sense, a benefits factory whose byproduct was dependency.

The purpose and culture of our single point of contact effort is totally different. From the moment participants enter, they know they are there to prepare for and find work—not just to receive a benefit check.

And we have had measurable success at training and placing in jobs those who are often the most difficult to employ. It is still on too small a scale, but we have proven that we can achieve the second key goal: moving people into private sector jobs.

Yet the hard fact is that even with vastly expanded job training, not every welfare recipient will be able to get a private sector job in 2 years. Our economy still is not creating enough of those jobs. But those who cannot find one should be called on to do well-organized public service work. There is certainly plenty and badly needed work to do.

One caution: I also know from experience that public service work can degenerate into make work. As Pennsylvania's Secretary of Labor and Industry, I saw how well-intentioned efforts like summer jobs for youth can pay young people to kill time in local government offices doing little more than moving around meaningless files.

At the same time, I have also seen rigorous, team-based public work in the nonprofit, independent sector that is both worthwhile in meeting community needs and useful in developing not only job skills, but also the discipline, responsibility, and initiative that is essential for success in work and in life.

An effective public works program has to achieve a careful balance. It has to require more than simply putting in a certain number of hours to get a welfare check. It should be a job for which the former welfare recipients are paid by the community agency or service corps where they work.

The work should be structured. Whether it is out in the community or inside an office, the tasks should be challenging, the rewards well-earned. A pay check, not a welfare check, is essential if people are to see themselves—and be seen as—moving from welfare to work.

Third, we have to get rid of the disincentives to work that exist in the system today. To put it simply, we have to make work pay. We have already taken an important first step by increasing the earned income tax credit. This enables families with low earnings to gain tax credits for each dollar that they earn themselves. Only those who work get the credit. And, up to a limit, the more they work, the more they get.

The earned income tax credit is exactly the opposite of welfare. Welfare penalizes people who go to work by cutting their benefits. So it encourages them to stay at home. But the tax credit rewards work. As a result, it is estimated that over half a million low-income Pennsylvania families will qualify for some $808 million in additional earnings.

That is only a start. What I hear over and over again all across our State—from employers and workers, from welfare recipients and social workers—is that the single most powerful incentive to stay on welfare is the health care benefits available while on welfare.

As Secretary of Labor and Industry, I found that the biggest obstacle to our effort to move people from welfare to work was how many poor single mothers were afraid to take job training opportunities because the entry-level jobs they could get did not include the health benefits that staying on Medicaid gave them and their children.

As long as people are afraid to leave welfare because they are afraid of losing their health care, people will stay on welfare when they could take jobs. And what is even worse, some people will actually quit jobs that lack health benefits and go on welfare in order to qualify for Medicaid.

Last fall at a Small Business Committee hearing I held in northeastern Pennsylvania, Philadelphia businessman Samuel Kuttab told how it broke his heart, and hurt his bottom line, to

have dedicated, productive workers quit their jobs and go on welfare when what they really needed was health insurance.

At a Labor Committee hearing I held earlier this year in Chester, PA, I heard from Kathleen Lawson of Lester, PA—a mother who has worked all her life. Her job does not provide health insurance. Recently doctors found a lump in her breast. She is concerned that she may be forced to quit and go on welfare—so that Medicaid will pay for the treatment she needs to fight breast cancer.

Marguerite Jones of Sharon Hill, PA, had a similar story. A mother of three, Ms. Jones used to work in a mental health group home. Her job provided health insurance for herself—but not for her children. One of her sons has severe asthma. She couldn't afford his medication—so she was forced to give him only half of the dosage he needed. She went to the local welfare office to see if she could get medical assistance for her son—but was told that she was over the income limit by $5 dollars. Five dollars.

After struggling for years, Marguerite Jones left her job and went on welfare. Now her son is able to take the full dosage of his medication. And she is unemployed. Why do we force people to make that kind of a choice between their independence and their children's health?

The head of a county welfare office told me that more than half the people who come to the welfare office seeking assistance are actually looking for medical assistance—not cash benefits. These are working people without health care. And far too often, they, like Marguerite Jones, become unemployed people on Medicaid.

This is unacceptable. Clearly, health care reform that guarantees every American private health insurance is an essential prerequisite to reforming welfare. If anyone thinks that we can do one without the other then they don't understand the problem.

Some believe that we cannot accomplish both health care reform and welfare reform this year, in this Congress. I disagree. The fact is, we cannot end welfare as we know it unless we reform health care. And to those who say that Congress cannot move forward on both tracks at the same time, these stories tell us that we cannot afford not to.

That leads me to the fourth key part of the puzzle: preventing people from going on welfare in the first place. That means improved job training, education, and job search programs for those who are laid off through no fault of their own. As we did with our Job Center Program in Pennsylvania, we have to turn our Federal unemployment system into a reemployment system.

When I was secretary of labor and industry, at one point we counted 22 separate and uncoordinated Federal job training and placement programs. I am proud that the one-step shop idea we pioneered in Pennsylvania is providing a model for Secretary Reich and the Clinton administration for how to combine, simplify and streamline job training, and placement services.

For those who have not yet joined the work force, we need to expand the kind of school-to-work transition and youth apprenticeship programs that are also working in Pennsylvania. We know that in learning-by-doing, young people gain not only the job skills, but also the discipline, initiative and personal responsibility required to succeed as workers in a competitive world economy.

In recent years, only half of our high school graduates enter postsecondary education or training programs. Of these, only half have completed their degrees. Too many of these young people move from one low-skill job to the next, with periods of unemployment and sometimes welfare in between. It is estimated that 50 percent of adults in their late twenties have not found a steady job. We simply cannot afford to waste their productivity, talents and skills.

The Career Pathways Act Senator SIMON and I introduced last year—now incorporated in the School-to-Work Transition Act, will help the half of high school students who do not go on to college prepare for good jobs, for real jobs in the private sector.

The average stay on welfare is under 2 years—but a third of those who enter welfare as teenagers stay on welfare for over 10 years. So it makes sense to focus intensive services and requirements first of all on those who are most likely to stay on welfare for a long time—the young, and those with the most barriers to employment.

That is what we did in Pennsylvania with the Single Point of Contact Program. We targeted those who have never worked before, those without a high school diploma or GED, and those who are illiterate: 80 percent are under 30 years old.

And despite the tough odds, we achieved results. One success story is Donna Russini of Swissvale, PA. Donna went onto welfare after her divorce. She had some work experience, but few marketable skills. She had trouble finding a job that would support her and her son. She entered the Single Point of Contact Program in 1987. She said "my goal was to have my son, Tony, look at me with pride."

The program gave Donna the direction and the job skills she needed. She graduated from a secretarial program and attended Allegheny Community College part-time. Ms. Russini now has a good job at Integra Bank—but she does not forget how far she has come. She says, "I keep one food stamp in my wallet to remind me where I come from."

Like so many people in our State and across the country who have been forced by circumstances onto welfare, Donna Russini knows the value of independence and importance of taking responsibility for herself and her family. She wants to set a good example for her son. And the system does not make it easy for her.

And that leads to the fifth point, the system seems to make it easy for parents who don't take their responsibilities seriously. It is a scandal that only a small fraction of single mothers get any child support at all from absent fathers today. Of the $55 billion in child support that is owed, only $11 billion is collected.

Bringing children into this world is a serious responsibility. For fathers as well as mothers. No one can doubt that our American society seems somehow to have devalued that responsibility.

Hard economic circumstances are something we all understand. Most Americans have felt hard-pressed in the pocketbook over the past few years. But that is no excuse for deadbeat dads skipping out on the obligations they owe to their own children.

That is why I am a cosponsor of Senator BRADLEY's legislation to improve and strengthen the collection of child support—especially between different States. We need to do a better job of establishing paternity and determining and collecting child support payments in this country—because an ever-increasing number of America's poor are children. And the more children who grow up poor, the more young adults there are who are likely to fall into the same welfare trap.

Our job, in Congress and in our country, must be to break that cycle of dependency that all too often continues from one generation to the next. I believe we are ready to do it.

Republicans in Congress have offered a serious proposal for reform. I do not agree with every detail of their plan. But their approach shares a number of elements I have been proposing and the President is proposing.

We have the opportunity now to build on that common ground and find a consensus for action.

The vast majority of Americans want a system built on reciprocal responsibility. And few dislike our current dependency system more than those who are in it and struggling to escape it. We owe it to them and to our country not to lose this opportunity to end welfare as we know it.

Just a few months before I came to the Senate, I spoke at Rosemont College's Centennial Symposium on the Papal Encyclical Rerum Novarum. To prepare for it, I went back to Pope Leo's 1891 document. Of course, there were elements in it that no longer apply to our modern society; as well as ideas for workers' rights that have been adopted in our laws and are part of our new reality.

But my primary reaction was how much truth he spoke. And how he still speaks to us today with unfinished agenda for action.

For many years in public affairs, I have seen how governments are big, slow, lumbering bureaucratic steeds that need to be stung into action by gadflies. Pope Leo was far more than a gadfly when he wrote of the scandal of the wretched condition of the century working classes. Looking at today's problems, I called my talk, "The Scandal of the Nonworking Classes." I said:

> We need a new encyclical which looks at the one-fourth of our people, more or less, who are without work—who are born into a class that is programmed not to work or who have fallen into that class. They have fallen into the safety net of our so-called welfare system and been entrapped by it.

The principle to guide our action was stated by Leo himself. "Work for all who are able to work is 'necessary; for without the result of labor a man cannot live.'" He went back to the Biblical authority: "In the sweat of thy brow thou shall eat thy bread."

In short, work is the essential way to make life more human. That's why our challenge today, as we take action to end the scandal of a welfare system which is failing the very people it was meant to serve, is the same challenge Leo put to all governments over a century ago:

> Everyone should put his hand to the work which falls to his share, and that at once and straightaway, lest the evil which already is so great become through delay absolutely beyond remedy.

Mr. President, the evils of our current welfare system are already great, but they are not beyond remedy—not if we in this Congress put our hands to the work which is our share; and if we do so without delay.

Mr. LOTT addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Mississippi [Mr. LOTT], is recognized.

Mr. LOTT. I thank the Chair.

(The remarks of Mr. LOTT pertaining to the introduction of S. 1955 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LOTT. I yield the floor, and I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. BRADLEY. 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.

The Senator is recognized for 10 minutes.

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## UNITED STATES-JAPAN RELATIONS: A STRATEGIC FRAMEWORK

Mr. BRADLEY. Mr. President, America's most important relationship internationally is with a country that is in the throes of a historic transformation. It is a country trying to break free from the bureaucratic shackles which have victimized its people and reduced its quality of life, shackles which have denied the public a voice in the governance of their country and a fair share of if considerable prosperity.

The stakes in the success of this transformation are high. If it succeeds, this country will emerge as a primary American partner in working for the kind of international environment conducive to a stable, peaceful, prosperous, and democratic future. If it fails, the world will be more nasty and brutish, and we will have to devote more of our scarce resources in support of vital national interests abroad.

The country in question is not Russia or China, it is Japan. And our approach to Japan has broad implications for American interests across the board: in bilateral trade, Japan's political reform, and American strategic interests.

The most visible symbol of the United States-Japan relationship is our merchandise trade deficit, now over $59 billion. Our current account deficit, which takes into account our surplus in service trade, is only around $12 billion smaller.

To understand what can work to reduce the bilateral trade balance, we must first understand what will not work. Quantitative measures will not eliminate the bilateral trade imbalance. The studies I have seen indicate that removing every single Japanese barrier would reduce the merchandise trade deficit by less than 20 percent. For example, a comprehensive study by the Institute for International Economics concludes that Japanese market access barriers are limiting American merchandise exports by only about $9 to $18 billion, or less than the increase in that deficit since 1990. This is significant, of course, and argues for effective policies to open Japanese markets. But it pales in comparison with the magnitude of the overall problem.

The economic fact is that the overall U.S. trade deficit will continue as long as the gap remains between American savings and investment. As long as we consume more than we save, we will need to draw in goods from abroad. The Japanese component of that overall deficit will remain too large as long as the macroeconomic mix is wrong.

Japan is currently in recession, the deepest since its recovery from World War II. Industrial production is down 3.1 percent from a year ago. Unemployment is up and, for the first time in two generations, Japanese workers fear for their jobs. As a result, Japanese consumers are buying less and importing less. In fact, Japanese households spent 0.6 percent less in 1993 than in 1992, the first year-on-year drop in 12 years.

At the same time, the American economy is enjoying a recovery. This recovery, I should point out, owes something to the administration's successful effort to cut the budget deficit by almost $500 billion. Americans are buying more—industrial production is up 4.8 percent; retail sales have increased 5.8 percent. As a result, America is sucking in more imports. This combination of Japan in recession and America in recovery has led to a worsening of the bilateral trade deficit.

So our first task is to get the macroeconomic fundamentals in synch. That means the Japanese must take effective measures to get their economy growing again. A growing Japanese economy will do more than quantitative targets to bring the deficit down.

However, a growing economy is not enough. For even in a growing Japanese economy that imports more American goods, there will remain barriers to American companies in specific markets. Make no mistake about that. There are barriers. In pulp and paper, wood products, flat glass, auto parts—the list goes on and on—Japanese cartels and other market barriers are making it very difficult for United States firms to gain market share. These barriers must be removed. The question, then, is not whether to try to eliminate the barriers to the penetration of American goods into the Japanese market, but how to get those barriers removed.

There are two approaches to opening the Japanese economy to our products. One is to set and enforce quantitative sales targets on a market-by-market basis. Mr. President, I do not think this is going to work.

The problem with quantitative measures is that, like all measures for managing trade, they deny American firms the ability to compete and win market share. This is because, while it is always possible for bureaucrats to come up with a number—indeed, that is what Soviet bureaucrats did for over 60 years—there is no guarantee the number chosen will be the right number.

The Americans inevitably will see this number as a floor. The Japanese will see it as a ceiling. So trade will settle at that figure, or lower, even though there is no way of knowing whether that figure is the right one. If it is too high, trade will not reach it, no matter how much pressure is applied. If it is too low, we have missed out on sales and jobs.

However, there is another way. Instead of trying to manage results, we can focus our efforts on improving the working of the market. This means negotiating rules, then providing for adjudication. Under a transparent, open market, with agreed rules, backed by a transparent, open dispute resolution mechanism, American companies will have the opportunity to increase mar-

ket share well beyond any number Japanese bureaucrats would agree to. When the market, not bureaucrats, decide, American companies benefit.

Take the semiconductor agreement, for example. The target was set at 20 percent. Foreign market share is hovering around 20 percent and will continue to do so. That is what the target was; that is roughly where we are. I believe that in an open, transparent market with adequate dispute resolution, the American share alone would be far higher than 20 percent. Or, if the share did not exceed 20 percent, it would be for market reasons. Perhaps, for example, the product in question has lost its technological edge and American industry was focusing its efforts elsewhere. What good is a 20-percent market share in buggy whips? The point is, the market would decide, not a Japanese or American bureaucrat.

You do not have to take my word for this. Even the semiconductor industry, the beneficiary of the semiconductor agreement, concurs. In a March 2 form letter to me, the president of the Semiconductor Industry Association admits,

> There is no doubt that the United States share alone of the Japanese semiconductor market would be far higher than 20 percent if the market was open to free and fair competition.

In other words, with no quantitative target but an open market we would be doing a lot better.

I agree with those who assert that previous rules-based negotiations, such as the MOSS and SII talks, have been largely ineffective. But I believe they were ineffective not because of their focus on rules, but because of the lack of an ajudication process to hold the sides to their agreements. What we need to do is keep the focus on the process, while adding effective enforcement.

The focus on quantitative indicators also undercuts our interest in a successful Japanese political transformation. Prime Minister Hosokawa, the first post-war prime minister who is not from the Liberal Democratic Party, came to power on a wave of reform promises and has already taken courageous steps to update Japan's political economy. He has cracked open Japan's rice market, to the eventual benefit of Japan's consumers. He has also established single-member electoral districts which will give urban consumers a greater voice in the political process and has removed some of the money corruption that has so plagued Japanese politics.

Hosokawa's ultimate objective is to reduce the power of the bureaucracy and the entrenched big business interests, and thereby empower the people, the consumers, through their elected representatives. When consumers have more power, they will demand—and get—cheaper goods, higher quality goods, and a better standard of living. Cheaper goods, higher quality goods—that means American goods.

As I have explained, the Japanese Government must get its economy going again. To do that, Hosokawa is going to have to override the objections of his bureaucrats. The recent announcement of a $50 billion income tax cut shows how far he has come—and how far he still has to go.

The bureaucrats in the Finance Ministry are pushing hard for a consumption tax increase to counteract Hosokawa's income tax cut, even though that would reduce or even eliminate the stimulus to Japan's economy. In other words, the bureaucracy is putting budget stringency ahead of the economic welfare of the Japanese people. Hosokawa has secured the $50 billion cut for 1 year, but the questions of whether it will be permanent and whether it will be paid for by other tax increases, have yet to be settled. If Hosokawa is to do the right thing, he will need the power to override the bureaucrats.

But a policy focused on quantitative indicators works against Hosokawa's efforts by strengthening the bureaucrats and the cartels, and cutting the consumer out of the process. Quantitative targets need someone to do the quantifying and someone to monitor results against the targets. Politicians will not do this. Voters will not do this. Bureaucrats will. And who will they work with? The cartels, of course. Quantitative targets, then, strengthen the bureaucracy and the cartels at the expense of the consumer, at the expense of political reform, and at the expense of American exports.

There is a better way. A rules-based approach with an effective dispute settlement mechanism would, by opening up the process, educate Japanese consumers to the market impediments which are reducing their quality of life. Once an American company demonstrates, through a transparent dispute-settlement process, how it could deliver a better product at a lower price, Japanese consumers will be empowered to demand the product and demand the elimination of the market impediment. The argument will shift from, "Why are the Americans managing trade?" to "Why does our Japanese system work against our interests as Japanese people?"

Finally, a trade policy focusing on quantitative measures would be devastating to America's strategic interests.

I realize that there is a constituency here in the United States that favors standing up to Japan. I know that failure of the framework talks was politically safer than agreement.

But I also know that leadership means identifying and pursuing American interests, even at short-term political cost. And, in this case, our interests are clear—you do not pick needless fights with your closest allies.

Every President intones that "the most important bilateral relationship we have is with Japan." It has become a mantra, not a policy. Yet we see at the same time a policy that I would call trust but quantify. What does that sound like? Trust, but verify, the Reaganera cold war refrain. What does that tell you? That we do not trust our most important global strategic partner any more than we trusted our most dangerous strategic rival. That signals an ominous mindset that could hinder the achievement of our worldwide strategic objectives.

Look at our most important foreign policy challenges in this time of transformations following the end of the cold war, such as strengthening the global economy; containing nuclear proliferation in North Korea; supporting reform in Russia and the rest of the former Soviet Union; encouraging the development of a globally responsible China; reforming the international financial institutions. The list goes on, but all the items have one thing in common. Without United States-Japan cooperation, we will not be successful.

However, no cooperative relationship can succeed without trust, the trust underpinning tough decisions and sacrifices. Trust but quantify, by undermining United States-Japanese trust, undermines our ability to manage these issues.

In addition, it puts the United States at a disadvantage vis-a-vis Japan in our legitimate economic competition. Take, for example, our economic relations with the Southeast Asian "Tigers." These countries are all going to the Japanese saying, "Don't give in. Don't accept managed trade." All of these countries see free and open trade as vital to their economic development and prosperity, so they support Japan, which in this case ironically has the opportunity to portray itself as a free-trader standing firm against American efforts at managed trade.

As a result, a policy based on quantitative indicators undercuts the United States position as the balance to Japan in these countries, thereby reducing American influence and market share. It clears the way for the Japanese to become the champions of free trade and to portray us as the country pushing policies that are contrary to southeast Asian interests.

And it is not only the ASEAN's who are concerned. The Europeans are not only critical of a quantity-based approach, they are trying to take advantage by cozying up to the Japanese as one free trader to another.

So where do we go from here? I would recommend a two-part strategy: launch a new round of negotiations to agree on trading rules backed by dispute-settlement procedures, and identify areas for strategic cooperation.

First, we start a new round of talks. The goal of these negotiations would be to identify market impediments in specific sectors, negotiate rules to remove those barriers, and agree on an effective dispute settlement mechanism to ensure that both sides stick to their agreements.

What kind of dispute mechanism would provide United States companies adequate relief when Japanese markets don't function properly? I would recommend a three-part structure consisting of GATT/WTO procedures, United States-Japan binational panels, and a subcabinet early warning committee.

1. GATT/WTO PROCEDURES

The Uruguay round provides negotiated rules and an agreed panel structure for those areas covered by the agreement. Panels are made up of three experts chosen from a permanent roster. Decisions can be appealed, but cannot be blocked by the losing party. The winner can use cross retaliation against a recalcitrant loser. The problem here, of course, is that Japan largely conforms to GATT rules. The problems are in areas, such as competition policy, which are not covered under GATT.

2. BINATIONAL PANELS

For those issues that fall outside of GATT, such as competition policy, financial services, specific sector agreements, asset prices, et cetera, the United States and Japan would negotiate bilateral rules backed by a binational dispute panel mechanism. The United States-Israel FTA panel structure is a good model, with its three-member panels. Each side chooses one member and jointly chooses the president.

Panel procedures would be open and transparent, with ample scope for nonofficial input and maximum publicity. After all, the whole point is for consumers to know what is going on. There would be strict time limits on the process to prevent stalling.

Like the United States-Canada chapter 18 panels, United States-Japan panels would hold hearings and issue reports. Reports would be politically binding and form the basis for a resolution. Whenever possible, the result would be nonimplementation or removal of the offending measure. If that didn't happen, the Government of the winning party would be free to take sanctions. These sanctions would not, as now, appear as the result of Government fiat, but be seen by consumer as the result of an open, logical process.

3. SUBCABINET EARLY WARNING

Prevention is the best policy. To nip budding disputes, where possible, the United States and Japan should establish an informal group at subcabinet level. The group would be composed, perhaps, of a deputy USTR, Under Secretaries of State and Commerce, and an NEC deputy, with Japanese counterparts. The idea would be to develop an informal forum for straight talk that would eliminate misunderstandings that lead to disputes. This would not be adding a layer of bureaucracy to manage trade, but simply an informal discussion group to keep lines of communication open.

As the final piece of the trade puzzle, the two governments could set up a deregulation working group. Deregulation is essential to opening Japan's market, but it also constitutes the greatest threat to Japan's bureaucracy, since it would weaken the bureaucracy's power over its domestic constituencies. The fate of the Hiraiwa Commission report demonstrates the size of the obstacle.

What we must find is a way to empower Hosokawa to deregulate by giving him two arguments: The Americans want it, and it is good for Japan. We could do this by setting up a deregulation working group made up of executive, legislative, business, labor, and academic representatives. This satisfies the the Americans want it criterion. The group could build on the Hiraiwa Commission, and be charged to study regulation in both countries and come up with ideas that would benefit Japan. This satisfies the it's good for Japan criterion.

There would be no formal mechanism for implementing the Commission's recommendations. If these were binding, I doubt either bureaucracy, United States or Japanese, would agree to participate. However, assuming Hosokawa really is committed to deregulation, the Commission could give him a leg up on the bureaucrats.

Second, beyond trade, we need to look for high profile cooperative efforts in areas of strategic importance to us and the Japanese. The areas specified in the Framework Agreement—environment, technology, development of human resources, population, and AIDS—are a start but, frankly, do not go far enough. We must work together on such topics as human rights in China, North Korea proliferation, Russian reform, Middle East oil, and reform of the international economic system. In this way, we can build momentum in our relationship and establish the trust so vital to our strategic interests.

The United States has a major stake in the historic transformation underway in Japan. For half a century, the United States has borne the responsibility for making the international system work, for creating a benign international environment in which America and Americans can prosper. We should not shoulder that responsibility alone, but neither can we cast it off.

That responsibility now requires intelligent support for Japan's transformation. Trade policy must be at the center of our efforts, but a trade policy that works in synch with the ongoing transformation of Japan's economy and politics to achieve results that conform to both our interests.

Mr. HATCH addressed the Chair.

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

Under the previous order, morning business closes at 10 o'clock. If the Senator wishes the full 15 minutes, he would have to ask unanimous consent.

Mr. HATCH. Mr. President, I ask unanimous consent that I be afforded the full 15 minutes and that the time not be counted against the budget resolution.

The PRESIDING OFFICER (Mr. MATHEWS). Without objection, it is so ordered.

## NOMINATION OF CHIEF JUSTICE ROSEMARY BARKETT

Mr. HATCH. Mr. President, upon review of her judicial record and of her testimony before the Judiciary Committee, I have decided that I must oppose the nomination of Florida Chief Justice Rosemary Barkett to be a judge of the U.S. Court of Appeals for the Eleventh Circuit. I do so with regret because I like Chief Justice Barkett, and I consider her to be a fine person. But, I do so with the firm view that her record establishes that she will substitute her own policy views for the written law and take too soft an approach to criminal law enforcement.

In reaching this conclusion, I stress that no judicial nominee needs to agree with my reading of the law, or any other Senator's reading, in all or nearly all cases. But, there are just too many cases, across too wide a range of subjects, where I believe this nominee stepped well past the line of responsible judging. I and other Senators inquired about many of these cases at her hearing before the Judiciary Committee. Incidentally, I notified Chief Justice Barkett in advance of the cases that would be the subject of inquiry. I was not reassured by her testimony. Indeed, Chief Justice Barkett herself ultimately admitted that she overreached or was careless in a number of important opinions.

For example, in her dissent in University of Miami versus Echarte, Chief Justice Barkett voted to strike down statutory caps on noneconomic damages in medical malpractice cases. In addition to a variety of State law grounds, her dissent also relied upon the Federal equal protection clause. Without citing any Federal precedent, she asserted:

> I fail to see how singling out the most seriously injured medical malpractice victims for less than full recovery bears any rational relationship to the Legislature's stated goal of alleviating the financial crisis in the medical liability insurance industry.

In fact, the rational relationship between the means and the goal is self-

evident and was clearly spelled out by the legislature. One might well disagree with caps on noneconomic damages as a policy matter. But, Chief Justice Barkett's purported application of rational-basis review is a stark overreach and a flagrant misuse of the Federal equal protection clause. At her hearing, she acknowledged that she should not have relied on that clause.

In another case, Shriner's Hospital versus Zrillic, the nominee again relied on the rational basis standard under the Federal equal protection clause—as well as on a variety of State law grounds—in striking down a statute. In her opinion, she took the remarkable position that "underinclusive or overinclusive classifications fail to meet even the minimal standards of the rational basis test." This distortion of rational basis review into something akin to strict scrutiny clearly flies in the face of equal protection principles set forth in nearly 50 years of U.S. Supreme Court precedent.

Justice Barkett's misreliance on the Federal equal protection clause in these two cases is all the more striking to me in light of her partial dissent in Foster versus State. There, in seeking to rely on a theory of statistical racial discrimination in a challenge to the death penalty, she expressly acknowledged that the Federal equal protection clause was unavailable to her in light of a Supreme Court decision, McCleskey versus Kemp, squarely rejecting her view under the U.S. Constitution. Accordingly, in her Foster opinion she only relied on the Florida equal protection clause. Yet, she did not recognize the error of relying on the Federal Constitution when she wrote her opinions in Echarte and Zrillic. Her failure to appreciate in these two opinions that Supreme Court precedent foreclosed her reliance on the U.S. Constitution deeply troubles me. Supreme Court precedent governs lower courts not only when the claim presented is identical to that previously rejected by the Supreme Court but also when the basic doctrinal principles enunciated by the Supreme Court are applicable to a case. The failure to appreciate this opens the door to judicial activism—a door, I regret to say, I believe this nominee has repeatedly walked through.

I also find Chief Justice Barkett's reliance on Federal substantive due process very troubling. In State versus Saiez, she wrote an opinion holding that a State law criminalizing the possession of embossing machines capable of counterfeiting credit cards "violated substantive due process under the Fourteenth Amendment to the United States Constitution." Briefly, let me just say here, this expansive, substantive use of the due process clause is insupportable under Supreme Court precedent. The nominee testified that she was really relying on State due process grounds and her inclusion of the Federal due process clause was "careless".

Now, I can accept that, on occasion, a sitting judge may wish to phrase an opinion differently, in hindsight, or even believe that he or she got an opinion wrong. But tossing into her opinion the Federal equal protection clause and the Federal due process clause, on occasions where they very clearly do not belong, raises concerns that I do not find assuaged by testimony acknowledging this was erroneous. These two clauses are among the most powerful tools a judge can use, if so inclined, to legislate from the bench. In the case of the equal protection clause, virtually every law classifies people into at least two classes on some basis. Congress might enact limits on medical or product liability, which are subject to equal protection analysis as a component of the due process clause of the fifth amendment. States or Congress may seek to remove recipients from welfare rolls after a time limit of 2 years. A misreliance on Federal equal protection in reviewing these laws would lead to their erroneous invalidation. In the case of the due process clause, there is a tendency by some judges and commentators to read almost anything into it. This is all the more troubling because the misuse of these two clauses is not subject to limiting principles of judging, but only to the whim of the judge.

There will be many cases of first impression before the eleventh circuit. There will also be many times when precedents must be construed, and they may be construed broadly or narrowly. Most appellate decisions are not reviewed by the Supreme Court. These errors, then, are not merely technical or academic.

My concern about the nominee's approach to judging is heightened by other cases. For example, in a redistricting case (In re Constitutionality of Senate Joint Resolution 2G), the Florida Supreme Court selected from among six different modifications to a state legislative redistricting plan. Writing "dubitante," Justice Barkett stated that she was—

> loath to agree to any of the convoluted plans submitted under these hurried circumstances * * * If I had to choose only among those presented, however, I would choose the plan submitted by the NAACP simply because this is the organization that has traditionally represented and promoted the position that advances all minority interests.

At her hearing, Justice Barkett recognized that this opinion gave a clear appearance of partiality, as it expressed a preference for a party based on who the party was rather than the merits of that party's argument. She stated that she wished she had written her opinion differently.

On an occasional lapse, I am willing to give the benefit of the doubt to a nominee. But there are just too many instances in Justice Barkett's judicial record—the principal basis for evaluating her nomination—of overreaching, and on very significant issues, to leave me comfortable with elevating her to the eleventh circuit.

There are many other cases that concern me. For example, in Stall versus State, Chief Justice Barkett joined a dissent striking down a State obscenity statute on State law grounds. She also wrote separately in an opinion that, again, is sweeping and overbroad.

There are several problems with this dissent.

First, her statement that, "A basic legal problem with the criminalization of obscenity is that it cannot be defined" is flatly contradicted by the U.S. Supreme Court's landmark opinion in Miller versus California (413 U.S. 15 (1973)), which Chief Justice Barkett does not even acknowledge, much less discuss.

Second, she sweepingly claims that an obscenity law such as the one in Florida violates "every principle of notice and due process in our society"—not, I might add, a statement limited to state law principles, and, again, contradicted by the Miller decision.

Third, Chief Justice Barkett's opinion mischaracterizes the Florida law in the case: That law does not turn on the "subjective" view of a handful of law enforcement people and jurors or judges, as she incorrectly suggests. The Florida law incorporates the standard set forth by the U.S. Supreme Court in Miller. The law bans materials that, judged by contemporary community standards, appeal to the prurient interest, that depict or describe, in a patently offensive way, specifically defined sexual conduct, and that lack serious literary, artistic, political, or scientific value. Thus, the role of jurors or judges under this law would not be to make their own "subjective definition" of what is obscene, but rather to discern and apply existing community standards.

Incidentally, while I am pleased that she voted to uphold a Florida child pornography statute in a different case, I make two observations. First, this does not mitigate her sweeping views about the more general subject of obscenity. Second, contrary to her testimony, the child pornography statute is a different statute from the one she voted to strike down in Stall.

I have all of these concerns, and have yet to reach the issue of criminal law enforcement generally and the issue of the death penalty. There is much to say on these subjects.

With respect to criminal law issues aside from the death penalty, I believe that the nominee has too often erroneously come down on the side of lawbreakers and against police officers and law enforcement. She has exhibited an unduly restrictive view of the Fourth Amendment that would ham-

string the police, especially with regard to controlling drugs.

[See, e.g., *Bostick* v. *State*, 554 So.2d 1153 (Fla. 1989), rev'd, 111 S.Ct. 2382 (1991), on remand, 593 So.2d 494 (Fa. 1992); *State* v. *Riley*, 511 So.2d 282 (Fla. 1987), rev'd, 488 U.S. 445 (1989), on remand, 549 So.2d 673 (Fla. 1989); *Cross* v. *State*, 560 So.2d 228 (Fla. 1990); *Sarantopoulos* v. *State* (Fla. Dec 9, 1993)].

For example, in Bostick, a case involving cocaine trafficking, Justice Barkett adopted an across-the-board, per se ban on passenger searches on intercity buses even though Supreme Court precedent clearly called for an analysis of a search's legality based on all of the particular circumstances of the search. The U.S. Supreme Court reversed her.

The U.S. Supreme Court also reversed her in the Riley case, where her misapplication of precedent would have led to dismissal of charges against criminals growing marijuana. In yet another drug case, the Court criticized her overbroad reading of precedent.

In her dissent in a case called Cross, Justice Barkett refused to credit the testimony of police officers that they had seen cocaine packaged in the same peculiar way on hundreds of occasions in their combined 20 years of law enforcement. In so doing, she ignored Florida precedent cited by the majority that provided that the observation of an experienced policeman of circumstances associated with drugs could provide probable cause for an arrest.

In another dissent, she ignored settled principles enunciated in U.S. Supreme Court precedent in finding that someone who was growing marijuana in his backyard had his fourth amendment rights violated when police, acting on a tip, looked over a 6-foot fence, spotted the marijuana plants and then obtained a search warrant. Rather than inquiring whether the defendant had an expectation of privacy that was objectively reasonable, Chief Justice Barkett simply displayed her personal opposition toward what she regarded as overly intrusive law enforcement.

Justice Barkett has also written opinions striking down narrowly drawn laws that ban loitering for the purpose of prostitution and drug dealing. These opinions are badly flawed and misapply precedent. Moreover, they seriously disable communities from preventing harmful crime.

In my view, there are too many other instances where she unjustifiably construed criminal statutes in favor of criminals.

[See, e.g., *State* v. *Bivona*, 460 So.2d 469 (Fla. DCA 1984), rev'd, 496 So.2d 130 (Fla. 1986); *Gayman* v. *State*, 616 So.2d 17 (Fla. 1993).]

With regard to the death penalty, I appreciate that the nominee has voted to uphold the death penalty a number of times. I would expect as much in a State with a lawful death penalty and, unfortunately, a great deal of violent crime. But as I stated at Justice Barkett's hearing, a proper inquiry into a nominee's judicial outlook on the death penalty is not ended merely by noting that the nominee has upheld the death penalty in a number of cases, where even the most activist of judges cannot avoid its imposition. If a nominee exhibits a clear tendency to strain for unconvincing escapes from the imposition of the death penalty in cases where that penalty is appropriate, then that raises concerns in my mind about the nominee's fidelity to the law, no matter how many times the nominee may have upheld the death penalty in other cases. From my review of her record, I have concluded that Justice Barkett clearly exhibits such a tendency.

Let me further note at this point that one of Justice Barkett's dissenting opinions would render the death penalty virtually unenforceable, unless imposed on the basis of racial quotas. Her partial dissent in Foster versus State, had it been the law of Florida when she joined the Florida Supreme Court, would likely have led to a different outcome in many, if not virtually all, of the cases where she did vote to uphold the death penalty. Indeed, the theory she embraced in Foster, until its rejection by the U.S. Supreme Court in 1987, had become a principal weapon in the antideath penalty movement's arsenal.

Overall, I believe that Justice Barkett, in reviewing death sentences, views aggravating circumstances too narrowly; construes mitigating circumstances too broadly; creates unjustified categorical exclusions from death penalty eligibility; subjects the death penalty to racial statistical analysis that would paralyze its implementation, as I have just discussed; and creates procedural anomalies.

Let me mention just two of the many cases that concern me. Dougan versus State is a 1992 Florida Supreme Court case.

Dougan was the leader of a group that called itself the Black Liberation Army and that, according to the trial judge, had as its "apparent sole purpose * * * to indiscriminately kill white people and thus start a revolution and a race war." One evening in 1974, he and four other members of his group, armed with a pistol and a knife, went in search of victims. They picked up a white hitchhiker, Steven Orlando, drove him to an isolated trash dump, stabbed him repeatedly, and threw him to the ground. As Orlando writhed in pain and begged for his life, Dougan put his foot on Orlando's head and shot him twice—once in the chest and once in the ear—killing him instantly. Subsequent to the murder, Dougan made several tape recordings bragging about the murder, and mailed them to the victim's mother as well as to the media. The following excerpt from one of the tapes aptly illustrates the content:

He was stabbed in the back, in the chest and the stomach, ah, it was beautiful. You should have seen it. Ah, I enjoyed every minute of it. I loved watching the blood gush from his eyes.

The Florida Supreme Court upheld the death penalty for Dougan. Justice Barkett and another Justice joined a remarkable and very disturbing dissent by Justice McDonald in which she voted to reduce the death penalty to life imprisonment, with eligibility for parole in 25 years.

I rarely fault a nominee about an opinion the nominee has joined rather than written. And I do not hold a nominee to every word or phrase in an opinion he or she joins. There is an outlook which pervades this dissenting opinion, however, which is so striking and disturbing that I believe it is appropriate to consider it in evaluating this nomination. This is especially so in light of the fact that in many other cases Justice Barkett has written separately, or merely stated that she concurred in, or dissented from, the result, when another opinion had not suited her.

Normally, I would summarize this dissent, but I do not want anyone listening to think that I am distorting it. Accordingly, I am going to read verbatim excerpts from it:

This case is not simply a homicide case, it is also a social awareness case. Wrongly, but rightly in the eyes of Dougan, this killing was effectuated to focus attention on a chronic and pervasive illness of racial discrimination and of hurt, sorrow, and rejection. Throughout Dougan's life his resentment to bias and prejudice festered. His impatience for change, for understanding, for reconciliation matured to taking the illogical and drastic action of murder. His frustrations, his anger, and his obsession of injustice overcame reason. The victim was a symbolic representation of the class causing the perceived injustices.

To some extent, [Dougan's] emotions were parallel to that of a spouse disenchanted with marriage, full of discord and disharmony which, because of frustration or rejection, culminate in homicide. We seldom uphold a death penalty involving husbands and wives or lovers, yet the emotion of that hate-love circumstance are somewhat akin to those which existed in this case.

Such a sentence reduction should aid in an understanding and at least a partial reconciliation of the wounds arising from discordant racial relations that have permeated our society. To a large extent, it was this disease of racial bias and discrimination that infect an otherwise honorable person and contributed to the perpetration of the most horrible of crimes. An approval of the death penalty would exacerbate rather than heal those wounds still affecting a large segment of our society.

This opinion reeks of a moral relativism and excuse-making that I find shocking and unacceptable. As much as I personally like Chief Justice Barkett, I find it disturbing that President Clinton would nominate someone to a judgeship who applied these views to judicial decisions.

In the October 11, 1992, Sunshine magazine, the following reactions to this Dougan dissent are quoted:

"How can they compare a cold-blooded, premeditated, torturous crime that's motivated by racial hate and equate that to the emotional circumstances in domestic murders?" asks prosecutor Chuck Morton, himself a black man, after rereading the Dougan case.

Adds Tallahassee prosecutor Ray Markey: "To say that this white victim was a sacrificial lamb and call it a social awareness case—that's scary."

The Dougan majority had this to say in response to the dissent that Justice Barkett joined:

We disagree with the dissent that this pitiless murder should be equated with the emotional circumstances often existent in homicides among spouses. While Dougan may have deluded himself into thinking murder justified, there are certain rules by which every civilized society must live. One of these rules must be that no one may take the life of another indiscriminately, regardless of what that person may perceive as a justification.

Our review must be neutral and objective. This Court recently upheld the death penalty in the indiscriminate killing of two blacks by a white defendant. The circumstances of this case merit equal punishment. To hold that death is disproportionate here would lead to the conclusion that the person who put the bomb in the airplane that exploded over Lockerbie, Scotland, or any other terrorist killer should not be sentenced to death if the crimes were motivated by deepseated philosophical or religious justifications.

Let me explain why the general attitude and outlook adopted by Justice Barkett in that dissent concern me so much. The approach taken in that dissent is certainly applicable to others besides Dougan, including criminals of all races. Let me note that we have many cases in our country of racially motivated, disgusting, violent crimes against racial minorities. I do not view the perpetrators of such violence as worthy of a lesser penalty on account of their backgrounds or personal histories either.

If a person of any race, ethnic background, or social class considering violent or other crimes comes to believe that the judicial system views past mistreatment or discrimination against them as mitigating the seriousness of the crimes they commit or the penalties they face, I believe you undermine the principle of neutral justice and seriously reduce the deterrent value of the law. You create, frankly, an environment or atmosphere of permissiveness if these kinds of reasons can be used to justify lesser sentences. And I am not only talking about murder cases, such as the recent Colin Ferguson case on a Long Island commuter train. I mean other crimes as well, assault, robbery, carjackings.

Before Senators cast their votes on this nominee, they should read the opinions in this Dougan case, along with any other opinions they deem relevant. Mr. President, I ask unanimous consent that a copy of the Dougan case be included in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. HATCH. In another case, *LeCroy v. State* [533 So.2d 750 (Fla. 1988)], the Florida Supreme Court, by a vote of six to one, affirmed a death sentence for two brutal first-degree murders by LeCroy, who was 17 years and 10 months old when he committed the murders. The court noted, among other things that the sentencing judge gave great weight to LeCroy's youth but found him mentally and emotionally mature. It also noted that Florida statutes clearly provided for some decades that 17-year-olds charged with capital crimes should be punished as adults. Construing U.S. Supreme Court precedent, it ruled that there was no constitutional bar to the imposition of the death penalty on those who were 17 at the time of the capital offense.

In her lone dissent, Justice Barkett concluded that the eighth amendment of the Federal Constitution prohibited Florida from executing those who were under 18 at the time of the crime. Reaching out to overturn this death sentence seems to be another clear instance of the nominee injecting her own policy preferences for the law. It is an unfortunate fact that 16- and 17-year-olds are committing the most vicious of adult crimes, including much-noted murders of tourists. If a State wishes to treat them as adults when they commit such crimes, then the substitution of a judge's personal views for the legislature's enactment is wrong. Not surprisingly, the U.S. Supreme Court later confirmed that it was the majority in LeCroy, rather than Justice Barkett, who had correctly read the Federal Constitution. (See Stanford versus Kentucky.)

I have many other concerns about this nominee—including, for example, her openness to pervasive quotas—and many other opinions of hers that trouble me. These concerns are outlined in some detail in three memoranda on Justice Barkett's cases that I would like to attach to my remarks. Mr. President, I request unanimous consent that these three memoranda be included in the RECORD following my remarks.

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

(See exhibit 2.)

Mr. HATCH. Some may claim that those of us who have concerns over this nomination have focused on a relatively small number of cases and that this is not an appropriate way to evaluate the nominee. I have a three-part response to this concern.

First, a large number of cases of any appellate court are, frankly, routine, and I would expect that virtually all judges would rule unobjectionably in most cases before them.

Second, and more importantly, if a small number of cases gives rise to large concerns, it is appropriate to base a vote on those cases. For example, the flagrant misuse of the Federal equal protection clause and the Federal due process clause may have occurred in just a handful of cases. But these two constitutional provisions are far too powerful, far too open to picking and choosing among democratically enacted statutes based on the policy preferences of a judge, for me to be much comforted by unobjectionable decisions in numerous other, routine cases. A single dissent that would sweepingly invalidate obscenity laws, notwithstanding clear U.S. Supreme Court precedent to the contrary, is tremendously significant for what it says about a nominee's legal outlook in a very important area of law. And it gives rise to doubts about whether the nominee will properly apply that Supreme Court precedent, especially in light of other opinions that give cause for the same concern in other contexts. A series of search and seizure opinions, improperly hamstringing the police in significant ways—especially in the war on drugs—has an importance beyond the mere number of these cases. An opinion, like her partial dissent in Foster, that would paralyze enforcement of the death penalty counts more than scores of routine death penalty cases. Joinder in an opinion like the Dougan dissent speaks volumes about a nominee's outlook on crime and personal responsibility.

I could go on and on, but this leads me to my third point:

The concerns about this nominee arise from more than a handful of cases, and they arise across numerous areas of the law, not just the death penalty.

I therefore have concluded with regret that I cannot in good conscience support this nomination.

I will close by noting that all of the tough-on-crime rhetoric the President serves up means less than his actions, including selection of judges. Placing more police officers on the street will avail us little if judges hamstring them; construe our criminal laws in an unduly narrow fashion; or sentence the criminals they do convict with unwarranted sympathy for the criminal.

I urge my colleagues to review the cases and the hearing testimony for themselves. I believe they will reach the same conclusion.

EXHIBIT 1

[Supreme Court of Florida, Jan. 2, 1992, Rehearing Denied April 1, 1992]

JACOB JOHN DOUGAN, APPELLANT, VERSUS STATE OF FLORIDA, APPELLEE, NO. 71755

Defendant was convicted in the Circuit Court, Duval County, R. Hudson Olliff, J., of homicide. Defendant appealed. The Supreme Court, 343 So.2d 1266, affirmed, and later, 362 So.2d 657 vacated sentence and remanded for resentencing. On remand, defendant was

again sentenced to death, and the Supreme Court again affirmed, 398 So.2d 439. Subsequently, the Supreme Court, 470 So.2d 697, granted defendant new appeal, affirmed his conviction, vacated death sentence, and remanded for resentencing hearing. On remand, defendant was again sentenced to death. The Supreme Court held that: (1) direction to jury to follow mandate of death penalty statute was not error; (2) finding that aggravating circumstances existed sufficient to warrant imposition of death penalty was not error; (3) finding that mitigating evidence was insufficient to warrant sentence of life imprisonment, rather than death, was not error; and (4) death sentence was not disproportionate.

Affirmed.

Kogan, J., concurred in the results only.

McDonald, J., dissented and filed an opinion in which Shaw, C.J., and Barkett, J., joined.

1. Jury ⚷33(5.1)

Trial court has broad discretion in determining if peremptory challenges exercised by prosecutor are racially motivated. (Per Curiam opinion of three Justices with one Justice concurring in the result)

2. Criminal Law ⚷731

Jury may, in its discretion, decide to grant "jury pardon" in deciding defendant's guilt. (Per Curiam opinion of three Justices with one Justice concurring in the result.)

3. Criminal Law ⚷1206.1(2)

Death penalty statutes must restrain and guide sentencing discretion in order to insure that death penalty is not meted out arbitrarily and capriciously. (Per Curiam opinion of three Justices with one Justice concurring in the result.)

4. Criminal Law ⚷796, 1206.1(2)

Death penalty statute, and instructions and recommendation forms based upon it, sets out clear and objective standard for channeling jury's discretion. (Per Curiam opinion of three Justices with one Justice concurring in the result.) West's F.S.A. §921.141(2).

5. Criminal Law ⚷796

Direction to jury to follow mandate of death penalty statute in determining whether to render advisory sentence of death or live imprisonment was not error; statute, which provides that jury must take into consideration both aggravating and mitigating circumstances and recommend sentence of death if sufficient aggravating circumstances exist and are not outweighed by sufficient mitigating circumstances, sets out clear and objective standard, and allowing jury to disregard statutory directions and guidance would engender arbitrariness and capriciousness in jury recommendations. (Per Curiam opinion of three Justices with one Justice concurring in the result.) West's F.S.A. §921.141(2).

6. Criminal Law ⚷796

Standard jury instruction on nonstatutory mitigating evidence is not ambiguous and allows jurors to consider and weigh relevant mitigation evidence. (Per Curiam opinion of three Justices with one Justice concurring in the result.)

7. Criminal Law ⚷986.2(1)

Deciding whether particular mitigating circumstances have been established and, if established, weight to be afforded those circumstances lies with trial court, and trial court's decision will not be reversed because appellant reaches opposite conclusion. (Per Curiam opinion of three Justices with one Justice concurring in the result.)

8. Homicide ⚷357(3, 7, 11)

Aggravating factors sufficient to warrant imposition of death penalty had been established where defendant and his companions set out with intent to kill any white person they came upon, defendant and his companions kidnapped and murdered hitchhiker in heinous, atrocious and cruel manner, defendant's killing of victim was committed in cold, calculated, and premeditated manner, and defendant, subsequent to murder, made several tape recordings bragging about murder, which were mailed to victim's mother and to the media. (Per Curiam opinion of three Justices with one Justice concurring in the result.) West's F.S.A. §921.141(2).

9. Homicide ⚷357(3, 4, 7, 11)

In homicide prosecution, mitigating evidence, and sentence to death, rather than life imprisonment, was required where, although defendant participated in civil rights activities and was active in community, social, health, and welfare work, and codefendants who also participated in murder had received lesser sentences, evidence indicated that murder was committed during kidnapping, that murder was heinous, atrocious and cruel, and that defendant had murdered victim in cold, calculated, and premeditated manner. (Per Curiam opinion of three Justices with one Justice concurring in the result.) West's F.S.A. §921.141(2).

10. Homicide ⚷357(3, 7, 11)

In homicide prosecution, death was not disproportionate sentence where defendant and his companions set out to murder any white person they encountered, defendant and his companions kidnapped hitchhiker and murdered him in heinous, atrocious and cruel manner, defendant, as leader of group, directed execution of kidnapping and murder in cold, calculated, and premeditated manner, and defendant was not mentally deficient, even though defendant had suffered life of racial prejudice. (Per Curiam opinion of three Justices with one Justice concurring in the result.) West's F.S.A. §921.141(2).

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James E. Ferguson, II of Ferguson, Stein, Watt, Wallas & Adkins, P.A., Charlotte, N.C., for appellant.

Robert A. Butterworth, Atty. Gen. and Gary L. Printy, Asst. Atty. Gen., Tallahassee, for appellee.

PER CURIAM

We again review a sentence of death imposed on Jacob John Dougan, Jr., for a homicide committed on June 17, 1974.[1] This Court affirmed two prior death sentences, but later vacated them and remanded for resentencing; the findings of guilt have been affirmed.[2]

The trial judge accurately set forth the facts of this murder in his sentencing order:

"The four defendants, Jacob John Dougan, Elwood Clark Barclay, Dwyne Crittendon, and Brad W. Evans, were part of a group that termed itself the "Black Liberation Army" (BLA), and whose apparent sole purpose was to indiscriminately kill white people and thus start a revolution and racial war.

"Dougan was the group's unquestioned leader and it was he who conceived the murderous plan. Apparently he did not have to break down a wall of morality to induce Barclay, Crittendon, and Evans to participate—but it was Dougan's plan—and he pushed it through to murderous finality. The act of Dougan in firing the fatal shots and his leadership were undoubtedly reasons the jury recommended death only for him.

"The trial testimony showed that on the evening of June 17, 1974, the four defendants and William Hearn (who testified for the State) all set out in a car armed with a pistol and a knife with the intent to kill a "devil"—the "devil" being any white person they came upon under such advantageous circumstances that they could murder him, her, or them.

"As they drove around Jacksonville, they made several stops and observed a number of white persons as possible victims, but decided the circumstances were not advantageous and that they might be seen and/or thwarted by witnesses. At one stop, Dougan wrote out a note—which was to be placed on the body of the victim ultimately chosen for death.

"Eventually, the five men drove towards Jacksonville Beach, where they picked up a white hitchhiker, 18-year-old Stephen Anthony Orlando. Against Orlando's will and over his protest, they drove him to an isolated trash dump, ordered him out of the car, stabbed him repeatedly, and threw him to the ground. As the 18-year-old youth writhed in pain and begged for his life, Dougan put his foot on Orlando's head and shot him twice—once in the chest and once in the ear—killing him instantly."

Subsequent to the murder, Dougan made several tape recordings bragging about the murder, which were mailed to the victim's mother as well as to the media. The following excerpt from one of the tapes aptly illustrates the content:

The reason Stephen was only shot twice in the head was because we had a jive pistol. It only shot twice and then it jammed; you can tell it must have been made in America because it wasn't worth a shit. He was stabbed in the back, in the chest and the stomach, ah, it was beautiful. You should have seen it. Ah, I enjoyed every minute of it. I loved watching the blood gush from his eyes.

The jury recommended the death sentence by a vote of nine to three. The trial court found three aggravating circumstances and no mitigating circumstances and sentenced Dougan to death. Dougan raises numerous points on appeal, only some of which merit discussion.[3]

[1] The prosecutor exercised several peremptory challenges against black prospective jurors, and Dougan now argues that he failed to give racially neutral explanations for those excusals. The trial court, however, has broad discretion in determining if peremptory challenges are racially motivated. *Reed* v. *State*, 560 So.2d 203 (Fla.), *cert. denied*,——U.S. ——, 111 S.Ct. 230, 112 L.Ed.2d 184 (1990). Our review of the record shows no abuse of discretion in the trial court's acceptance of the prosecutor's explanations of the peremptory challenges. Thus, we find no merit to Dougan's first point on appeal.

Subsection 921.141(2), Florida Statutes (1987), provides:

(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

The instructions and jury's recommendation form used in this case tracked the lan-

[1] Footnotes at end of article.

guage of the statute. During deliberations, however, the jury asked the court if it could recommend life imprisonment "in the event that the jury decides that sufficient aggravating circumstances exist to justify a death sentence and that sufficient mitigating circumstances do not exist." After conferring with the parties, the court told the jury to answer each question on the recommendation form "as you deem appropriate from the law and the evidence." Dougan now argues that the jury should be allowed to recommend life imprisonment regardless of its findings as to aggravating and mitigating circumstances. We disagree.

[2, 3] A jury may, in its discretion, decide to grant a "jury pardon" in deciding a defendant's guilt. *E.g., Amado* v. *State*, 585 So.2d 282 (Fla.1991). On the other hand, "where discretion is afforded . . . on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action." *Gregg* v. *Georgia*, 428 U.S. 153, 188–89, 96 S.Ct. 2909, 2932, 49 L.Ed.2d 859 (1976). As pointed out by the United States Supreme Court, "there is no . . . constitutional requirement of unfettered sentencing discretion . . . and States are free to structure and shape consideration of mitigating evidence 'in an effort to achieve a more rational and equitable administration of the death penalty.'" *Boyde* v. *California*, 494 U.S. 370, 110 S.Ct. 1190, 1196, 108 L.Ed.2d 316 (1990) (quoting *Franklin* v. *Lynaugh*, 487 U.S. 164, 181, 108 S.Ct. 2320, 2331, 101 L.Ed.2d 155 (1988)). To that end, death penalty statutes must restrain and guide the sentencing discretion to ensure "that the death penalty is not meted out arbitrarily and capriciously." *California* v. *Ramos*, 463 U.S. 992, 999, 103 S.Ct. 3446, 3452, 77 L.Ed.2d 1171 (1983). *Cf. California* v. *Brown*, 479 U.S. 538, 541, 107 S.Ct. 837, 93 L.Ed.2d 934 (1987) ("death penalty statutes [must] be structured so as to prevent the penalty from being administered in an arbitrary and unpredictable fashion.").

[4] Under subsection 921.141(2) death may be the appropriate recommendation if, and only if, at least one statutory aggravating factor is established. After an aggravator has been established, any mitigating circumstances established by the evidence must be weighed against the aggravator(s). Florida's death penalty statute, and the instructions and recommendation forms based on it, set out a clear and objective standard for channeling the jury's discretion.

[5] Dougan's claim that the jury should be allowed to disregard the statutory directions and guidance would engender arbitrariness and capriciousness in jury recommendations. This is improper because [i]t is no doubt constitutionally permissible, if not constitutionally required, for the State to insist that "the individualized assessment of the appropriateness of the death penalty [be] a moral inquiry into the culpability of the defendant, and not an emotional response to the mitigating evidence." Whether a juror feels sympathy for a capital defendant is more likely to depend on that juror's own emotions than on the actual evidence regarding the crime and the defendant. It would be very difficult to reconcile a rule allowing the fate of a defendant to turn on the vagaries of particular jurors' emotional sensitivities with our longstanding recognition that, above all, capital sentencing must be reliable, accurate, and nonarbitary. At the very least, nothing . . . prevents the State from attempting to ensure reliability and nonarbitrariness by requiring that the jury consider and give effect to the defendant's mitigating evidence in the form of a "reasoned *moral* response," rather than an emotional one. The State must not cut off full and fair consideration of mitigating evidence; but it need not grant the jury the choice to make the sentencing decision according to its own whims or caprice.

*Saffle* v. *Parks*, 494 U.S. 484, 110 S.Ct. 1257, 1262–63, 108 L.Ed.2d 415 (1990) (citations omitted). Thus, we find no error in the trial court's directing the jury to follow the mandate of subsection 921.141(2).

[6] We also find no merit to Dougan's other arguments about the instructions on mitigating evidence. The standard jury instruction on nonstatutory mitigating evidence is not ambiguous and allows jurors to consider and weigh relevant mitigating evidence. *Robinson* v. *State*, 574 So.2d 108 (Fla.), *cert. denied*, —— U.S. ——, 112 S.Ct. 131, 116 L.Ed.2d 99 (1991). Dougan's contention that evidence of no prior criminal history can be rebutted only by convictions is incorrect. *Walton* v. *State*, 547 So.2d 622 (Fla. 1989), *cert. denied*, 493 U.S. 1036, S.Ct. 759, 107 L.Ed.2d 775 (1990).

The trial court found that three aggravators had been established—committed during a kidnapping; heinous, atrocious, or cruel; and committed in a cold, calculated, and premeditated manner. As nonstatutory mitigating evidence, the court specifically considered Dougan's civil rights activities, his community social, health, and welfare work, his family and personal background, his codefendants' lesser sentences, and the racial unrest at the time of this murder. The court held that, on this record, the evidence did not mitigate the penalty. Now, Dougan claims that the trial court erred both in finding that the aggravators had been established and in not finding that mitigators had been established. We disagree.

[7–9] Dougan states that the mitigating evidence related to four areas: 1) positive character traits; 2) contribution of racial oppression to the homicide; 3) potential for rehabilitation; and 4) inequality between his sentence and those of his codefendants and argues that the court erred in not finding that mitigators had been established. It is apparent from the judge's written findings that he considered these matters. Based on his evaluation of the evidence, however, he decided that the facts of this case did not support Dougan's contention that these matters constituted mitigating circumstances. *Rogers* v. *State*, 511 So.2d 526 (Fla. 1987), *cert. denied*, 484 U.S. 1020, 108 S.Ct. 733, 98 L.Ed.2d 681 (1988). Deciding whether particular mitigating circumstances have been established and, if established, the weight afforded it lies with the trial court, and a trial court's decision will not be reversed because an appellant reaches the opposite conclusion. *Sireci* v. *State*, 587 So.2d 450 (Fla. 1991); *Stano* v. *State*, 460 So.2d 890 (Fla. 1984), *cert. denied*, 471 U.S. 1111, 105 S.Ct. 2347, 85 L.Ed.2d 863 (1985). We find no reversible error regarding consideration of the evidence Dougan presented in his attempt to mitigate his sentence.

We likewise find no error in the trial court's holding three aggravators to have been established. The evidence fully supports finding this murder to have been committed during a kidnapping. The facts also set this murder apart from the norm of killing by illustrating the victim's suffering and Dougan's indifference to the victim's pleas and support finding the heinous, atrocious, or cruel aggravator. *Cf. Ponticeli* v. *State*, 593 So.2d 483 (Fla. 1991), and cases cited therein. Finally, the planning and execution of this murder demonstrate the heightened premeditation needed to find it had been committed in a cold, calculated, and premeditated manner. *Cf. Cruse* v. *State*, 588 So.2d 983 (Fla. 1991); *Rogers*. As discussed later, Dougan had no colorable claim of any moral or legal justification for this killing.

[10] Turning to Dougan's final point, we disagree that death is disproportionate in this case. There was no suggestion that Dougan is mentally deficient. To the contrary, he is intelligent and articulate and a leader among men. In fact, he recruited his codefendants while teaching them karate. He knew precisely what he was doing.

The dissent suggests that because Dougan has suffered a life of racial prejudice and that this murder was related to this, his sentence should be reduced to life. We do not minimize the injustices perpetrated by our society upon the black race. However, it must be noted that Dougan suffered less from the racial discrimination that occurred while he was growing up than many others of his race. Although abandoned by his mother, he was adopted at the age of two and one-half years by loving parents who provided him with a stable environment. Several witnesses said that he was well liked in high school, and he achieved the rank of Eagle Scout. There was no evidence that he suffered any racial discrimination not common to all of the black community.

We disagree with the dissent that this pitiless murder should be equated with the emotional circumstances often existent in homicides among spouses. While Dougan may have deluded himself into thinking this murder justified, there are certain rules by which every civilized society must live. One of these rules must be that no one may take the life of another indiscriminately, regardless of what that person may perceive as a justification.

Our review must be neutral and objective. This Court recently upheld the death penalty in the indiscriminate killing of two blacks by a white defendant. Asay v. *State, 580 So.2d 610 (Fla.), cert. denied, —— U.S. ——, 112 S.Ct. 265, 116 L.Ed.2d 218 (1991). The circumstances of this case merit equal punishment. To hold that death is disproportionate here would lead to the conclusion that the person who put the bomb in the airplane that exploded over Lockerbie, Scotland, or any other terrorist killer should not be sentenced to death if the crime were motivated by deep-seated philosophical or religious justifications.*

We have reviewed the other issues Dougan raises[4] and find no reversible error. Therefore, we affirm the sentence of death.

It is so ordered.

OVERTON, GRIMES and HARDING, JJ., concur.

KOGAN, J., concurs in result only.

McDONALD, J., dissents with an opinion, in which SHAW, C.J., and BARKETT, J., concur.

McDONALD, Justice, dissenting.

This case is unique; it is also a case of contrast. Dougan's counsel describes the events as a tragic aberration while others view them as frightening, inexcusable, and callous. In the entire bizarre series of events leading to and following the murder by "an unacceptable act of violence upon an unsuspecting white youth," Dougan was the leader and the planner.

Substantial evidence was presented at the last sentencing proceeding to assist the jury, the trial judge, and this Court in determining the appropriate sentence. The jury recommended death,[5] which the trial judge imposed. He found that the homicide was cold, calculated, and premeditated without any

pretense of moral justification, that in its planning it was especially cruel and atrocious and in its execution especially heinous, and that there was a kidnapping to facilitate the crime. The trial judge either rejected mitigating circumstances or found them to be so insignificant that they did not outweigh the aggravating ones.

It is not our function on review to reweigh the evidence, but, rather, to determine whether the trial judge's findings and conclusions are supported by the record. There is evidence to support the conclusions of the trial judge on the aggravating factors, even though in the mind of Dougan there was a pretense of moral justification for his acts. On the other hand, it is our responsibility to review the totality of the circumstances to determine whether death is appropriate when compared to other death sentences. *Adams* v. *State*, 412 So.2d 850 (Fla.), *cert. Denied*, 459 U.S. 882, 103 S.Ct. 182, 74 L.Ed.2d 148 (1982); *Brown* v. *Wainright*, 392 So.2d 1327 (Fla.), *cert. Denied*, 454 U.S. 1000, 102 S.Ct. 542, 70 L.Ed.2d 407 (1981). We have reduced death sentences to life imprisonment after reviewing both the aggravating and mitigating circumstances as shown in the record and concluding that death is not warranted. *E.g.*, *Halliwell* v. *State*, 323 So.2d 557 (Fla.1975).

Dougan's mother was white and his father, whom he never knew, was black. After Dougan's birth, his mother returned to an all white community where she abandoned her son. Although as much white as black, Dougan was rejected by his white relatives and the white population. Ultimately he was adopted by an understanding and compassionate family which also came from a biracial background. An intelligent person, Dougan was well educated and became a leader in the black community, but throughout his life was confronted with a perception of injustice in race relations. Within the black community he was respected. He taught karate and counseled black youths. When blacks were refused service at a lunch counter, he participated in a sit-down strike in defiance of a court order and was held in contempt of court therefor. This was the only blemish, if it can be called one, on his police record until this homicide.

The events of this difficult case occurred in tumultuous times. During the time of the late sixties and early seventies, there was great unrest throughout this country in race relations. Duval County, where this homicide occurred, did not escape and was also a place of such unrest. I mention these facts not to minimize what transpired, but, rather, to explain the environment in which the events took place and to evaluate Dougan's mind-set.

The trial judge was aware of everything I have stated. Indeed, he substantially recited these facts in his sentencing order. His final conclusion was that the grossness of the homicide clearly outweighed any other factor or combination thereof which may have lessened the ultimate penalty. The majority agrees, but I cannot.

We have said that the death penalty is reserved for those cases where the most aggravating and least mitigating circumstances exist.[6] We must determine whether Dougan belongs to that class of killers for whom the death penalty is the appropriate punishment. In resolving that issue and mindful of the factors set forth in section 921.141, Florida Statutes (1973), and established case law, we must carefully review what was done, how it was done, why it was done, and what kind of a person did it. How the public views these factors depends to a large extent upon the vantage point or perception of those looking at them. Understandably, in the eyes of the victim, or potential victims, the aggravating factors clearly outweigh the mitigating; in the eyes of the defendant, his friends, and most of those situated in the circumstances of Dougan, the death penalty is not warranted and is disproportionate to the majority of hate slayings, at least where the victim is black and the perpetrator is white.

Even though we are aware of and sensitive to these contrasting emotions, our review must be neutral and objective. This case is not simply a homicide case, it is also a social awareness case. Wrongly, but rightly in the eyes of Dougan, this killing was effectuated to focus attention on a chronic and pervasive illness of racial discrimination and of hurt, sorrow, and rejection. Throughout Dougan's life his resentment to bias and prejudice festered. His impatience for change, for understanding, for reconciliation matured to taking the illogical and drastic action of murder. His frustrations, his anger, and his obsession of injustice overcame reason.[7] The victim was a symbolic representative of the class causing the perceived injustices.

In comparing what kind of person Dougan is with other murderers in the scores of death cases that we have reviewed, I note that few of the killers approach having the socially redeeming values of Dougan. In comparison to Dougan's usual constructive practices, this homicide was indeed an aberration. He has made and, if allowed to live, can make meaningful contributions to society.

I ask again the question, is this one of the most aggravated and least mitigated cases reserved for the ultimate penalty of death? When considering the totality of the circumstances, but with compassion for and, hopefully, understanding from the family of the victim, I think not. A life sentence makes this penalty more proportionate to what has existed in emotional or other racially caused homicides.

Such a sentence reduction should aid in an understanding and at least a partial reconciliation of the wounds arising from discordant racial relations that have permeated our society. To a large extent, it was this disease of racial bias and discrimination that infected an otherwise honorable person and contributed to the perpetration of the most horrible of crimes. An approval of the death penalty would exacerbate rather than heal those wounds still affecting a large segment of our society.

Accordingly, I believe that the death penalty should be vacated and that Dougan's sentence should be reduced to life imprisonment without eligibility for parole for twenty-five years from the date of his incarceration for this murder.

SHAW, C.J. and BARKETT, J., concur.

FOOTNOTES

1. We have jurisdiction. Art. V, §3(b)(1), Fla. Const.

2. *Barclay* v. *State*, 343 So.2d 1266 (Fla. 1977), *cert. denied*, 439 U.S. 892, 99 S.Ct. 249, 58 L.Ed.2d 237 (1978); *Barclay* v. *State*, 362 So.2d 657 (Fla. 1978); *Dougan* v. *State*, 398 So.2d 439 (Fla.), *cert. denied*, 454 U.S. 882, 102 S.Ct. 367, 70 L.Ed.2d 193 (1981); *Dougan* v. *Wainwright*, 448 So.2d 1005 (Fla. 1984); *Dougan* v. *State*, 470 So.2d 697 (Fla. 1985), *cert. denied*, 475 U.S. 1098, 106 S.Ct. 1499, 89 L.Ed.2d 900 (1986).

3. Several issues have been decided adversely to Dougan's contentions: 1) adequacy of instructions on aggravating factors, *e.g.*, *Sochor* v. *State*, 580 So.2d 595 (Fla.), *cert. granted*, — U.S. —, 112 S.Ct. 436, 116 L.Ed.2d 455 (1991); 2) ex post facto application of the cold, calculated, and premeditated aggravating factor, *Combs* v. *State*, 403 So.2d 418 (Fla. 1981), *cert. denied*, 456 U.S. 984, 102 S.Ct. 2258, 72 L.Ed.2d 862 (1982); and 3) diminution of the jurors' sense of responsibility, *e.g.*, *Grossman* v. *State*, 525 So.2d 833 (Fla. 1988), *cert. denied*, 489 U.S. 1071, 109 S.Ct. 1354, 103 L.Ed.2d 822 (1989).

4. The remaining issues are: 1) impermissible appeal to racial bias; 2) refusal to grant change of venue; 3) no probable cause for the arrest; and 4) abdication of prosecutorial function.

5. The State describes the jury's recommendation of death as basically saying "that Mother Theresa would get the death penalty for organizing a plan to go out and kidnap an innocent man, torture him and then twice shoot him in the head."

6. "Death is a unique punishment in its finality and in its total rejection of the possibility of rehabilitation. It is proper, therefore, that the Legislature has chosen to reserve its application to only the most aggravated and unmitigated of most serious crimes." *State* v. *Dixon*, 283 So.2d 1, 7 (Fla. 1973), *cert. denied*, 416 U.S. 943, 94 S.Ct. 1950, 40 L.Ed.2d 295 (1974).

7. To some extent, his emotions were parallel to that of a spouse disenchanted with marriage, full of discord and disharmony which, because of frustration or rejection, culminate in homicide. We seldom uphold a death penalty involving husbands and wives or lovers, yet the emotions of that hate-love circumstance are somewhat akin to those which existed in this case. *See, e.g.*, *Ross* v. *State*, 474 So.2d 1170 (Fla. 1985); *Blair* v. *State*, 406 So.2d 1103 (Fla. 1981). However, if pecuniary gain is a dominant motive in a spousal homicide, we have upheld it. *E.g.*, *Buenoano* v. *State*, 527 So.2d 194 (Fla. 1988); *Byrd* v. *State*, 481 So.2d 468 (Fla. 1985), *cert. denied*, 476 U.S. 1153, 106 S.Ct. 2261, 90

EXHIBIT 2

JUSTICE BARKETT AND CRIMINAL LAW

This memorandum presents opinions by Justice Barkett in the field of criminal law that raise concerns about her decisionmaking in this field. This memorandum generally does not address Justice Barkett's death penalty jurisprudence, which is the subject of a separate memorandum.[1]

FOURTH AMENDMENT

Justice Barkett has a pattern of unduly restrictive search-and-seizure decisions that would hamstring the police in their battle against drugs if her views had prevailed.

*Bostick* v. *State*, 554 So.2d 1153 (Fla. 1989), rev'd, 111 S. Ct. 2382 (1991), on remand, 593 So.2d 494 (Fla. 1992)

Two Broward County Sheriff's officers searching for persons with illegal drugs boarded a bus going from Miami to Atlanta during a stopover in Fort Lauderdale. They had badges and insignia and one had a zipper pouch containing a visible pistol. They asked to inspect the defendant's ticket and identification. The ticket and identification matched. "However, the two police officers persisted and explained their presence as narcotics agents on the lookout for illegal drugs. In pursuit of that aim, they then requested the defendant's consent to search his luggage." Cocaine was discovered in his luggage, and he was arrested and charged with cocaine trafficking.

The trial judge determined, as a question of fact, that the defendant consented to the search and had been informed of his right to refuse consent. His motion to suppress was denied, and he then pled guilty, reserving his right to appeal the denial of the suppression motion. An appellate court affirmed.

By a 4 to 3 vote, the Florida Supreme Court, in an opinion by Justice Barkett, ruled that the search violated Bostick's Fourth Amendment rights. Justice Barkett's opinion adopted a per se rule that the police practice of routinely boarding buses to question passengers violates the Fourth Amendment rights of the persons questioned, and that any consent to search is necessarily tainted by this violation. The three dissenters rejected this per se rule; relying on U.S.

Footnotes at end of article.

Supreme Court precedent, they instead stated that the validity of consent was to be determined from the totality of circumstances, and they would have upheld the conviction.

By a 6 to 3 vote, the U.S. Supreme Court, in an opinion by Justice O'Connor, reversed Justice Barkett's ruling. *Florida* v. *Bostick*, 111 S. Ct. 2382 (1991). The Court rejected creation of a per se rule, and instead ruled that the determination whether a particular encounter constitutes a seizure must be made in the light of all the circumstances. The Court found "dispositive" the same U.S. Supreme Court precedent that the dissenters to Justice Barkett's opinion had relied on.

On remand, the Florida Supreme Court, by a 4–3 vote, ruled the search lawful. Justice Barkett, in dissent, concluded that "Bostick's consent to search was invalid as a product of an unreasonable seizure under the specific facts of this case."

This case is noteworthy in several respects:

1. Justice Barkett initially adopted an overbroad per se rule that would clearly have had the effect (including in the specific case at hand) of vitiating freely given consent to search and of freeing criminals.

When asked why she did not apply the totality-of-the-circumstances test called for under U.S. Supreme Court precedent, Justice Barkett did not answer the question. Instead, she stated that "search and seizure I think is one of the most difficult areas of the law" [135:7–8] and suggested (despite clear per se language in her opinion) that it was the U.S. Supreme Court that had "interpreted" her opinion to create a per se rule [135:12–14].

2. Justice Barkett did not follow existing U.S. Supreme Court precedent that both the U.S. Supreme Court and three of her colleagues recognized as dispositive. (The fact that three Supreme Court Justices sided with Justice Barkett does not in any sense validate her position: they were not obligated to adhere to Supreme Court precedent; she was.)

3. Justice Barkett found occasion to compare the police search method at issue to methods used by "Nazi Germany, Soviet Russia, and Communist Cuba."[2]

At her hearing Justice Barkett denied that she had made any such comparison: "Senator, I would never compare the conduct of any of our police officers in this country to those of Nazi Germany or Soviet Russia, and I do not think there is any question but that had I made such a comparison, I would not have received the support of many of the rank-and-file officers in my State." [136:23–137:3]

Her opinion shows, however, that Justice Barkett clearly did make such a comparison. The fact that she was able to obtain the support of many police officers in her retention campaign is beside the point (as is the number of prosecutors and law enforcement personnel who opposed her retention).

Justice Barkett's opinion elicited a rebuke from Florida Attorney General Bob Butterworth (a Barkett supporter). A January 23, 1990, St. Petersburg Times article reported on a speech he gave to the Florida Sheriffs Association:

"'A pattern appears to be developing, a pattern that should be discouraging to every law-abiding Floridian,' Butterworth said. 'During the past two or three years, the Florida Supreme Court has begun to show itself substantially more liberal on crime issues than the U.S. Supreme Court.'

"Butterworth said the time may be approaching when Floridians should consider constitutional amendments so accused criminals in Florida don't have rights that aren't available in other states.

"Butterworth gave the sheriffs a blow-by-blow look at three Florida Supreme Court rulings that overturned the convictions of defendants in drug cases. Two of the three were written by Justice Rosemary Barkett; the third was an unsigned opinion approved by a 4–3 majority of the justices.

"One of the opinions, written by Barkett in November, compared the searches conducted by Broward County sheriff's deputies on commercial buses with the roving patrols and arbitrary searches conducted in Nazi Germany, Soviet Russia and communist Cuba.

"'It is an insult to the 36,000 police officers in our state to be likened to Nazis,' Butterworth said. 'I can assure you that the three Florida law enforcement officers who lost their lives in the line of duty last year were not Nazis. Such language is simply not appropriate, and we should expect more from the highest court in this state.'"

*State* v. *Riley*, 511 So.2d 282 (Fla. 1987), rev'd, 488 U.S. 445 (1989), on remand, 549 So.2d 673 (Fla. 1989)

From a helicopter hovering 400 feet above Riley's property, police detected marijuana growing in a greenhouse. They then obtained a warrant to search the greenhouse, and arrested Riley. The trial court granted Riley's motion to suppress, but the appellate court reversed.

In a unanimous opinion by Justice Barkett, the Florida Supreme Court ruled that the helicopter surveillance of Riley's greenhouse violated the Fourth Amendment. In determining that Riley had a reasonable expectation of privacy that was invaded by the helicopter surveillance, Justice Barkett sought to distinguish the U.S. Supreme Court's decision in *California* v. *Ciraolo*, 476 U.S. 207 (1986). In *Ciraolo*, the Court had held that surveillance from a fixed-wing aircraft flying at 1000 feet did not violate the Fourth Amendment. According to Justice Barkett, "We simply cannot dismiss as irrelevant the difference between a fixed-wing aircraft flying at 1,000 feet and a helicopter circling and hovering at 400 feet so that its occupants can look through an opening in a roof." She further stated that "[s]urveillance by helicopter is particularly likely to unreasonably intrude upon private activities" and that "the details observed here from the vantage point of a circling and hovering helicopter could [not] just as easily have been discerned by any person casually flying over the area in a fixed- wing aircraft."

The U.S. Supreme Court reversed by a 5–4 vote. The plurality and concurring opinions found *Ciraolo* indistinguishable (as, apparently, did the authors of the dissenting opinions, since they had also dissented in *Ciraolo*). In the words of the plurality opinion: "there is nothing in the record or before us to suggest that helicopters flying at 400 feet are sufficiently rare in this country to lend substance to [Riley's] claim that he reasonably anticipated that his greenhouse would not be subject to observation from that altitude." *Florida* v. *Riley*, 488 U.S. 445, 451–452 (1989).

On remand, the Florida Supreme Court remanded to the trial court for further evidentiary development. *Riley* v. *State*, 549 So.2d 673 (Fla. 1989). Justice Barkett's opinion for the court asserted, "All nine justices of the United States Supreme Court agreed that the record lacked evidentiary development of Riley's claimed expectation of privacy." A separate opinion took the position that Riley's Fourth Amendment claim should be decided adversely to him, without any further evidentiary development.

A couple aspects of this case warrant attention:

1. Justice Barkett's attempted distinction of *Ciraolo* is not faithful to the rationale of *Ciraolo*. The question is whether an expectation of privacy is reasonable. To determine this, one should look, under the principle of *Ciraolo*, to whether helicopter flights at an altitude of 400 feet are legal or common. To instead compare what can be seen at 400 feet from a helicopter to what can be seen at 1000 feet from a plane is to misapply *Ciraolo*.

2. Justice Barkett's suggestion on remand that all 9 U.S. Supreme Court Justices believed that additional evidentiary development was necessary is not accurate. Both the plurality and the concurring opinion clearly believed that the state of the record could be held against Riley. Ultimately, it is probably a question of state law whether further development should be permitted. But the fact that Justice Barkett mischaracterized what the U.S. Supreme Court had said in order to support her remand order is troublesome.

The White House briefing materials contain a similar distortion: "The United States Supreme Court narrowly reversed on the question of allocation of the burden of proof in showing a constitutionally unacceptable invasion of privacy." [Br. at 23]

This is the second of the three cases Florida Attorney General Butterworth cited in his January, 1990 speech as part of a pattern of liberal criminal decisions of the Florida Supreme Court.

*Cross* v. *State*, 560 So.2d 228 (Fla. 1990)

Three detectives spotted Cross in an Amtrak station. Based on her monitoring of them and her lack of luggage for the trip that she was taking, they asked if they could speak with her. She said yes. When the name on her ticket did not match the name on her driver's license, they asked for permission to search her tote bag but advised her that she did not have to consent. She consented. Inside the tote bag, the detectives found a hard baseball-shaped object wrapped in brown tape inside a woman's slip. Having seen cocaine packaged in this manner on "hundreds of occasions" in their combined 20 years of law enforcement experience, they then arrested Cross. The contents of the package proved to be cocaine. The trial judge granted Cross's motion to suppress, but the court of appeal (ultimately) reversed.

By a vote of 5–2, the Florida Supreme Court held that probable cause existed for the arrest. The majority opinion cited Florida precedent holding that the observation of an experienced policeman of circumstances associated with drugs could provide sufficient probable cause. Justice Barkett, dissenting, adopted the reasons stated by a dissenting judge below, who opined that the taped package did not create probable cause. That opinion did not acknowledge, much less credit, the experience of the police officers that cocaine is often packaged in that unusual manner.

The majority opinion appears clearly correct, and Justice Barkett's dissent appears to reflect an unwarranted reluctance to rely on the experience of police officers (despite precedent warranting such reliance).

At her hearing, Justice Barkett stated: "My concern in that case, Senator, was to the quality of the evidence presented. *The conclusion of a police officer that it was his experience that this is the way it was does not comport, in my judgment with evidence.* A sim-

ple conclusory statement does not comport with the requisite evidence." [146:22–147:2]

The police officers' sworn testimony that they had seen cocaine packaged that way "hundreds of times" was not "conclusory." Justice Barkett is simply refusing to credit the police officers' testimony.

*Sarantopoulos* v. *State* (Fla. Dec. 9, 1993)

Having received an anonymous tip that Sarantopoulos was growing marijuana in his backyard, two police officers went to his residence. They entered a neighbor's yard, and one of the officers, standing on his tiptoes, peered over a six-foot high wood fence and spotted marijuana plants. The police then obtained a search warrant and arrested Sarantopoulos. The trial court granted Sarantopoulos's motion to suppress, but the appellate court reversed.

The Florida Supreme Court, by a 5–2 vote, held that the search was lawful. It reasoned that Sarantopoulos lacked a reasonable expectation of privacy in his backyard, since it was protected from view only from those who remained on the ground and who were unable to see over the six-foot fence.

Justice Barkett, dissenting, stated, "I cannot believe that American citizens sitting on porches or in their backyards are not constitutionally protected when government agents, acting only on an anonymous tip, climb on ladders or stretch on tiptoes to peer over privacy fences."

The core legal issue under U.S. Supreme Court law—which, under Florida law, governs application of Florida's search-and-seizure provision—is whether Sarantopoulos had a reasonable expectation of privacy. Justice Barkett's opinion, unlike the majority's, does not meaningfully address this issue. Instead, it simply reflects a hostility towards what she regards as overly intrusive law enforcement.

At her hearing, Justice Barkett said that the fact that the search was based on an anonymous tip was "a factor which I found very significant here." [141:20] But this factor is irrelevant to the question whether Sarantopoulos had a reasonable expectation of privacy in the first place; it comes into play only if he did. She also claimed that "another element [was] whether or not the police were lawfully in the [neighbor's] yard." [143:1–2] Again, that question has nothing to do with the prior question whether Sarantopoulos had a reasonable expectation of privacy.

*State* v. *Wells*, 539 So.2d 464 (Fla. 1989), aff'd (but criticized), 495 U.S. 1 (1990)

Wells was stopped for speeding. When the officer smelled alcohol on his breath, he arrested Wells for DUI. The officer then noticed cash lying on the car's floorboard, and asked Wells to open the car's trunk. Wells agreed to do so, but neither he nor the officer was able to work the trunk's lock. The officer then informed Wells that the car would be impounded. Wells gave permission for the trunk to be forced open and examined. The car was then transported to a facility, and a locked suitcase was found in the trunk. The suitcase was forced open and was found to contain a large amount of marijuana.

By a vote of 6–1, the Florida Supreme Court, in an opinion originally signed by Justice Barkett but later issued per curiam, held that the search of the suitcase violated Wells' Fourth Amendment rights. Among other things, the court held that the search of the luggage was not permissible under an inventory search theory. Justice Barkett construed a U.S. Supreme Court precedent, *Colorado* v. *Bertine*, 479 U.S. 367 (1987), as "mandat[ing] either that all containers will be opened during an inventory search, or that no containers will be opened. There can be no room for discretion." Since the police did not have a policy specifically requiring the opening of closed containers, the search of the suitcase was held to violate *Bertine*.

The U.S. Supreme Court, while affirming the judgment of the Florida Supreme Court, criticized Justice Barkett's reading of *Bertine*: "in forbidding uncanalized discretion to police officers conducting inventory searches, there is no reason to insist that they be conducted in a totally mechanical 'all or nothing' fashion. * * * A police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself. * * * The allowance of the exercise of judgment based on concerns related to the purposes of an inventory search does not violate the Fourth Amendment." *Florida* v. *Wells*, 495 U.S. 1, 4 (1990). (This opinion was joined by five Justices; two other Justices also expressly disagreed with Justice Barkett's reading; and no Justice defended it.)

This case illustrates Justice Barkett's inclination to create mechanical rules that severely limit police discretion and that turn the Fourth Amendment into a straitjacket.

The White House briefing materials note that the U.S. Supreme Court upheld the decision in *Wells*, but fail to mention the fact that the Court criticized Justice Barkett's reasoning. [Br. at 22] The White House cites *Wells* and *Riley* in support of the claim that Justice Barkett is "vigilant in upholding the rights of individuals *while respecting the critical need for swift and fair law enforcement*." [Br. at 22]

PROSECUTORIAL DISCRETION

*Foster* v. *State*, No. 76,639 (Fla. Apr. 1, 1993)

(This case is addressed more fully in the death penalty memorandum. Its implications for quotas are discussed in the constitutional law memorandum. This memorandum will address its implications for criminal law generally.)

Foster, two young women, and another man, Lanier, drove to a deserted area where one of the women was to make some money by having sex with Lanier. As Lanier, who was very drunk, was disrobing, Foster suddenly began hitting him and then held a knife to Lanier's throat and sliced his neck. Foster and the women then dragged the still-breathing Lanier into the bushes and covered him with branches and leaves. Foster then took a knife and cut Lanier's spine. Foster and the women then split the money found in Lanier's wallet.

Foster was convicted of murder and sentenced to death in 1975. On resentencing, the trial court, finding three aggravating circumstances, again imposed the death penalty. The Florida Supreme Court, by a 4–3 vote, rejected Foster's claim that his death sentence was a product of racial discrimination against black victims. (The court did remand for resentencing on other grounds.)

Justice Barkett, dissenting from this racial discrimination ruling, would not accept the majority's determination that Foster's statistical evidence purporting to show that white-victim defendants in Bay County were more likely to get the death penalty than black-victim defendants failed to establish a constitutional violation. (Lanier, evidently, was white; Foster's race does not appear to be stated, but newspaper accounts report that he is also white.) Justice Barkett would have relied on the Florida Constitution's Equal Protection Clause to reach a result rejected by the U.S. Supreme Court in *McCleskey* v. *Kemp*, 481 U.S. 279 (1987), under the federal Equal Protection Clause. In *McCleskey*, the Court ruled that a capital defendant claiming a violation of the federal Equal Protection Clause must show the existence of purposeful discrimination and a discriminatory effect on him. According to Justice Barkett:

(1) The *McCleskey* standard fails to address the problem of "unconscious discrimination."

(2) Statistical evidence of discriminatory impact in capital sentencing that "cannot be traced to blatant or overt discrimination" should establish a violation of Florida's Equal Protection Clause.

(3) This statistical evidence should be construed broadly to include not only analysis of the disposition of first-degree murder cases, "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, and *the general conduct of a state attorney's office, including hiring practices and the use of racial epithets and jokes*." (Emphasis in italic.)

(4) The defendant should have the initial burden of showing the strong likelihood that discrimination influenced the decision 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 initial burden has been met, "the burden then shifts to the State to show that the practices in question are not racially motivated."

In addition to the fact (addressed elsewhere) that Justice Barkett's proposed standard would paralyze implementation of the death penalty, there is no reason why the standard should be limited to death penalty cases; her theory would apply equally to robbery, rape, and all other crimes. There is likewise no reason why Justice Barkett's standard would be limited to cases with white victims; a killer of a male victim, for example, could try to show that sexism pervades the prosecutor's office. As Justice Powell said in rejecting this standard in *McCleskey*: "McCleskey's claim, taken to its logical conclusion, throws into serious question the principles that underlie our entire criminal justice system." *McCleskey*, 481 U.S., at 314–315.

Justice Barkett's proposed standard would effectively impose rigid judicial oversight of prosecutorial decisionmaking.

STATUTORY CONSTRUCTION

*State* v. *Bivona*, 460 So.2d 469 (Fla. DCA 1984), rev'd, 496 So.2d 130 (Fla. 1986)

Bivona was arrested for shoplifting in California in June 1983. He was also charged by information with a previous bank robbery in Florida. On Florida's request, the State of California held him in jail pending his extradition to Florida, which occurred in August 1983. In January 1984, Bivona filed a motion claiming that the state had failed to bring him to trial within the 180 days required under Florida law. Bivona's motion counted from the time he was first arrested in California, not from the time he was returned to Florida. The trial judge granted the motion and dismissed the charges against him.

Judge Barkett, then on the district court of appeals, wrote the opinion for a divided (2–1) court affirming the dismissal of charges. The State relied on a section of the law in question, Rule 3.191(b)(1), that read:

"A person who is . . . incarcerated in a jail or correctional institution outside the juris-

diction of this State, or who is charged by indictment or information issued or filed under the laws of this State, is not entitled to the benefit of [the 180-day time period] until that person returns or is returned to the jurisdiction of the court within which the Florida charge is pending and until written notice of this fact is filed with the court and served upon the prosecutor."

Noting that Bivona had cooperated in being extradited, Judge Barkett ruled that this section "must be interpreted to apply [only] when a defendant is incarcerated in jails outside the jurisdiction of this state *on charges pending in the other state*." (Emphasis in italic.)

The Florida Supreme Court unanimously reversed. It found the language of Rule 3.191(b)(1) to be "without ambiguity" and criticized Judge Barkett for "put[ting] a gloss on it, unwarranted by anything that appears in rule 3.191."

*Gayman* v. *State*, 616 So.2d 17 (Fla. 1993)

Facts: Gayman was found guilty of petit theft. Because he had two prior convictions for petit theft, the trial court adjudicated him guilty of felony petit theft. It also classified him as a habitual violent felony offender (under the state habitual offender statute) based on a prior felony conviction for aggravated battery. His sentence was enhanced accordingly. A second petitioner, Williams, faced a similar situation; his prior felonies were for burglary and cocaine selling.

By a 6–1 vote, the Florida Supreme Court rejected Gayman's and Williams' claim that enhancement of a sentence based on a prior conviction constituted double jeopardy.

Justice Barkett, dissenting in part, opined that it was not sufficiently clear that the Florida legislature specifically intended the double enhancement (as a felony and as a habitual felony offender).

Justice Barkett fails to demonstrate that the ordinary operation of the Florida statutes would provide anything other than double enhancement. In asserting that the Florida legislature's intent was not sufficiently clear, Justice Barkett is implicitly repudiating the basic principle that legislative intent is reflected in the plain meaning of statutes. This repudiation is a license for judicial activism.

ANTI-LOITERING LAWS

A separate memorandum discusses the serious defects arising from Justice Barkett's opinions that held unconstitutional laws prohibiting loitering for the purpose of prostitution (Wyche) and for the purpose of drug-related activity (E.L. and Holliday). The injury that these rulings inflict on the ability of communities to police themselves bears attention.

OBSCENITY

Justice Barkett's dubiously reasoned position that laws against obscenity violate due process (in Stall) is discussed in a separate memorandum. Justice Barkett uses the hypothetical danger of misapplication of obscenity laws to strike down provisions that safeguard the civilized life of the community.

FOOTNOTES

[1] The case summaries in this memorandum are not intended to discourage the reader from reviewing the opinions themselves. Indeed, we encourage such review. In addition, the transcript of Justice Barkett's hearing is available for review in the minority office of the Senate Judiciary Committee.

[2] The passage in fuller context reads: "The intrusion upon privacy rights caused by the Broward County police is too great for a democracy to sustain. Without doubt the inherently transient nature of drug courier activity presents difficult law enforcement problems. Roving patrols, random sweeps, and arbitrary searches or seizures would go far to eliminate such crime in this state. Nazi Germany, Soviet Russia, and Communist Cuba have demonstrated all too tellingly the effectiveness of such methods. Yet we are not a state that subscribes to the notion that ends justify means."

JUSTICE BARKETT AND THE DEATH PENALTY

This memorandum presents Justice Barkett's approach to the death penalty. It is based on a review of over 300 death penalty cases in which Justice Barkett has participated, including every case in which she has written an opinion.[1]

Part I provides basic background on Florida's death penalty statute and on applicable laws governing death penalty proceedings. Part II examines a broad array of cases that illustrate how Justice Barkett applies these laws. Part III analyzes the oft-made (but little-scrutinized) claim by Justice Barkett's supporters that she has voted to enforce the death penalty in more than 200 cases.

At the outset, it should be made clear that Justice Barkett has voted to uphold the death penalty on a substantial number of occasions. This only begins the inquiry, however, for one would expect that a judge in a state with a death penalty and many murders committed within it will have many occasions when he or she must uphold the death penalty. But if a nominee exhibits a clear tendency to strain for unconvincing escapes from imposing the death penalty in cases where it is appropriate, that raises a concern about a judge's fidelity to the law, no matter how many times the nominee has upheld the death penalty in other cases. Moreover, as explained below, if Justice Barkett's view in the Foster case had prevailed, it is likely that the death penalty would be effectively repealed.

I. FLORIDA DEATH PENALTY LAW

Under Florida law, Fla. Stat. §921.141, a defendant who has been found guilty of capital murder then faces a separate sentencing proceeding to determine whether he should be sentenced to death or to life imprisonment. Florida is a so-called "weighing" state: the death sentence is warranted if the statutory "aggravating circumstances" outweigh the "mitigating circumstances." Florida law expressly limits the aggravating circumstances (or "aggravators") to the following list of 11:

(a) the defendant was under sentence of imprisonment when he committed the capital crime;

(b) the defendant was previously convicted of another capital felony or of a felony involving use or threat of violence;

(c) the defendant knowingly created a great risk of death to many persons;

(d) the capital crime was committed while the defendant was committing, or attempting to commit, or fleeing from committing or attempting to commit, a robbery, sexual battery, arson, burglary, kidnapping, aircraft piracy, or bombing;

(e) the capital crime was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;

(f) the capital crime was committed for pecuniary gain;

(g) the capital crime was committed to disrupt or hinder the lawful exercise of any government function;

(h) the capital crime was especially heinous, atrocious, or cruel;

(i) the capital crime was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification;

(j) the victim was a law enforcement officer engaged in the performance of his official duties; and

(k) the victim was an elected or appointed public official engaged in the performance of his official duties, and the motive was related to the victim's official capacity.

Fla. Stat. §921.141(5). Florida law lists the following seven mitigating circumstances (or "mitigators"):

(a) the defendant has no significant history of prior criminal activity;

(b) the capital crime was committed under the influence of extreme mental or emotional disturbance;

(c) the victim participated in the defendant's conduct or consented to the act;

(d) the defendant was merely an accomplice whose participation was relatively minor;

(e) the defendant acted under extreme duress or the substantial domination of another person;

(f) 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; and

(g) the age of the defendant at the time of the crime. Fla. Stat. §921.141(6). In addition, under current federal constitutional rulings, any other mitigating evidence is also to be weighed.

The capital sentencing proceeding has two stages. In the first stage, the jury renders an advisory sentence based on whether sufficient aggravators exist and on whether the mitigators outweigh the aggravators. Fla. Stat. §921.141(2). In the second stage, the trial judge makes these same determinations. Id. §921.141(3). But under Florida case law, *Tedder* v. *State*, 322 So.2d 908 (Fla. 1975), a jury's recommendation of a life sentence is to be given great weight and can be overturned by the trial judge only if no reasonable person could conclude that death was not warranted.

A death sentence is entitled to automatic review by the Florida Supreme Court. Fla. Stat. §921.141(4). *Under a 1972 provision, anyone who is punished by "life" imprisonment may be eligible for parole after 25 years. Fla.* Stat. §775.082.

Once death-sentenced murderers have lost their direct appeal, they may pursue postconviction relief under state law (as well as federal postconviction relief in the federal courts). Two basic avenues may be pursued. First, a convicted capital murderer may file a motion for postconviction relief in the trial court under Florida Rule of Criminal Procedure 3.850. Denial of this motion is then reviewable by the Florida Supreme Court. Second, a convicted capital murderer may file an original action in the Florida Supreme Court for a writ of habeas corpus under Article V, section 3(b)(9) of the Florida Constitution.

II. JUSTICE BARKETT'S DEATH PENALTY JURISPRUDENCE

This Part will present cases that illustrate various of the means employed by Justice Barkett to vote against the death penalty. These include: (A) construing aggravators exceedingly narrowly; (B) construing mitigators very broadly; (C) creating categorical exclusions from death penalty eligibility; (D) subjecting the death penalty to racial statistical analyses that would paralyze its imple-

[1] The case summaries in this memorandum are not intended to discourage the reader from reviewing the opinions themselves. Indeed, we encourage such review. In addition, the transcript of Justice Barkett's hearing is available for review in the minority office of the Senate Judiciary Committee.

mentation; (E) developing procedural anomalies; and (F) failing to provide any reason at all.

*A. Construing Aggravators Exceedingly Narrowly*

When aggravators are given artificially narrow constructions, those who would face the death penalty escape it. Many of Justice Barkett's opinions illustrate a tendency to read the aggravators far too narrowly. For example:

*Cruse* v. *State*, 588 So.2d 983 (Fla. 1991)—

Cruse loaded an assault rifle, a shotgun, a pistol, and 180 rounds of ammunition into his car and began driving to a shopping center. On the way, he fired the shotgun at a 14-year-old boy who was playing basketball and then at the boy's parents and brother. At the shopping center, he shot and killed two shoppers who were leaving a grocery store and wounded a third. He then shot at various other customers, killing one and wounding another.

When Cruse heard sirens approaching, he got back in his car and drove across the street to another shopping center. When Officer Ronald Grogan approached in his police car, Cruse turned, inserted a new clip into his rifle, and fired eight times into the car, killing Officer Grogan.

Officer Gerald Johnson then entered the parking lot and exited his car. Cruse shot at Officer Johnson and wounded him in the leg. Cruse then headed into the parking lot, searching for the wounded officer. When he found him, he shot Officer Johnson several more times, killing him. As a rescue team attempted to move Officer Grogan's car out of Cruse's line of fire, Cruse fired several shots at them and told them to "get away from the cop. I want the cop to die."

Cruse then entered a store and began firing at people trying to escape. He killed one more and wounded many others. He then found two women hiding in the women's restroom and held one as a hostage for several hours. In all, Cruse killed six people and wounded 10 others.

Cruse was found guilty of, among other things, six counts of first-degree murder. The jury recommended death on all six counts. The trial court imposed the death penalty for the murders of Officers Grogan and Johnson.

By a vote of 6 to 1, the Florida Supreme Court affirmed the convictions and the death sentences. In her lone dissent, Justice Barkett voted to reverse the convictions. In addition, she stated that the death sentence was in any event inappropriate for Cruse.

The basis upon which Justice Barkett would have reversed the convictions was the prosecution's alleged failure to make available to Cruse so-called "Brady evidence." Under the U.S. Supreme Court's ruling in *Brady* [v. *Maryland*, 373 U.S. 83 (1963)], the prosecution must provide the accused, upon the accused's request, material evidence in its possession that is favorable to the accused. As she stated in your opinion, "Evidence is material when 'there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'"

Justice Barkett would have ruled that evidence of the names of two mental health experts whom the prosecution had contacted should have been turned over to Cruse, and that the failure to turn over this evidence required reversal of the convictions and remand for a new trial. In her opinion, she rejected the majority's opinion that this evidence was merely cumulative. In addition, she stated, "I do not believe that the fact that other experts at trial expressed the same opinion [regarding Cruse's mental state] is a pertinent part of the inquiry of whether or not a Brady violation occurred."

In the second part of her dissent, Justice Barkett concluded that even if the convictions were to be upheld, the death sentence was in any event not warranted and should be reduced to life. She would have found that the cold-calculated-and-premeditated aggravator was not met. In particular, she concluded that Cruse had the "pretense of moral or legal justification" for his killings because "the evidence shows that Cruse was acting in response to his delusions that people were trying to harm him."

Justice Barkett also took the position that even apart from what she saw as a pretense of moral or legal justification, there was insufficient evidence of heightened premeditation in the murders of the two police officers.

*Analysis*: Justice Barkett's dissent appears riddled with flaws:

(1) Her position that it is not pertinent under *Brady* whether evidence is merely cumulative conflicts with the principle that evidence is material for purposes of *Brady* only if there is a reasonable probability that disclosure of the evidence would have led to a different result at trial. Merely cumulative evidence is by definition not material. So it appears that the basis upon which she voted to reverse Cruse's convictions is clearly invalid.

(2) As the majority pointed out, the consensus of the experts who testified was that Cruse's delusions related to a fear that others were trying to turn him into a homosexual, not to a fear of any physical harm. It therefore appears that Justice Barkett's finding of a pretense of moral or legal justification rests on a serious mischaracterization of the evidence.

(3) What additional facts would be needed to persuade Justice Barkett that Cruse had heightened premeditation? The evidence of heightened premeditation was clear: With respect to the murder of Officer Grogan, the evidence shows that when Officer Grogan approached in his police car, Cruse turned, inserted a new clip into his rifle, and fired eight times into the car, killing Officer Grogan. In addition, as a rescue team attempted to move Officer Grogan's car out of Cruse's line of fire, Cruse fired several shots at them and told them to "get away from the cop. I want the cop to die." With respect to the murder of Officer Johnson, the evidence shows that when Officer Johnson entered the parking lot and exited his car, Cruse shot at him and wounded him in the leg. Cruse then headed into the parking lot, searching for the wounded officer. When he found him, he shot Officer Johnson several more times, killing him.

*McKinney* v. *State*, 579 So.2d 80 (Fla. 1991)—

A driver of a rental car was shot to death in Miami when he stopped to ask directions. McKinney was convicted of first-degree murder (as well as armed robbery, armed kidnapping, and other offenses) and was sentenced to death.

The Florida Supreme Court, in an opinion by Justice Barkett, voted 6-1 to reverse the death sentence on the ground that the aggravators had not been sufficiently proven. E.g.: "While it is true that the victim was shot multiple times, a murder is not heinous, atrocious, or cruel without additional facts to raise the shooting to the shocking level required by this factor."

*Analysis*: Justice Barkett's determination that the only evidence supporting the "heinous, atrocious, or cruel" aggravator was the number of gunshot wounds ignores the special vulnerabilities that visitors face and the shocking nature of the crime. Indeed, there has been a recent rash of killings of tourists driving rental cars in Miami.

*Porter* v. *State*, 564 So.2d 1060 (Fla. 1990)—

Porter was the live-in lover of Evelyn Williams from 1985 until July 1986. Their relationship was marked by several violent incidents, including Porter's threat to kill Williams and her daughter. Porter left town for a few months, during which time Williams established a relationship with another man, Burrows.

When Porter returned to town in October 1986, Williams refused to see him. Porter contacted Williams' mother, who told him that Williams did not wish to see him anymore. A few days before the murders, Williams asked to borrow a gun from a friend; the friend declined, but the gun was later missing. During each of the two days before the murder, Porter was seen driving past Williams' home. Then, after drinking heavily, Porter invaded Williams' home, shot her to death, threatened to kill her daughter, and then killed Burrows in a scuffle. Porter pled guilty to the two murders, and was sentenced to death for the murder of Williams.

By a vote of 5 to 2, the Florida Supreme Court affirmed the death sentence. Barkett, dissenting (with Kogan), opined that in "almost every other case where a death sentence arose from a lover's quarrel or domestic dispute," the court had reversed the death sentence, and that the heightened premeditation aggravator had therefore not been met. She also concluded that Porter's heavy drinking rendered the death sentence disproportionate.

*Analysis*: The evidence of heightened premeditation was clear; indeed, Porter basically stalked his victim for two days. Justice Barkett's characterization of the murder as arising from "lover's quarrel or domestic dispute" appears inaccurate and beside the point.

*Hodges* v. *State*, 595 So.2d 929 (Fla. 1992)—

On the morning that Hodges was scheduled for a hearing on a charge of indecent exposure, the 20-year-old clerk who had complained of the indecent exposure was found shot to death next to her car in her store's parking lot. Hodges was convicted and sentenced to death. By a 6-1 vote, the Florida Supreme Court affirmed the death sentence.

Justice Barkett, dissenting, would have ruled that the two aggravators—witness elimination and cold, calculated, and premeditated killing—were "so intertwined here that they should be considered as one" and that, so considered, they did not strongly outweigh the mitigators.

*Analysis*: The two aggravators are "intertwined" only in the sense that aggravators arising out of the same murderous episode are inevitably intertwined. Witness elimination clearly involves a concern that the "cold, calculated, and premeditated" aggravator does not.

At her hearing, Justice Barkett claimed that her dissent followed (though it did not cite) a case called *Cherry* v. *State*, 544 So.2d 184 (Fla. 1989). In *Cherry*, the court, in an opinion by Justice Barkett, held that the aggravating factor of murder for pecuniary gain improperly duplicated the aggravating factor of murder during the commission of a burglary where the sole purpose of the burglary was pecuniary gain. The central precedent cited in *Cherry*, however, permits aggravators to be counted separately where they relate to "separate analytical con-

cepts," *Provence* v. *State*, 337 So.2d 783 (Fla. 1976), which would certainly appear to be the case in *Hodges*. Justice Barkett's dissent surely does not provide an adequate basis for her conclusion.

The White House briefing materials brazenly and falsely describe Justice Barkett's dissent in *Hodges* as "another excellent example of Justice Barkett's strict adherence to established Florida and U.S. death penalty jurisprudence." [Br. at 25]

*B. Construing mitigators too expansively*

In many cases, Justice Barkett appears to give undue weight to alleged mitigating evidence or to rely on such evidence to contend that the death penalty is somehow disproportionate to the crime. She appears too ready to adopt the view that society, or racism, or deprivation, mitigates responsibility for the horrific crime that the defendant has committed.

*Dougan* v. *State*, 595 So.2d 1 (Fla. 1992)—

Dougan was the leader of a group that called itself the Black Liberation Army and that, according to the trial judge, had as its "apparent sole purpose . . . to indiscriminately kill white people and thus start a revolution and a race war." He conceived a plan for his group to kill a "devil"—i.e., "any white person they came upon under such advantageous circumstances that they could murder him." One evening in 1974, he and four other members of his group, armed with a pistol and a knife, picked up a white hitchhiker, drove him to a trash dump, stabbed him repeatedly, and threw him to the ground. "As the 18-year-old youth writhed in pain and begged for his life, Dougan put his foot on [the youth's] head and shot him twice—once in the chest and once in the ear." Later, Dougan made several tape recordings bragging about the murder, and mailed them to the victim's mother as well as to the media. The following tape excerpt was said to be illustrative of the tapes' content: "He [the youth] was stabbed in the back, in the chest and the stomach, *ah, it was beautiful. You should have seen it. Ah, I enjoyed every minute of it. I loved watching the blood gush from his eyes.*" (Emphasis in italics.)

Dougan's case had been considered on the merits five previous times by the Florida Supreme Court. The court had affirmed two prior sentences but later vacated them and remanded for resentencing. On the most recent resentencing, the jury recommended death, and the trial court found three aggravating circumstances and no mitigating circumstances and therefore sentenced Dougan to death.

The Florida Supreme Court affirmed the death sentence. The plurality rejected a slew of arguments, including the claim that the death penalty was disproportionate under the circumstances.

Justice Barkett *joined* a dissent written by Justice McDonald that would have held the death penalty disproportionate. The dissent made the following remarkable observations:

1. "This case is not simply a homicide case, *it is also a social awareness case*. Wrongly, but *rightly in the eyes of Dougan, this killing was effectuated to focus attention on a chronic and pervasive illness of racial discrimination and of hurt, sorrow, and rejection*. Throughout Dougan's life his resentment to bias and prejudice festered. His impatience for change, for understanding, for reconciliation *matured* to taking the illogical and drastic action of murder. His frustrations, his anger, and his *obsession of injustice overcame reason. The victim was a symbolic representation of the class causing the perceived injustices.*" 595 So.2d, at 7–8 (emphasis in italics).

2. "To some extent, [Dougan's] emotions were parallel to that of a spouse disenchanted with marriage, full of discord and disharmony which, because of frustration or rejection, culminate in homicide. We seldom uphold a death penalty involving husbands and wives or lovers, yet the emotion of that hate-love circumstance are somewhat akin to those which existed in this case." 595 So.2d at 7 n. 7.

3. "*The events of this difficult case occurred in tumultuous times*. During the time of the late sixties and early seventies, there was great unrest throughout this country in race relations. . . . I mention these facts not to minimize what transpired, but, rather, to *explain the environment* in which the events took place and to *evaluate Dougan's mindset*." 595 So.2d, at 7 (emphasis in italics).

4. "There is evidence to support the conclusions of the trial judge on the aggravating factors, *even though in the mind of Dougan there was a pretense of moral justification for his acts*." 595 So.2d, at 6 (emphasis in italics).

5. "Understandably, in the eyes of the victim, or potential victims, the aggravating factors clearly outweigh the mitigating; *in the eyes of the defendant, his friends, and most of those situated in the circumstances of Dougan, the death penalty is not warranted* and is disproportionate to the majority of hate slayings, at least where the victim is black and the perpetrator is white. Even though we are aware of and sensitive to these contrasting emotions, our review must be neutral and objective." 595 So.2d, at 7 (emphasis in italics). (The dissent proceeds directly from here to the first passage quoted above.)

6. "In comparing what kind of person Dougan is with other murderers in the scores of death cases that we have reviewed, I note that few of the killers approach having the socially redeeming values of *Dougan*." 595 So.2d, at 8 (emphasis added). (This apparently refers to the dissent's earlier observations that Dougan was "intelligent," "well educated," "a leader in the black community," "taught karate and counseled black youths," and once "participated in a sit-down strike in defiance of a court order" at a lunch counter that refused service to blacks.)

*Analysis*: (1) The October 11, 1992, *Sunshine* magazine quoted two prosecutors' responses to the dissent that Justice Barkett joined:

"'How can they compare a cold-blooded, premeditated, torturous crime that's motivated by racial hate and equate that to the emotional circumstances in domestic murders?' asks prosecutor Chuck Morton, himself a black man, after rereading the Dougan case.

"Adds Tallahassee prosecutor Ray Markey: 'To say that this white victim was a sacrificial lamb and call it a social awareness case—that's scary.'"

In the words of the plurality, "While Dougan may have deluded himself into thinking this murder justified, there are certain rules by which every civilized society must live. . . . To hold that death is disproportionate here would lead to the conclusion that the person who put the bomb in the airplane that exploded over Lockerbie, Scotland, or any other terrorist killer should not be sentenced to death if the crime were motivated by deep- seated philosophical or religious justifications." 595 So.2d, at 6.

(2) While Justice Barkett did not author the dissent, she signed onto it in its entirety. The fact that she would join such an opinion speaks volumes, especially since she regularly writes separately when she has a different view.

At her hearing, Justice Barkett stated that she had taken a position in *Dougan* at one point that was "different from the one I took ultimately in the dissent. It is a very close case. I cannot quarrel with a conclusion which would have found it the other way. I cannot quarrel with the majority in that case." [74:10–15]

This comment is troubling in several respects: (1) What happens in conference is confidential. To engage in self-serving, selective disclosure of confidences is to abuse the process. (2) If Justice Barkett found the dissent so persuasive that she abandoned a previously held position, that exacerbates the concerns that *Dougan* raises. (3) How can she say that she cannot quarrel with the majority? She did quarrel with it: she dissented. If she is saying that she cannot express a reasoned argument against the majority, then on what basis did she dissent?

*Wickham* v. *State*, 593 So.2d 191 (Fla. 1991)—

In March 1986, Wickham was driving with family and friends when they discovered that they were low on money and gas. Wickham decided to obtain money through robbery. His group tricked a passing motorist into stopping to examine their car, and Wickham then pointed a gun at him. When the motorist attempted to return to his car, Wickham shot him in the back, and then again in the chest. When the victim pled for his life, Wickham shot him twice in the head. Wickham then rummaged through the victim's pockets and found $4.05. At trial, the jury convicted and recommended death. The trial judge found six aggravating circumstances and no mitigating circumstances, and sentenced Wickham to death.

The Florida Supreme Court affirmed the death sentence by a 4 to 2 vote, with Justices Barkett and McDonald dissenting. According to Justice Barkett's dissent, "If the death penalty is supposed to be reserved for the most heinous of crimes and the most culpable of murderers, Jerry Wickham does not seem to qualify. . . . At the time he committed this senseless murder, Jerry Wickham was a forty-year-old mentally deficient, socially maladjusted individual who had been institutionalized for almost his entire life." 593 So.2d, at 194–195.

*Analysis*: (1) *Wickham* and *Dougan*, read together, are especially revealing: Wickham was "mentally deficient"; Dougan was "intelligent" and "well educated." Wickham was "socially maladjusted"; Dougan was socially well-adjusted ("a leader in the black community," "respected," etc.). Remarkably, the very qualities that Justice Barkett sees as somehow sparing Wickham from the death penalty, when converted into their opposites, manage to spare Dougan. (2) Justice Barkett's tendency to find unjustified mitigation for violent crime is reflected in the following passage from her dissent: "In early 1966, at the age of twenty-two, [Wickham] was permanently discharged from the mental hospital with no directions, no support, and no medication. *Not surprisingly*, seven months later he attempted to rob a cab driver, shooting him in the process." 593 So.2d, at 195 (emphasis in italics).

*Hayes* v. *State*, 581 So.2d 121 (Fla. 1991)—

In the course of an evening consuming beer, cocaine, and marijuana, Hayes and two friends conspired to rob and shoot a taxicab driver in order to raise money to buy more cocaine. Hayes volunteered to do the shooting. Carrying out their plan, they borrowed a gun, then called a taxicab. During the ride, Hayes shot the driver in the back of his neck and killed him. Hayes then took forty dollars from the driver's pockets.

Hayes was convicted of first-degree murder. Mitigating evidence at the penalty phase showed that he had a neglectful, abusive, and deprived upbringing, that he had borderline intelligence, and that he had been consuming drugs and alcohol heavily for three years. The jury recommended death, and the trial court, finding that the aggravators—(1) "cold, calculated, and premeditated" and (2) for pecuniary gain and in the course of an armed robbery—clearly outweighed the mitigating evidence, sentenced Hayes to death.

The Florida Supreme Court, by a 5–2 vote, affirmed the death sentence. Justice Barkett, dissenting with Kogan, would have found that the mitigating evidence "renders the death sentence disproportional punishment in this case."

*Hudson* v. *State*, 538 So.2d 829 (Fla. 1989)—

Two months after breaking up with his girlfriend, Hudson, armed with a knife, broke into her home during the night. The former girlfriend, having received threats from him, was spending the night elsewhere. But her roommate was at home. When she began screaming at him to leave, Hudson stabbed her to death, put her body in the trunk of her car, and dumped her in a drainage ditch in a tomato field. Hudson was convicted and sentenced to death.

By a 6 to 1 vote, the Florida Supreme Court affirmed the death sentence. Justice Barkett, dissenting from the sentence, relied on the trial court's finding that Hudson "was apparently surprised by the victim during [his] burglarizing of [her] home" in support of her view that the death penalty was disproportionate to the offense.

*Analysis*: Anyone who breaks into a home that he believes to be occupied should expect to encounter an occupant. It is odd that this would somehow become mitigating.

*King* v. *State*, 514 So.2d 354 (Fla. 1987)—

While an inmate at a work-release correctional facility, King killed an elderly woman and robbed and burned her home. He was convicted of first-degree murder and was sentenced to death. The conviction and death sentence were affirmed on direct appeal, and his state postconviction petition was denied. On federal habeas, he obtained resentencing, but was again sentenced to death.

By a 5–2 vote, the Florida Supreme Court affirmed the resentence of death. In dissent, Justice Barkett (with Kogan) opined that a capital defendant must be permitted to offer at the penalty phase so-called "lingering doubt evidence"—evidence that the defendant might not actually be guilty of the crime of which he has just been convicted beyond a reasonable doubt.

*Analysis*: (1) If the defendant has been found guilty beyond a reasonable doubt, it follows that any evidence suggestive of his innocence either has already been rejected by the jury and the judge as not credible or would give rise, at most, only to *un*reasonable or whimsical doubts. Why should evidence that does not give rise to even a reasonable doubt of guilt and that is not otherwise relevant in any respect be required to be admitted in the sentencing phase as evidence of possible innocence? (2) In *Franklin* v. *Lynaugh*, 487 U.S. 164 (1988), the U.S. Supreme Court rejected Justice Barkett's position and made clear that it was not consistent with pre-existing precedent. In the words of Justice O'Connor's concurring opinion, "Our cases do not support the proposition that a defendant who has been found to be guilty of a capital crime beyond a reasonable doubt has a constitutional right to reconsideration by the sentencing body of lingering doubts about his guilt." 487 U.S. at 187.

*C. Categorical exclusions*

Justice Barkett would define certain categories of criminals—e.g., minors and those who are mentally retarded—as ineligible for the death penalty, and then would construe those categories very expansively. For example:

*LeCroy* v. *State*, 533 So.2d 750 (Fla. 1988)—

By a vote of six to one, the court affirmed a death sentence for two brutal first-degree murders by LeCroy, who was 17 years and ten months when he committed the murders. The court noted, among other things, that the sentencing judge gave great weight to LeCroy's youth but found him mentally and emotionally mature, and that Florida statutes specify that a child of any age charged with a capital crime "shall be tried and handled in every respect as if he were an adult." Construing U.S. Supreme Court precedent, it ruled that there was no constitutional bar to the imposition of the death penalty on those who were 17 at the time of the capital offense.

Justice Barkett, dissenting from the death sentence, stated her belief that both the Eighth Amendment of the federal Constitution and a state constitutional provision prohibit imposition of the death penalty on one who was a "child" at the time of the crime. "[T]he death penalty is totally inappropriate when applied to persons who, because of their youth, have not fully developed the ability to judge or consider the consequences of their behavior." 533 So.2d, at 758. "I am confident that most reasonable persons would agree that the death penalty cannot be imposed on children below a certain age. . . . In my view, that line should be drawn where the law otherwise distinguishes 'minors' from adults"—i.e., at 18 years. *Id.*, at 759. "I cannot agree, as the majority implicitly holds, that one whose maturity is deemed legally insufficient in other respects should be considered mature enough to be executed in the electric chair." *Id.*

*Analysis*:

(1) It would seem that the existing statutes permitting execution of those under 18, both in Florida and in other states, are a more reliable barometer than Justice Barkett's own subjective sense of what "most reasonable persons would agree."

(2) As the majority emphasizes, the trial court found that LeCroy's ability to judge the consequences of his behavior was fully developed. It would seem that a State should be able to choose to structure its determination on an individualistic basis, rather than be required to engage in the fiction that the moment a person turns 18, he acquires a maturity that did not previously exist.

(3) The relevant question is not whether someone is "mature enough to be executed" (whatever that means); rather, it is whether someone is mature enough to recognize the wrong of brutally killing a human being. It is plainly commonsensical, and surely constitutional, for the people of a State to conclude that the degree of maturity that is necessary to exercise sound judgment regarding voting or marrying may be somewhat greater than the degree necessary to recognize the wrong of brutally killing a human being.

(4) In *Stanford* v. *Kentucky*, 492 U.S. 361 (1989), the U.S. Supreme Court later rejected her position, as it held that there was no constitutional bar to execution of 16- and 17-year-olds.

In her written response to written questions submitted after her hearing, Justice Barkett stated that "there was no express evidence that the Florida Legislature had considered the question" of executing minors and that her *LeCroy* dissent "concluded that the Legislature had not sufficiently expressed its intent to execute juveniles to satisfy the Eighth Amendment."

This response is unsatisfactory in at least two respects: (1) It fails to acknowledge, much less rebut, the majority's detailed demonstration that the Florida legislature had, for the past 35 years, "repeatedly reiterated the historical rule that juveniles charged with capital crimes will be handled in every respect as adults" and that "it cannot be seriously argued that the legislature has not consciously decided that persons seventeen years of age may be punished as adults" and be subject to the death penalty. (2) Justice Barkett's written response gives the misimpression that her dissent rests on the ground that the legislature was not sufficiently clear. In fact, her dissent is in no way so limited.

*Hall* v. *State*, 614 So.2d 473 (Fla. 1993)—

In 1978, Hall and another man decided to steal a car to use in a robbery. They spotted a 7-month-pregnant woman in a grocery store parking lot. Hall forced her into her car and drove her to a secluded area, where Hall and the other man raped, beat and shot her to death. Hall was convicted and sentenced to death.

By a 5–2 vote, the Florida Supreme Court affirmed Hall's death sentence. The court ruled in part that the trial record supported the trial judge's conclusion that the mitigators alleged by Hall either had not been established or were entitled to little weight.

Justice Barkett, dissenting (with Kogan), did not agree that the mitigators had not been established. Instead, she would have found that Hall was mentally retarded and would have held that execution of the mentally retarded is cruel and unusual punishment under the Florida Constitution.

*Analysis*: (1) Justice Barkett relies on provisions of the Florida Constitution to reach anti-death penalty results well beyond what identical provisions of the federal Constitution have been construed to require. (2) Justice Barkett is often more ready than her colleagues to credit the defendant's mitigating evidence.

*D. Racial quotas*

*Foster* v. *State*, No. 76,639 (Fla. Apr. 1, 1993)—

Foster, two young women, and another man, Lanier, drove to a deserted area where one of the women was to make some money by having sex with Lanier. As Lanier, who was very drunk, was disrobing, Foster suddenly began hitting him and then held a knife to Lanier's throat and sliced his neck. Foster and the women then dragged the still-breathing Lanier into the bushes and covered him with branches and leaves. Foster then took a knife and cut Lanier's spine. Foster and the women then split the money found in Lanier's wallet.

Foster was convicted of murder and sentenced to death in 1975. On resentencing, the trial court, finding three aggravating circumstances, again imposed the death penalty. The Florida Supreme Court, by a 4–3 vote, rejected Foster's claim that his death sentence was a product of racial discrimination against black victims. (The court did remand for resentencing on other grounds.)

Justice Barkett, dissenting on this point, would not accept the majority's determination that Foster's statistical evidence purporting to show that white-victim defendants in Bay County were more likely to get

the death penalty than black-victim defendants failed to establish a constitutional violation. (Lanier, evidently, was white; Foster, according to newspaper accounts, was also white.) Justice Barkett would have relied on the Florida Constitution's Equal Protection Clause to reach a result rejected by the U.S. Supreme Court in *McCleskey* v. *Kemp*, 481 U.S. 279 (1987). In *McCleskey*, the Court ruled that a capital defendant claiming a violation of the federal Equal Protection Clause must show the existence of purposeful discrimination and a discriminatory effect on him. According to Justice Barkett:

(1) The *McCleskey* standard fails to address the problem of "unconscious discrimination."

(2) "Statistical evidence" of discriminatory *impact* in capital sentencing that "cannot be traced to blatant or overt discrimination" should establish a violation of Florida's Equal Protection Clause.

(3) This "'statistical' evidence" should be construed broadly to include not only analysis of the disposition of first-degree murder cases, "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, and *the general conduct of a state attorney's office, including hiring practices and the use of racial epithets and jokes*." (Emphasis in italics.)

(4) The defendant should have the initial burden of showing the strong likelihood that discrimination influenced the decision 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 initial burden has been met, "the burden then shifts to the State to show that the practices in question are not racially motivated."

*Analysis*: (1) Justice Barkett's proposed standard would paralyze implementation of the death penalty. (This point should be kept in mind in considering her supporters' claims about her death penalty record.) Under her standard, in every capital case involving either a non-white defendant or a white victim, the capital defendant would be able to investigate the general practices of the state attorney's office. A more burdensome inquiry could hardly be imagined. (2) Indeed, as Justice Powell pointed out in his opinion in *McCleskey*, there is no reason why Justice Barkett's standard would be limited to cases with non-white defendants or white victims. A white defendant should be able to try to show that racial discrimination against whites infected the State's decision. A Catholic defendant could try to show that state attorneys told jokes about the priest and the rabbi, etc. A female defendant (or a killer of a male victim) could try to show that sexism pervades the prosecutor's office. (3) There is also no reason why Justice Barkett's standard should be limited to death penalty cases; her theory would apply equally to robbery, rape, and all other crimes. In Justice Powell's words, "McCleskey's claim, taken to its logical conclusion, throws into serious question the principles that underlie our entire criminal justice system." *McCleskey*, 481 U.S., at 314-315.

At her hearing, Justice Barkett stated: "I have not suggested in this opinion or anywhere else that statistics is the be-all and 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." [157:1-6] How this statement can be reconciled with her opinion—in which she clearly embraces reliance on statistical evidence—is not clear.

*E. Developing procedural anomalies*

Justice Barkett has taken a number of positions that would place substantial procedural roadblocks in the way of the death penalty; she has taken other positions that give capital defendants special advantages. In the postconviction context, where the doctrine of procedural bar enables courts to dispose of claims that were not timely raised or that were otherwise not properly preserved, Justice Barkett has frequently declined to apply the law of procedural bar as uniformly as the court and has instead created ad hoc exceptions. See, e.g., *Bundy* v. *State*, 538 So.2d 445 (Fla. 1989); *Francis* v. *Dugger*, 581 So.2d 583 (Fla. 1991); *Foster* v. *State*, 518 So.2d 901 (Fla. 1987); *Johnson* v. *State*, 536 So.2d 1009 (Fla. 1988); *Jones* v. *State*, 533 So.2d 290 (Fla. 1988).

*Grossman* v. *State*, 525 So.2d 833 (Fla. 1988)—

Grossman, on probation following a prison term, drove with a companion to a wooded area to shoot a handgun that he had recently stolen from a home. When a wildlife officer came upon them, she took possession of Grossman's shotgun. Grossman pleaded with her not to turn him in, since he would be returned to prison for violating the terms of his probation. When the officer refused his plea, Grossman beat her with a large flashlight. After she fired her weapon in self-defense, Grossman wrestled the weapon away and shot her in the back of the head, killing her. Grossman was convicted and sentenced to death.

By a 6-1 vote, the Florida Supreme Court affirmed the death sentence. Justice Barkett, dissenting, would have continued to adhere to a view concededly rejected by numerous Florida Supreme Court decisions: namely, that the U.S. Supreme Court decision in *Caldwell* v. *Mississippi*, 472 U.S. 320 (1985)—which held that it was error for a prosecutor to urge a capital sentencing jury not to view itself as determining whether the defendant would die, since the correctness of the death sentence would be reviewed on appeal—applied under Florida's scheme to the advisory jury as well as to the sentencing judge. Justice Barkett also would not have permitted written findings in support of sentencing to be made three months after sentencing, where no specific oral findings were made at the time that the death sentence was imposed. She therefore would have required that the sentence be reduced to life.

*Burr* v. *State*, 518 So.2d 903 (Fla. 1987)—

Burr was convicted of first-degree murder and robbery with a firearm and was sentenced to death. His conviction and sentence were affirmed on direct appeal. Following the signing of a death warrant, he filed a motion for postconviction relief, which was denied by the trial court.

By a 6-1 vote, the Florida Supreme Court affirmed the denial of relief. Justice Barkett, dissenting, would have decided for Burr based on an issue that she conceded had not even been raised by Burr—the consideration of collateral crimes evidence during the sentencing phase.

At her hearing, Justice Barkett claimed that "the United States Supreme Court reversed Burr on the same basis upon which I dissented." [95:9-10] This claim is not accurate: The U.S. Supreme Court GVRed—granted, vacated and remanded—Burr in light of its intervening decision in a case called Johnson v. *Mississippi, where the Court ruled that a death sentence could not be based on a conviction that is no longer valid. Justice Barkett's dissent is not so limited and would appear to challenge the admission of any collateral crimes evidence.*

*Stewart* v. *State*, 549 So.2d 171 (Fla. 1989)—

Stewart, hitchhiking, was a passenger in a car. When the driver stopped to drop him off, Stewart, struck her on the head with the butt of a gun, shot her and shot and killed her companion, forced them from the car, and drove away. The trial judge, following the jury's recommendation, sentenced Stewart to death. The trial court made detailed oral findings that were dictated into the record; it failed, however, to provide separate written findings in support of its sentence.

The Florida Supreme Court, by a 5-2 vote, remanded so that the trial court could provide written findings, as required by an intervening decision construing state law. Justice Barkett, dissenting with Kogan, would have overruled a recent precedent by holding that a trial court's failure to provide contemporaneous written findings required that a death sentence be converted to life.

*Hamblen* v. *Dugger*, 546 So.2d 1039 (Fla. 1989)—

Hamblen pled guilty to first-degree murder and waived his right to have a jury consider whether he should be executed. At his sentencing hearing, he presented no mitigating evidence and agreed with the prosecutor's recommendation of death. The trial judge sentenced him to death. The sentence was affirmed on direct appeal (with Justice Barkett dissenting).

The capital collateral representative then filed a habeas petition on Hamblen's behalf. The Florida Supreme Court, by a vote of 6-1, denied the petition. Justice Barkett, dissenting, opined that a court that "gives a defendant the 'right' to waive presentation of mitigating factors" cannot perform its required function of weighing the aggravating and mitigating factors.

*Woods* v. *State*, 531 So.2d 79 (Fla. 1988)—

Justice Barkett opined that she would require a court to entertain any claim made by a condemned prisoner, no matter how dilatory the assertion of the claim: "a court must consider any point raised by a condemned prisoner as a reason why the death penalty should not be imposed."

*Analysis*: One of the problems in state administration of the death penalty has been the deliberate 11th-hour filing of claims by death row inmates whose sentences have been validly imposed and upheld both on direct and collateral appeal. At some reasonable point, a State must be permitted to prevent abuse of its criminal justice system. Otherwise, a death row inmate could delay his execution forever simply by filing another claim. Justice Barkett's dissent does not seem at all attentive to the legitimate interests of the State.

*F. Providing no reason*

In some 50 or so cases, Justice Barkett has provided no explanation—or at times only a conclusory statement—when she has refused simply to join the opinion of the court. In a number of these cases, she actually voted to grant relief. For example:

*White* v. *State*, 559 So.2d 1097 (Fla. 1990)—

White was convicted of robbing a small grocery store and shooting to death a customer. His conviction and death sentence were affirmed on appeal. In a petition for postconviction relief, White claimed, among other things, that his counsel had been ineffective. The Florida Supreme Court, by a vote of 5 to 2, affirmed the denial of his petition; in particular, the court addressed in de-

tail, and found meritless, White's claim of ineffective assistance of counsel.

Justice Barkett's entire dissent reads as follows: "I cannot concur in the majority's conclusion that appellant received a fair trial with effective assistance of counsel."

When asked at her hearing why she did not provide any further explanation for overturning a sentence recommended by the jury, imposed by the trial judge, affirmed on direct appeal, and upheld by the trial judge and the majority of her colleagues in postconviction proceedings, Justice Barkett stated: "[O]ur court is an extremely busy court. . . . I would have liked to have had, I am sure, the opportunity to have expanded here. But time constraints sometimes preclude you from amplifying any further than that." [87:8–17] This response does not adequately explain why Justice Barkett failed even to identify the primary reasons that led her to dissent.

*Engle* v. *Florida*, 510 So.2d 881 (Fla. 1987)—

Engle and another man robbed $67 from a convenience store, took the female cashier from the store, and strangled and stabbed her to death. A four-inch laceration, likely caused by a fist, was found in the interior of the victim's vagina. The jury recommended life, but the trial judge, finding four aggravators and no mitigators, sentenced Engle to death.

By a vote of 6–1, the Florida Supreme Court ruled that there was not a reasonable basis for the jury's life recommendation and affirmed the death sentence. Justice Barkett, in a two-sentence dissent, stated, without any further explanation, her belief that "the record adequately supports the jury's recommendation of life imprisonment."

See also *Kennedy* v. *Wainwright*, 483 So.2d 424 (Fla. 1986); *Thomas* v. *Wainwright*, 486 So.2d 574 (Fla. 1986); *Thomas* v. *Wainwright*, 486 So.2d 577 (Fla. 1986); *Funchess* v. *State*, 487 So.2d 295 (Fla. 1986); *Spaziano* v. *State*, 570 So.2d 289 (Fla. 1990); *Swafford* v. *Dugger*, 569 So.2d 1264 (Fla. 1990); *Turner* v. *State*, 530 So.2d 45 (Fla. 1987).

*G. Other noteworthy cases Torres-Arboledo* v. *State*, 524 So.2d 403 (Fla. 1988)—

Torres-Arboledo, an illegal alien from Colombia, rounded up two other men and went to a car body shop, where they attempted to take the owner's gold chain. When the owner resisted, Torres-Arboledo shot him to death. The jury recommended a life sentence, but the trial judge, finding two aggravators and no mitigators, overrode it and imposed death.

The Florida Supreme Court, by a 6–1 vote, affirmed the death sentence. Justice Barkett, in a three-sentence dissent, opined that the standard for overriding a jury life recommendation had not been met: "In light of the totality of the circumstances presented, it simply cannot be said that no reasonable jury could have recommended life."

In a number of other cases, Justice Barkett has been far more ready than her colleagues to find that a trial judge's override of a jury's life recommendation was not warranted. See, e.g., *Routly* v. *Wainwright*, 590 So.2d 397 (Fla. 1991); *Johnson* v. *State*, 536 So.2d 1009 (Fla. 1988).

*Swafford* v. *State*, 533 So.2d 270 (Fla. 1988)

*Facts*: The body of a female gas station attendant was found in a wooded area by a dirt road some miles from where she worked. She had been sexually battered and shot nine times, twice in the head. Swafford was convicted and sentenced to death. At his trial, evidence included testimony regarding an incident that took place two months after the murder: A witness, Johnson, testified that Swafford suggested that they "go get some women" and proceeded to say that "we'll do anything we want to her" and then "I'll shoot her in the head twice." In response to Johnson's question whether that wouldn't bother him, Swafford said that "it does for a while, you know, you just get used to it." Swafford then proceeded to target a victim and draw his gun, but Johnson ended the enterprise.

By a vote of 5–2, the Florida Supreme Court affirmed the death sentence. The majority held that Johnson's "other acts" evidence was admissible under the state counterpart to Rule 404(2) of the Federal Rules of Evidence as evidence of the meaning of Swafford's statement that "you just get used to it," and that this statement, in context, was relevant to establishing his crime two months before.

Justice Barkett, dissenting, asserted that the "only relevance of this testimony was to establish the criminal propensity and character of Swafford" and that it should therefore have been excluded under Rule 404(2).

*Analysis*: The majority's analysis is sound. While one might question how probative Swafford's statement was, Justice Barkett is wrong when she says its "only relevance" is to propensity and character.

III. CLAIMS REGARDING JUSTICE BARKETT'S PRO-DEATH PENALTY VOTES

Justice Barkett's supporters have routinely claimed that she has voted to enforce the death penalty in more than 200 cases. The White House has made available a list of 275 supposed such cases. Here is a statement made by Senator Hatch at Justice Barkett's hearing in response to these statistical claims:

"The White House and other supporters of Justice Barkett's nomination have made statistical claims regarding her death penalty record in an effort to rebut charges that she is soft on the death penalty. In support of these statistical claims, the White House has produced a lengthy table of her death penalty rulings. I would like to respond to these claims.

"Let me say at the outset that I believe that judges should be judged by the quality of their legal reasoning and by their fidelity to the law. A careful examination of particular opinions is the best measure of these qualities. It is precisely such an examination that I have conducted and hope to continue at this hearing. By contrast, because the craft of judging lies foremost in reasoning and not in results, broad statistical compilations of results often obscure far more than they clarify.

"Unfortunately, the White House's statistics suffer from more than the usual deficiencies. In the first place, the table of death penalty cases contains pervasive doublecounting. In particular, where (as routinely happens) the Florida supreme court addresses both a Rule 3.850 postconviction petition and a habeas petition in the same case, the White House counts this case as two cases. This doublecounting has the predictable effect of padding the list of cases in which the White House says that Justice Barkett has voted to enforce the death penalty. Even more remarkably, it has the perverse effect of including in this list of supposed votes to enforce the death penalty numerous cases in which Justice Barkett has in fact voted to grant relief to the petitioning convicted murderer.

"Second, the White House's list of cases in which Justice Barkett "has voted with the majority" is not limited to those cases in which she has been part of the majority. It includes, for example, a substantial number of cases in which she has refused to join the majority and has instead either dissented in part or relied on grounds significantly more adverse to the death penalty. It also includes a very large number of cases in which, without offering any explanation, she has merely concurred in the result.

"Thus, for example, a case such as *Foster* v. *State*—in which Justice Barkett, in partial dissent, takes a position that would virtually paralyze implementation of the death penalty—is listed by the White House as a case in which Justice Barkett and the majority are in agreement. [Case 91 on White House list] Other examples abound. For example, *Melendez* v. *State* [498 So.2d 1258 (Fla. 1986)]—#576 on the White House list—is identified as a case in which the majority and Justice Barkett were in agreement even though Justice Barkett, writing separately in that case, opined that she "believe[d] that the evidence does not rise to the level of certainty that should support imposition of the death penalty." Likewise, if one starts running through the list chronologically, in three of the very first cases [*Kennedy* v. *Wainwright*, 483 So.2d 424 (Fla. 1986) (#625 on list), *Adams* v. *Wainwright*, 484 So.2d 1211 (Fla. 1986) (#624 on list), and *Thomas* v. *Wainwright*, 486 So.2d 574 (Fla. 1986) (#621 on list)], Justice Barkett voted to stay the petitioner's execution and the majority did not, but the White House fails to identify this disagreement.

"A third basic flaw in the White House's statistical analysis is that the White House fails to compile, much less analyze, case histories of death-sentenced convicts. It is not at all unusual for a death-sentenced murderer to make numerous passes through the court system. This point is shown by the fact that the set of 275 occasions on which the White House says that Justice Barkett has voted to enforce the death penalty comprises well under 200 separate convicted murderers, many or most of whom will make yet more passes at escaping their sentence. In this regard, it bears mention that of these fewer than 200 murderers, Justice Barkett would have granted relief, even beyond what her court had elsewhere granted or what her positions in yet other cases might dictate, to some one-third of them somewhere along the line.

"The White House also makes certain statistical claims regarding Justice Barkett's death penalty cases and the U.S. Supreme Court. It states, for example, that "on eight occasions since 1987, Justice Barkett has voted to impose the death penalty in cases where a majority of the U.S. Supreme Court has voted to vacate that punishment." But the White House fails to make clear a number of relevant matters:

"'In none of these cases did the U.S. Supreme Court rule that the death sentence could not be imposed or even that resentencing was necessary.

"'Indeed, only one of these eight cases was even argued before the Court. In the other seven cases, the Supreme Court used the procedural device known as a GVR —grant, vacate, and remand—to enable the state supreme court to consider the possible impact of an intervening U.S. Supreme Court decision. The Supreme Court liberally uses this GVR device, especially in death cases. A GVR does not necessarily reflect disagreement with the state supreme court's ruling; rather, it simply gives the state supreme court the opportunity to consider the possible application of the intervening U.S. Supreme Court decision.

"'In the one case that was decided on the merits, the Supreme Court remanded so that the Florida supreme court could make the basis for its ruling more clear. In seven of these eight cases, the death penalty was imposed on remand from the Supreme Court. In short, these cases provide no meaningful basis for a comparison of how Justice Barkett stands in relation to the Supreme Court on the death penalty.'

"The White House also asserts that 'in four cases in which Justice Barkett dissented from a death sentence and that case was reviewed by the U.S. Supreme Court, the Court agreed with Justice Barkett, and not the Florida Supreme Court majority.' In fact, however, the Supreme Court did not agree with the legal position that Justice Barkett took in any of the four cases. Instead, it relied on other grounds in summarily vacating the death sentence in one of the cases and issuing GVRs in light of intervening precedent in the other three.

"For these same reasons, the White House's claim regarding the 'nine instances in which the U.S. Supreme Court has reached a conclusion different from Rosemary Barkett's in a capital case' misses the mark. I must also note that the White House fails to consider those cases from other jurisdictions in which the U.S. Supreme Court has rejected the very positions taken by Justice Barkett in other cases.

"The White House also fails to observe a striking fact that the statistics do show. Even if one accepts the White House's loaded numbers, these numbers show that there have been more than one hundred occasions on which Justice Barkett has dissented from the Florida Supreme Court's decision to enforce the death penalty. By contrast, there has not been one occasion—not one single occasion—on which Justice Barkett has been in dissent from a majority decision to grant relief to a convicted capital murderer. This drastic disparity makes all the more telling the White House's refusal to compile—or at least to disclose—data on any cases in which even a single justice has taken a position that is more favorable to the convicted murderer than Justice Barkett's.

"I emphasize again that I believe that a careful reading of a judge's cases is the best means of examining that judge's record."

JUSTICE BARKETT'S CONSTITUTIONAL DECISIONMAKING

Florida chief justice Rosemary Barkett, who has been nominated for a seat on the Eleventh Circuit Court of Appeals, has a record of constitutional decisionmaking that merits careful scrutiny. This memorandum will discuss some opinions of hers that raise serious concerns. In particular, it will focus on her constitutional decisionmaking in such areas as equal protection, substantive due process, the First Amendment, obscenity, and quotas.

As one would expect with any judge who has decided a large number of cases, Justice Barkett has, of course, written a number of opinions that are unobjectionable or soundly reasoned. But the broader question is whether her judicial record reflects a strong commitment to apply the Constitution and laws as written, or whether it instead reflects an inclination to impose her own policy outlook in the guise of judging.[1]

[1] The case summaries in this memorandum are not intended to discourage the reader from reviewing the opinions themselves. Indeed, we encourage such review. In addition, the transcript of Justice Barkett's hearing is available for review in the minority office of the Senate Judiciary Committee.

I. RATIONAL-BASIS REVIEW UNDER THE EQUAL PROTECTION CLAUSE

The U.S. Supreme Court's equal protection jurisprudence is well-settled: "this Court's cases are clear that, unless a classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest." *Nordlinger* v. *Hahn*, 112 S. Ct. 2326, 2331–2332 (1992).

How this rational-basis test is to be applied is also well-settled. As Justice Blackmun reiterated in NORDLINGER (for an 8-Justice majority), "the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the government decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational." *Nordlinger* v. *Hahn*, 112 S. Ct. 2326, 2332 (1992) (citations omitted).

The Supreme Court, citing cases going back to 1970, reiterated these basic principles earlier this year in another 8-Justice opinion (written by Justice Thomas):

"[E]qual protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is a reasonably conceivable state of facts that could provide a rational basis for the classification. . . . *This standard of review is a paradigm of judicial restraint*. . . . On rational basis-review, a classification in a statute . . . comes to us bearing a strong presumption of the legislative classification have the burden 'to negative every conceivable basis which might support it.'"

*FCC* v. *Beach Communications*, 113 S. Ct. 2096, 2101–2102 (1993) (emphasis in italic) (case citations omitted).

Examination of Justice Barkett's cases calls into serious question whether she has been faithful to this "paradigm of judicial restraint." In the case of *University of Miami* v. *Echarte*, 618 So. 2d 189 (Fla. 1993), the Florida Supreme Court ruled that a statutory monetary cap on noneconomic damages in medical malpractice cases did not violate Equal Protection. The court cited at length the legislature's concern over the "financial crisis in the medical liability insurance industry"; its concern that providers of medical care would "be unable to purchase liability insurance, and many injured persons [would] therefore be unable to recover damages"; its recognition that the size and increasing frequency of very large claims was a cause of these problems; and its concern that damages for noneconomic losses were being awarded arbitrarily and irrationally.

In dissent, Justice Barkett (among other grounds) her view that the statutory caps "violate[ ] . . . the equal protection clauses of the Florida and *United States Constitutions*." (Emphasis in italic.) In her view, the caps could not survive even minimal rational-basis scrutiny. Her application of the rational basis test appears to differ fundamentally from the settled test set forth by the U.S. Supreme Court. Justice Barkett does not cite any federal precedent. Instead, she makes a startling assertion: "I fail to see how singling out the most seriously injured medical malpractice victims for less than full recovery bears any rational relationship to the Legislature's stated goal of alleviating the financial crisis in the medical liability insurance industry." In fact, the rational relationship between the means and the goal appears self-evident and was clearly spelled out by the legislature. Thus, it is difficult to avoid the conclusion that instead of giving the legislation the "strong presumption of validity" to which it is entitled, Justice Barkett is substituting her own policy preferences in place of those of the legislature through the purported application of rational-basis review.

The point here is not the merits, or lack of merits, of caps on noneconomic damages as a matter of policy. The point, rather, is that under clear Supreme Court precedent issues like this are left broadly to the legislatures. It is a cause of great concern that Justice Barkett, first, would rely on the federal Equal Protection Clause (since state law grounds, under her view, sufficed to reach the same result), and, second, would fail to follow clear and longstanding Supreme Court precedent in applying that clause. More generally, one must be very concerned that a judge who would so casually invoke the federal Equal Protection Clause to invalidate legislative action in this area is very ready to continue to misuse the federal Equal Protection Clause—a very powerful tool if so misused—to impose her policy preferences instead of applying the law.

This concern has very broad ramifications. For example, Congress might well enact damage caps as part of product liability reform or as part of medical liability reform under a health care bill. Because the U.S. Supreme Court has held that the equal protection principle applies to the federal government under the Fifth Amendment's due process clause, the logic of Justice Barkett's position would seem almost certainly to lead to these caps being struck down.

At her hearing Justice Barkett said that Echarte was "primarily" a case implicating the state constitutional right of access to the courts. [47:9–48:3] "I grant you that I used the term 'Federal Constitution,' but . . . the analysis is totally using Florida cases under a Florida system." [48:12–15] She ultimately conceded that she should not have invoked the federal equal protection clause: "The only reaching out was including the phrase 'Federal Constitution,' I should not have done that." [50:12–14]

Justice Barkett's response heightens the concern that she invokes the federal Constitution in a cavalier and clearly erroneous manner. The fact that she cited only Florida cases emphasizes, rather than assuages, this concern.

Another Equal Protection case that raises similar concerns is *Shriners Hospitals* v. *Zrillic*, 563 So.2d 64 (Fla. 1990). There, Justice Barkett wrote the opinion for the court striking down, on numerous bases, a Florida statute that permitted a direct heir to cancel a gift to charity made in a will when that will was executed less than six months before the testator's death. The purpose of the statute was to guard against undue influence on charitable gift givers. One of the bases on which she struck down the statute was the federal Equal Protection Clause.

Again, the concern here is not with the wisdom, or lack of wisdom, of the statute, but rather with the reasoning by which she used the federal Equal Protection clause to invalidate it. In that case, she stated,

"Equal protection analysis requires that classifications be neither too narrow nor too

broad to achieve the desired end. Such underinclusive or overinclusive classifications fail to meet even the minimal standards of the rational basis test."

Her opinion proceeds to hold that the statute is underinclusive because it protects against only one type of undue influence exerted on testators (that exerted by charities), and that it is overinclusive because it would render voidable many intentional bequests not tainted by undue influence. Her opinion further states that the six-month period set forth in the statute is irrational; in her words; "[t]here is no rational distinction to automatically void a devise upon request when the testator survives the execution of a will by five months and twenty-eight days, but not when the testator survives a few days longer."

Justice Barkett's opinion cites no federal authority for the proposition that the rational basis test for the federal equal protection clause forbids both underinclusive and overinclusive classifications. Nor could she, for this proposition appears plainly incorrect: the U.S. Supreme Court has long held that a classification does not violate Equal Protection simply because it "is to some extent underinclusive and overinclusive." *Vince* v. *Bradley*, 440 U.S. 93, 108 (1979). As Justice Douglas stated in an opinion for the Court more than 40 years ago, "It is no requirement of equal protection that all evils of the same genus be eradicated or none at all." *Railway Express Agency* v. *New York*, 336 U.S. 106, 110 (1949). The Court restated this basic principle just last year: "[T]he legislature must be allowed leeway to approach a perceived problem incrementally. . . . '[It] may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others.'" *FCC* v. *Beach Communications*, 113 S. Ct., at 2102 (quoting *Williamson* v. *Less Optical*, 348 U.S. 483 (1955)).

Justice Barkett's ruling that the six-month period is irrational simply because it produces different results when the testator survives 5 months and 28 days versus 6 months and 1 day is also deeply troubling. A similar objection could be voiced against every time limit in the law. But in such matters the legislature "ha[s] to draw the line somewhere," *Beach Communications*, 113 S. Ct., at 2102, and when it does so, the "restraints on judicial review have added force, "*id.*—restraints ignored by Justice Barkett in her opinion in this case.

Again, this case goes very far towards transforming rational-basis scrutiny into strict scrutiny. Indeed, if applied consistently, there are few laws that could survive the test that Justice Barkett sets forth. (For example, a law that terminates welfare benefits after two years would be clearly susceptible to invalidation under Justice Barkett's equal protection analysis.) Of equal concern is the prospect that the test would not be applied consistently, but would be used arbitrarily and selectively to strike down particular laws that one considers unsound.

As with Echarte, Justice Barkett asserted that "the thrust of that [Zrillic] opinion again was grounded in the Florida Constitution." [53:19–20] "[E]qual protection . . . is really not at all the focus which concerned me in Zrillic." [123:3–6] [Even though she specifically invoked the federal equal protection clause, she said that "when I am thinking equal protection, generally I am thinking in terms of the prior case law of my own court in my own State." [53:25–54:2] Why, then, did she invoke the federal equal protection clause? Again, her response reflects an alarmingly cavalier attitude towards constitutional interpretation.

Indeed, her use of the federal Equal Protection Clause in Echarte and Zrillic is all the more striking in light of her partial dissent in *Foster* v. *State* (discussed more fully below and in other memoranda). There, Justice Barkett recognized that the U.S. Supreme Court decision in *McCleskey* v. *Kemp* foreclosed her from using the federal Equal Protection Clause as the basis for a statistical attack on the death penalty, so she instead relied solely on the Florida constitution's counterpart.

It must be noted that the fact that Justice Barkett had available sufficient state law grounds makes all the more troubling her invocation of federal equal protection: not only is she making bad federal constitutional law (which activist judges in other courts might later rely on), but she is also, in effect, immunizing her ruling from U.S. Supreme Court review (since the existence of sufficient state law grounds deprives that Court of Jurisdiction).

The danger of unprincipled, result-oriented decisionmaking that results from this misstatement of Equal Protection principles can perhaps be illustrated by comparing Justice Barkett's opinion in this Zrillic case to her dissent in *LeCroy* v. *State*, 533 So.2d 750 (Fla. 1988). In LeCroy, the six other Justices voted to affirm the death sentence for a murderer who was 17 years and 10 months old at the time that he committed two brutal first-degree murders. In her lone dissent, Justice Barkett took the position that the Eighth Amendment prohibits the execution of a person who was under 18 at the time of his offense. In short, she took the view that the Constitution imposed a bright-line age minimum of 18 for offenses that can result in the death penalty. (The U.S. Supreme Court subsequently rejected the position that she took.)

For present purposes, it is revealing to apply the methodology of her Shriners opinion to the position that she took in LeCroy. Applying that Shriners methodology, one would say that a bright-line age minimum of 18 is both underinclusive and overinclusive. It is underinclusive because it fails to protect from capital punishment those persons over 18 who (in the language of her LeCroy dissent) "have not fully developed the ability to judge or consider the consequence of their behavior." It is overinclusive because it does protect those under 18 who have in fact fully developed their deliberative faculties. Moreover, her Shriners methodology would appear to dictate the conclusion that the 18-year bright line is simply irrational, since it would exempt from the death penalty a heinous murderer who was 17 years, 11 months, and 28 days at the time of his offense, but would not exempt someone who was a few days older. In short, her Shriners methodology leads to the conclusion that what she thought in LeCroy to be constitutionally mandated under the Eighth Amendment is instead constitutionally impermissible under the Equal Protection clause.

In sum, Justice Barkett's serious misapplication of rational-basis review under the Equal Protection Clause allows a judge to substitute his or her own policy preferences for the legislature's legitimate enactments.

II. SUBSTANTIVE DUE PROCESS

The manner in which Justice Barkett has invoked "substantive due process"—even where no fundamental right is at stake and rational-basis review is therefore in order—also raises serious concerns. In *State* v. *Saiez*, 489 So.2d 1125 (Fla. 1986), for example, she wrote an opinion holding that a state law criminalizing the possession of embossing machines capable of counterfeiting credit cards "violate[d] substantive due process under the fourteenth amendment to the United States Constitution" (as well as under Florida's constitution). Specifically, she stated that the law was "not reasonably related to achieving [the] legitimate legislative purpose" of curtailing credit card fraud. In her words, "It is unreasonable to criminalize the mere possession of embossing machines when such a prohibition clearly interferes with the legitimate personal and property rights of a number of individuals who use embossing machines in their businesses and for other non-criminal activities." Justice Barkett cited no federal authority in support of this proposition.

The principle set forth in Saiez, if taken seriously, would have far-reaching consequences. A broad range of criminally proscribed items also have legitimate uses. Switchblades can be used to slice apples. Marijuana can be prescribed as medicine. Drug paraphernalia can be used for tobacco. Explosive devices can be used to build tunnels. It is extraordinary to conclude that "substantive due process" or any other principle of law disables society from determining that the harmful effects of some or all of these so outweigh the beneficial effects that possession should be criminalized. Again, the real danger is that this overbroad and unsound principle can be applied selectively in an unprincipled manner.

Justice Barkett acknowledged that she had relied on the federal due process clause, but again thought such reliance mitigated by the fact that she had discussed only cases construing the state constitutional counterpart: "if you go on to look at the language that is used from other cases, they are all Florida cases which have utilized the same phrase, but interpreted it in a different way." [126:12–15] When asked why she didn't apply just the State due process clause, she responded: "I think in essence I did, Senator, and all I can—I mean, I can certainly accept that in a body of law there are going to be occasions when you are going to be careless." [129:6–9]

III. LOITERING AND THE FIRST AMENDMENT

In her plurality opinion (over a vigorous 3-justice dissent) in *Wyche* v. *State*, 619 S.2d 231 (Fla. 1993), Justice Barkett struck down as facially unconstitutional an ordinance that prohibited loitering for the purpose of prostitution. In companion cases decided the same day as Wyche—*E.L.* v. *State*, 619 S.2d 252 (Fla. 1993), and *Holliday* v. *City of Tampa*, 619 So.2d 244 (Fla. 1993)—she likewise struck down as facially unconstitutional ordinances prohibiting loitering for the purpose of engaging in drug-related activity.

Her first holding in Wyche was that the ordinance did not require proof of intent to engage in unlawful acts of prostitution. This holding is puzzling. The language of the ordinance—criminalizing loitering "in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting, or procuring another to commit an act of prostitution"—appears plainly amenable to a reading that the purpose that must be manifested actually exist. In addition, the ordinance specifically provided, "No arrest shall be made for a violation of this subsection unless the arresting officer first affords such person the opportunity to explain this conduct, and no one shall be convicted of violat-

ing this subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose." Especially in the criminal law, where such mens rea requirements are routinely implied, it seems quite a stretch to construe the ordinance otherwise.

Justice Barkett offered the view that to construe the ordinance to have a specific intent requirement would be to "legislate" from the bench. But it seems that it would have been more consistent with the judicial role to invoke a tenet that is basic to our separation-of-powers system and that was clearly recognized in Florida case law: namely, that courts "have a duty to avoid a holding of unconstitutionality if a fair construction of the legislation will so allow." *State* v. *Ecker*, 311 So.2d 104, 109 (Fla. 1975).

Justice Barkett's second holding in Wyche was that, even if the ordinance were construed to require specific intent to engage in unlawful acts of prostitution, it "still would be subject to unconstitutional application" and therefore would chill protected speech in violation of the First Amendment. But virtually every law could hypothetically be applied in an unconstitutional manner that could chill First Amendment speech. Under First Amendment doctrine, a person challenging a law as facially overbroad must show that it would reach a substantial amount of constitutionally protected activity. It is difficult to see how the ordinance, if construed to require specific intent, would reach any constitutionally protected activity, much less a substantial amount.

The one federal case that Justice Barkett cites in support of her holding, *Board of Airport Commissioners* v. *Jews for Jesus, Inc.*, 482 U.S. 569 (1987), is plainly inapposite. The Supreme Court in Jews for Jesus simply stated that the regulation in that case—which banned all First Amendment activities at an airport—could not be permitted to be remedied by case-by-case adjudication. To compare the absolutist ban on First Amendment speech in that case to the hypothetical and purely incidental effect on speech arguably resulting from the ordinance in Wyche is strained in the extreme.

Another serious problem with Justice Barkett's opinion in Wyche is that it is at serious odds with—indeed, appears irreconcilable with—the Florida Supreme Court's 1975 ruling in *State* v. *Ecker*, 311 So.2d 104 (Fla. 1975), which held that a general anti-loitering statute was constitutional. Indeed, Wyche appears to overrule Ecker without even citing it or otherwise acknowledging it. This is not a proper way to deal with precedent.

Asked about Wyche, Justice Barkett repeatedly claimed that all members of her court agreed that the statute was defective but that the dissent was ready to remedy it. [186:10–11, 186:25–187:1, 187:8–9] In fact, however, the dissent stated that the statute was facially constitutional (i.e., was not defective).

The net effect of Wyche, E.L., and Holliday is to hamper severely the ability of communities to combat the scourges of prostitution and drugs.

IV. OBSCENITY

In *Stall* v. *State* [570 So.2d 257 (Fla. 1990)], the Florida Supreme Court ruled—as it had several times before—that Florida's laws against obscenity were constitutional. In a brief 4-paragraph dissent, Justice Barkett took the position that all criminal obscenity laws violate due process. (She also joined another dissent that held that obscenity laws violate the state right of privacy.) In her words:

"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 procedure runs counter to every principle of notice and due process in our society."

Arguably, Justice Barkett might intend that her due process holding rest only on the state constitution, though she invokes "every principle of notice and due process in our society." In any event, she does not even cite, much less discuss, U.S. Supreme Court precedent, such as *Miller* v. *California*, 413 U.S. 15 (1973), that contradicts her position. Miller held that material that, judged by contemporary community standards, appeals to the prurient interest, that depicts or describes, in a patently offensive way, specifically defined sexual conduct, and that lacks serious literary, artistic, political, or scientific value can be outlawed as obscene.

Indeed, it appears that Justice Barkett misreads or mischaracterizes the law that she would strike down. The Florida law incorporated Miller's focus on contemporary community standards as the benchmark of whether material is obscene. Thus, the role of jurors would not be to make their own "subjective definition" of what is obscene (as Justice Barkett suggests), but rather to discern and apply the existing community standards.

Further, the premise of Justice Barkett's position—namely, that obscenity laws are somehow unique—is dubious. There are any number of criminal laws whose definition or application is not any more "objective" than obscenity laws. Take, for example, criminal negligence or child neglect. Indeed, the difference between justifiable self-defense and unjustified homicide can equally be said to turn "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." These features are an inherent part of our criminal justice system. So it seems that her basic premise cannot be maintained and that no special solicitude for obscenity is warranted.

At her hearing, Justice Barkett stated that the statute in Stall "had language in it which, in my judgment, was very ambiguous." [105:8–10] But since the language of the Stall statute was the Miller standard, this suggests that Justice Barkett is not content with the Miller standard. Given Justice Barkett's treatment of other Supreme Court precedents mentioned in this and other memoranda, there is reason to worry that her apparent disagreement with this standard would lead her to apply it too narrowly.

Justice Barkett also claimed at length that her opinion in Stall needs to be read together with her vote in *Schmitt* v. *State*, 590 So.2d 404 (Fla. 1991), where she joined the per curiam opinion upholding a conviction under Florida's child pornography statute. Justice Barkett repeatedly claimed that the two cases involved "the very same statute" [106:25]: "in both those cases, the same statute was being decided, the same statute was being considered". [106:16–17] In fact, however, Stall involved the definition of obscenity under Fla. Stat. 847.001, whereas Schmitt involved the definition of child pornography under Fla. Stat. 827.071. Justice Barkett's apparent claim that the court's decision in Schmitt somehow vindicated her position in Stall [see 107:15–22] cannot be sustained. (She may also be claiming that her dissent in Stall was confined to her disagreement with the definition of "sexual conduct" in subsection 847.001(11), which is identical to the definition of "sexual conduct" in the child pornography law. But: (a) nothing in her dissent remotely supports such a limited reading, and (b) the separate requirement in the obscenity law of "appeal to the prurient interest"—a requirement not present in the child pornography statute—eliminates any overbreadth and makes such a claim untenable.)

V. QUOTAS

Justice Barkett's views on quotas are of serious concern. According to newspaper reports, Justice Barkett was a member of the Florida Commission on the Status of Women, which issued a report in February 1993 that recommended passage of state legislation requiring that all of Florida's decisionmaking boards, councils, and commissions be half male and half female by 1998. Justice Barkett defended the Commission against charges that its report advocated a quota system, by saying:

"It is not in the context of a quota system. It is simply an acknowledgment that women make up one-half of the population of this state." (St. Petersburg Times, 2/23/93.)

If a rigid requirement that positions be filled according to population is not a quota, then it is difficult to imagine what would be. (Florida Governor Lawton Chiles stated that he opposed the Commission proposal because it would create a quota system. Orlando Sentinel Tribune, 2/23/93.) This issue is not merely semantic: it may directly affect the breadth of the remedial authority that Justice Barkett would believe that she would have as a federal judge in cases of alleged discrimination. The Supreme Court has ruled that the use of preferential remedies and voluntary preferences is generally disfavored, although it has upheld them in narrow circumstances. If Justice Barkett cannot recognize a quota for what it is, how can one have confidence that she will properly construe Supreme Court precedents governing quotas and other preferences and respect the limits that the Supreme Court has placed on their use?

Told that her views appeared to lead to pervasive race and sex quotas, Justice Barkett did not dispute this. Indeed, she appeared to embrace it (in the euphemism of "representation"): "The goal of every women's group, Senator, that I am aware of and the goal of every minority group is that there be representation in policy-making bodies that are going to affect their lives, whether it is in the private sector or in the public sector. And I think that that is a goal that is laudable. There are many different ways of trying to achieve it, but I do not think that there is any question that it should be achieved, and I am committed to that." [184:3–11]

Of course diversity in private and public employment and in policymaking bodies is welcome. The critical question, however, is whether it is to be pursued by nondiscriminatory means or by the use of quotas and preferences. Justice Barkett's statement appears to treat this fundamental distinction as though it were insignificant.

Even more disturbing is Justice Barkett's dissent in *Foster* v. *State*, No. 76,639 (Fla. Apr. 1, 1993). In that case, Foster, two young women, and another man, Lanier, drove to a deserted area where one of the women was to make some money by having sex with Lanier. As Lanier, who was very drunk, was disrobing, Foster suddenly began hitting him

and then held a knife to Lanier's throat and sliced his neck. Foster and the women then dragged the still-breathing Lanier into the bushes and covered him with branches and leaves. Foster then took a knife and cut Lanier's spine. Foster and the women then split the money found in Lanier's wallet.

Foster was convicted of murder and sentenced to death in 1975. On resentencing, the trial court, finding three aggravating circumstances, again imposed the death penalty. The Florida Supreme Court, by a 4-3 vote, rejected Foster's claim that his death sentence was a product of racial discrimination against black victims. (The court did remand for resentencing on other grounds.)

Justice Barkett, dissenting from this racial discrimination ruling, would not accept the majority's determination that Foster's statistical evidence purporting to show that white-victim defendants in Bay County were more likely to get the death penalty than black-victim defendants failed to establish a constitutional violation. (Lanier, evidently, was white; Foster, according to newspaper accounts, was also white.) Justice Barkett would have relied on the Florida Constitution's Equal Protection Clause to reach a result rejected by the U.S. Supreme Court in *McCleskey* v. *Kemp*, 481 U.S. 279 (1987), under the federal Equal Protection Clause. In McCleskey, the Court ruled that a capital defendant claiming a violation of the federal Equal Protection Clause must show the existence of purposeful discrimination and a discriminatory effect on him. According to Justice Barkett:

(1) The McCleskey standard fails to address the problem of "unconscious discrimination."

(2) Statistical evidence of discriminatory impact in capital sentencing that "cannot be traced to blatant or overt discrimination" should establish a violation of Florida's Equal Protection Clause.

(3) This statistical evidence should be construed broadly to include not only analysis of the disposition of first-degree murder cases, "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, and *the general conduct of a state attorney's office, including hiring practices and the use of racial epithets and jokes.*" (Emphasis in italics.)

(4) The defendant should have the initial burden of showing the strong likelihood that discrimination influenced the decision 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 initial burden has been met, "the burden then shifts to the State to show that the practices in question are not racially motivated."

The paralyzing effect that Justice Barkett's proposed standard would have on the death penalty—and, indeed, if taken to its logical conclusion, on the criminal justice system generally—will be addressed in another memorandum. For present purposes, what must be emphasized are the broad-ranging implications that Justice Barkett's disparate impact analysis could have on the issue of quotas generally. Her focus on "unconscious discrimination" shows that she rejects, for purposes of Florida's Constitution, the basic principle under the federal Constitution that discriminatory intent is an essential element of an Equal Protection violation. Her opinion also raises a legitimate concern that she might adopt a view of statistical disparities under federal statutes like the recently amended Title VII that effectively mandates pervasive adoption of race and sex quotas.

VII. CONCERNS ABOUT IMPARTIALITY

In *In re Constitutionality of Senate Joint Resolution 2G*, 601 So.2d 543 (Fla. 1992), the Florida Supreme Court selected from among six different modifications to a state legislative redistricting plan. Writing "dubitante," Barkett wrote that she was "loath to agree to any of the convoluted plans submitted under these hurried circumstances. . . . If I had to choose only among those presented, however, *I would choose the plan submitted by the NAACP simply because this is the organization that had traditionally represented and promoted the position that advances all minority interests.*" (Emphasis in italics.)

Justice Barkett's frank admission that she would give special weight to a position based on who offered it rather than on its intrinsic merits is very disturbing and appears clearly at odds with the obligation of judicial impartiality.

Justice Barkett claimed that her words were "concededly very inartful[]" [174:15] and that what she "was attempting to say . . . was in rebuttal to a claim that the NAACP did not adequately represent the interests of African Americans." [175:1-4; see also 177:9-13] "I can understand in this case why you would read it the way you would read it. It is inartful, and I wish that I had the opportunity to edit that more than anything else that we have been talking about." [175:12-14]

Concern about Justice Barkett's impartiality also arose at her hearing over her involvement with a trial lawyer's group, the Academy of Florida Trial Lawyers, while the case of *University of Miami* v. *Echarte* was pending. Specifically:

(1) The Academy of Florida Trial Lawyers submitted an amicus brief in this case in October 1991. The Trial Lawyers brief (like other briefs submitted on behalf of one party) argued that the cap on non-economic damages in medical malpractice cases was unconstitutional.

(2) In 1992, this same organization of trial lawyers created an annual award named after her, the Rosemary Barkett Award, to be given each year to a person who, in the view of the trial lawyers, has made outstanding contributions to the law. In November 1992, she agreed to present the first annual award at the trial lawyers' annual convention, which took place one week after her successful retention election.

(3) In May 1993, she, in dissent, accepted the argument that the cap on non-economic damages was unconstitutional.

It does not seem at all consistent with her obligation to maintain both the fact and the appearance of impartiality for her to decide a case in which an organization that had named an award after her had filed a brief. Indeed, her actions would seem to have violated the ABA Code of Judicial Conduct. Canon 2, subpart B states that a judge "shall not lend the prestige of judicial office to advance the private interests of others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. . . ." Canon 3, subpart E(1) states that a judge should disqualify herself in a proceeding in which her impartiality might reasonably be questioned.

Justice Barkett stated that she understood the trial lawyers' award to reflect the group's commitment to "equal justice under the law" [179:20-21] and not to have anything to do with its "private interests" [181:7]. In any event, the trial lawyers' amicus brief in Echarte clearly advanced their private interests, and her participation in that case would seem to give rise to an appearance of lack of impartiality.

## PRESIDENT MARY ROBINSON OF IRELAND ON THE FUTURE OF THE WORLD COMMUNITY

Mr. KENNEDY. Mr. President, during her visit to Boston earlier this month, Ireland's President, Mary Robinson, delivered a major address at Harvard on the future of the world community and the need for more effective international cooperation to deal with the challenges we face.

In her address on March 11, she emphasized the opening words of the preamble of the U.N. Charter—"We the peoples of the United Nations, determined to save succeeding generations from the scourge of war." She urged the western industrial nations of the world to renew and update that commitment today, by dealing more effectively with the opportunities and responsibilities of being part of the larger global community. She reminded us all of the importance of this aspect of our leadership. As she stated,

> We need a vision of the whole * * * that does not protect some of us from an acceptance of crisis simply because we are fortunate enough to be exempt from its immediate consequences.

She urged nations to learn to respect one another's diversity, so that we can draw strength and not weakness from our differences. She urged us to explore and share new approaches to economic development, alleviation of poverty, and protection of the environment.

I believe that President Robinson's thoughtful and stimulating address will be of interest to all of us concerned with these issues and with the future of relations among nations, and I ask unanimous consent that it may be printed in the RECORD.

There being no objection, the address was ordered to be printed in the Record, as follows:

[Irish Times/Harvard Colloquium, John F. Kennedy School of Government, Boston, Mar. 11, 1994]

ADDRESS BY THE PRESIDENT OF IRELAND MARY ROBINSON

WE THE PEOPLES OF THE UNITED NATIONS * * *—RENEWING THAT DETERMINATION

The preamble to the United Nations Charter, written in 1945, is an eloquent statement of its fundamental aims. It begins with these words: "We the peoples of the United Nations, determined to save succeeding generations from the scourge of war." And it then sets out those aims. I want to reflect on that preamble today, but with an emphasis on its opening words. Even as I prepare to do so, I am fully aware that I cannot claim a specialist wisdom on the United Nations. On the other hand, I am also aware that I have the true privilege of holding an elected office which is removed from day-to-day policy issues. This in turn has allowed me the advantage and responsibility of a different time-

scale, with all the opportunities for reflection that brings.

The phrase "We the peoples" was so powerful in its time because it made an assertion about common human purpose following on an episode of terrible human suffering. It looked boldly to the future. Now that future is our past. As we look back to it today, we can see more clearly the exceptional dangers of that past. We can also see clearly those times in this century when the sense of crisis—widely felt and widely shared—was sufficient to generate analysis and institutions to avert further danger. I want to ask today—in the light of those exceptional and powerful words—whether we can find our way again, as a community who shares a planet, to a sense of crisis which is sufficient to the present danger.

Fifty years ago today the world was at war. Millions had died; millions had yet to die. As well as the tragegy of death and suffering, there was an additional and terrible spectacle: Some of the most creative aspects of human intelligence—including its outcome in technology—had been mobilized for the purposes of human destruction. Against that background, and even while the outcome was still uncertain, plans were already under way for a better world. The U.S., British, Soviet and Chinese governments had agreed that they would seek to establish "a general international organization, based on the principle of the sovereign equality of peace-loving states." So began the process of discussion which culminated with the signature of the Charter of the United Nations, by fifty-one nations, at San Francisco in June 1945.

Now, half a century later, the United Nations has grown and developed. Its membership has more than trebled. We are preparing to celebrate its 50th anniversary. I know that Governments are already at work, in New York and elsewhere, debating possible change and reform in the institutions and structures of the United Nations so that it can better achieve its stated aim—the maintenance of international peace and security. I do not propose here to enter that debate, but I wish it every success. In fact I do not intend to put forward proposals here as such, but to evoke possibilities. Our world has changed; our institutions have changed. In fifty years we have come a long way and brought those institutions with us. And yet as Dag Hammarskjold says in Markings: "The longest journey is the journey inwards." It is that inward journey, of reflection and questioning and re-evaluation, which concerns me this evening.

But even an inward journey is affected by outward events. There are three such events which seem to me to have shaped our century and our world. The first was the cataclysm of the First World War.

The shift of consciousness wrought by that war was enormous. You only have to look at a poet like Francis Ledwidge, who came from County Meath in my own country to see an instance of its sheer waste. In one of his summer poems he writes "soon the swallows will be flying south". He had hardly finished that poem before he died in France, at the front, still in his twenties.

Ledwidge is just one example. The loss of a whole generation of young Europeans in that war had a huge effect. The effect to restructure the world after that war—an effort led by Woodrow Wilson—saw two ideas begin to find general acceptance in international life. One was a concept noted in the American Declaration of Independence—that peoples everywhere should be free to determine their own future, to form independent States if they so wished—in the general recognition of the principle of self-determination. This in turn brought to an end the world of Empire and colony, and led to the emergence everywhere of the independent, sovereign, territorial state as the unit of social and political organization. We now live in a world of such states, and it seems humanity is likely to organize itself that way for some time to come.

But the second idea which followed on that first one is also important: the idea that a new order of independent states needed to generate an institutional structure, so as to avoid conflict and promote cooperation. For this purpose, the League of Nations was set up. It was open to all States and was based on a covenant, which for the first time in history, set out a written constitution or code for relations between States. But its flawed and weak structures were finally swept away in the Second World War.

The ferocity and scope of this war exceeded any other. Much of the land surface of the planet, of its industrial power, and of its technology was mobilized for the purposes of destruction. Nazism, which had grown like a malignity out of Western civilization, created a system more uniquely and objectively evil than any seen before.

The extent of human cruelty and degradation involved in the concentration camps, and the process of revelation followed by a horrified international realisation of what had happened, marks the second defining event of our century. When Immanuel Kant described the imperative of treating each human being as an end and not a means, he proposed a standard of humanity which was reversed in the terrible logic of the death camps, which reduced each victim of the system to the status and powerlessness of an object and a means.

The camps forced new understandings on the world. Above all, they showed the need for an accepted and internationally validated code of human rights which all States subscribed to, and which would set limits on what any State may do internally.

There was some symmetry to what happened after the First and Second World Wars. Once again international society was reconstituted, once again the family of more specialised international organizations was grouped around it. The new system, like the League of Nations, was based on the sovereignty and equality of States—though the Charter did accord a special role and responsibility to the five permanent members of the Security Council. Indeed the Charter contained an explicit provision precluding the organisation from intervening in matters which were essentially within the domestic jurisdiction of a State. It was a document with careful provisions towards a balance between independence and responsibility.

I have put before you so far two of the major developments which have affected the organization of international life in this century. One is the adoption worldwide of the sovereign territorial State, based on the principle of self-determination of peoples. The other is the growing acceptance, following the horror of genocide, that State sovereignty cannot be an absolute.

These shifts of consciousness are hard to pinpoint, yet deeply formative. I now come to another one which I can best summarise in two conflicting pictures which most of us hold in our minds and our memory. One of these pictures is of the mushroom cloud—that terrible potential image of human destruction which so many of us grew up with. The other is of the marvellous and poignant picture of the planet earth, photographed by the astronauts who landed on the moon—an image saying as much about human creativity as the other said about the human capacity for self-destruction.

That first picture, of a cloud of death, became a symbol of the Cold War. That time of competition—with its policy of mutually assured destruction—is now over. But the risks are still there and may be greater than before. The big powers who held those weapons and were ready to destroy each other were at least disciplined in the holding of their arsenals. Now as they dismantle those arsenals other dangers present themselves, the more ominous for being more diffuse. If this century tells us anything it is that knowledge once acquired cannot be suppressed. More and more nations have laid their hands on the secrets of death. And a world where small- and medium-sized nuclear powers multiply will be exceptionally dangerous.

And dangerous, it must be said, not just to us, but to that other image: of a globe, enamelled with blue oceans and suspended in a black sky above its moon, a globe which is hostage to our vision and our greed. While the photograph itself may be an image of beauty and fragility, it is also a warning to us of the limitations of our own environment, and the vulnerability of our planet Earth. But emotive reactions are not enough. We need a careful and painstaking consciousness to suit the intense need this planet has for our care and caution.

Almost everything I have been speaking about so far reaches back into the events of the past and yet is relevant too, to the resources of the present—whether those resources are the physical ones of the planet, or the attitudes with which we meet the moment we find ourselves in. We look back through the century, whether through the photographs of the astronauts, or the pages of a history book, and we recognize our world. The millennium lies ahead. What world will our children look back on, and their children? Some patterns have already been established, but it is our response to them and the agenda we set which will determine our children's prospects.

To start with, there is a world population at present of 5½ billion. It took thousands of years, until the 19th century, for there to be one billion. Then the process accelerated. Even at the lowest projections it will have increased to 7½ billion by about the year 2025. The world will then have five times as many people as at the beginning of this century.

When you consider that 95 percent of that growth in the next thirty years will take place in developing countries, and that it will increasingly be an urban population, you can see the effect of this on one of the other shaping factors of our world which is its economy.

It has become possible now to talk about a global economy because the world's individual economies are increasingly linked. The linkages are not just economic. With the growth of information technology has come the phenomenon of financial and stock markets operating in a unified fashion around the world on a 24-hour basis. When New York closes, Tokyo is already opening with all of the complex and delicate reactions of one market to another. And with this extraordinary theatre of action and information has come the sobering fact that governments can no longer withstand—even in concert—the collective force of individual investors.

This increase in information is mirrored in the revolution in communications. We live

in a world where perceptions are powerfully affected by television images and sometimes disturbingly distanced by them. Satellite has made us all one: it is a pitiless light showing us both our disasters and our self-protection from them at one and the same time. But the truth is that to make a complex present visible requires an increase, not a decrease in our attention, however difficult this is: I may say that in Ireland one of the ways we pay attention is by our own strong and loyal memories of images from our past: whether of our own Frederick Boland at the UN breaking his gavel, or Frank Aiken urging the non-proliferation of nuclear weapons, long before that was an easy argument to make, or by the sight of the difficult and courageous contribution that Irish soldiers make to peacekeeping.

These factors—of population and economy and the images which bring them to us—lead directly to a point which I think is central: of how the world's resources—greater now than ever before—are to be shared. As President of Ireland, a country with rich agricultural land, and at the same time an historic memory of famine, I stood in the camps in Somalia and saw the real effect of poverty. And yet Somalia is a local crisis which focuses on an even more dreadful truth: that 1½ billion people—the same population which inhabited the planet at the turn of the century—now live in that absolute poverty. If there is one emphasis more than any other I want to place in this speech it is this: that if we, as human beings, accept—whether by non-engagement or indifference or an evasion of information—the situation of those people, then in my view we fail in our responsibility to our humanity in a way which cannot be justified or redeemed by any other action.

Finally all these questions—of population, of economy and of distribution—lead to the question of the planet itself. That beautiful image, seen from space, is a more flawed and ambiguous one if you look closely. And we should look closely. We are losing our forests, our topsoil, our animals, our habitats. We have polluted our air, our oceans, our rivers. We have run through an ecological fortune even in a single generation, and like many profligate heirs we hardly know what we have spent and what we have left. But we can be sure that one of the things we are squandering is our children's futures.

All the factors I have put before you lead to a single question. How are we to manage this new world? The question may be urgent and fresh to this generation. But it is in effect the same question which in 1945, as the Second World War was ending, confronted the leaders of the victorious countries. They understood the dangers which another conflict between States would present. Their answer to that question was a new and better international organization of States—the United Nations—which has now become universal, and which needs to be strengthened and developed further.

I am now right back to where I began tonight with those opening words of the U.N. charter: "We the peoples of the United Nations, determined to save succeeding generations from the scourge of war." The choice of words, with its implication that it was peoples rather than governments which drafted the charter, was hardly more than a rhetorical device at the time. I think it is vital that we take that phrase now and refresh its meaning and give it a new vitality if we are to answer that question about managing our world.

Those two ideas of self-determination and individual responsibility which were highlighted in the aftermath of two world conflicts are once again undergoing a process of change. Humanity may continue to organize itself into sovereign states, but the factors I mentioned—including limited resources and ever growing population—mean that sovereignty is being increasingly eroded by global developments. The complex inter-relationship of the world structure demands that people everywhere are brought increasingly into participation in decision-making.

I want to suggest four ideas which I see as fundamental to the way we should now organize and structure our relations in this changing world. I can summarize them as follows: connectedness, listening, sharing and participation.

First connectedness: I put it to you that we need to see this world as a single whole. We need to understand the connectedness of its fate and our actions. Can we find a way to achieve what has come to be called "sustainable development" so that the larger human population of the next century may be able to achieve a decent human life in ways that are in harmony with the Earth, and which respect and rely on its marvelous capacity for renewal? If we are to do that, we need a vision of the whole that does not divide the science of ecology from the social consequences of famine; that does not protect some of us from an acceptance of crisis simply because we are fortunate enough to be exempt from its immediate consequences. The development of a sense of connectedness is an intellectual responsibility which requires that we understand the relationship of political, social and environmental factors.

The second fundamental idea is the ability to listen, and it is a more complex task than it sounds. A distinguished political scientist, Samuel Huntington, wrote recently of the possibility that "a clash of civilizations" could be a basis for future wars. We cannot allow this to happen. We need to listen to the narrative of each other's diversities, so that we can draw strength and not weakness from our differences.

But respect for diversity should not make us abandon the ideas that there are universal values which ought to be upheld as part of what it is to be human. We must hold on to what has been achieved in human rights over the last fifty years. We must continue to insist that certain rights, which are grounded in human nature, as it has developed and grown through history, are of universal validity.

At the same time, only by listening to each other's diversities, can we be sure that what we call universal is not in fact culture-bound. Our listening to the different stories which emphasize our diversity is the surest way to inform and strengthen our view of what is universal.

The third fundamental idea which I put to you is that of sharing. Abraham Lincoln asked if the Government of the American nation could survive "half slave and half free". Our world cannot and will not survive without conflict if one fifth is prosperous and four-fifths subsists in various degrees of misery.

It may be that the idea of sharing is too simple. It suggests an old model of development aid, given in benevolence from one part of the world to the other, less prosperous, part. It may not adequately reflect the fact that there is a need for radical re-thinking leading to fundamental structural change.

In your part of the world and in mine—in Europe, North America and parts of the Asia Pacific—we have developed consumer societies which are more prosperous than any in human history. And more wasteful. Are the developing countries to take this as a model? It is estimated that by the year 2000 half the growth in the world's gross product will come from East Asia and half the world's population will live there. As things stand, these countries cannot deny their peoples a share in the consumption for which we have been the chief role model. Why should they? But if they take our way of life as exemplary, how is our planet to sustain the consequences?

The answer to this question can only come with a fundamental and unswerving re-thinking of the society which we have been creating, with its increasing transformation of raw material into luxuries rather than necessities, its heedless output of waste, its profligate use of resources.

Another re-think may be imposed on developed societies such as yours and mine in regard to the nature of work. Since the industrial revolution work in our societies has been a basis for income distribution and self-esteem. Now, however, it seems societies such as ours face chronic unemployment—or at the least a casualisation of work—as industry becomes more automated and technology advances. At the same time there is a growing tendency for industry to be highly mobile—to move from West to East, North to South, in pursuit of lower wages.

How do our societies handle these developments without being disfigured by them? Must we resign ourselves to a growing restlessness as social benefits in the West are steadily cut and social protections are removed in an ultimately futile effort to compete with lower wage rates elsewhere? Or can we meet the challenge of re-thinking the nature of work itself, and the role it plays in a developed society where production is increasingly automated?

In the world of the 21st century information, more than ever, will be power. The setting up of information super-highways marks a new Industrial Revolution. I put it to you strongly that the idea of sharing has a particular meaning in this context. In the new information revolution education, capital, technology and knowledge are powerful partners. These resources, once linked together, will have an enormous impact on how we live. But what of the developing world? Now is the moment to make sure that the information highway does not stretch laterally around the world from North America to Europe and Japan but with no junction route to the South. This is where the connectedness of our vision, as I suggested earlier, comes into its own. This is where the idea of listening becomes real. We must ensure that the developing world does not watch at the window, envious of what it can see, but unable to benefit from the communications revolution.

The fourth idea is fundamental to the way we live. It is that of participation. The concept of doing things to and for people is no longer a viable one.

As you can appreciate, I have a particular interest in this idea, because it opens the whole question of women in society. I have just come from addressing a Woman's Forum and speaking to the Commission on the Status of Women at the UN in New York. I consider myself a witness to this matter, because as President of Ireland I have seen the powerful effect of women's groups and the dimension which women can bring to the social and political life around them. In many ways, these groups are the best text I know of the benefits of developing a parity of participation by men and women

The broader arena for participation is, of course, democracy and political freedom. Over the past decade there has been a remarkable growth in the process of democratization around the world. This process must continue so that people are drawn more and more to participate in, and make their voices heard, in the systems of government. The model will not everywhere be the same.

Indeed it would be wrong to think a certain kind of Western democracy is always the most suitable model. But it is important that the trend towards participation by people everywhere in the system of government under which they live should be encouraged.

There is another way in which participation can thrive. There has been a remarkable growth in recent years in non-governmental associations and groups, both within countries and internationally. And even more remarkable are the links and networking between such organizations. This is a welcome development which has paralleled the development of the UN itself. Forty-one NGOs participated in the San Francisco Conference. Now there are nearly a thousand with consultative status. The importance of these organizations lies in their ability to speak for individual concerns. I think we see this clearly in major international conferences. What is so interesting—apart from the main agenda of these conferences—is the vivid and persuasive role played in them by these non-governmental organizations. Even where their advice may not be accepted, their voices are heard. The Rio Conference on the environment in 1992, the Vienna Conference on Human Rights in 1993, and the Cairo conference on population which will happen this Autumn and the Conference on Women in Beijing in 1995 offer a rare theatre, with a world wide audience, for the exchange of views. And the non-governmental organizations have made full use of that stage.

But we need to move from spectacle to action. So far our main focus has been on the very fact that these conferences have occurred and are occurring; that the arguments have been made; that the coverage has happened. But neither the conferences, nor the arguments, nor the coverage are enough in themselves. They need to be taken into the very heart of the decision-making processes of all those international organizations which are part of the UN family. Once they are and only then—can the consequences of so much discussion and debate be felt. Finally this concept of participation in decision-making has little meaning unless it can reach into one of the most vital areas of all—where the resources of a developing country can be almost crippled by the burden of debt. And so there is a real need for the organizations of financial governance such as the World Bank and the International Monetary Fund to be true partners in these processes of consultation and revision.

I am aware—in everything I have said tonight—of how fragile are the words we speak compared with the meanings we want to convey. I particularly feel this in that gap which opens up between information and urgency whenever the subject is our future and the future of this planet. I want to convey a sense of crisis; and yet to do that—and I am like many others in this—I have to provide those statistics, those arguments, those rational paragraphs which can actually defer our sense of danger and immediacy. But there is a crisis. I feel it. We need to feel it.

Perhaps the real question is how are we to catch the attention of this area of the world, which is still partly sheltered from the crisis? When I had small children—and I think many people in this room will have known the feeling—I remember exactly how I felt if one of them strayed near anything dangerous. I wanted to call out something which would make them turn their heads, walk back and avoid the danger. Thinking about this later it seems to me that no parent, in that situation, ever finds exactly the right words. But no parent ever fails to find the right tone. It is the tone—the right and exact tone which expresses danger—which we need now.

In 1945 the framers of the UN Charter found that tone. The world turned its head to those opening words. But at the time the sense of danger had been shared. The world had come through a major disaster and was determined it must not be allowed to happen again. Now we live in a time when so many methods of expression—even the images of disaster which come to us over television—encourage us not to pay attention. They allow us that crucial distance from our own sense of danger and engagement which may just be an inch too much for what is happening to our planet and our future and the futures of our children.

In a way, a great deal of what I have been speaking about today is language itself: its uses and its excuses, its inadequacy, as we have come to use it, in conveying a true picture of reality which will move us to action. We need a new, exact and agreed language if we are to continue the spirit of the 1945 charter, with its powerful address to feeling and intent. We need to listen to warnings so as to avoid the consequences of neglecting them. There is a beautiful warning, written by the poet, Robert Lowell, in his poem "Waking Early Sunday Morning"—a poet who is so associated with this city and this University. We need not accept the darkness of his elegy, nor the depth of his pessimism. But we must be deeply moved and stirred by the vision which he evokes.

Pity the planet, all joy gone
From this sweet volcanic cone;
Peace to our children when they fall
In small war on the heels of small
War—until the end of time
To Police the earth, a ghost
Orbiting forever lost
In our monotonous sublime.

With the tone of that warning in our ears, let us turn our heads once again and re-dedicate ourselves:

"We the peoples of the United Nations, determined to take responsibility for our world * * *"

## ST. PATRICK'S DAY STATEMENT BY THE FRIENDS OF IRELAND

Mr. KENNEDY. Mr. President, recent months have seen far-reaching developments which have raised hope for peace and reconciliation in Northern Ireland.

The Friends of Ireland is a bipartisan group of Senators and Representatives opposed to violence and terrorism in Northern Ireland and dedicated to maintaining a United States policy that promotes a just, lasting, and peaceful settlement of the conflict that has cost more than 3,100 lives over the past quarter century.

Last week, the Friends of Ireland released its annual St. Patrick's Day statement. I believe it will be of interest to all of our colleagues who are concerned about this issue, and I ask unanimous consent that it may be printed in the RECORD.

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

STATEMENT BY THE FRIENDS OF IRELAND, ST. PATRICK'S DAY, 1994

The Friends of Ireland in the United States Congress join more than 44 million Irish Americans, and indeed Irish people everywhere, in celebrating our Irish heritage on this St. Patrick's Day. We welcome to Washington the Prime Minister of Ireland, An Taoiseach, Albert Reynolds. And we renew our commitment to a peaceful resolution of the conflict which has plagued Northern Ireland for the past quarter century.

One year ago, the Congressional Friends of Ireland joined "friends of Ireland everywhere in urging all parties to make special efforts this year to bring about peace and reconciliation in Northern Ireland." The last twelve months have indeed seen historic developments which have raised hopes that at long last the parties to the conflict in Northern Ireland may be ready to begin the hard task of reconciliation. It is truly a time of opportunity.

Most especially, we welcome the peace initiatives culminating in the December 15 Joint Declaration by Prime Minister Reynolds and British Prime Minister John Major. The Declaration has been widely acclaimed in Ireland and the United Kingdom and throughout the world, and President Clinton and Irish Americans have welcomed it as the most hopeful path toward peace and justice in Northern Ireland in many years. We fully support the Declaration, which provides a framework for continued dialogue aimed at achieving a peaceful and secure future throughout the island of Ireland. Building upon the Declaration, we urge continued dialogue between and among the two governments and all political parties which seek a constitutional way forward towards solving the problems of Ireland. We welcome the joint affirmation of the Irish and British governments on February 19 to such a process. Both the British and Irish governments have gone the extra mile for peace, and we commend their commitment to achieving the earliest possible end to the conflict.

The Friends of Ireland continue to support a united Ireland achieved through peaceful consent, and we welcome the statement by the British Government in the Declaration that "it is for the people of the island of Ireland alone, by agreement between the two parts respectively, to exercise their right of 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."

As the Irish Government stated in the Declaration, "the democratic right of self-determination by the people of Ireland as a whole must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland."

The Declaration assures that no avenue is foreclosed with regard to the future status of Northern Ireland. It also assures that a predetermined outcome will not be forced on either community. Both communities in Northern Ireland should be reassured by these guarantees.

Most important, the Declaration is inclusive. It welcomes to the peace table all who oppose the violence that has achieved nothing and cost so much in the past 25 years.

The Friends of Ireland unequivocally condemn the violence which has claimed more

than 3,100 lives—the majority of whom have been civilians—in the 25 year history of the conflict.

We condemn the continuing violence of all paramilitary groups in Northern Ireland, both Republican and Loyalist. We note that since the Troubles began, more Catholic civilians have been killed by the IRA, than have been killed by British security forces. We also note that Loyalist paramilitary groups such as the UFF and UVF, which routinely and deliberately target civilians for assassination, have in recent years been responsible for an increasing number of deaths in Northern Ireland.

The Friends of Ireland condemn the recent upsurge of IRA bombing attacks in densely populated locations, such as Heathrow Airport, with the attendant risk of numerous casualities. We deplore the recent reciprocal paramilitary murders in Northern Ireland and hope that they will not increase. The Friends repeat that it is such indiscriminate bombings and killings that represent the worst abuse of human rights in the Northern Ireland context. We appeal to Sinn Fein and the IRA to accept the Declaration as a basis for further negotiation toward permanent peace and justice. We call for an end to all violence and the entering into of negotiations, so that Northern Ireland may be spared further destruction as the peace process continues.

The Friends of Ireland commend the high attention that President Clinton has given the situation in Northern Ireland. The President has frequently reaffirmed his commitment and willingness to have the United States contribute to the efforts to bring lasting peace to Northern Ireland. The President has also, in both budgets he has sent to the Congress, requested funding for the International Fund for Ireland.

The Friends of Ireland also continue to be concerned about human rights abuses in Northern Ireland, and we view recent reports by the U.S. Department of State and internationally recognized human rights organizations with concern.

Since 1969, more than 340 people have been killed by the police and Army in Northern Ireland, a large number in disputed circumstances. Yet 1993 marked the first year since 1969 that no one in Northern Ireland was killed by a member of the British security forces. We welcome this development and hope that it reflects a trend toward stricter control and greater restraint. However, prosecutions of members of the security forces for earlier uses of lethal force have been rare, and convictions have been even rarer. We share the concern of the nationalist community over the need for accountability by members of the security forces. The Friends of Ireland urge the British Government to deal effectively with these concerns by adopting stricter rules to prevent abuses in the use of lethal force.

We continue to be concerned about the lack of other safeguards in the system of justice in Northern Ireland, which differs in many ways from the system of justice in Great Britain.

We urge the British Government to take steps to end human rights abuses in Northern Ireland and to address the recommendations made in reports by the Committee on the Administration of Justice in Northern Ireland and other internationally recognized human rights organizations.

The Friends of Ireland continue to support the work of the International Fund for Ireland, which was established in 1986 to promote economic and social development in Northern Ireland and to facilitate and encourage contact and reconciliation between the two communities.

Since its creation, the Fund has provided assistance to 3,000 projects. In 1993, it contributed to 400 new projects, creating 2,600 full-time permanent jobs. Seventy-five percent of the Fund's resources are targeted to the most disadvantaged areas in Northern Ireland and border counties of the Republic of Ireland.

We also remain concerned about employment discrimination in Northern Ireland. The Fair Employment Act of 1989 was passed by the British Government to address the disparities between Catholic and Protestant unemployment in Northern Ireland, and we commend the positive steps taken under the Act to end discrimination. Nevertheless, the level of Catholic male unemployment remains twice as great as that of Protestants. As Bob Cooper, Chairman of the Fair Employment Commission, characterized the situation, "while the pendulum is swinging slowly towards the center, there is still some considerable distance to go before it gets there. * * *"

The Friends of Ireland await the completion in 1995 of the review of employment equality which the British Government is undertaking. This review should examine all ways, including stronger legislation, in which more effective progress can be made to eliminate job discrimination and achieve fair participation by both communities in the workforce.

Finally, we welcome and firmly endorse the recent call for fair employment and greater investment in Northern Ireland by the leaders of the Catholic, Presbyterian, Anglican and Methodist churches in Ireland. As they noted: "Investment can contribute to the prosperity of both communities in Northern Ireland, an end to disparities in unemployment, and a reduction in violence."

As Friends of Ireland, our hope on this St. Patrick's Day is that 1994 will be the year in which the violence ends and the courageous people of Northern Ireland—Catholic and Protestant—begin at last to live together in peace and prosperity. Important steps have been taken. This opportunity for peace and reconciliation should be embraced. That is our wish for the coming year.

Friends of Ireland Executive Committee:

Senate: Edward M. Kennedy, Daniel Patrick Moynihan, Claiborne Pell, and Christopher J. Dodd.

House of Representatives: Thomas S. Foley, Robert H. Michel, Frank McCloskey, Pat Williams, Joseph M. McDade, Barbara Kennelly, Henry J. Hyde, John P. Murtha, William F. Clinger, Jr., William J. Coyne, James T. Walsh, Richard E. Neal, and Jack Quinn.

## HAPPY BIRTHDAY NO. 200 TO TOWN OF CHAPEL HILL

Mr. HELMS. Mr. President, for sometime now, residents of Chapel Hill, NC, have been singing happy birthday to this remarkable and historic home of the University of North Carolina.

This is its bicentennial, the 200th anniversary of the founding of a community which, until fairly recent times, was just a pleasant village. It may yet be pleasant but it is no longer a village. It is instead a center for many activities that regularly capture nationwide attention including—from time to time, but not this year—the Nation's No. 1 NCAA basketball championship.

I was asked some time ago to pen a few comments in recognition of this Chapel Hill milestone. I don't normally do this, but in the instance of Chapel Hill's bicentennial, I do ask unanimous consent that my salute to Chapel Hill and its leaders be printed in the RECORD at the conclusion of my remarks.

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

SALUTE TO CHAPEL HILL

A number of North Carolina communities have been around longer than Chapel Hill, which this year celebrates its 200th anniversary, and there are many other North Carolina communities that possess great attractiveness and charm. But there are few, if any, communities with which so many have fallen in love as quickly and as deeply as with the Town of Chapel Hill.

Well after my life span began, more than seven decades ago, Chapel Hill was still little more than a village consisting of Franklin Street and a few flanking lanes. When I was at Wake Forest College, not many miles away in northern Wake County, the University of North Carolina with its 3,000 students of Chapel Hill was a gigantic institution.

Today, beginning its 201st year, this once-peaceful academic hamlet has becomes a vibrant city whose borders, population and economic activity have expanded manyfold. The distinguished university which the city encloses now enrolls more than 20,000 students and has spread far beyond the original boundaries of Old East, the Old Well and Davie Poplar.

All progress has its price. Chapel Hill's progress has seen a once-leisurely gait become a quickstep. The once-prevalent atmosphere of calm timelessness has given way in some degree to urgency and haste.

Nevertheless, Chapel Hill, more than most municipalities in these times, has saved and insulated what was priceless from the past. Whether or not blue is its predominant color, Chapel Hill is entitled to its often proclaimed billing as a significant slice of paradise.

So Dot Helms and I congratulate the Town of Chapel Hill—its government, its leaders, its institutions, its burgeoning businesses, its citizens. Congratulations upon reaching the age of 200.

And best wishes for the third century that is just now beginning.

## BUDGET SCOREKEEPING REPORT

Mr. SASSER. Mr. President, I hereby submit to the Senate the Budget Scorekeeping Report prepared by the Congressional Budget Office under section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32, the first concurrent resolution on the budget for 1986.

This report shows the effects of congressional action on the budget through March 18, 1994. The estimates of budget authority, outlays, and revenues, which are consistent with the technical and economic assumptions of

the concurrent resolution on the budget (H. Con. Res. 287), show that current level spending is below the budget resolution by $4.4 billion in budget authority and $0.7 billion in outlays. Current level is $0.1 billion above the revenue floor in 1994 and below by $30.3 billion over the 5 years, 1994–98. The current estimate of the deficit for purposes of calculating the maximum deficit amount is $312.1 billion, $0.7 billion below the maximum deficit amount for 1994 of $312.8 billion.

There has been no action that affects the current level of budget authority, outlays, or revenues since the last report, dated March 17, 1994.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, March 21, 1994.*

Hon. JIM SASSER,
*Chairman, Committee on the Budget, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the 1994 budget and is current through March 18, 1994. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the Concurrent Resolution on the Budget (H. Con. Res. 64). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Since my last report, dated March 15, 1994, there has been no action that affects the current level of budget authority, outlays, or revenues.

Sincerely,

ROBERT D. REISCHAUER,
*Director.*

Enclosure.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, FISCAL YEAR 1994, 103D CONGRESS, 2D SESSION, AS OF CLOSE OF BUSINESS MARCH 18, 1994

[In billions of dollars]

| | Budget resolution (H. Con. Res. 64)[1] | Current level[2] | Current level over/under resolution |
|---|---|---|---|
| ON-BUDGET | | | |
| Budget authority | 1,223.2 | 1,218.9 | −4.4 |
| Outlays | 1,218.1 | 1,217.5 | −0.7 |
| Revenues: | | | |
| 1994 | 905.3 | 905.4 | 0.1 |
| 1994–98 | 5,153.1 | 5,122.8 | −30.3 |
| Maximum deficit amount | 312.8 | 312.1 | −0.7 |
| Debt subject to limit | 4,731.9 | 4,462.6 | −269.3 |
| OFF-BUDGET | | | |
| Social Security outlays: | | | |
| 1994 | 274.8 | 274.8 | (3) |
| 1994–98 | 1,486.5 | 1,486.5 | (3) |
| Social Security Revenues: | | | |
| 1994 | 336.3 | 335.2 | −1.1 |
| 1994–98 | 1,872.0 | 1,871.4 | −0.6 |

[1] Reflects revised allocation under section 9(g) of H. Con. Res. 64 for the Deficit-Neutral Reserve fund.

[2] Current level represents the estimated revenue and direct spending effects of all legislation that Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[3] Less than $50 million.

Note.—Detail may not add due to rounding.

THE ON-BUDGET CURRENT LEVEL REPORT FOR THE U.S. SENATE, 103D CONGRESS, 2D SESSION, SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1994 AS OF CLOSE OF BUSINESS MARCH 18, 1994

[In millions of dollars]

| | Budget authority | Outlays | Revenues |
|---|---|---|---|
| ENACTED IN PREVIOUS SESSIONS | | | |
| Revenues | | | 905,429 |
| Permanents and other spending legislation[1] | 721,182 | 694,713 | |
| Appropriation legislation | 742,749 | 758,885 | |
| Offsetting receipts | (237,226) | (237,226) | |
| Total previously enacted | 1,226,705 | 1,216,372 | 905,429 |
| ENACTED THIS SESSION | | | |
| Emergency supplemental appropriations, fiscal year 1994 (P.L. 103–211) | (2,286) | (248) | |
| ENTITLEMENTS AND MANDATORIES | | | |
| Budget resolution baseline estimates of appropriated entitlements and other mandatory programs not yet enacted[2] | (5,562) | 1,326 | |
| Total current level[3 4] | 1,218,857 | 1,217,451 | 905,429 |
| Total budget resolution | 1,223,249 | 1,218,149 | 905,349 |
| Amount remaining: | | | |
| Under budget resolution | 4,392 | 698 | |
| Over budget resolution | | | 80 |

[1] Includes budget committee estimate of $2.4 billion in outlay savings for FCC spectrum license fees.

[2] Includes changes to baseline estimates of appropriated mandatories due to enactment of Public Law 103–66.

[3] In accordance with the Budget Enforcement Act, the total does not include $13,608 million in budget authority and $8,896 million in outlays in emergency funding.

[4] At the request of committee staff, current level does not include scoring of section 601 of Public Law 102–391.

Notes.—Numbers in parentheses are negative. Detail may not add due to rounding.

## SECRETARY OF STATE WARREN CHRISTOPHER'S VISIT TO CHINA

Mr. PELL. Mr. President, the recent trip by Secretary of State Warren Christopher to the People's Republic of China [PRC], despite criticisms to the contrary, was a necessary one for it underscored to a Chinese audience too used to the accolades of businessmen the importance of human rights to American foreign policy. His visit also accomplished more than is given public credit. Secretary Christopher followed the correct course in going to China and engaging with the Chinese. I applaud him.

Thus, for the last few months journalists and interested parties in the international business community have been portraying the country as divided on the issue of human rights and most-favored-nation status. The Chinese have, of course, been trying to encourage the perception of such divisions. The Chinese should harbor no doubt, however, of the President's determination to see significant progress achieved.

As the Secretary noted in a press conference after his discussions with the Chinese leadership, he found that differences between China and the United States are narrowing and that it is clear that the Chinese are open to discussion and dialog.

The Secretary made progress on several major issues:

First, the United States and China signed a joint declaration fully implementing the prison labor agreement. Chinese prison labor facilities will be inspected. This is one of the two mandatory issues that the President set out in his Executive order last year concerning renewal of China's most-favored-nation trading status. It is significant.

Second, the Chinese made a commitment to work with the United States to resolve the outstanding emigration cases that remain—another key aspect of the President's Executive order.

Third, the Chinese confirmed their support for the Universal Declaration of Human Rights. In so doing, the Chinese have acknowledged the legitimacy of our discussions with them on their compliance with its provisions.

Fourth, the Chinese said they would permit International Committee of the Red Cross delegates to visit prisons and individual prisoners. This has been an important concern among human rights advocates. Establishing ICRC access to Chinese prisons acknowledges again that concern about China's treatment of prisoners is of international interest—not just an American issue. In a related matter, the Secretary received a detailed accounting of a list of 235 prisoners and he was told that an additional accounting of 106 Tibetan prisoners would be provided. As the Secretary noted, this is a step, but not a conclusive step in the right direction.

Finally, the Chinese indicated that they would review information about their jamming of Voice of America broadcasts. What does this mean? I believe that it is a clear signal that the Chinese will stop interfering with VOA transmissions. Shortly the Congress will have before it the conference report for the State Department authorization bill which contains authority for establishing a Radio Free Asia. Unjamming VOA is a first step in making certain Radio Free Asia is also heard.

The Secretary was also able to raise at the highest levels our concern over continued efforts by the Chinese to proliferate weapons of mass destruction in violation of their international commitments and of our interest in the Chinese having a serious discussion with the Dalai Lama about cultural and religious matters in Tibet.

Was the Secretary's visit a breakthrough?

No; it was not. And no one could expect that given the difficult nature of the issues that divide China and the United States. As an experienced and skilled negotiator, the Secretary understood this challenge before embarking on his mission. He wanted to deepen a dialog with China's leaders. The success of his trip should not be judged solely in terms of what agreements were achieved, but also on how clearly the Chinese heard the determination in his voice. Given the strong reaction by the Chinese Foreign Minister who criti-

cized the Secretary after his visit for not showing enough sincerity, it is clear that the Chinese heard Secretary Christopher.

I know. I visited China and Tibet in late 1992. As with many recent visitors, I was impressed by the economic transformation of China. The hustle and bustle of open markets is apparent everywhere. It is a sound that none of us want to dim. Not extending most-favored nation status would certainly mute those noises.

Unfortunately, discordant sounds now seem to dominate our bilateral relations following the Secretary's visit. That was not his intent, nor was it the appropriate action by the Chinese. Secretary Christopher is a wise and composed, but persistent, diplomat whose objective is not to isolate China but to integrate it more completely into the community of nations. That is a goal all of us share.

Over the coming months, I believe that wise policymakers on both sides will defuse the current sense of confrontation and replace it with a recognition that more can be achieved through calm and rational dialog than through threats and confrontation.

## BRADY BILL

Mr. CRAIG. Mr. President, I just want to bring to the attention of the Members of the Senate an article that appeared in the Washington Times this morning. It is as a result of a memo to Attorney General Janet Reno from an Assistant Attorney General Walter Dellinger. It came on Saturday. The Washington Post covered it and the Washington Times covered it this morning.

The memorandum explained that the Federal Government had no ability to enforce a background check requirement on the new Brady bill.

Let me repeat that. It was a statement I had made on the floor during the heat of the debate on the Brady bill, that the Government had no authority to enforce it; that if State law enforcement officers chose not to use this law, that they could walk away from it. And that is exactly what is going on in the Justice Department today.

What did our friends on the other side who were using the political placebo of the Brady bill tell us year after year? "This is not a slippery slope toward gun control. It works because it requires law enforcement to do a background check on handgun purchases. It has teeth. It will stop crime."

Let me repeat, a memorandum from Assistant Attorney General Walter Dellinger to Janet Reno saying we have no authority, Mr. President, to enforce the Brady bill. I think it is important that the record show that, as we begin another extensive debate on the false illusion that somehow if we take the rights of law-abiding citizens away from them in their ability to own guns that we will make the streets of America safe. That is false politics, and anybody who engages in it on this floor must now go tell their Attorney General: Can you enforce a phony piece of legislation, or is it merely a political cover during an election year process?

I yield back the floor

Mr. HATCH. 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. SASSER. 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. SASSER. Mr. President, what is the pending business?

## CONGRESSIONAL BUDGET CONCURRENT RESOLUTION

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of Senate Concurrent Resolution 63, which the clerk will report.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 63) setting forth the congressional budget for the United States Government for the fiscal years 1995, 1996, 1997, 1998, and 1999.

The Senate proceeded to consider the concurrent resolution.

Mr. SASSER. Mr. President, I have some initial housekeeping unanimous-consent requests to take up prior to beginning debate on the resolution. Each of these has been cleared, I might say, with the Republican manager.

First, section 305(b)(3) of the Congressional Budget Act provides, and I quote:

Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the Senate, there shall be a period of up to 4 hours for debate on economic goals and policy.

### UNANIMOUS-CONSENT AGREEMENT

Mr. SASSER. Mr. President, I ask unanimous consent that there be debate only on Senate Concurrent Resolution 63, the concurrent budget resolution, until the Senate resumes consideration of the concurrent resolution following disposition of S. 208, the park concessions bill.

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

### PRIVILEGE OF THE FLOOR

Mr. SASSER. Mr. President, I ask unanimous consent that the staff of the Committee on the Budget and its members be allowed to remain on the floor during consideration of Senate Concurrent Resolution 63. I send to the desk a list of the staff.

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

### CORRECTION IN TYPOGRAPHICAL ERRORS IN REPORT ACCOMPANYING THE RESOLUTION

Mr. SASSER. Mr. President, there are minor typographical errors in the report to accompany the resolution. I send to the desk an errata sheet and ask unanimous consent that it be printed in the RECORD.

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

ERRATA

On page 18, under "Function 550: HEALTH," change the last word in the second paragraph from "unfunded" to "underfunded."

On page 19, move the fourth full paragraph (regarding Head Start) to page 18, immediately before "Function 550: HEALTH" (so that it may properly appear under the preceding function, "Function 500: EDUCATION, TRAINING, EMPLOYMENT AND SOCIAL SERVICES").

Mr. SASSER. Mr. President, for the information of Senators, let me just take a moment to review the program for the next few hours under the unanimous-consent agreement just reached.

The ranking Republican member of the Budget Committee and I will give our opening statements, to be followed by debate on economic goals and policies. The Senate will recess, under the previous order, for the party conferences between the hours of 12:30 and 2:30 p.m. At 2:30 p.m., the Senate will proceed to vote on final passage of S. 208, the national park concessions bill. Amendments to the budget resolution will be in order after 2:50 p.m. this afternoon.

Mr. President, when we met last year to consider the budget for the 1994 fiscal year, the 1994 budget resolution, we faced a very formidable task. The deficit was spinning out of control, out of control in both the short term and the long term. This was an unfortunate legacy of many years of neglect and many years of evasion.

At that time, deficits were projected to reach historic levels. The 1995 deficit estimated at $305 billion was estimated to swell to $388 billion by 1998, and then to nearly double by the year 2003.

To recapitulate, the 1995 deficit in April 1993 was estimated to be $305 billion. And this deficit was to grow in 1995 from $305 billion to $388 billion by 1998. And then, shockingly, it was to nearly double by the year 2003. That is what we were faced with last year at this time.

The larger economy was both a culprit in driving up the deficits and it was also a victim of the deficits. The Nation was vexed by lackluster economic growth and poor job creation. The weak economy was fueling larger deficits, and the uncontrolled deficits were undermining the confidence of consumers and also the financial markets.

The President insisted that we break this financial downward spiral. And al-

though there was apprehension as to whether we could withstand the fiscal contraction needed to reduce the deficit, we took the necessary step at the necessary time.

Now, many of our colleagues, especially those on the minority side, did not believe the deficit reduction package would work, period. Not a single one of them voted for it. In my judgment, they were clinging to the wreckage of a failed economic philosophy. Instead of reduced deficits, instead of tax equity, instead of lower interest rates, instead of seeing a robust economy resulting from this lowering of the deficit, they saw the Four Horsemen of the Apocalypse coming over the horizon. The CONGRESSIONAL RECORD is full of their anxieties and prophecies of doom.

It does no good to repeat the comments that were made at that time. The important thing, Mr. President, is that the right step was taken. We passed the largest single deficit reduction package in the history of the United States of America. The plan reduced the deficit by $500 billion. It cut spending by $255 billion, allocated every new tax dollar to deficit reduction, restrained discretionary spending at a hard freeze level, and cut $90 billion out of entitlement spending.

Now, Mr. President, as I have said earlier, we have not broken the back of the deficit problem, but we have certainly administered a very sharp crack to its vertebrae. If we do not stray from the path that we are on, the 1998 deficit will be $200 billion less than it otherwise would have been. And that is just the beginning.

For the first time since Harry Truman was President of this country, we will have 3 years in a row of declining deficits. And bear in mind that Harry Truman was presiding over a budget and a country which was coming out of World War II. And the deficit as a percentage of gross domestic product, or national income, will reach 2.3 percent, the lowest level since 1979, before the deficits began to explode during the decade of the 1980's.

Now, in testimony before the Senate Budget Committee on January 27, 1994, the Congressional Budget Office Director, Dr. Robert Reischauer, said:

> The deficit picture is significantly brighter than it appeared 1 year ago when the Congressional Budget Office projected the budget deficit would soar above $350 billion by fiscal year 1998. CBO now predicts that the Federal deficit will fall from $223 billion in the current fiscal year to below $170 billion in fiscal year 1996.

Continuing, and quoting directly from Dr. Reischauer, he says:

> The dramatic improvement since last January is largely the result in August of a major package of tax increases and spending cuts—the Omnibus Budget Reconciliation Act of 1993.

Now, Mr. President, some of my colleagues have tried to attribute this unparalleled deficit reduction solely to the economy. I would submit that is a very distorted picture, indeed. As Dr. Reischauer observed, it gives short shrift to the discipline, unified and carefully constructed strategy that brought the deficit down. And over the next 5 years nearly 75 percent of the total 5-year decline in the deficit will result from the deficit reduction plan presented by the President and passed by this Senate.

The simple fact is that the improved deficit and economic picture represent a self-reinforcing knot. The improved economy bolsters the improved deficits and vice versa. And I think even our friends on the other side have to admit that that is infinitely better than a condition in which a weak economy drives us deeper into the deficit hole and vice versa.

It was, Mr. President, the credibility of long-term deficit reduction to which the financial markets responded so favorably. The Chairman of the Council of Economic Advisers, Laura Tyson, told the Senate Budget Committee last month, and I quote Dr. Tyson:

> The decline in long-term interest rates since January of 1993 has tracked very closely the fortunes of the administration's economic plan.

The Congressional Budget Office Director, Dr. Reischauer, further underscored the relationship between interest rates tumbling, coming to their lowest levels in over 20 years, and the largest multiyear deficit reduction package in history.

In testimony earlier this year before the Budget Committee, Dr. Reischauer said:

> I think certainly part of the reduction in interest rates that we have experienced relates to this successful deficit reduction effort.

Now, since we took the steps to bring down deficits, the drop in interest rates caused sectors of the economy that rely on long-term financing to expand very rapidly. Let us just talk about a few things that the drop in interest rates brought about.

First, housing starts, housing permits, housing sales all soared in the fourth quarter of 1993 at a more than 50-percent annual rate. In December, all three housing indicators stood at their best levels in the last 4½ years, and they are expected to rebound smartly after the return of normal weather in March.

Sales of domestically produced cars and light trucks—that is, cars and light trucks produced in the United States—jumped at a more than 50-percent annual rate over the last 5 months. They stood in February at their best level since 1986.

Current domestic production plans indicate that first quarter assembly of cars and light trucks will be close to the record levels of the 1970's. Mr. President, that is real economic progress creating tens of thousands of jobs for auto workers, for those who supply the auto industry, for those who service the auto industry.

What about other sectors of this economy? Real business investment spending advanced at a 22-percent rate in the fourth quarter of 1993 and today stands at an all-time high. New orders for business equipment which always precede future production of investment goods shot up at a 51-percent annual rate over the last 6 months. And each of these very pronounced improvements at the end of last year stands in marked contrast to the very modest gains that these interest sensitive sectors had shown over the past 4 years.

Their strengthening propelled the real gross domestic product of this Nation to grow in the fourth quarter of 1993 at a 7.3-percent annual rate, well ahead of the pace that came earlier in the recovery. As a consequence of strong growth toward the end of last year, economic performance during the first year of the Clinton administration surpassed by a wide margin that seen in the 4 preceding years.

Real gross domestic product—that is the gross domestic product corrected for inflation—grew more than 3 times as fast in the first year of the Clinton Presidency than it did during the preceding 4 years. A total of almost 2 million private sector jobs, 1.901 million, to be exact, have been created since President Clinton was inaugurated. That is far more than the 1 million jobs that were added during the previous 4 years. In other words, during the first year of the Clinton administration, we created almost twice as many private sector jobs as had been created in the previous 4 years. If they continue at that rate, President Clinton will have created almost eight times more jobs in his 4-year term than were created in the preceding 4-year term of his predecessor.

What is most heartening is living standards rose during the first year of the Clinton administration more than during the preceding 4 years. Living standards are measured by per capita income, real growth in per capita income, and real growth in per capita income in 1993 grew more than in the preceding 4 years put together.

Recent data indicate that this acceleration in economic growth will continue into 1994. The index of leading indicators rose for the sixth consecutive month in December, up at a 5.4-percent annual rate.

This is the best 6-month performance of this economic growth index in over a decade. In fact, the Office of Management and Budget, the Congressional Budget Office, and the Blue-Chip Economic Consensus forecast all predict that real GDP for 1994, as a whole, will increase at its best rate in 6 years. Let me repeat that. The consensus of private blue chip economists, the Congressional Budget Office, and the Office of

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Management and Budget all predict that the gross domestic product of the United States will increase in 1994 at its best rate in over 6 years.

Welcome as this pickup in current economic activity may be, the beneficial effect of last year's budget agreement on long-term economic performance is even more important. There is now a developing consensus that the economy's underlying rate of growth has accelerated.

In his testimony before the Joint Economic Committee on January 31 of this year, the Federal Reserve Board Chairman, Dr. Alan Greenspan, a conservative economist appointed during the Reagan administration, said, and I quote him directly:

> I don't recall as good an underlying base in the long-term economic outlook any time in the last two or three decades.

Dr. Greenspan is saying that he does not remember, or he has not seen, the economic outlook look as good on a long-term basis, based only the fundamentals of this economy, anytime in the last 20 or 30 years. Did you know that most economists share the optimistic outlook of the Chairman of the Federal Reserve Board?

The projections of the administration, the Congressional Budget Office, and the 50 private forecasters surveyed by blue-chip indicators are all very similar. They foresee solid real GDP growth of about 3 percent per year with hardly any rise in inflation.

So, Mr. President, the verdict is in. The deficit reduction package that we passed in 1993 despite the dire predictions that it would cause the economy to drop, that it was nothing but a tax bill, that it was going to cause widespread unemployment, that it was going to accelerate us into a recession—the verdict is in, and the verdict is that we have dramatically changed the economic direction of the United States of America for the better. This economy is on the path to renewal with rising output, increased employment, and falling deficits.

We might ask ourselves, and the question before the Senate now is, What action do we take at the present time? Mr. President, I would advise my colleagues that we simply stay the course that brought us to this point. It has served us well, and there is no reason to warrant a departure.

We are in an economy with deficits coming down, with economic growth continuing in a sustained noninflationary manner. Those who argue for deeper cuts in both discretionary spending and entitlements that we see in the present budget, I say to them, let us stay this course for 1 year, or perhaps 2. Let this deficit reduction package that we passed last year work its way through the full economy, and then come back and take another look to see if we should take further steps to reduce deficits. But unfortunately, the critics are once again not giving us credit for our cuts in spending and for our entitlement savings.

Discretionary spending next year will fall below last year's level. That has not happened since Neil Armstrong was setting foot on the Moon in 1969. And coincidentally, Mr. President, the last time this Nation had a balanced budget was in 1969 as President Lyndon Johnson was exiting the Presidency.

The President's budget called for the complete elimination of 115 programs, cutting below last year's nominal level in more than 300 programs. And discretionary spending, as a share of the economy, is lower than at any time since 1940. Let me repeat that. Discretionary spending, as a share of the overall economy, is lower than at any time since 1940 in this budget before us.

I think we have made some truly remarkable achievements. If someone had come to me in January or February 1993 and asked if we could have achieved the deficit reduction that we have achieved, with the corresponding economic growth that is accompanying it, I would have said: I do not think we can do it.

But we have done it, and it is a remarkable achievement indeed. But I expect we are going to hear a lot about the spending problem not having been solved. And we are going to hear a lot about deficits that will shoot upward again beginning in 1999 because of the alleged "uncontrolled growth in the entitlements." It is always amusing to me to see how our colleagues are so concerned about what is going to happen 4, 5, 6, or 7 years down the road. Somehow they cannot bring themselves to deal with problems that we have to deal with today and tomorrow.

Parenthetically, I observe that the people who are making the most noise about unrestrained deficits in the outyears, almost without exception voted against a deficit reduction package that cut the projected deficit in the year 2003 from $655 to $343 billion.

There is no denying that entitlements are a thorny issue. But I want to take just a moment to give credit where credit is due. I want to give credit to the distinguished ranking member of the Budget Committee, Senator DOMENICI, for his leadership some years ago in bringing about a budget process change, especially in the entitlement area. The paygo system he helped institute is working to control new entitlement growth, and I think it is a tribute to my good friend from New Mexico. In fact, we have legislated very little new entitlement growth since the paygo system was put in place. We certainly have not ignored entitlement programs when it comes to spending reductions—especially in health care.

In the old days when the cowboys would come into the saloon, many times they were required to check their guns at the door. Well, let us just check our rhetoric at the door as we look at this budget and see what has occurred to entitlement programs. In 10 of the last 13 years, we have passed bills reducing Medicare outlays. The aggregate since 1980 comes to a 20-percent cut. Just by looking at Congressional Budget Office scoring of each of these bills, we can see that we have cut $165 billion from Medicare since the paring back began in 1981.

Last year's reconciliation bill made substantial entitlement cuts—a net reduction of $88 billion over 5 years—and total entitlement program reductions were $102 billion.

Some of these savings were used to pay for an increase in the earned income tax credit. That is an effort, using the Tax Code, to try to encourage people to move from welfare to the work force. That is an effort to try to give all people who work for a living at least a modicum of a decent standard of living. The total of reductions were $13 billion more than had been achieved in the budget summit 3 years earlier and $26 billion more than had been proposed in the President's budget last year.

Last year's bill, which cut Medicare by $56 billion, also achieved major reforms in other entitlement programs and with major savings. Here are some of the top savers in the entitlement area: Medicaid was reduced by $7 billion; civil service and military retirement was reduced by $10.7 billion; the student loan program was reduced by $4.2 billion; the administration of Federal welfare programs cut by almost $4 billion; agricultural entitlement programs cut by $3.2 billion; veterans programs cut by $2.6 billion; and banking and housing program mandatory spending cut by $3.1 billion. Those are cuts in entitlement programs.

I am not trying to argue that we have done all that needs to be done. I am simply reminding my colleagues that it is inaccurate to contend that we never touched the entitlement programs. We have been going at them for a decade, going at them very frequently, in a bipartisan way.

The only accounts in this Federal budget that are growing faster than the gross domestic product of this country are in the area of health care. We have before us major reform proposals for both health care and welfare. As we stand on the cusp of major reforms in health care, I think it makes no sense to keep picking at the edges of Medicare and Medicaid. We already know that the past 13 years of tinkering with Medicare has helped contribute to the health insurance problems that we are now hoping to reform. And merely sprucing up health care, with a nip at Medicare here, and a tuck at Medicaid there, is no longer an option. We need a complete overhaul that will take into account the fundamental problems of coverage and cost containment in the overall system.

Some contend that reform of the health care system will end up costing more money. I am not so cynical about our prospects about coming up with a meaningful health reform bill. The distinguished majority leader, put it best the other day when he said: "No plan is perfect, but we cannot let the perfect be the enemy of the good."

So we will be working together to come up with the best approach to these reforms. I am confident that our tried and true paygo system, which has already undergone some real tests and has prevailed, will continue to serve us well.

I want to sketch out the committee's budget resolution as reported. With one major exception, it tracks very closely the President's fiscal year 1995 budget. This budget resolution is necessary to sustain the historic deficit reduction that we passed last year. Over the next 5 years, there will be in excess of $600 billion in reduced deficits, rather than the $500 billion for which we aimed. I want to repeat that so all of our colleagues will absorb this and understand it. We are now reducing the deficit, over the next 5 years, by $600 billion, rather than the $500 billion we anticipated last year.

This same path of deficit reduction will sustain a robust and surging economy that continues to perform beyond our expectations.

The 1995 budget resolution contains the following key components:

The baseline we worked from for 1995 accepts all of the President's program cuts and all of the President's program terminations. This translates to some 300 programs which are either cut or terminated.

(Mrs. MURRAY assumed the chair.)

Mr. SASSER. The resolution also closes a $3.1 billion gap that opened up on the discretionary side of the budget for fiscal year 1995 because of differences between OMB and CBO scoring. That required the committee to cut $3 billion more from the President's budget.

I would note that in the past we have not necessarily accepted the more conservative Congressional Budget Office scoring. I am reminded specifically of the budgets that were submitted by President Bush in fiscal year 1992 and fiscal year 1993 which used OMB's numbers for appropriations rather than CBO's numbers. But this year we will be totally scrupulous and we have filled the supposed gap to hit CBO's account targets.

In addition to the reductions contained in the chairman's mark, the committee adopted an amendment making further cuts in 602(a) allocations reported to the Senate Appropriations Committee.

For fiscal year 1995 budget authority would be reduced by $5.3 billion and outlays would be reduced by $1.6 billion. Over the next 5 years, budget authority for all discretionary spending, including defense, would be cut by $43.2 billion in budget authority and outlays of $26.1 billion. All savings would go to deficit reduction.

The 1995 budget resolution falls below the caps by $1.6 billion in 1995 and by more than $5 billion in each of the next 4 years. Over 5 years, the budget resolution is below the legal spending limits by $26 billion.

Madam President, I want to stress that while I support the budget resolution, I do not think that this amendment we passed in the committee is particularly well advised.

First, I think we already have exercised considerable fiscal restraint. But more important, we have administered the correct formula of fiscal contraction. The economy has been able to absorb the medicine and still grow at a very productive rate. There is a very delicate balance here and I do not want to upset it at this time.

I am not saying we solved the deficit problem. I know we have not. The deficit is still a very real and profound problem. All of us know that there will be another round of deficit reduction, and I hope when it comes in 1 year or 2 that it will be a bipartisan round of deficit reductions this time.

But I believe we need this interval to give the economy time to thoroughly digest last year's deficit reduction program before we embark on another course of cuts.

This is not a time to be headstrong. This is a time, I think, to be prudent, a time to be cautious, a time to continue down the deficit reduction path, a time to flourish and nurture this economic growth that we are presently experiencing.

We need to keep our priorities straight. We should cut those programs that do not produce and invest in those programs that perform well. I believe we can find bipartisan support to do exactly that. But that does not mean that we have to start hacking away at the good and the bad. It does not mean that we should squeeze additional deficit reduction from accounts that are already frozen.

This amendment brings back into focus a nagging problem that plagues this body's efforts to engage in serious and credible deficit reduction. The amendment that was passed in the Budget Committee calls for making cuts in nonspecific areas.

Interestingly enough during consideration of the budget resolution, the Budget Committee rejected 10 amendments, 10 amendments that made specific spending cuts. But when the vote came on this amendment that deals only in general amounts, a majority of the Budget Committee voted for it and what happens? We passed the buck on to the Appropriations Committee. And those who voted for it on the Budget Committee will say when the appropriators have to make these cuts, "Well, I did not vote for cuts; I did not want those cuts to be made. It is the appropriators that made those cuts. I was not for them. I was for something else being cut."

That is what you get into with these nonspecific reductions. We are just going to cut $1.6 billion in outlays next year. We do not say where they are going to come from. We just say we are going to cut it. That is not serious budgeting. That is budgeting by headline.

The action of many of my colleagues sustained something that the distinguished majority leader has long warned about. Senators are very fond of making cuts in general. They can go back home and tell the Rotary Club, and their constituents: "Oh, I voted for cuts. I voted for cuts and the reduced spending in general in the abstract." But they are very reluctant to vote for specific spending cuts.

The great writer Robert Louis Stevenson once said:

> Everybody, sooner or later sits down to a banquet of consequences.

And those who supported this amendment are going to sit down to a banquet table of their consequences if it is sustained, and they will be eating bitter fruit indeed.

Well, no matter what clever complex, and arcane machinery the mind of human kind can come up with—and I think we have seen about all of them by now here—dealing with the budgeting process, the process of reducing spending, and bringing down the deficit comes down to one thing, and one thing only: You must have the courage to vote for specific spending cuts. And we very rarely see that.

Last summer I was on the floor of this body trying to reduce spending, trying to phase out the space station. We failed. We tried to cut the superconducting super collider. Eureka, we succeeded in that, but not because we did it in this body, but because our colleagues in the House said we are just not going to spend any more money on it. And we fought desperately last year just to make a few cuts in the very expensive Star Wars Program.

Mark my word, I am going to be back when the appropriations bills hit the floor this year, and I am going to add Milstar to my list of proposed cuts. I hope that many of those same Senators who supported reducing the 602(a) allocation in this committee will join with me in voting to cut some of these specific wasteful programs.

I think one of the things that is going to be thrown overboard, whether we like it or not, if this amendment stands is the new nuclear aircraft carrier. It simply cannot be financed out the 602 allocation that is going to go to the Armed Services Committee.

Returning now to the overall content of this resolution, we deal with the

whole question of mandatory programs such as health care, welfare reform, GATT, and nutrition.

The budget resolution is completely agnostic when it comes to which health care plan or combination of plans will be ultimately passed.

The reserve clauses in this resolution are strictly enabling legislation and nothing more, which allows deficit neutral legislation to be considered on the floor.

We have added back to the President's budget in a few areas which merit an additional note.

The committee's resolution restores roughly 70 percent of the President's reduction in the Low Income Heating Assistance Program, so-called LIHEAP.

We also restored the administration's $202 million in cuts in mass transit operating grants.

The committee resolution as reported rejects the proposed $63 million reduction in various Rural Electrification Administration loan and loan guarantee programs.

And for Ryan White, we have added $182 million over last year's funding level.

We have offset those adds and filled the $3.1 billion gap with a group of adjustments to the President's discretionary totals. The committee's resolution, as reported, assumes the ceiling contained in the Federal Work Force Restructuring Act, which recently passed both Houses.

The resolution also assumes that requested funding for the acquisition of Federal buildings is reduced by $300 million. Budget authority still exceeds the 1994 funding level and the current services baseline.

In addition, the resolution, as reported, assumes roughly a 3-percent across-the-board cut in agency overhead expenses. The cut does not apply to the Department of Defense or the Social Security Administration and excludes obligations for R&D and GSA rent and minimizes the application to program-related obligations.

The cuts in overhead specifically affect purchases of land and equipment, supplies, transportation, consulting, and printing, and contracting-out services.

There will be no reconciliation instruction because there are no tax increases in this bill or reductions proposed in the budget.

On the mandatory side, the committee does not recommend any reductions for the simple reason that the major programs are all being scrutinized by the relevant committees, and major reforms are forthcoming.

Well, Madam President, in conclusion, I believe we have made remarkable progress in the past year. The measure of our journey is not in time, nor difficulty, but in what we have achieved. We have achieved falling deficits. We have achieved an expanding economy. We have achieved a higher standard of living for working men and working women. The challenge we face today is whether we have the courage to stay the course.

Madam President, I have here some graphic evidence of the progress which we have made during the past year.

In April 1993, the Office of Management and Budget was predicting a budget deficit for fiscal year 1994 of $305 billion. The current OMB estimate, after the passage of the Deficit Reduction Act, is $236 billion, and the current Congressional Budget Office estimate is $228 billion.

So, as a result of the Deficit Reduction Act we passed, and as a result of economic expansion, we now have seen the deficit reduced from $305 billion for 1994 to $228 billion.

In April 1993, we were predicting for fiscal year 1995 a deficit of $302 billion. We are now anticipating, because of the Deficit Reduction Act that we passed, a deficit of $177 billion by OMB estimates and $179 billion by CBO estimates, a very dramatic reduction.

In April 1993, we were predicting for 1996 a deficit of $298 billion. Because of the Deficit Reduction Act we passed and the expanding economy, that is now predicted to be between $178 billion and $180 billion, well over a $100-billion reduction; well over a one-third reduction in the so-called deficit. The same is true for 1997 and for 1998.

Look at 1998, Madam President. In April 1993, the Office of Management and Budget was predicting a deficit of $388 billion. The prediction now of both CBO and OMB for 1998 is a deficit of $187 billion. By our action on this Deficit Reduction Act that we passed last year, we will reduce the deficit in 1998 alone by over $200 billion.

And look what is happening in the economy. This is real business investment in billions of 1987 dollars. Look at that line, going almost straight up, as this economy recovers. This real business investment is the best evidence we have that we have a robust economy on our hands for the coming year and for the outyears.

Look, too, at this index of leading economic indicators. These are what the economists rely on to predict economic growth in the years ahead and to predict whether we are going to be in a recession, have moderate growth, or substantial growth.

Look at these leading economic indicators. Beginning in the fall of 1993, that line is going almost straight up. That is an indication of robust economic growth to come.

Well, what has happened to the deficit over the same period of time? These were the deficit projections in April of 1993. The deficit was predicted to be $310 billion in 1993, to stabilize; and then, in 1997, start going through the roof by the year 2003.

What this line indicated was the bankruptcy of the Government of the people of the United States. Look at what has happened since we passed the Deficit Reduction Act. Instead of $310 billion for fiscal year 1993, it is now $255 billion; coming down in 1995 to about $170 billion and staying flat until the outyears; and, of course, going up somewhat if nothing is done about health care costs.

The blue line represents discretionary spending from 1995 to 1999 with no cap on it. That is if we just let discretionary spending grow with inflation; in other words, no real increase in discretionary spending, but just let it go up with inflation so that you have the same purchasing power.

You see that it grows from something akin to $550 billion to up to about $610 billion. Well, we placed caps on discretionary spending in our 1993 economic package that we passed, our deficit reduction package. And, rather than discretionary spending going straight up during this 4-year period, we see it remaining relatively flat for the whole 4-year period. That is somewhere in the neighborhood of $540 billion to $550 billion.

The red mark represents the amendment that was passed in the Senate Budget Committee. This amendment, as I said, reduces, over that period, budget authority by $65 billion and outlays by $26 billion. In 1995, the amendment passed by the Senate Budget Committee will reduce budget authority by $12 billion and outlays by $1.6 billion relative to the caps over the next 5 years.

And you can see this is the red line which puts the domestic cap below the Budget Enforcement Act that we passed last year.

The distinguished ranking member has been waiting patiently for his turn to speak and make his opening statement this morning. I want to defer now to Senator DOMENICI for his comments.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Madam President, I hope I did not cause my colleague to stop before he was ready?

Mr. SASSER. No.

Mr. DOMENICI. Madam President, the lack of interest in a budget resolution this year, it is fair to say, indicates that not very much is happening. I can assure my colleagues, the media was not very interested in the markup during the 2 days we were in session. Also, there is not a great deal of interest on the part of our fellow Senators because essentially the budget does nothing this year. In fact, it does precisely what we said it would do last year. I assume that, if this mode is continued, next year it will do exactly what it was told to do in the Budget Enforcement Act, passed in August of last year.

I would like to take a few minutes today and discuss why that is not good enough. In the meantime, in my own way, let me describe some of the very, very difficult situations we face in terms of the people understanding what we are doing. Rather than proceed to talk about why we are doing nothing and why doing nothing is very, very frightening to this Senator in terms of our children and the legacy of debt we are going to leave them, let me talk a minute about the idea of who is fiscally responsible and who is not, who is willing to vote for hard cuts and who is not.

My good friend, Chairman JIM SASSER whom I have grown to respect and admire—and it is a pleasure working with him. And right up front here I want to thank my excellent staff and indicate I observed his excellent staff worked very hard on this technical and difficult problem. I thank both sides, the Democratic staff and Republican staff.

But let me just use one of the Senator's examples since a lot of Americans wonder who is for cutting and who is not. The Senator said he came to the floor and recommended cutting the space station, that we should not have that as an American program. And he says to the people listening: The people who did not vote for that must be for bigger deficits or for not cutting spending.

Madam President, the truth of the matter is, whether the space station was cut or not made zero difference in terms of aggregate deficit numbers and how much we will spend each year as a nation. That is because we are now operating not on a program-by-program basis but by one overall expenditure cap that cannot be violated. I know this does not sound quite right to many Americans who do not believe we have a way of saying we will not spend any more than a given amount but we actually do have a way. This Senator does not think that those budget limits are low enough, but we do have a way.

Since 1990, we finally invented and enforced a way to see to it that if we say you are only going to spend $540 billion in the year 1995, you cannot spend more than $540 billion. That is written into law. The law says if you have appropriated more than $540 billion at the end of the year, there is an automatic cut across the board to bring it down to $540 billion. That was thought up in the 1990 summit when many of us were meeting over at Andrews Air Force Base. Many think we did not come up with a very good product. Some think there are some components that are very good. This is a component that is very good.

Consequently, if you cut the space station here on the floor in an appropriations bill, the real test of whether you wanted to cut the budget or not is not part of that vote. The important vote is the one that says, when you cut that money out of the budget, you reduce the spending cap by an equal amount. That occurred in the Senate, if I recall. Many voted to take the program out but said leave the cap right where it is.

What does that do to spending? It only means you chose the space program to cut and you want to spend the money somewhere else. Spending gets filled back up to the cap in the ensuing weeks because there is no other rule around. You spend the money on other programs that you would have spent on the space station.

So as a Senator who has understood this process since we started this budget process of mandatory binding caps that would be followed by an across-the-board cut if you exceed them—I do not think people ought to too quickly pass judgment on individual appropriation items as being a budget cutter unless the cutters are willing to lower the cap for total expenditures. Otherwise, the only thing the cut says is "Spend the money someplace else." I do not think anybody can deny what I just said. Every time we have removed a program, Congress has proceeded to spend right back up to the cap, which means we have not saved anything.

My last point is there are a lot of priorities that the Republican side might want and the Democrat side might not want, and vice versa. But if you just pick your priorities and vote on them, you are simply picking priorities. You are not cutting deficits, if you leave the total amount to be spent where it was to begin with. You have not saved anything.

It is also interesting that the budget process has evolved to a point where—with regard to the budgeteers and people who are going to come to this floor and talk about what they are going to cut—the budget resolution does not have any individual programs in it to cut. That might surprise some people. It is just a lot of numbers. You see a whole bunch of numbers.

So if somebody comes to the floor and says today I am offering an amendment that says I do not want to spend money for this program but I would like to spend it for this other program—if they leave the numbers in the budget resolution exactly where they were, that vote is nothing more than an expression of desire. They are in effect saying, "I would like the Congress to not spend money on this, and in turn spend it on that." When we are all finished with this, what controls what is really spent are, the dollar numbers we give to the Appropriations Committee. They divide it up, and they spend it and bring it to the floor in 13 separate bills.

So while we will have a lot of rhetoric—some of it will be great, some of it will make a very good point in terms of what ought to be and what people think they want to do, frankly, to simply move money around—unless you change the caps you have not changed the budget one bit.

Let me now refer to a couple of charts for a minute. I know the first discussions here are supposed to be about the economy, but I choose to weave the economy into the next 30 or 40 minutes and not separate it out. I want to make sure everybody who is looking at the American fiscal policy understands what we are leaving for our children as the legacy of indebtedness. Professor Tribe once expressed it this way: America is kind of a revolutionary country where we are opposed to taxation without representation. But the deficit and its enormous size is taxation of our youth and the next generation and the next generation, without any representation, because assuredly they will have to pay more taxes to pay it off. So in a very real sense the deficit is taxation of generations yet unborn without representation.

Here is the reality of the "stay the course," "do nothing in addition to what we did last year" approach to fiscal policy. In 1995, the deficit will be $178 billion. That will be the number if we stay the course.

The deficit does not come down anymore. It starts going up and in 1998—that is not very far from now—the fifth year of this budget, it rises further. And if those who look at budgets are right—and I believe they are—and if current policy is left unchanged, deficits will exceed $350 billion by the year 2004. I do not think anybody really thinks this Nation is going to have sustained recovery with this reality. And it is a reality, it is just not yet fixed in the minds of the American people and policymakers.

Let us look at where this deficit comes from, and maybe we will all understand why it is not enough to stay the course.

In 1990, the budget of the United States was made up of $184 billion in net interest and $185 billion in nondefense discretionary. That means what we spend on education, what we spend on housing, what we spend on highways and the like. Defense, $319 billion; and entitlements and mandatory expenditures, like the health care programs—Medicare, Medicaid, Social Security, and a lot of others, hundreds of them—the amount was $567 billion.

We go to 1995—the budget year we are going to vote on—the interest is now up to $212 billion; nondefense discretionary has gone up almost $70 billion, which many people would be shocked by because we are always telling them how much we cut. In fact defense is the only one that went down. It went from $319 billion to $291 billion. Next, the entitlements and mandatory programs of our land, go from $560 billion to $843 billion, almost a $300 billion increase.

Frankly, it is these entitlements and mandatories that nothing is being done about.

Then let us look at what the projections are for 1999. These are from the Congressional Budget Office. Lo and behold, stay the course. Do you think that after looking at these spending increases Americans would say: "Well, you told us we are cutting programs and that we are spending less at home and less on defense and less on foreign affairs, everything is just getting cut all over the place"?

Let us look at nondefense discretionary from 1995 to 1999. That is the one I explained a while ago—education and the like. It does not go down. It goes from $249 billion to $283 billion. If my quick arithmetic is right, practically a $50 billion increase. Not down, up.

Defense, again, comes down. It will then go to $280 billion. It was once $319 billion. But then consider what happens. Mandatories and entitlements, goes up to $1.099 trillion from $843 billion in 1995. Some quick arithmetic: $250 billion more in these next 5 years.

The point of this is very, very simple: When, how and where will we finally control this budget? When will we get these upward trends turned around?

Madam President, there are no cuts in this budget—no new cuts, to this increase of $250 billion.

Point No. 1, frankly, I do not believe we can sustain this trend for very long. Point No. 2, in my opinion, the best time to make real changes in domestic programs, both from the political standpoint and from the reality of economics is when the economy is growing. You will never change the spending habits of a nation in any permanent and significant way when the economy is coming down. It does not work. People are frightened. It does not make good sense from the standpoint of wanting to do things that are not adverse to economic growth. So, it seems to me, that now would be the time to take a serious look at some new and different ways to approach the mandatory and entitlement programs of this land.

A great deal has been said about the buoyant state of the American economy. Hopefully between now and 12:15 or so, and throughout the next 15 to 20 hours, we can speak some more about how the economy got to where it is. But I think it is important that as part of this debate we talk about something that is now getting a little worrisome and yet it is being held up as the most single positive phenomenon that should cause success to continue and the American economy to grow and prosper; and that is lower interest rates.

In August 1993, the Democrats in the Senate and House, led by President Clinton, passed a deficit reduction package. I am sure that many Americans will be shocked to learn that that was not the beginning of this recovery; that was not the beginning of the interest rate declines.

Before I go on with the rest of my thoughts, let me say the economy is doing splendidly, especially when you consider the rest of the world. I am very pleased. I am glad it is happening. If I were on the other side of the aisle, I would be bragging about it, too. I would be trying to say we did it; it is our economic recovery. But I think it is our job to be a little realistic and make sure we understand all that surrounds those kinds of statements.

The 10-year T-notes are very, very important for many reasons, partly because most of our debt is evidenced by 10-year T-notes. Three-month Treasury bills are an indication of how the short-term market on interest rates is going. They are very important, too, although not terribly relevant to the business community. Nevertheless, they indicate downward trends in interest.

In 1990, these 3-month bills started coming down. By 1992 they were below 3 percent. What has happened since then? Instead of coming down further, they have gone up. And today, as we speak, without any recent change in policy by the Federal Reserve, they are inching up so that now they are back to 3.5 percent.

That means that interest rates have been having a healthy effect on this economy for about 2½, almost 3 years, rates have been coming down during that period of time.

The 10-year notes follow the same pattern. I believe it is not just interest rates that are making the economy go but a lot of other things that came together midyear of last year and really buoyed the economy, which had been growing at a very slow pace.

The downward spiral in the trend of interest rates started about 3 months into 1990 and, with ups and downs, continued downward, and, believe it or not, during the Clinton administration they came down a little bit more. But for everyone it is obvious they are going back up again. In fact, they have gone up more than 1 full point, from a low of almost 5 to 6.5 percent today, a rather clear upward trend and a clear signal.

Now, that only means to me, if it is interest rates that concern us, we better be worried about all the trends coming back together at the wrong time moving in the wrong direction. When the markets and everyone else find out this deficit is on the way back up and not up just a little bit but substantially and significantly, that this deficit is moving up and the debt will grow rapidly, it would seem to me we will not add to the quality of things going on in the American economy that would cause interest rates to come down.

So I believe the time is now to do some major surgery on mandatory and entitlement programs, and later I will present, hopefully in behalf of most Republicans, an approach to doing that, to getting that $365 to $400 billion deficit down dramatically and reducing the deficit over the next 5 years substantially more than is proposed.

Having said that, let me talk a little bit about the successes we have had so far. And again I say to Senator SASSER, who has done a marvelous job, sometimes I appreciate very much how difficult it is for him to get all of his Democrats together on something and to make it move. I had to do that once for 6 years, and it is tough. I believe it is not as difficult this year because of what I have already explained. We are really just enforcing the caps that were imposed heretofore as part of a 5-year program.

But I think it is worth stating again that, if you look at July 1993 when the so-called big deficit package was passed, let us analyze two things.

First, I am not trying to deny the President or Democrats the joy of claiming great success, but I do think we ought to talk about a little realism. When the U.S. Government makes a major policy change which will affect the economy, I think it is general consensus among most economists, in fact, I would say almost everybody on the joint economic advisory group that advises the President would say it takes about 1 to 1½ years for the economy to react to major policy changes, be it tax cuts or be it investment tax credits of the Kennedy era. It just does not happen overnight.

Well, just think a minute. The largest quarter of GDP growth in the last 4½ to 5 years was the last quarter of 1993 when the GDP, gross domestic product, grew at 7.5 percent. That was 1 month after the passage of the package that was heralded as the reason for the pickup. Now, having said that, CBO reported in their economic and budget outlook fiscal years 1994–98, "Although monetary actions operate powerfully on the economy, they do so only indirectly and with an uncertain lag, perhaps more than a year."

The deficit in the year 1998 is projected still to be $201 billion and at the same time the 5-year program in the document before the Senate, assumes constant growth of over 2.7 percent, for the next 4 years, and assumes these interest rates do not go up but actually stay level or in some cases decline from current rates.

After 1998 deficits skyrocket, and I believe the question is: Should we do something about that this year or not? I think we should. It is not easy. In fact, it is very difficult to do that. But I would submit that at least we are going to try. We are going to offer, either today or early tomorrow, an alternative. It will get the deficit to $99 bil-

lion by 1998, and we will also be able to turn the tax tables so that they favor families with children and homemakers, part of a thrust to change the Tax Code to do a better job of recognizing how expensive and difficult it is to raise children these days, especially on the economic side when the Government has dramatically reduced the deduction that you can take for dependent children.

Madam President, currently our economy is growing, we are creating jobs for our people, and our businesses, by and large, are prospering. This is good news. The Federal deficit is declining from $255 billion last year to an estimated $225 billion this year. With continued growth the deficit will decline again in the coming fiscal year to about $180 billion.

President Clinton is fortunate to have come into office inheriting an economy in the recovery stage of the current business cycle expansion—the ninth expansion of the post-war era. It is this upswing in the business cycle that, more than anything else, has contributed to the recent decline in the deficit. However, the work of the Budget Committees over the past 4 years has also contributed—through establishing caps on discretionary spending first in 1990 and then extending them again last year.

But the job is far from done. And the resolution before us today leaves the job undone. Now is not the time for us to be taking a break or putting the budget process on automatic pilot.

THE PROBLEM

First, the low interest rates which began coming down 4 years ago and have stoked recent economic growth are creeping back up. Ten-year Treasury-note interest rates—representative of long-term rates—are now at 6.4 percent, down from 8.9 percent in September 1990. This 6.4 percent is approximately equal to the 6.6-percent level reached last January when President Clinton assumed office.

The administration has been quick to take credit for interest rate declines that occurred last year, but rates are not back to about the level when President Clinton took office. This increase has, according to economists, already had a dampening effect upon consumer activity.

Simply stated, economic growth is not a certainty. The average peacetime expansion has lasted but 14 quarters, only 11 if one removes the exceptional 1980's expansion, the longest peace-time expansion on record. The current expansion is in its 12th quarter. The administration and the Congress must now rely on more than just the momentum of the business cycle to keep the economy strong and vibrant. We must continue to structure policies that increase net national savings for investment and growth.

Second and related to the economics discussed above, is the deficit trend after 1996. It is not good. Because, as we all know, after fiscal 1996 the deficit begins turning upward again and embarks on a relentless upward spiral, driving past the $300 billion mark shortly after the turn of the century.

The resolution reported by the committee does not do anything to change this long-term trend. Even including the impact of the Exon-Grassley discretionary cut amendment adopted in committee, the deficit will still rise throughout the next 5 years growing back to $200 billion by 1999. These estimates assume 10 years of uninterrupted economic growth averaging over 2.5 percent annual real growth.

During last year's budget debate, we were repeatedly told by the White House and members of this committee that health care reform would bring down the deficit in the outyears. But CBO dashed that myth. The secret is out—there is no deficit reduction in the Clinton health care reform plan.

More importantly, the Senate-reported resolution at best would only reduce spending $36 billion over the next 5 years, $20 billion of that $36 billion occurring in 1999—in other words "back-in loaded". And all of these reductions would come from that area of the budget known as discretionary programs, annually appropriated. The real culprit of spending growth—mandatory spending—is left untouched in this resolution.

What is more interesting, the resolution before us today does not accept the President's spending cuts for LIHEAP, mass transit, REA, Impact Aid part B, Ryan White grants, and Head Start. While adding back real spending for these Presidential cuts, the resolution finds questionable real offsets in the form of delaying obligations for the Head Start Program, delaying obligations for the National Institutes of Health, delaying obligations for Federal building programs, assuming different outlay rates for housing programs, and cutting agency overhead rates by 3 percent.

I do not think anybody can argue that the resolution before us today, including the discretionary savings from the Exon-Grassley amendment, does anything to address the real spending problem of this country.

THE SOLUTION

We cannot fool people anymore. We cannot simply say we did the work last year—we're taking this year off. We cannot duck our responsibilities simply because it's an election year. It is clear that the President's budget and the House-passed budget resolution along with the one before us today are really designed to hold the course. They are do-nothing budgets.

But Republicans are not satisfied with the direction this course will take in the longer run. We have much more to do if we are to keep our economy moving forward.

Republicans are willing to work to make that happen. Contrary to the opinion of some, Republicans want this President to succeed. We particularly want this Nation to succeed. We want to bring our deficit down—cut it in half by the end of the President's term as he promised—to help create jobs, and to provide some security to our people. Republicans want to help the President meet his campaign goal of providing a middle-income tax cut to hard-working American families with children.

After many weeks of work and development, Republicans offered in committee a comprehensive Republican alternative to the Clinton budget as embodied in the chairman's remark. It was a principled budget.

It was a budget designed to provide real security to the American people. Moreover, the GOP alternative budget helped President Clinton achieve his two campaign promises—to cut the deficit in half and provide a middle-class tax cut.

And the Republican alternative would have provided real security to the American people. It would have enhanced their national security, their personal security, and their future security.

Our alternative began by providing for current and future security by achieving real deficit reduction. The Republican alternative budget would have reduced the deficit $318 billion over the next 5 years. This is $322 billion more in deficit reduction than the President proposes and $303 billion more in deficit reduction than the House-passed resolution contains and $280 billion more than the Senate-reported resolution.

It reduced the deficit to $99 billion in 1999. It cut the deficit in half that year compared to the Clinton policies. The $99 billion deficit in 1999 would be $106 billion less than the deficit projected under the Clinton budget.

The alternative budget then sought to enhance the personal security to middle-class families by providing promised tax relief to American families and small business.

Provided tax relief to middle-class families by providing a $500 tax credit for each child in the household. The provision grants needed tax relief to the families of 52 million American children. The tax credit would have provided a typical family of four $80 every month for family expenses and savings.

Restored deductibility for interest on student loans to assist our young people seeking to advance their education.

Indexed capital gains for inflation and allowed for capital loss on principal residence; and

Created new incentives for family savings and investments through new IRA proposals that would have allowed penalty free withdrawals for first-time homebuyers, educational and medical

expenses. It also would have created an IRA for homemakers.

Furthermore, we sought to help small business and spur job creation by extending the R&E tax credit for 1 year, providing for a 1-year exclusion of employer-provided educational assistance, and adjusting depreciation schedules for inflation.

The Republican alternative budget sought to ensure the personal security of Americans by fully funding the Senate crime bill trust fund—providing $22 billion for anticrime measures over the next 5 years. The Clinton budget does not. The House-passed budget does not.

Our alternative ensured our national security by increasing funding for President Clinton's defense request by the $20-billion shortfall acknowledged by the Pentagon. By rejecting the Republican amendment to restore the firewall between defense and nondefense spending, the committee-reported resolution as modified by the Exon-Grassley amendment to cut discretionary spending $43.2 billion in budget authority, can only be considered a further risk to national security funding in the future.

The alternative budget addressed the largest and fastest growing component of Federal spending—the non-Social Security mandatory spending programs. The alternative was willing to reduce the projected rate of growth in the Medicare Program from 10.6 percent annually to 7.8 percent annually over the next 5 years. The alternative was willing to reduce the rate of growth in the Medicaid Program from 12 percent annually to 8.1 percent annually over the next 5 years.

While the alternative budget was austere, Federal spending would still continue to grow. Total spending would increase from $1.48 trillion in fiscal year 1995 to more than $1.7 trillion in fiscal year 1999.

The GOP alternative budget did not paper over the problems confronting us. Rather, it responded to the fears and concerns of the American people. It gave workers a break, it gave families a break, and, most importantly, it would have given our children a break from having to pay our bills.

Unfortunately the alternative bright-line vision for America's future was rejected on a straight party line vote in the committee. I believe the full Senate will have an opportunity to vote on the Republican alternative before this debate ends.

The administration projects that the economic expansion currently underway will continue in coming years. I do not believe there is a person on either side of the aisle that doesn't hope that that's the case. In fact the administration's projections of benign deficits ahead crucially hinge on this assumption—and of course the assumption of significant savings from the administration's health care reform. Unfortunately this rosy scenario is based on a "Sun is shining now" attitude about the economy. Yes, we had strong growth in the fourth quarter of 1993, but we must put this in economic context.

President Clinton was fortunate to come into office inheriting an economy in the recovery stage of the ninth business cycle of the postwar era. Owing to underlying conditions that had been steadily improving for a number of years, the economy continued the expansion in 1993 that had begun a year and a half earlier in the spring of 1991.

Important components of this expansion include 3 years of improving household and business balance sheets, declining interest rates since 1990 and declining inflation that goes all the way back to the early 1980's when inflation peaked at 12 percent or so.

Low inflation and interest rates have set a solid foundation for economic growth, reflecting a determined and successful Federal Reserve—though I believe they have not been receiving the credit they deserve. Here are the facts:

Following a declining trend that began in 1990, interest rates reached their lowest levels since the 1960's. Three-month Treasury bill interest rates—representative of short-term rates—declined from 7.8 percent in April 1990 just before the recession began to 3.0 percent by the beginning of 1993. The 3-percent rate was reached before President Clinton came to office and short-term rates have done no better since then.

The 10-year Treasury note rates—representative of long-term rates—are now at 6.4 percent, down from 8.9 percent in September 1990. Almost all of that decline occurred before President Clinton took office. Rates declined further last year but have now risen nearly back to the 6.6 percent levels of early 1993.

Part of the interest rate reductions we have seen reflects expectations of lower inflation ahead than previously thought. Inflation averaged 12 percent in the late 1970's and in 1980, 4 percent during the mideighties, and 3 percent in 1992 and 1993. Inflation partly reflects the costs of production and growth in these costs has moderated because of large gains in worker productivity in recent years. During 1992, nonfarm business productivity, the best measure of economywide worker productivity, rose 3.6 percent. That's the biggest 1-year increase since the early 1960's. productivity growth in 1993 was a slower 1.9 percent.

Following a downward trend that started in 1990, household debt burdens have receded to levels last seen in the mid-1980's. Household debt service as a percent of disposable income declined from a high of 19 percent in late 1989 to nearly 16 percent by the end of 1993—about equal the level in 1985. Payment delinquencies on consumer loans fell sharply in 1992 and the trend continued in 1993. They are now at a level not seen in 6 years.

As a result of improving conditions, real GDP advanced at an average rate of 3.2 percent over the four quarters of 1993, higher than the 2.7 percent pace of the first seven quarters of the expansion and slower than the pace in 1992. Over the four quarters of 1992 real GDP rose a strong 3.9 percent, the fastest pace since 1987.

Partly owing to the strong GDP advance in 1992, disposable income per capita after adjusting for inflation rose 3.8 percent or an average of $527 per person during 1992—the largest 1-year rise since 1984. In 1993, income per person held to the high level achieved at the end of 1992.

While this administration was quick to take credit for interest rate declines that occurred during part of last year, rates have now risen back up to about the level when President Clinton took office. It appears now that they wish to have their economic plan take credit for the pickup in real GNP in the fourth quarter. Again, it is important that we understand what is going on in terms of the economic cycle and the recovery that began in 1991. Alan Binder, a member of President Clinton's Council of Economic Advisers has written:

> Rapid economic growth always follows on the heels of a steep recession. I call it the Joe Palooka effect, after those inflatable toys on which young boys worked out their aggressions a generation ago. Because Joe Palooka was weighted at the bottom, he always snapped back after being pummeled to the ground.

Herbert Stein, Chairman of Richard Nixon's Council of Economic Advisers has always said:

> The business cycle was more important than any President's acts.

Taking credit for the pickup in growth that began in October of last year, the administration has pointed to OBRA 1993, the Budget Reconciliation Act completed a little more than a month earlier in August. But, this is what economists have said about the delay between policy and the economy. Nobel Prize winner Lawrence Klein wrote in 1991 that a fiscal policy GNP "multiplier reaches a high * * * after four or five quarters." CBO reported in their "Economic and Budget Outlook: Fiscal Years 1994–1998":

> Although monetary actions operate powerfully on the economy, they do so only indirectly and with an uncertain lag, perhaps more than a year.

We should ask, is it likely that the substantial declines in interest rates between 1990 and 1992 stimulated real GNP in 1993? In my estimation, that lagged effect makes eminent sense. Could the August 1993 OBRA affect October 1993 growth? That just doesn't fly no matter how many times it is asserted.

Based on such flimsy support, we cannot rely on the speed up of growth in the fourth quarter to justify a sanguine view of our future economy. In fact, Democrats in Congress have joined the administration in carrying the logic of crediting President Clinton's economic plan for strengthening the fourth quarter a dangerous, yet erroneous, step further. They advocate a stay the course path to sustain healthy economic growth. It makes no sense to me. The Shadow Open Market Committee, a group of eminent academic and business sector economists, declared in their most recent public statement:

Although the administration takes credit for improved economic performance, recent growth mainly reflects past Federal Reserve policy.

Moreover, even lower interest and inflation rates, and the benefits they produce, may now have ended. Declines in interest rates that occurred in 1993 have all but disappeared. The economy is approaching capacity levels not seen since 1988 and this puts pressure on prices.

Unfortunately, economic growth during this expansion, or any other, is not a certainty—the average peace-time expansion lasts but 14 quarters, only 11 if you remove the exceptional 1980's expansion, the longest peace-time expansion on record. The current expansion is in its 12th quarter.

At this point, we must now rely on more than just the momentum of the business cycle to keep the economy strong and vibrant—we must rely on good policies. Assuming a "Sunny day" scenario because the Sun has been shining is not enough to bank our future economic growth and budget prospects on.

It is funny that I should say this, but candidate Clinton advocated what I thought was "good policy" during the campaign. He said he would cut the deficit in half in 4 years, and cut taxes for the middle class. That sounded like a pretty good goal then, and it is the goal we should aim for today.

Might I ask our chairman, I intend now to suggest to our Republicans, Mr. President, that anyone who has amendments at least get me familiar with them so we will begin to compare how many amendments we have because I gather most Senators would like to see us move expeditiously with this resolution, and I for one want to accommodate many who have said this on my side and I know the Senator wants to do the same.

So I am asking Republicans to give us their amendments so we begin to make some order on our side. Is that a fair way to proceed?

Mr. SASSER. I think that is an excellent course to pursue, and I wish to join with the distinguished Senator in asking that all Senators from the Democratic side who are contemplating offering amendments to bring those amendments to us, let us know what they are so that we can make arrangements to bring them up in an orderly way.

As all Senators know, we are operating under, I think, a 30-hour time agreement. So, if we are going to entertain amendments of everybody and give them adequate time, we need to get the amendments early. If we do not and all the amendments come in at the end of the day, then Senators ought to understand there will be little or no time for debate and there will not be a fair airing of their amendments.

So I urge all Senators on our side to bring their amendments to me in the Chamber or to our very able Budget Committee staff here and let us begin the orderly process of trying to align them for taking up.

I thank the Senator.

Mr. DOMENICI. Madam President, might I ask, is there anybody on our side who wants to speak before we go out for policy luncheons?

Would the Senator from Iowa like to speak?

Mr. GRASSLEY. Is it possible to speak for 20 minutes?

Mr. DOMENICI. I am going to take 5, and then I will yield.

Does the chairman have other time requirements?

Mr. SASSER. Yes. The distinguished Senator from Washington wishes to speak.

Mr. DOMENICI. How does the Senator want to do that?

How much time did the chairman use this morning and how much did I use?

The PRESIDING OFFICER. The Senator from New Mexico has used 28 minutes; the Senator from Tennessee has used approximately 56 minutes.

Mr. SASSER. Since we are ahead on time, perhaps we will yield and let Senator GRASSLEY go next.

Mr. DOMENICI. Can I use 5 additional minutes before I do that on my time?

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I ask unanimous consent to insert in the RECORD a statement that I would entitle "A Budget Process Concern."

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

A BUDGET PROCESS CONCERN

The Congressional Budget and Impoundment Act of 1974 celebrates its 20th anniversary this July. It is particularly ironic in this anniversary year that critical public policy issues with major fiscal policy consequences now before the Congress are being ignored by the Budget Committees. The most important public policy issue confronting the Congress this year—health care reform—an issue that affects one-seventh of our economy is delegated to a "reserve fund" in the committee-reported resolution.

In addition to health care reform, the reported resolution contains 10 other reserve funds for future legislation ranging from trade-related legislation to the "nanny" tax. The expanding use of reserve funds, many of which are for broadly defined purposes, erodes this committee's budgeting role and the importance of a budget resolution for setting fiscal policy.

The 1974 Budget Act requires Congress to write binding outlay, revenue, and deficit totals in the budget resolution. Section 2(2) of the Budget Act states in part "that it is essential to provide for the congressional determination each year of the appropriate levels of Federal revenues and expenditures".

A reserve fund provides for a procedure to adjust the aggregate spending and revenue levels in the budget resolution. With the eleven reserve funds in the budget resolution, we have no idea what the levels of outlays and revenues will be.

The first such reserve fund was established in the FY 1984 budget resolution. However, this reserve fund was for specific initiatives and was limited to specific amounts. Through FY 1991, reserve funds were used sparingly, usually limited to defined amounts, and specific in purpose. Beginning with the FY 1992 budget resolution, reserve funds have grown in number and have been broadened in scope.

*Number of reserve funds*

| | |
|---|---|
| Budget resolution: | |
| Fiscal year: | |
| 1984 | 1 |
| 1987 | 2 |
| 1988 | 4 |
| 1989 | 3 |
| 1990 | 2 |
| 1991 | 1 |
| 1992 | 5 |
| 1993 | 5 |
| 1994 | 7 |
| 1995 | 11 |

When the Budget Committee simply sets discretionary funding right at the statutory caps and provides open-ended reserve funds to cover every conceivable mandatory spending initiative that the Congress will face over the next year, then this committee has given up its budgeting role to a significant degree. We have become simply a deficit enforcement committee that takes no meaningful actions on fiscal policy.

One of the chief purposes of the 1974 Budget Act was to bring "backdoor" (or mandatory) spending under control. During the debate on the Budget Act, then Senator Bentsen gave an eloquent description of the purposes of the congressional budget process:

"Piecemeal reductions in Federal programs, which is more or less what the Congress presently does, fail to provide a permanent solution to the problem of regaining and retaining congressional control over Federal spending. Congress has to have a means for making an independent judgement on the amount of Government money to be spent each year and we need the machinery for insuring coordination among the various committees incurring obligations and making outlays."

Reserve funds erode our control of spending and revenue levels and put us back on the path of making piecemeal decisions. It is ironic that 20 years after the Budget Act became law, the budget resolution, which was intended to control mandatory spending, is being used to facilitate open-ended expansions of such spending.

Finally, we gained adoption of an amendment to the health care reserve fund in this resolution to make it applicable to amendments. For the other ten reserve funds, a deficit-neutral bill reported by a committee

will be exempt from Budget Act points of order pertaining to spending and revenue levels. However, a deficit-neutral amendment that changes the mix of revenues and outlays in the reported bill would be subject to a 60 vote Budget Act point of order.

If a budget resolution is going to contain this many reserve funds that are so broadly defined, it is unfair to put individual Senators at such a disadvantage relative to the committees in writing legislation.

Mr. DOMENICI. Madam President, we have 11 reserve funds in this budget resolution. I am concerned about the growing number of reserve funds, and I have a history of how that evolved from almost none to 11 in 1984, the first time we ever used a reserve fund, and it was very precise and specific.

I think to say that reserve funds are an adaptation of the pay-as-you-go, which was kind of invented and thought up in 1990, is probably a fair statement. But I do not think it means that everything is going to be all right so long as we have pay-go on new programs. So let me try to give an example to the Senate of why that concerns me.

If you look at this major component of the components of the budget, the real problem with this budget is that the entitlements and mandatory expenditures, which in 1995 would be $1,843.9 billion, and it will grow to $1 trillion in 1999 just 4 years later, the real problem with the way we are headed is something like this: The biggest component of that is Social Security. Let us set that aside for a minute. The next biggest component, without any question, is the health-care programs of the U.S. Government: big, growing precipitously, one might even say somewhat out of control.

If they are out of control and are growing at 2½ times inflation, then the President of the United States was right in his campaign. I was right, the Senator from New Mexico was right 6 or 7 years ago when the statement was made that without controlling health care costs you will never control the Federal deficit. That is pretty obvious. If you let things continue as they are, those two occur.

Since everybody has been saying you have to control health care to get the deficit under control, I am very concerned about starting a health care debate with language in a resolution that says it does not matter whether there is any reduction in the tremendous surge in costs of these programs. What really matters is that when you do the new program that you put enough taxes in, cut other programs someplace or another, but you do not have to really reduce the costs of the spiraling programs.

Let me put it another way.

If in fact we were supposed to get the deficit under control by getting health care costs down, then we do not get the deficit under control by leaving health care costs alone and spending all of the money we might save on new health-care programs. It just will not work. So we have gone from "without health care savings we cannot balance the budget" to saying "it is OK so long as we do not spend any more than what health care costs are today" That will never work.

The President was mistaken when he sent his package up here. He was trying to tell us he would get some deficit reduction along with new programs. Then the Congressional Budget Office said, "Wait a minute. That is not true. It may be true in 10 years. But for the time being, you are going to spend more, not less."

So to merely say about health care so long as it comes out deficit neutral it is all OK, it seems to me to acknowledge we are not going to reduce the costs and apply any of those savings to the deficit of the United States. I will have to conclude you will never get the deficit under control because you have given up the ingredients that were there to be used.

Having said that, I would also suggest that I very much would like to start the debate on health care with the budget on Medicare and Medicaid having assumed the position in a budget where there are already savings built in that are applied to the deficit. Then I think you have a realistic picture of where you are going to end up, not the kind of situation that I envision occurring now as I look at the spiraling costs of health care and the fact that we are not going to get any contribution to the deficit from health care costs to the U.S. Government.

Madam President, I yield the floor. I understand Senator GRASSLEY desires to speak. How late are we going to go, I ask the chairman? We have a policy lunch at 12:30 and a leadership meeting at 12:15.

Mr. SASSER. Madam President, 12:15 or 12:30. The chairman would be most accommodating to the distinguished ranking member. We can do either one.

Mr. DOMENICI. Thank you. I think we can go to 12:15. I have to go to another meeting. Senator GRASSLEY might be able to stay 10 minutes or so. We will ask him. If not, we will ask to recess at 12:15.

Mr. GRASSLEY. Madam President, I yield myself such time as I might consume. I am thinking in terms of roughly 20 minutes.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I want to address the so-called $20 billion inflation problem. This deals with the outyears of the Department of Defense's future year defense plan [FYDP].

We have had a parade of witnesses before the Budget Committee in recent weeks, including Secretary of Defense Perry, and they all tell the same story. They tell us how inflation is a culprit. It is very difficult to predict what inflation is going to be, and, consequently, they cannot supply definite figures for the outyears for the future year defense plan.

I do not know why the Department of Defense cannot predict inflation for 5 years out and do it for budgetary purposes, because every other agency of the Federal Government must do that, and does do it. So I just do not buy the excuse that it is very difficult and impossible to predict for 5 years out.

We are just starting our analysis of the fiscal year 1995 future year defense plan. So I cannot make final judgments today about the problem's cause, and I cannot about its true size. However, I do have some preliminary conclusions based on available information.

First, the mere existence of a $20 billion future year defense plan budget disconnect constitutes a violation of section 221, title X of the United States Code. This law was passed by Congress in 1987. Under section 221, the Department of Defense must submit a future year defense plan to the Congress, and they must do it each and every year, and they must do it so that it is fully consistent with the President's budget.

The purpose of this law is simple. It forces the Department of Defense and the Secretary to make some very hard decisions to squeeze all of the programs into the President's budget. That means they would be forced to make tradeoffs, to make tradeoffs when it is very necessary to make tradeoffs, because decisions not made today mean spending lots of money and obligating lots of money down the road.

Of course, in the process of making the decisions, that means the Secretary of Defense must eliminate unaffordable programs. The question we must ask is: Does the fiscal year 1995 future year defense plan comply with that 1987 law?

I want to take a few moments to examine the facts as we know them.

This chart with the three lines of figures is the President's budget for Defense. The President's budget is the top line, totaling $1.2355 trillion for 5 years. This is what the President says the Department of Defense is allowed in fiscal years 1995 through 1999.

The second line shows the numbers in the fiscal year 1995, future years defense program at $1.2557 trillion.

The third line—the line that is the point of my remarks—shows the difference between the budget and the future years defense program: $20.2 billion.

DOD's future years defense program exceeds the President's allowance by $20.2 billion. The future years defense program is over budget, then, by that $20.2 billion. In other words, it is overprogrammed.

To hide the overprogramming and to make the books balance, as required by law, Pentagon bureaucrats inserted

negative funding wedges or plug figures. The use of such budget gimmicks is inconsistent with the spirit and intent of the 1987 law. The Department of Defense got caught with a $45 billion negative funding wedge in 1989. So Congress amended the law in 1989 to specifically outlaw such devices—devices like are being used here. The amendment allowed for management contingency accounts, like potential funding requirements, but only if such accounts are included in both the President's budget and in the future years defense program—meaning that these two lines should balance. Obviously, they do not.

Madam President, I ask unanimous consent to have printed in the RECORD sections from page 666 of the conference report on the fiscal year 1990 defense authorization bill of House report 101-331, because it explains the rule on negative funding wedges.

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

CONFERENCE REPORT ON AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1990 FOR MILITARY ACTIVITIES OF THE DEPARTMENT OF DEFENSE, FOR MILITARY CONSTRUCTION, AND FOR DEFENSE ACTIVITIES OF THE DEPARTMENT OF ENERGY, TO PRESCRIBE PERSONNEL STRENGTHS FOR SUCH FISCAL YEAR FOR THE ARMED FORCES, AND FOR OTHER PURPOSES

*Consistency in the budget presentations of the Department of Defense (sec. 1602)*

The House bill contained a provision (sec. 1202) that would amend the existing provision of law (10 U.S.C. 114 (f) and (g)) that requires the submission of the Five Year Defense Program to Congress by April 1 of each year. The House bill would eliminate the provision of law that allows inconsistencies between the President's budget and the Five Year Defense Program if such inconsistencies are explained in detail. Under the House bill, no inconsistencies would be permitted. The House bill would also change the date for submission of the Five Year Defense Program from April 1 to be at or about the time that the President's budget is submitted to Congress.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that provides that the use of management contingency accounts is not precluded, provided such accounts are included in both the President's budget and the Five Year Defense Program. The conferees understand that the Department of Defense may not be able to submit the Five Year Defense Program in support of a new budget request at precisely the same time as the President's budget following years when the Congress has failed to provide full year authorizations and appropriations in a timely fashion for the previous fiscal year.

Mr. GRASSLEY. Secretary Perry's prepared testimony before the Budget Committee on March 9 tells us why the funding wedge was inserted in the future years defense program.

Late last year, he testified, after the Bottom-Up Review was completed, that DOD discovered that the future years defense program exceeded the President's budget authority by a very substantial margin—much more substantial than this, in fact. More money was needed, is what he said. So the President weighed in in December on a major policy decision, as far as this funding wedge is concerned.

President Clinton decided to provide extra money for pay raises over the future years defense program period, and that was all he was going to do—money for pay raises, period, nothing else. In fact, he said "no" on extra money for inflation. In other words, the President was not going to give any more money to the Defense Department because they had what they thought was a potential inflation problem that they had to deal with. I quote from Secretary Perry's testimony to the Budget Committee: "The President opted not to budget for the multiyear inflation bill."

Since the President opted not to budget for the multiyear inflation bill, why are those costs then presented in the Department of Defense future years defense program?

In other words, why is this figure here? Why has Secretary Perry failed to make hard decisions, then, to bring his top line down, as required by law? Twenty-billion dollars is less than 2 percent of the $1.2 trillion future years defense program. A good business executive like Secretary Perry should be able to solve such a modest problem in a flash. I am baffled by his failure to do it.

Secretary Perry and others say it is no big deal. The problem is, as they would want you to think, all in the outyears. They tell us, "Do not worry." They tell us that we can fix it tomorrow. At least, that is what I hear them saying.

I see this as an attempt to disguise the significance of the outyears. At the Pentagon, the outyears are the whole enchilada, and I think Secretary Perry knows that.

You know how it works. The military buys complex weapons and equipment that can take years to build and, consequently, years to pay for. There are frequently multiple buys for the same piece of equipment. These can extend over 5 or 10 different budgets.

The budget must be hooked up to the outyears, and the outyears and the budget should be in sync. You should not have $20 billion of overprogramming.

The $1.02 billion of advance procurement money in the 1995 budget, for example, is a direct link to the outyears. When we approve that in this budget, we are merely making a downpayment, and obligating money for outyears. But when there is overprogramming in those outyears, like now, advance procurement could be a downpayment on a dead horse. Advance procurement dollars could be hooked up to programs that must be axed down the road, with a concomitant waste of taxpayers' dollars that has been spent before that time. In fact, this is how the really big money gets wasted. This is how the military does not get what it needs.

That brings me to the second major point. I think it may be misleading and inaccurate to characterize this $20 billion in the future years defense program/budget mismatch as strictly an inflation problem. That is what the Secretary of Defense says it is—an inflation problem.

The $20 billion inflation problem, I fear, is a smoke screen for a much bigger problem out there, a problem that could be $50 billion or $100 billion—a real blivet. A blivet, of course, is 5 pounds of manure in a four-pound sack. Like on the chart here, you cannot quite get it in there. You try to push that $20 billion in there, and you just cannot get it in. The Department's handling of this whole problem makes me very suspicious.

This sack is not big enough for that $20 billion.

The first sign of trouble came with Mr. Ted Warner's testimony before the House Armed Services Committee on February 4 of this year. He is the Assistant Secretary for Strategy and Resources. He testified that amounts allocated in the future year defense program would exceed the President's budget authority by $20 billion.

Next we discovered a gaping hole in the President's budget: more, new defense budget blanks.

I want to show you those blanks are right here.

Madam President, these are the blanks that I was referring to in the President's budget for the outyears of the defense budget, the future year defense program. No figures here for that.

This is also in table 5.1 of the Budget of the U.S. Government, fiscal year 1995, Historical Tables on page 69.

There is no breakdown here of the DOD budget by a major appropriation account for fiscal years 1996 through 1999. No data whatsoever for military personnel; for operations and maintenance; for procurement; for research, development, test and evaluation; for military construction, for family housing; for allowances; and for all others. Where is that data?

After the fuss over the missing budget data, the Department of Defense Comptroller sent the committee two tables. Those two tables lay bare the plan for concealing the future year defense program/budget mismatch. Their integrity rests on the plug figures that I referred to moments ago.

Mr. Perry's inability to resolve the so-called $20 billion inflation problem tells me that the inflation problem is hooked up to a much bigger problem. In other words, this $20 billion is nothing more than the tip of an iceberg.

Sources in the Pentagon confirm that. They say there is at least another $20 to $30 billion in overprogramming,

and maybe much more. So we are really looking at perhaps even as much as a $50 billion problem—minimum. The Congressional Budget Office says it is a $50 billion problem.

The last future year defense program given to Congress was back in February 1991. So for 1992 and 1993, no future year defense program. And that one that we received in 1991 gives us a clue about the size of the blivet I have spoken about.

It assumed $172 billion in savings from the proposed program terminations, management efficiencies like the defense management review, and base closures.

Were those savings realized? Do you think so? I doubt it, I doubt it very much.

If these savings did not happen, then we are dealing with really a megablivet.

Madam President, I leave my colleagues with this question: How did the Department of Defense move from $172 billion overprogramming in 1991 to just $20 billion of overprogramming in the outyears for the period of time now through 1999? Did efficiency do it? Did the Department of Defense really save that much money?

Secretary of Defense Perry has promised to make the future year defense program honest. I hope that Secretary Perry is right; that he does that. But I think we are off to a bad start. The new plug figures given to the committee point to more future year defense program monkey business down the road.

Madam President, there is one person in the Defense Department I think who knows how to handle that problem, and that is a budget analyst by the name of Chuck Spinney. At the Perry hearing, I recommended that he be invited to brief the committee on the results of his latest analysis on future year defense program/budget mismatch. Senator DOMENICI suggested that we have side-by-side testimony from both Mr. Spinney and Mr. Perry. I think that that is very definitely an excellent idea. Between the two of them, we should get to the bottom of this problem.

So on March 11, I wrote to the chairman of the committee to formally request that such a hearing be scheduled. I asked that the hearing take place after the General Accounting Office completes its analysis of the new future year defense program. The GAO analysis should be done in May, provided GAO gets access to the data and provided our Pentagon bureaucrats do not conduct some stonewalling operation.

With the GAO assessment in hand, we should have a much better understanding of what this problem is, so that we get real numbers and we take care of this overprogramming problem that we have at the Defense Department. So that the 1987 law, as amended in 1989—so that we cannot have and do not have this mismatch which we have now, contrary to law—so that that law is abided by.

I hope that we can get directives from this Congress respected by the Department of Defense. The $230.4 billion plug figures that are inserted in this budget at the last minute do not meet the intent of Congress in that law.

I yield the floor.

The PRESIDING OFFICER (Mr. BREAUX). The Senator yields the floor.

Who yields time?

Mr. SASSER. Mr. President, I yield such time to the Senator from Washington as she may consume.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Thank you, Mr. President.

I have to say, I am delighted to be back in the Chamber today talking about the President's budget. These are good days to be a member of the Budget Committee. I am not an economist, but I know it has been a good year for all of us. It has been good for America, good for America's kids, and good for my home State of Washington.

During the next few days, we are going to see a lot of charts and hear a lot of statistics. I could add to the debate by telling you how my region leads the country in consumer confidence; how unemployment has decreased across the State of Washington, despite the layoffs by the Boeing Co.; how the construction industry and businesses associated with international trade each employed an additional 12,000 people during 1993; and how housing starts in our Tri-Cities and in Spokane were among the top five in the country.

But I do not want to talk about baselines and outyears and caps. I want to talk today about something average Americans understand about budgets. I want to talk about courage and tough choices.

I have not been here long, but I have learned a great deal in this body. I have seen how easy it is to score political points while holding up the Nation's business. I have learned how some of our colleagues demand more and more cuts because it sounds good.

Do not misunderstand. I agree with them. As long as we have a deficit, we need to keep cutting spending. But the method that I have seen used in this body is a sham and everyone knows it.

I have watched as some Senators offer amendments which call for massive unspecified cuts—or vague, across-the-board reductions. And then I am astounded as they vote against every amendment which calls for a specific cut.

I saw all that happen in the Budget Committee last year and again last week. And I am sure we will see it on the floor again in the next few days.

But the people of this country will not be fooled. They are demanding honesty and courage in the budget process, and that is what they deserve. I would remind those who criticize the President's plan, it contained over 300 specific budget cuts and it eliminates more than 100 specific programs.

The President was not afraid to name the names of the programs he thought were wasteful. He showed courage and he made tough choices. He went to the White House and I came to the Senate at a time when it is better to cut than receive.

Mr. President, you and I and our friends here voted for a tough budget, with real cuts, and the plan is working. And this year we are going to trim more.

We have changed our priorities and given our children hope. Every child, no matter who he or she is, or where they come from, must have the opportunity to succeed. I know that as well as anyone.

I come from a low-income family of nine. And because of education and the kinds of opportunities found in this budget before us today, I stand here as a U.S. Senator.

I know Government cannot do it all. I know spending does not solve every problem. Throughout my life I have had to make tough decisions on what to spend, what to buy, and what to invest in. As a school board president, I have voted to close schools. As a mother with limited resources, I have told my kids no more often than yes when they asked me to buy them something. And as an appropriator and a member of the Budget Committee I have told my friends and my neighbors, the Federal Government cannot fund every project that comes before us.

But I believe the Federal Government can create opportunities. And there is no group in this Nation more deserving than our children, all of our children: Children who need help learning through Head Start; children who need to escape the violence of our inner cities; children living with AIDS and other debilitating diseases; children whose future is darkened by poverty; children who need nutritional assistance through the WIC program; children who go to bed and dream of a home, and a job, and a better life. And this budget recognizes all of those children.

Our colleagues talk on this floor a lot about violence. I have spoken personally with young violent offenders, and they tell me over and over again, adults do not care about them. They learned that lesson when they were very young.

We need to give those kids not only the skills they never learned, but also hope for the future. That is why I support this budget. It invests in our kids and it takes people into account.

We cannot assume that our work ended last year. We have to keep on

target. Otherwise we will go back to the days of out-of-control spending and mortgaging our children's future. We will abandon a generation of youth to more crime, more violence, unskilled jobs, and no health care.

It is time for us as a nation to send a message to children that they are our top priority. This budget sends that message.

I thank the chairman of the Budget Committee, Senator SASSER, for his work and diligence on this budget and I look forward to working with him toward its passage.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. Mr. President, I yield myself such time as I may consume.

Mr. President, I thank the distinguished Senator from Washington [Mrs. MURRAY], for her very perceptive statement here on the floor of the U.S. Senate today. I might say, the Senator from Washington [Mrs. MURRAY], has become one of the most valuable members of our Senate Budget Committee in a relatively short period of time. She has developed and demonstrates a solid grasp of budget issues. And she has the courage of her convictions.

She will stand and vote for specific budget cuts to make savings in the overall budget, and she is quite correct. She has analyzed this thing, I think, appropriately, when she says some of our colleagues come here and vote for large, nonspecific spending cuts that they know are going to fail. But when it comes time to vote for the specific budget cuts, then they wither like summer soldiers when the frost comes—they are nowhere to be found.

But the distinguished Senator from Washington is always there. She has the courage of her convictions. She has been a stalwart on the Senate Budget Committee. Speaking as the chairman, she has been a very substantial asset. I am very pleased she serves on our committee and she does an outstanding job—not just for herself, but for her constituents in the State of Washington, and I think for all Americans who are concerned about a fair and equitable distribution of the Federal budget, and who are concerned about trying to get these deficits under control.

Mr. President, I see no other Senators who wish to speak. I suggest the Senate recess for the various conferences.

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RECESS

The PRESIDING OFFICER. Without objection, and under the previous order, the Senate will stand in recess until the hour of 2:30 p.m.

Thereupon, at 12:16 p.m., the Senate recessed until 2:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mrs. FEINSTEIN).

NATIONAL PARK SERVICE CONCESSIONS POLICY REFORM ACT OF 1994

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to a vote on S. 208, to reform the policies of the National Park Service, and for other purposes.

Mr. JOHNSTON. Madam President, I wish to again commend Senator BUMPERS' for his years of hard work on this important legislation. As the subcommittee chairman, he has drafted this legislation, conducted the hearings, and negotiated the compromise that we are passing today. In addition, I would like to again compliment the Senator from Utah [Mr. BENNETT] who has worked very closely with Senator BUMPERS and the rest of us on the Energy Committee in bringing this bill together. He brought a fresh, objective and business-oriented view of the concessions issue to the table and without his assistance, our road would have been much rougher.

Madam President, I would also like to acknowledge the contribution of a number of staff members who have been involved in this legislation—particularly, David Brooks, Tom Williams, Diane Balamoti, and Jason Dilg of the Energy Committee staff; Rich Glick and Tracy Crowley of Senator BUMPERS staff; and Chip Yost and Jim Barker of Senator BENNETT's staff. I thank each of them for their help and hard work.

Mr. SIMPSON. Madam President, I rise to join my colleague, the senior Senator from Wyoming, MALCOLM WALLOP, in opposition to this bill.

I share my colleagues strong concerns about the provisions that force concessionaires to forfeit their private property rights.

That, in my view, is an unconstitutional taking of private property. I do not believe for an instant that the rather convoluted formula for depreciation and purchase of the private property is just compensation as that phrase is used in the constitution.

Just means fair and equitable.

There is nothing just in accelerating a depreciation schedule over 10 years for some improvements that range in the millions of dollars.

If the Senate passes this legislation, we will be directing the Department of Interior to do nothing less than confiscate the private property of concessionaires who have done nothing wrong. Indeed, the concessionaires currently doing business in Wyoming National Parks are doing a fine job and providing a needed—and much appreciated—service to the public.

I am at a loss to understand why this provision is being supported by the administration. It is a puzzling thing.

I can very easily understand why the Park Service wants to get its hands on the revenues from concessionaires. It does not take a rocket scientist to understand why the Park Service wants to keep that money, rather than turn it over to the Treasury. I hunch that they would like to keep it "off budget" also. That invites abuse and we should vote against this bill because of that provision alone.

The National Park Service enjoys a billion dollar yearly budget. They are constantly saying they "need more" funding, and this is an attractive mechanism for that. But in terms of services, it is the concessionaires that provide the food, the lodging, and the recreational opportunities for the vast majority of the public that visit our national parks.

It is the Park Service personnel who enforce the laws and they employ many good people who do the "heavy lifting" in maintaining the roads and the attractions.

We can not, however, say that the Park Service collects the entrance fees, because our experience in Wyoming is that often, those collection booths are abandoned.

We have heard our able colleague, Senator BURNS of Montana, speak eloquently on that issue last year.

Instead of ensuring that entrance fees are collected, the administration now seems to prefer spending its energy thinking up creative ways to request additional revenues from another group of taxpayers—concessionaires. Concessionaires pay income, State, and local taxes and they pay a great deal.

This legislation targets those concessionaires—the last remaining revenue generating activity in our parks—for eventual extinction. When the concessionaires are forced out, who will provide the needed public services and amenities?

Certainly not the Park Service—they have not even been able to collect entrance fees on a regular basis.

We are very fortunate in Wyoming to have some of the finest park supervisors in the country. Bob Barbee of Yellowstone Park is one of the most able men I have come to know. He does it all. I admire him greatly. They are all good people who work cooperatively with the fine concessionaires that we are fortunate to have in our Wyoming Parks.

I do not believe this policy originated at the local park level. We need only look about a mile west of this building to find the source of this ill-advised and unjust policy.

There is only a single provision of this bill that has merit. That is the provision which grants preferential renewal rights to the "small" concessionaires: outfitters.

Outfitters deserve deference in our policy—they are excellent stewards and provide services to the general public and often assist Park Service personnel in maintenance and upkeep activities. These small businesses are entitled to respect for their contributions in the management policy of the parks.

It is most unfortunate that the respect shown the small outfitters in this bill did not extend to the administration's policy for all concessionaires. It is unfortunate, and it is unjust. I oppose this legislation and I encourage my colleagues to oppose it also.

Mr. WALLOP. Madam President, my opposition to S. 208 is very simple. Enactment of this legislation will:

First, seriously undermine a very successful system under which the private sector has financed and provided quality services to the public at reasonable rates;

Second, place increases pressures on an already overextended National Park Service budget;

Third, result in totally unnecessary Federal expenditures at the expense of not only the National Park Service, but all agencies which must compete for funds from the Interior and Related Agencies Appropriation account;

Fourth, reduce Federal revenues; and

Fifth, threaten National Park System resources.

Under the present system the Concession Policy Act of 1965, the private sector—not the Federal Government—provides visitor services. When Congress passed the Concession Policy Act in 1965, we intended to discourage the turnover of concession operations.

As a matter of Federal policy, we decided that the private sector should be encouraged to provide visitor services. They would be regulated and would be allowed to make a reasonable profit. In exchange, they, not the Federal Government and the taxpayers, would be required to raise the capital to construct and maintain facilities to standards set by the Federal Government. Continuity of good services at reasonable rates to our park visitors was judged to be more important than the collection of receipts. That was a time when our national parks were considered to be public treasures for the benefit of the public. Concessions were never intended to be cash cows for the Government, but rather an efficient cost effective means of providing visitor services. The Government has full authority to adjust the franchise fee to ensure a fair return to the Federal Government under the 1965 act, that it has not, speaks to Park Service management, not statutory weakness.

The present system works because concessioners are provided a preferential right of renewal if they perform adequately, which ensures continuity of service, and a possessory right in all improvements, which they can use as collateral for loans. Title to all facilities resides in the United States. The concessioner is entitled to the sound value of the possessory interest if the contract is not renewed.

S. 208 eliminates all future possessory interests unless the Secretary determines that the elimination of possessory interest will prevent the submission of satisfactory proposals, and requires that, as a condition of contract renewal, present concessioners agree to have their current possessory interest reduced in value over a period of years until it is eliminated. I submit that the analysis is simple.

An existing concessioner with a $5 million possessory interest facing renewal can either have his interest reduced to nothing or he can take the money. A competitor who might otherwise have bid on the contract would be faced with paying the $5 million without its value as collateral, since it will be reduced for him as well. What is likely to happen is that no one will want the contract until the Federal Government pays off the existing concessioner.

A partial survey of outstanding possessory interests indicate that the total exceeds $1 billion with interests ranging from as little as $100,000 to over $150 million. CBO estimates that 90 percent of the contracts will come under the provisions of the new law within the next 5 years. If that is correct and my concerns are correct, the Interior and related agencies appropriation accounts are facing somewhere between $150 million and $200 million of additional unavoidable costs each year. That is almost 20 percent of the entire budget for the National Park Service just to buy out the existing possessory interests. Those costs will come out of the limited funding available for all the programs within that subcommittee, and all for no purpose.

The costs, however, do not end there. Without the possessory interest and the right of renewal, there will be neither the collateral nor the incentive for concessioners to maintain or expand visitor facilities. Those expenses will fall on the National Park Service and the Federal taxpayer. If any of you have spent the past 2 months driving the Clara Barton memorial parking lot and pothole obstacle avoidance parkway, you will have some idea of what the capability of the Park Service is to maintain what they already have.

The claims of increased revenues will not happen. Concessioners will still be limited in the charges they can exact from the visitor, and will have to recapture the additional expenditures through lower, not higher, franchise fees. The Federal deficit will simply increase. Competition will not be enhanced, since smaller operations will not have access to sufficient collateral. Larger corporations may well now be able to force out the small family businesses which have provided services in some of our parks for generations. That is not a policy we should be encouraging.

Secretary Babbitt already has authority to gain increased franchise fees, to negotiate the relinquishment of possessory interests, and the obligation to provide quality services at reasonable rates to the public. This legislation simply dismantles a system which works, threatens park resources, raids the Treasury, jeopardizes the park experience for the public, and all so we can say we reformed a carefully crafted partnership which has provided Americans a National Park System second to none in the world.

I ask unanimous consent that a letter from the Babbitt Brothers Reading Co.—the Secretary's family business—be inserted in the RECORD at this point. The Senate should find this opposition to the Secretary's support more than a little interesting.

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

BABBITT BROS. TRADING CO.,
*Flagstaff, AZ, March 11, 1994.*

Mr. ROGER G. KENNEDY,
*Director, National Park Service, U.S. Department of the Interior, Washington, DC.*

DEAR DIRECTOR KENNEDY: I enjoyed your speech to the National Parks Hospitality Association last week. The challenges you face of downsizing and streamlining are the same challenges that many businesses throughout the United States have had to face.

Babbitts is no different. Over the past five years, we have closed eight unprofitable retail locations and dramatically cut our corporate overhead. Over the past five years, we have dropped from 700 employees to 500 employees.

With one major exception, our approach to ensuring the survival of a one-hundred-five-year-old company is similar to your approach. In 1987 our company was carrying $20,500,000 in bank borrowings (a debt to equity ratio of 9:1). Our survival plan included an aggressive approach to cutting costs and reducing debt. In order to reduce our debt to a manageable level, we had to sell and lease back some of our operating properties.

The Park Service seems to want to acquire properties at the expense of further increasing the national debt. There is no question that amortizing possessory interest over a period of time will result in lower concession fees and lower revenues to the federal government.

I won't bore you with any further discussion of Senate Bill 208. I'm sure you understand all the pros and cons and the concerns of the concessionaires. Many of those concerns were discussed at the El Tovar Symposium last fall. I respectfully request you consider suggesting two changes to the bill:

(1) grandfathering existing possessory interest thereby honoring commitments made by the Park Service when improvements were made in the parks; and,

(2) extending standards lengths of contracts to 15 years. Fifteen year contracts would lessen the administrative burden on the Park Service and would go a long way in ensuring that future National Park improvements would be provided by concessionaires.

As long as I am writing, I would like to bring to our attention my concerns regarding the General Management Plan at the Grand Canyon. I have enclosed copies of a letter I sent to Bob Chandler and a copy of a letter from Steve Carothers, president of the consulting firm, SWCA, regarding the GMP. I believe my proposals are a reasonable compromise and accomplish the parks objectives with minimal environmental impact.

Babbitts has had a presence on the south rim of the Grand Canyon since 1905. Our love

and appreciation for the park is deeply rooted in the family and our employees. I am concerned about how our Board of Directors and shareholders may view the proposed legislative changes. That coupled with the uncertainty of future contract renewals and impacts from the GMP may result in our company "cashing out" of the business.

We may be just one of many smaller concessionaires leaving the parks.

I hope you will see fit to intercede in the legislative process.

Sincerely,

W. DAVID CHAMBERS,
*President & CEO.*

Mr. LAUTENBERG. Madam President, I am pleased to rise in support of S. 208, a compromise sponsored by Senators BUMPERS, JOHNSTON, and BENNETT. S. 208 reforms the Federal Government's system of contracting with private concessions in national parks by bringing the management of the concessions in line with today's standard business practices and by eliminating the sweetheart deals with concessioners that have plagued the taxpayer and our national parks for years.

This reform is long overdue. In the almost three decades since Congress enacted the Concessions Policy Act of 1965, management of the concessions in national parks has continued without reform. But reform is needed now.

Madam President, since 1965, national parks have witnessed a dramatic incerase in visitors and popularity. As a result, the business climate for concessioners has improved. Concession incentives drafted in 1965—like ensuring that the concessioners hold monopoly status, a preferential right of renewal and possessory interest, and nominal franchise fees—are not needed in the world of 1994. Today, such incentives are enjoyed by few businesses in a free market; indeed, no concessioner outside the national park system enjoys these deals.

S. 208 reforms the way Government does business with national park concessioners and assures a fairer return on the taxpayer's dollar. In 1992, concessioners grossed $650 million and paid only $17.2 million in fees. That is 2.6 percent of their gross revenues. Concessioners outside the NPS system pay an average of 5 to 50 percent of gross.

This is no way to do business. For too long the Federal Government has leased the use of its resources for rockbottom fees. Be it grazing fees, logging on public lands, or hard rock mining claims, this method of business has got to go.

Madam President, we all know that the Federal deficit is a major concern. We continue to subsidize industries in ways that simply make no sense. It is time to stop, and this bill is a good start.

It is estimated that the competition ensured in this bill may result in increased franchise fees amounting to $40 million more dollars to the Government. The bill will also establish a special account into which the fees will be put that will go back to the parks, instead of the General Treasury.

I have heard that this bill will create a number of dire scenarios—that the national parks will fall in disarray and it will be the park visitor who will truly bear the brunt of the failure. It is curious to me that some of those who advocate the virtues of competition for Government contracts are against this bill. I do not understand why competition in general is good while competition in the national parks will result in lower standards. I do not believe this, but it is indicative of the gridlock that prevents reform.

This bill, a compromise bill, will result in fairer management of the system, which will give the taxpayers a better bang for their buck while enhancing the national parks that are one of our country's greatest treasures.

I am proud to be a cosponsor of this legislation, and I urge my colleagues to join me in supporting S. 208.

The PRESIDING OFFICER. The question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUYE] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 90, nays 9, as follows:

[Rollcall Vote No. 63 Leg.]

YEAS—90

| | | |
|---|---|---|
| Akaka | Dorgan | Lugar |
| Baucus | Durenberger | Mack |
| Bennett | Exon | Mathews |
| Biden | Feingold | McCain |
| Bingaman | Feinstein | McConnell |
| Bond | Ford | Metzenbaum |
| Boren | Glenn | Mikulski |
| Boxer | Gorton | Mitchell |
| Bradley | Graham | Moseley-Braun |
| Breaux | Gramm | Moynihan |
| Brown | Grassley | Murray |
| Bryan | Gregg | Nickles |
| Bumpers | Harkin | Nunn |
| Burns | Hatch | Packwood |
| Byrd | Hatfield | Pell |
| Campbell | Heflin | Pressler |
| Chafee | Hutchison | Pryor |
| Coats | Jeffords | Reid |
| Cochran | Johnston | Riegle |
| Cohen | Kassebaum | Robb |
| Conrad | Kempthorne | Rockefeller |
| Coverdell | Kennedy | Roth |
| Craig | Kerrey | Sarbanes |
| D'Amato | Kerry | Sasser |
| Danforth | Kohl | Simon |
| Daschle | Lautenberg | Smith |
| DeConcini | Leahy | Specter |
| Dodd | Levin | Warner |
| Dole | Lieberman | Wellstone |
| Domenici | Lott | Wofford |

NAYS—9

| | | |
|---|---|---|
| Faircloth | Murkowski | Stevens |
| Helms | Shelby | Thurmond |
| Hollings | Simpson | Wallop |

NOT VOTING—1

Inouye

So the bill (S. 208), as amended, was passed, as follows:

S. 208

*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 "National Park Service Concessions Policy Reform Act of 1994".

**SEC. 2. FINDINGS AND POLICY.**

(a) FINDINGS.—In furtherance of the Act of August 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2-4), which directs the Secretary of the Interior to administer areas of the National Park System in accordance with the fundamental purpose of preserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress finds that the preservation and conservation of park resources and values requires that such public accommodations, facilities, and services as the Secretary determines are necessary and appropriate in accordance with this Act—

(1) should be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair these values; and

(2) should be limited to locations and designs consistent to the highest practicable degree with the preservation and conservation of park resources and values.

(b) POLICY.—It is the policy of the Congress that—

(1) development within a park shall be limited to those facilities and services that the Secretary determines are necessary and appropriate for public use and enjoyment of the park in which such facilities and services are located;

(2) development within a park should be consistent to the highest practicable degree with the preservation and conservation of the park's resources and values;

(3) such facilities and services should be provided by private persons, corporations, or other entities, except when no private interest is qualified and willing to provide such facilities and services;

(4) if the Secretary determines that development should be provided within a park, such development shall be designed, located, and operated in a manner that is consistent with the purposes for which such park was established;

(5) such facilities and services should be awarded to the person, corporation, or entity submitting the best proposal through a competitive selection process; and

(6) such facilities or services should be provided to the public at reasonable rates.

**SEC. 3. DEFINITIONS.**

As used in this Act, the term—

(1) "concessioner" means a person, corporation, or other entity to whom a concessions contract has been awarded;

(2) "concessions contract" means a contract, including permits, to provide facilities or services, or both, at a park;

(3) "facilities" means improvements to real property within parks used to provide accommodations, facilities, or services to park visitors;

(4) "park" means a unit of the National Park System;

(5) "proposal" means the complete proposal for a concessions contract offered by a potential or existing concessioner in response to the minimum requirements for the contract established by the Secretary; and

(6) "Secretary" means the Secretary of the Interior.

**SEC. 4. REPEAL OF CONCESSIONS POLICY ACT OF 1965.**

The Act of October 9, 1965, Public Law 89-249 (79 Stat. 969, 16 U.S.C. 20-20g), entitled "An Act relating to the establishment of

concession policies administered in the areas administered by the National Park Service and for other purposes", is hereby repealed. The repeal of such Act shall not affect the validity of any contract entered into under such Act, but the provisions of this Act shall apply to any such contract except to the extent such provisions are inconsistent with the express terms and conditions of the contract.

**SEC. 5. CONCESSIONS POLICY.**

Subject to the findings and policy stated in section 2 of this Act, and upon a determination by the Secretary that facilities or services are necessary and appropriate for the accommodation of visitors at a park, the Secretary shall, consistent with the provisions of this Act, laws relating generally to the administration and management of units of the National Park System, and the park's general management plan, concessions plan, or other applicable plans, authorize private persons, corporations, or other entities to provide and operate such facilities or services as the Secretary deems necessary and appropriate.

**SEC. 6. COMPETITIVE SELECTION PROCESS.**

(a) IN GENERAL.—(1) Except as provided in subsection (b), and consistent with the provisions of subsection (g), any concessions contract entered into pursuant to this Act shall be awarded to the person submitting the best proposal as determined by the Secretary, through a competitive selection process.

(2) Within 180 days after the date of enactment of this Act, the Secretary shall promulgate appropriate regulations establishing such process. The regulations shall include provisions for establishing a method or procedure for the resolution of disputes between the Secretary and a concessioner in those instances where the Secretary has been unable to meet conditions or requirements or provide such services, if any, as set forth in a prospectus pursuant to sections 6(c)(2) (D) and (E).

(b) TEMPORARY CONTRACT.—Notwithstanding the provisions of subsection (a), the Secretary may award a temporary concessions contract in order to avoid interruption of services to the public at a park except that the Secretary shall take all reasonable and appropriate steps to consider competing alternatives for such contract.

(c) PROSPECTUS.—(1) Prior to soliciting proposals for a concessions contract at a park, the Secretary shall publish a notice of availability for a prospectus soliciting proposals at least once in local or national newspapers or trade publications, as appropriate, and shall make such prospectus available upon request to all interested parties.

(2) The prospectus shall include, but need not be limited to, the following information:

(A) The minimum requirements for such contract, as set forth in subsection (d).

(B) The terms and conditions of the existing concessions contract awarded for such park, if any, including all fees and other forms of compensation provided to the United States by the concessioner.

(C) Other authorized facilities or services which may be provided in a proposal.

(D) Facilities and services to be provided by the Secretary to the concessioner, if any, including but not limited to, public access, utilities, and buildings.

(E) Minimum public services to be offered within a park by the Secretary, including but not limited to, interpretive programs, campsites, and visitor centers.

(F) Such other information related to the proposed concessions operation which is not privileged or otherwise exempt from disclosure under Federal law as the Secretary determines is necessary to allow for the submission of competitive proposals.

(d) MINIMUM PROPOSAL REQUIREMENTS.—(1) No proposal shall be considered which fails to meet the minimum requirements as determined by the Secretary. Such minimum requirements shall include, but need not be limited to, the minimum acceptable franchise fee, the duration of the contract, facilities, services, or capital investment required to be provided by the concessioner, and measures needed to ensure the protection and preservation of park resources.

(2) The Secretary may reject any proposal, notwithstanding the amount of franchise fee offered, if the Secretary determines that the person, corporation, or entity is not qualified, is likely to provide unsatisfactory service, or that the proposal is not responsive to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities or services to the public at reasonable rates.

(3) If all proposals submitted to the Secretary either fail to meet the minimum requirements or are rejected by the Secretary, the Secretary shall establish new minimum contract requirements and re-initiate the competitive selection process pursuant to this section.

(e) SELECTION OF BEST PROPOSAL.—(1) In selecting the best proposal, the Secretary shall consider the following principal factors:

(A) The responsiveness of the proposal to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(B) The experience and related background of the person, corporation, or entity submitting the proposal, including but not limited to, the past performance and expertise of such person, corporation, or entity in providing the same or similar facilities or services.

(C) The financial capability of the person, corporation, or entity submitting the proposal.

(D) The proposed franchise fee: *Provided*, That consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities or services to the public at reasonable rates.

(2) The Secretary may also consider such secondary factors as the Secretary deems appropriate.

(f) CONGRESSIONAL NOTIFICATION.—(1) The Secretary shall submit any proposed concessions contract with anticipated annual gross receipts in excess of $5,000,000 (indexed to 1993 constant dollars) or a duration of ten or more years to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives.

(2) The Secretary shall not ratify any such proposed contract until at least 60 days subsequent to the notification of both Committees.

(g) NO PREFERENTIAL RIGHT OF RENEWAL.—(1) Except as provided in paragraph (2), the Secretary shall not grant a preferential right to a concessioner to renew a concessions contract executed pursuant to this Act.

(2)(A) Notwithstanding the provisions of paragraph (1), the Secretary shall grant a preferential right of renewal to a concessioner—

(i) for a concessions contract which—

(I) primarily authorizes a concessioner to provide outfitting, guide, river running, or other similar services within a park; and

(II) does not grant the concessioner any interest in any structure, fixture, or improvement pursuant to section 11 of this Act; or

(III) the Secretary estimates will have annual gross revenues of no more than $500,000; and

(ii) where the Secretary determines that the concessioner has operated satisfactorily during the term of the previous contract; and

(iii) where the Secretary determines that the concessioner submits a responsive proposal for the new contract which satisfies the minimum requirements established by the Secretary.

(B) For the purposes of paragraph (2), the term "preferential right of renewal" means that the Secretary shall allow a concessioner satisfying the requirements of subparagraph (A) the opportunity to match the terms and conditions of any competing proposal which the Secretary determines to be the best offer.

(h) NO PREFERENTIAL RIGHT TO ADDITIONAL SERVICES.—The Secretary shall not grant a preferential right to a concessioner to provide new or additional services at a park.

**SEC. 7. FRANCHISE FEES.**

(a) IN GENERAL.—Franchise fees, however, stated, shall not be less than the minimum fee established by the Secretary for each contract. The minimum fee shall be determined in a manner that will provide the concessioner with a reasonable opportunity to realize a profit on the operation as a whole, commensurate with the capital invested and the obligations assumed.

(b) MULTIPLE CONTRACTS WITHIN A PARK.—If multiple concessions contracts are awarded to authorize concessioners to provide the same or similar outfitting, guide, river running, or other similar services at the same approximate location or resource within a specific park, the Secretary shall establish an identical franchise fee for all such contracts. Such fee shall reflect fair market value, as determined by the Secretary.

**SEC. 8. USE OF FRANCHISE FEES.**

(a) SPECIAL ACCOUNT.—Except as provided in subsection (b), all receipts collected pursuant to this Act shall be covered into a special account established in the Treasury of the United States. Amounts covered into such account in a fiscal year shall be available for expenditure, subject to appropriation, solely as follows:

(1) 50 percent shall be allocated among the units of the National Park System in the same proportion as franchise fees collected from a specific unit bears to the total amount covered into the account for each fiscal year, to be used for resource management and protection, maintenance activities, interpretation, and research.

(2) 50 percent shall be allocated among the units of the National Park System on the basis of need, in a manner to be determined by the Secretary, to be used for resource management and protection, maintenance activities, interpretation, and research.

(b) PARK IMPROVEMENT FUND.—(1) In lieu of collecting all or a portion of the franchise fees that would otherwise be collected pursuant to the concessions contract, the Secretary shall, where the Secretary determines it to be practicable, require a concessioner to establish a Park Improvement Fund (hereinafter in this section referred to as the "fund"), in which the concessioner shall deposit the franchise fees that would otherwise be required by the contract.

(2) The fund shall be maintained by the concessioner in an interest bearing account in a Federally-insured financial institution.

The concessioner shall maintain the fund separately from any other funds or accounts and shall not co-mingle the monies in the fund with any other monies. The Secretary may establish such other terms, conditions, or requirements as the Secretary determines to be necessary to ensure the financial integrity of such fund.

(3) Monies from the fund, including interest, shall be expended by the concessioner solely as directed by the Secretary for activities and projects within the park which are consistent with the park's general management plan, concessions plan, and other applicable plans, and which the Secretary determines will enhance public use, safety, and enjoyment of the park, including but not limited to projects which directly or indirectly support concession facilities or services required by the concessions contract. Projects paid for from the fund shall not include routine, operational maintenance of facilities. A concessioner shall not be allowed to make any advances or credits to the fund.

(4) A concessioner shall not be granted any interest in improvements made from fund expenditures, including any interest granted pursuant to section 11 of this Act.

(5) Nothing in this subsection shall affect the obligation of a concessioner to insure, maintain, and repair any structure, fixture, or improvement assigned to such concessioner and to insure that such structure, fixture, or improvement fully complies with applicable safety and health laws and regulations.

(6) The concessioner shall maintain proper records for all expenditures made from the fund. Such records shall include, but not be limited to invoices, bank statements, canceled checks, and such other information as the Secretary determines to be necessary.

(7) The concessioner shall annually submit to the Secretary a statement reflecting total activity in the fund for the preceding financial year. The statement shall reflect monthly deposits, expenditures by project, interest earned, and such other information as the Secretary requires.

(8) Upon the termination of a concessions contract, or upon the sale or transfer of such contract, any remaining balance in the fund shall be transferred by the concessioner to the successor concessioner, to be used solely as set forth in this subsection. In the event there is not a successor concessioner, the fund balance shall be deposited into the special account established in subsection (a).

**SEC. 9. DURATION OF CONTRACT.**

(a) MAXIMUM TERM.—A concessions contract entered into pursuant to this Act shall be awarded for a term not to exceed ten years: *Provided, however,* That the Secretary may award a contract for a term not to exceed twenty years if the Secretary determines that the contract terms and conditions necessitate a longer term.

(b) TEMPORARY CONTRACT.—A temporary concessions contract awarded on a non-competitive basis pursuant to section 6(b) of this Act shall be for a term not to exceed two years.

**SEC. 10. TRANSFER OF CONTRACT.**

(a) IN GENERAL.—(1) No concessions contract may be transferred, assigned, sold, or otherwise conveyed by a concessioner without prior written notification to, and approval of the Secretary.

(2) The Secretary shall not approve the transfer of a concessions contract to any individual, corporation or other entity if the Secretary determines that—

(A) such individual, corporation or entity is, or is likely to be, unable to completely satisfy all of the requirements, terms, and conditions of the contract; or

(B) such transfer, assignment, sale or conveyance is not consistent with the objectives of protecting and preserving park resources, and of providing necessary and appropriate facilities or services to the public at reasonable rates: *Provided,* That such approval shall not be unreasonably withheld.

(b) CONGRESSIONAL NOTIFICATION.—Within thirty days after receiving a proposal to transfer, assign, sell, or otherwise convey a concessions contract, the Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives of such proposal. Approval of such proposal, if granted by the Secretary, shall not take effect until sixty days after the date of notification of both Committees.

**SEC. 11. PROTECTION OF CONCESSIONER INVESTMENT.**

(a) EXISTING STRUCTURES.—(1) A concessioner who before the date of the enactment of this Act has acquired or constructed, or is required under an existing concessions contract to commence acquisition or construction of any structure, fixture, or improvement upon land owned by the United States within a park, pursuant to a concessions contract, shall have a possessory interest therein, to the extent provided by such contract.

(2) The provisions of this subsection shall not apply to a concessioner whose contract in effect on the date of enactment of this Act does not include recognition of a possessory interest.

"(3)(A) Except as provided in subparagraph (B), with respect to a concessions contract entered into on or after the date of enactment of this Act, the provisions of subsection (b) shall apply to any existing structure, fixture, or improvement as defined in paragraph (a)(1), except that the value of the possessory interest as of the termination date of the first contract expiring after the date of enactment of this Act shall be used as the basis for depreciation, in lieu of the actual original cost of such structure, fixture, or improvement.

"(B) If the Secretary determines during the competitive selection process that all proposals submitted either fail to meet the minimum requirements or are rejected (as provided in section 6), the Secretary may, solely with respect to a structure, fixture, or improvement covered under this paragraph, suspend the depreciation provisions of subsection (b)(1) for the duration of the contract: *Provided,* That the Secretary may suspend such depreciation provisions only if the Secretary determines that the establishment of other new minimum contract requirements is not likely to result in the submission of satisfactory proposals, and that the suspension of the depreciation provisions is likely to result in the submission of satisfactory proposals.

(b) NEW STRUCTURES.—(1) On or after the date of enactment of this Act, a concessioner who constructs or acquires a new, additional, or replacement structure, fixture, or improvement upon land owned by the United States within a park, pursuant to a concessions contract, shall have an interest in such structure, fixture, or improvement equivalent to the actual original cost of acquiring or constructing such structure, fixture, or improvement, less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles: *Provided,* That in no event shall the estimated useful life of such asset exceed the depreciation period used for such asset for Federal income tax purposes.

(2) In the event that the contract expires or is terminated prior to the recovery of such costs, the concessioner shall be entitled to receive from the United States or the successor concessioner payment equal to the value of the concessioner's interest in such structure, fixture, or improvement. A successor concessioner may not revalue the interest in such structure, fixture, or improvement, the method of depreciation, or the estimated useful life of the asset.

(3) Title to any such structure, fixture, or improvement shall be vested in the United States.

(c) INSURANCE, MAINTENANCE AND REPAIR.—Nothing in this section shall affect the obligation of a concessioner to insure, maintain, and repair any structure, fixture, or improvement assigned to such concessioner and to insure that such structure, fixture, or improvement fully complies with applicable safety and health laws and regulations.

**SEC. 12. RATES AND CHARGES TO PUBLIC.**

The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the bid specifications and contract, be judged primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration for length of season, seasonal variance, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

**SEC. 13. CONCESSIONER PERFORMANCE EVALUATION.**

(a) REGULATIONS.—Within one hundred and eighty days after the date of enactment of this Act, the Secretary shall publish, after an appropriate period for public comment, regulations establishing standards and criteria for evaluating the performance of concessions operating within parks.

(b) PERIODIC EVALUATION.—(1) The Secretary shall periodically conduct an evaluation of each concessioner operating under a concessions contract pursuant to this Act, as appropriate, to determine whether such concessioner has performed satisfactorily. In evaluating a concessioner's performance, the Secretary shall seek and consider applicable reports and comments from appropriate Federal, State, and local regulatory agencies, and shall seek and consider the applicable views of park visitors and concession customers. If the Secretary's performance evaluation results in an unsatisfactory rating of the concessioner's overall operation, the Secretary shall provide the concessioner with a list of the minimum requirements necessary for the operation to be rated satisfactory, and shall so notify the concessioner in writing.

(2) The Secretary may terminate a concessions contract if the concessioner fails to meet the minimum operational requirements identified by the Secretary within the time limitations established by the Secretary at the time notice of the unsatisfactory rating is provided to the concessioner.

(3) If the Secretary terminates a concessions contract pursuant to this section, the Secretary shall solicit proposals for a new contract consistent with the provisions of this Act.

(c) CONGRESSIONAL NOTIFICATION.—The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Rep-

resentatives of each unsatisfactory rating and of each concessions contract terminated pursuant to this section.

**SEC. 14. RECORDKEEPING REQUIREMENTS.**

(a) IN GENERAL.—Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concessioner's contract have been, and are being faithfully performed, and the Secretary or any of the Secretary's duly authorized representatives shall, for the purpose of audit and examination, have access to such records and to other books, documents and papers of the concessioner pertinent to the contract and all the terms and conditions thereof as the Secretary deems necessary.

(b) GENERAL ACCOUNTING OFFICE REVIEW.—The Comptroller General of the United States or any of his or her duly authorized representatives shall, until the expiration of five calendar years after the close of the business year for each concessioner, have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner related to the contracts or contracts involved.

**SEC. 15. EXEMPTION FROM CERTAIN LEASE REQUIREMENTS.**

The provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leasing of buildings and properties of the United States, shall not apply to contracts awarded by the Secretary pursuant to this Act.

**SEC. 16. NO EFFECT ON ANILCA PROVISIONS.**

Nothing in this Act shall be construed to amend, supersede, or otherwise affect any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

**SEC. 17. IMPLEMENTATION.**

Beginning on June 1, 1997 and bi-annually thereafter the Inspector General of the Department of the Interior shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the appropriate Committees of the House of Representatives on the implementation of this Act and the effect of such implementation on facilities operated pursuant to concession contracts and on visitor services. Each report shall—

(a) identify any concession contracts which have been renewed, renegotiated, terminated, or transferred during the year prior to the submission of the report and identify any significant changes in the terms of the new contract;

(b) state the amount of franchise fees the rates which would be charged for services, and the level of other services required to be provided by the concessioner in comparison to that required in the previous contract;

(c) assess the degree to which concession facilities are being maintained using the condition of such facilities on the date of enactment of this Act as a baseline;

(d) determine whether competition has been increased or decreased with respect to the awarding of each contract;

(e) set forth the amount of revenues received and financial obligations incurred or reduced by the Federal Government as a result of the comparison of the Act for the reporting period and in comparison with previous reporting periods and the baseline year of 1993, including the costs, if any, associated with the acquisition of possessory interests.

Mr. MITCHELL. Madam President, I move to reconsider the vote by which the bill, as amended, was passed.

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

The motion to lay on the table was agreed to.

## TO ELECT MARTHA S. POPE SECRETARY OF THE SENATE

Mr. MITCHELL. Madam President, I send a resolution to the desk and ask that it be stated and considered immediately.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 191) to elect as the Secretary of the Senate, Martha S. Pope.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Madam President, Members of the Senate, the distinguished Secretary of the Senate, Walter J. Stewart, who served this institution with great integrity, dedication, and loyalty for many decades, has informed me of his intention to leave the Senate employ effective April 14 of this year.

I know of no person, other than Members of the Senate themselves, who has been so devoted, so loyal, and so knowledgeable about and committed to the Senate as an institution than has been our friend, Joe Stewart.

He has been a superb administrator, he has been a friend, adviser, and he has been a source of institutional memory that all Senators have had the opportunity to call upon whenever necessary. There was no time of day or night, no day of the year, when he was not available, and he will be sorely missed.

I will at an appropriate time present to my colleagues in the majority a resolution of commendation for Joe Stewart, and I know that these few words are inadequate to convey the sense of gratitude and loss which we all feel.

The resolution before us calls for Martha S. Pope, who currently serves as Sergeant at Arms, to replace Mr. Stewart as Secretary of the Senate effective April 15, 1994. The resolution has been cleared by the Republican colleagues, and I ask that it be considered as passed.

The PRESIDING OFFICER. Without objection, the question is on agreeing to the resolution.

The resolution (S. Res. 191) was agreed to.

Mr. MITCHELL. Madam President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

The resolution is as follows:

S. RES. 191

*Resolved*, That Martha S. Pope be, and she is hereby, elected Secretary of the Senate, effective April 15, 1994.

## TO ELECT SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE, ROBERT LAURENT BENOIT

Mr. MITCHELL. Madam President, I send a resolution to the desk and ask that it be stated and immediately considered.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 192) to elect Sergeant at Arms and Doorkeeper of the Senate, Robert Laurent Benoit.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Madam President, as I previously stated, Martha Pope, who currently serves as Sergeant at Arms of the Senate, and who has served in that position with great distinction, will become Secretary of the Senate effective April 15. And under this resolution, Robert L. Benoit has been nominated to succeed her as Sergeant at Arms.

Mr. Benoit has been a longtime employee of the Senate, serving for the past 14 years as the field representative in charge of my offices in Maine, and prior to that, he served the Senate as an assistant to my predecessor, Senator Muskie. He is an extremely able, intelligent, and decisive person who will, I believe, serve effectively in the position of Sergeant at Arms, and will meet the high standards which Martha Pope has established as set for that office by her conduct.

I now, Madam President, urge adoption of the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 192) was agreed to.

Mr. MITCHELL. Madam President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

The resolution is as follows:

S. RES. 192

*Resolved*, That Robert Laurent Benoit be, and he is hereby elected Sergeant at Arms and Doorkeeper of the Senate, effective April 15, 1994.

Mr. MITCHELL. Madam President, I thank my colleagues.

I yield the floor.

Mr. HARKIN. Madam President, first of all, I want to join the distinguished majority leader with regard to the two individuals named. Joe Stewart has been an exemplary Secretary of the Senate for many years, and has always been most helpful and considerate to this Senator. I know I speak for a lot of other Senators in saying he is going to be sorely missed. He has been a great help in making sure that this institu-

tion runs in an orderly and effective manner. We are going to miss him.

I congratulate Mr. Benoit on his elevation to the position of Sergeant at Arms and wish him well.

## CONGRESSIONAL BUDGET CONCURRENT RESOLUTION

The Senate continued with the consideration of the concurrent resolution.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER. I yield to the distinguished Senator from Iowa such time as he may consume.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Madam President, I will shortly offer an amendment on behalf of myself, Senators MURRAY, ROCKEFELLER, WOFFORD, DASCHLE, and FEINGOLD.

First of all, I want to congratulate the distinguished Senator from Tennessee for bringing a tough budget onto the floor. It is tough. But, overall, it is fair. Obviously, each of us could design one differently in regard to how we feel. But it has been a very tough assignment for the Senator from Tennessee.

He has done a superb job in putting it altogether and bringing a budget here that continues to cut the deficit and bring the deficit down.

The Senator from Tennessee deserves all of our thanks and our praise for making sure that we cut the deficit and bring the deficit down. I want to compliment him on that and recognize his efforts in continuing this effort to bring our budget deficit down.

Mr. SASSER. Madam President, I thank my friend from Iowa for his very kind comments. I would ask my friend from Iowa if he would be good enough to add me as a cosponsor of his amendment?

Mr. HARKIN. I will be honored to have the distinguished chairman as a cosponsor of this amendment and will so add his name.

Madam President, my amendment will transfer the proposed $513 million increase for Star Wars to a critical public safety program, the Edward Byrne Memorial State and Local Law Enforcement Assistance Program and again to cut more wasteful spending and reduce the deficit further.

If you were to ask a group of average Americans about their concerns for this country and what is uppermost in their minds, two words would be heard again and again. One is "crime" and the other is "deficit."

Madam President, we must take action to address these issues. I am proud to have supported the two most significant pieces of legislation addressing them in many years. First, the President's Budget Reconciliation Act, which has spurred the recent improvement in the economy and is bringing our deficit down day by day and week by week. I also supported the Senate crime bill, which addresses crime on a broad front.

Unfortunately, Madam President, the budget resolution before us would eliminate a vital formula grant program that has helped hundreds of communities nationwide to fight crime and drugs. The Drug Control and System Improvement Grant Program, which is the formula grant component of the Edward Byrne programs, is the primary source of Federal financial assistance for State and local drug law enforcement efforts. This year, some $358 million in block grants were distributed to State and local law enforcement agencies through this formula grant program.

On Monday, I announced the award of some $3.8 million in Byrne grant funds for my State of Iowa. But under the budget report, future funds under this program would be entirely eliminated. The reason this formula grant program is so important is that these funds are getting down to our local departments and really making a difference. Just last week, the Appanoose County sheriff in Iowa shut down one of the largest businesses in the county, an indoor marijuana-producing operation producing an estimated $15 million in street value of drugs was uncovered.

In Decatur County, a methamphetamine laboratory was recently shut down. Some of these drug dealers are coming in from big cities and other places in the country to rural areas, drawn to the open spaces where the nearest neighbor could be a one-half mile or more away.

Our State law enforcement agencies have reacted to this threat. In 1987, we had only two drug task forces in the State. Today, there are 23 drug task forces, and 58 of Iowa's 99 counties participate in one or more of the drug task forces. Many of these agencies are recipients of Federal funds through the Byrne Federal Formula Program.

Without the formula grant funding, many valuable antidrug efforts would be eliminated in my State and in many other States. Just last weekend, Madam President, I met on Saturday afternoon with 14 of Iowa's most prominent law enforcement officials. They told me what these Edward Byrne funds have meant to law enforcement efforts in Iowa.

For example, the Polk County sheriff's office receives about $200,000 per year from this program to fund its drug task force. Well, how has that money paid off? Well, Sheriff Bob Rice, an outstanding sheriff of Polk County, said that in the last 3 years, the task force has arrested over 500 persons, filed nearly 1,000 criminal charges, and seized over $2.5 million in assets.

Both Sheriff Rice and Police Chief Bill Moulder of the Des Moines police force pointed out to me how effective the Byrne funds were. There is a State match of 25 percent. Once the formula grant goes out, the State and local government has to match it by 25 percent. But as both Chief Moulder and Sheriff Rice told me, the Byrne money actually doubles in size in their areas. They have been able to use it on their drug task forces, which seize tainted assets, which they then turn around and sell. Really, it has afforded them the ability to double the amount of money that the Byrne formula grant would otherwise produce. So this program has had a major impact in Polk County, the county of the state capital, Des Moines. Without these funds, it would be very difficult to operate this program. In fact, Sheriff Rice told me that if the Byrne formula grant money was done away with, they would lose five drug enforcement officers this year and they would not be able to continue the type of programs that they have had.

(Mrs. BOXER assumed the chair.)

Mr. HARKIN. So, Madam President, restoring the Byrne funds is a top priority of law enforcement groups, who know the impact this program has had on crime and drugs—but not only just in arrests and convictions and seizures of assets; the Byrne money has also been used for prevention.

We all know how effective the DARE Program is in local law enforcement in our areas, because we know local law enforcement officers are part of the DARE Program. They go into our schools and work with high school students. By all accounts, I think the DARE Program has been very effective throughout this country.

Sheriff Bill Davis of Calhoun County, IA, who has jurisdiction over these DARE Programs in Iowa, told me on Saturday at this meeting how necessary the Byrne money is for the DARE Program. They have 35 local projects in Iowa. They are using this money, not just to arrest, but to go into high schools and use it very effectively for preventive measures. I was told that, overall, about 60 percent of the Byrne Program money goes to the uniformed police officers; about 40 percent goes to local jurisdictions, local agencies, for prevention, for corrections, and also for prosecutions.

Every one of the law enforcement officers I talked to on Saturday said that what the Byrne money allows is for them to be proactive, rather than just to react to drug crimes. It allows them to actually go out in a proactive manner, both in prevention and in sting operations, and in uncovering laboratories and things like that for methamphetamines. It allows them to act proactively.

I mentioned prosecution. In Iowa, we have nine prosecutors that are solely dedicated to the drug task enforcement project in Iowa. These nine prosecutors are funded out of the Byrne formula grant money that comes to Iowa. The

attorney general's office in Iowa said these nine prosecutors would be out in July if the funding was cut.

So, again, whether it is for the uniformed officers and police forces, whether it is for prevention in the DARE Programs, or whether it is for prosecutions, the Byrne formula grant money has been the underpinning of our efforts in drug enforcement in our country.

Almost all of the forces, police forces and others, in this country support this program. The National Association of Police Organizations and the National Sheriffs Association have both written to me supporting continuation of this program. The bipartisan leadership of the Senate Judiciary Committee also recognizes its importance. In the report of the Budget Committee on this bill, Senators BIDEN, THURMOND, SIMPSON and BROWN, all of the Judiciary Committee, express their support for the Byrne Formula Grant Program.

At the same time, Madam President, we are asked to cut the vital Byrne Program, the budget resolution incredibly provides an 18.7 percent increase in star wars. That is right. You may have thought star wars was dead and gone, but it is still around. Quite frankly, it amazes me that we are trying to put an 18-percent increase into star wars again this year. We do not call it that anymore; we call it BMD, ballistic missile defense. More than half of that BMD budget now goes to theater missile defenses. That is the defense against the real threat of the shorter-range missiles like the Scud missiles. But over $1.2 billion of the BMD budget still goes for the old star wars pipe dream: stopping a sudden long-range nuclear strike by the Soviet Union, or since that does not exist my longer, by whoever else might be out there.

In fact, this national BMD account has been increased in the fiscal 1995 budget request from $1.1 billion to $1.21 billion. I believe we ought to be putting some money into theater ballistic missile defenses for the short-range missiles. That is where we ought to be concentrating. But this old pipe dream of orbiting laboratories and laser beams and particle beams and x-ray lasers, and all these fancy things that are going to shoot down intercontinental ballistic missiles is a relic of the past. This program not only funds that, but it increases it from last year.

How can we justify funding for a missile shield against a nuclear attack by the Soviet Union, which does not exist any longer, when our people in this country are facing a very real crime threat on our streets every night, every week, every month of the year? Where are our priorities?

My amendment is actually very modest. It will cut star wars back to this year's level of $2.74 billion. In my judgment, I think we ought to cut it deeper, but we made a modest cut. Maybe we can reduce funding later on in the year. My amendment still leaves $2.74 billion for ballistic missile defense. The Pentagon can still spend the $2 billion it has requested for fiscal 1995 for theater missile defenses.

Again, I want to point out that my amendment will in no way cut into the Pentagon's request for theater missile defense programs. The Pentagon can take it out of the long-range missile defense program.

So what this would do is amount to about a $405 million increase for theater missile defense over last year, about a 25-percent increase. I wanted to make it clear that this amendment does not cut the theater missile defense programs. My amendment would transfer these funds from the old star wars kind of program to restore the discretionary portion of the Byrne Program to its fiscal 1994 level, with the remainder going to reduce spending.

So, Madam President, my amendment transfers $513 million out of star wars; of that, $358 million goes to the Byrne formula grant program and about $155 million goes for deficit reduction.

A few weeks ago, Madam President, many Members of this body, including myself, voted for proposed amendments to the Constitution to require a balanced budget. But the hard choices needed are choices like this. How do we want to spend the money we are going to spend next year? How do we want to set up our budget? Well, I know which one I think will contribute more to our Nation's long-term security.

By transferring these funds, we send a signal that we have our priorities straight.

I call my amendment star wars to street wars. We do not have star wars. We do not even see anywhere on the horizon that we are going to have this kind of long range ballistic missile attack coming in on the United States.

But I can tell you that tonight in Washington, DC, and in New York, and in our major cities and many of our smaller communities, people will be killed, drug transactions will take place, and young people will get hooked on drugs for the first time. This will happen tonight and it will happen tomorrow night and it will happen every night this week. That is the real threat to this country. And the Byrne formula grant program is a very effective part of dealing with that real threat to this country.

So, with this amendment, Star Wars to Street Wars, let us make our choices. What are our priorities?

Again, I want to point out that this amendment does not bind the appropriations process, but it sends a clear message of the intent of this body that I believe will have a real impact on final appropriations for this program.

If you want money to go into the Byrne formula grant program to fight crime and to fight drugs, this is a chance to say so right here. Otherwise, it is not going to happen; the money is going to go into star wars.

It is clear to me that the problem of drugs and the deficit far outweighs the need for increased funding for star wars. I hope that my colleagues will join me in supporting this amendment.

Madam President, I ask unanimous consent to also add the present occupant of the chair, Senator BOXER, as a cosponsor of the amendment.

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

Mr. HARKIN. Madam President, I ask unanimous consent that the time I used in my statement in which I explained my amendment be charged against my time on the amendment.

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

AMENDMENT NO. 1558

Mr. HARKIN. Madam President, I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:.

The Senator from Iowa [Mr. HARKIN], for himself and Mrs. MURRAY, Mr. ROCKEFELLER, Mr. WOFFORD, Mr. DASCHLE, Mr. FEINGOLD, Mr. SASSER, and Mrs. BOXER, proposes an amendment numbered 1558.

Mr. HARKIN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 5, line 1, decrease the amount by $155,000,000.

On page 5, line 11, decrease the amount by $155,000,000.

On page 5, line 22, decrease the amount by $158,000,000.

On page 5, line 23, decrease the amount by $59,000,000.

On page 5, line 24, increase the amount by $69,000,000.

On page 5, line 25, increase the amount by $8,000,000.

On page 6, line 1, decrease the amount by $10,000,000.

On page 6, line 7, decrease the amount by $158,000,000.

On page 6, line 8, decrease the amount by $59,000,000.

On page 6, line 9, increase the amount by $69,000,000.

On page 6, line 10, increase the amount by $8,000,000.

On page 6, line 11, decrease the amount by $10,000,000.

On page 6, line 17, decrease the amount by $158,000,000.

On page 6, line 18, decrease the amount by $59,000,000.

On page 6, line 19, increase the amount by $69,000,000.

On page 6, line 20, increase the amount by $8,000,000.

On page 6, line 21, decrease the amount by $10,000,000.

On page 7, line 1, decrease the amount by $158,000,000.

On page 7, line 2, decrease the amount by $59,000,000.

On page 7, line 3, increase the amount by $69,000,000.

On page 7, line 4, increase the amount by $8,000,000.

On page 7, line 5, decrease the amount by $10,000,000.

On page 7, line 8, decrease the amount by $158,000,000.

On page 7, line 9, decrease the amount by $217,000,000.

On page 7, line 10, decrease the amount by $148,000,000.

On page 7, line 11, decrease the amount by $140,000,000.

On page 7, line 12, decrease the amount by $150,000,000.

On page 8, line 7, decrease the amount by $158,000,000.

On page 8, line 8, decrease the amount by $59,000,000.

On page 8, line 9, increase the amount by $69,000,000.

On page 8, line 10, increase the amount by $8,000,000.

On page 8, line 11, decrease the amount by $10,000,000.

On page 10, line 3, decrease the amount by $513,000,000.

On page 10, line 4, decrease the amount by $236,000,000.

On page 10, line 11, decrease the amount by $195,000,000.

On page 10, line 18, decrease the amount by $56,000,000.

On page 10, line 25, decrease the amount by $10,000,000.

On page 11, line 7, decrease the amount by $10,000,000.

On page 35, line 8, increase the amount by $358,000,000.

On page 35, line 9, increase the amount by $78,000,000.

On page 35, line 16, increase the amount by $136,000,000.

On page 35, line 23, increase the amount by $125,000,000.

On page 36, line 6, increase the amount by $18,000,000.

Mr. HARKIN. I yield the floor.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. I thank the Chair.

Madam President, I rise this afternoon to support the amendment offered by the distinguished Senator from Iowa. With this amendment, Senator HARKIN, I believe, wisely directs resources toward the chronically underfunded domestic programs and away from a single, consistently overfunded military program.

What the Harkin amendment seeks to do, as he has explained, is increase funding for Federal grants to State and local governments for community policing and drug patrols, while reducing the planned funding increases for the ballistic missile defense programs.

The Senator from Iowa, I am sure, has been struck by the fact that we no longer call it star wars. They have changed the name now. It is no longer star wars or the strategic defense initiative. It is now the Ballistic Missile Defense Program.

But Senator HARKIN's amendment, unlike many of those we consider in this body, offers specific program cuts to pay for his proposed increases. I commend the Senator for taking that approach. It is always very easy to come up with a nonspecific spending reduction to pay for an add-on, but the Senator is taking the responsible approach, I think, in stating specifically what he would reduce to pay for the amendment that he is offering, therefore, making his amendment deficit neutral.

This country has already spent over $32 billion on ballistic missile defense research. I commend the administration for its efforts in scaling back the proposal that it inherited from the Bush administration. But the administration still plans to spend an additional $18 billion over the next 5 years for ballistic missile defense.

For 1995, the President's budget request includes some $3.3 billion for ballistic missile defense activities, an increase of $800 million over last year's level, increasing spending on ballistic missiles defense activities by $500 million over last year's level.

In testimony before the Budget Committee, the Department of Defense indicated that this increase of nearly 20 percent—when we are cutting 300 domestic discretionary programs—this increase of 20 percent makes ballistic missile defense one of the fastest growing programs in the Pentagon. Based on my knowledge of the President's request, this kind of increase would make it one of the fastest growing programs in the entire Federal budget. We hear a lot about the growth in entitlements, but this Ballistic Missile Defense Program is growing faster than any of the entitlement programs on which so much attention is focused.

Most of this half-billion-dollar increase is earmarked for theater missile defense programs. Nobody has any theater missiles that can strike the United States. These theater missile defense programs are of much greater benefit to our allies than they are to the United States. In fact, of the $18 billion the administration plans to spend on ballistic missile defense in the 5-year period from 1995 to 1999, over one-half of this total is intended for the theater missile defense programs.

The truth is that our allies, many of them, live daily under the threat of an attack by shorter-range theater missiles, and many more could come within range in the near future. But despite this immediate and direct threat, our allies are doing precious little about theater missile defense. And why should they? Let Uncle Sugar finance all the research and development on these theater missile defense systems.

If I were a German citizen or a German political leader, I would say why should I endanger any of my domestic programs? Why should I endanger the health programs to the German citizens? Why should I undermine the unemployment compensation system to the French citizens? Why should I take away from infrastructure development for Belgian citizens to develop ballistic missile defenses? There is no need to do that, let the Government of the United States pay for it. Let them cut the programs for their citizens to pay for this ballistic missile defense program that will largely go to defending us.

I do not blame them for doing that. I think that is smart on their part. I do not think it is very wise of us, however, to continue to shoulder the burden of doing this to the tune of raising our expenditures up to $3.3 billion—$500 million over last year.

This amendment offered by our friend from Iowa, which I am proud to cosponsor, is not going to damage the U.S. ballistic missile defense effort. The funding for ballistic missile defense would still total about $2.8 billion, and that is more than all our allies combined, even though, as I said earlier, their countries are at greater risk of ballistic missile attack. This would preserve, even with the Harkin spending reduction for ballistic missile defense, a very robust ballistic missile defense program. And the Harkin amendment would allow our Government to devote additional resources to address the problems encountered by millions of Americans each and every day: crime and drugs.

If you went down the streets of the major cities in this country, or if you went down the main streets of the small towns and municipalities in this country, and you asked any citizen you came in contact with, "What do you think is the greatest threat, a ballistic missile attack or being mugged by a criminal on the street?" We all know the answer to that. If you asked them what is the greatest threat—being hit by a missile, is that the greatest threat to our society? Or is it drugs and what they are doing to our young people? Without exception, I think they will tell you uniformly—not just 98 percent—100 percent would say a much greater threat to our safety and to our country is criminality, criminal conduct, drugs, the whole host, the whole constellation of antisocial conduct that surrounds drugs—that is a much greater threat to our society and to our country than ballistic missiles.

So I commend our friend from Iowa. I think he is leading an effort here to adjust our fiscal priorities. He is doing it without increasing the Federal budget deficit. What he is saying is yes, we are going to maintain a robust ballistic missile defense program, but we are not going to inflate that program to the point we are robbing other very important and very crucial domestic priorities such as police work, and doing something about the drugs in this country.

So I commend the Senator and I urge my colleagues to support the Harkin amendment.

Madam President, I ask unanimous consent that the time I used speaking in favor of the Harkin amendment be

charged against the proponents of the amendment.

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

The Senator from Iowa.

Mr. HARKIN. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. WOFFORD. Madam President, I rise to add my name as a cosponsor to Senator HARKIN's amendment. The Edward Byrne Memorial State and Local Law Enforcement Assistance Program has proven an essential element in Pennsylvania's fight against crime and drugs.

In Pennsylvania, the Byrne Program provides total support for the Commonwealth's Drug Control and System Improvement [DCSI] Program. DCSI has supported many important and effective law enforcement projects across the State including: local drug enforcement and prevention task forces, crime victim's service programs, alternative sentencing programs such as bootcamps, child abuse prosecution task forces, and other community-based crime prevention programs. In addition, the DCSI is currently funding projects statewide related to improving criminal history records information which are essential to fulfilling the background check requirements of the Brady law.

I have received numerous letters from legislators and criminal justice officials in Pennsylvania stressing the importance of maintaining funding of the Byrne Program. Police Chief Paul L. Wood of the borough of Wilkinsburg captured that sentiment in his letter from which I quote:

> Wilkinsburg desperately needs the help offered in [the Byrne Grant Program]. We are a distressed community and do not have the money to increase our staff, to operate local drug task forces, and to fight drug related activity. The last week in February, our officers confiscated over $4,000 worth of crack cocaine and a large amount of money from juveniles. Wilkinsburg has serious problems and we need the services this [Program] provides.

Quite simply, the Byrne Program works for Pennsylvania and works for the Nation. At a time when we are searching for successes in fighting crime and drugs, when we are exploring ways to best deploy our limited crime-fighting resources, we cannot do so at the expense of those programs that are proven successes.

Madam President, now is the time that we need to forge a new definition of our national security, one that looks to guaranteeing our citizens security in their towns, in their neighborhoods and in their homes. With this amendment Senator HARKIN has taken an important step in that direction and I am proud to be a cosponsor.

Madam President, I ask unanimous consent to insert in the RECORD letters that I have received from Pennsylvanians supporting continued funding for the Byrne Program.

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

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF YORK,
*York, PA, March 9, 1994.*

Hon. HARRIS L. WOFFORD, Jr.,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR WOFFORD: I recently learned of the President's recommendation to terminate the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program in the FY 1995 budget. This program is the mainstay of Pennsylvania's Drug Control and System Improvement Program which program has provided me with the capability to establish the York County Drug Task Force and a special child abuse prosecution unit. The impact of these programs has been unprecedented in York County.

YORK COUNTY DRUG TASK FORCE

The York County Drug Task Force is comprised of county, state, federal, and local law enforcement officers. The purpose of the task force is twofold: interdiction and education/demand reduction. Prior to its inception, coordination of investigations across jurisdictional lines was virtually non-existent. Since the establishment of the York County Drug Task Force, there has been a 152% increase in narcotics cases which are prosecuted by my office. The funds received by York County from the Byrne Grant have provided for the overtime pay of police officers assigned to the drug task force and the necessary equipment required therefor. The presence of our drug task force has facilitated the cooperation and exchange of information among all levels of law enforcement in this county. I cannot imagine returning to pre-task force methods of drug law enforcement.

In the area of education, a portion of the funds we receive is employed to put an officer into every 5th and 6th grade classroom in the county for a series of three classes. These classes focus on peer pressure, drug education, and self-awareness. This county has noticed a decrease in the number of juveniles being charged with possession of narcotics since the introduction of demand reduction education.

The number of law enforcement officers is not the only available weapon in combatting the escalating crime epidemic facing our nation. While additional officers can always be used, the task force concept is a force multiplier—one that we can ill afford to lose in the war against drugs.

YORK COUNTY CHILD ABUSE PROSECUTION UNIT

Unlike most other crimes, the investigation and prosecution of child abuse involves people and agencies other than law enforcement. Successful resolution of cases, therefore, requires coordination during the investigation among all those involved—the prosecutor, police, child protective services, the medical community, and mental health therapists.

The York County Child Abuse Unit was initiated in 1990 and consisted of a Child Abuse Prosecutor and a Unit Coordinator. Through monies from Pennsylvania's Drug Control and System Improvement Program, the unit was able to add an Investigator and a Paralegal in 1992. The unit was created to serve the special needs of child victims. It is designed to assist the child victim as his or her case proceeds through the criminal justice system.

In York County, we maintain a conviction rate of 96 percent with many of these cases being resolved with guilty pleas, a direct result of perpetrator confessions to our well-trained investigators. The success of our unit would not have been possible without money from the Drug Control and Systems Improvement Program.

I urge you to oppose the President's recommendation to terminate the Edward Byrne Memorial as the impact to our Child Abuse Unit as well as newly established units across Pennsylvania would suffer as would our abused children.

Sincerely yours,

H. STANLEY REBERT,
*District Attorney.*

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HOUSE OF REPRESENTATIVES,
COMMONWEALTH OF PENNSYLVANIA,
*Harrisburg, PA, March 7, 1994.*

Re FY 1995 Budget/Byrne formula grants.

Hon. HARRIS L. WOFFORD, Jr.,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR WOFFORD: As a member of the Pennsylvania Commission on Crime and Delinquency, I was recently advised that the President's budget recommendations for FY 1995 include a recommendation to terminate the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program. That program totally supports Pennsylvania's Drug Control and System Improvement (DCSI) Program. In 1994, Pennsylvania received $15,216,000 from the Byrne Formula Grants.

Over the past year, I have had the opportunity to review hundreds of proposals that depend upon DCSI funding throughout Pennsylvania. In addition, I have been fortunate to personally observe the benefits of these programs. I know the President wants to put 100,000 more police officers on the streets, but at what cost to existing programs?

Numerous state and local agencies have had the opportunity to experiment and be innovative in producing long-lasting criminal justice solutions. DCSI grants have funded a wide variety of projects, a few of which include the following:

Criminal Justice Training.
Local Drug Task Force Operations.
Combatting of Drug Gang Activities.
Motivational Boot Camps.
Intermediate Punishment.
Treatment Alternatives to Street Crime (TASC).
Juvenile/Organized Crime Drug Traffickers.
Dangerous Drug Offender Unit.
Community Policing.
School-Based Probation.

It is my opinion that these programs will do far more good than spreading 100,000 police officers around the country. I believe it is essential for Congress to preserve the present mechanism for delivery of federal funds to the state. I urge you to examine the impact on these programs closely when the budget comes up for consideration.

If you need any additional information, do not hesitate to contact me.

Sincerely yours,

ALBERT H. MASLAND.

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THE CITY OF HARRISBURG,
BUREAU OF POLICE,
*Harrisburg, PA, February 28, 1994.*

Hon. HARRIS L. WOFFORD, Jr.,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR WOFFORD: Allow me to bring to your attention a concern which has

been raised within my organization and within law enforcement agencies throughout the Commonwealth.

President Clinton's budget recommendation for FY 1995 includes a recommendation to terminate the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program (DCSI).

As Chief of Police for a mid-sized municipal agency, I can verify that the DCSI Program provides police administrators with the fiscal means to develop and test various innovative approaches to preventing and controlling crime.

Recently, this Bureau submitted a grant application for the Neighborhood Dispute Settlement of Dauphin County. We intend to use the NDS to mediate disputes between neighbors rather than having the district officer issue criminal complaints and spend needless time in court. Through the use of mediation services it is likely serious crime between neighbors can and will be prevented and an added benefit will be the freeing up of officers to address the more serious crimes in our community.

This serves to illustrate only one example of how the DCSI Program can support and assist in developing these innovative approaches to addressing crime on a local level.

It is certainly my belief that state and municipal governments are in the best position to develop and evaluate programs to be used at the local level.

Congress needs to support this mechanism for the delivery of federal crime control funds to this level of government if we as municipal agencies are to continue to be innovative in our approach to addressing the many issues of crime in our society.

Your active support in this very important matter will be appreciated.

Sincerely,

RICHARD S. SHAFFER,
*Chief of Police.*

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COMMONWEALTH OF PENNSYLVANIA,
THE PENNSYLVANIA COMMISSION ON SENTENCING,
*State College, PA, February 28, 1994.*

Hon. HARRIS L. WOFFORD, Jr.,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR WOFFORD: I am writing to express my opposition to a recommendation that the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program be terminated. This program totally supports Pennsylvania's Drug Control and System Improvement Program. I have been personally involved in a number of projects supported through these programs grants.

These monies in Pennsylvania have supported a number of very effective and worthy projects including the development of computer information systems for law enforcement, county jails, district attorneys, victim service agencies, and adult probation. There are plans to develop an automated sentence/sentencing, guidelines application program. There are also a number of projects currently being funded related to improving criminal history records information which are crucial to fulfilling background checks under the Brady Bill.

Additionally, these monies are used for training and educational programs for those involved in the criminal justice field. This has been especially important in the area of developing and implementing safe, secure, and viable sentencing alternatives for nonviolent offenders. Numerous programs in Pennsylvania which were given "seed" money through these grants, are not either self-supporting or supported through local or state government. If not for the initial start-up monies [which are matched with local dollars], there is a very high probability that none of these programs would be in existence.

Congress needs to maintain this mechanism for supporting the state's criminal justice initiatives. Please do not allow a budget that removes this vital funding to be approved.

Thank you, in advance, for your continued support of the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

Sincerely,

IODEEN M. HOBBS,
*Associate Director.*

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PENNSYLVANIA DEPARTMENT OF CORRECTIONS,
*Camp Hill, PA, March 2, 1994.*

Hon. HARRIS WOFFORD, Jr.,
*U.S. Senate,*
*Federal Building, Harrisburg, PA.*

DEAR SENATOR WOFFORD: I am writing to you concerning President Clinton's budget proposal which calls for the elimination of the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program. I wanted to make you aware of how devastating it would be to Pennsylvania to lose this program and the accompanying $15,216,000 that it received in fiscal year 1994.

These funds, administered through the Pennsylvania Commission on Crime and Delinquency, support Pennsylvania's Drug Control and System Improvement Program (DCSI) which has given local jurisdictions an opportunity to enhance their crime prevention and victim assistance programs, develop model programs, test new ideas, and share information and experiences with others across the Commonwealth. The beauty of the program has been its incentive for creativity and its ability to assist in the development of community level initiatives to improve the justice system by encouraging cooperative efforts between agencies.

Prior to my employment with the Pennsylvania Department of Corrections, I worked for fourteen years in the Philadelphia District Attorney's Office. As Director of Victim Services for that agency, I was privileged to work with several community based programs that were funded through the DCSI program, which covered initiatives such as developing model programs designed to enhance security in the home for domestic violence victims and an anti-violence education program in the Philadelphia School System.

Many statewide initiatives enhancing victim services have also been funded, such as, the development of a Victim Service Agency's computer information system, multidisciplinary approaches to child abuse prosecution, and comprehensive victim services. These programs would never have gotten off the ground without the initial funding provided through the DCSI program. Without your continued support from this funding stream, no new initiatives will rise in Pennsylvania if the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program is eliminated.

I ask your careful review of this portion of the President's budget and the great impact it will have on community initiatives in Pennsylvania. I hope that you will support the continuation of this program.

Sincerely,

MARY ACHILLES,
*Director, Victim Services.*

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HOUSE OF REPRESENTATIVES,
COMMONWEALTH OF PENNSYLVANIA,
*Harrisburg, PA, March 4, 1994.*

Senator HARRIS WOFFORD,
*Russell Senate Building,*
*Washington, DC.*

DEAR HARRIS: President Clinton's budget request for FFY 1995 recommended that the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program be terminated so that funds are available to put 100,000 more police officers on the street.

As a Commissioner on the Pennsylvania Crime and Delinquency Commission and as a member of the House Judiciary and Appropriations Committees, I call on you to oppose this recommendation.

Byrne Formula Grants completely support Pennsylvania's Drug Control and System Improvement (DCSI) Program. Among other things, DCSI monies have provided services to crime victims; funded community based crime prevention strategies; assisted drug intervention, treatment, and rehabilitation initiatives; helped criminal justice agencies share and develop information; supported boot camps and other intermediate sanction mechanisms; and assisted in child abuse prosecution.

Pennsylvania received $15,216,000 in FFY 1995 under this grant program.

Increasing the number of police in our communities may or may not be a laudable goal, but the DCSI Program is too valuable to sacrifice to it. Again I urge that the Byrne Grants be preserved.

Yours,

BABETTE JOSEPHS.

Mr. ROCKEFELLER. Mr. President, I am proud to be a cosponsor of Senator HARKIN's amendment to restore funding for the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, because this program has been the bedrock for local justice systems to combat drugs and violent crime.

At a time when public alarm over drugs and violent crime is escalating, it seems to me to be a penny-wise but pound-foolish decision to cut funding for such an effective grassroots program for law enforcement. Personally, I believe that one of the real strengths of the Byrne Program is that it is a formula grant that States and local communities can rely on to use as a foundation to fight crime year in and year out. The program helps forge a local partnership because it requires matching funds which ensure that communities are involved.

This program fills a vital need, especially in rural areas, where community policing cannot be effective because of the nature of rural areas like West Virginia. All of our communities are concerned about violent crime, and all of them deserve Federal support and incentives.

But the people who are most convincing on this issue, are the law enforcement officials themselves who are on the front lines every day in the fight against crime. I want to share with my colleagues samples of letters from West Virginia law enforcement officials about this program, and ask for unani-

mous consent that copies of letters from Col. Thomas L. Kirk, superintendent of the West Virginia State Police, and the Honorable Virgil Miller be printed in the RECORD following my statement.

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

WEST VIRGINIA STATE POLICE,
*South Charleston, WV, February 8, 1994.*

Hon. JOHN D. ROCKEFELLER IV,
*U.S. Senate, Hart Senate Office Building, Washington, DC.*

DEAR SENATOR ROCKEFELLER: On Friday, February 4, 1994, the Washington Post printed an article outlining President Clinton's plans to terminate one hundred and fifteen federal programs. This plan includes the block grant portion of the Edward Byrne Memorial Grant program, which is administered by the Bureau of Justice Assistance.

I have corresponded with you and spoken with members of your staff in the recent past concerning reductions in this program. It appears that our worst fears are coming to pass since the President apparently intends to eliminate this most important program.

Every day, as police officers, we are urged to tailor our efforts to combat the ever rising violent crime rate. To work towards the accomplishment of this task requires broad based support, yet this support is now being threatened. The termination of this program would eliminate a resource which is critical to our efforts.

Our task forces are purposely designed to combat both drug trafficking and violent crime. This design was an obvious choice, since the two are so closely interrelated. The elimination of this funding would result in personnel reductions, shortages in investigative resources, and would, overall, seriously jeopardize the cooperative policing efforts which have been so successful to date.

There have been suggestions that funds from the block grant program may be shifted to a discretionary grant program, thereby providing for closer scrutiny of each request. If this happens and the present trend continues, West Virginia will most likely not receive necessary funding in support of its policing efforts. In the past this type of funding has routinely been awarded to larger metropolitan areas, despite the fact that they already had more law enforcement resources available, both in terms of their individual tax base and in terms of the existing Federal law enforcement presence. West Virginia has never fallen within this category and if final approval is received, the Firearms Task Force grant which we are currently applying for will be a first for our state. Based upon past experience, President Clinton's plan, if implemented, will be devastating to public safety in West Virginia.

I would also note that rural states in general, West Virginia included, have already been overlooked by the President's initiatives to increase the number of police officers on the street. My staff has reviewed the parameters of the Police Hiring Supplement Program in detail. By its very design it simply is not applicable to rural jurisdictions, nor does it appear to be applicable to any "state level" law enforcement entity. Although rural states such as ours received a smaller share, since the Byrne Memorial block grant program is population based, it was at least something we felt we could count on. It now appears that rural law enforcement may be completely cut off from support which is crucial to our efforts. The people of West Virginia pay Federal taxes like all other Americans; they are entitled to better treatment than this.

I urge you to strongly support the preservation of the state administered federal assistance delivery system currently in place under the United States Department of Justice administered Edward Byrne Memorial Grant Program.

We, in the West Virginia law enforcement community, are aware of the importance of controlling federal spending, however, there is no more critical need in this nation than to reduce crime and violence. The law enforcement community is grateful for the assistance you have rendered in the past and again we ask for your help in preserving the integrity of this vitally important program.

Sincerely,

COL. THOMAS L. KIRK,
*Superintendent.*

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COURT HOUSE,
*Buckhannon, WV, February 10, 1994.*

Hon. JOHN D. ROCKEFELLER IV,
*U.S. Senate, Hart Senate Office Building, Washington, DC.*

DEAR SENATOR ROCKEFELLER: I am writing on behalf of the Upshur/Lewis/Harrison Drug Task Force, which also includes the cities of Clarksburg and Bridgeport working in conjunction with the W.Va State Police, DEA, FBI, and IRS to urge you to preserve the integrity of the State Administrated Federal Assistance Delivery systems currently in place under the U.S. Department of Justice—administered Edward Byrne Memorial State and Local Law Enforcement Assistance discretionary and formula grant programs and to employ that delivery system in the distribution of any future criminal justice grant-in-aid programs, including financial assistance specifically intended for local government.

The HLUCTF urges you to support the full funding for the Byrne Memorial grant program in the Fiscal Year 1995 Budget. When the Federal Office of Management & Budget submits its recommendations to Congress for spending for the federal agencies and programs, we are hopeful the recommendations covering the U.S. Department of Justice, Office of Justice Programs will include a sufficient allotment to preserve the viability of the Byrne Memorial grant program.

The Drug Control and Systems improvement/Byrne Memorial grant program (1998–present) have provided state and local governments with the impetus and financial means to develop and implement new and innovative approaches to preventing and controlling crime.

In the Fiscal Year 1994, the appropriation of the Byrne Memorial grant program was reduced by six percent from the previous funding level, after being sustained at $473 million each year for three fiscal years. However, the strength of these grant-in-aid programs has been in the inducement and flexibility that they have provided the state and the local governments to identify crime priorities and to experiment with new programs that address crime problems. This experimentation and innovation by state and local governments under the Safe Streets Acts Grant-In-Aid Program produces and continues to produce under the Byrne Memorial grant program, many significant and lasting criminal justice initiatives.

We applaud and support your efforts to increase federal aid to state and local governments and urge you to employ the Byrne Memorial grant funds delivery system in the distribution of any future criminal justice grant-in-aid program, including financial assistance specifically intended for local units of government and to support full funding of the Byrne Memorial grant program in the fiscal year 1995 budget.

Certainly, there is no more critical need in this nation that to reduce crime and violence. The public has every right to expect to be safe and secure at home and in the streets and turn to the government for the will and resources to meet this expectation. We look forward to working with you in this matter of mutual interest. With kindest and personal regards and sincere best wishes.

Sincerely yours,

VIRGIL D. MILLER,
*Sheriff Upshur County.*

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Madam President, I suggest the absence of a quorum and ask unanimous consent the time be charged equally against both sides.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Madam President, I yield 5 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized for 5 minutes.

Mrs. MURRAY. Madam President, I thank the Senator from Iowa.

I rise briefly today to speak in strong support of this amendment, and I am pleased to be an original cosponsor of it.

As the chairman knows, I spoke this morning regarding the need for responsible amendments that named specific cuts. The Senator from Iowa, [Mr. HARKIN] has once again shown the leadership we have come to expect from him by offering this amendment.

I always say that the budget needs more everyday common sense, and that is what this amendment is about that has been offered by the Senator from Iowa.

I recently held a series of violence forums around the State of Washington. I heard firsthand from many teenagers and violent offenders about what we need to do to keep our streets safe. I talked with law enforcement officials who told me how important programs like this are. The Byrne Formula Grant Program gets to the heart of the needs in our neighborhoods. It is an investment which will have a direct impact on our neighborhoods that each one of us will see.

My good friends, the Senator from Iowa and the Senator from Tennessee, our chairmen, have made a compelling case for this amendment.

I will not take any more time except to say I fully support this amendment. I thank them for their leadership. I am

convinced it will move to speedy adoption.

Thank you, Madam President. I suggest the absence of a quorum.

The PRESIDING OFFICER. Does the Senator yield back her time, or does she give it back to the Senator from Iowa?

Mrs. MURRAY. I yield my time back to the Senator from Iowa.

Mr. HARKIN. Madam President, I yield myself a couple minutes.

I again want to thank the Senator from Washington for her support for this amendment. I again thank her for all of her input and leadership on both the issue of getting our budget deficit down in a meaningful way to make sure that we do reduce that deficit and, second by making sure we have our spending priorities in order. I want to thank the Senator from Washington for her support.

Madam President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally against both sides.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Might I inquire, how much time does Senator HARKIN have remaining on the first-degree amendment?

The PRESIDING OFFICER. The Senator from Iowa has 27 minutes remaining.

Mr. DOMENICI. I assume since the chairman is in favor of the amendment that I have the hour in opposition to the amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. Madam President, would the Senator from Washington, Senator GORTON, like 20 minutes, 15 minutes?

Mr. GORTON. Fifteen minutes.

Mr. DOMENICI. I yield 15 minutes of that time to Senator GORTON.

The PRESIDING OFFICER. The Senator has 57 minutes remaining, and he yields 15 minutes to the Senator from Washington.

Mr. GORTON. Madam President, Edward Byrne was a young New York City policeman killed in action by drug lords in the 1980's. You would think that in his tough talk on crime, the President would have remembered this heroic officer whose name has done more to take dope pushers off our streets than perhaps any other. But the President has proposed we eliminate funding for the Byrne grants. At a time when our families and neighborhoods need effective law enforcement more than ever, we cannot afford to forget this successful program.

The distinguished Senator from Iowa has proposed to restore this program to exactly the level at which it found itself last year. With that proposition, I agree in part with. The method by which he proposes to pay for it, I disagree profoundly.

So I intend to use this 15 minutes, first, to amplify on the remarks of the distinguished Senator from Iowa as to what this program means with respect to law enforcement, the field in which we agree completely, and then to suggest that when all time has been yielded back, that I will have a second-degree amendment to amendment of the Senator from Iowa which will do two things:

First, it will restore not just the amount of the Byrne grants which they have been in the current year, but the amount for which they were authorized and which they received up to the current year, which is some $423 million a year as against the $358 million, about which is the subject of this amendment.

And, second, to take that money not out of national defense, the single function which is and continues to lose more than any other function in our budget, but taking a leaf from the proposals of a more broad nature made by the distinguished Senator from New Mexico in the Budget Committee itself to take it from allowances with a specific reference to the amount of money that we, in the Federal Government, spend across the board on furniture and on furnishings.

With that introduction, I should like to go back and speak to the Byrne grants themselves for a particular period of time.

As the Senator from Iowa well knows, the National Governors Association, the National Criminal Justice Association, the National Sheriffs Association, the International Association of Chiefs of Police, and the Fraternal Order of Police all have expressed support for full restoration of the Byrne formula grants.

Madam President, I ask unanimous consent that their letters in support be printed in the RECORD.

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

NATIONAL SHERIFFS' ASSOCIATION,
*Alexandria, VA, March 21, 1994.*

Hon. SLADE GORTON,
*U.S. Senate, Washington, DC.*

DEAR SENATOR GORTON: On behalf of the 22,000 members of the National Sheriffs' Association, I am writing to thank you for your efforts to preserve the Edward Byrne Grant Program. Elimination of these funds will have the most devastating impact on law enforcement, especially on small and rural jurisdictions. This comes at a time when there is no more critical need in this nation than to reduce crime and violence. The sheriffs of this nation applaud your stand and commend you for your efforts. As always, NSA is prepared to support legislation in the best interest of law enforcement and the public.

I would be grateful if you would keep me informed of any progress regarding your amendment. Thank you for your endeavors.

Sincerely,

CHARLES "BUD" MEEKS,
*Executive Director.*

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NATIONAL GOVERNORS' ASSOCIATION,
NATIONAL CRIMINAL JUSTICE ASSOCIATION,
*March 21, 1994.*

Hon. SLADE GORTON,
*U.S. Senate, Washington, DC.*

DEAR SENATOR GORTON: We are writing on behalf of the National Governors' Association and the National Criminal Justice Association to applaud your statement on the floor of the Senate on March 16, 1994, in support of preservation of the Edward Byrne Memorial State and Local Law Enforcement Assistance formula grant program.

The Byrne Memorial program, as you so aptly pointed out in your statement, is a vital source of financial assistance for states and local governments' efforts to halt the epidemic of violent crime in this country. Byrne Memorial funds have underwritten most of the major advances in the field of criminal justice; including community policing, boot camps, and multi-jurisdictional drug enforcement task forces, such as those in place under Byrne funding in your own state of Washington.

The Byrne Memorial program is as equitable, efficient, effective, and accountable a grant-in-aid initiative as any the federal government has to offer. The program's strength lies in the flexibility that it provides the states and local governments to identify crime priorities and to develop, test, and replicate new and innovative approaches to preventing and controlling crime.

Governors, state legislators, state and local police officials, and numerous other public policymakers and criminal justice officials are united in their commitment to continuation of the Byrne Memorial program and in their belief that President Clinton's proposal to eliminate the Byrne Memorial formula grant program in his fiscal year 1995 budget should not be allowed by the Congress to go forward.

We understand that you plan to offer an amendment during floor debate of the budget resolution in support of the Byrne Memorial grant program. We wholeheartedly support that action and hope that your colleagues in the Senate will lend their support to your amendment.

Thank you again for your commitment to preserving the Byrne Memorial program.

Sincerely,

NOLAN E. JONES,
*Director of Justice and Public Safety, National Governors' Association.*

GWEN A. HOLDEN,
*Executive Vice President, National Criminal Justice Association.*

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INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE,
*Alexandria, VA, March 22, 1994.*

Hon. SLADE GORTON,
*U.S. Senate, Washington, DC.*

DEAR SENATOR GORTON: The International Association of Chiefs of Police (IACP) is in full support of all efforts to maintain and enhance funding for the Edward Byrne Memorial State and local Law Enforcement Assistance Programs and the Regional Information Sharing Program (RISS) in the FY 1995 Budget.

The IACP understands that several sources of funding are under consideration from re-

ducing consulting services to reducing funding for Star Wars projects. The Congress is in the best position to determine which programs can best be reduced. The IACP knows however that these grant monies are vital to law enforcement to fund multi-jurisdictional narcotics task force that are the main defense against drug traffickers at the local level. Without this support, a coordinated and cost effective law enforcement effort is impossible and leaves communities across America vulnerable to unchecked drug trafficking.

The IACP and its members urges continuation of the Byrne Formula Grant and RISS programs in the FY' 1995 Budget.

Sincerely,

SYLVESTER DAUGHTRY, Jr.,
*President.*

Mr. GORTON. Madam President, as we look at the various programs which are contained in this budget, one of the overwhelming demands of the American people is for effectiveness in the spending of Federal money. If every Federal program were as cost effective as the Byrne grants, we would have very little need for some of the more drastic changes in our budget which have been proposed here.

According to the Washington State Patrol which supervises the exercise of these grants in Washington State, for every program dollar, either from the Federal Government or by match, spent on multijurisdictional task forces within the Byrne grants, $8.40 worth of drugs are removed from the streets. Not only is the program cost effective, it is unusually successful.

In the State of Washington, the conviction rate for those prosecuted after being arrested by these drug task forces under Byrne grants is 90 percent. For arrests outside of these Byrne grant task forces, the conviction rate is 42 percent.

Let me go through just a few of the ways in which this program operates in the State of Washington, which I believe is typical of all of the States which utilize these Byrne grants.

In the State of Washington, there are 21 such programs occupying almost all of the counties and the great and overwhelming majority of the population of the State of Washington. As you can note from this map, many of them cross county lines; all of them cross various jurisdictional lines within counties. They are the primary source of drug interdiction in Washington State. Considering the millions of dollars in assets seized every year in the prevention of drug abuse, the Byrne Grant Program in Washington State is among the wisest investments of Federal taxpayer money.

Designed to provide State and local flexibility and control over law enforcement strategies, Byrne grant money is distributed directly to all States on a population-based formula.

Madam President, I ask unanimous consent that a summary of the amounts each State has received in fiscal year 1994 be printed in the RECORD.

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

*Byrne Formula Grant Program*

[Fiscal year 1994]

| *Allocation of funds* | *Allocation* |
|---|---|
| Alabama | $5,827,000 |
| Alaska | 1,595,000 |
| Arizona | 5,465,000 |
| Arkansas | 3,756,000 |
| California | 37,704,000 |
| Colorado | 5,033,000 |
| Connecticut | 4,808,000 |
| DC | 1,597,000 |
| Delaware | 1,717,000 |
| Florida | 16,980,000 |
| Georgia | 8,946,000 |
| Hawaii | 2,278,000 |
| Idaho | 2,167,000 |
| Illinois | 14,765,000 |
| Indiana | 7,647,000 |
| Iowa | 4,248,000 |
| Kansas | 3,904,000 |
| Kentucky | 5,373,000 |
| Louisiana | 6,007,000 |
| Maine | 2,368,000 |
| Maryland | 6,748,000 |
| Massachusetts | 8,048,000 |
| Michigan | 12,149,000 |
| Minnesota | 6,237,000 |
| Mississippi | 4,012,000 |
| Missouri | 7,088,000 |
| Montana | 1,878,000 |
| Nebraska | 2,810,000 |
| Nevada | 2,477,000 |
| New Hampshire | 2,220,000 |
| New Jersey | 10,184,000 |
| New Mexico | 2,780,000 |
| New York | 22,502,000 |
| North Carolina | 9,055,000 |
| North Dakota | 1,653,000 |
| Ohio | 14,032,000 |
| Oklahoma | 4,725,000 |
| Oregon | 4,445,000 |
| Pennsylvania | 15,216,000 |
| Rhode Island | 2,093,000 |
| South Carolina | 5,192,000 |
| South Dakota | 1,743,000 |
| Tennessee | 6,886,000 |
| Texas | 21,950,000 |
| Utah | 3,057,000 |
| Vermont | 1,575,000 |
| Virginia | 8,500,000 |
| Washington | 7,020,000 |
| West Virginia | 3,056,000 |
| Wisconsin | 6,866,000 |
| Wyoming | 1,451,000 |

Mr. GORTON. Madam President, States and localities must match up to 25 percent of the cost of the program, and no more than 10 percent of the formula grant to a State can be used for administrative purposes. Most of it, in fact, gets through to the streets, to the law enforcement agencies which deal with drugs themselves.

Twenty different law enforcement activities are included within Byrne grants. Multijurisdictional task forces that integrate Federal, State and local law enforcement agencies and prosecutors, demand reduction education programs like the DARE Program, programs designed to target clandestine drug labs, community and neighborhood crime prevention programs and white collar crime and organized crime.

Of all the activities permitted under Byrne grants, the multijurisdictional task forces are among the most cost effective and productive in the fight against crime.

In the State of Washington, a total 21 multijurisdictional task forces, the drug prosecution assistance program, and several community policing programs were funded with Byrne grants during this current fiscal year for a total of $7 million.

More than half of that amount was dedicated toward the task forces, with the Washington State Patrol playing an important role as coordinator and supervisor. Uncommon cooperation among State and local law enforcement has made Washington State's task forces renowned for their efficiency and effectiveness.

Listen to some specific examples, Madam President. According to Capt. Hal Mahnke of the Cowlitz-Wahkiakum Narcotics Task Force, right here, in 1993 alone that task force arrested 442 suspected drug dealers, seized 21 automobiles from drug dealers and $57,000 in cash. Captain Mahnke told me that "most crimes that police officers investigate can be traced to drug activity. And we have plenty of drug activity. If we lose more drug investigative ability, we will see a definite increase in the crime rate in our area."

Comdr. Al Shelstad of the Snohomish County Regional Narcotics Task Force, which is here just north of Seattle, reports that since 1988 his task force has seized more than $19 million in narcotics, $367,000 in drug dealer vehicles, and $322,000 in cash.

Detective Sgt. Brent Pfundheller, supervisor of the Spokane Regional Drug Task Force, in the eastern part of the State, tells me in the fall of 1992 the Spokane Task Force ended one of the largest marijuana investigations in the State of Washington's history. More than 7,000 plants were seized with a street value of $7 to $10 million. Last year, the task force arrested more than 120 individuals for possession and/or trafficking in narcotics.

Detective Sgt. Dave Rekow of the South King County Task Force, in the metropolitan area of Seattle, reports that his group just last January seized more than 2 kilograms of cocaine in west Seattle. That seizure led to another one in Everett, WA resulting in 25 kilograms of cocaine, nearly half a million dollars in cash and several weapons. He told me, and I quote:

> Without the assistance of the Edward Byrne Memorial fund, we would, because of budgetary restraints, dissolve the South King County Task Force and reassign those officers to other enforcement efforts.

Sergeant Kennelly of the Tri-City Metro Drug Task Force reports that 241 individuals were arrested last year by the eight task force members for narcotics-related offenses. He adds that—

> Without the grant money, the Tri-City Metro Drug Task Force would not be able to operate. Each individual agency would then

be burdened with trying to cope with the volume of narcotics that are so prevalent in the Tri-City area. Without the manpower and resources available to each agency which the task force provides as a unit, it would be an impossible task for the agencies to effectively combat the drug program.

We have similar quotes from Grays Harbor County, from Clark and Skamania Counties' drug task force, from the Interagency Narcotics Task Force Team in Grant County, from the West Sound Narcotics Enforcement Team, from Bob Thurston of the Quad Cities Drug Task Force.

And finally, Lt. Jim Pryde, of the Thurston County Narcotics Task Force, reports that since 1990 more than $12 million in illegal drugs, 238 firearms and 522 felony arrests have been made. He says:

Loss of the drug grant funding would severely and negatively impact the quality of life we are fighting to maintain in Thurston County and the State of Washington.

This is what we face if this program is wiped out.

This second chart illustrates what the Washington State Patrol says would be the devastating impact of the loss of Byrne grants. On this two-colored map of the State of Washington, those in red are counties and areas in the State in which drug task forces are operating. Those in green are ones that have not participated. Some 90 percent of the people of the State of Washington live in areas supported by Byrne grants.

The Washington State Patrol says that—

The loss of interjurisdictional cooperation would be greatly impaired. Loss of the BJA funding would cause approximately 80 percent of the multijurisdictional task forces to disband. The effectiveness of the remaining 20 percent would be greatly reduced. Rural areas would suffer the most because they do not have funds to replace lost Federal dollars; and drug control strategy is adversely impacted if task forces fold. Traffickers will move into areas where there is lower law enforcement presence.

Madam President, law enforcement officials across the country shake their heads in disbelief as they hear about page 97 of the fiscal year 1995 budget summary for the Department of Justice as proposed by the President, which reads as follows:

The elimination of the Byrne formula grants is requested in order to support expansion of Juvenile Justice Program crime prevention activities and provide some of the funding necessary for the Department to maintain its primary Federal law enforcement responsibilities. Further, the administration believes that many new State and local assistance programs provisions, offered by the pending Crime Control and Law Enforcement Act, will more than offset the loss of the Byrne program formula grants. These new State and local programs, authorized in the crime bill, will include grants for community policing, criminal history records upgrades, boot camps, drug courts for youthful and nonviolent offenders and drug treatment in prisons and jails.

In other words, the administration is saying, "Don't worry; you are covered."

Law enforcement has a right to be skeptical.

First, few would argue with the need for more juvenile crime justice assistance programs. To think, however, that eliminating the main defense against drug trafficking will not erode our efforts on behalf of children is absurd. Juvenile justice programs and narcotics task forces are part of the same effort and cannot be traded off against one another.

Second, it is not clear what the administration means by "funding necessary for the Department to maintain its primary Federal law enforcement responsibilities." That could mean anything from ethics briefings for the White House to salaries and expenses of a special prosecutor. Since much of the Byrne money goes to multijurisdictional task forces that include Federal law enforcement and pursue interstate drug trafficking, it is hard to believe that these are not considered primary Federal law enforcement responsibilities.

Third, law enforcement personnel cannot reasonably rely on the administration's belief that the pending Crime Control and Law Enforcement Act will more than offset the loss of the formula grants. Considering the fact that there is a $16 billion difference between the Senate-passed crime bill and the bill currently being debated in the House of Representatives, few can know what, if anything, will emerge from the Senate-House conference comparable to the Byrne grants.

Fourth, the administration seems to neglect the substantial sum, nearly $2 billion according to some estimates, that these multijurisdictional task forces generate in seized assets.

Finally, the President's enthusiasm over hiring 50,000 new——

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. GORTON. Will the Senator give me another 5 minutes?

Mr. DOMENICI. I yield the Senator 5 minutes.

Mr. GORTON. Finally, the President's enthusiasm over hiring 50,000 new officers perplexes many of those in and outside of law enforcement. In doing so, he suggests that eliminating experienced narcotics officers who are primarily responsible for drug interdiction before the drugs get to the cities can somehow be justified by hiring rookie cops in the big cities for a period of 3 years. We desperately need new police officers in our cities but not at the expense of law enforcement in rural areas. In taking from rural task forces to pay for new city police, the President is blatantly suggesting that we rob Peter to pay Paul when both are obviously needed.

Now, Madam President, it is because of the tremendous success of these programs that our view is that they should be restored to their roughly historic level, and that is why the amount of money that we would propose is slightly larger than that in the Harkin amendment. But more significant, Madam President, is the fact that in one very real sense, in spite of the statement of the distinguished chairman of the Budget Committee, none of these amendments are truly specific. The pattern of an amendment which I will set up will be identical to that of Senator HARKIN. They simply change numbers in particular lines on particular pages of the budget resolution.

Fundamentally, however, the Harkin amendment takes all of the money for the restoration of these grants out of function 050; that is to say, national defense. He advertises and argues that this will come out of a portion, not all, of our antiballistic missile defense force. Maybe so, maybe not. That will not be decided here on the floor of the U.S. Senate. It cannot be decided during the course of the budget resolution. It does, however, come out of our function for national defense, a function which has declined in real terms ever since 1985 and is declining in absolute terms during the course of this year in spite of the fact that the President has said that he wants no more cuts in national defense, and in spite of the fact that we already have a $20 billion to $40 billion asterisk in the defense funds because the amount of money in the function, admittedly by the Department of Defense, is insufficient to pay for the defense which the President of the United States himself thinks to be necessary.

So my alternative proposal will be to take it out of allowances and earmark it against the money that we are spending on furniture, and it would be my intention that it come equally out of all of the functions in which those expenditures come, which would include a very modest cut in the defense function but it would be one which is directly proportional to the size of the defense function as a part of the overall budget and not solely and completely out of the defense function, which is already very, very short.

So while I am absolutely convinced that the Senator from Iowa has done a great service in speaking about the Byrne grant, and I agree with him completely, I think we can do better on the Byrne grant. I think we can do better on the functions from which we pay for the Byrne grant. I think we can do better for the defense of the United States.

Mr. HARKIN. Madam President, I, on my time, if the Senator, my good friend from Washington, will engage in a colloquy with me on where we are getting the money—we both agree the Edward Byrne fund ought to be saved or increased a little bit, if at all possible. I think that is a general sentiment here.

I guess the question then comes down to where are we going to get the money? The Senator is right. I do take it out of 050. I have indicated to him in my remarks that it should come from the ballistic missile defense fund and that portion which is the star wars program, not the theater missile defense. That whole star wars program goes from $1.2 to $1.21 billion, and that is where I propose the money come from.

The Senator is right. Obviously, it has to be appropriated. Obviously, an amendment then would be in place on the appropriations bill when it comes to the floor.

So I made it clear where I would get my money. I am still a little uncertain as to where the Senator from Washington will get his money to put into the Edward Byrne program. I understand what he says; that he was going to get portions from every function; a little bit out of every function. Well, does that mean some of it will come from education? Will some come from health care? Will some come from the National Institutes for Health, which we are trying to fund to put money into basic medical research? Would some of this come from job training? Where would it come from? Will all of it come out of all of these? That is what I am asking the Senator from Washington. Would, under his proposal, a little bit come out of all of these programs that I mentioned?

Mr. GORTON. Madam President, I respond to the distinguished Senator that the amounts that will come out of each of the functions across the board under the alternative proposal of the Senator from Washington will be directly proportional to the amount in the allowance section, the small print, in the budget directed toward the purchase of furnishings for various Federal Government agencies. That, of course, is precisely specific, no more or no less specific than the amendment of the Senator from Iowa, which comes out of national defense. Of course, it would come out of any function of national defense, I suppose, if some of these agencies ended up preferring their own personal comforts for the work which they were designed to do that they might buy their plush furnishings in any event and shortchange their own activities.

It is not the intent of the Senator from Washington—the intent of the Senator from Washington is identical to that of the Senator from New Mexico, who had a similar but broader amendment during the course of the debate over the budget resolution in the Budget Committee itself.

In any event, it comes out of the allowances section, and the precise intent will be to reduce by 50 percent the amount of money all Federal agencies spend on furniture and furnishings.

Mr. HARKIN. I appreciate those remarks. I guess my point is, again, the Senator says that, but his amendment does not mean that. It could come out of anywhere, just as the Senator from Washington is saying about my amendment. Mine comes out of national defense. I have indicated it would come out of star wars. Obviously, the appropriators can take it out of anywhere. If we take the amendment of the Senator from Washington, it does not necessarily have to come out of furnishings. It can come out of something else across the board.

My amendment, then, will send a strong signal to the Appropriations Committee about where our priorities are. Again, I do not have any real case to make for furnishings. I do not know what the situation is with furnishings. I suppose if you run an office, you have to have office equipment. I do know about the National Institutes of Health, though. I do know that they need equipment. They need lab equipment. They need proper furnishings to conduct their research, as do our extramural grants that go out to other universities. I suppose that would be included in that, too. I do not know exactly what all is included in the furnishings.

But, again, my point is this: We have had a huge increase in the star wars budget this year. It has gone up by almost 30 percent over last year. Again, is that where our priorities are?

The Senator from Washington states that we have had all of these big cuts in the military spending. I think it is time to start pricking that balloon and that myth. The Senator did say that it has come down since 1986. He is right. We had a huge buildup under Ronald Reagan, and since 1986 it has come down.

But, Madam President, I have a chart that shows that since the cold war started—defining the cold war as starting after the Korean war—there have been 16 years during that cold war when we had the threat of the Soviet Union intercontinental ballistic missiles, nuclear warfare threatening us. In 16 of those years we spent less on defense than we are this year in constant dollars. At the height of the cold war, in 16 of those years, we spent less than we did this year. Most of the years in which we spent more were the Vietnam war years.

I would also point out that if you added up the military budgets of every country in the world who could be our potential enemy, Russia, Iraq, China, North Korea, Libya, Iran, Syria, and Cuba, add them all up, it comes to $52.6 billion.

This year we are spending $277 billion, five times more than all of our potential enemies all put together. Yet, the Senator from Washington says that is not enough. Five times more than all of our potential enemies all put together, and that is not enough. Well, I am sorry. I beg to differ. I think that is more than enough. And I think it is time for our allies to start picking up more of the burden and not our taxpayers. I think if the taxpayers are putting this money in, it ought to go back to fight our street wars, and put it into the Edward Byrne Program to fund it. That is why I called my amendment star wars to street wars. I guess the Senator from Washington would call his "Furniture to Street Wars." Maybe he has a name, I do not know. I think it is time to put our priorities in order and cut the Star Wars Program. How much time do I have left?

The PRESIDING OFFICER (Mr. ROBB). The Senator has 19 minutes remaining.

Mr. HARKIN. Mr. President, I yield the floor and reserve the remainder of my time.

Mr. DOMENICI. Mr. President, let me suggest that, as I understood the way we were going to do things, Senator HARKIN was first, and that was at the request of the majority. The Republicans would go second. I think Senator GORTON is waiting to go second, but we have additional time on the Harkin amendment. I am going to use a few minutes and yield a few more minutes to Senator GORTON.

The PRESIDING OFFICER. The Senator from New Mexico has 37 minutes and 14 seconds remaining.

Mr. DOMENICI. Let me see if I can put this matter into perspective as I see it. The Senate in this first amendment—and I assume throughout the debate on this budget resolution we are going to be talking about areas about where Senators from both sides of the aisle think the President of the United States made a mistake in his budget. This is a big one. This is a very big mistake in the President's budget.

Frankly, I do not think the Senate is going to let this mistake get by without a lot of debate. There are three or four others in the area of criminal justice that are not going to get by without a big debate. This is a big one because not too many years ago we established a grant program for our States, and we named it after a very, very big police hero from New York City, as I recall. I think Senator D'AMATO brought him over because his father came to witness the ceremony of honoring this marvelous son who was a policeman and was just blown up by somebody who decided to kill him. We named this after that person. It is a tremendous fund, because it goes to our sovereign States in a manner that is reasonably related to the problems they have in terms of dollars. And then they get to use it for a myriad of things that they think are important. Believe you me, they are using it for tremendous law enforcement advances in our sovereign States. Senator GORTON alluded to some of them a while ago.

What the President did, I believe, in an effort to reach a certain level of ex-

penditures and no more in terms of the caps, is tell America he was going to invest a lot of money into law enforcement. But the big new item for law enforcement was community-based policemen. So a very large new program was put in under criminal justice.

My recollection is that it is over a billion dollars for 50,000 community-based law enforcement people. Frankly, in order to make room for that, the President took the Byrne Grant Program and reduced it dramatically. What is going on here today in both the Harkin amendment and the Gorton amendment to be proposed, second-degree amendment, is to try to reinstate this so-called Byrne fund to its preexisting level, before the President cut it, and in some cases to let it go up a little bit, because it is thought to be one of the best crime fighting expenditures the Federal Government has.

Frankly, I think everybody understands that the Appropriations Committee is not going to cut the Byrne fund as much as the President recommended in his budget. It just cannot be. The States are going to tell us it is impossible and you cannot do this to us. And the President will lose any initiative of being a crime fighter when the States are through telling him: You cut more in the Byrne fund, which is helpful to us, than all this community police stuff you are talking about. It is going to get funded.

What we are doing here on the floor today, Senator HARKIN would say, look, I know how it ought to be funded. I am going to cut the Strategic Defense Initiative some and that will make up for the money in the Byrne fund. To tell you the truth, the President said we should not do this. Why did he say that? The President said in two different large quotes in his State of the Union Address: I have cut defense all that it should be cut. That is paraphrasing. In fact, he said something I did not think I would hear: Some of my staff and people that advise me—again paraphrasing—wanted me to cut defense more, but I refused to. It has been cut enough.

When you tear away all of what somebody wants this amendment to be—what Senator HARKIN wants it to be—it is another cut in defense to pay for what the President did not fund in the criminal justice section, the Byrne amendment. It is nothing more, nothing less. There is no doubt that this ballistic missile defense fund is not going to be cut as much as the Senator says it should be, because the Defense Appropriations Committee is going to make that decision. I remind everyone that the President himself said we should not be cutting this, because we have cut defense enough.

So, in my opinion, standing on its own, that amendment should not pass here today. Frankly, I believe the Senators want to vote for an amendment that says we are for putting the Byrne grant program on crime prevention back to where it was before, and even raise it a little. As I said, it is probably going to happen whether we vote on it here today or not, because the appropriators are going to cut someplace else and fund that program.

But if we want to vote to reinstate this fund so we can say we are crime fighters—we are even better crime fighters than the President—then it seems to me that Senator GORTON's idea that we ought to say to the agencies of this Government: Do not buy any new furniture, or at least 50 percent less, and do not use so many outside consultants; use half as many. That is what essentially he intends to do—send a signal that it is those kinds of excesses that should have been restrained in the President's budget so he would not have had to cut the crime-fighting Byrne funding for our States and localities.

With that, I ask the Chair, how much time do I have remaining?

The PRESIDING OFFICER. The Senator controls 30 minutes 49 seconds.

Mr. DOMENICI. I yield the floor.

Mr. KOHL. Mr. President, I ask to speak for 3 minutes in behalf of the Byrne amendment.

Mr. HARKIN. I yield the Senator 3 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. KOHL. Mr. President, I rise today to support the amendment of my colleague from Iowa, which would, in his words, transfer Federal funds from star wars to street wars. It would take money currently slated to the missile defense budget and use it to restore cuts proposed to the Byrne grant anticrime and antidrug program.

Star wars to street wars is more than just a catchy phrase, it is a good idea. I was, frankly, surprised to see the President propose the elimination of the Byrne formula grant program in his budget at precisely the time the Federal Government has finally begun to face up to its responsibility to address the crime and drug problem in a truly tough, smart fashion.

The fact is that the Byrne Grant Program works. In my home State of Wisconsin alone it funds 27 drug task forces and more than 20 drug enforcement positions as well as a highly effective program that shuts down crack houses in Milwaukee.

The proposed elimination of this program has prompted more than 50 law enforcement officials from all over Wisconsin to write and call me.

They write and call with success stories; stories about the important things they have done, and the drug crime that they have fought, with the Byrne grant money.

These are clearly difficult times that compel us to make all sorts of tough budget-cutting decisions. It is our responsibility not to shy away from these difficult votes. But it is also our responsibility to ensure that our budget-cutting knife does not slice the heart out of our anticrime and antidrug efforts. We must distinguish muscle from fat. Programs that work as well as the Byrne grant program are muscle—they simply should not be cut.

So it is for this reason that I strongly support the amendment proposed by my colleague from the State of Iowa, Senator HARKIN.

I thank you and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. It is my understanding that time is charged equally to both sides.

The PRESIDING OFFICER. If neither side yields time, that is correct.

Mr. DOMENICI. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Tennessee, Senator SASSER.

Mr. SASSER. How much time does Senator HARKIN have available?

The PRESIDING OFFICER. The Senator from Iowa has 16 minutes and 44 seconds.

Mr. SASSER. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally against both sides.

The PRESIDING OFFICER. Is there objection? Without objection, the time will be charged equally against both sides.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Who yields time? The Chair recognizes the Senator from Iowa [Mr. HARKIN].

AMENDMENT NO. 1558, AS MODIFIED

Mr. HARKIN. Mr. President, we are trying to reach an agreement. First of all, I ask unanimous consent to modify my amendment.

The PRESIDING OFFICER. Is there objection?

Mr. GORTON. No objection.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, with its modification, is as follows:

Replace the matter to be inserted at the designated places with the following:

On page 5, line 1, decrease the amount by $93,000,000.

On page 5, line 11, decrease the amount by $93,000,000.

On page 5, line 22, decrease the amount by $144,000,000.

On page 5, line 23, decrease the amount by $35,000,000.

On page 5, line 24, increase the amount by $91,000,000.

On page 5, line 25, increase the amount by $11,000,000.

On page 6, line 7, decrease the amount by $144,000,000.

On page 6, line 8, decrease the amount by $35,000,000.

On page 6, line 9, increase the amount by $91,000,000.

On page 6, line 10, increase the amount by $11,000,000.

On page 6, line 11, decrease the amount by $10,000,000.

On page 6, line 17, decrease the amount by $144,000,000.

On page 6, line 18, decrease the amount by $35,000,000.

On page 6, line 19, increase the amount by $91,000,000.

On page 6, line 20, increase the amount by $11,000,000.

On page 6, line 21, decrease the amount by $10,000,000.

On page 7, line 1, decrease the amount by $144,000,000.

On page 7, line 2, decrease the amount by $35,000,000.

On page 7, line 3, increase the amount by $91,000,000.

On page 7, line 4, increase the amount by $11,000,000.

On page 7, line 8, decrease the amount by $144,000,000.

On page 7, line 9, decrease the amount by $179,000,000.

On page 7, line 10, decrease the amount by $88,000,000.

On page 7, line 11, decrease the amount by $77,000,000.

On page 7, line 12, decrease the amount by $88,000,000.

On page 8, line 7, decrease the amount by $144,000,000.

On page 8, line 8, decrease the amount by $35,000,000.

On page 8, line 9, increase the amount by $91,000,000.

On page 8, line 10, increase the amount by $11,000,000.

On page 8, line 11, decrease the amount by $10,000,000.

On page 35, line 8, increase the amount by $420,000,000.

On page 35, line 9, increase the amount by $92,000,000.

On page 35, line 16, increase the amount by $160,000,000.

On page 35, line 23, increase the amount by $147,000,000.

On page 36, line 6, increase the amount by $21,000,000.

Mr. HARKIN. Mr. President, let me briefly state what the modification is.

Basically the modification would still reduce star wars by $513 million. It would increase the amount going to the Byrne program by $423 million, and it would reduce the deficit by only $90 million. It adjusts all the numbers accordingly.

That is the modification. I want to make it very clear, it still reduces the star wars program by the $513 million. It shifts most of that into the Byrne program, but there is $90 million that is used for deficit reduction. And that is the modification.

Mr. President, I have consulted with my friend, the Senator from Washington, who feels as strongly I do, I know, about the Byrne program. We just have a difference on how to fund it. We have worked out an agreement which is acceptable to our side and I know is acceptable to their side.

I ask unanimous consent that the pending Harkin amendment be set aside; that Senator GORTON be recognized to offer a first-degree amendment on the Byrne program; that there be 20 minutes of debate on the Gorton amendment equally divided in the usual form; that upon conclusion of debate on the Gorton amendment, the Senate proceed without any intervening action to vote on or in relation to the Harkin amendment, and on disposition of that, to be followed without intervening action or debate by a vote on or in relation to the Gorton amendment, and that no second-degree amendments be in order to either amendment.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the Senator from Iowa?

Mr. GORTON. Reserving the right to object.

The PRESIDING OFFICER. The Senator reserves that right.

Mr. GORTON. Our parliamentarians tell us it is a little bit more complicated than that, Mr. President, because, of course, at this point, since we are going to vote back to back, this Senator does not know which of two amendments to put up. That will depend on the success or the failure of the Harkin amendment. So if the unanimous-consent agreement should be modified so that I will put up an amendment at this point, we will debate it, as per the request of the Senator from Iowa, but if the Harkin amendment should pass, that I have unanimous consent to substitute a different amendment for this one.

Mr. HARKIN. We have a gentleman's agreement. I understand what the Senator is going to do, and it is perfectly acceptable.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. SASSER. Mr. President, reserving the right to object, will the distinguished Senator explain the agreement?

Mr. HARKIN. As I understand the agreement, it is this. I have just modified my amendment. That amendment will be set aside. Senator GORTON is going to offer an amendment in the first degree, and upon completion of debate on that, we will proceed to vote on my amendment up or down. On the disposition of that, we would proceed to the Gorton amendment. However—and the Senator is right—if my amendment passes, the amendment that he is now debating is moot, and he wants to be able to modify that amendment at that point to get an up-or-down vote.

Let me explain in plain English what we are doing here. I have taken the money from star wars to fund the Byrne program. There is a little bit left over that goes to deficit reduction. Senator GORTON's amendment takes the money out of a furnishings account that is spread over all of the different functions to pay for the Byrne program. If my amendment wins, Senator GORTON wants to offer an amendment that would basically undo what my amendment did. It would take the money out of my amendment that was taken out of star wars, put all that money back into star wars and take the money out of the furnishings account to pay for the Byrne program.

Mr. GORTON. Will the Senator yield?

Mr. SASSER. If the Senator will yield——

Mr. GORTON. In other words, this Senator at this point does not know whether or not Senator HARKIN will prevail. Part of my amendment will depend on whether it prevails or does not prevail. I will put up one form of it. But if his prevails, I wish to substitute the second form for it. The effect will be the same. If Senator HARKIN's wins and mine loses, the Byrne grants come out of star wars. If mine wins after his, it displaces his and the money comes out of the allowances with the intention that it be in the furnishings account.

Mr. SASSER. But in the event his wins, then the Senator will modify his amendment and the modification will be in such a way that you still fund the Byrne provision but you will take the funds from where at that juncture?

Mr. GORTON. That is correct.

Mr. SASSER. No.

Mr. GORTON. I will take them from allowances with the intention that they be from the furnishings account, exactly what we have been debating all this time.

Mr. SASSER. All right.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the Senator from Iowa? If not, that will be the order of the Senate.

AMENDMENT NO. 1559

(Purpose: Restore the Edward Byrne formula grants by reducing all agencies furniture accounts)

The PRESIDING OFFICER. Under the order just adopted, the Harkin amendment will be set aside. The Senator from Washington is recognized to offer an amendment.

Mr. GORTON. Mr. President, I send an amendment to the desk and ask it be considered.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 1559.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 35, line 8, increase the amount by $423,000,000.

On page 35, line 9, increase the amount by $93,000,000.

On page 35, line 15, increase the amount by $423,000,000.

On page 35, line 16, increase the amount by $241,000,000.

On page 35, line 22, increase the amount by $423,000,000.

On page 35, line 23, increase the amount by $402,000,000.

On page 36, line 5, increase the amount by $423,000,000.

On page 36, line 6, increase the amount by $423,000,000.

On page 36, line 12, increase the amount by $423,000,000.

On page 36, line 13, increase the amount by $423,000,000.

On page 41, line 11, decrease the amount by $423,000,000.

On page 41, line 12, decrease the amount by $93,000,000.

On page 41, line 18, decrease the amount by $423,000,000.

On page 41, line 19, decrease the amount by $241,000,000.

On page 41, line 25, decrease the amount by $423,000,000.

On page 42, line 1, decrease the amount by $402,000,000.

On page 42, line 7, decrease the amount by $423,000,000.

On page 42, line 8, decrease the amount by $423,000,000.

On page 42, line 14, decrease the amount by $423,000,000.

On page 42, line 15, decrease the amount by $423,000,000.

The PRESIDING OFFICER. Who yields time?

Mr. GORTON. Mr. President, I yield myself so much of my 10 minutes as I may utilize.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. GORTON. The Senator from Iowa has explained the situation, as we have set it out, quite accurately. Each of us agrees on the vital importance of Byrne grants to effective law enforcement and particularly to effective drug interdiction in the United States. The Senator from Iowa, in fact, has acceded to me and has listed the amount in his amendment to be essentially equal to my own, that is to say, the 1993 Byrne grant numbers. So we no longer have any difference on the importance of Byrne grants to law enforcement and to drug interdiction at all.

We do have a difference on the function or functions from which that money should be taken. The Senator from Iowa proposes that it be taken out of antiballistic missile defense. This Senator proposes that it be taken out of all functions proportionate to the amount of money that they spend on furniture and on furnishings which, of course, will include a very small amount from the defense function itself.

So the basic debate in which we are engaged at the present time is whether or not we want to restore this money for a vitally effective law enforcement function out of national defense or out of furnishings. I think it is a very simple proposition. Are we going to take perhaps the single most important function of the U.S. Government, its national defense, in a time of great unrest in the world, and deprive it of another $500 million over all of the cuts in defense which have taken place across the course of the last decade, a national defense function which the President has said he does not wish to cut, a particular item which the President has said he does not wish to cut, or should we take that money out of new furniture and new furnishings for all of the bureaucracy of the United States at a time, ironically, in which we are going to cut 200,000 or 250,000 people off of the Federal payroll.

It seems to me, Mr. President, the answer to that question is obvious. Of course, we should not cut back on national defense because, remember, whatever our stated intention that this money come out of star wars, it will come out of whatever the body decides it will come out of within the whole range of national defense at the time at which we finally pass an appropriations bill for the defense of the United States.

We already have a huge asterisk of, what is it, I ask Senator DOMENICI, $20 billion or more by which defense is underfunded for the very defense structure which the President of the United States has asked? Senator HARKIN asks that we add to that asterisk another one-half billion dollars, we take another one-half billion dollars out of defense. This Senator says, "No." We do need the Byrne Program. It is vitally important. Let us take it out of luxuries. Let us not take it out of the sinew of our national defense. Consequently, however the first vote goes, if you vote for the Gorton amendment on the second round, you will have determined that you want the Byrne grant, but you will have determined that you are going to take them out of luxuries, out of new furnishings for the governmental entities of the United States and not out of the sinew of this country's national defense.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, I agree with my colleague from Washington that we have to increase the Byrne account and get that money out to our police and law enforcement for their programs for prevention and for prosecution. However, again, I would point out that the Gorton amendment takes the money for this out of all functions. He says it is going to come out of furnishings. It does not necessarily have to come out of furnishings. There is no specified item in each fund for furnishings. It is sort of an object account within every department that they have for furnishings. He says it is going to come out. Maybe it will; maybe it will not. We do not really know that for a fact. I do not know how much money is in furnishings.

Mr. GORTON. Approximately $1 billion.

Mr. HARKIN. The Senator says approximately $1 billion per year we spend on furnishings. I am not certain. I take his word for it. I would have to look at every function to see.

But again there is not any specific line item that says furnishings that we can go after. So really what he is digging into is all of the different functions. It could come out of education. It could come out of health, the FBI, the Justice Department, and prosecutions. Everything this could come out of. the Senator's amendment does not really distinguish the source. It says everything is equal out there; this cuts across the board.

My amendment specifies exactly where that money would come from. We had $2.74 billion for the old Star Wars Program last year. The President has asked and this budget includes an increase over that of about $513 million to $3.25 billion.

Again, the very accounts that the Senator from Washington is going after have all been frozen or cut in previous years. Here is one account that was not cut and was not frozen. That is star wars. It is increased by $500 million.

So what I have done is I have carefully drafted my amendment to say we will take it from the Star Wars Program, $513 billion. That will still leave $2 billion for theater missile defense programs to go after the real military threat out there. That is the time of Scud missiles, the theater missile programs that we need. We do not need to increase at this time the old star wars concept of shooting down intercontinental ballistic missiles.

So I use that money to transfer from star wars to street wars, to put it in the Byrne Program.

I believe the amendment I have offered is a much cleaner amendment. It correctly states what our priorities are going to be. It cuts down an increase that was made in the Star Wars Program, leaves it at last year's level. The Gorton amendment basically cuts into programs that have already been frozen or cut themselves. Therein I think lies the difference.

Again, I urge Senators to send a signal loud and clear that we do not need $500 million increase in Star Wars, but we do need $500 million increase in fighting crime and drugs in America.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, how much time does Senator GORTON have?

The PRESIDING OFFICER. Six minutes and 2 seconds.

Mr. GORTON. I yield such time as he wishes to use.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President and fellow Senators, you have a clear vote it seems to me. One, do you support the President of the United States when he said we shall not cut defense anymore? He even said, "My staff has advised me, some of them have, to cut defense. But it is wrong. We have cut defense enough."

The Harkin amendment would cut defense some more to pay for what the President should have funded from the beginning: The Byrne amendment which fights drugs and crimes in our cities and States in probably the best way that any Federal money is spent. The other choice is to take Senator GORTON's approach, and it will be the second vote, and say we do not want to cut defense anymore, but we do want to replenish the Byrne Grant Program in its totality. We want to fund it right up to current policy which means inflation on top of last year because it is a great program.

Then Senator GORTON says, as I would interpret it, the President should never cut the Byrne grants, and said to the agencies of this Government, you can spend $1 billion on new furniture. So we say cut that in half. I believe had the President been looking at $1 billion worth of new furniture or cutting the Byrne grants, he would have said cut the furniture. In any event, whether he says it or not, we ought to say it here today. That is why we ought to support the second vote.

Everybody wins. Senator HARKIN gets the Byrne grant replenished. The United States Senate, which probably to a man and to a woman, wants to replenish that program. It is a good program. It should not be cut. It will not be cut.

That version wins, and who loses? The only thing that loses is the big allowance account of this Government. If you are worried about specificity, it is a $9 billion account, and it is full of generalities: rent, across-the-board reductions. It also assumes that we are going to have procurement savings, and it has a dollar number for it.

So Senator GORTON's amendment is as real as you can get on a budget resolution, and I think it deserves support of the Senate.

How much time do I have?

The PRESIDING OFFICER. The Senator controls 3 minutes, and 48 seconds.

Mr. DOMENICI. I yield 2 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas, Mr. GRAMM.

Mr. GRAMM. Mr. President, I want to add one thing to what Senator DOMENICI said. The President, in a very passionate moment in his State of the Union Address said, "And some have said cut defense further. And I have said no." Of course 3 days later, the President's budget came out and he cut defense by another $117 billion.

Unless our alternative passes, it is too late for this budget to fulfill the President's promise. But the point is, do not cut defense any further than the President cut it after he promised he would not cut it.

So I think the question is, are we going to buy furniture for the Government, or are we going to continue to fund national defense, even though the President has already cut it $117 billion more than he promised he would cut it?

I think that is the issue. And on that basis, I think it is very important that we reject the Harkin amendment and that we accept the Gorton amendment to fund DARE, to fund the war on drugs, to fund our rural task force effort. I am very much in favor of Byrne funding.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Iowa [Mr. HARKIN] controls 6 minutes and 4 seconds.

Mr. HARKIN. Let me clear up a misconception, Mr. President, which I think that the Senator from Texas has on this defense spending.

Quite frankly, I want to make the point again that the Star Wars Program was not cut. It was increased by $513 million over last year. That is really the issue. Do we want to keep pouring money into the old Star Wars Program, Edward Teller's dream, lasers, x-ray particle beams, star wars and all that kind of nonsense? We have put $32 billion into star wars, and what do we have to show for it? Not a thing.

What if we were to put that $32 billion into high-speed rail, into clean energy systems, or into education and better schools for our kids in this country? Then we would have something to show for it. That is not enough for the Senator from Texas. Oh, no. He wants another $500 million to go into the Star Wars Program. I am sorry. My goal is not cutting defense. It is cutting the old Star Wars Program. That is what we are doing here with this amendment. We are putting it into fighting drugs and fighting crime through the Byrne Program.

Second, I hear all this talk about cutting defense and cutting defense. The fact is that since the cold war started, there have been 16 years during the height of the cold war when we spent less money on defense than we are doing today. We are spending more, but the Soviet Union no longer exists. There is no big threat to the United States security. And the only years in which we spent more were during the Vietnam war years.

So what are we talking about here in terms of cutting defense? We are talking about cutting it below what it was when Ronald Reagan built it up.

Last, Mr. President, of all the potential enemies we face in the world, Russia, Iraq, China, North Korea, Libya, Iran, Syria, and Cuba, add them all, what they spend on defense, it comes to $52 billion. We are spending $277 billion, five times more than all of our enemies put together. But that is not enough for the Senator from Texas. No, he has to spend more on defense.

Well, there are legitimate needs in defense. But I submit to you, Mr. President, that star wars is not one of those. It is time to take the President's request, and I believe the President is wrong on this when he asked for a half billion dollars more in star wars. Take that increase, bring it down to last year's level and put it into the Byrne program to fight crime and drugs. That is what the Harkin amendment does. I ask for the Senators' support on that amendment to send a message loud and clear that Star Wars is gone, over and done with. If you want to fund defense, put it into something else, not in star wars.

I yield the floor.

Mr. GORTON. Mr. President, the Senator from Iowa and the Senator from Washington agree totally on the Byrne grant program. We agree as to its effectiveness on the war on drugs and with respect to interdisciplinary task forces. We agree on the DARE Program. What they do not agree on is how to pay for a program which the President most improvidently took out of his budget. The Senator from Iowa believes it ought to come out of national defense, and that is all he can do with this resolution, but he wishes to earmark it to come out of star wars. In that, he disagrees with his own Department of Defense, with his own President of the United States, and disagrees, of course, with the budget resolutions that came out of the Budget Committee.

The Senator from Washington believes that our national defense is more important than new furnishings for bureaucrats, and believes the money ought to come out of those furnishings. It is as simple as that. We are going to restore money for Byrne grants, I am convinced of that. The question is whether or not we take it out of the defense of the United States or furniture allowances.

The Senator from South Carolina has asked to speak for 4 minutes. I suspect I do not have that much time left. I will yield to him whatever time I have left, plus the difference between that and 4 minutes off the bill.

The PRESIDING OFFICER. The Senator from Iowa has 3 minutes.

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

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I rise in strong opposition to the Harkin amendment. I wish to commend the able Senator from Washington State for the position he has taken.

I am astonished that the Senator from Iowa would bring this proposal to the floor now—of all times.

Just last week we learned that North Korea is developing two long-range ballistic missiles along with their nuclear weapons program. Director of Central Intelligence Woolsey has said that if deployed, they could project North Korea's offensive reach throughout the northwest Pacific.

Ballistic missiles are the primary choice to deliver weapons of mass destruction because there is no effective defense against them. We do have the Patriot, but its antimissile capabilities are limited, and it may not be effective against chemical or biological warheads.

Perhaps the Senator from Iowa has not been reading the papers or watching the news in the past few weeks. The danger posed by North Korea is obvious. What more does it take for this country to get serious about ballistic missile defense? We ought to be adding money for missile defense and expediting the program, not cutting it further.

Missiles and weapons of mass destruction are spreading all over the world, especially in outlaw states like Iran, Iraq, and North Korea. It is significant that every nation in the potential column of nuclear arms proliferants also has a parallel ballistic missile program.

If we are serious about stopping the spread of missiles and mass destructive weapons, we ought to be building the most effective theater missile defense that our technology will permit. Senator HARKIN may not realize it, but his amendment will hurt theater defense as well as homeland defense. First, the so-called star wars homeland defense program died long ago. What remains of homeland defense is technology work in land-based elements and sensors. It is not the star wars pipe-dream system as the Senator characterized it. This work has produced technologies that enhance theater defense. Second, the threats we are facing are approaching intercontinental range. The new North Korean missile is a case in point. It may have a range of 3,500 kilometers. Third, theater defense is already underfunded. To cut another $523 million from BMDO will hurt theater defense by crippling the entire effort, despite what the Senator may say.

Only missile defense can make ballistic missiles less useful and thus less attractive to would-be aggressors. Without missile defense our counterproliferation policy is impotent against a determined violator like North Korea. Without better missile defenses our troops deployed overseas and our allies are vulnerable to the most potent military threat we face today.

The Harkin amendment will extend this vulnerability. I urge the defeat of the Harkin amendment.

I yield the floor and thank the managers for their courtesy.

The PRESIDING OFFICER. Who yields time?

The Senator from Iowa has 3 minutes remaining.

Mr. HARKIN. Mr. President, I want to say that the Senator from South Carolina is right. We should be concerned about North Korea, I say to the Senator. We should be concerned about North Korea. But right now, I say to the Senator from South Carolina, I do not know if he knows how much they spend on their military. Right now, we spend in 5 days what North Korea spends in an entire year.

Here is the chart right here, Mr. President. In 1 year, North Korea spends $2.2 billion in defense. We spend $277 billion in defense. Yes, we are concerned about North Korea. Of course, we are. But to somehow argue that we have to spend even more than what we are spending now to swat at a gnat—maybe the Senator from South Carolina is afraid of the gnats and ants, but I am not. Our military is up to North Korea any day of the week. In 5 days, we spend more on defense than North Korea spends in one entire year. If that is not enough, God help us all.

I yield the remainder of my time.

Mr. GRASSLEY. Mr. President, my friend from Iowa certainly raises some good points about whether we should be increasing funding for star wars.

He also is right to support the Edward Byrne Memorial State and Local Law Enforcement Assistance Program; it has been an unqualified success.

This matching grant program plays an indispensable role in fighting drug use in rural America. These grants are distributed fairly, on the basis of population, and require State commitment to anticrime efforts through matching funds.

In Iowa, these funds enable more than 20 coordinated State and local drug task forces to function. The Byrne grants also increase undercover work in smaller communities.

As drug trafficking has spread to rural areas, less populous areas need to address drug problems that had only existed in concentrated form in urban centers.

Without the Byrne grants, localities lacking the population and resources to combat drugs would not be able to adequately respond.

It is unfortunate that the Clinton administration decided to eliminate this successful program.

I agree with the Senator's intention to fund the Byrne Program and I voted twice in Budget Committee to restore funding for this program. It would have been paid for by reducing funds to the Legal Services Corporation, and to mass transit.

Unfortunately, the Democrats on the committee voted these amendments down. It seems they believed it was more important to fund lawyers, not fight drugs.

So I have voted to fund the Byrne Program twice in committee and will support the amendment on the floor offered by Senator GORTON that will fund this program.

However, I disagree with my Iowa colleague in wanting to take from defense to pay for this domestic program. If defense spending is cut it should be used for deficit reduction in my view, not for more spending elsewhere.

This year, I don't subscribe to the liberal view that we should cut defense and spend it on social engineering. Rather, we should reduce the deficit with defense cuts, and we should prioritize better on the domestic side, given the state of the debt and deficits.

And so I must reluctantly oppose my friend from Iowa, and instead support the amendment of the Senator from Washington whose approach is consistent with how I believe these funds should be transferred.

Mr. AKAKA. Mr. President, I urge my colleagues to restore funding to the formula grant portion of the Edward Byrne Memorial State and Local Law Enforcement Assistance Block Grant Program.

I know how valuable the Byrne Program is to the State of Hawaii, and I have heard from many State and county law enforcement officials regarding the critical impact this program has on combating youth and domestic violence, expanding treatment facilities for drug abusers, improving criminal history records, and stemming the flow of illegal drugs.

During last summer's appropriations debate, I contacted the Senate Appropriations Committee to express my serious concern that any decrease from previous funding levels would have a significant impact on Hawaii.

I was, therefore, dismayed to learn that the fiscal year 1995 budget proposal would eliminate the formula grant portion of this successful program. Although the discretionary portion would be doubled, the budget proposal could not guarantee that Hawaii would receive the funds that have become so valuable in its fight against drugs and crime.

As I have mentioned before, Hawaii is an island paradise. However, there are problems in paradise, and State and local jurisdictions need the valuable resource of the Byrne Formula Grant Program.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1558, as modified.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUYE] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 59, as follows:

[Rollcall Vote No. 64 Leg.]

YEAS—40

| | | |
|---|---|---|
| Akaka | Hatfield | Moynihan |
| Baucus | Hollings | Murray |
| Biden | Jeffords | Pell |
| Boren | Kennedy | Pryor |
| Boxer | Kerry | Reid |
| Bradley | Kohl | Riegle |
| Breaux | Lautenberg | Rockefeller |
| Bumpers | Leahy | Sarbanes |
| Daschle | Levin | Sasser |
| DeConcini | Mathews | Simon |
| Dodd | Metzenbaum | Wellstone |
| Dorgan | Mikulski | Wofford |
| Feingold | Mitchell | |
| Harkin | Moseley-Braun | |

NAYS—59

| | | |
|---|---|---|
| Bennett | Exon | Lugar |
| Bingaman | Faircloth | Mack |
| Bond | Feinstein | McCain |
| Brown | Ford | McConnell |
| Bryan | Glenn | Murkowski |
| Burns | Gorton | Nickles |
| Byrd | Graham | Nunn |
| Campbell | Gramm | Packwood |
| Chafee | Grassley | Pressler |
| Coats | Gregg | Robb |
| Cochran | Hatch | Roth |
| Cohen | Heflin | Shelby |
| Conrad | Helms | Simpson |
| Coverdell | Hutchison | Smith |
| Craig | Johnston | Specter |
| D'Amato | Kassebaum | Stevens |
| Danforth | Kempthorne | Thurmond |
| Dole | Kerrey | Wallop |
| Domenici | Lieberman | Warner |
| Durenberger | Lott | |

NOT VOTING—1

Inouye

So the amendment (No. 1558), as modified, was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, I ask for the yeas and nays on the Gorton amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, I rise in strong support of the Gorton-Hatch amendment to the budget concurrent resolution. Frankly, I am very concerned abut the significant cuts to law enforcement proposed in President Clinton's fiscal year 1995 budget.

I commend my colleague for his leadership on this issue. I was pleased to work with him on this amendment as this has been a priority of mine for some time.

Existing Byrne memorial state and local law enforcement block grants, which police have been counting on, are cut in the proposed 1995 budget. This program currently provides my State of Utah over $3 million in law enforcement assistance. Utah desperately needs this funding. It has become a transshipment point for drug traffickers. Gangs are also a serious problem.

The argument some suggest is that this program is being eliminated in order to fund the crime bill's proposed community policing program. Yet, the crime bill funding is expected to come from savings earned through personnel reductions, not from existing law enforcement grants. this program has proven to be both effective and extremely popular. It should be retained.

These grants are used by the States for a variety of law enforcement purposes. In fact, over 950 task forces and drug unit have been established or expanded throughout the country through the use of these formula grants. These grants are also used to hire prosecutors and train law enforcement personnel. Ironically, while the administration is proposing the elimination of this successful formula program which insures that each State gets its fair share of law enforcement resources, the department has proposed increasing the funds available for discretionary grants.

There is clearly a need for fiscal restraint and budget cuts. But in a budget of $1.5 trillion, priorities can and must be met. We must ensure that budget cuts are not borne on the backs of law enforcement and crime victims. We cannot permit this administration to further impair the Government's ability to meet its obligations to our Nation's law abiding citizens. Cutting existing law enforcement grant programs is an unwise choice, especially in light of our Nation's crime problem.

For these reasons, I urge my colleagues to support the Gorton-Hatch amendment.

Mr. MURKOWSKI. Mr. President, as we take up the administration's budget request for fiscal year 1995, I rise to add my support to the Gorton amendment and demand reconsideration of the administration's proposal to completely eliminate the Edward Byrne Memorial State and Local Law Enforcement Assistance Program. Despite President Clinton's tough rhetoric on crime, he has seen fit to cut out one of the most valuable and cost effective means at our disposal for combating drugs and drug related crimes.

For 1994, the Byrne Program provides $358 million in grants directly to the States according to a population based formula. States may use the money to perform a variety of law enforcement activities, including multijurisdictional task forces, neighborhood and community crime prevention, location of clandestine drug labs, and white collar and organized crime. This flexibility recognizes the rapidly changing tactics of drug criminals and allows those on the front lines to adjust their enforcement efforts accordingly.

My State of Alaska received $1,595,000 this year through the Byrne programs, and these funds have truly made a difference. Let me quickly cite just one example to illustrate this point. Unalaska, AK, is probably the last place in the world many people would expect to find a thriving cocaine network. Unalaska is a small, isolated community located in the Aleutian Island chain, and like many Alaskan communities, accessible only by boat or aircraft. With a year-round population of only 3,000 people, local law enforcement is understandably quite limited.

Yet State and local agents have recently uncovered a sophisticated cocaine distribution system on the island which took advantage of isolation, limited law enforcement presence, and the large quantities of money generated by the seasonal seafood industry. Although based on Unalaska, the drug sales reached northward all the way to communities in Bristol Bay and Kodiak, over 500 miles away.

After an 8-month investigation, officers arrested 27 people, and the State has filed 77 criminal charges. The price of cocaine in Unalaska, Bristol Bay, and Kodiak has doubled from $100 to $200 a gram, a signal that the supply of drugs to these communities has been effectively diminished.

Elimination of Byrne grant funding would devastate Alaska's drug enforcement efforts, and severely harm the entire law enforcement community. It would mean the loss of nine state troopers and five prosecuting attorneys. These figures represent a 35-percent reduction of full-time drug enforcement efforts State-wide, and a 9-percent reduction in prosecuting attorneys. Byrne grant resources have made it possible for the State of Alaska to field the necessary expertise and manpower to confront major narcotics operations operating out of the Pacific Northwest. In the case of Unalaska, State and local law enforcement officials have interrupted the supply of drugs over a considerable area of the State.

Over the last 3 years, Byrne grant funding has been reduced by $142 million to a 1994 level of $358 million. Despite these cutbacks, State and local law enforcement agencies continue to demonstrate impressive results. We should not reward the competence and effectiveness of these fine men and women by eliminating the funds which make their successes possible.

The Gorton amendment restores these needed funds to the most fiscally responsible manner. I am pleased to support this program and this amendment.

VOTE ON AMENDMENT NO. 1559

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1559 offered by the Senator from Washington.

The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] and the Senator from Hawaii [Mr. INOUYE] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 97, nays 1, as follows:

[Rollcall Vote No. 65 Leg.]

YEAS—97

| | | |
|---|---|---|
| Akaka | Feingold | Metzenbaum |
| Baucus | Feinstein | Mikulski |
| Bennett | Ford | Mitchell |
| Biden | Glenn | Moseley-Braun |
| Bingaman | Gorton | Moynihan |
| Bond | Graham | Murkowski |
| Boren | Gramm | Murray |
| Boxer | Grassley | Nickles |
| Bradley | Gregg | Nunn |
| Breaux | Harkin | Packwood |
| Brown | Hatch | Pell |
| Bryan | Hatfield | Pressler |
| Bumpers | Heflin | Pryor |
| Burns | Helms | Reid |
| Byrd | Hutchison | Riegle |
| Campbell | Jeffords | Robb |
| Chafee | Johnston | Rockefeller |
| Coats | Kassebaum | Roth |
| Cochran | Kempthorne | Sarbanes |
| Cohen | Kennedy | Sasser |
| Conrad | Kerrey | Shelby |
| Coverdell | Kerry | Simon |
| Craig | Kohl | Simpson |
| D'Amato | Lautenberg | Smith |
| Danforth | Leahy | Specter |
| Daschle | Levin | Stevens |
| DeConcini | Lieberman | Thurmond |
| Dodd | Lott | Wallop |
| Dole | Lugar | Warner |
| Domenici | Mack | Wellstone |
| Durenberger | Mathews | Wofford |
| Exon | McCain | |
| Faircloth | McConnell | |

NAYS—1

Hollings

NOT VOTING—2

Dorgan Inouye

So, the amendment (No. 1559) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. I ask unanimous consent that when the Senate resumes consideration of Senate Concurrent Resolution 63 tomorrow morning at 9 a.m., there be 20 hours for debate remaining on the resolution, equally divided; that Senator DOMENICI be recognized at 9 a.m. to offer a Republican alternative budget amendment and that no second-degree amendments be in order to the Domenici amendment or to language that may be stricken; that a vote on or in relation to the Domenici amendment occur at 11 a.m. tomorrow; that upon disposition of the Domenici amendment, Senator DODD be recognized to offer an amendment relating to education, with no second-degree amendments in order, nor to the language which may be stricken by the Dodd amendment.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Reserving the right to object, Mr. President, I wonder if the majority leader would, on the time of voting on the substitute, make that an extra half-hour. Instead of 11, could we make it 11:30?

Mr. MITCHELL. So there would be 2½ hours?

Mr. DOMENICI. Correct.

Mr. MITCHELL. Mr. President, I ask——

Mr. DOMENICI. And we may yield back. We can say no later than that if the Senator would like.

Mr. MITCHELL. I then inquire of the chairman, I assume he has no objection to that, making it 2½ hours?

Mr. SASSER. No objection.

Mr. MITCHELL. Mr. President, I modify my request to accommodate the request of the Senator from New Mexico.

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

Mr. MITCHELL. Mr. President, I thank my colleagues.

Mr. President, accordingly, there will be no further rollcall votes this evening.

Mr. President, I thank the distinguished chairman and ranking member.

For the information of Senators, it is my hope that we could complete action on this resolution by the close of business on Thursday. That is our hope and intention. I know there are several amendments remaining, but I hope that we can complete this. There are other important matters which we will have to act on prior to leaving for the recess. This obviously is a very important matter, one required by our procedures, and I thank my colleagues for their cooperation.

## MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein for up to 10 minutes each.

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

## HOMICIDES BY GUNSHOT IN NEW YORK CITY

Mr. MOYNIHAN. Mr. President, I rise, as I have done each week during this session of the 103d Congress, to announce to the Senate that during this past week, 25 people were killed in New York City by gunshot.

## COMMITTEE OF 100

Mr. MCCAIN. Mr. President, next week a delegation representing the Committee of 100, an organization of prominent Chinese-Americans, will be visiting China to introduce themselves and to promote an understanding of American attitudes toward the People's Republic of China [PRC]. At the center of its message to China are the results of a study commissioned by the committee and carried out by Wirthlin Associates.

The Wirthlin study, as I understand it, concentrates on the opinions of four United States constituencies essential to the development of our policy toward the PRC: United States congressional decisionmakers, business decisionmakers, Chinese-Americans, and the general public. It is my hope that providing Chinese leaders with the findings will underscore the importance of our relationship in all its many facets.

I have long admired the work of the Committee of 100 and the very distinguished members that represent it. The members of the committee represent Chinese-Americans from all over the Nation and across a wide range of political opinions and professions. To give my colleagues an idea of the caliber of people making up the organization, I commend to them the biographies of three members who recently visited my office, one of whom, Ms. Ming Chen Hsu, is an Arizona resident. The biographies are somewhat dated, but I think they illustrate well the competence of the Committee of 100 delegation.

I ask unanimous consent that the three biographies, as well as a complete delegation list, filled with distinguished Chinese-Americans, appear in the RECORD so that my colleagues might examine them.

I wish the Committee of 100 delegation well in their efforts to establish a dialog with the PRC and look forward to speaking with them upon their return. Given the state of United States-Chinese relations today, their efforts to promote mutual understanding could not come at a better time.

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

[From the Patriots Asian Pacific American Heritage]

MING CHEN HSU, COMMISSIONER, THE FEDERAL MARITIME COMMISSION

From vice president of international trade for the RCA Corporation to her current position as commissioner of the Federal Maritime Commission, Ming Chen Hsu for over 30 years has been part business woman, part politician, and part diplomat. During this time period, she was named the Governor's Special Trade Representative by former Governor Thomas Kean of New Jersey and served as director of the State Commerce Department's Division of International Trade.

After leaving China and her family in 1944, Hsu made it to California via the help of a United States army plane and troop ship. In New York, she enrolled at Barnard College, later transferring to George Washington University in Washington, DC. By 1949, she received her BA in foreign affairs with a minor in international economics. By this time, her father was sent to Taiwan with Chaing Kai-shek and her mother and sister soon joined her in New York. She later received her PhD from New York University and was the Penfield Fellow of International Affairs Diplomacy, and Belles-Lettres, Hsu also obtained a LLD from Ramapo College in 1988 and from Kean College in 1989.

Hsu constantly faced the possibility of deportation and received temporary stays. She

eventually married Richard Hsu, then president of the China Institute in America. Soon, Hsu began working for NBC as a researcher. She received her first break with RCA. NBC's parent company, when they asked Hsu to make a presentation because they were interested in investing in foreign television stations. Within the year, she moved to RCA and worked on corporate planning and marketing. According to Hsu, the position was not glamorous. By the 1970's, Hsu made a name for herself. After years of slowly climbing the corporate ladder, she became director of international marketing in 1976 and was staff vice president in 1980. Representing RCA before representatives of the People's Republic of China, hosting delegations, and working with United States government agencies were a few of her accomplishments during this time period.

Her constant commitment to public service and her weariness of the rigid corporate environment were some of the reasons she left RCA and accepted the position as director of the New Jersey State Commerce Department's Division of International Trade in 1982. Working with her good friend, former New Jersey Governor Thomas Kean, she set out to promote New Jersey as a place to do business. Through Hsu's efforts, over 1,000 companies from 48 countries invested in New Jersey—employing some 175,000 residents. Among the firms Hsu helped bring to New Jersey: Hyundai, Sharp Electronics, and Samsung Electronics.

After former Governor Kean left office, the White House asked Hsu to come to Washington to become commissioner of the Federal Maritime Commission. She was confirmed by the Senate in June 1990. She was reappointed in 1991 after completing the term of a former commissioner.

Hsu's and the Commission's major concern is to protect United States shipping and trade practices or trade statutes that have been enacted by foreign governments. Many complaints have been filed against a number of countries for their discriminatory trade practices. The Commission is currently gathering information on certain shipping practices from countries such as Japan, Taiwan, Venezuela and the Ivory Coast. Hsu states, "The object is to free up trade and make it easier for our exporters to sell in those countries."

The numerous committees Hsu has worked with include the Defense Advisory Committee on Women in the Services, the New Jersey Advisory Council of Channel Thirteen/WNET, the National Commission on the Observance of International Women's Year, the United States Commission on Civil Rights, and the Newark Museum, Newark, New Jersey. Some of the awards she has received include Woman on the Move Award from the Business Journal of New Jersey in 1989, the Paul L. Troast Award for Outstanding Public Service from the New Jersey Business and Industry in 1989, the Philbrook Award from the Women's Political Caucus in 1989, and Woman of the Year from the Asian-American Professional Women's Association in 1983.

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[From the Patriots Asian Pacific American Heritage]

BRIG. GEN. JOHN L. FUGH, JUDGE ADVOCATE GENERAL, DEPARTMENT OF THE ARMY

After years of legal service for the United States Army, Brigadier, General John Fugh is the current Judge Advocate General, overseeing a worldwide legal organization for the Army.

As the current Judge Advocate General, Brigadier General John L. Fugh heads a worldwide legal organization for the Army consisting of 1,700 active duty lawyers, 350 civilian lawyers, 2,200 reserved component lawyers (nonactive national Guard or United States Army Reserve lawyers), and over 5,000 paralegal and administrative personnel. Fugh added that this is a statutory position and his responsibilities include being the legal adviser to the Army leadership and directing Army lawyers in the performance of their duties. Fugh also oversees the Judge Advocate General's School in Virginia, a claims service at Fort Meade, and a judiciary that includes judges and appellate judges. His duties are not only limited to the military justice arena. Fugh also handles civil law matters, such as Army contracts with the defense industry, protest disputes, and litigation. "I also assist the Justice of Department in the Federal courts, take care of soldiers' personal legal concerns, and handle legal concerns, and handle legal work in operational areas." Fugh added.

Born in Beijing, China, Fugh attended Georgetown University School of Foreign Service, the George Washington University Law School, and Harvard University's Kennedy School of Government. Fugh has also attended the Judge Advocate General's School, the United States Army Command and General Staff College, and the United States Army War College.

With over 30 years in the United States. Army, Fugh stated that he has not experience overt discrimination, "just the usual ethnic slurs one can expect from peers along the way. "In 1984, I became the first Chinese-American and the first non-white person to become General in the United States Army, so you can see that being a minority, or Chinese did not hurt me too much," commented Fugh.

Fugh has travelled extensively throughout his career. He visits the field to make sure the delivery of legal services is going well. "My next visit will be to Budapest to meet with my counterpart in the Hungarian Army. They're trying to catch up, being a former Communist country, and the interests of our national and foreign policy is to further the democratization of their society." Topics to be discussed between the two include environmental compliance and clean-up law and litigation, and civil military relations.

Prior to his appointment as Judge Advocate General, his key assignments at Headquarters, Department of the Army, include service as the Assistant Judge Advocate General (1990–1991), Assistant Judge Advocate General for Civil Law (1984–1990), and Chief, Litigation Division (1982–1984). Fugh has also been the Special Assistant in the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), and the Staff Judge Advocate for Legal Counsel for the Third Armored Division in Frankfurt, Germany, for the United States Ballistic Missile Defense Program, for the Office of the Army Chief of Staff in Arlington, Virginia, and for the Military Assistance Advisory Group in Taipei, Taiwan.

Asked about his plans when he retires, Fugh stated that he hoped to do something in the area of international trade in the Pacific. "There, I can use my language, ability, background, and training. Of course, being a lawyer, I would work with law firms and our United States corporate entities and businesses over there." Because China is second to Japan in terms of favorable trade balance, Fugh would like to work on ways to promote United States companies to the Chinese.

His awards and declarations include: the Defense Superior Service Medal, Legion of Merit, Meritorious Service Medal (with Oak Leaf Cluster), Air Medal, Joint Service Commendation Medal, Army Commendation Medal (with Oak Leaf Cluster), Office of Secretary of Defense Badge, and Army Staff Badge.

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VITA OF KUNG-LEE WANG

Mr. Wang is a businessman and economist. He is an active Asian Pacific American community leader. Born in China, he is a naturalized American citizen. He has a broad range of experiences as a senior government official an internationally known resource and inter-industry economist, a businessman and a community activist.

From 1955 to 1960, he was an economist-operations analyst with the C.F.I.R., Inc., a consulting firm. For twenty-two years, he worked as an economist for the U.S. Department of the Interior. From 1966 to 1982, he was a GS 15 senior economist. After 12 years as the chief of Quantitative Economics at the Bureau of Mines, he left the U.S. Civil Service in June 1982 and heads his own economic, business development and marketing consulting firm, KLW International, Inc.

In December 1982, he helped to found the Chinatown Development Corporation (CDC). CDC and its partners jointly bid and won the right to develop the Far East Trade Center in the heart of Washington, D.C. Chinatown on top of a transfer stop for three of the five Washington, D.C. subway lines from the Washington Metropolitan Area Transit Authority in May 1983. Since 1982, he has served CDC as Director and/or Officer. Now CDC is the largest limited partner of the Far East Trade Center Associates partnership that is developing a $200 million mixed-use real estate project, next to Chinatown Friendship Archway and near the Washington, D.C. Convention Center.

Mr. Wang received his B.A. degree in economics from Yenching University in China, received his M.A. degree in economics from Brown University, his M.B.A. degree in business economics from Columbia University and his M.B.A. degree in political economy and government from Harvard University.

He is a professional economist with international reputation in mineral economics and inter-industry (input-output) analysis, has authored many monographs, articles and book (sections) on mineral economics and input-output analysis. He was the founder and first president of the American Institute of Mining Metallurgical and Petroleum Engineers (AIME) Washington, D.C. Mineral Economics Section, 75–78, first time in AIME history to have a section devoted to economics. He was the national Chairman of AIME Council of Economics, 80–81. The Council has over 10,000 members among the total 55,000 AIME members at that time.

Mr. Wang is the founder of the Organization of Chinese Americans, Inc. (OCA) and served as its first National President, 73–77; National Board Member, 73–91; and OCA Business Advisory Council coordinator, 83. OCA, with 8,000 members and 11 chapters in 26 states, is a nonprofit, nonpartisan national advocacy organization dedicated to ensuring justice and equal opportunities for Chinese, other Asians and all Americans; to eliminate ignorance about the bigotry against Chinese and other Asian Americans; to promote a positive image for Chinese and other Asian Americans; and to encourage active participation of all Americans in all levels of civic, political and economic life in America.

Mr. Wang is the chairman of the U.S. China Capital Cities Friendship Council, Inc.

since 1987 that carries out and promotes cultural and business exchange between the two sister cities. He is the founder and president of the U.S. China Council for International Exchange, Inc. since February 1988 that promotes professional personnel exchange between the U.S. and China.

Mr. Wang is a co-founder and national director of the National Council of Chinese American Voters League and the Asian American Voters Coalition since 1984. The principle purpose of the two organizations is to promote political involvement of Asian Americans in mainstream American politics. He is also a co-founder and past President of the Asian Pacific American Heritage Council, Inc. of the Washington, D.C. area. Since 1979, the Council has been sponsoring annual Asian Pacific American Heritage Week activities that promote the positive image of Asian and Pacific Islanders and has been the prime mover in successfully asking the President to proclaim the annual Asian Pacific Heritage Week by Executive Order since 1979.

He is a co-founder and past national director of the Association of Chinese Schools, Inc. that promotes and coordinates activities of the 120 weekend Chinese language and cultural schools in the eastern United States. He was a counselor of the Harvard University-Kennedy School of Government Alumni Association Executive Council, 1978–82. He was a past national Vice President of the Asian Pacific American Chamber of Commerce, 1983–84.

He is a member of the Board of Directors of the Committee of 100 since 1989 and its current Executive Director. The Committee of 100 is a national organization of Chinese American leaders in arts, academia, public service, business and the sciences. The Committee's mission is to provide leadership in advocating respect for the inherent dignity and rights of Chinese Americans and Chinese everywhere and to promote a constructive relationship between the people of China and the United States.

His firm, KLW International, Inc., provides consulting assistance to business enterprises in the Far East and South East Asia in the fields of marketing, investment, finance, economic and business analysis, negotiations and public relations. The firm also provides consulting services to Americans firms outside of Washington, D.C. area in qualifying for minority business programs of U.S., state and local governments such as 8(a) program, mentor-protege program, etc. and in assisting firms to bid for business contracts from various government agencies and Fortune 500 corporations.

In 1964, he was selected to receive the Career Education Award from the Ford Foundation and U.S. Civil Service Commission. In 1966, he was selected as a Fellow of the National Institute of Public Affairs. He was the recipient of the 1976 Engineer of the Year Award and the 1984 Mineral Economist of the Year Award from the AIME-Washington, D.C. Section. He is listed in the Who's Who in the East and Who's Who in the World of Marquis Who's Who, Inc., in the Men and Women of Distinction and Men of Achievement of International Biographical Centre, Cambridge, England, U.K., and American Men and Women of Science: Economics of Bowker and Co. He is the recipient of the Civil Rights Award of the Year, 1988 by the Asian and Pacific American Civil Rights Alliance.

COMMITTEE OF 100—CHINA TRIP DELEGATION LIST

I. ATTENDING BOARD OF DIRECTORS-GOVERNORS

Mr. Yo-Yo Ma. A world famous concert cellist. (Cambridge, Massachusetts)

Mr. I.M. Pei. A world renowned architect. (New York City, New York)

Dr. Chang-Lin Tien. Chancellor, University of California at Berkeley. (Berkeley, California)

II. ATTENDING BOARD OF DIRECTORS-OFFICERS

Chairman: Ms Shirley Young. Vice President Consumer Product Development, General Motors Corporation. (Detroit, Michigan)

Vice Chairman: Mr. Henry Tang. Senior Vice President and Managing Director, Jeffries & Company Inc. (New York City, New York)

Treasurer: Mr. Oscar Tang. Former CEO and President, Reich and Tang Inc. (New York City, New York)

Secretary: Mr. Charles Pei Wang. Member and Former Vice Chairman, US Civil Rights Commission; Former President, China Institute in America. (New York City, New York)

Executive Director: Mr. Kung-Lee Wang. Founder and First National President, Organization of Chinese Americans Inc.; President, US-China Council of International Exchange and Professional Quantitative (Input-Output) and Mineral Resource Economist. (Rockville, Maryland)

III. ATTENDING BOARD OF DIRECTORS-MEMBERS

*Ms. Lily Lee Chen.* Chairwoman, Han. Chuan (U.S.A.) Corporation; Former Mayor City of Monterey Park, California; Delegate to Democratic National Convention; and Past National President, Organization of Chinese American Women. (Glendale, California)

*Ms. Leeann Chin.* Author *Betty Crocker's New Chinese Cookbook, Recipes by Leeann Chin.* CEO and Founder of Leeann Chin, Inc, an organization that runs many restaurants. (Bloomington, Minnesota)

*Ms. Ming Chen Hsu.* U.S. Federal Maritime Commissioner (Appointed by President George Bush in 1990). Delegate to the Republican National Conventions, 1984, 1988. Former Vice-President of RCA Corporation. (Washington, D.C.)

*Mr. David K. Lam.* President and CEO, Expert Edge Inc.; Past President Asian American (High Technology) Manufacturers Association of Silicon Valley, California. (Palo Alto, California)

*Dr. T. Y. Lin.* Chairman of the Board, Lin Tung-Yen China Inc.; Professor Emeritus of Civil Engineering, University of California Berkeley; Recipient of US Presidential National Medal of Science, 1986. (San Francisco, California)

*Mr. Wei-Ming Lu.* Executive Director, Lowertown Redevelopment Corporation, a US $425 Million Real Estate Development Project, St. Paul, Minnesota; Chairman, Midwest Asian Center. (St. Paul, Minnesota)

*Dr. Edmund Hsin-Tung Pi.* Professor of Clinical Psychiatry and Director of Transcultural Psychiatry, University of Southern California School of Medicine. (Los Angeles, California)

*Mr. Charles Y. C. Tse.* Lawyer, Vice Chairman (retired), Warner Lambert Company; Director, Foster-Wheeler Corporation; Director, Brendon Systems Corporation; Director, Transcell Technologies Inc.; and President, Cancer Research Institute (1992). (New York City, New York)

V. ATTENDING DELEGATION MEMBERS

Major General John L. Fugh, U.S. Army Retired. Formerly The Judge Advocate General, Department of the Army. Currently, partner at a large law firm, McGuire, Woods, Battle & Boothe, Washington, D.C. office. (Washington, D.C.)

Mr. John Chien-Nan Huang. U.S. Representative and Director of Lippo Group of Indonesia and Hong Kong and Vice Chairman, Lippo Bank California and Lippo Group (USA) Companies. (Glendale, California)

Mr. James M. Li. President, International Business Development Group, 1993 and President, Consumer Financial Service Group, 1991–93, Travel Related Service Companies, Inc. American Express. (New York City, New York)

Mr. Don Liu, MD. Professor of Ophthalmology and Chief of Oculoplastic and Orbital Surgery, University of Southern California School of Medicine Doheny Eye Institute. (Los Angeles, California)

Dr. Charles Sie. Vice-President of Advanced Technology and Engineering Excellence at Xerox Corporation; Manager, Technology Portfolio for Xerox Office Document Systems Division. (Palos Verdes, California)

Dr. John B. Tsu. Regent and Professor, John F. Kennedy University; President, Asian American Political Education Foundation; Secretary's Western Regional Representative for the US Department of Education, 1989–91; National Chairman, Asian Pacific Americans for Bush and Quayle, 1988 and 1992. (Millbrae, California)

## VOLUNTARY SCHOOL PRAYER

Mr. THURMOND. Mr. President, yesterday, by a vote of 345 to 64, the House of Representatives agreed to withhold Federal education funds from school districts that prohibit students from engaging in voluntary prayer in public school. I applaud my colleagues in the House for this vote and especially commend Congressman JOHNSON of Texas who drafted the language. This amendment should remain in the bill which will provide Federal aid to elementary and secondary school programs.

Also, my good friend and colleague, Senator HELMS, had offered a similar amendment to S. 1150, the Goals 2000, Educate America Act, which was adopted in the Senate by a vote of 75 to 22. However, the House-Senate conference on Goals 2000, in a hasty manner, adopted so-called compromise language on the Helms amendment which completely misses the mark of the original Senate position. Hopefully, this action will not stand and the Senate will have the opportunity to reiterate its position on voluntary prayer in public schools.

Mr. President, last year on the first legislative day of the 103d Congress, I introduced Senate Joint Resolution 9 which is a proposed constitutional amendment to allow voluntary school prayer. This bill is essentially the same as legislation which I introduced at the request of President Reagan in March 1983, during the 98th Congress. I reintroduced this amendment in the 99th, 100th, 101st, and 102d Congress. This proposal would restore the right to pray voluntarily in pubic schools—a right which was freely exercised under our Constitution for 170 years until the Supreme Court ruled to the contrary.

Until the Supreme Court ruled in the Engel and Abington school district decisions, the establishment clause of the first amendment was generally understood to prohibit the Federal Government from officially approving, or holding in special favor, any particular faith or denomination. In crafting that clause, our Founding Fathers sought to prevent what had originally caused many colonial Americans to emigrate to this country—an official, state religion. At the same time, they sought, through the free exercise clause, to guarantee to all Americans the freedom to worship God without government interference or restraint. In their wisdom, they recognized that true religious liberty precluded the government from both forcing and preventing worship.

In the 1960's, in one fell swoop, the Supreme Court overturned the long-settled public policies of tens of thousands of communities across the country. A moment of voluntary prayer at the start of the school day—a policy that had enriched the education of generations of schoolchildren since the founding of the Republic—was determined by the Supreme Court to be a menace to the first amendment.

Mr. President, every morning we open the Senate and begin our workday with the comfort and stimulus of voluntary prayer. As a nation, we continue to recognize God in our Pledge of Allegiance by affirming that we are a nation "under God." Our currency is inscribed with the motto, "In God We Trust." It is time we restored the simple freedom of our citizens to offer prayer in our public schools and institutions. The public expression through prayer and recognition in other ways of our faith in God is a fundamental part of our American heritage. It should not be excluded from our public schools.

Mr. President, our liberty springs from and depends upon an abiding faith in God. This has been clear from the time of George Washington, who stated in his farewell address:

> Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports * * *. And let us with caution indulge the supposition that morality can be maintained without religion * * * [R]eason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

Mr. President, there is much discussion across this Nation on the breakdown of values and morality. There are concerns of violence in schools threatening the safety of teachers and students alike and undermining a sound learning environment. Of course, school prayer is not the panacea to end all problems, but I am confident that it will considerably add to the well-being and character development of America's children.

Again, I commend the recent action by the House of Representatives and believe that we must rededicate our efforts to amending the Constitution to return voluntary prayer to public schools.

I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. President, let me express my appreciation to the distinguished Senator from South Carolina for his remarks. He and I have fought this battle for 21 years, to my knowledge. And as long as I am in the Senate, we will continue to do our best to restore voluntary prayer in the schools. It should never have been eliminated in the first place.

If I may, I should like to ask the distinguished Senator from South Carolina one question.

The Senator was a conferee on the Goals 2000, was he not?

Mr. THURMOND. That is correct.

Mr. HELMS. Is it not a fact that all of the issues had been ostensibly taken care of over several days of meetings, and the Helms amendment was put off to be the last item to be resolved by the conferees? And after that, it is my understanding that the so-called compromise language on the Helms amendment—which was not a compromise because the Democratic staff knew the language was unacceptable from the minute it was first proposed—was hastily adopted with virtually no debate during literally the last minute or two of the conference. Is that the understanding of the Senator from South Carolina?

Mr. THURMOND. That is my understanding. I was necessarily absent but my staff was present and informed me of the situation.

Mr. HELMS. I understand.

It is a fact, is it not, that both the House and the Senate by overwhelming margins had approved what has come to be known as the Helms amendment? Is that correct?

Mr. THURMOND. That is correct. The Senate passed the amendment of the Senator from North Carolina overwhelmingly by a vote of 75–22, and the House passed the same language overwhelmingly yesterday by a vote of 345 to 64.

Mr. HELMS. Prior to that, I ask the Senator, is it not a fact that the House of Representatives had instructed by an overwhelming vote their conferees to retain the Helms amendment on the Goals 2000 bill?

Mr. THURMOND. I was informed that that was the case.

Mr. HELMS. I thank the Senator.

I want to say to the Senator that I have no desire whatsoever to delay the Senate in its quest for adjournment or recess on Thursday of this week. But unless and until the Helms amendment is restored to the Goals 2000 bill, this Senate runs the risk of being in session. And I will do my best to correct the error in judgment that was made by the senior Senator from Massachusetts on this issue in conference.

I do not want to delay any Senator from going home. I do not want to delay myself. But this issue is so significant to what we hope to restore to this country. We could pass all the laws we want to about drugs, crime, and all the rest of it. But unless we get back on a moral and spiritual footing, I do not believe this country has a chance.

Does the Senator agree with that?

Mr. THURMOND. This is a vital issue. It concerns our society as a whole, and I am confident that we ought to pass this. And I think it will improve the social situation in the entire Nation.

Mr. HELMS. Again, I thank the Senator for his kind remarks. I thank the Chair.

I yield the floor.

Mr. THURMOND. Again, I commend the able Senator from North Carolina.

Mr. HELMS. I thank the Senator.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MIKULSKI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 6968(a), appoints the following Senators to the Board of Visitors of the U.S. Naval Academy:

The Senator from Maryland [Ms. MIKULSKI], from the Committee on Appropriations;

The Senator from Maryland [Mr. SARBANES], at large;

The Senator from Oregon [Mr. HATFIELD], from the Committee on Appropriations; and

The Senator from Arizona [Mr. MCCAIN], from the Committee on Armed Services.

The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 4355(a), appoints the following Senators to the Board of Visitors of the U.S. Military Academy:

The Senator from Nevada [Mr. REID], from the Committee on Appropriations;

The Senator from Alabama [Mr. SHELBY], from the Committee on Armed Services;

The Senator from Mississippi [Mr. COCHRAN], from the Committee on Appropriations; and

The Senator from South Dakota [Mr. PRESSLER], at large.

The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 9355(a), appoints the following Senators to the

Board of Visitors of the U.S. Air Force Academy:

The Senator from Nebraska [Mr. EXON], from the Committee on Armed Services;

The Senator from South Carolina [Mr. HOLLINGS], from the Committee on Appropriations;

The Senator from Montana [Mr. BURNS], from the Committee on Appropriations; and

The Senator from Idaho [Mr. KEMPTHORNE], at large.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## PERSEPHONE RETURNS TO THE ALLEGHENIES

Mr. BYRD. Madam President, "Winter tames man, woman, and beast," but Robert Browning has announced the good news:

The year's at the spring.
And the day's at the morn;
Morning's at seven;
The hillside's dew-pearled;
The lark's on the wing;
The snail's on the thorn:
God's in his heaven—
All's right with the world.

Even as I stand here on the floor of the U.S. Senate, an imperceptible miracle is taking place all around us—on the Capitol Grounds, around the U.S. Capitol Building, on The Mall, along the banks of the Potomac, in the parks—and in the adjacent countryside.

Without our feeling it, and with few people taking notice of it, the axis on which planet Earth spins is changing its angle.

That change of angles has been going on annually without interruption apparently for billions of years.

Off the coast of southern California, the change in the angle of the Earth's axis will bring the swallows back to Capistrano.

Off the coast of the Carolinas, the change in the angle of the Earth's axis will bring sunbathers back to the beaches on the Outer Banks and vacationers to the Grand Strand along Myrtle Beach.

And as that angle shifts, drastic changes will occur, and suddenly, the cherry blossoms will pop open and within a few days be gone.

With little advance notice, temperatures here will shoot up into the eighties—one day 65 degrees, the next day 85 degrees. Not many more weeks will slip by until, with little advance notice, air-conditioning here will have to be turned on again in Government buildings, stores, and schools. Overcoats, scarfs, and gloves will have to be stored away until next November. And with little advance notice, overheating taxicabs will appear along steaming streets through which perspiring throngs of men and women scurry to escape the increasing burn of an intemperately hot Washington spring—a spring that will all too prematurely literally and figuratively melt into another scorching Washington summer.

However, only a few score miles west of here lies West Virginia, where the resplendent forms of Nature's glorious rebirth are everywhere to be seen:

* * * The marigold, that goes to bed with the sun,
And with him rises weeping. * * * daffodils,
That come before the swallow dares, and take
The winds of March with beauty; violets dim,
But sweeter than the lids of Juno's eyes
Or Cytherea's breath; pale primroses,
That die unmarried ere they can behold
Bright Phoebus in his strength * * *

Even as I speak here today, spring is making its approach to the hills and highlands of West Virginia.

But in the Alleghenies, across which West Virginia is draped like a cloak, and along the Blue Ridge across which West Virginia's Eastern Panhandle is gently stretched, and down deep valleys and stream gorges reaching toward the mighty Ohio River in numbers too generous to count, spring returns more subtlely, more gently, and more politely than it does here in these Potomac bottomlands.

Even as I speak, in the high reaches of Pocahontas and Randolph Counties, WV, to the extended joy of skiers, high-banked snow still rests heavily on the peaks and slopes of mountains so old that their rock strata yet carry the fossil remains of lumbering dinosaurs and long-extinct sea creatures whose descendants we can today collect along the shore's edge at Ocean City or Rehoboth.

But with each passing day, the snow banks of the Alleghenies will melt, adding a pristine flow to the mother tributaries that feed into the New River and the Potomac, the Monongahela, the Kanawha, the Big Sandy, and the Gauley rivers.

The temperatures in the Alleghenies will moderate slightly, calling tomorrow for gloves to be put away, but postponing until next week or the week after, tucking the scarf into a dresser drawer, and requiring yet a few more weeks until wool can be exchanged for cotton, and the cottons then again for sheerer and lighter garments.

Across the mountains to the west, temperatures in the 80's will not arrive until mid- or late-May in most climes, and even then, cool breezes will wisp out of the lush forests and green hills at night to replace the mild heat of the day with refreshment and relief.

But before that natural air-conditioning begins, West Virginia will offer up to the sensitive and appreciative observer some of the choicest experiences that spring offers anywhere in the world.

Senators, have you ever come out of your house on a cool spring morning to be greeted by an assembly of blossoming crocuses that were not there when you looked yesterday, but today foretell the wonders of the season ahead? I have—in West Virginia.

Have you ever followed a path down a hillside just as the "rosy fingers of dawn" are emerging across a cloudless, early-spring morning, to witness at your feet and overlaying a broad mountain valley below, the stray vapors of a morning fog lifting skyward on gentle drafts? I have—in West Virginia.

Have you ever marveled at the lingering dew on early-spring spiderwebs stretched about new-spring blades of grass—cobwebs whose patterns and ornamentation suggest diamond necklaces that might render a Russian tsarina jealous? I have—in West Virginia.

Have you ever surveyed day by day the emerging tender leaves on a variety of hardwood tress—maples, oaks, hickory—or the first spring buds on a dogwood? I have—in West Virginia.

I have studied across rugged crags and plunging knolls—some so remote and so wild that never in the history of mankind on Earth has a human foot been set there—I have watched there the week-to-week progress of Nature's mantle of leaves and blossoms that cover winter's drabness, and double as shelter and sustenance for returning flocks of birds and for awakening deer and other native fauna.

Little happens quickly in West Virginia's salubrious spring. Over and over, one can calculate and watch the daily changes in the world about—the gradually warming sun, the gradually greening fields, the gradually thickening leaves, the gradually flowering rhododendron and mountain laurel, the gradually climbing and sweet-smelling honeysuckle vines, the gradually more varied chirping of birds, the gradually clearer waters in rippling brooks—all things done in God's time and measured by God's timepiece.

No wonder the song says, "Almost heaven, West Virginia."

Clocks in West Virginia are set on Eastern Time, Mr. President, but life in West Virginia is lived largely on "God's Time" minus most of the hurry and bustle, the ulcers, and lost tempers that characterize the passage of time in so many other places.

Madam President, I have labored hard to help build up the "economic infrastructure," as we say here in Washington, of my State—to draw more people and jobs to West Virginia. That is important.

But I hope that West Virginia can grow economically without sacrificing the unique wonders that render West

Virginia unlike any other place in America or in the world. There in West Virginia, just as the God-bestowed spring emerges so gradually and so gently, so can a child grow into manhood or womanhood—as I think God intends us all to so grow—nurtured in the deepest of human values and caressed by the richest wonders of Nature—wonders intended for everyone, but so richly bestowed most generously of all on the people of West Virginia—where "the wind laughs and murmurs and sings of a land where even the old are fair and even the wise are merry of tongue."

Madam President, I invite Senators to visit West Virginia sometime this spring and invite you to visit the State and witness for yourself some of the qualities of life that I have described.

But, Madam President, be careful not to tell too many others about the beauties you see there. Be careful not to reveal how much more rested you feel after sleeping one night in a West Virginia bed. Be careful not to talk too much about the friendliness of the people you might meet in Preston County or in Pendleton County or in Huntington or Beckley. Take care not to brag too much about the beauty of Greenbrier County or the magic of Dolly Sods or Seneca Rock or Spruce Knob or Cranberry Glades. After all, you and I might want to keep a good thing a secret just between ourselves.

I yield the floor. 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. 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.

## APPOINTMENT OF CONFEREES—H.R. 3474

The PRESIDING OFFICER. Pursuant to the order of March 17, 1994, the Chair appoints the following Senators to serve as conferees on H.R. 3474.

The Presiding Officer appointed Mr. RIEGLE, Mr. SARBANES, Mr. DODD, Mr. D'AMATO, and Mr. GRAMM conferees on the part of the Senate.

## EXECUTIVE SESSION

## EXECUTIVE CALENDAR

Mr. FEINGOLD. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Order No. 742, Calendar Order No. 750, Calendar Order No. 778, and Calendar Order No. 779.

I further ask unanimous consent that the nominees be confirmed en bloc; that any statement appear in the RECORD as if read; that, upon confirmation, the motions to reconsider be laid upon the table en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF DEFENSE

Stephen C. Joseph, of Minnesota, to be an Assistant Secretary of Defense.

Helen Thomas McCoy, of Maryland, to be an Assistant Secretary of the Army.

DEPARTMENT OF JUSTICE

Deval L. Patrick, of Massachusetts, to be an Assistant Attorney General.

Jamie S. Gorelick, of Maryland, to be Deputy Attorney General.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

## CHILD SAFETY PROTECTION ACT

Mr. FEINGOLD. Madam President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 965, a bill to provide for toy safety and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendment of the Senate to the bill (H.R. 965) entitled "An Act to provide for toy safety and for other purposes", with the following amendment:

In lieu of the matter inserted by said amendment, insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Child Safety Protection Act".*

***TITLE I—TOY LABELING REQUIREMENTS***

***SEC. 101. REQUIREMENTS FOR LABELING CERTAIN TOYS AND GAMES.***

*(a) REQUIREMENT UNDER FEDERAL HAZARDOUS SUBSTANCES ACT.—The Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) is amended by adding at the end the following new section:*

***"SEC. 24. REQUIREMENTS FOR LABELING CERTAIN TOYS AND GAMES.***

*"(a) TOYS OR GAMES FOR CHILDREN WHO ARE AT LEAST 3.—*

*"(1) REQUIREMENT.—The packaging of any toy or game intended for use by children who are at least 3 years old but not older than 6 years (or such other upper age limit as the Commission may determine, which may not be less than 5 years old), any descriptive material which accompanies such toy or game, and, in the case of bulk sales of such toy or game when unpackaged, any bin, container for retail display, or vending machine from which the unpackaged toy or game is dispensed shall bear or contain the cautionary statement described in paragraph (2) if the toy or game—*

*"(A) is manufactured for sale, offered for sale, or distributed in commerce in the United States, and*

*"(B) includes a small part, as defined by the Commission.*

*"(2) LABEL.—The cautionary statement required by paragraph (1) for a toy or game shall be as follows:*

" ⚠ ***WARNING:***

***CHOKING HAZARD—Small parts.***
***Not for children under 3 yrs.***

*"(b) BALLOONS, SMALL BALLS, AND MARBLES.—*

*"(1) REQUIREMENT.—In the case of any latex balloon, any ball with a diameter of 1.75 inches or less intended for children 3 years of age or older, any marble intended for children 3 years of age or older, or any toy or game which contains such a balloon, ball, or marble, which is manufactured for sale, offered for sale, or distributed in commerce in the United States—*

*"(A) the packaging of such balloon, ball, marble, toy, or game,*

*"(B) any descriptive material which accompanies such balloon, ball, marble, toy, or game, and*

*"(C) in the case of bulk sales of any such product when unpackaged, any bin, container for retail display, or vending machine from which such unpackaged balloon, ball, marble, toy, or game is dispensed,*

*shall bear or contain the cautionary statement described in paragraph (2).*

*"(2) LABEL.—The cautionary statement required under paragraph (1) for a balloon, ball, marble, toy, or game shall be as follows:*

*"(A) BALLOONS.—In the case of balloons, or toys or games that contain latex balloons, the following cautionary statement applies:*

" ⚠ ***WARNING:***

***CHOKING HAZARD—Children under 8 yrs. can choke or suffocate on uninflated or broken balloons. Adult supervision required.***

***Keep uninflated balloons from children. Discard broken balloons at once.***

*"(B) BALLS.—In the case of balls, the following cautionary statement applies:*

" ⚠ ***WARNING:***

***CHOKING HAZARD—This toy is a small ball. Not for children under 3 yrs.***

*"(C) MARBLES.—In the case of marbles, the following cautionary statement applies:*

" ⚠ ***WARNING:***

***CHOKING HAZARD—This toy is a marble. Not for children under 3 yrs.***

*"(D) TOYS AND GAMES.—In the case of toys or games containing balls, the following cautionary statement applies:*

" ⚠ ***WARNING:***

***CHOKING HAZARD—Toy contains a small ball. Not for children under 3 yrs.***

*In the case of toys or games containing marbles, the following cautionary statement applies:*

" ⚠ ***WARNING:***

***CHOKING HAZARD—Toy contains a marble. Not for children under 3 yrs.***

*"(c) GENERAL LABELING REQUIREMENTS.—*

*"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), any cautionary statement required under subsection (a) or (b) shall be—*

*"(A) displayed in its entirety on the principal display panel of the product's package, and on any descriptive material which accompanies the product, and, in the case of bulk sales of such product when unpackaged, on the bin, container for retail display of the product, and any vending machine from which the unpackaged product is dispensed, and*

*"(B) displayed in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on such package, descriptive materials, bin, container, and vending machine, and in a manner consistent with part 1500 of title 16, Code of Federal Regulations (or successor regulations thereto).*

*"(2) EXCEPTION FOR PRODUCTS MANUFACTURED OUTSIDE UNITED STATES.—In the case of a product manufactured outside the United States and directly shipped from the manufacturer to the consumer by United States mail or other delivery service, the accompanying material inside the package of the product may fail to bear the required statement if other accompanying material shipped with the product bears such statement.*

*"(3) SPECIAL RULES FOR CERTAIN PACKAGES.—(A) A cautionary statement required by subsection (a) or (b) may, in lieu of display on the principal display panel of the product's package, be displayed on another panel of the package if—*

*"(i) the package has a principal display panel of 15 square inches or less and the required statement is displayed in three or more languages; and*

*"(ii) the statement specified in subparagraph (B) is displayed on the principal display panel and is accompanied by an arrow or other indicator pointing toward the place on the package where the statement required by subsection (a) or (b) appears.*

*"(B)(i) In the case of a product to which subsection (a), subsection (b)(2)(B), subsection (b)(2)(C), or subsection (b)(2)(D) applies, the statement specified by this subparagraph is as follows:*

" ⚠ *SAFETY WARNING*

*"(ii) In the case of a product to which subsection (b)(2)(A) applies, the statement specified by this subparagraph is as follows:*

" ⚠ *WARNING—CHOKING HAZARD*

*"(d) TREATMENT AS MISBRANDED HAZARDOUS SUBSTANCE.—A balloon, ball, marble, toy, or game, that is not in compliance with the requirements of this section shall be considered a misbranded hazardous substance under section 2(p).".*

*(b) OTHER SMALL BALLS.—A small ball—*

*(1) intended for children under the age of 3 years of age, and*

*(2) with a diameter of 1.75 inches or less,*

*shall be considered a banned hazardous substance under section 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)).*

*(c) REGULATIONS.—The Consumer Product Safety Commission (hereinafter referred to as the "Commission") shall promulgate regulations, under section 553 of title 5, United States Code, for the implementation of this section and section 24 of the Federal Hazardous Substances Act by July 1, 1994, or the date that is 6 months after the date of enactment of this Act, whichever occurs first. Subsections (f) through (i) of section 3 of the Federal Hazardous Substances Act (15 U.S.C. 1262) shall not apply with respect to the issuance of regulations under this subsection.*

*(d) EFFECTIVE DATE; APPLICABILITY.—Subsections (a) and (b) shall take effect January 1, 1995, and section 24 of the Federal Hazardous Substances Act shall apply only to products entered into commerce on or after January 1, 1995.*

*(e) PREEMPTION.—*

*(1) IN GENERAL.—Subject to paragraph (2), a State or political subdivision of a State may not establish or enforce a requirement relating to cautionary labeling of small parts hazards or choking hazards in any toy, game, marble, small ball, or balloon intended or suitable for use by children unless such requirement is identical to a requirement established by amendments made by this section to the Federal Hazardous Substances Act or by regulations promulgated by the Commission.*

*(2) EXCEPTION.—A State or political subdivision of a State may, until January 1, 1995, enforce a requirement described in paragraph (1) if such requirement was in effect on October 2, 1993.*

***SEC. 102. REPORTING REQUIREMENTS.***

*(a) REPORTS TO CONSUMER PRODUCT SAFETY COMMISSION.—*

*(1) REQUIREMENT TO REPORT.—Each manufacturer, distributor, retailer, and importer of a marble, small ball, or latex balloon, or a toy or game that contains a marble, small ball, latex balloon, or other small part, shall report to the Commission any information obtained by such manufacture, distributor, retailer, or importer which reasonably supports the conclusion that—*

*(A) an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game; and*

*(B) as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.*

*(2) TREATMENT UNDER CPSA.—For purposes of section 19(a)(3) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(3)), the requirement to report information under this subsection is deemed to be a requirement under such Act.*

*(3) EFFECT ON LIABILITY.—A report by a manufacturer, distributor, retailer, or importer under paragraph (1) shall not be interpreted, for any purpose, as an admission of liability or of the truth of the information contained in the report.*

*(b) CONFIDENTIALITY PROTECTIONS.—The confidentiality protections of section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)) apply to any information reported to the Commission under subsection (a) of this section. For purposes of section 6(b)(5) of such Act, information so reported shall be treated as information submitted pursuant to section 15(b) of such Act respecting a consumer product.*

***TITLE II—CHILDREN'S BICYCLE HELMET SAFETY***

***SEC. 201. SHORT TITLE.***

*This title may be cited as the "Children's Bicycle Helmet Safety Act of 1993".*

***SEC. 202. STANDARDS.***

*(a) IN GENERAL.—Bicycle helmets manufactured 9 months or more after the date of the enactment of this Act shall conform to—*

*(1) any interim standard described under subsection (b), pending the establishment of a final standard pursuant to subsection (c); and*

*(2) the final standard, once it has been established under subsection (c).*

*(b) INTERIM STANDARDS.—The interim standards are as follows:*

*(1) The American National Standards Institute standard designated as "Z90.4-1984".*

*(2) The Snell Memorial Foundation standard designated as "B-90".*

*(3) The American Society for Testing and Materials (ASTM) standard designated as "F 1447".*

*(4) Any other standard that the Commission determines is appropriate.*

*(c) FINAL STANDARD.—Not later than 60 days after the date of the enactment of this Act, the Commission shall begin a proceeding under section 553 of title 5, United States Code, to—*

*(1) review the requirements of the interim standards set forth in subsection (a) and establish a final standard based on such requirements;*

*(2) include in the final standard a provision to protect against the risk of helmets coming off the heads of bicycle riders;*

*(3) include in the final standard provisions that address the risk of injury to children; and*

*(4) include additional provisions as appropriate.*

*Sections 7, 9, and 30(d) of the Consumer Product Safety Act (15 U.S.C. 2056, 2058, 2079(d)) shall not apply to the proceeding under this subsection and section 11 of such Act (15 U.S.C. 2060) shall not apply with respect to any standard issued under such proceeding. The final standard shall take effect 1 year from the date it is issued.*

*(d) FAILURE TO MEET STANDARDS.—*

*(1) FAILURE TO MEET INTERIM STANDARD.—Until the final standard takes effect, a bicycle helmet that does not conform to an interim standard as required under subsection (a)(1) shall be considered in violation of a consumer product safety standard promulgated under the Consumer Product Safety Act.*

*(2) STATUS OF FINAL STANDARD.—The final standard developed under subsection (c) shall be considered a consumer product safety standard promulgated under the Consumer Product Safety Act.*

Mr. FEINGOLD. Madam President, I ask unanimous consent that the Senate disagree to the House amendment to the Senate amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees.

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

The presiding Officer appointed Mr. HOLLINGS, Mr. FORD, Mr. BRYAN, Mr. DANFORTH, and Mr. GORTON conferees on the part of the Senate.

## AUTHORITY FOR COMMITTEES TO REPORT

Mr. FEINGOLD. Madam President, I ask unanimous consent that, during the recess of the Senate, Senate committees may file committee-reported Legislative and Executive Calendar business on Tuesday, April 5, from 11 a.m. to 3 p.m.

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

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. 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 11:19 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1284) to amend the Developmental Disabilities Assistance and Bill of Rights Act to expand or modify certain provisions relating to programs for individuals with developmental disabilities, Federal assistance for priority area activities for individuals with developmental disabilities, protection and advocacy of individual rights, university affiliated programs, and projects of national significance, and for other purposes.

### ENROLLED JOINT RESOLUTION SIGNED

The message also announced that the Speaker has signed the following joint resolution:

S.J. Res. 56. Joint Resolution to designate the week beginning April 11, 1994, as "National Public Safety Telecommunicators Week."

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2382. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the cumulative report on rescissions and deferrals dated March 1, 1994; pursuant to the order of January 30, 1975, as modified by the order April 11, 1986; referred jointly to the Committee on Appropriations, the Committee on Budget, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, the Committee on Finance, the Committee on Foreign Relations, the Committee on Governmental Affairs, the Committee on the Judiciary, and the Committee on Small Business.

EC-2383. A communication from the Secretary of Defense, transmitting, pursuant to law, notice relative to the Future Years Defense Program; to the Committee on Armed Services.

EC-2384. 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 5 days of enactment; to the Committee on the Budget.

EC-2385. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the report of options for spending reductions and revenue increases; to the Committee on the Budget.

EC-2386. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report on a transaction involving United States exports to Russia; to the Committee on Banking, Housing, and Urban Affairs.

EC-2387. A communication from the Secretary of the Interior, transmitting, pursuant to law, the annual report on the Youth Conservation Corps for fiscal year 1993; to the Committee on Energy and Natural Resources.

EC-2388. A communication from the Secretary of Energy, transmitting, pursuant to law, notice relative to the annual/quarterly report on the Strategic Petroleum Reserve; to the Committee on Energy and Natural Resources.

EC-2389. A communication from the Deputy Administrator of the General Services Adminisrtation, transmitting, pursuant to law, a building project survey report for Springfield, IL; to the Committee on Environment and Public Works.

EC-2390. A communication from the Secretary of Defense, transmitting, pursuant to law, the annual report on the system of internal accounting and financial controls in effect during fiscal year 1993; to the Committee on Governmental Affairs.

EC-2391. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, a report relative to requests for agency records under the Freedom of Information Act during calendar year 1993; to the Committee on the Judiciary.

EC-2392. A communication from the Assistant Attorney General, Legislative Affairs, transmitting, a draft of proposed legislation to allow removal of suits against the United States and its agencies, as well as those against Federal officers, and to allow removal of suits against Federal agencies and officers that are brought in tribal courts, courts of Indian offenses, and local courts of U.S. territories and possessions; to the Committee on the Judiciary.

EC-2393. A communication from the Executive Director of the National Mediation Board, transmitting, pursuant to law, a report relative to requests made under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2394. A communication from the Postmaster General, transmitting, pursuant to law, a report relative to requests made under the Freedom of Information Act for calendar year year 1993; to the Committee on the Judiciary.

EC-2395. A communication from the Chairman of the National Endowment for the Arts, transmitting, pursuant to law, the annual report on the Arts and Artifacts Indemnity Program for fiscal year 1993; to the Committee on Labor and Human Resources.

EC-2396. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a draft of proposed legislation entitled "Community Services Block Grant Amendments of 1994;" to the Committee on Labor and Human Resources.

EC-2397. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of the Office of Minority Health for fiscal years 1991 and 1992; to the Committee on Labor and Human Resources.

EC-2398. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on the Youth Gang Drug Prevention Program for fiscal year 1992; to the Committee on Labor and Human Resources.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MITCHELL (for Mr. INOUYE), from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 1146. A bill to provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, Arizona, and for other purposes (Rept. No. 103-239).

By Mr. PELL, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 155. A resolution commending the Government of Italy for its commitment to halting software piracy.

## EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committee were submitted:

By Mr. MOYNIHAN, from the Committee on Finance:

Charles F. Meissner, of Maryland, to be an Assistant Secretary of Commerce, vice Thomas J. Duesterberg, resigned.

Susan G. Esserman, of Maryland, to be an Assistant Secretary of Commerce, vice Alan M. Dunn, resigned.

William Booth Gardner, of Washington, to be Deputy United States Trade Representative, with the rank of Ambassador, vice Michael H. Moskow, resigned.

Lynn M. Bragg, of Maryland, to be a Member of the United States International Trade Commission for the term expiring June 16, 2002, vice Anne Brunsdale, term expired.

(The above nominations were approved subject to the nominees' commitment to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations:

Jeanette W. Hyde, of North Carolina, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Barbados, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Commonwealth of Dominica, Ambassador Extraordinary and Plenipotentiary of the United States of America to St. Lucia, and Ambassador Extraordinary and Plenipotentiary of the United States of America to St. Vincent and the Grenadines.

Nominee: Jeanette W. Hyde.

Post: U.S. Ambassador to Barbados.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, Gore for Senate Committee—$1,000 (1989); Price for Congress Committee—$400 (1990); Gantt for Senate Committee—$1,000 (1990); Gore for Senate Committee—$1,000 (1990); Americans for Kerry Committee—$250 (1991); David Price Reelection Committee—$1,000 (1991); Committee to Reelect Terry Sanford—$500 (1991); Gephardt for Congress Committee—$250 (1991); and Clayton for Congress—$500 (1992).

Also David Price for Congress Committee—$1,000 (1992); Committee to Reelect Terry Sanford—$1,500 (1992); Committee to Elect Bill Clinton President—$1,000 (1992); Braun for Senate Committee—$1,000 (1992); NC Democratic Campaign (Federal Account)—$5,000 (1992); DNC Victory Fund (Finance Council Membership)—$5,000 (1992); DNC Victory Fund—$5,000 (1992); and DSCC—$200 (1992).

2. Spouse, Terry Sanford for Senate Committee—$250 (1989); Democratic House and Senate Council—$5,000 (1989); Gore for Senate Committee—$1,000 (1989); David Price for Congress—$500 (1990); Gantt for Senate Committee—$1,000 (1990); Clark for Congress Committee—$500 (1990); Democratic House and Senate Council—$1,500 (1990); Gore for Senate Committee—$1,000 (1990); Bill Clinton for President—$250 (1991); and David Price for Congress—$300 (1991).

Clark for Congress Committee—$400 (1991); Stevens for Congress Committee—$300 (1991); Gephardt for Congress Committee—$250 (1991); Democratic House and Senate Council—$1,500 (1991); Bradley for Senate Committee—$1,000 (1991); Americans for Kerry Committee—$250 (1991); Terry Sanford for Senate Committee—$2,000 (1992); Bill Clinton for President—$750 (1992); Stevens for Congress Committee—$500 (1992); DNC Victory Fund—$7,000 (1992); Friends of Clayton and Watt for Congress—$200 (1992); Democratic House and Senate Council—$1,500 (1992); and Democratic House and Senate Council—$625 (1993).

Children and spouses, None.

Stepchildren and spouses names, Martha Hyde Jones, Dan Jones (spouse) none, Charlie W. Hyde, none, Barbara Hyde White, Joseph White (spouse), none.

Parents names, Gurney C. Wallace, deceased, Effie W. Wallace, none.

Grandparents, names, Nettie B. Whitlock, Jones J. Whitlock, deceased.

Brothers and spouses, none.

Sisters and spouses names, June W. Smith, John G. Smith (spouse), none, Wanda W. Dobbins, Ralph A. Dobbins (spouse), none.

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Sam W. Brown, Jr., of California, for the rank of Ambassador during his tenure of service as Head of Delegation to the Conference on Security and Cooperation in Europe (CSCE).

Josiah Horton Beeman, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to New Zealand, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Western Samoa.

Nominee: Josiah Horton Beeman.

Post: Ambassador to New Zealand and Western Samoa.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, $250, 1989, Muenster for Senate; $250, 1990, Friends of Les Aspin; $125, 1990, Keep Geo. Brown in Congress; $100, 1992, Friends of Les Aspin; $1,000, 1992, Levine for Senate; $500, 1992, EMK'94; $100, 1993, Farr for Congress; and $500, 1993, Feinstein for Senate.

2. Spouse, Linda.

3. Children and spouses, none.

4. Parents names, Josiah Horton Beeman, Helen Hooper Beeman (deceased).

5. Grandparents, deceased for over 30 years.

6. Brothers and spouses, Jerrold Hooper Beeman (deceased.

7. Sisters and spouses, Anne Beeman Lack, none.

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Donald M. Blinken, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Hungary.

Nominee: Donald M. Blinken.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, $250, 1990, DNC; $1,000, 1990, Moynihan Committee; $2,000, 1991, Moynihan Committee; $5,000, 1992, DNC; $2,000, 1992, DNC; $1,000, 1992, DNC; $1,000, 1991, Clinton for President; $5,788, 1992, DNC; and $1,000, 1993, Democratic Senate Campaign. $2,000, 1993, Democratic Senate Campaign; $1,000, 1993, Dick Swett for Congress; $500, 1992, Abrams '92; $250, 1992, Citizens for Downey; $500, 1992, Citizens for Downey; $100, 1992, Braun for Senate; $250, 1990, Bill Green for Congress; and 250, 1992, NYS Democratic Committee.

2. Spouse, Vera Blinken, $1,000, 1992, Clinton for President; $3,000, 1992, DNC; $1,000, 1990, Moynihan Committee; $1,000, 1993, Democratic Senate Committee; and $1,000, 1993, Democratic Senate Committee.

3. Children and spouses, Antony J. Blinken, $1,000, 1992, Clinton for President; $2,000, 1993, The Moynihan Committee.

Alan John Blinken, $10,000, 1992, DNC; $1,000, 1992, Friends of Bob Carr; $500, 1992, Owens for Senate; $1,000, 1992, Clinton for President; $500, 1992, Kerry Committee; $1,000, 1991, Committee for Tim Wirth; $1,000, 1991, Liz Holtzman for Senate; $1,500, 1991, DNC; and $10,000, 1991, DNC. $1,000, 1990, Bill Bradley for U.S. Senate; $500, 1990, Eisendrath Campaign Committee; $500, 1990, Sloane for Senate Committee; $1,000, 1990, Friends of Al Gore, Jr. (Primary); $1,000, 1990, Friends of Al Gore, Jr. (General); $250, 1990, Women's Campaign Fund; $1,000, 1989, Andrew Stein for Congress; $500, 1989, Coelho for Congress; $1,000, 1989, Re-Elect Congressman Schumer.

4. Parents, names, Maurice H. Blinken, deceased, Ethel Blinken, none.

5. Grandparents, names, Mier Blinken and Anna Blinken, Kate Horowitz and Morris Horowitz, deceased.

6. Brothers and spouses, names, Robert and Allison Blinken, $10,000 1992, DNC Victory Fund; $2,000, 1992, DNC Victory Fund; and $5,000, 1990, Alan Blinken '90.

Melinda Blinken, $1,000, 1988, People for John Heinz Committee; $1,000, 1988, Al Gore for President Committee; $1,000, 1990, Re-Elect Congressman Chuck Schumer; $1,000, 1990, Bill Bradley for U.S. Senate '90; $200, 1990, Reed for Congress; $1,000, 1992, Susan Molinari for Congress; $500, 1992, Barbara Boxer for U.S. Senate; $1,000, 1992, Clinton for President; $1,000, 1992, Abrams '92; $250, 1992, Kerry for President; and $500, 1992, Lynn Yaekel for Senate.

March Fong Eu, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federated States of Micronesia.

Nominee: March Fong Eu.

Post: Ambassador to Micronesia.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, none.

2. Spouse, none.

3. Children and spouses, names, Marchesa/Jim Stein, none, Matthew/Paula Fong, $100, 1988, George Bush; and $100, 1988, Pete Wilson.

4. Parents names: Yuen Kong/Shiu (me) Shee deceased.

5. Grandparents names: deceased.

6. Brothers and spouses names: Bob Kong/Xiao Ling Huo Henry/Rose Kong, none.

7. Sisters and spouses names: Ruby/K.Y. Fong, none.

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Richard Dale Kauzlarich, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Azerbaijan.

Nominee: Richard D. Kauzlarich.

Post: Ambassador to the Republic of Azerbaijan.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, donee:

1. Self, none.

2. Spouse: Anne Kauzlarich, none.

3. Children and spouses names: Richard D. Kauzlarich, Terri L. Kauzlarich, none.

4. Parents names: Victor Kauzlarich, Eva M. Kauzlarich, none.

5. Grandparents names: George Kauzlarich, Emma Kronfeld, deceased.

6. Brothers and spouses names: Stanley J. Kauzlarich, none.

7. Sisters and spouses names: Victoria J. Kauzlarich, none, James Thane none.

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Charles R. Baquet III, of Maryland, to be Deputy Director of the Peace Corps, vice Barbara Zartman, resigned.

Thomas L. Baldini, of Michigan, to be a Commissioner on the part of the United States on the International Joint Commission, United States and Canada, vice Gordon K. Durnil, resigned.

Susan Bayh, of Indiana, to be a Commissioner on the part of the United States on the International Joint Commission, United States and Canada, vice Hilary Paterson Cleveland.

Alice Chamberlin, of New Hampshire, to be a Commissioner on the part of the United States on the International Joint Commission, United States and Canada, vice Robert F. Goodwin.

Harold C. Pachios, of Maine, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 1996, vice Lewis W. Douglas, Jr., term expired.

Lewis Manilow, of Illinois, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring

July 1, 1996, vice Tom C. Korologos, term expired.

Alexander Fletcher Watson, of Massachusetts, to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring September 20, 1996, vice Bernard William Aronson, term expired.

John F. Hicks, Sr., an Assistant Administrator of the Agency for International Development, to be a Member of the Board of Directors of the African Development Foundation for a term expiring September 22, 1997, vice Scott M. Spangler, term expired.

Barry S. Newman, of Virginia, to be United States Alternate Executive Director of the International Monetary Fund for a term of two years, vice Quincy Mellon Krosby, resigned.

(The above nominations were approved subject to the nominees' commitment to appear and testify before any duly constituted committee of the Senate.)

By Mr. MITCHELL (for Mr. INOUYE) from the Committee on Indian Affairs:

Michael H. Trujillo, of Oregon, to be Director of the Indian Health Service, Department of Health and Human Services, for a term of four years. (New position)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SIMON:

S. 1954. A bill to extend the deadlines applicable to certain hydroelectric projects under the Federal Power Act, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. LOTT (for himself, Mr. SHELBY, Mr. HATCH, Mr. BROWN, Mr. BURNS, Mr. COATS, Mr. COVERDELL, Mr. DOLE, Mr. GRASSLEY, Mr. GREGG, Mr. HELMS, Mrs. KASSEBAUM, Mr. MACK, Mr. MCCAIN, Mr. NICKLES, Mr. SIMPSON, and Mr. SMITH):

S. 1955. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to reform the budget process, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. SHELBY (for himself, Mr. CONRAD, Mr. JOHNSTON, Mr. BREAUX, and Mr. FAIRCLOTH):

S. 1956. A bill to amend the Consumer Credit Protection Act to improve disclosures made to consumers who enter into rental-purchase transactions, to set standards for collection practices, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. PELL (by request):

S. 1957. A bill to provide for a United States contribution to the Interest Subsidy Account of the successor (ESAF II) to the Enhanced Structural Adjustment Facility of the International Monetary Fund; to the Committee on Foreign Relations.

By Mr. MURKOWSKI (for himself, Mr. STEVENS, and Mr. AKAKA):

S. 1958. A bill to amend title 38, United States Code, to exclude certain payments received under the Alaska Native Claims Settlement Act from the determination of annual income for purposes of eligibility for veterans pension; to the Committee on Veterans' Affairs.

By Mr. GRAHAM:

S. 1959. A bill to prevent delay in the completion of Federal construction projects, and for other purposes; to the Committee on Governmental Affairs.

By Mr. MCCAIN:

S. 1960. A bill to increase housing opportunities for Indians; to the Committee on Indian Affairs.

By Mr. KENNEDY (for himself, Mr. DODD, Mr. DECONCINI, and Mr. KERRY):

S. 1961. A bill to provide for necessary medical care for former civilian prisoners of war; to the Committee on Labor and Human Resources.

By Mr. DODD (for himself and Mr. ROCKEFELLER):

S. 1962. A bill to provide for demonstration projects in 6 States to establish or improve a system of assured minimum child support payments; 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. MITCHELL:

S. Res. 191. A resolution to elect the Secretary of the Senate, Martha S. Pope; considered and agreed to.

S. Res. 192. A resolution to elect Sergeant at Arms and Doorkeeper of the Senate, Robert Laurent Benoit; considered and agreed to.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LOTT (for himself, Mr. SHELBY, Mr. HATCH, Mr. BROWN, Mr. BURNS, Mr. COATS, Mr. COVERDELL, Mr. DOLE, Mr. GRASSLEY, Mr. GREGG, Mr. HELMS, Mrs. KASSEBAUM, Mr. MACK, Mr. MCCAIN, Mr. NICKLES, Mr. SIMPSON, and Mr. SMITH):

S. 1955. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to reform the budget process, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee has 30 days to report or be discharged.

BUDGET PROCESS REFORM ACT

Mr. LOTT. Mr. President, today as we begin debate on the budget resolution for the next fiscal year, I think it is appropriate that we also think at this time about the need for budget process reform.

Twenty years ago, we passed the Congressional Budget and Impoundment Control Act of 1974. I supported it at that time because I thought we needed some process to take a look at how much we were spending, what it was going for, and just basically adding up what we were doing. Up until that time, there was no budget. We had authorization bills and appropriations bills out of the various subcommittees of Appropriations Committee, and nobody ever added them up to see what we were spending really, in total, and what it was doing to the deficit.

So we passed the Budget and Impoundment Control Act, and I thought it was a good idea at the time. This bill established our basic budget process as we know it today. Twenty years has been long enough to see what has worked and what has not worked. Some of it has been fine; some of it has not accomplished all we would like for it to have accomplished. So, as the old adage says, "Hindsight is 20/20." It is time for us to take advantage of what we can see behind us, learn from it, and make some changes.

As we consider this fiscal year 1995 budget, we should also make significant changes in the budget process that the Budget Act, the Budget and Impoundment Control Act, established in 1974.

That is why I am introducing a bill today to overhaul the Federal budget process, along with a number of our colleagues, including Democrats and Republicans. Process reform may not seem very glamorous. Indeed, it is not. But it is the foundation upon which all of our annual spending and taxing decisions are made. Without a strong foundation, a house will not stand.

There are two fundamental components of the budget which must be addressed to achieve effectiveness and efficiency in budgeting, as well as deficit reduction. After all, that should be our goal.

As we debate the budget, we will see this week that as a matter of fact we continue to have deficits every year, and the debt continues to go up every year. In fact, it will go up, some estimate, to $5 trillion over the next 5 years unless we find some way to better address the problem.

But the two components of the budget go hand in hand. The first is the process for development and implementation of a budget, and the second is the actual determination of the taxing and spending levels within that budget.

This bill addresses the first component, process reform, as its title, "The Budget Process Reform Act," indicates. I am introducing this bill with my friend Senator SHELBY and 15 other original Senate cosponsors. This bill would radically change the way Congress does business.

With budget reform in place, we could then effectively administer the second component of budgeting, the resource allocation process: where and how much do we spend of the taxpayers money. We will have a structure designed to permit clear, rational, and accountable choices among competing priorities.

That is the difficult part. If we would just basically says we have this much

coming in, and that is all we are going to spend, there would be a ferocious debate about what our priorities would be and how we would spend that money.

But that is what we are here for, and in the end we could make, I think, rational decisions about our priorities for spending and keep the budget deficits and eventually the debt under control.

I do think deficits matter, and as far as pointing fingers, I am not doing that. I think we all have contributed to this problem. But I think instead of looking back at the past, and how we got here, we need to be looking forward to how we stop this problem.

I believe the momentum behind the balanced budget amendment, which we have debated and which got a very strong vote—it came within four votes in the Senate, and I believe five votes in the House of Representatives—is an indication of a continuing and, I believe, growing concern about this problem.

Our Nation is facing a fiscal crisis. Our deficit for fiscal year 1993 was $255 billion. Our debt for fiscal year 1994 is projected to be $4.734 trillion. That is $13,345 for every man, woman, and child in America. We must do something about this.

Why are we debating these types of changes? Because Congress needs handcuffs. Unfortunately, Congress has not been willing to make the tough choices and cut spending enough.

There have been some starts and fits and stops, back and forth, and we have accomplished some things. I remember in 1981 and 1982, we actually cut the deficit some. Last year, the process I think actually did contribute to cutting the deficit some. I objected because I thought too much of it was done in the tax area. But the net result was that we still have not made enough tough choices to deal with the problem.

I can understand why each one of us were sent here by constituencies to protect the interests of our various States. In my own State, we have a lot of poverty; we have a lot of needs. We need better roads. We need better schools. Naturally, I am interested in trying to help my State with those needs.

Putting procedural changes in place such as the balanced budget amendment and some of the provisions of this bill would force Congress to be more responsible stewards of our constituents' hard-earned money.

I do want to point out that even if we had a budget surplus, I would still believe the changes in this bill are necessary. The system needs to be tweaked. As it stands currently, it does not allow the budget to reflect the current priorities of our Nation.

This bill was also introduced in the House by my friend Congressman CHRIS COX. He and Congressman CHARLES STENHOLM have worked very hard on this and there are now over 160 cosponsors in the House.

The bill will achieve the following objectives: simplification of the process, a shift from its current bias toward higher spending, and compliance with current law.

The Budget Process Reform Act would accomplish these goals through the following specific provisions:

First, it requires the budget resolution to be a joint one, voted on by April 15. Making it legally binding by requiring the President's signature will involve the President in the process at an early stage and ensure a shared effort.

I think that would be very important. You may say: Well, this President is not involved. But maybe he is more than others. I think until we get this requirement for a joint resolution, the President will not be as involved. We really need him.

The bill espouses a wise concept: Budget first, spend second. No spending bills—either authorizations or appropriations—could be considered prior to passage of the budget resolution. This will allow spending bills to move through the appropriations process in a logical and timely manner.

Second, the bill forces overall spending decisions to be made at a macro level. This year's budget is 4 volumes, 2,013 pages, and weighs 6 pounds.

How many of us are actually going to read it?

It takes a budget guru just to figure out what we're spending on a specific program. Our system seems designed to keep us all confused.

This bill would simplify the budget process by first requiring a 1-page budget document reflecting the total spending levels in the 19 summary categories currently used.

This would facilitate an easier decisionmaking process and the ability to prioritize—and see—where we are spending the American taxpayers' money.

We should not get bogged down in the details. That job belongs to the authorizers and appropriators.

The budget would also set ceilings on all Federal spending for the coming fiscal year, except for Social Security and interest on the debt. The bill does not say what those ceilings would be, but merely that Congress would set them and then live by them.

The President would be required to submit the detailed support 2 weeks later, after the overall spending decisions had been addressed.

The bill would eliminate baseline budgeting as we know it. This concept of budgeting allows automatic spending increases every year. This is the only place I know in the world where you allow for an increase and then you begin deciding how much you are going to add to that from that particular point.

I believe there are two fundamental problems with this: First, this means spending automatically goes up every year. Period. Second, this does not allow Congress to make decisions about where we should spend more or less.

I think anyone who considers this issue in terms of their own financial position would agree that this is poor policy and it is not even honest. For instance, how many of you automatically plan to spend 3 or 4 percent—or whatever the annual inflation rate is—more each year than you did the year before?

I was very encouraged by the vote on this issue in the Senate Budget Committee markup last Thursday. The Budget Committee voted 15 to 5 for a sense-of-the-Congress to eliminate baseline budgeting. This provision was also included in the House passed budget resolution. This is a change whose time has come. I urge that we adopt this provision.

The bill also contains a bias in favor of spending constraint which is in sharp contrast to our current situation. Any spending which exceeds the caps set in the budget resolution would be subject a three-fifth's vote of the Senate. Thus, the only way to adopt spending proposals by simple majority would be to authorize and appropriate within the ceilings of a duly enacted budget law.

Additionally, the ceilings on spending would also apply to entitlements. Again, this merely means that Congress would decide on specific spending totals for these programs. Congress has abdicated their control over the largest Government programs. As a result, these programs have grown uncontrollably. We must reign them in and make conscious decisions about the Government spending instead of just signing the blank check year after year.

The head of each executive agency that administers any entitlement program would be authorized to adjust benefit levels and eligibility requirements, so that the program costs exactly what Congress has appropriated and no more.

To maintain the integrity of congressional control over the legislative process, the CBO—rather than the OMB—would be the scorekeeper for determining whether particular authorization and appropriations measures were consistent with the budget ceilings. In his State of the Union speech last year, President Clinton said that the CBO should be the official scorekeeper. I do not have any bias for CBO. In fact, I have a lot of reservations about it. But, we need to decide who it is going to be, so we will have consistent numbers.

President Clinton has also repeatedly stated his support for the line item veto. This bill would give it to him. Why shouldn't the President of the United States have the same ability as 43 Governors to reduce targeted, pork-barrel projects?

This bill gives the President the authority to rescind over-budget spending

unless Congress were to enact legislation expressly overturning it. This gives the President the power to selectively reduce individual programs by a percentage, leaving intact some portions of programs budgeted by Congress if he chooses. This would help control spending.

The bill also precludes the need for continuing resolutions by automatically reverting any unfinished appropriations bills to the prior year's spending level. It amazes me, by law, Congress is to finish all appropriations bills by June 30. Yet, every year we miss this legal deadline and are forced to pass continuing resolutions because we can't get our work done in a timely manner. Various Government agencies and programs do not know whether they are going to be able to continue or not. We always talk about shutting down the Washington Monument. It is time to stop that insanity.

This provision of the bill will prevent actual or threatened annual shutdowns of the Federal Government.

In addition, this reversion would encourage spending restraint—if no action were taken on the appropriations bills, spending would not increase from year to year.

In conclusion, through the Budget Process Reform Act we will enforce the law. We will require cooperation between the President and Congress. We will bring entitlement programs under budget control. Above all, we will make the system clear and understandable to the people whose money we are spending.

As we annualy translate our Nation's priorities into a Federal budget, we can use this new process to both plan and discipline our spending while still achieving our goals. The final result will be a meaningful budget which allows Congress to focus on the effects of the bottom line on the economy and on the tradeoffs which must be made among priorities to control overall levels of spending.

This is a bipartisan plan. In preparing this legislation, we drew upon the experience and ideas of Democratic and Republican administration officials, congressional leaders, and academic experts across the past seven decades. This bill is a good starting point for real deficit reduction.

It sets the mechanisms in place to facilitate a more efficient and effective budget system.

I am hopeful that the grounds swell of support for reform will enable us to get this bill through this Congress. We need to put aside old ways of thinking and doing things. I believe Congress can do what it must do. We can win back the people's trust.

Our fiscal problems are not unsurmountable. A child must learn to step before he walks, and walk before he runs.

I remind my colleagues of a quote by St. Francis of Assisi:

Start by doing what's necessary; then do what is possible; and suddenly you are doing the impossible.

So I urge my colleagues to join me and the cosponsors of this bill in taking this step towards restoring fiscal responsibility, discipline, and accountability.

Mr. President, I ask unanimous consent that the Budget Process Reform Act be printed in it's entirety at the conclusion of my remarks.

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

S. 1955

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Budget Process Reform Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—STATEMENT OF CONGRESSIONAL PURPOSE**

Sec. 101. Improvement in decisionmaking process.
Sec. 102. Reform of fiscal management.
Sec. 103. Safeguards against delay and inaction.

**TITLE II—BINDING BUDGET LAW**

Sec. 201. Joint resolution establishing binding budget law.
Sec. 202. Budget required before spending bills may be considered.
Sec. 203. "baseline" budgeting prohibited; unadjusted year-to-year comparisons required in budget law.
Sec. 204. President's budget submissions.

**TITLE III—ENFORCEMENT MECHANICS**

**Subtitle A—Supermajority Required to Break Budget Law**

Sec. 301. Three-fifths requirement for all spending bills in absence of budget law.
Sec. 302. Three-fifths requirement for over-budget spending bills.
Sec. 303. Three-fifths requirement for waiver of this Act.

**Subtitle B—Limited Enhanced Rescission Authority**

Sec. 304. Rescission authority limited to spending above limits of congressional budget law.
Sec. 305. Application.

**Subtitle C—"Blank Check" Appropriations Prohibited**

Sec. 306. Intent of Senate.
Sec. 307. Fixed-dollar appropriations required.
Sec. 308. Agency-adjusted benefits.
Sec. 309. Budget authority and entitlement authority may cover only a single fiscal period.

**Subtitle D—"Pay As You Go" Requirement for New Spending**

Sec. 310. Spending offsets required.
Sec. 311. Three-fifths vote required to waive point of order.

**TITLE IV—SUSTAINING MECHANISM**

Sec. 401. Automatic continuing resolution.
Sec. 402. Contingency regulations.
Sec. 403. Unauthorized appropriations prohibited.

**TITLE V—PROTECTION OF SOCIAL SECURITY**

Sec. 501. Benefits protected against deficit reduction.
Sec. 502. Conforming amendment.

**TITLE VI—TIMETABLE**

Sec. 601. Revision of timetable.

**TITLE VII—CONFORMING AMENDMENTS**

Sec. 701. Conforming and technical amendments changing "concurrent" to "joint" resolutions.
Sec. 702. Further conforming and technical amendments.
Sec. 703. Conforming amendments to the Impoundment Control Act of 1974.
Sec. 704. Conforming amendment to title 31, United States Code.

**TITLE VIII—DEFINITIONS AND RULES OF INTERPRETATION**

Sec. 801. Definitions.
Sec. 802. Amendments to Congressional Budget and Impoundment Control Act of 1974.
Sec. 803. Use of terms.

**TITLE IX—EFFECTIVE DATE**

Sec. 901. General provision.
Sec. 902. Fiscal year 1993.

**TITLE I—STATEMENT OF CONGRESSIONAL PURPOSE**

**SEC. 101. IMPROVEMENT IN DECISIONMAKING PROCESS.**

Because the Federal budget process is the principal vehicle by which many of the most fundamental policy choices in Government are made, the purpose of this Act is to facilitate rational, informed, and timely decisions by the Congress in the course of that process.

**SEC. 102. REFORM OF FISCAL MANAGEMENT.**

It is the sense of the Congress that a properly functioning Federal budget process should focus the attention of policymakers and the public on the aggregate impact of Federal spending on the economy, and on the tradeoffs that must be made among priorities in order to control overall levels of spending. To this end, the Act is intended to establish a budget process that, in each fiscal period—

(1) requires the adoption of a budget before, not after, any spending begins;

(2) produces decisions on that budget early in the budgeting cycle;

(3) encourages cooperation between Congress and the President in adopting the budget;

(4) ties each subsequent spending decision to an overall, binding budget total;

(5) requires regular, periodic decisions on appropriate spending levels for all Federal programs, not just those arbitrarily deemed "controllable"; and

(6) produces a bias in favor of fiscal responsibility that can be overcome only if the Congress expressly determines to do so.

**SEC. 103. SAFEGUARDS AGAINST DELAY AND INACTION.**

The Congress further finds that a properly functioning budget process should contain safeguards against delay and inaction, so that temporary shut-downs of the Federal Government may be avoided when the President and the Congress fail to complete work on the budget prior to the beginning of a fiscal period. Accordingly, this Act is intended to provide an enforcement mechanism that gives meaning and importance to the timely adoption of a budget, and a sustaining mechanism that ensures a continuation of the Government should the political process produce deadlock or a failure to act in a timely fashion.

**TITLE II—BINDING BUDGET LAW**

**SEC. 201. JOINT RESOLUTION ESTABLISHING BINDING BUDGET LAW.**

To encourage early consultation and cooperation between the Congress and the

President on decisions concerning overall spending levels for all Federal programs, the Congress shall enact a binding budget law, in the form of a joint resolution, by April 15 of the calendar year before that in which the fiscal period commences. The technical amendments contained in title VI and section 701 of this Act are intended to assist in the establishment of this requirement. The budget law itself shall fit on a single page, which sets forth specific budget ceilings in the following 19 major functional categories, which together comprise the entire Federal budget.

Function 050: National Defense
Function 150: International Affairs
Function 250: General Science, Space and Technology
Function 270: Energy
Function 300: Natural Resources and Environment
Function 350: Agriculture
Function 400: Transportation
Function 450: Community and Regional Development
Function 500: Education, Training, Employment and Social Services
Function 550: Health
Function 570: Medicare
Function 600: Income Security
Function 650: Social Security
Function 700: Veterans Benefits and Services
Function 750: Administration of Justice
Function 800: General Government
Function 900: Net Interest
Function 920: Allowances
Function 950: Undistributed Offsetting Receipts.

By thus requiring that the budget process begin with highly generalized macroeconomic decisions about spending in 19 overall categories, this section is intended to facilitate agreement within Congress itself, and between Congress and the President, on how much the Federal Government should spend in the ensuing fiscal period.

**SEC. 202. BUDGET REQUIRED BEFORE SPENDING BILLS MAY BE CONSIDERED.**

Unless and until a joint resolution on the budget is enacted with respect to any major functional category for a fiscal period, it shall not be in order in either the House of Representatives or the Senate, or any committee or subcommittee thereof, to consider any spending bill affecting spending in that category, except as provided in Title III of this Act. The purpose of this provision is to ensure that until the budget is signed into law, no authorization or appropriations bill shall be considered in the Congress.

**SEC. 203. "BASELINE" BUDGETING PROHIBITED; UNADJUSTED YEAR-TO-YEAR COMPARISONS REQUIRED IN BUDGET LAW.**

Section 301(e) of the Congressional Budget Act of 1974 is amended by—

(1) inserting after the second sentence the following: "The starting point for any deliberations in the Committee on the Budget of each House on the joint resolution on the budget for the next fiscal period shall be the estimated level of outlays for the current period in each function and subfunction. Any increases or decreases in the Congressional budget for the next fiscal period shall be from such estimated levels.";

(2) striking paragraphs (2) and (3) and inserting the following:

"(2) a comparison of levels for the current fiscal period with proposed spending for the subsequent fiscal periods along with the proposed increase or decrease of spending in percentage terms for each function and subfunction;

"(3) information, data, and comparisons indicating the manner in which, and the basis on which, the committee determined each of the matters set forth in the joint resolution, including information on outlays for the current fiscal period and the decisions reached to set funding for the subsequent fiscal years;";

(3) inserting "and" after the semicolon in paragraph (7);

(4) striking paragraph (8); and

(5) redesignating paragraph (9) as paragraph (8).

The technical amendments contained in sections 702(g) and 704(b) of this Act are intended to apply the same prohibition against "baseline" budgeting to the budgets prepared by the President and the Congressional Budget Office reports to the Budget Committees.

**SEC. 204. PRESIDENT'S BUDGET SUBMISSIONS.**

On or before the fifteenth day after a joint resolution on the budget is enacted, the President shall submit to the Congress a detailed budget for the fiscal period beginning on October 1 of the current calendar year, including all summaries and explanations required under section 1105(a) of title 31, United States Code.

## TITLE III—ENFORCEMENT MECHANICS

### Subtitle A—Supermajority Required to Break Budget Law

**SEC. 301. THREE-FIFTHS REQUIREMENT FOR ALL SPENDING BILLS IN ABSENCE OF BUDGET LAW.**

Unless and until a joint resolution on the budget is enacted with respect to any major functional category for a fiscal period, it shall not be in order in the Senate or any committee or subcommittee thereof, to consider any spending bill affecting spending in that category unless it is approved by the affirmative vote of three-fifths of the Members voting, a quorum being present.

**SEC. 302. THREE-FIFTHS REQUIREMENT FOR OVER-BUDGET SPENDING BILLS.**

(a) DETERMINATION OF BUDGET EFFECT OF ALL PROPOSED SPENDING BILLS.—The Congressional Budget Office shall provide to the Senate (or the appropriate committee, subcommittee, or conference thereof) as soon as practicable after the introduction of any spending bill, its estimate of the costs in each major functional category attributable to that bill during the fiscal period in which it is to become effective and in each of the next 4 fiscal years, together with the basis for such estimate. The Congressional Budget Office report shall not be required, however, if the Congressional Budget Office certifies that a spending bill will likely result in applicable costs of less than $10,000,000. For purposes of estimating the costs attributable to any spending bill that includes new credit authority, the report shall deem the market value of any loan (if it were sold by the Federal Government) or the assumption cost of any guarantee (if it were assumed at market rates) to be the costs attributable to such loan or guarantee in the fiscal period in which it is made.

(b) CBO REPORT REQUIRED BEFORE CONSIDERATION OF SPENDING BILLS.—It shall not be in order in the Senate, or in any committee thereof, to consider any spending bill, unless and until the report referred to in subsection (a) has been made available to the Senate or the appropriate committee or subcommittee thereof.

(c) THREE-FIFTHS REQUIREMENT FOR ALL OVER-BUDGET SPENDING BILLS.—It shall not be in order in the Senate (or in any committee, subcommittee, or conference) to consider any spending bill for a fiscal period that the report referred to in subsection (a) indicates would in such fiscal period exceed a budget ceiling, unless such bill is approved by the affirmative vote of three-fifths of the Members voting, a quorum being present.

(d) DETERMINATION OF SPENDING IN A CATEGORY.—A spending bill shall be deemed to break a budget ceiling if—

(1) its cost in any major functional category as estimated in the report referred to in subsection (a); and

(2) all other budget authority, budget outlays, and entitlement authority, if any, in that major functional category for the relevant fiscal period contained in any previously enacted legislation for the fiscal period; and

(3) to the extent that new budget authority or entitlement authority for the relevant fiscal period has not been granted (or modified from the level of the previous fiscal period) in any other enacted legislation for any program within such major functional category, the amounts of budget authority and entitlement authority for such major functional category (or part thereof) for the previous fiscal period;

exceed the budget ceiling for such major functional category.

**SEC. 303. THREE-FIFTHS REQUIREMENT FOR WAIVER OF THIS ACT.**

No waiver of any provision of this Act, including the calendar deadlines for completion of Congressional action and the provisions concerning over-budget spending, shall be effective unless approved by the affirmative vote of three-fifths of the Members of the Senate, a quorum being present. No committee of the Senate shall have jurisdiction to report a rule governing procedures for consideration of spending bills covered by this Act, if such rule would violate the provisions of this section. Nothing in this provision shall be deemed to require a supermajority vote to amend this Act.

### Subtitle B—Limited Enhanced Rescission Authority

**SEC. 304. RESCISSION AUTHORITY LIMITED TO SPENDING ABOVE LIMITS OF CONGRESSIONAL BUDGET LAW.**

The Impoundment Control Act of 1974 (2 U.S.C. 681 et seq.) is amended by redesignating sections 1013 through 1017 as sections 1014 through 1018, respectively, and inserting after section 1012 the following new section:

"RESCISSION OF SPENDING ABOVE LIMITS OF CONGRESSIONAL BUDGET LAW

"SEC. 1013. (a) TRANSMITTAL OF SPECIAL MESSAGE.—The President may transmit to both Houses of Congress for consideration in accordance with this section one or more special messages to rescind (in whole or in part) items of budget authority or entitlement authority sufficient to ensure that the levels of budget authority, entitlement authority, and outlays in a functional category do not exceed the levels stated in the budget law for the applicable fiscal period (or, in the absence of a budget law, do not exceed such levels in the previous fiscal period).

"(b) LIMITATIONS.—For purposes of this section—

"(1) continuing appropriations made pursuant to section 1311 of title 31, United States Code, shall be treated as continuing appropriations for an entire fiscal period; and

"(2) the levels of budget authority, entitlement authority, and outlays shall be determined on the basis of the reports made by the Congressional Budget Office pursuant to section 202 of the Budget Process Reform Act of 1990.

"(c) CONTENTS OF SPECIAL MESSAGE.—Each special message transmitted under subsection (a) shall specify, with respect to each item of budget authority to be rescinded, the matters referred to in paragraphs (1) through (5) of section 1012(a).

"(d) REQUIREMENT NOT TO MAKE AVAILABLE FOR OBLIGATION.—Any item of budget authority to be rescinded as set forth in such special message shall not be made available for obligation unless, within the prescribed 45-day period, Congress completes action on a rescission bill disapproving the rescission of the amount to be rescinded. Funds made available for obligation under this procedure may not be included in a special message again.

"(e) PROCEDURES.—

"(1)(A) Before the close of the third day beginning after the day on which a special message to rescind an item of budget authority is transmitted to the House of Representatives and the Senate under subsection (a), a bill may be introduced (by request) by the majority leader or minority leader of the House of the Congress in which the appropriation Act providing the budget authority originated to disapprove the rescission set forth in the special message. If such House is not in session on the day on which a special message is transmitted, the bill may be introduced in such House, as provided in the preceding sentence, on the first day thereafter on which such House is in session.

"(B) A bill introduced in the House of Representatives or the Senate pursuant to subparagraph (A) shall be referred to the Committee on Appropriations of such House. The Committee shall report the bill without substantive revision (and with or without recommendation) not later than 15 calendar days of continuous session of the Congress after the date on which the bill is introduced. A committee failing to report a bill within the 15-day period referred to in the preceding sentence shall be automatically discharged from consideration of the bill and the bill shall be placed on the appropriate calendar.

"(C) A vote on final passage of a bill introduced in a House of the Congress pursuant to subparagraph (A) shall be taken on or before the close of the 25th calendar day of continuous session of the Congress after the date of the introduction of the bill in such House. If the bill is agreed to, the Clerk of the House of Representatives (in the case of a bill agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a bill agreed to in the Senate) shall cause the bill to be engrossed, certified, and transmitted to the other House of the Congress on the same calendar day on which the bill is agreed to.

"(2)(A) A bill transmitted to the House of Representatives or the Senate pursuant to paragraph (1)(C) shall be referred to the Committee on Appropriations of such House. The committee shall report the bill without substantive revision (and with or without recommendation) not later than 10 calendar days of continuous session of the Congress after the bill is transmitted to such House. A committee failing to report the bill within the 10-day period referred to in the preceding sentence shall be automatically discharged from consideration of the bill and the bill shall be placed upon the appropriate calendar.

"(B) A vote on the final passage of a bill transmitted to a House of the Congress pursuant to paragraph (1)(C) shall be taken on or before the close of the 10th calendar day of continuous session of the Congress after the date on which the bill is transmitted to such House. If the bill is agreed to in such House, the Clerk of the House of Representatives (in the case of a bill agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a bill agreed to in the Senate) shall cause the engrossed bill to be returned to the House in which the bill originated, together with a statement of the action taken by the House acting under this paragraph.

"(3)(A) A motion in the House of Representatives to proceed to the consideration of a bill under this section shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(B) Debate in the House of Representatives on a bill under this section shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the bill. A motion further to limit debate shall not be debatable and shall require an affirmative vote of two-thirds of the Members voting, a quorum being present. It shall not be in order to move to recommit a bill under this section or to move to reconsider the vote by which the bill is agreed to or disagreed to.

"(C) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a bill under this section shall be decided without debate.

"(D) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a bill under this section shall be governed by the Rules of the House of Representatives applicable to other bills in similar circumstances.

"(4)(A) A motion in the Senate to proceed to the consideration of a bill under this section shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(B) Debate in the Senate on a bill under this section, and all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(C) Debate in the Senate on any debatable motion or appeal in connection with a bill under this section shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(D) A motion in the Senate to further limit debate on a bill under this section is not debatable. A motion to recommit a bill under this section is not in order.

"(f) AMENDMENTS PROHIBITED.—No amendment to a bill considered under this section shall be in order in either the House of Representatives or the Senate. No motion to suspend the application of this subsection shall be in order in either House, not shall it be in order in either House for the presiding officer to entertain a request to suspend the application of this subsection by unanimous consent.".

**SEC. 305. APPLICATION.**

The amendments made by section 304 shall apply to items of budget authority (as defined in subsection (g)(1) of section 1013, as added by section 103(b) of this Act) provided by appropriation Acts (as defined in subsection (g)(3) of such section) that become law after the date of enactment of this Act.

## Subtitle C—"Blank Check" Appropriations Prohibited

**SEC. 306. INTENT OF SENATE.**

It is the intent of the Senate, by this provision, to put an end to open-ended, "blank check" appropriations, which typically authorize the spending of "such sums as may be necessary." By requiring explicit decisions concerning the desired level of spending for each federal program (except social security and interest on the debt), it is intended that currently uncontrolled programs will be brought within the discipline of an overall budget.

**SEC. 307. FIXED-DOLLAR APPROPRIATIONS REQUIRED.**

(a) FIXED-DOLLAR APPROPRIATIONS.—For every account except social security and interest on the debt, every appropriation for a fiscal period for any program, project, or activity shall be for a specific, fixed dollar amount. Any appropriations of "such sums as may be necessary" (except with respect to the automatic continuing resolution provided for by section 401 of this Act) are hereby prohibited.

(b) POINT OF ORDER.—It shall not be in order in the Senate (or in any committee, subcommittee, or conference) to consider any appropriation that is in violation of subsection (a).

**SEC. 308. AGENCY-ADJUSTED BENEFITS.**

The head of each Executive agency that administers any entitlement program is authorized to adjust benefit levels and eligibility requirements, or both, with respect to the program such that aggregate outlays for a fiscal period do not exceed the fixed-dollar appropriation proved pursuant to this title such fiscal period. Such adjustment shall be made by rule or, pending adoption of appropriate rules, informal guideline. The purpose of any such rule or guideline shall be to ensure that the fixed-dollar appropriations for the program authorized by Congress are not exceeded.

**SEC. 309. BUDGET AUTHORITY AND ENTITLEMENT AUTHORITY MAY COVER ONLY A SINGLE FISCAL PERIOD.**

Chapter 13 of title 31, United States Code, is amended by inserting after section 1312 the following new section:

**"§ 1313. Budget authority and entitlement authority must cover single fiscal period**

"(a) Notwithstanding any other provision of law and except as provided by subsection (b), no budget authority or entitlement authority—

"(1) enacted on or after the date of enactment of this section shall be effective for more than one fiscal period; or

"(2) enacted before the date of enactment of this section shall continue in effect beyond the end of the first fiscal period beginning after the date of enactment of this section.

"(b) Subsection (a) does not apply with respect to appropriations for the repayment of indebtedness incurred under chapter 31 or benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act.".

**Subtitle D—"Pay As You Go" Requirement for New Spending**

**SEC. 310. SPENDING OFFSETS REQUIRED.**

It shall not be in order in the Senate to consider any supplemental appropriation measure, or any other bill, resolution, or amendment which authorizes, requires, or provides new entitlements/mandatory spending as defined in section 3 (12)(A) of the Congressional Budget and Impoundment Control Act of 1974, or which authorizes spending for a fiscal period that the report referred to in section 302(a) of this Act indicates would in such fiscal period exceed a budget ceiling, unless any such increased spending called for therein is offset fully in each such fiscal period in such measure, bill, resolution or amendment by an equal amount of reductions in existing spending.

**SEC. 311. THREE-FIFTHS VOTE REQUIRED TO WAIVE POINT OF ORDER.**

The point of order established by this subtitle may be waived or suspended in the Senate, and an appeal of the ruling of the Chair on a point of order raised under this section may be sustained, only by the affirmative vote of three-fifths of the Members voting, a quorum being present.

**TITLE IV—SUSTAINING MECHANISM**

**SEC. 401. AUTOMATIC CONTINUING RESOLUTION.**

Chapter 13 of title 31, United States Code, is amended by inserting after section 1310 the following new section:

**"§ 1311. Continuing appropriation**

"(a) If for any account an appropriation for a fiscal period does not become law before the beginning of such fiscal period, there are hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, such sums as may be necessary to continue any program, project, or activity provide for in the most recent appropriation Act at a rate of operations not in excess of the rate of operations provided for such program, project, or activity in such Act. In no case shall the total dollar amount of appropriations for any program, project or activity pursuant to this section exceed the appropriation for such program, project, or activity in the most recent appropriation Act, determined on a fiscal-period basis.

"(b) Amounts appropriated pursuant to subsection (a) for a program, project, or activity shall be available during a fiscal period until the earlier of—

"(1) the day on which the appropriation bill for such fiscal period which would include the program, project, or activity takes effect; or

"(2) the last day of such fiscal period.".

**SEC. 402. CONTINGENCY REGULATIONS.**

Chapter 13 of title 31, United States Code, is amended by inserting after section 1311 the following new section:

**"§ 1312. Contingency regulations**

"(a) Notwithstanding any other provisions of law and except as provided by subsection (b), the head of each Executive agency that administers any entitlement program shall, by rule, (or informal guideline, pending adoption of appropriate rules), provide for the adjustments of benefit levels or eligibility requirements, or both, with respect to the program such that aggregate outlays for a fiscal period do not exceed the fixed-dollar appropriation provided pursuant to section 314 (requiring fixed-dollar appropriations) or section 401 (providing for an Automatic Continuing Resolution) of this Act for such fiscal period.

"(b) In the case of social safety net programs, the rules shall provide each State the option of receiving an aggregate amount for the fiscal period for such programs equal to the amount it received for the preceding fiscal period for such programs (in which case such State could, in its discretion, allocate the benefits among such programs to best meet the needs of recipients in its State) or the amounts it received for each such program for such preceding fiscal period.

"(c) As used in this section—

"(1) the term 'Executive agency' has the meaning given such term in section 105 of title 5, United States Code;

"(2) the term 'entitlement program' means any spending authority as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974; and

"(3) the term 'social safety net programs' means the following programs: family support payments, adoption assistance, child support enforcement, food stamps, foster care, medicaid, child nutrition programs, social services block grant, and supplemental security income (SSI).".

**SEC. 403. UNAUTHORIZED APPROPRIATIONS PROHIBITED.**

Section 401(b) is amended to read as follows:

"(b) CONTROLS ON LEGISLATION PROVIDING FUNDING.—(1) It shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or conference report that provides budget authority or spending authority described in subsection (c)(2)(C) except a bill or resolution reported by the Committee on Appropriations of that House or a conference report made by a committee or conference all of whose conferees are member of the Committee on Appropriations.

"(2) Paragraph (1) shall not apply to benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act.".

**TITLE V—PROTECTION OF SOCIAL SECURITY**

**SEC. 501. BENEFITS PROTECTED AGAINST DEFICIT REDUCTION.**

Nothing in this Act shall be construed to require or permit reductions in Social Security benefits otherwise payable pursuant to applicable law or regulations.

**SEC. 502. CONFORMING AMENDMENT.**

Chapter 13 of title 31, United States Code, is amended by inserting after section 1313 the following new section:

**"§ 1314. Protection of social security from budget deficit reduction measures**

"No reductions in benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act shall be made as a consequence of the Budget Process Reform Act".

**TITLE VI—TIMETABLE**

**SEC. 601. REVISION OF TIMETABLE.**

Section 300 (2 U.S.C. 631) is amended to read as follows:

"TIMETABLE

"SEC. 300. The timetable with respect to the Congressional budget process for any Congress (beginning with the One Hundred Third Congress) is as follows:

| "On or before: | Action to be completed: |
|---|---|
| First Monday in February. | President submits short-form budget recommendations. |
| February 15 | Congressional Budget Office submits report to Budget Committees. |
| February 25 | Committees submit views and estimates to Budget Committees. |
| March 31 | Budget Committees report joint resolution on the budget. |
| April 15 | Congress completes action on joint resolution on the budget and transmits it to the President for signature or veto. |
| President signs joint resolution, or Congress overrides veto. | Authorization and appropriations bills may be considered in the Congress. |
| 15th day after enactment of joint budget resolution. | President submits complete budget and support documents. |
| June 10 | Appropriations Committees report last of annual appropriation bills. |
| September 30 | Congress completes action on reconciliation legislation and annual appropriation bills. |
| October 1 | Fiscal period begins. Congress completes all necessary action on budget, authorizations and appropriations, or automatic continuing resolution takes effect.". |

**TITLE VII—CONFORMING AMENDMENTS**

**SEC. 701. CONFORMING AND TECHNICAL AMENDMENTS CHANGING "CONCURRENT" TO "JOINT" RESOLUTIONS.**

(a) Sections 300, 301, 302, 303, 304, 305, 308, 310, and 311 (2 U.S.C. 631 et seq.) are amended by striking "concurrent resolutions" each place it appears and by inserting "joint resolutions".

(b) The table of contents set forth in section 1(b) is amended by striking "Concurrent" in the items relating to sections 301, 303, and 304 and inserting "Joint".

(c) Clauses 4(a)(2), 4(b)(2), 4(g), and 4(h) of rule X, clause 8 of rule XXIII, and rule XLIX of the Rules of the House of Representatives are amended by striking "concurrent" and by inserting in its place "joint".

(d) Section 258C(b)(1) of the Deficit Control Action of 1985 is amended by striking "concurrent" and by inserting "joint".

**SEC. 702. FURTHER CONFORMING AND TECHNICAL AMENDMENTS.**

(a) Section 302(f) (2 U.S.C. 633(f)) is amended—

(1) in paragraph (1) by striking "(1) IN THE HOUSE OF REPRESENTATIVES.—", by striking "new budget authority for such fiscal year, new entitlement authority effective during such fiscal year, or" and by striking "new discretionary budget authority, new entitlement authority, or"; and

(2) by striking paragraph (2).

(b) Section 303 is amended—

(1) in its heading by striking "NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY," and the comma before "OR CHANGES";

(2) in subsection (a) by striking paragraphs (1), (4) and (5) and by redesignating paragraphs (2), (3), and (6) as paragraphs (1), (2), and (3), respectively; and

(3) in subsection (b) by striking paragraph (1)(A), by striking "(B)", by striking the dash after "resolution", and by striking the last sentence.

(c) The table of contents set forth in section 1(b) is amended by striking "new budget authority, new spending authority," and the comma before "or changes" in the item relating to section 303.

(d) Section 311 is amended—

(1) in its heading by striking "NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, AND";

(2) in subsection (a)(1) by striking "providing new budget authority for such fiscal year, providing new entitlement authority effective during such fiscal year, or"; by striking "the appropriate level of total new budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget to be exceeded, or";

(3) by repealing subsection (b); and

(4) by redesignating subsection (c) as subsection (b), and by striking "new budget authority, budget outlays, new entitlement authority, and" in subsection (c) (as redesignated).

(e) The table of contents set forth in section 1(b) is amended by striking "new budget authority, new spending authority, and" in the item relating to section 311.

(f) The last sentence of clause 4(b) of rule XI of the Rules of the House of Representatives is amended by inserting before the period at the end of the following: "; nor shall it report any rule or order which would waive any point of order set forth in title III of the Budget Process Reform Act".

(g) The first sentence of section 202(f)(1) of the Congressional Budget Act of 1974 is amended to read as follows: "On or before February 15 of each year, the Director shall submit to the Committees on the Budget of the House of Representatives and the Senate a report, for the fiscal year commencing on October 1 of that year, with respect to fiscal policy, including (A) estimated budget outlays in all functions and subfunctions for appropriated accounts for the current fiscal year and estimated budget outlays under current law for all entitlement programs for the next fiscal year, (B) alternative levels of total revenues, total new budget authority, and total outlays (including related surpluses and deficits), and (C) the levels of tax expenditures under existing law, taking into account projected economic factors and any changes in such levels based on proposals in the budget submitted by the President for such fiscal year.".

**SEC. 703. CONFORMING AMENDMENTS TO THE IMPOUNDMENT CONTROL ACT OF 1974.**

(a) Section 1011(5) (2 U.S.C. 682(5)) is amended—

(1) by striking "1012, and" and inserting "1012, the 20-day periods referred to in paragraphs (1)(b) and (2)(A) of section 1013(c), the 45-day period referred to in section 1013(b), and";

(2) by striking "1012 during" and inserting "1012 or 1013 during";

(3) by striking "of 45" and inserting "of the applicable number of"; and

(4) by striking "45-day period referred to in paragraph (3) of this section and in section 1012" and inserting "period or periods of time applicable under such section".

(b) Section 1011 is further amended—

(1) in paragraph (4) by striking "1013" and inserting "1014"; and

(2) in paragraph (5)—

(A) by striking "1016" and inserting "1017"; and

(B) by striking "1017(b)(1)" and inserting "1018(b)(1)".

(c) Section 1015 (as redesignated) is amended—

(1) by striking "1012 or 1013" each place it appears and inserting "1012, 1013, or 1014";

(2) in subsection (b)(1) by striking "1012" and inserting "1012 or 1013";

(3) in subsection (b)(2) by striking "1013" and inserting "1014"; and

(4) in subsection (e)(1)—

(A) by striking "and" at the end of subparagraph (A),

(B) by redesignating subparagraph (B) as subparagraph (C),

(C) by striking "1013" in subparagraph (C) (as redesignated), and

(D) by inserting after subparagraph (A) the following new subparagraph:

"(B) he has transmitted a special message under section 1013 with respect to a proposed rescission; and".

(d) Section 1016 (as redesignated) is amended by striking "1012 or 1013" each place it appears and inserting "1012, 1013, or 1014".

(e) Section 1012(b) is amended by inserting before the last sentence the following new sentence: "The preceding sentence shall not apply to any item of budget authority proposed by the President to be rescinded under this section that the President has also proposed to rescind under section 1013 and with respect to which the 45-day period referred to in subsection (e) of such section has not expired.".

(f) The table of sections set forth in section 1(b) is amended—

(1) by redesignating the items relating to sections 1013 through 1017 as items relating to sections through 1018, respectively; and

(2) by inserting after the item relating to section 1012 the following new item:

"Sec. 1013. Rescission of spending above limits of congressional budget law.".

**SEC. 704. CONFORMING AMENDMENT TO TITLE 31, UNITED STATES CODE.**

(a) The analysis of chapter 13 of title 31, United States Code, is amended by inserting after the item relating to section 1310 the following new items:

"Sec. 1311. Continuing appropriation.
"Sec. 1312. Contingency regulations.
"Sec. 1313. Budget authority and entitlement authority must cover single fiscal period.
"Sec. 1314. Protection of Social Security from budget deficit reduction measures.".

(b) Paragraph (5) of section 1105(a) of title 31, United States Code, is amended to read as follows:

"(5) except as provided in subsection (b) of this section—

"(A) estimated expenditures and proposed appropriations for each function and subfunction in the current fiscal year;

"(B) estimated expenditures and proposed appropriations the President decides are necessary to support the Government for each function and subfunction in the fiscal year for which the budget is submitted; and

"(C) a comparison of levels of estimated expenditures and proposed appropriations for each function and subfunction in the current fiscal year and the fiscal year for which the budget is submitted, along with the proposed increase or decrease of spending in percentage terms for each function and subfunction;".

(b) Section 1105(a) of title 31, United States Code, is amended—

(1) in the first sentence, by inserting "on a single page, which sets forth specific budget ceilings for that fiscal period in the nineteen major functional categories described in section 201 of the Budget Process Reform Act" before the period; and

(2) by repealing the second sentence and all of the third sentence preceding the colon and inserting the following: "On or before the fifteenth day after a joint resolution on the budget for that budget period is enacted, the President shall submit a detailed budget for that fiscal period, including a budget message and summary and supporting information, as follows".

## TITLE VIII—DEFINITIONS AND RULES OF INTERPRETATION

**SEC. 801. DEFINITIONS.**

(a) DEFINITION OF BUDGET LAW.—Section 3(4) (2 U.S.C. 622(4)), containing general definitions under the Budget Act is amended to read as follows:

"(4) The term 'budget law' or 'joint resolution on the budget' means—

"(A) a joint resolution setting forth the simplified budget for the United States Government for a fiscal period as provided in section 301; and

"(B) any other joint resolution revising the budget for the United States Government for a fiscal period as described in section 304.".

(b) OTHER DEFINITIONS.—Section 3 (2 U.S.C. 622) is further amended by adding at the end the following new paragraphs:

"(11) The term 'major functional category' refers to the groupings of budget authority, budget outlays, and credit authority (including continuing appropriations pursuant to section 1331 of title 31, United States Code) into any one of the following:

"Function 050: National Defense
"Function 150: International Affairs
"Function 250: General Science, Space and Technology
"Function 270: Energy
"Function 300: Natural Resources and Environment
"Function 350: Agriculture
"Function 400: Transportation
"Function 450: Community and Regional Development
"Function 500: Education, Training, Employment and Social Services
"Function 550: Health
"Function 570: Medicare
"Function 600: Income Security
"Function 650: Social Security
"Function 700: Veterans Benefits and Services
"Function 750: Administration of Justice
"Function 800: General Government
"Function 900: Net Interest
"Function 920: Allowances
"Function 950: Undistributed Offsetting Receipts.".

"(12) The term 'budget ceiling' means the dollar amount set forth in a budget law for a major functional category.

"(13) The term 'spending bill' means any bill or resolution, or amendment thereto or conference report thereon, which provides budget authority, spending authority, credit authority, or outlays.

"(14) The term 'fiscal period' means the twelve-month fiscal year beginning October 1 currently in use, or any other fiscal period (such as a biennial period) that may subsequently be adopted for the management of the budget of the United States.".

**SEC. 802. AMENDMENTS TO CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974.**

Except as otherwise expressly provided, whenever any provision of this Act is expressed as an amendment to a section or other provision, the reference shall be deemed to be made to a section or other provision of the Congressional Budget and Impoundment Control Act of 1974.

**SEC. 803. USE OF TERMS.**

Whenever any term is used in this Act which is defined in section 3 of the Congressional Budget Impoundment Control Act of 1974, the term shall have the meaning given to such term in that Act.

## TITLE IX—EFFECTIVE DATE

**SEC. 901. GENERAL PROVISION.**

Except as provided in section 902, this Act and the amendments made by it shall be-

come effective January 1, 1995, and shall apply to fiscal periods beginning after September 30, 1995.

**SEC. 902. FISCAL YEAR 1993.**

Notwithstanding subsection (a), the provisions of—

(1) the Congressional Budget Impoundment Control Act of 1974,

(2) title 31, United States Code, and

(3) the Balanced Budget and Emergency Deficit Control Act of 1985, (as such provisions were in effect on the day before the effective date of this Act) shall apply to the fiscal year beginning on October 1, 1994.

Mr. SHELBY. Mr. President, next year, we will pay close to $300 billion just on interest on the national debt—$300 billion. Mr. President. That is about one-fifth of the budget for 1995.

Because we will spend so much on our budget in 1995 on just financing our national debt, just paying the interest alone, not paying anything off, I remain unconvinced that we are on the right track, that we are doing what we need to do to address our chronic deficit and national debt problems.

While CBO's recent projection of the 1995 deficit is lower than originally expected, it does not speak to our long-term deficit and debt future, because we have not changed the way we spend money around here. Our system has not changed; yet, our problems are systemic.

Indeed, Mr. President, although deficit reduction was the justification for last year's tax bill, which raised over $230 billion in new taxes, Federal spending continues to increase at a progressive rate through the next 5 years. From 1994 through 1998, spending will continue to increase from $1.5 to $1.8 trillion.

So, Mr. President, in reality, at the same time Congress was raising new taxes, it was also increasing spending.

Mr. President, I ask you: Is this fiscal restraint? Is this a sign of a Government on a diet? It would not appear so. Rather, it looks more like the kind of diet that ends up putting 10 pounds on you instead of taking 10 pounds off.

Let us not forget spending cuts. The President claims over 300 specific program cuts in the fiscal 1995 budget, and several proposals have been offered over the past few months which would have similarly made specific program cuts in order to lower the deficit.

The fact is, however, Mr. President, that many of these proposals had nothing to do with lowering the deficit. Instead, they would only have authorized a shift in spending. These proposals would not only have had no effect on shrinking the size of the Federal pie, but, in fact, even with the proposed cuts, the Federal pie would continue to get larger through Federal spending.

So, Mr. President, I submit that while we may be slowing the growth of the debt, we are still accelerating toward fiscal disaster.

Mr. President, if we want to put the brakes on excess Federal spending, we need to change how we go about spending the Federal dollar. We need to reform our annual budget process.

What role does our budget process play today if we have to wait to pass a 5-year budget agreement locking in spending levels before we can address spending cut proposals? And why should it be necessary for Congress to always promise spending cuts in the future, or as we say, in the "outyears," and deliver tax increases today or—or in the case of the 1994 tax bill—yesterday? You will recall that it was retroactive taxes.

The reason is because Congress is unaccountable—unaccountable by choice as well as by nature. Congress has no real incentives and faces no threatened penalties to encourage fiscally responsible behavior here.

Thus far, Mr. President, Congress has sought and approved simple, politically expedient solutions to our complex deficit and debt problems. In fact, the rallying call for deficit reduction that started this past summer may have proved to be more of a cloak than a standard in combating the deficit and our national debt.

Our current budget process favors increased Federal spending, not less spending. It is impotent in enforcing current budget ceilings and remains hostile to cuts in Federal programs. In short, Mr. President, the budget process that we have today itself is impervious to efforts to cut the Federal deficit and national debt.

Indeed, Mr. President, the budget process can strengthen or weaken Congress' ability and Congress' resolve to gain control over its excessive spending habits.

Senator LOTT and I have joined the efforts of Representatives COX and STENHOLM in trying to create a budgetary framework that is receptive to efforts to curb Federal spending and facilitate fiscal responsibility here.

The Budget Process Reform Act seeks to take Federal spending off of automatic pilot and put it under stricter fiscal controls. It proposes to reform the process to provide greater budget discipline and stronger budget enforcement mechanisms.

The act would require that a legally binding budget resolution be in place prior to the consideration of any appropriations or authorization bills. Such a budget would fit on one page, setting aggregate spending totals for each of the 19 spending categories we deal with.

The bill would eliminate baseline budgeting and require that all entitlements, excepting Social Security and interest on the debt, are given fixed-sum appropriations.

In addition, in order to have effective enforcement, the bill would require a three-fifths supermajority to spend overbudget and would grant the President enhanced rescission authority when a budget category exceeds its allowable spending level.

Mr. President, this is effective legislation. It contains no gimmicks. Rather, the bill establishes a process for spending Federal dollars that imposes discipline and order while providing the flexibility to prioritize Federal spending without draconian measures such as across-the-board cuts or unlimited line-item veto authority.

While many may seek solace in the fact that the annual deficit is less than predicted for this year, it is a hollow promise for our future and for our children's future.

Without doubt, Mr. President, Congress must reform its budget process if it is ever to effectively address this country's sinister deficits and heavy debt—and ensure its citizens of a bright economic future.

I ask my colleagues in the Senate to join Senator LOTT and me in cosponsoring this important piece of legislation.

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By Mr. SHELBY (for himself, Mr. CONRAD, Mr. JOHNSTON, Mr. BREAUX, and Mr. FAIRCLOTH):

S. 1956. A bill to amend the Consumer Credit Protection Act to improve disclosures made to consumers who enter into rental-purchase transactions, to set standards for collection practices, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

RENTAL PURCHASE REFORM ACT OF 1994

• Mr. SHELBY. Mr. President, today I introduce the Rental-Purchase Reform Act of 1994, a bill that would regulate the rental-purchase industry. This legislation would ensure that consumers are provided straightforward disclosures of the important terms in rental-purchase agreements.

Under a rental-purchase transaction, consumers rent televisions, stereos, VCR's, refrigerators, furniture, and other household items by the week or by the month. There is no long-term obligation to rent the property beyond the initial rental period. However, after renting the property for a specified period of time, ownership of the item transfers automatically to the consumer.

Consumers have found rental-purchase transactions to be an attractive means of obtaining goods that may be out of reach through traditional purchase transactions. It is my understanding that renters become owners in approximately 25 percent of rental-purchase transactions.

There have been some abuses in this industry. Passage of this legislation will help curb these abuses. While this bill is similar to legislation enacted in 36 States, it goes farther than many of these State statutes. This legislation requires 11 contract disclosures, including the amount and timing of rental payments, the total number and the

total dollar amount of rental payments and other charges necessary to acquire ownership, whether the property is new or used, the cash price of the property, and other disclosures important to consumers when shopping for merchandise for their homes.

This bill also requires price tags on all of the merchandise in rental-purchase stores showing consumers the important aspects of the transaction. The bill would ensure that consumers may terminate a rental-purchase agreement voluntarily at any time with no penalty. This bill also contains substantive consumer protections, including reinstatement rights for consumers, which allow them up to 90 days to catch up on any past-due payments.

This bill also regulates the collection practices of rental merchants and the advertising of rental-purchase products. Specifically, the bill will require lessors to disclose important financial information in the advertising of rental rates or the right to acquire ownership. Finally, this bill would allow consumers to file suit for violations of the act with statutory damages and would preempt State laws which do not provide the same level of protection to rental-purchase consumers as that contained in this bill. Although 36 States have passed legislation to regulate this industry, uniform Federal regulation is still needed. I urge my colleagues to support this legislation and I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1956

*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 "Rental-Purchase Reform Act of 1994".

**SEC. 2. REQUIREMENTS FOR RENTAL-PURCHASE TRANSACTIONS.**

The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following new title:

**"TITLE X—RENTAL-PURCHASE TRANSACTIONS**

**"§ 1001. Short title**

"This title may be cited as the 'Rental-Purchase Reform Act of 1994'.

**"§ 1002. Findings and purposes**

"(a) The Congress finds that a significant number of consumers engage in rental-purchase transactions. These transactions have taken place, in many instances, without provision of adequate disclosures and other protections to consumers.

"(b) The purposes of this title are the following:

"(1) To assure meaningful disclosure of the terms of rental-purchase agreements, including disclosure of all costs to consumers under those agreements.

"(2) To regulate the collection practices of rental-purchase merchants.

"(3) To provide certain substantive rights to consumers under rental purchase agreements.

**"§ 1003. Definitions**

"(a) For purposes of this title:

"(1) The term 'advertisement' means a commercial message in any medium intended to aid, promote, or assist, directly or indirectly, a rental-purchase agreement.

"(2) The term 'agricultural purpose' includes—

"(A) the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates plants or propagates or nurtures agricultural products; and

"(B) the acquisition of farmlands, real property with a farm residence, or personal property and services used primarily in farming.

"(3) The term 'Board' means the Board of Governors of the Federal Reserve System.

"(4) The term 'consumer' means an individual that, as a party to a rental-purchase agreement, is provided use of personal property.

"(5) The term 'date of consummation' means the date on which a consumer becomes contractually obligated under a rental-purchase agreement.

"(6) The term 'merchant' means a person who provides the use of property through a rental-purchase agreement and to whom a consumer's initial obligation under the agreement is payable.

"(7) The term 'personal property' means property that is not real property under the laws of the State where the property is located when it is made available under a rental-purchase agreement.

"(8) The term 'rental-purchase agreement'—

"(A) means an agreement between a consumer and a merchant—

"(i) under which the merchant agrees to provide to the consumer the use of personal property for an initial period of 4 months or less;

"(ii) that is automatically renewable with each payment by the consumer; and

"(iii) that permits but does not obligate the consumer to become the owner of the property; and

"(B) does not include any credit sale (as that term is defined in section 103(g)).

"(9) The term 'State' means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(b) REFERENCES TO REGULATIONS.—Any reference to any provision of this title shall be considered to include reference to the regulations prescribed by the Board under this title.

**"§ 1004. Exempted transactions**

"This title does not apply to rental-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with government agencies or instrumentalities or with organizations.

**"§ 1005. General disclosure requirements**

"(a) The merchant under a rental-purchase agreement shall disclose to the consumer under the agreement the information required by this title. In a transaction involving more than one merchant, only one merchant is required to make the disclosures.

"(b) The disclosures required under this title shall be made—

"(1) at or before the date of consummation of the rental-purchase agreement;

"(2) clearly and conspicuously in writing, in a form that the consumer may keep; and

"(3) in the case of disclosures required under section 1006, segregated from all other terms, data, or information provided to the consumer.

"(c) If a disclosure required to be made by a merchant under this title becomes inaccurate as the result of any act, occurrence, or agreement occurring after delivery of the required disclosure, the resulting inaccuracy is not a violation of this title.

**"§ 1006. Rental-purchase disclosures**

"For each rental-purchase agreement, the merchant shall disclose to the consumer under the agreement the following, as applicable:

"(1) The amount of the initial rental payment, including any fees, taxes, or other charges which may be required at or before the date of consummation of the agreement.

"(2) The amount and timing of rental renewal payments.

"(3) The total number and the total dollar amount of rental payments and other charges necessary to acquire ownership of the property.

"(4) A statement that the consumer will not own the property until the consumer has made the total dollar amount necessary to acquire ownership.

"(5) A statement that the total dollar amount of payments does not include other charges, such as late payment or reinstatement fees, and that the consumer should examine the rental-purchase agreement for an explanation of these charges, if applicable.

"(6) A statement that the consumer may be responsible for the fair market value of the property if it is lost, stolen, damaged, or destroyed.

"(7) A statement indicating whether the property is new or used, except that a statement that indicates that new property is used property is not a violation of this title.

"(8) A statement of—

"(A) the manufacturer's suggested retail price, where applicable; or

"(B) the price for which the property is available from the merchant in a cash sale.

"(9) A clear statement of the terms of the consumer's option to purchase.

"(10) A statement—

"(A) identifying the party that is responsible for maintaining or servicing the property while it is being rented;

"(B) describing that responsibility; and

"(C) disclosing that if any part of a manufacturer's express warranty covers the property at the time the consumer acquires ownership of the property, the warranty will be transferred to the consumer if allowed by the terms of the warranty.

"(11) The date of consummation of the transaction and the identities of the merchant and consumer.

**"§ 1007. Point-of-sale disclosures**

"Each item of property displayed or offered pursuant to a rental-purchase agreement shall have affixed to it a point-of-sale card, tag, or label that clearly and conspicuously discloses only the following:

"(1) Whether the property is new or used.

"(2) The price of the property in a cash sale.

"(3) The amount of each rental payment under the agreement.

"(4) The total number of rental payments necessary to acquire ownership of the property under the agreement.

"(5) The total dollar amount of rental payments necessary to acquire ownership of the property under the agreement.

**"§ 1008. Prohibited practices**

"(a) A rental-purchase agreement may not contain—

"(1) a confession of judgment;

"(2) a negotiable instrument;

"(3) a security interest or any other claim of a property interest in any goods except

those goods the use of which is provided by the merchant pursuant to the agreement;

"(4) a wage assignment; or

"(5) a waiver by the consumer of a claim or defense.

"(b) Each rental-purchase agreement shall—

"(1) provide a statement of any obligation of the consumer and the merchant under the agreement to repair any defect or malfunction of the property covered by the agreement, and any limitation of those obligations;

"(2) provide that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property covered by the agreement upon expiration of any rental term; and

"(3) contain a provision for reinstatement of the agreement, which at a minimum—

"(A) permits a consumer who fails to make a timely rental renewal payment to reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of all past due rental charges and any late fee, within 7 days after the renewal date;

"(B) if the consumer returns or voluntarily surrenders the property covered by the agreement, other than through judicial process, during the applicable reinstatement period set forth in subparagraph (A), permits the consumer to reinstate the agreement during a period of at least 30 days after the date of the return or surrender of the property by the payment of all past due rental charges, and any applicable redelivery, repair, or late fees; and

"(C) if the consumer has paid 60 percent or more of the total dollar amount of payments necessary to acquire ownership of the property under the agreement and returns or voluntarily surrenders the property, other than through judicial process, during the applicable reinstatement period set forth in subparagraph (A), permits the consumer to reinstate the agreement during a period of at least 90 days after the date of the return of the property by the payment of all past due rental charges, and any applicable redelivery, repair, or late fees.

"(c) Subsection (b) shall not be construed to prevent a merchant from attempting to repossess property during the reinstatement period, but such a repossession does not affect the consumer's right to reinstate. Upon reinstatement, the merchant shall provide the consumer with the same property, or substitute property of comparable quality and condition.

**"§ 1009. Collection practices**

"(a) A merchant under a rental-purchase agreement, in communicating with any person other than the consumer for the purpose of acquiring information as to the location of a consumer—

"(1) shall identify himself or herself and state that he or she is confirming or correcting location information concerning the consumer;

"(2) shall not communicate with any person more than once, unless—

"(A) requested to do so by the person; or

"(B) the merchant reasonably believes that the earlier response is erroneous or incomplete and that the person now has correct or complete location information;

"(3) shall not communicate by postcard;

"(4) shall not use any language or symbol on any envelope or in the contents of any communication which indicates that the communication relates to the recovery or repossession of property; and

"(5) shall not communicate with any person other than the consumer's attorney, after the merchant knows the consumer is represented by an attorney with regard to the rental-purchase agreement and has knowledge of, or can readily ascertain, the attorney's name and address, unless the attorney fails to respond within a reasonable period of time to communication from the merchant or unless the attorney consents to direct communication with the consumer.

"(b)(1) Without the prior consent of the consumer given directly to the merchant or the express permission of a court of competent jurisdiction, a merchant shall not communicate with a consumer in connection with the recovery or repossession of property—

"(A) at the consumer's place of employment;

"(B) at any unusual time or place or a time; or

"(C) at any place known or which should be known to be inconvenient to the consumer.

"(2) In the absence of knowledge of circumstances to the contrary, a merchant shall assume that the convenient time for communicating with a consumer is after 8:00 a.m. and before 9:00 p.m., local time at the consumer's location.

"(c) A merchant may not communicate, in connection with a rental-purchase agreement, with any person other than the consumer, the consumer's attorney, or the merchant's attorney, except—

"(1) as reasonably necessary to acquire location information concerning the consumer in accordance with subsection (a);

"(2) after receiving prior consent from the consumer given directly to the merchant;

"(3) after receiving express permission of a court of competent jurisdiction; or

"(4) as reasonably necessary to effectuate a post-judgment judicial remedy.

"(d) If a consumer notifies the merchant in writing that the consumer desires the merchant to cease further communication with the consumer, the merchant shall not communicate further with the consumer with respect to the rental-purchase agreement, except—

"(1) to advise the consumer that the merchant's further efforts to communicate are being terminated;

"(2) to notify the consumer that the merchant may invoke specified remedies allowable under law which are ordinarily invoked by the merchant; or

"(3) as necessary to effectuate any post-judgment remedy.

"(e) A merchant shall not—

"(1) use or threaten to use violence or criminal means to harm the physical person, reputation, or property of any person;

"(2) use obscene, profane, or abusive language;

"(3) cause a telephone to ring, or engage any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person;

"(4) place any telephone call without disclosing the caller's identity; or

"(5) perform any other act intended to harass or abuse a consumer.

**"§ 1010. Receipts and accounts**

"A merchant shall provide the consumer a written receipt for each payment made by cash or money order.

**"§ 1011. Renegotiations and extensions**

"A renegotiation of a rental-purchase agreement is deemed to be a new agreement for purposes of this title, requiring new disclosures. A renegotiation shall be considered to occur when an existing rental-purchase agreement is satisfied and replaced by a new agreement undertaken by the same merchant. Events such as the following shall not be treated as renegotiations:

"(1) The addition or return of property in a multiple-item agreement or the substitution of property, if in either case the average payment allocable to a payment period is not changed by more than 25 percent.

"(2) A deferral or extension of one or more periodic payments, or portions of a periodic payment.

"(3) A reduction in charges in the agreement.

"(4) An agreement involving a court proceeding.

"(5) Any other event described in regulations prescribed by the Board.

**"§ 1012. Rental-purchase advertising**

"(a) If an advertisement refers to or states the amount of any payment or the right to acquire ownership, the merchant that makes the advertisement shall also clearly and conspicuously state in the advertisement the following items, as applicable:

"(1) That the transaction advertised is to occur under a rental-purchase agreement.

"(2) The total number and total dollar amount of rental payments necessary to acquire ownership under the agreement.

"(3) That the consumer acquires no ownership rights in the property if the total dollar amount of rental payments necessary to acquire ownership is not paid.

"(b) The owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable for a violation of this section.

"(c) Subsection (a) does not apply to an advertisement which—

"(1) does not refer to or state the amount of any payment,

"(2) is published in the yellow pages of a telephone directory or in any similar directory of businesses, or

"(3) is displayed in the merchant's place of business.

**"§ 1013. Administrative enforcement**

"(a) The requirements imposed by this title shall be enforced by the Board.

"(b) All of the functions and powers of the Board under this Act are available to the Board to enforce compliance by any person with the requirements imposed by this title.

**"§ 1014. Civil liability**

"(a) Except as otherwise provided in this title, a merchant who willfully violates this title with respect to a consumer is liable to the consumer in an amount equal to the following:

"(1) In an action by an individual consumer, the sum of—

"(A) actual damages sustained by the consumer as a result of the violation; and

"(B) not less than $100.

"(2) In a class action, the amount the court determines to be appropriate with no minimum recovery as to each member.

"(b)(1) An action under this section may be brought in any United States district court of competent jurisdiction, by not later than one year of the date of the occurrence of the violation.

"(2) This subsection does not bar a consumer from asserting a violation of this title in an action to collect a debt brought more than one year after the date of the occurrence of the violation as a matter of defense by recoupment or set off, except as otherwise provided by State law.

"(c)(1) A consumer may not take any action to offset any amount for which a merchant is potentially liable under subsection

(a) against any amount owed by the consumer, unless the amount of the merchant's liability has been determined by judgment of a court of competent jurisdiction in an action in which the merchant was a party.

"(2) This subsection does not bar a consumer who is in default on the obligation from asserting a violation of this title as an original action, or as a defense or counterclaim to an action brought by the merchant to collect amounts owed by the consumer.

**"§ 1015. Defenses**

"(a) A merchant is not liable under section 1014 for a violation of the requirements of section 1006 if within 15 days after first having knowledge of the violation, and before an action under section 1014 is filed or written notice of the violation is received from the consumer, the merchant notifies the consumer of the violation and makes whatever adjustments in the account are necessary to assure that the consumer will not be required to pay an amount in excess of the amounts actually disclosed.

"(b)(1) A merchant is not liable under this title for any act done or omitted in good faith in conformity with any rule, regulation, interpretation, or approval promulgated by the Board or by an official duly authorized by the Board.

"(2) Paragraph (1) applies even if, after the act or omission has occurred, the rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

"(c) A merchant is not liable under this title for a violation if the merchant establishes, and at the time of the violation is implementing, procedures reasonably calculated to prevent the violation.

**"§ 1016. Liability of assignees**

"(a) For purposes of sections 1014 and 1015, the term 'merchant' includes an assignee of a merchant. However, an action under section 1014 for a violation of this title may be brought against an assignee only if the violation is apparent on the face of the rental-purchase agreement to which it relates. A violation apparent on the face of a rental-purchase agreement includes a disclosure that can be determined to be incomplete or inaccurate from the face of the agreement. An assignee has no liability in a case in which the assignment is involuntary.

"(b) In an action by or against an assignee, the consumer's written acknowledgement of receipt of a disclosure shall be conclusive proof that the disclosure was made, if the assignee had no knowledge that the disclosure had not been made when the assignee acquired the rental-purchase agreement to which it relates.

**"§ 1017. Regulations**

"(a) The Board shall issue regulations to carry out the purposes of this title, to prevent its circumvention, and to facilitate compliance with its requirements. The regulations may contain classifications and differentiations and may provide for adjustments and exceptions for any class of transaction.

"(b) The Board shall publish model disclosure forms and clauses to facilitate compliance with the disclosure requirements of this title and to aid consumers in understanding transactions under rental-purchase agreements. In designing forms, the Board shall consider the use by merchants of data processing or similar automated equipment. Use of the models shall be optional. A merchant who properly uses the model disclosure forms shall be deemed to be in compliance with the disclosure requirements.

"(c) Any regulation issued by the Board, or any amendment or interpretation thereof, that requires a disclosure different from the disclosures previously required by regulations of the Board shall not be effective before the October 1 that follows the date of promulgation by at least 6 months. The Board may at its discretion lengthen that period of time to permit merchants to adjust their forms to accommodate new requirements. The Board may also shorten that period of time, notwithstanding the first sentence, if it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices. In any case, merchants may comply with any newly promulgated disclosure requirement prior to its effective date.

**"§ 1018. Relation to state laws**

"This title does not annul, alter, affect, or exempt any person subject to this title from complying with the laws of any State with respect to a matter covered by this title, except to the extent that those laws—

"(1) are inconsistent with this title; and

"(2) provide a lesser degree of protection for consumers.

**"§ 1019. Effect on government agencies**

"No civil liability under this title may be imposed on the United States or any of its departments or agencies, any State or political subdivision, or any agency of a State or political subdivision.".●

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By Mr. PELL (by request):

S. 1957. A bill to provide for a United States contribution to the Interest Subsidy Account of the successor [EASF II] to the Enhanced Structural Adjustment Facility of the International Monetary Fund; to the Committee on Foreign Relations.

EASF LEGISLATION

Mr. PELL. Mr. President, by request, I introduce for appropriate reference a bill to provide for a United States contribution to the interest subsidy account of the successor [ESAF II] to the Enhanced Structural Adjustment Facility of the International Monetary Fund.

This proposed legislation has been requested by the Department of the Treasury, and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the letter from the general counsel of the Department of the Treasury, which was received on March 16, 1994.

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

S. 1957

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended by adding at the end thereof the following new section:

**"SEC. 61. CONTRIBUTION TO THE INTEREST SUBSIDY ACCOUNT OF THE SUCCESSOR (ESAF II) TO THE ENHANCED STRUCTURAL FACILITY OF THE INTERNATIONAL MONETARY FUND.**

"(a) CONTRIBUTION AUTHORIZED.—

"(1) IN GENERAL.—Subject to paragraph (2), the United States Governor of the Fund may contribute $100,000,000 to the Interest Subsidy Account of the successor (ESAF II) to the Enhanced Structural Adjustment Facility of the Fund on behalf of the United States.

"(2) CONTRIBUTION.—The contribution authorized in paragraph (1) shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

"(b) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—To pay for the contribution authorized in subsection (a), there are authorized to be appropriated $100,000,000 without fiscal year limitation for payment by the Secretary of the Treasury.".

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DEPARTMENT OF THE TREASURY,
*Washington, March 14, 1994.*

Hon. AL GORE,
*President of the Senate, Washington, DC.*

DEAR MR. PRESIDENT: I am pleased to transmit herewith a draft bill, "To provide for a United States contribution to the Interest Subsidy Account of the successor (ESAF II) to the Enhanced Structural Adjustment Facility of the International Monetary Fund."

The bill would authorize the United States Governor of the International Monetary Fund (Fund) to contribute $100,000,000 on behalf of the United States to the Interest Subsidy Account of ESAF II. The commitment to make this contribution is subject to obtaining the necessary appropriations.

The original ESAF was established in 1987 to enable the Fund to provide balance of payments assistance on concessional terms of low-income developing countries that have protracted payments problems and that are prepared to adopt a multi-year economic and structural reform program. On December 15, 1993, the Fund adopted a decision to establish ESAF II once the Executive Board determines that sufficient contributions have been made to the facility's Interest Subsidy Account. The establishment of ESAF II would help assure that countries with minimum access to resources that are willing to initiate reforms are provided with continued access to resources on concessional terms.

It would be appreciated if you would lay the draft bill before the Senate. An identical draft bill has been transmitted to the Speaker of the House of Representatives.

The Office of Management and Budget has advised that there is no objection to the transmittal of this draft bill to the Congress, and that enactment would be in accord with the Administration's program.

Sincerely,

JEAN E. HANSON.

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By Mr. MURKOWSKI (for himself, Mr. STEVENS, and Mr. AKAKA):

S. 1958. A bill to amend title 38, United States Code, to exclude certain payments received under the Alaska Native Claims Settlement Act from the determination of annual income for purposes of eligibility for veterans pension; to the Committee on Veterans Affairs.

VETERANS PENSION LEGISLATION

Mr. MURKOWSKI. Mr. President, often when proposed legislation is pre-

sented to this body by its sponsors, they state that they are pleased to be introducing the bill in question. Usually, Mr. President, that is the case with me. Today, however, I am not entirely happy to be introducing a bill which, in my view, should not be necessary. Unfortunately, the failure of one Federal agency, the Department of Veterans Affairs [VA], to perceive accurately the clear intent of the Congress when it enacted amendments to the Alaska Native Claims Settlement Act [ANCSA] in 1987 makes this bill, which is purely technical and which seeks only to put into practical affect congressional intent as expressed in ANCSA, necessary. Before I launch into an explanation of the legislation I propose today, however, I want to thank my distinguished colleagues, Senators STEVENS and AKAKA, for joining me as cosponsors of this bill.

As many Members of this body will recall, the Congress has labored hard over the years to reach a series of compromises relating to the settlement of the land claims of Alaska's Native peoples. Those compromises are reflected in the text, and the underlying purposes of, the Alaska Native Claims Settlement Act, codified at 43 U.S.C. section 1601 et seq., as enacted in 1971, and amended in 1988. By the legislation that I introduce today, I do not intend to upset—or to effect in any way whatsoever—the delicate balance of compromises reflected in this landmark legislation; indeed, I would not amend ANCSA at all. My only purpose is to see to it that ANCSA, as amended in 1988, be put into full effect by requiring that the VA disregard payments received by Alaska Natives under ANCSA—as intended by the 1988 amendments to ANCSA—when it computes Alaska Natives' eligibility for VA's means-tested pensions programs. My amendment would amend statutes which govern VA's pension program to accomplish that result.

To fully explain why this legislation is necessary, I need to outline briefly the general terms of ANCSA and, in particular, a relatively minor—but absolutely critical—provision of the statute relating to needs-based Federal benefits. The overall purpose of ANCSA, as stated in the legislation itself, is to provide "a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." Public Law 92-203, section 2(a), 85 Stat. 688 (1971). ANCSA was, and remains, an unusual—indeed, a landmark—piece of legislation in resolving Native land claims. In the words of our colleague, Senator BINGAMAN, ANCSA adopted "a novel, experimental approach in [the Federal Government's] relationship with Native Americans. It departed from the conventional method of * * * settling tribal land claims [by] creating * * * a framework for * * * administering Native lands and funds through a * * * [Native]-run corporate structure." S. Rept. No. 100-201 at 45, additional views.

To summarize, under ANCSA, Native Alaskans received a combination of cash, mineral lease proceeds, and land in exchange for the extinguishment of aboriginal land claims. Those assets, however, were not distributed directly to individual Native Alaskans when ANCSA was enacted in 1971. Rather, ANCSA authorized the creation of 12 Native owned and operated regional corporations to administer those assets for the benefit of Alaska Native shareholders. These corporations continue to exist today, and they distribute funds received in settlement of Native land claims, and funds generated from corporate earnings, to Native village corporations and to Alaska Native shareholders.

When ANCSA was enacted, the question arose as to whether these distributions should be taken into account in determining whether an Alaska Native would be eligible to receive Federal Food Stamp assistance. The Congress concluded—wisely, I think—that it would not be fair to penalize Alaska Natives for settling their land claims by causing them to lose eligibility for food stamps as a result of receiving settlement payments. Thus, ANCSA, as originally enacted, contained a provision, codified at 43 U.S.C. section 1626(b), which stated that "in determining the eligibility of any household to participate in the Food Stamp Program, any compensation, remuneration, revenue, or other benefit received by any member of such household * * * shall be disregarded." It was only when ANCSA was amended in 1988 that this "compensation disregard" provision was expanded.

As was stated in the Senate report accompanying the 1988 amendments to ANCSA,

> Currently, section 29 of ANCSA directs that any compensation, remuneration, revenue or other benefit received pursuant to ANCSA "shall be disregarded" in determining eligibility to participate in the Food Stamp Program. *Natives have been denied benefits or have received diminished benefits* in other Federal or federally-assisted programs, because of benefits received under ANCSA. Accordingly, the new subsection (c) in this section clarifies the present protections as *including all Federal or federally-assisted programs.* It also *specifically exempts dividends up to $2,000 per individual per year and dividends and distribution of stock from consideration in eligibility determinations.* Application of less restrictive eligibility tests are not prohibited by this language. S. Rept. 100-201 at 39 (emphasis added).

Based on this clear expression of intent to broaden and expand the already-existing "disregard" provisions within section 29 of ANCSA, the statute was amended to read as follows:

> In determining the eligibility of a household, an individual Native, or a descendant of a Native * * * to—
>
> * * * * *
>
> (3) receive financial assistance or *benefits, based on need, under any Federal program or federally-assisted program,*
>
> *none of the following* received from a Native corporation, shall be considered or taken into account as an asset or resource:
>
> (A) *cash (including cash dividends on stock received from a Native corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum;*
>
> (B) stock (including stock issued or distributed by a Native corporation as a dividend or distribution on stock);
>
> (C) a partnership interest;
>
> (D) land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and
>
> (E) an interest in a settlement trust.
>
> 43 U.S.C. section 1626(c) (emphasis added).

It seems to me, Mr. President, that the law could hardly be clearer. By any reading of this statute, and the explanation of it contained in the Senate Energy and Natural Resources Committee's report, one can only conclude that ANCSA payments are to be disregarded not only for purposes of food stamps, but for any and all Federal needs-based benefits programs. To the extent that the words of the statute, or the Senate's expression of purpose, might have admitted to any ambiguity—and, frankly, I do not see how anyone could contend that they do—the requirement that ANCSA be construed in a fashion sympathetic to Native interests, see, e.g., *Cape Fox Corp.* v. *U.S.*, 4 Cl. Ct. 223, 231 (1983), would require that any such ambiguity be resolved to require the "disregarding" of ANCSA payments. When one considers that the needs-based benefit program in question is a veterans program—a program which embodies a longstanding tradition of resolving doubt in the veteran's favor—the door should have been slammed, I think, on any thought that ANCSA dividends might be used to reduce pension benefits to which a veteran might be eligible.

Unfortunately, the VA's general counsel has taken a differing view. In two separate legal opinions, the general counsel has stated, in effect, that despite the foregoing, VA shall take ANCSA dividends into account for purposes of determining eligibility for, and the amount of benefit received under, VA's veterans pension program. This, Mr. President, is totally indefensible in my view.

As is made clear in ANCSA, payments received under ANSCA—whether they be cash, cash dividends, up to $2,000 per year, stock dividends, land, whatever—are not to be "considered" or "taken into account" for purposes of determining eligibility for "benefits, based on need, under any Federal program." Equally, ANCSA payments are not to be taken into account for purposes of diminishing needs-based Federal benefits. See S. Rept. 100-201, supra. VA's pension program—which is not a retirement pension program but is, rather, an "income maintenance"

program which assures that wartime veterans who are permanently and totally disabled due to nonservice connected disability will not be forced to live below subsistence income levels—is clearly a "benefit, based on need." See 38 U.S.C. chapter 15. And yet, VA allows payments received pursuant to ANCSA to be taken into account in determining if one is eligible to receive pension benefits. So, for example, a veteran having an annual income of $6,000 who would otherwise be eligible for pension would be disqualified if he or she were to receive $2,000 per year in cash dividends under ANCSA. Equally—and more importantly for practical purposes—VA offsets ANCSA dividends on a dollar-for-dollar basis when it computes the amount of pension benefits to be paid. So, for example, a VA pension recipient who would otherwise receive $7,397 per year in pension benefits would only receive $5,397 if he or she were also to be a recipient of $2,000 per year in ANCSA distributions. This despite the clear indication of congressional intent to the contrary.

My colleagues might ask how VA justifies such action. I am told that VA reasons as follows: ANCSA says that cash paid to Alaska Natives shall not be taken into account as "assets" or "resources;" a person's "assets" or "resources" are akin to his or her "net worth;" therefore, Congress intended that ANCSA payments not be taken into account for determining eligibility only for a certain kind of means tested benefits programs—those that rely on "net worth" computations—as distinguished from "annual income" computations—to determine eligibility; eligibility for VA pension programs is governed by the applicant's "annual income," not his or her "net worth;" therefore, ANCSA's directive that Native Corporation dividends be disregarded does not apply to VA pension programs, even though eligibility is based on need, since pension eligibility is determined by reference to annual income, not net worth. I will only comment, at this point, that this chain of reasoning stretches out of all proportion any considered interpretation of what Congress actually intended when it amended ANCSA in 1988.

Mr. President, the Congress had no such income versus net worth distinction in mind when it expanded the disregard provision of ANCSA. It had in mind something more direct: It wanted to preclude ANCSA payments from causing Alaska Natives to be ineligible for food stamps, and any other needs-based Federal benefits; and it wanted to assure that such benefits would not be diminished as a result of ANCSA receipts. My bill, Mr. President, would see to it that that clear intent would be put into effect by forbidding VA from taking ANCSA payments into account for purposes of its pension programs.

As I stated, Mr. President, when I opened these comments, I am not particularly pleased to introduce this legislation. In light of VA's interpretation of the law, this legislation is necessary. But it should not be necessary since, to my way of thinking, the words and policy of ANCSA clearly required the result dictated by this bill: a disregarding of Native Corporation payments under ANCSA for purposes of both eligibility for veterans pension payments and the amounts of those payments. If there is a lesson to be learned here it is that whatever words we choose in legislating we cannot rely on logic and common sense to guide the interpretation of those words.

I ask my colleagues to support this common sense piece of legislation. Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 1958

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

**SECTION 1. EXCLUSION OF PAYMENTS FROM DETERMINATION OF ANNUAL INCOME.**

Section 1503(a) of title 38, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (9);

(2) by striking out the period at the end of paragraph (10)(B) and inserting in lieu thereof "; and"; and

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

"(11) cash, stock, land, or other interest referred to in subparagraphs (A) through (E) below paragraph (3) of section 29(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c)), whether attributable to the disposition of real property, profits from the operation of real property, or otherwise, that is received from a Native Corporation under such Act (43 U.S.C. 1601 et seq.).".

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By Mr. GRAHAM:

S. 1959. A bill to prevent delay in the completion of Federal construction projects, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL CONSTRUCTION PROJECT LEGISLATION

Mr. GRAHAM. Mr. President, I rise today to introduce a bill to speed up Federal construction projects. My bill is similar to a Florida State law which speeds up funding for State construction projects. The purpose was to accelerate the progress of getting capital outlay projects started. According to William Scaringe, the director of the Florida division of building construction, the Florida law has been very "effective and the State likes it." Mr. Scaringe said that during the first 3 to 4 years under the Florida law, projects would bunch up that agencies wanted to get bid. Now Mr. Scaringe says the State has no problem with the mandated deadlines. The State has the controls in place so projects get funded and the funds don't sit waiting for a project.

My bill is very similar to the State of Florida's law. Under my bill, a Federal project would lose its funding unless work begins within 2 years of the Federal appropriation. The goal is to speed up construction, to create jobs, and to use Federal dollars more efficiently. We should not leave Federal money sitting around and gathering dust when it could be used for worthwhile projects.

Under my bill, work on each phase of the project would have to begin within 2 years of Federal appropriation for that phase. If a project were funded for design, design would have to begin within 2 years. If a project were fully funded, construction would have to begin within 2 years.

Since 1992, my staff has reviewed federally funded construction projects in Florida. At this time we have found that more than one-fourth of Florida's federally funded construction projects are running behind schedule.

When we see that projects are delayed, I have written letters to the Federal and State agencies whenever a project is behind schedule. In these letters, I have tried to determine why the projects are lagging and whether I can help expedite them.

The bill would provide the incentive to diminish these delays, and to find alternatives for projects that are hopelessly behind schedule. It would also discourage Congress from appropriating money to projects that have not been carefully planned out and would help ensure that construction begins on projects before their design is obsolete.

In December 1993, 30 percent of Florida's projects—or 396 million dollars' worth—were listed as delayed.

Among the construction projects that are substantially delayed around the country are:

IRS Complex, Chamblee, GA—Site acquisition appropriated in 1990. Work has not begun.

Federal Building-Courthouse, Boston, MA—Construction appropriated in 1990. Construction has not begun.

Southeast Federal Center-Infrastructure, Washington, DC—Appropriated in 1991. Construction delayed until 1996.

The bill also requires each Federal agency to report to the Director of the Office of Management and Budget on a quarterly basis on the status of each ongoing construction project that is under the agency's jurisdiction. The agencies shall identify each project, which projects are delayed and the reason for the delay. This information shall be given to the Director of OMB who shall work with each agency to facilitate removal of the delay on each project. The Director will then report to the Congress on a annual basis on the construction projects.

The bill would only affect projects authorized after its enactment.

Mr. President, the bill is an important step to improve the Federal Gov-

ernment's fiscal responsibility and I encourage my colleagues to review and cosponsor this bill.

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By Mr. McCAIN:

S. 1960. A bill to increase housing opportunities for Indians; to the Committee on Indian Affairs.

INDIAN HOUSING DEVELOPMENT AND REFORM ACT OF 1994

Mr. McCAIN. Mr. President, I rise today to introduce the Indian Housing Development and Reform Act of 1994.

Before I begin my remarks, I want to publicly express my appreciation to Senator MIKULSKI, Senator GRAMM, and their staffs for their efforts to secure and preserve increased funding for Indian housing. I know their efforts have given Indian people a renewed sense of hope that their housing needs have not been forgotten.

While the majority of our Nation has been served under the public housing program since it was first established in 1937, American Indians and Alaska Natives were not declared eligible for Federal housing programs until 1961. And in fact, a substantial number of Indian housing units were not authorized until the early 1970's. The Office of Indian Housing at the Department of Housing and Urban Development was not permanently established until 1978. Given the slow evolution of the Indian housing program, it is not hard to understand why there continues to be a substantial number of Indian families in need of safe, decent, and sanitary housing.

I want to briefly highlight a few key provisions contained in this bill.

First, the bill increases the current Indian housing authorization from 3,000 to 4,000 units. The primary concern of Indian tribes continues to be the authorization level for the development of new housing units. While appropriations for Indian housing have been near the presently authorized level for the past several years, I believe we can do better.

Second, my bill would reform Federal Indian housing programs by taking the Housing Improvement Program now administered by the Bureau of Indian Affairs at the Department of the Interior and consolidating it with the primary Federal Indian housing programs now administered by the Office of Native American Programs at the Department of Housing and Urban Development.

The objective of this consolidation is not—repeat—not to eliminate the Housing Improvement Program [HIP]. No one disputes the fact that HIP is a valuable source of housing assistance. Unfortunately, according to five separate audits by the Department of the Interior's inspector general, HIP has been seriously mismanaged and abused. In response to these audit findings, the former Assistant Secretary for Indian Affairs wrote the following memorandum chastising bureau personnel for failing to do their job:

DEPARTMENT OF THE INTERIOR,
*Washington, DC, April 12, 1993.*

To: All Area Directors, Director, Office of Self-Governance.
Through: Acting Deputy Commissioner of Indian Affairs.
From: Assistant Secretary-Indian Affairs.
Subject: Program Management.

The Housing Improvement Program (HIP) started informally in 1964 as an outgrowth of disaster relief efforts in California and Montana. Regulations were developed in 1975 and contracting pursuant to P.L. 93-638 began in late 1978. In 1983, Congress removed HIP funding from what was then known as the "Band" placing it in a construction account and directing that: "HIP be more cost effective and better meet housing need." The result was the redirected HIP which, among other things, included (1) inventory of housing need and (2) use of model contract.

A General Accounting Office (GAO) report in 1987 showed that redirected HIP internal controls needed strengthening in three areas. The Acting Assistant Secretary—Indian Affairs issued a five page memorandum on August 7, 1987, mandating corrective action covering model contracting enforcement, construction monitoring and inspection, and use of the selection criteria.

In 1992, the Office of the Inspector General (OIG) began HIP audits for selected Bureau of Indian Affairs (BIA) operated programs in Albuquerque and Sacramento Areas. They also audited one tribal P.L. 93-638 contract in Aberdeen and one in Sacramento. All reports pointed out serious management problems with the Housing Improvement Program. Similar weaknesses were identified by BIA staff in those Areas who applied A-123 reviews to HIP. It is noted that not all Areas fulfilled their responsibility with this internal review.

The OIG has also completed a HIP audit for the Portland Area. The pending report covers two BIA Agency HIP operations and three tribally contracted programs. It is anticipated that the Portland Audit will also be highly critical of HIP management.

In the past eighteen months we have been embarrassed by GAO and OIG reports on Social Services, Credit and Financing, and now HIP. A common thread which runs through these audits is that we are not being responsible program managers. We are not insuring compliance to regulations as to client eligibility and requirements. We are not verifying, documenting, and enforcing.

It doesn't seem to matter whether the program is BIA operated or the services provided pursuant to P.L. 93-638 contracts, we are failing to do our job. Public funds are being wasted; clients not eligible are being served and clients who should be served are not receiving needed assistance. This must stop.

As to HIP, we are working towards revision of 25 CFR 256 and updating the 64 BIAM. This will take some time. We are also developing an instrument for review of Area HIP. This will also take time. Meanwhile, each Area Director and the Director, Office of Self-Governance is required to do the following:

1. Review the Albuquerque, Sacramento and Pit River OIG Audits. Reports for Omaha and Portland will be distributed when they become final.

2. Review the position paper on redirected HIP which was approved by the Deputy Assistant Secretary—Indian Affairs on April 30, 1985, and transmitted to all Area Directors on May 21, 1985, by the Deputy Director, Office of Indian Services.

3. Review the August 7, 1987, memorandum to All Area Directors from the Acting Assistant Secretary—Indian Affairs entitled "General Accounting Office Audit Report on Indian Housing."

4. Review 25 CFR 256.

5. Certify that housing personnel are knowledgeable of those trade crafts required by page 11 of the redirected HIP Position Paper.

6. Certify that P.L. 93-638 contractors are using the model contract as required by "redirected HIP" and specifically mandated by the above referenced August 7, 1987, memorandum.

7. Certify that all units for which HIP funds are being expended have been inspected pursuant to 25 CFR 256.9, required by page 10 of the "Redirect" and mandated by page 2 of the August 7, 1987, memorandum.

8. Certify that all HIP recipients are eligible pursuant to 25 CFR 256.6 and selected in accord with 256.7 and page 2 of the 1987 memorandum.

9. Certify that Contracting Officers award HIP Contracts only after concurrence from the Housing Officers as to work plans, eligibility of homeowners, and funding. A copy of final inspection should become part of the contract file and Housing office records.

I expect a personal certification from each Area Director to the above nine (9) requirements by COB May 17, 1993. Your certification is to be addressed to the Deputy Commissioner of Indian Affairs. Any certification which cannot assure total compliance shall include a specific Action Plan not to exceed six (6) months for corrective action.

In conclusion, and perhaps waxing philosophically, a few words need to be said about public officials. Private citizens can do anything they so desire so long as it is not specifically prohibited by law. Public officials can only do those things which are specifically authorized. This is a very significant difference. Our authorizations derive from Public Laws, regulations, manuals, policies, court cases and IBIA decisions. If it is not authorized, we cannot do it.

Regardless of whether the desired action is perceived as good or bad, we do not possess the authority to act unless specifically authorized. We do not possess authority to serve ineligible clients, approve less than professional work (such as shoddy work on a HIP house) or fail to verify basic requirements.

Simply put, we have been acting outside of our authority (a very incriminating comment against public officials in a liberal democracy) to allow those things to occur which now have been documented in audits going back for a decade. We must become professional public officials.

The final report of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing did not mince words about the BIA's administration of HIP:

The BIA has consistently failed to fulfill its responsibility to Native American people mandated by the Snyder Act. In testimony before the Commission, the BIA has admitted that it failed to meet its own goals for providing basic housing needs. Its major housing program for Indians, the Housing Improvement Program, has functioned for over 20 years as a self-perpetuating bureaucracy unable to bring about any significant improvements in the Native housing crisis. BIA has underestimated housing needs and has built only a fraction of the new homes desperately required in Indian country. An-

nual HIP appropriations have been significantly below the BIA's own declared need.

Despite this criticism, the Commission recommended increased funding for HIP. Apparently, the Commission concluded that the need for housing assistance outweighed the need for HIP reform. I strongly disagree with the Commission. I believe it is important to ensure that all levels of government possess the integrity, accountability, and capability to meet the needs of Indian citizens. The overriding goal should be to strengthen and improve the capacity of the Federal and tribal governments to effectively and efficiently provide the necessary programs and services to the Indian people. I believe the best way to accomplish this goal for Indian housing is to transfer HIP to HUD.

In addition, I believe the transfer of HIP to HUD is consistent with the administration's proposals for reinventing government which seeks to lower administrative expenses by improving productivity and efficiency. In fact, the report of the National Performance Review included several recommendations for the consolidation of various Federal programs that have a common goal. The transfer would also contribute to the President's goal of reducing Federal employment by 252,000 full-time employees by 1999.

I want to point out to my friends in Indian country that while I see merit in transferring HIP to HUD, it does not represent a general belief on my part that there needs to be a wholesale division and transfer of BIA programs to other Federal agencies as some people will argue.

Finally, section 8 of the bill authorizes $500,000 in grants to Indian tribal governments to obtain technical assistance. In the past, the Congress has seen fit to identify one organization for Indian tribes to secure such assistance. After thinking carefully about this particular approach, I believe technical assistance is best arranged between an Indian tribe and the service provider that the tribe believes can best meet its needs. The service provider is then made directly accountable to the tribe and is likely to deliver a higher quality of service in return. I do not believe any organization is entitled to Federal assistance which establishes them as the sole provider. Organizations should earn the trust of the constituency they seek to serve.

Mr. President, I ask unanimous consent that a copy of the bill and the section-by-section analysis to the bill be printed in the RECORD immediately following my remarks.

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

S. 1960

*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 "Indian Housing Development and Reform Act of 1994".

**SEC. 2. FINDINGS.**

The Congress finds that—

(1) Indian tribes face an unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, persons with disabilities, and families with children;

(2) the demand for Indian housing has become more severe and, in the absence of more effective efforts and consistent funding, is expected to become dramatically worse, endangering the lives and safety of Indian and Alaska Native people;

(3) the Federal Government has a historical and special legal relationship with, and resulting responsibility to, Indian tribes;

(4) included within the relationship referred to in paragraph (3) is a trust responsibility to provide decent, safe, sanitary, and affordable housing to the members of Indian tribes residing on reservations;

(5) the Inspector General of the Department of the Interior has issued several audit reports on various area offices of the Bureau of Indian Affairs and has concluded that the Housing Improvement Program has been severely mismanaged and abused;

(6) as a result of the mismanagement and abuse of the Housing Improvement Program, persons who are not eligible for the Program are receiving assistance while persons who are eligible for the Program are not receiving needed assistance;

(7) the Secretary of Housing and Urban Development has the primary responsibility for the delivery of Indian housing services; and

(8) the transfer of the Housing Improvement Program to the Department of Housing and Urban Development will eliminate useless bureaucracy and waste while allowing the Secretary of Housing and Urban Development to administer the Housing Improvement Program according to the Program's intended goals and objectives.

**SEC. 3. DEFINITIONS.**

For purposes of this Act, the following definitions shall apply:

(1) DEPARTMENT.—The term "Department", unless otherwise specified, means the Department of Housing and Urban Development.

(2) INCORPORATED DEFINITIONS.—The terms "Indian", "Indian housing authority", and "Indian tribe" have the same meanings as in section 3 of the United States Housing Act of 1937.

(3) PROGRAM.—The term "Program" means the Housing Improvement Program of the Bureau of Indian Affairs, Department of the Interior, as set forth in part 256 of title 25, Code of Federal Regulations.

(4) SECRETARY.—The term "Secretary", unless otherwise specified, means the Secretary of Housing and Urban Development.

**SEC. 4. HOUSING IMPROVEMENT PROGRAM.**

(a) TRANSFER OF PROGRAM.—

(1) IN GENERAL.—The Program is hereby transferred to the Department.

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on the expiration of the 180-day period following the date of enactment of this Act.

(b) PROGRAM GOALS.—Notwithstanding any other provision of law, the goals of the Program are—

(1) to benefit Indian families by providing decent, safe, and sanitary shelter and by reducing the health and social costs created by an unsafe and unsanitary environment; and

(2) to provide for renovations, repairs, and additions to existing Indian houses, including repairs to houses that remain substandard but need repairs for the health or safety of the occupants and repairs to bring Indian houses to standard condition.

(c) ADMINISTRATION OF THE PROGRAM.—

(1) IN GENERAL.—The Secretary shall carry out the Program in accordance with this section.

(2) LIMITATION ON ASSISTANCE.—Notwithstanding paragraph (3) or any other provision of law, the Secretary, unless otherwise authorized by the governing body of an Indian tribe—

(A) shall provide assistance under the Program only to the governing body of an Indian tribe; and

(B) shall not provide any such assistance to an Indian housing authority.

(3) MODIFICATIONS TO PROGRAM.—The Secretary is authorized to modify or otherwise change the Program to meet the goals set forth in subsection (b).

(d) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS.—Except as otherwise provided in this section, the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the Program, subject to section 1531 of title 31, United States Code, shall be transferred to the Department. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(e) TRANSFER OF PERSONNEL.—

(1) IN GENERAL.—Except as otherwise provided in this section, the Secretary of the Interior shall transfer such personnel to the Department to administer the Program as the Secretary considers necessary and appropriate.

(2) NO SEPARATION OR REDUCTION IN GRADE OR COMPENSATION FOR 1 YEAR.—Except as otherwise provided in this section, any transfer pursuant to this section of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation during the 1-year period beginning on the date on which the employee is transferred to the Department.

(3) EXECUTIVE SCHEDULE EMPLOYEES.—Except as otherwise provided in this section, any person who, on the day preceding the date on which such person is transferred to the Department under this section, holds a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(4) PRESIDENTIAL APPOINTEES.—Positions whose incumbents are appointed by the President, by and with the advice and consent of the Senate, the functions of which are transferred pursuant to this section, shall terminate on the effective date of this section.

(f) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized to make such determinations as may be necessary with regard to the Program, and to make such additional incidental dispositions of personnel, assets, li-

abilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the Program, as may be necessary to carry out this section. The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this section and for such further measures and dispositions as may be necessary to effectuate the purposes of this section.

(g) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(1) that have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official, or by a court of competent jurisdiction, in the performance of the Program which are transferred under this section; and

(2) that are in effect on the effective date of subsection (a)(1), or that were final before such date and are to become effective on or after such date;

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, or other authorized official, a court of competent jurisdiction, or by operation of law.

(h) PROCEEDINGS NOT AFFECTED.—The provisions of this section shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Department of the Interior on the effective date of subsection (a)(1), with respect to the Program, and such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this section shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(i) ACTIONS NOT AFFECTED.—The provisions of this section shall not affect actions commenced before the effective date of subsection (a)(1), and in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(j) NONABATEMENT OF ACTIONS.—No action or other proceeding commenced by or against the Department of the Interior, or by or against any individual in the official capacity of such individual as an officer of the Department of the Interior, shall abate by reason of the enactment of this section.

(k) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the Department of the Interior relating to the Program may be continued by the Department with the same effect as if this section had not been enacted.

(*l*) TRANSITION.—The Secretary is authorized to utilize—

(1) the services of such officers, employees, and other personnel of the Department of the Interior with respect to the Program; and

(2) funds appropriated to the Program for such period of time as may reasonably be needed to facilitate the orderly implementation of this section.

(m) REFERENCES.—Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to—

(1) the Secretary of the Interior, with regard to the Program, shall be deemed to refer to the Secretary; and

(2) the Department of the Interior, with regard to the Program, shall be deemed to refer to the Department.

(n) REGULATIONS.—The Secretary shall, by notice published in the Federal Register, establish such requirements as may be necessary to carry out this section. The Secretary shall issue final regulations to carry out this section, based on such notice, after providing opportunity for public comment on the notice.

(o) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $34,000,000 for fiscal years 1996, 1997, 1998, 1999, and 2000 to carry out the Program.

**SEC. 5. AUTHORIZATION.**

Section 5(c) of the United States Housing Act of 1937 (42 U.S.C. 1437c(c)) is amended by adding at the end the following new paragraph:

"(9) Using the additional budget authority that becomes available during fiscal years 1996, 1997, 1998, 1999, and 2000, the Secretary shall, to the extent approved in appropriation Acts, reserve authority to enter into obligations aggregating, for public housing grants for Indian families under subsection (a)(2), an amount sufficient to provide assistance for an additional 4,000 units of Indian housing for each such year.".

**SEC. 6. ELIGIBLE INDIANS.**

Section 201 of the United States Housing Act of 1937 (42 U.S.C. 1437aa) is amended by adding at the end the following new subsection:

"(d) ELIGIBLE FAMILIES.—

"(1) IN GENERAL.—Except as provided in section 202(d) of this title and paragraph (2) of this subsection, low-income housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority shall be limited to Indian low-income families.

"(2) EXCEPTION.—An Indian housing authority may provide assistance to any non-Indian family on an Indian reservation or other Indian area if the Indian housing authority determines that the need for housing for such families on the Indian reservation or other Indian area cannot reasonably be met without such assistance.

"(3) EXISTING ASSISTANCE.—Nothing in this subsection shall be construed to prohibit or otherwise affect any assistance provided to a family served by an Indian housing authority on the date of enactment of this subsection.".

**SEC. 7. CERTAIN WAGE RATES NOT APPLICABLE.**

(a) WAGE RATES.—Beginning on the date of enactment of this Act, the provisions of the Davis-Bacon Act shall not be applicable to any construction, alteration, or repair, including painting and decorating, carried out pursuant to any contract entered into after the date of enactment of this Act, except as provided in subsection (b), in connection with any housing project of 40 units or less involving Indian housing developed or operated by an Indian housing authority.

(b) EXISTING CONTRACTS.—The provisions of subsection (a) shall not affect any contract in effect on the date of enactment of this Act, or any contract that is entered into on or after such date of enactment pursuant to invitations for bids that were outstanding on such date of enactment.

**SEC. 8. TECHNICAL ASSISTANCE.**

(a) TECHNICAL ASSISTANCE GRANTS.—The Secretary is authorized to make grants to Indian tribes for use by such tribes in obtaining technical assistance in connection with Indian housing programs.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000 to carry out the provisions of subsection (a).

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SECTION-BY-SECTION ANALYSIS OF THE INDIAN HOUSING DEVELOPMENT AND REFORM ACT OF 1994

Section 1. Short Title.

Section 2. Congressional findings.

Section 3. Definitions.

Section 4. This section transfers the Housing Improvement Program at the Bureau of Indian Affairs to the Department of Housing and Urban Development. The department would use the same goals, standards and objectives of the existing HIP program. In addition, program funding would still be made to Indian tribal governments. The bill authorizes $34 million per year through FY 2000. HIP funding has generally ranged between $17 million to $20 million per year.

Section 5. This section authorizes budget authority sufficient to provide 4,000 units of Indian housing per year through FY 2000. The current authorization is 3,000 units.

Section 6. (a) Amends the 1937 Housing Act by requiring that the HUD Indian housing program is limited to low-income Indian families.

(b) An Indian housing authority is authorized to assist non-Indian families only if it is determined that the housing needs of non-Indian families on an Indian reservation cannot be reasonably met without such assistance.

(c) Any non-Indian family currently being served by an Indian housing authority is not affected by this section.

Section 7. (a) provides that the prevailing wage rates shall not apply to an Indian housing project that involves 40 units or less.

(b) provides that existing contracts, contracts signed on the date of enactment or invitations for bids issued before the date of enactment shall not be affected by this section.

Section 8. This section authorizes technical assistance grants to be made to Indian tribes. Tribes may then purchase technical assistance from the provider of choice. The bill authorizes $500,000 for this section.

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By Mr. KENNEDY (for himself, Mr. DODD, Mr. DECONCINI, and Mr. KERRY):

S. 1961. A bill to provide for necessary medical care for former civilian prisoners of war; to the Committee on Labor and Human Resources.

CIVILIAN EX-POW HEALTH AND DISABILITY LEGISLATION

Mr. KENNEDY. Mr. President, on behalf of Senators DODD, DECONCINI, KERRY, and myself, I am introducing legislation to address the health and disability needs of civilian ex-prisoners of war.

The bill concerns basic issues of fairness and justice for a group of Americans who have endured a great deal of

suffering and who urgently need relief. In 1948, Congress passed the War Claims Act which extended health disability and detention benefits to more than 6,000 American civilians interned by the Japanese during World War II. Most of them were private citizens residing in the Philippines at the outbreak of the war.

Like military ex-POW's, civilian internees suffer from a number of physical and psychological disabilities caused by their imprisonment. Among the most common are gum disease caused by their poor diet in the internment camps, and post-traumatic stress syndrome.

The War Claims Act created a War Claims Commission to administer benefits to these individuals. That function was later taken over by the Department of Labor's Office of Worker's Compensation Program [OWCP]. It also established eligibility criteria, benefit levels, and procedural requirements that claimants must meet in order to receive medical and disability benefits. Of close to 5,000 cases administered since the War Claims Act was passed, between 75–100 cases remain active.

By the time War Claims Act became law, the needs of other POW groups had already been addressed. Former military POW's had access to health and disability benefits through the Veterans' Administration. Compensation programs for Federal employees interned in wartime prison camps had been authorized in 1916 by the Federal Employees Compensation Act. Similar benefits for the employees of independent Federal contractors were established in 1942 under the Defense Base Act.

Despite the importance of the 1948 law in securing health and disability benefits for civilian ex-POW's, the act is deficient in a number of important respects.

First, the 1948 law covers only those who were interned in the Philippines and other Japanese-controlled territories during World War II. This provision excludes a majority of WWII-era detainees. According to the Committee on Civilian Internee Rights, eliminating this exclusion would extend coverage by an additional 5,600 survivors, raising the total number of civilian ex-POW's covered by Federal health and disability benefits to 8,600. It also denies coverage to approximately 100 American civilians detained in Korea and Vietnam during the conflicts in those regions.

Second, the process for filing claims is unnecessarily burdensome and out of step with the more streamlined approach used to administer medical and disability benefits to other POW's. The Department of Veterans Affairs automatically approves claims related to presumptive conditions—conditions widely recognized as caused or exacerbated by periods of internment. But former civilian POW's must document that an injury or medical condition is related to their detainment, no matter how common the condition.

Finally, the disability benefits established by the War Claims Act have been unfairly eroded by four and a half decades of inflation. Under the act, the level of disability benefits is set at $25 a week—an amount derived by taking 66 percent of the National Average Weekly Wage in 1948.

Further, the maximum amount of disability benefits is set by the law at $7,500 per claimant. By contrast, the law covering those who were Federal workers or Federal contractors at the time of their capture imposes no such limit, benefit levels are automatically adjusted for increases in the cost of living.

The Civilian Ex-Prisoner of War Health and Disability Benefits Act of 1994 corrects these deficiencies. All civilian POW's from WWII and the Korean and Vietnam wars will be eligible to receive health and disability benefits. This eligibility extension also applies to civilians who went into hiding to avoid becoming prisoners of war in those conflicts.

In determining eligibility, the bill extends to civilian POW's the same presumptive conditions used by the VA to evaluate claims filed by former military POW's.

Benefit levels are also updated by the measure. The bill eliminates the per claimant cap on total disability payments under the War Claims Act. In addition, the bill sets weekly disability payment levels at the levels established by FECA, thereby creating parity with ex-POW's who were Federal workers of Federal contractors when they were interned. Linking compensation levels to FECA also assures that disability benefit levels will be adjusted every year of increases in the cost of living.

Mr. President, this bill is long overdue as a matter of simple justice. I hope that Congress will expedite its action, and I ask unanimous consent that its text may be printed in the RECORD.

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

S. 1961

*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 "Civilian Ex-Prisoner of War Health and Disability Benefits Act of 1994".

**SEC. 2. MEDICAL CARE AND DISABILITY BENEFITS.**

(a) ELIGIBILITY.—A former civilian prisoner of war is entitled to receive necessary medical care and disability benefits for any injury or disability resulting from the period of internment or hiding. Any presumptive medical and dental condition related to a period of internment provided for former military prisoners of war under section 1112(b) of title 38, United States Code, shall be extended to former civilian prisoners of war and shall be considered to have been incurred in or aggravated by such period of internment or hiding without regard to the absence of any record of such injury.

(b) PAYMENT OF BENEFITS.—Prompt monetary payment or reimbursement shall be facilitated for reasonable and necessary expenditures for all medical treatment, including rehabilitation, mental health services, and dental care, provided for under this section for which a claim and any documentation determined necessary by the Secretary of Labor has been filed with the Secretary of Labor.

(c) WAIVER OF LIMITATIONS.—There shall be no limitation on the total medical or disability benefits which a person may receive for any injury or disability resulting from the period of internment or hiding.

(d) RATE OF COMPENSATION.—Compensation for disability shall be equal to the weekly equivalent of the minimum monthly rate of compensation payable for a total disability covered by chapter 81 of title 5, United States Code, as computed under section 8112(a) of such title.

(e) CREDITING BENEFITS UNDER THE SOCIAL SECURITY ACT.—The benefits provided by this section to any individual shall be reduced to the extent such benefits are provided under title XVIII of the Social Security Act, or any private insurance, for the same medical condition or disability.

**SEC. 3. ADVISORY COMMITTEE.**

(a) ESTABLISHMENT.—The Secretary of Labor shall establish an advisory committee to be known as the Former Civilian Prisoner of War Committee (hereafter in this section referred to as the "advisory committee"). The members of the advisory committee shall be appointed by the Secretary of Labor from the general public and shall include appropriate representatives of former civilian prisoners of war and individuals who are recognized authorities in fields pertinent to the injuries and disabilities prevalent among former civilian prisoners of war.

(b) AUTHORITY OF THE SECRETARY OF LABOR.—The Secretary of Labor shall determine the number, terms of service, and pay and allowances of members of the advisory committee. The Secretary of Labor shall consult with and seek the advice of the advisory committee with respect to the administration of benefits under this Act.

(c) REPORT.—Not later than January 1, 1996, the Secretary of Labor shall submit to Congress a report on the programs and activities of the Department of Labor that pertain to those former civilian prisoners of war. The Secretary of Labor shall include in the report—

(A) an assessment of the needs of such civilian prisoners of war with respect to health and disability benefits;

(B) a review of the programs and activities of the Office of Workers' Compensation Program designed to meet such needs; and

(C) such recommendations as the advisory committee considers to be appropriate.

(d) INFORMATION ON BENEFITS.—Not later than 90 days after the date of enactment of this Act, and at appropriate times thereafter, the Secretary of Labor shall seek out former civilian prisoners of war and provide them with information regarding applicable changes in law, regulations, and services to which such citizens are entitled by virtue of this Act.

**SEC. 4. REGULATIONS.**

The Secretary of Labor shall prescribe regulations as may be necessary to ensure that

benefits provided to former civilian prisoners of war under this Act are coordinated with and do not duplicate any benefits provided such persons under the War Claims Act.

**SEC. 5. DEFINITIONS.**

For purposes of this Act—

(1) the term "former civilian prisoner of war" means a person determined by the Department of Labor, in consultation with the Department of State and the Department of Defense, as being someone who, being then a citizen of the United States was forcibly interned by an enemy government or its agents, or a hostile force, or who went into hiding in order to avoid capture by such government, its agents, or hostile force, during a period of war, or other period for at least 30 days, including those interned or who went into hiding during the Asian-Pacific Theater or in the European Theater of World War II during the period beginning September 1, 1939, and ending December 31, 1946, in Korea during the period beginning June 25, 1950, and ending July 1, 1955, or in Vietnam during the period beginning February 28, 1961, and ending on the date designated by the President by Executive order as the date of termination of the Vietnam conflict, except—

(A) a person who at any time voluntarily gave aid to, collaborated with, or in any manner served such a government, or

(B) a person who at the time of his capture or entrance into hiding was—

(i) a person within the purview of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes", approved September 7, 1916, as amended, and as extended;

(ii) a person within the purview of the Act entitled "An Act to provide benefits for the injury, disability, death, or enemy detention of employees of contractors with the United States, and for other purposes", approved December 2, 1942, as amended; or

(iii) a regularly appointed, enrolled, enlisted, or inducted member of any military or naval force; and

(2) the term "hostile force" means any nation, or any national thereof, or any other person serving a foreign nation—

(A) engaged in war against the United States or any of its allies; or

(B) engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies.

**SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this Act, such sums as may be necessary for each of the fiscal years 1995 through 2000.

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By Mr. DODD (for himself and Mr. ROCKEFELLER):

S. 1962. A bill to provide for demonstration projects in 6 States to establish or improve a system of assured minimum child support payments; to the Committee on Finance.

CHILD SUPPORT ASSURANCE ACT OF 1994

Mr. DODD. Mr. President, I rise today to introduce a piece of legislation whose subject should be central to our debate over welfare reform. This bill, the Child Support Assurance Act of 1994, seeks to put a stop to one of the principal causes of child poverty in this country, lack of financial support from absent parents. I am delighted to be joined in this effort by my colleague from West Virginia, Senator ROCKEFELLER, who has long been a champion of children's causes and this concept in particular.

If I had to sum this legislation in one word, it would be responsibility: Parents' responsibility to support their kids and our responsibility as a nation to support struggling families. If we can begin to live up to these responsibilities, we will go a long way toward solving the problems that lead people to turn to welfare.

WELFARE REFORM, WELFARE PREVENTION

I firmly believe we will not succeed in reforming welfare until we succeed in reforming child support. In my view, the term welfare reform does not do justice to the task at hand. Of course, we need welfare reform that will encourage people to become self-sufficient and leave government assistance. But just as important, we need welfare prevention—policies to allow people to avoid welfare in the first place. We need to seriously ask ourselves, what can we as a nation do to support families in danger of sliding into poverty?

At or near the top of our list of answers should be putting some teeth and some assurances into our child support system. Lack of child support is one of the principal causes of poverty for one-parent families. The census bureau illustrated this fact when it estimated that between 1984 and 1986 approximately half-a-million children fell into poverty after their father left home.

In 1989 alone, the children and single parents of America were owed $5.1 billion in unpaid child support. This week, we will discuss a budget resolution in which we had to squeeze and cut just to come up with an extra $700 million for Head Start this year. And that $700 million should make a real difference in the fight against child poverty. But $700 million is tiny in comparison with the amount of money owed in back child support. Can you imagine the difference it would make for the children of America if they received that $5 billion they are being cheated out of annually?

Connecticut is no different from any other State. Despite a child support enforcement system that ranks among the best in the Nation, its child support delinquencies now total nearly half-a-billion dollars. That is half-a-billion dollars in a State of only 3½ million people.

CLEAR CONNECTION

The clear connection between child support and welfare was illustrated for the subcommittee on children last August during a hearing I chaired on this topic. Geraldine Jensen testified about struggling as a single mother, receiving no help from her ex-husband. She had to work 60 hours a week just to make ends meet. One day she realized her kids had gone from two parents to one parent when her husband left, and then from one parent to none when she had to take her second job. She was working so much that she had no time for her children.

So Ms. Jensen quit her jobs and went on AFDC. She finally collected the child support owed her 7 years later, and she was able to get back on her feet. As president of the Association for Children for the Enforcement of Support, Ms. Jensen is now working to fashion a child support system that will make stories like hers a thing of the past.

But the reality today is that there are far too many families out there like Ms. Jensen's. And far too many children are plunged into poverty when their parents do not live up to their responsibilities.

The poverty rate for single-parent families headed by women is nearly 33 percent. This compares to a poverty rate of under 8 percent for 2-parent families.

Why is the poverty rate so high for households led by single women? The primary reason is a lack of support from absent fathers. Forty-two percent of single mothers do not even have child support orders for their children. For poor women, this figure is 57 percent. And a child support order is no guarantee of support. In 1989, half of all mother-let families with child support orders received no support at all or less than the amount due.

CHILDHOOD'S END

As a recent report titled "Childhood's End" by the National Child Support Assurance Consortium poignantly illustrated, these are much more than simply numbers on a page for the children involved. For far too many young Americans, the lack of child support means poverty. It means not being able to go to the doctor when they're sick. It means going to bed hungry. It means teetering on the brink of homelessness.

We have known for some time now that our child support system needs a major overhaul. The Child Support Amendments of 1984 and the Family Support Act of 1988 made modest improvements. For every 100 child support cases in 1983, there were 15 in which there was a collection. In 1990, there were 18. Out of 100, 15 to 18 is a step in the right direction, but we clearly have a long, long way to go.

The bill we are introducing today would take us further down the road toward an effective child support system. It would create incentives for responsible behavior: Incentives for custodial parents to seek child support orders, incentives for noncustodial parents to follow those orders, and incentives for States to make sure this whole process works. As a last resort, it would provide a minimum level of support for all children not living with both parents.

Right now, the poor children of America are the ones paying for the failings of our families and the failings of our child support system. It is time

for all of us to help shoulder this burden.

RIGOROUS REQUIREMENTS

The bill would authorize demonstrate grants to six States for use in guaranteeing and assured child support benefit. Participating States would have to meet a rigorous set of requirements. To qualify, States would already have to be doing a good job of collecting child support and would have to be at, or above, the national median for paternity establishment. And during the course of the grant, the State would have to show real, measurable improvement in paternity establishment, child support orders, and collections.

Just as the Child Support Assurance Act calls on participating States to meet their obligations, it would do the same for participating families. To qualify, the custodial parent would have to possess, or be seeking, a child support award or have a good reason not to.

We hope that this approach will serve as a model for the country. To test this proposition, the Department of Health and Human Services would conduct 3- and 5-year evaluations of the demonstration programs to gauge whether the approach should be extended nationally.

I hope my colleagues will join Senator ROCKEFELLER and me in supporting this legislation and demanding that we all meet our responsibilities to America's children.

I ask unanimous consent that the full text of this bill be printed in the RECORD, along with several letters of support.

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

S. 1962

*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 "Child Support Assurance Act of 1994".

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—The Congress finds that—

(1) the number of single-parent households has increased significantly;

(2) there is a high correlation between childhood poverty and growing up in a single-parent household;

(3) family dissolution often brings the economic consequence of a lower standard of living for the custodian and children;

(4) children are nearly twice as likely to be in poverty after a family dissolution as before a family dissolution;

(5) one-fourth of the single mothers who are owed child support receive none and another one-fourth of such mothers receive only partial child support payments;

(6) single mothers above and below the poverty line are equally likely to receive none of the child support they are owed; and

(7) the failure of children to receive an adequate level of child support limits the ability of such children to thrive and to develop their potential and leads to long-term societal costs in terms of health care, welfare, and loss in labor force productivity.

(b) PURPOSE.—It is the purpose of this Act to enable participating States to establish child support assurance systems in order to improve the economic circumstances of children who do not receive a minimum level of child support from the noncustodial parents of such children and to strengthen the establishment and enforcement of child support awards. The child support assurance approach is structured on a demonstration basis in order to implement and evaluate different options with respect to the provision of intensive support services and mechanisms for administering the program on a national basis.

**SEC. 3. ESTABLISHMENT OF CHILD SUPPORT ASSURANCE DEMONSTRATION PROJECTS.**

(a) IN GENERAL.—In order to encourage States to provide a guaranteed minimum level of child support for every eligible child not receiving such support, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall make grants to not more than 6 States to conduct demonstration projects for the purpose of establishing or improving a system of assured minimum child support payments in accordance with this section.

(b) CONTENTS OF APPLICATION.—An application for grants under this section shall be submitted by the Governor of a State and shall—

(1) contain a description of the proposed child support assurance project to be established, implemented, or improved using amounts provided under this section, including the level of the assured benefit to be provided, the specific activities to be undertaken, and the agencies that will be involved;

(2) specify whether the project will be carried out throughout the State or in limited areas of the State;

(3) estimate the number of children who will be eligible for assured minimum child support payments under the project, and the amounts to which they will be entitled on average as individuals and in the aggregate;

(4) describe the child support guidelines and review procedures which are in use in the State and any expected modifications;

(5) contain a commitment by the State to carry out the project during a period of not less than 3 and not more than 5 consecutive fiscal years beginning with fiscal year 1996;

(6) contain assurances that the State—

(A) is currently at or above the national median paternity establishment rate (as defined in section 452(g)(2) of the Social Security Act),

(B) will improve the performance of the agency designated by the State to carry out the requirements under part D of title IV of the Social Security Act by at least 4 percent each year in which the State operates a child support assurance project under this section in—

(i) the number of cases in which paternity is established when required;

(ii) the number of cases in which child support orders are obtained; and

(iii) the number of cases with child support orders in which collections are made; and

(C) to the maximum extent possible under current law, will use Federal, State, and local job training assistance to assist individuals who have been determined to be unable to meet such individuals' child support obligations;

(7) describe the extent to which multiple agencies, including those responsible for administering the Aid to Families With Dependent Children Program under part A of title IV of the Social Security Act and child support collection, enforcement, and payment under part D of such title, will be involved in the design and operation of the child support assurance project; and

(8) contain such other information as the Secretary may require by regulation.

(c) USE OF FUNDS.—A State shall use amounts provided under a grant awarded under this section to carry out a child support assurance project designed to provide a minimum monthly child support benefit for each eligible child in the State to the extent that such minimum child support is not paid in a month by the noncustodial parent.

(d) REQUIREMENTS.—(1) A child support assurance project funded under this section shall provide that—

(A) any child (as defined in paragraph (2)) with a living noncustodial parent for whom a child support order has been sought (as defined in paragraph (3)) or obtained and any child who meets "good cause" criteria for not seeking or enforcing a support order is eligible for the assured child support benefit;

(B) the assured child support benefit shall be paid promptly to the custodial parent at least once a month and shall be—

(i) an amount determined by the State which is—

(I) not less than $1,500 per year for the first child, $1,000 per year for the second child, and $500 per year for the third and each subsequent child, and

(II) not more than $3,000 per year for the first child and $1,000 per year for the second and each subsequent child;

(ii) offset and reduced to the extent that the custodial parent receives child support in a month from the noncustodial parent;

(iii) indexed and adjusted for inflation; and

(iv) in the case of a family of children with multiple noncustodial parents, calculated in the same manner as if all such children were full siblings, but any child support payment from a particular noncustodial parent shall only be applied against the assured child support benefit for the child or children of that particular noncustodial parent;

(C) for purposes of determining the need of a child or relative and the level of assistance, one-half of the amount received as a child support payment shall be disregarded from income until the total amount of child support and Aid to Families With Dependent Children benefit received under part A of title IV of the Social Security Act equals the Federal poverty level for a family of comparable size;

(D) in the event that the family as a whole becomes ineligible for Aid to Families With Dependent Children under part A of the Social Security Act due to consideration of assured child support benefits, the continuing eligibility of the caretaker for Aid to Families With Dependent Children under such title shall be calculated without consideration of the assured child support benefit; and

(E) in order to participate in the child support assurance project, the child's caretaker shall apply for services of the State's child support enforcement program under part D of title IV of the Social Security Act.

(2) For purposes of this section, the term "child" means an individual who is of such an age, disability, or educational status as to be eligible for child support as provided for by the law of the State in which such individual resides.

(3) For purposes of this section, a child support order shall be deemed to have been "sought" where an individual has applied for services from the State agency designated by

the State to carry out the requirements of part D of title IV of the Social Security Act or has sought a child support order through representation by private or public counsel or pro se.

(e) CONSIDERATION AND PRIORITY OF APPLICATIONS.—(1) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this section and shall approve not more than 6 applications which appear likely to contribute significantly to the achievement of the purpose of this section. In selecting States to conduct demonstration projects under this section, the Secretary shall—

(A) ensure that the applications selected represent a diversity of minimum benefits distributed throughout the range specified in subsection (d)(1)(B)(i);

(B) consider the geographic dispersion and variation in population of the applicants;

(C) give priority to States the applications of which demonstrate—

(i) significant recent improvements in—

(I) establishing paternity and child support awards,

(II) enforcement of child support awards, and

(III) collection of child support payments;

(ii) a record of effective automation; and

(iii) that efforts will be made to link child support systems with other service delivery systems;

(D) ensure that the proposed projects will be of a size sufficient to obtain a meaningful measure of the effects of child support assurance;

(E) give priority, first, to States intending to operate a child support assurance project on a statewide basis, and, second, to States that are committed to phasing in an expansion of such project to the entire State, if interim evaluations suggest such expansion is warranted; and

(F) ensure that, if feasible, the States selected use a variety of approaches for child support guidelines.

(2) Of the States selected to participate in the demonstration projects conducted under this section, the Secretary shall require, if feasible—

(A) that at least 2 provide intensive integrated social services for low-income participants in the child support assurance project, for the purpose of assisting such participants in improving their employment, housing, health, and educational status; and

(B) that at least 2 have adopted the Uniform Interstate Family Support Act.

(f) DURATION.—(1) During fiscal year 1995, the Secretary shall develop criteria, select the States to participate in the demonstration, and plan for the evaluation required under subsection (h). The demonstration projects conducted under this section shall commence on October 1, 1995, and shall be conducted for not less than 3 and not more than 5 consecutive fiscal years, except that the Secretary may terminate a project before the end of such period if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(g) COST SAVINGS RECOVERY.—The Secretary shall develop a methodology to identify any State cost savings realized in connection with the implementation of a child support assurance project conducted under this Act. Any such savings realized as a result of the implementation of a child support assurance project shall be utilized for child support enforcement improvements or expansions and improvements in the Aid to Families With Dependent Children Program conducted under part A of title IV of the Social Security Act within the participating State.

(h) EVALUATION AND REPORT TO CONGRESS.—(1) The Secretary shall conduct an evaluation of the effectiveness of the demonstration projects funded under this section. The evaluation shall include an assessment of the effect of an assured benefit on—

(A) income from nongovernment sources and the number of hours worked;

(B) the use and amount of government supports;

(C) the ability to accumulate resources;

(D) the well-being of the children, including educational attainment and school behavior; and

(E) the State's rates of establishing paternity and support orders and of collecting support.

(2) Three and 5 years after commencement of the demonstration projects, the Secretary shall submit an interim and final report based on the evaluation to the Committee on Finance and the Committee on Labor and Human Resources of the Senate, and the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives concerning the effectiveness of the child support assurance projects funded under this section.

(i) STATE REPORTS.—The Secretary shall require each State that conducts a demonstration project under this section to annually report such information on the project's operation as the Secretary may require, except that all such information shall be reported according to a uniform format prescribed by the Secretary.

(j) RESTRICTIONS ON MATCHING AND USE OF FUNDS.—(1) A State conducting a demonstration project under this section shall be required—

(A) except as provided in paragraph (2), to provide not less than 20 percent of the total amounts expended in each calendar year of the project to pay the costs associated with the project funded under this section;

(B) to maintain its level of expenditures for child support collection, enforcement, and payment at the same level, or at a higher level, than such expenditures were prior to such State's participation in a demonstration project provided by this section; and

(C) to maintain the Aid to Families With Dependent Children benefits provided under part A of title IV of the Social Security Act at the same level, or at a higher level, as the level of such benefits on the date of the enactment of this Act.

(2) A State participating in a demonstration project under this section may provide no less than 10 percent of the total amounts expended to pay the costs associated with the project funded under this section in years after the first year such project is conducted in a State if the State meets the improvements specified in subsection (b)(6)(B).

(k) COORDINATION WITH CERTAIN MEANS-TESTED PROGRAMS.—For purposes of—

(1) the United States Housing Act of 1937;

(2) title V of the Housing Act of 1949;

(3) section 101 of the Housing and Urban Development Act of 1965;

(4) sections 221(d)(3), 235, and 236 of the National Housing Act;

(5) the Food Stamp Act of 1977;

(6) title XIX of the Social Security Act; and

(7) child care assistance provided through part A of title IV of the Social Security Act, the Child Care and Development Block Grant, or title XX of the Social Security Act,

any payment made to an individual within the demonstration project area for child support up to the amount which an assured child support benefit would provide shall not be treated as income and shall not be taken into account in determining resources for the month of its receipt and the following month.

(l) TREATMENT OF CHILD SUPPORT BENEFIT.—Any assured child support benefit received by an individual under this Act shall be considered child support for purposes of the Internal Revenue Code of 1986.

(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary in each of the fiscal years 1995, 1996, 1997, 1998, 1999, and 2000 to carry out the purposes of this Act.

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CENTER FOR LAW AND SOCIAL POLICY,
*Washington, DC, March 21, 1994.*

Hon. CHRISTOPHER DODD,
*Committee on Labor and Human Resources, Subcommittee on Children, Families, Drugs and Alcoholism, Washington, DC.*

DEAR SENATOR DODD, the Center for Law and Social Policy commends you for sponsoring the Child Support Assurance Act of 1994.

In recent times, a great deal of attention has been paid to the idea of "ending welfare as we know it." The real issue, however, is ending poverty as we know it. In particular, we must be committed to eliminating the poverty of children being raised in single-parent families. To ameliorate this poverty, a child support assurance system is absolutely essential. Your bill takes a strong positive step toward creating such a system.

The Child Support Assurance Act of 1994 authorizes up to six demonstration projects. In a demonstration project site, any eligible child could receive a monthly guaranteed child support payment. If the child's non-custodial parent paid support, that money would be used to reimburse the government for the assured benefit. If the non-custodial parent paid no support or paid less than the guaranteed amount, the child would still receive the guaranteed payment. Each site would set its own payment structure (within the limits set out in the bill) and would use a variety of guideline approaches to determine what the non-custodial parent should pay.

Three aspects of the Child Support Assurance Act of 1994 are particularly important. First, it gives priority to states which have already shown a commitment to improving child support enforcement and requires all participating states to improve enforcement over the life of the demonstration project. Any test of child support assurance ought to be conducted in conjunction with improving enforcement. Not only is this fiscally prudent, but also it emphasizes that the child's parent is and should be the primary source of his/her support.

Second, the bill gives priority to states wishing to operate state-wide demonstration projects. The primary reason for having demonstration projects, rather than moving immediately to a national child support assurance system, is to learn how to phase in an assurance system nationwide. To learn as much as we can, large scale projects are needed and your bill recognizes this.

Third, the bill helps the most vulnerable children—those receiving AFDC. By providing a partial disregard of the assurance payment, it allows children subsisting on meager AFDC benefits the chance to obtain a family income that is closer to the poverty line. By providing a source of reliable child support to supplement the wages of a parent

when the family leaves AFDC, it makes escape from poverty possible.

We look forward to working with you to make child support assurance a reality.

Sincerely,

PAULA ROBERTS,
*Senior Staff Attorney.*

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WOMEN'S LEGAL DEFENSE FUND,
*Washington, DC, March 21, 1994.*

Hon. CHRISTOPHER J. DODD and Hon. JAY D. ROCKEFELLER IV,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATORS DODD AND ROCKEFELLER, the Women's Legal Defense Fund is a national, nonprofit advocacy organization that for more than twenty years has worked for policies that help women and their families achieve economic security, equal opportunity in the workplace, and access to quality health care. For more than ten years, we have worked in Congress, the executive branch, and the states, to improve this country's child support system. We write to express our strong support for a program of child support assurance, and to commend the important steps in that direction that would be taken under the Child Support Assurance Act of 1994.

Children need and deserve the support of both parents. Single parents, usually mothers, struggle to provide both nurturance and economic support for their children. They confront a labor market that offers many of them only low wage, part time, and insecure jobs, if any; often unavailable or unaffordable child care; and still insufficient flexibility to combine paid work and caretaking, even with the improvements of the Family and Medical Leave Act. As a result, over half of the children in single parent families live in poverty.

Despite reforms, a majority of single mothers and their children cannot count on the child support system to deliver economic support from the other parent. Now, when a noncustodial parent fails to pay, and the state fails to collect, the burden of these failures falls on children. Child support assurance would protect children from this loss, just as Social Security survivors' insurance protects against the loss of a parent. Thus, child support assurance is needed as a matter of simple justice.

In addition, child support assurance is an effective route to both child support and welfare reform. With child support assured, mothers who now despair of ever actually receiving child support will have a greater incentive to seek child support awards. The states will have a greater incentive to collect them. And a child support assurance program that allows mothers to combine paid work and an assured minimum benefit can truly "make work pay." With a reliable source of income in place to supplement their wages, many mothers will be able to avoid applying for public assistance. If the program is designed so that mothers receiving public assistance do not experience a dollar for dollar reduction in income, they will be able to improve their families' economic security with the assured benefit. The disincentives to work that are part of the current public assistance program will be reduced. And the fathers of children now receiving public assistance will have a greater incentive to pay. Most importantly, child support assurance can alleviate the poverty that far too many children and single mothers must bear.

The Women's Legal Defense Fund believes that every child deserves an assurance of child support. Although the Child Support Assurance Act of 1994 authorizes only demonstration projects, not a universal program, the demonstration projects it would authorize include several crucial features:

Participation would be open to custodial parents who have child support awards; are seeking awards; or have good cause not to seek a child support award. This creates an incentive for single parents to seek to establish child support, without penalizing them for system delays or failures, or putting them at risk of additional abuse.

There would be real economic benefits for all families, and work incentives would remain, because half of the assured benefit would be disregarded from income for families receiving AFDC.

At least some demonstration projects would assure a minimum benefit large enough to make a real difference in children's lives.

The Child Support Assurance Act of 1994 would represent real progress toward equity and security for children in single parent families, goals the Women's Legal Defense Fund will work to help achieve.

Sincerely,

JUDITH L. LICHTMAN,
*President.*

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CHILDREN'S DEFENSE FUND,
*Washington, DC, March 21, 1994.*

Hon. CHRISTOPHER J. DODD and Hon. JOHN D. ROCKEFELLER,
*U.S. Senate,*
*Washington, DC 20510.*

DEAR SENATORS DODD AND ROCKEFELLER, we want to congratulate you for your leadership in developing a proposal to create six state demonstrations of child support assurance. We believe your partnership in supporting this concept will provide the impetus to help make child support assurance a reality.

Child support assurance is a key building block in a long-term strategy to meet the needs of children and families. With its emphasis on personal responsibility and incentives to work, as well as on reducing child poverty and economic insecurity, the proposal will unite advocates for children. It will make a genuine difference in children's lives by making child support a regular, reliable source of income that encourages custodial parents to work because they can anticipate having reliable contributions from the non-custodial parent or the government. It is an essential component of a welfare reform strategy that encourages work and parental responsibility.

We are heartened by your expectation that states must improve the way they establish paternity and enforce support in order to participate in child support assurance. We agree that child support assurance must be coupled with aggressive efforts to improve child support enforcement, both to keep government cost down and to underscore the message that every child deserves the support of both parents.

Child support assurance is built on the premise that government will insure children against harm when parents fail to meet their responsibilities, but will continue to hold parents responsible. When a parent leaves the household, this parental responsibility does not end. Child support assurance protects children and reinforces parent responsibility by helping provide a stable economic base for children, but also by aggressively pursuing reimbursement from the non-custodial parent when he or she fails to pay support.

We appreciate your longstanding work to help children, and look forward to working with you on this important proposal.

Sincerely,

NANCY EBB,
*Senior Staff Attorney.*

Mr. ROCKEFELLER. Mr. President, I am proud to join my distinguished colleague from Connecticut [Mr. DODD] in introducing a demonstration project which will help us chart a bold course in promoting parental responsibility and stable support for children. It truly is an honor to join with such a dedicated, effective advocate for children in promoting a new concept of security for children.

Today, we are joining forces to promote a demonstration project, the Child Support Assurance Act of 1994. It is a combination of our previous individual initiatives, but we are united in our commitment to aggressively push this concept as part of comprehensive welfare reform. Child support assurance, we believe, will be the effective carrot to get the Federal Government, States, and individuals working to collect the billions of dollars that parents owe their children in child support.

This demonstration is just one piece of the puzzle—but, I believe, is a key piece to link others together. We understand and agree that child support assurance will not be effective unless we dramatically improve child support enforcement efforts. But our child support assurance demonstration will provide tremendous incentives for States and parents to work with the Federal Government to establish paternity, get child support awards in place, and collect the money from all parents who have an obligation to support their children. Only as a last resort would a minimum benefit kick in for the child if the parent did not pay after all efforts were made to collect. The minimum benefit will ensure that children aren't penalized when an absent parent shirks their obligations.

Such stable, consistent support is vital for children. A recent study by the National Institute of Child Health and Human Development noted that children of single-parent families are at increased risk. It noted that the single most important factor in accounting for the lower achievement of children in single-parent families is poverty and economic insecurity. Income differences account for half of the increased risk for disadvantages. The researchers noted that because income is such an important factor in the increased risk for disadvantages among children in single-parent families, policies that serve to minimize the negative economic impact on children may help reduce their difficulties.

The National Child Support Assurance Consortium issued a compelling report called Childhood's End in January 1993 that outlined what happens to children when child support payments are missing or just late. Let me share

just a few of the report's significant findings about what happens to children when child support is not paid:

Fifty-five percent of mothers reported that their children missed regular health check-ups.

Thirty-six percent of mothers reported that their children did not get medical care when they became ill.

Fifty-seven percent of the mothers reported that their children lost their regular child care.

The list goes on and on, and it is tragic that parents are not living up to their financial obligations and placing their own children at risk. And demographers warn us that one out of every two children growing up today will spend some time living with only one parent, and therefore half of our children will be dependent on child support.

All these statistics indicate that we must dramatically strengthen our child support enforcement system to protect all children who are at risk, and I believe this child support assurance demonstration will do exactly that.

As chairman of the National Commission on Children, I wanted to put this initiative into perspective. Our bipartisan commission issued a unanimous report entitled "Beyond Rhetoric, A New American Agenda for Children and Families." This historic report clearly stated that the best way to help children is to strengthen families, and I wish that every child could grow up in a stable home, with two loving parents and financial security.

But in reality, over 15.7 million children are living in single-parent families and dependent on child support. Only 26 percent of those children receive the financial support they deserve from their absent parent. This means that 74 percent are placed at risk. These children deserve our compassion and support, not penalties and sanctions. We believe our child support assurance demonstration which will require improved child support enforcement, should help.

I believe this demonstration will promote parental responsibility and over the long-run strengthen families by sending a clear signal we believe every parent has obligation to support their children.

This demonstration should also promote work and responsibility for single-parents on welfare. While our child support assurance program is not means tested, it will offer stronger incentives for parents on welfare to return to work. For example, if a parent on welfare goes to work, their AFDC benefits are reduced, but if that same parent returns to work their child support award is continued and the family is better off. Our hope is that the vast majority of the child support awards will be paid by the absent parent. But when it is impossible to collect from the absent parent, and the single-parent has fully cooperated, the assured minimum benefit will ensure that the child is not penalized and put at risk.

The concept of child support assurance has attracted interest from groups across a broad range of the political spectrum, and it holds enormous potential to offer security to children. It deserves to be tested and this demonstration project is an ideal opportunity to explore this innovative idea.

I ask for unanimous consent that background information on child support facts be printed in the RECORD following my remarks.

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

FACTS AND FIGURES ON CHILD SUPPORT

One out of every two children growing up today will spend some time living with only one parent, and therefore will be dependent on child support.[1]

10 million women are custodial parents of 15.7 million children, but only 58 percent have a child support award in place, and of those women, only 26 percent receive full payment.[2]

$11.2 billion was collected in child support in 1989, but $5.1 billion more was due in support.[3]

(This does not include arrearages, which are estimated by the Office of Child Support Enforcement at about 22 billion cases in the system. Nor does it include support for 42 percent of cases in which an award has not been established.)

If all eligible mothers had child support award pegged to current state guidelines, children would be eligible for about $30 billion in support payments each year.[4]

Researchers estimate that if we improved child support enforcement and established a national child support assurance system, the results could yield:

A reduction of 8 percent to 9 percent in the poverty rate, and

A decline of 12 percent to 20 percent in welfare dependency.[5]

## ADDITIONAL COSPONSORS

S. 208

At the request of Mr. BUMPERS, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 208, a bill to reform the concessions policies of the National Park Service, and for other purposes.

S. 235

At the request of Mr. REID, the name of the Senator from New Hampshire [Mr. GREGG] was added as a cosponsor of S. 235, a bill to limit State taxation of certain pension income, and for other purposes.

S. 257

At the request of Mr. BUMPERS, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 257, a bill to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes.

S. 784

At the request of Mr. HATCH, the names of the Senator from Pennsylvania [Mr. WOFFORD] and the Senator from Wisconsin [Mr. FEINGOLD] were added as cosponsors of S. 784, a bill to amend the Federal Food, Drug, and Cosmetic Act to establish standards with respect to dietary supplements, and for other purposes.

S. 978

At the request of Mr. BAUCUS, the names of the Senator from Massachusetts [Mr. KENNEDY], the Senator from Michigan [Mr. LEVIN], the Senator from Nevada [Mr. REID], the Senator from Maryland [Mr. SARBANES], the Senator from Ohio [Mr. METZENBAUM], the Senator from Connecticut [Mr. DODD], and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of S. 978, a bill to establish programs to promote environmental technology, and for other purposes.

S. 1040

At the request of Mr. BINGAMAN, the names of the Senator from Rhode Island [Mr. CHAFEE] and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 1040, a bill to support systemic improvement of education and the development of a technologically literate citizenry and internationally competitive work force by establishing a comprehensive system through which appropriate technology-enhanced curriculum, instruction, and administrative support resources and services, that support the National Education Goals and any national education standards that may be developed, are provided to schools throughout the United States.

S. 1171

At the request of Mr. BREAUX, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 1171, a bill to amend the Internal Revenue Code of 1986 with respect to the taxation of certain sponsorship payments to tax-exempt organizations and certain amounts received by Olympic organizations.

S. 1231

At the request of Mr. MOYNIHAN, the names of the Senator from North Dakota [Mr. CONRAD], the Senator from Michigan [Mr. RIEGLE], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 1231, a bill to provide for simplified collection of em-

[1] Irwin Garfinkel and Sara McLanahan, "Single Mothers and Their Children: A New American Dilemma" (Washington, DC: The Urban Institute Press, 1986) p.1.

[2] U.S. Census Bureau, "Statistical Brier: Who's Supporting the Kids?" October 1991.

[3] Same.

[4] David Good and Maureen Pirog-Good, "The efficiency of State Child Support Enforcement Programs" in Public Budgeting and Finance," Fall 1990, p. 25.

[5] Daniel Meyer, Irwin Garfinkel, Philip Roobins, and Donald Oellerich, "The Costs and Effects of a National Child Support Assurance System" (University of Wisconsin-Madison Institute for Research on Poverty, Discussion Paper 940-91, March 1991), p. 28.

ployment taxes on domestic services, and for other purposes.

S. 1592

At the request of Mr. DOMENICI, the names of the Senator from Minnesota [Mr. DURENBERGER] and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 1592, a bill to improve Federal decisionmaking by requiring a thorough evaluation of the economic impact of Federal legislative and regulatory requirements on State and local governments and the economic resources located in such State and local governments.

S. 1651

At the request of Mr. D'AMATO, the names of the Senator from Virginia [Mr. ROBB] and the Senator from Tennessee [Mr. MATHEWS] were added as cosponsors of S. 1651, a bill to authorize the minting of coins to commemorate the 200th anniversary of the founding of the United States Military Academy at West Point, New York.

S. 1688

At the request of Mr. GRAHAM, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 1688, a bill to amend the Internal Revenue Code of 1986 to treat spaceports like airports under the exempt facility bond rules.

S. 1691

At the request of Mr. CONRAD, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 1691, a bill to amend the Internal Revenue Code of 1986 to provide taxpayers engaged in certain agriculture-related activities a credit against income tax for property used to control environmental pollution and for soil and water conservation expenditures.

S. 1791

At the request of Mr. KEMPTHORNE, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 1791, a bill to provide for mandatory life imprisonment of a person convicted of a second offense of kidnapping a minor.

S. 1825

At the request of Mr. BUMPERS, the names of the Senator from Michigan [Mr. LEVIN] and the Senator from California [Mrs. FEINSTEIN] were added as cosponsors of S. 1825, a bill to authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property.

S. 1830

At the request of Mrs. FEINSTEIN, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 1830, a bill to authorize funding for the small business defense conversion program of the Small Business Administration, and for other purposes.

S. 1920

At the request of Mr. DOMENICI, the names of the Senator from Wyoming [Mr. SIMPSON], the Senator from Virginia [Mr. WARNER], the Senator from Washington [Mr. GORTON], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from New Hampshire [Mr. SMITH], the Senator from North Carolina [Mr. FAIRCLOTH], and the Senator from Idaho [Mr. KEMPTHORNE] were added as cosponsors of S. 1920, a bill to amend title IV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") to ensure the safety of public water systems, and for other purposes.

S. 1933

At the request of Mr. MCCAIN, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of S. 1933, a bill to repeal the Medicare and Medicaid Coverage Data Bank, and for other purposes.

S. 1943

At the request of Mrs. KASSEBAUM, the names of the Senator from New Mexico [Mr. DOMENICI], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of S. 1943, a bill to consolidate Federal employment training programs and create a new process and structure for funding the programs, and for other purposes.

SENATE JOINT RESOLUTION 172

At the request of Mr. DOLE, the names of the Senator from New Hampshire [Mr. GREGG], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Maine [Mr. COHEN], the Senator from North Dakota [Mr. CONRAD], the Senator from Idaho [Mr. CRAIG], the Senator from Ohio [Mr. GLENN], the Senator from Massachusetts [Mr. KERRY], the Senator from Wisconsin [Mr. KOHL], the Senator from Tennessee [Mr. MATHEWS], the Senator from Maine [Mr. MITCHELL], the Senator from Wyoming [Mr. SIMPSON], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 172, a joint resolution designating May 30, 1994, through June 6, 1994, as a "Time for the National Observance of the Fiftieth Anniversary of World War II."

SENATE RESOLUTION 170

At the request of Mr. CHAFEE, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of Senate Resolution 170, a resolution to express the sense of the Senate that obstetrician-gynecologists should be included as primary care providers for women in Federal laws relating to the provision of health care.

## SENATE RESOLUTION 191—ELECTING THE SECRETARY OF THE SENATE, MARTHA S. POPE

Mr. MITCHELL submitted the following resolution; which was considered and agreed to:

S. RES. 191

*Resolved*, That Martha S. Pope be, and she is hereby, elected Secretary of the Senate, effective April 15, 1994.

## SENATE RESOLUTION 192—ELECTING THE SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE, ROBERT LAURENT BENOIT

Mr. MITCHELL submitted the following resolution; which was considered and agreed to:

S. RES. 192

*Resolved*, That Robert Laurent Benoit be, and he is hereby elected Sergeant at Arms and Doorkeeper of the Senate, effective April 15, 1994.

## AMENDMENTS SUBMITTED

### CONGRESSIONAL BUDGET RESOLUTION

### SPECTER AMENDMENT NO. 1557

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to the concurrent resolution (S. Con. Res. 63) concurrent resolution setting forth the Congressional Budget for the U.S. Government for fiscal years 1995, 1996, 1997, 1998, and 1999; as follows:

On page 13, decrease the amount on line 7 by $2,150,000,000.

On page 13, decrease the amount on line 8 by $1,400,000,000.

On page 13, decrease the amount on line 14 by $2,200,000,000.

On page 13, decrease the amount on line 15 by $2,100,000,000.

On page 13, decrease the amount on line 21 by $2,250,000,000.

On page 13, decrease the amount on line 22 by $2,250,000,000.

On page 14, decrease the amount on line 3 by $2,350,000,000.

On page 14, decrease the amount on line 4 by $2,300,000,000.

On page 14, decrease the amount on line 10 by $2,400,000,000.

On page 14, decrease the amount on line 11 by $2,350,000,000.

On page 24, increase the amount on line 17 by $1,290,000,000.

On page 24, increase the amount on line 18 by $801,000,000.

On page 24, increase the amount on line 25 by $733,000,000.

On page 25, increase the amount on line 1 by $700,000,000.

On page 25, increase the amount on line 8 by $750,000,000.

On page 25, increase the amount on line 16 by $783,000,000.

On page 25, increase the amount on line 17 by $766,000,000.

On page 25, increase the amount on line 24 by $800,000,000.

On page 25, increase the amount on line 25 by $783,000,000.

On page 26, increase the amount on line 8 by $635,000,000.

On page 26, increase the amount on line 9 by $395,000,000.

On page 26, increase the amount on line 15 by $733,000,000.

On page 26, increase the amount on line 16 by $700,000,000.

On page 26, increase the amount on line 22 by $750,000,000.

On page 26, increase the amount on line 23 by $750,000,000.

On page 27, increase the amount on line 5 by $783,000,000.

On page 27, increase the amount on line 6 by $766,000,000.

On page 27, increase the amount on line 12 by $800,000,000.

On page 27, increase the amount on line 13 by $783,000,000.

On page 30, increase the amount on line 20 by $225,000,000.

On page 30, increase the amount on line 21 by $204,000,000.

On page 31, increase the amount on line 2 by $734,000,000.

On page 31, increase the amount on line 3 by $700,000,000.

On page 31, increase the amount on line 9 by $750,000,000.

On page 31, increase the amount on line 10 by $750,000,000.

On page 31, increase the amount on line 16 by $784,000,000.

On page 31, increase the amount on line 17 by $767,000,000.

On page 31, increase the amount on line 23 by $800,000,000.

On page 31, increase the amount on line 23 by $784,000,000.

Mr. SPECTER. Mr. President, this amendment transfers $2.1 billion in budget authority and $1.4 billion in outlays from NASA's space station program for fiscal year 1995 into the following areas:

First, LIHEAP: $225 million in fiscal year 1995 to restore funds cut by the President and not fully restored by the Senate Budget Committee.

Second, Education and training (Function 500): $1.3 billion for Job Training Partnership Act [JTPA], Job Corps, vocational education, adult education, Prison Literacy, Neglected and Delinquent Program, and drug free schools.

Third, Prenatal care/pregnancy prevention (function 550): $635 million for Maternal and Child Health Block Grant Program, health start, community and migrant health centers, and substance abuse treatment for pregnant women, family planning, comprehensive school health, Center for Disease Control, Teen Pregnancy Program, Department of Education Comprehensive School Health Program, Maternal and Child Health Block Grant Program.

For the remaining 5 years under the budget resolution, the savings from cancellation of the space station are divided equally between functions 600, 500, and 550 to support the programs above.

## HARKIN (AND OTHERS) AMENDMENT NO. 1558

Mr. HARKIN (for himself, Mrs. MURRAY, Mr. ROCKEFELLER, Mr. WOFFORD, Mr. DASCHLE, Mr. FEINGOLD, Mr. SASSER, Mrs. BOXER, Mr. BAUCUS, Mr. KOHL, and Mr. LAUTENBERG) proposed an amendment to the concurrent resolution Senate Concurrent Resolution 63, supra; as follows:

On page 5, line 1, decrease the amount by $155,000,000.

On page 5, line 11, decrease the amount by $155,000,000.

On page 5, line 22, decrease the amount by $158,000,000.

On page 5, line 23, decrease the amount by $59,000,000.

On page 5, line 24, increase the amount by $69,000,000.

On page 5, line 25, increase the amount by $8,000,000.

On page 6, line 1, decrease the amount by $10,000,000.

On page 6, line 7, decrease the amount by $158,000,000.

On page 6, line 8, decrease the amount by $59,000,000.

On page 6, line 9, increase the amount by $69,000,000.

On page 6, line 10, increase the amount by $8,000,000.

On page 6, line 11, decrease the amount by $10,000,000.

On page 6, line 17, decrease the amount by $158,000,000.

On page 6, line 18, decrease the amount by $59,000,000.

On page 6, line 19, increase the amount by $69,000,000.

On page 6, line 20, increase the amount by $8,000,000.

On page 6, line 21, decrease the amount by $10,000,000.

On page 7, line 1, decrease the amount by $158,000,000.

On page 7, line 2, decrease the amount by $59,000,000.

On page 7, line 3, increase the amount by $69,000,000.

On page 7, line 4, increase the amount by $8,000,000.

On page 7, line 5, decrease the amount by $10,000,000.

On page 7, line 8, decrease the amount by $158,000,000.

On page 7, line 9, decrease the amount by $217,000,000.

On page 7, line 10, decrease the amount by $148,000,000.

On page 7, line 11, decrease the amount by $140,000,000.

On page 7, line 12, decrease the amount by $150,000,000.

On page 8, line 7, decrease the amount by $158,000,000.

On page 8, line 8, decrease the amount by $59,000,000.

On page 8, line 9, increase the amount by $69,000,000.

On page 8, line 10, increase the amount by $8,000,000.

On page 8, line 11, decrease the amount by $10,000,000.

On page 10, line 3, decrease the amount by $513,000,000.

On page 10, line 4, decrease the amount by $236,000,000.

On page 10, line 11, decrease the amount by $195,000,000.

On page 10, line 18, decrease the amount by $56,000,000.

On page 10, line 25, decrease the amount by $10,000,000.

On page 11, line 7, decrease the amount by $10,000,000.

On page 35, line 8, increase the amount by $358,000,000.

On page 35, line 9, increase the amount by $78,000,000.

On page 35, line 16, increase the amount by $136,000,000.

On page 35, line 23, increase the amount by $125,000,000.

On page 36, line 6, increase the amount by $18,000,000.

## GORTON (AND OTHERS) AMENDMENT NO. 1559

Mr. GORTON (for himself, Mr. HATCH, Mr. D'AMATO, and Mr. ROTH) proposed an amendment to the concurrent resolution, S. Con. Res. 63, supra; as follows:

On page 35, line 8, increase the amount by $423,000,000.

On page 35, line 9, increase the amount by $93,000,000.

On page 35, line 15, increase the amount by $423,000,000.

On page 35, line 16, increase the amount by $241,000,000.

On page 35, line 22, increase the amount by $423,000,000.

On page 35, line 23, increase the amount by $402,000,000.

On page 36, line 5, increase the amount by $423,000,000.

On page 36, line 6, increase the amount by $423,000,000.

On page 36, line 12, increase the amount by $423,000,000.

On page 36, line 13, increase the amount by $423,000,000.

On page 41, line 11, decrease the amount by $423,000,000.

On page 41, line 12, decrease the amount by $93,000,000.

On page 41, line 18, decrease the amount by $423,000,000.

On page 41, line 19, decrease the amount by $241,000,000.

On page 41, line 25, decrease the amount by $423,000,000.

On page 42, line 1, decrease the amount by $402,000,000.

On page 42, line 7, decrease the amount by $423,000,000.

On page 42, line 8, decrease the amount by $423,000,000.

On page 42, line 14, decrease the amount by $423,000,000.

On page 42, line 15, decrease the amount by $423,000,000.

## NOTICE OF HEARING

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

Mr. GLENN. Mr. President, I would like to announce that the Subcommittee on Federal Services, Post Office, and Civil Service, of the Committee on Governmental Affairs, will hold a hearing on March 24, 1994. The Postmaster General of the United States will present the Annual Report of the Postal Service.

The hearing is scheduled for 10 a.m., in room 342 of the Senate Dirksen Office Building. For further information, please contact Todd Menotti, at 224-2254.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to

meet on Tuesday, March 22, 1994, at 2:30 p.m., in closed session to receive an interim briefing from Senators LEVIN and WARNER on their investigation on Somalia.

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

COMMITTEE ON FINANCE

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet today, March 22, 1994, at 10 a.m.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Tuesday, March 22, 1994, at 10 a.m. to hold a business meeting to vote on pending business, and to receive testimony from the Secretary of State and ACDA Director on the Chemical Weapons Convention, Treaty Doc. 103–21.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on Further Perspectives on OSHA Reform, during the session of the Senate on March 22, 1994, at 10 a.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, March 22, 1994 at 4 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the subcommittee on Federal Services, Post Office, and Civil Service, Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Tuesday, March 22, 1994, to review operational testing and to discuss proposals for operational testing.

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

## ADDITIONAL STATEMENTS

### TRIBUTE TO ABE POLLIN

• Ms. MIKULSKI. Mr. President, I rise today to salute a distinguished citizen of the State of Maryland, Mr. Abe Pollin. In recognition of his lifetime of work in furthering the bond of friendship between Israel and the United States, the Joint Commission on the American Promenade in Israel has named Abe Pollin the founding father from the State of Maryland for the American Promenade.

The American Promenade is a privately funded national park located at the gateway to Jerusalem, whose purpose is to commemorate the unique bond of friendship between the two countries. It will consist of 50 marble monuments bearing the flags and official seals of the 50 States, and the United States-Israel Friendship Botanical Garden featuring Biblical and State trees and flowers. An outstanding personality from each State will be honored by the Joint Commission as a founding father, whose name will be permanently inscribed on the monument along with the names of the current Governor and U.S. Senators.

In selecting Abe Pollin for this honor, the Joint Commission is now recognizing something that we in Maryland have known for quite a while—that this is a man whose accomplishments in business, in his community, and in public affairs will long be remembered.

As the owner of two professional sports franchises, the Washington Bullets basketball team and the Washington Capitols hockey team, Abe Pollin has brought national recognition to the Baltimore/Washington market and generated excitement and pride in the accomplishments of its teams. As the operator of a very successful home building company and the director of a local savings and loan, Abe Pollin has directly contributed to the local economy and enabled many Marylanders to own their own homes. Finally, as a member of the board of directors for the United Jewish Appeal, the National Jewish Hospital, the Jewish Community Center, and the John F. Kennedy Cultural Center, Abe Pollin has shown his concern over many years for the spiritual, cultural, and material needs of his community.

Mr. President, I believe the Joint Commission made a wise decision. I salute my good friend, Abe Pollin, and I urge my colleagues to join me in congratulating him on his selection for this prestigious honor.•

### COMMISSIONING OF THE U.S.S. "CURTIS WILBUR"

• Mr. KEMPTHORNE. Mr. President, I rise today to recognize the latest ship in the U.S. Naval fleet, the U.S.S. *Curtis Wilbur*. DDG 54, an Arleigh Burke guided missile destroyer, was commissioned Saturday in Long Beach, CA.

The ship is named after Curtis Dwight Wilbur, who served as Secretary of the Navy under Calvin Coolidge. His administration was characterized by his energetic efforts to strengthen and modernize the Navy. His foresight, instincts, and statesmanship helped restore credibility and respect to our naval forces following the Teapot Dome scandal and the subsequent resignation of Secretary of the Navy Edwin Denby.

Curtis Wilbur headed up our Navy during the difficult times between World War I and World War II. Restrictive treaties, pacifists who would eliminate the Navy, and a reluctant Congress all contributed to the deterioraton of the Navy. Secretary Wilbur successfully argued to Congress that we were in danger of creating a hollow force. He also championed naval aviation and added it to the curriculum of the Naval Academy.

As Secretary of the Navy, Curtis Wilbur fought for the front line troops. He argued that our men needed good ships as good homes for the men—clean and shipshape for good service. He also stressed that money was needed for constant training. His persistence paid off. Morale improved, as desertions went down and reenlistments went up. With the exception of four ships, the entire cruiser strength of the Navy in 1941 was the result of Secretary Wilbur and his dedication. Mr. President, where would this country have been if Curtis Wilbur had not insisted on cruiser construction?

I might add that under Secretary Wilbur's administration, the light cruiser, CL–47, the U.S.S. *Boise*, was built and commissioned. The *Boise* and her crew earned 11 battle stars and the nickname "The One Ship Fleet" for her heroics in World War II.

We can learn from Curtis Wilbur. Let me quote from a fine article written by Col. James W. Hammond, Jr., USMC (Ret.), entitled "The Almost forgotten Secretary." He wrote, "He felt it was criminal to require American boys to accept hazards stemming from inadequate equipment or lack of training because of underfunding." Mr. President, we face those same issues today. Secretary Wilbur's legacy lives on today, and I think we can all learn from his example. We must strive to ensure our men and women have the finest equipment and training possible before we send them into harm's way.

Mr. President, I ask that an article from the Saturday, March 18 Idaho Statesman about Curtis Wilbur and his son, who lives in Boise, be included in the RECORD.

The article follows:

[From the Idaho Statesman, Mar. 19, 1994]

SUCCESS ON LAND AND SEA

(By Tim Woodward)

When the Navy commissions its newest ship today, no one will be prouder than Lyman Wilbur.

The U.S.S. Curtis Wilbur is named after his father, Secretary of the Navy under Calvin Coolidge. The ship is fourth in a new class of hightech guided missile destroyers.

At 93, Boisean Lyman Wilbur took the trip to Long Beach, Calif. for today's commissioning in stride. Chief engineer for the Morrison-Knudsen Co. from 1947 to 1970, he still is very much a man in charge. His voice is

strong, his bearing erect, his presence commanding. His memories of titanic construction projects and billion-dollar contracts are as sharp as an accountant's pencil.

Before leaving for Long Beach, Wilbur took time to reminisce at his home near Hillcrest Country Club. Dapper in dress slacks and black oxfords, surrounded by mementos of world travels and a panoramic view of the Boise Front, he talked about his illustrious father, his famous boss and his own distinguished career.

His famous father was a "stern but gentle" man, a man of striking contrasts. As Secretary of the Navy, Curtis Wilbur was largely responsible for preserving "Old Ironsides," now a national monument in Boston Harbor. He was a driving force in rebuilding the Navy after World War I and helped pioneer the concept of naval aviation. He worked with Adm. Richard Byrd, the Antarctic explorer. President Harding promised him a seat on the U.S. Supreme Court.

The other side of the man who knew presidents was less daunting. He told his children bedtime stories, taught Sunday school classes, wrote children's books.

"In spite of being terribly busy and not always being able to get home for dinner, he always had time for the family," Wilbur recalled. "He used to tell us stories, some of which he wrote as books. One was published as 'The Bear Family at Home and How the Circus Came to Visit Them.'

"Dad always made us toe the mark, but he did it in a gentle way. It never hurt if he spanked us, but we felt so bad for disappointing him that we'd cry."

Lyman Wibur grew up in California, accustomed to the company of influential people. Before his father was Secretary of the Navy, he was chief justice of the California Supreme Court.

Curtis wanted his son to follow his example by attending the Naval Academy, but Wilbur chose to follow his uncle—then president of Stanford University—in academic pursuits instead. He earned a degree from Stanford in engineering and had eight years' experience when the Depression began.

By 1931, he was looking for work. A judge at a tea party urged him to apply with one of the companies building Hoover Dam, then the largest construction project in the world. Harry Morrison, who happened to be there the day he applied, hired him on the spot.

"He was a wonderful person." Wilbur said of Morrison. "He would get the most out of people and probably paid less than anyone for comparable work just because people wanted to work for him.

"He was telling me after just a few minutes things what I considered company secrets. He had a way of cutting people in on the operation of the company. He'd send you out and say go do it. If you need help, call."

Morrison sent Wilbur out a lot. When Wilbur and his late wife were building their Boise home in 1955, his first priority was "a place for my suitcase. I was traveling three fourths of the time."

He worked on the Taugus River Bridge in Portugal, making 11 trips to Lisbon in a year. The bridge has the deepest piers in the world.

He spent three years in Morocco, building airbases. He worked on the world's largest hydroelectric project, on the border of Brazil and Paraguay, and another "almost as big" in Venezuela.

He helped negotiate what became a $2 billion contract with the Navy for airfields in Vietnam. His work there won him the 1966 Man of the Year award from "Engineering News Record," the engineering profession's trade journal.

Wilbur says his father would be "greatly honored" by today's commissioning, and "of course the whole family feels the same way."

So much so that an estimated 70 family members are in Long Beach to see the ship join the fleet.

Lyman, the senior member of the family, probably won't say much about his own military service—as an Army private during the waning months of World War I.

"The only Navy connection I have is Dad wanted me to go to the Naval Academy. I studied all one summer for the exam, but then my uncle was appointed head of Stanford.

The Navy's loss was Idaho's gain. Wilbur will long be remembered as MK's top engineer during construction of Lucky Peak, Brownlee, Oxbow and Hells Canyon dams.

"Frankly," he said, "I don't think I'd have cared for Naval service."•

## RAYMOND F. McCASKEY HONORED

• Ms. MOSELEY-BRAUN. Mr. President, I would like to honor a distinguished Illinoisan, Raymond F. McCaskey, who is the 1994 recipient of the Anti-Defamation League's Distinguished Community Service Award. Mr. McCaskey is the Blue Cross and Blue Shield of Illinois president and chief executive officer.

Ray joined Blue Cross in 1976 as an associate actuary, and rose through the ranks of vice president, chief financial officer, and president. He was named chief executive officer in 1993, overseeing the operations of Illinois oldest and largest health insurer.

Ray McCaskey has a strong commitment to people, and to service. Blue Cross has nurtured many community projects and programs under his tenure. Every day, Blue Cross CareVans travel to Chicago's poorest neighborhoods helping in the battle against disease. Since the program began in 1989, CareVan nurses have administered nearly 100,000 immunizations.

Blue Cross is a corporate sponsor of the Chicago Housing Authority's Midnight Basketball League, the Cabrini Green Summer Youth League and Cabrini Greens, the gardening program which has planted seeds of hope and pride at one of the city's largest public housing projects. Ray McCaskey also has continued the fight against illiteracy begun by his predecessor, S. Martin Hickman. Blue Cross is the major underwriter of Chicago United's Family Learning Center project to promote early childhood development and adult literacy.

Under Ray's leadership, Blue Cross has been a strong advocate of health care reform on the national and State levels. He serves on Illinois Gov. Jim Edgar's health care reform task force as one of two key committee chairmen. Ray also serves on the board of directors of the Mental Health Association in Illinois.

As head of one of the major employers in Illinois, Ray McCaskey has promoted equal employment opportunity and affirmative action. Blue Cross has a strong commitment to hiring and promoting minorities, women, veterans, and persons with disabilities. In numerous communications with Blue Cross employees, and most importantly, by personal example, Ray has made clear that everyone must respect and appreciate individual differences.

In presenting its 1994 Distinguished Community Service Award to Ray McCaskey, the Anti-Defamation League said it is "proud to honor this distinguished American whose life and works embody our very highest ideals and aspirations."

I wish to convey my heartfelt congratulations to Ray as he receives this special honor.•

## ILLINOIS TOPS IN BATTLE AGAINST DRUNK DRIVING

• Mr. SIMON. Mr. President, I am proud to announce that in the rating the States survey conducted by Mothers Against Drunk Driving [MADD], the State of Illinois received the highest grade in the country, an "A-minus". MADD found that over the past 12 years, Illinois has gone from having one of the worst laws in the country to having the most effective program in the Nation to deter and combat drunk drivers.

This rating is very encouraging, and I commend the strong leadership of Governor Edgar, solid support from the people of Illinois, and a strong public information and education program. In addition, maintaining drunk driving offense information on driver's license records indefinitely, and progressive penalties for subsequent offenders also played a large role in this success story.

It is my pleasure to recognize the citizens of Illinois for their efforts in fighting the senseless deaths and injuries caused by drunk drivers.•

## INDIANA WINNERS OF 1993–94 EIGHTH GRADE YOUTH ESSAY CONTEST

• Mr. LUGAR. Mr. President, I rise today to congratulate a group of young Indiana students who have shown great educative achievement. I would like to bring to the attention of my colleagues the winners of the 1993–94 Eighth Grade Youth Essay Contest which I sponsor in association with the Indiana Farm Bureau and Bank One of Indianapolis. These students have displayed strong writing abilities and have proven themselves to be outstanding young Hoosier scholars. I submit their names for the CONGRESSIONAL RECORD because they demonstrate the capabilities of today's students and are fine representatives of our Nation.

This year, Hoosier students wrote on the theme, "Pyramid Builders Live on

Indiana Farms." Students were encouraged to consider and creatively express what effect Indiana agriculture has on their daily lives. I would like to submit for the RECORD the winning essays of Sara Hounshell of Orange County and Christopher J. Myers of Wabash County. As State winners of the Youth Essay Contest, these two outstanding students were recognized on Friday, March 18, 1994, during a visit to our Nation's Capital.

The essays follow:

PYRAMID BUILDERS LIVE ON INDIANA FARMS

(By Sara Hounshell, Orange County)

I am an Egyptian girl, thirteen years of age. Once a stranger visited from a far away place called Indiana. This was his story.

"You're not alone in pyramid building. Indiana farmers contribute to what we call the 'Food Guide Pyramid,' a chart which I'll explain.

"Bread, cereal, rice, and pasta form the base group, and provide vitamins, minerals, and fiber. On the next level, providing these same nutrients, are the fruit and vegetable groups. Next is the milk, yogurt, and cheese group, and the meat, fish, eggs, poultry, dry beans, and nuts group. Both provide calcium, iron, and zinc. The top group, containing fats, sweets, and oils, should be avoided. These foods contain many calories and few nutrients."

He paused and I reflected on his words. "Why is a balanced diet so important?" I asked.

"Eating a balanced diet prevents disease. By avoiding excess sodium, sugar, and cholesterol, you avoid health disorders that could lead to premature death, like coronary heart disease, high blood pressure, and obesity. Obesity causes heart attacks, strokes, and diabetes. More benefits of a healthy diet are a great appearance and a longer, more productive life," he replied.

I thought for a minute and then asked, "Why are Indiana farmers important to a healthy diet?"

He answered, "Indiana farmers raise many animals, like cattle, sheep, swine, poultry, and fish. They also grow plants, such as corn, soybeans, oats, barley, wheat, fruits, and vegetables. These products are grown on Indiana farms of all sizes and are sold world wide.

"Indiana farmers are some of the most important, yet over-looked men in our land. Without them, we would be nothing."

Long after he'd left, I still thought of his words. This Indiana sounds like a wonderful place and the Indiana farmer, a hero.

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PYRAMID BUILDERS LIVE ON INDIANA FARMS

(By Christopher J. Myers, Wabash County)

Today's Indiana farmers are the pyramid builders of the twentieth-century. Just as the ancient Egyptians used the products of the earth and technology to build important pyramids, so do Indiana farmers. Using the rich earth and modern technology, they build the levels of the United States Department of Agriculture's food pyramid.

It is said that, "Variety is the spice of life." According to the food pyramid, variety is the key to building a balanced diet. The pyramid base contains foods made from grains. Eating six to seven servings daily provides important fiber, vitamins, and minerals. The second level recommends that you eat three to five servings of vegetables and two to four servings of fruit daily. The milk and meat groups are located on the third level. Two to three servings daily provides protein, calcium, iron, and zinc. Fats, oils, and sweets at the tip of the pyramid should be eaten sparingly.

Eating a balanced diet has many benefits. A diet low in fat and cholesterol reduces your chance of having a heart attack and some cancers. Limiting your intake of fats, oils, and sweets helps maintain a healthy weight. This may prevent high blood pressure, heart disease, stroke, and diabetes. Using only small amounts of salt reduces the risk of high blood pressure.

Indiana farmers produce an amazing variety of products on 65,000 farms covering 16 million acres. Indiana is ranked first nationally in the production of popcorn and ducks; third in eggs and soybeans; and fourth in chickens, tomatoes, and corn. Today's Hoosier farm worker produces enough food to feed seventy-five additional people in the United States and twenty-one people abroad.

In the future, we will continue to depend on Hoosier farmers to provide high quality products from the good earth to build the food pyramid.

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1993-94 DISTRICT WINNERS

District 1: Kelly Doreen Hannon, Dan Jancha.

District 2: Rachel Vonderau, Benjamin Cichocki.

District 3: Stacy Tebo, Nathan Blume.

District 4: Kathryn Gilbert, Christopher J. Myers.

District 5: Adam Phillips.

District 6: Jacqueline M. Boone, Shawn Howard.

District 7: Sandra Halter, Paul Fleschner.

District 8: Laura Willett, Mike Pogue.

District 9: Sara Hounshell, Kelly David O'Donnell.

District 10: Darcy Lynn Fowler, Justin Selmeyer.

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1993-94 COUNTY WINNERS

Allen: Rachel Vonderau, Benjamin Cichocki.

Bartholomew: Laura Willett, Mike Pogue.

Blackford: Kristin Dinse, Nick Ehrhart.

Carroll: Nate Slavens.

Cass: Jessica Smith, Nathan Blume.

Clay: Kate Yegerlehner.

Clinton: Kelley Gray.

Daviess: Sandra Halter.

Delaware: Robyn Pearson, Scott Lynn Cain.

Dearborn: Darcy Lynne Fowler, Justin Selmeyer.

Decatur: Christy Kunz, Hale Kile.

Fayette: Heather Mitchell, Chad Mauger.

Floyd: Heather Bunch, Nathan Hock.

Franklin: Carrie Mergenthal.

Fulton: Amy Allison Eizinger.

Gibson: Rebecca Coomer.

Hamilton: Jacqueline Boone, Michael Cochran.

Harrison: Sarah Yeager, Chris Chamber.

Howard: David Fang.

Jay: Kathryn Gilbert, Matt Vold.

Lake: Ann Marie Bronowski, Michael Flutka.

Madison: Harmony Warner, Jeremy Davis.

Marion: Andrea Kirk, Shawn Howard.

Morgan: Adam Phillips.

Newton: Stacey Tebo, John Wheelock.

Orange: Sara Houshell.

Porter: Kelly Doreen Hannon, Andy Bien.

Posey: Sarah Seib, Mark Alan Blackburn.

Randolph: Anita Harris, Isaac Thornburg.

St. Joseph: Jill Boruff, Dan Jancha.

Starke: Kristie J. Kelley, John Ostrega.

Switzerland: Jerri Lynn Peters, Nathan Jones.

Vanderburgh: Leah Michelsen, Kelly David O'Donnell.

Vigo: Kirsten Henry, Paul Fleschner.

Wabash: Brandy E. Smith, Christopher J. Myers.

Warrick: Jessica Locker, Erick T. Hilbert.

Washington: Kelly Hauger, Andrew Knapp.

Wayne: Beth Jeffries.

Wells: Jamie Stromberg, Landon Smith.•

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## A FUTURE FOR BOSNIA AND HERZEGOVINA

• Mr. DECONCINI. Mr. President, it was heartening to see the weekend news from Sarajevo, which is no longer about daily killings. For the first time in about 2 years, the remaining residents of the besieged Bosnian capital were able to enjoy a soccer match, in which—by the way—Sarajevo beat the United Nations 4 to 0. More important, in terms of survival, were the images of the first U.N. humanitarian relief convoy to arrive in the isolated enclave of Maglaj since last October.

These developments demonstrate the truth of what many have said since the outbreak of hostilities in Bosnia and Herzegovina: that a credible use of force by the international community could bring the bloodshed to an end. To trigger such a force, it was critical that the United States take the lead, which, finally, it did. NATO issued an ultimatum for the withdrawal of heavy weapons around Sarajevo, and four Bosnian Serb aircraft were shot down for violating the "no-fly zone." President Clinton initiated a process to bring the Croat population of Bosnia-Herzegovina back into the Bosnian fold. This led, last week, to a new Bosnian constitution creating a federation of cantons, a good first step despite the way in which it may undemocratically perpetuate the politics of ethnic division. It also led to a mutually advantageous economic confederation between Bosnia and Herzegovina and Croatia.

These welcome developments are an indication of what can be done when members of the international community are determined to end aggression and warfare. They also illustrate the effectiveness of U.S. leadership in garnering the necessary political will in this regard. Frankly, I hope that those who viewed the aggression in Bosnia-Herzegovina as a civil war in which we should let them go ahead and kill each other, realize what such policies of inaction have done. In their toleration of genocide, and support for action only to the extent necessary to soothe public consciences, we failed to save at least 150,000 innocent, civilian lives. This puts a heavy responsibility on us to help give Bosnia and Herzegovina back its future, a future which we allowed to be stolen by war criminals, and I hope that those opposing preemptive action early on will now at least feel bound to support the more difficult challenges ahead. While the develop-

ments that have taken place are positive, they are far from complete, and the international community must further toughen its resolve to ensure that U.N. resolutions are carried out.

In the short term, for example, the ultimatum regarding Sarajevo should be extended to all besieged enclaves, in particular the designated "safe havens" and perhaps the entire country. Force should be used, if necessary, to ensure the delivery of humanitarian relief to isolated, starving and freezing populations.

In the medium term, we should make it clear to the Serb militants that the Bosnians do not get anything less than is being suggested in the current deliberations on a Bosnian federation. Bosnia and Herzegovina stays united, and territory seized by force is to be returned. If the Serb response is not satisfactory, alternatives to continued mediation should be considered, including punitive airstrikes by NATO to negate the Serb militants' ability to sustain their aggression, or the lifting of the arms embargo on a Bosnian-Croatian alliance so that it can defend itself and save its people.

In the longer term, if the Bosnian Serbs do come to terms, we must be prepared to preserve the peace, and support human rights, reconciliation and democratization in Bosnia and Herzegovina the best we can. This means, potentially, United States participation in peacekeeping in Bosnia and Herzegovina. I would support this if it were done under NATO auspices, if the peace plan respects the territorial integrity of Bosnia and Herzegovina and other important principles, and, most importantly, if the peacekeepers were given the mandate to ensure the peace plan is implemented as agreed, unlike what has happened in neighboring Croatia. In any event, this also means the persistent pursuit and prompt prosecution of war criminals, wherever they are found.

We will also need to make sure that peace in Bosnia does not mean that the war has simply moved somewhere else. Current preventive diplomacy measures—such as the CSCE mission in Macedonia and European missions in other neighboring countries, must be continued and reenforced, and Belgrade must feel pressure to agree to the reestablishment of the CSCE Missions in Kosovo, Sandzak, and Vojvodina, where the situation has worsened in the last year. Finally, we must not even think of lifting sanctions until we have seen deeds, not just more words, out of Belgrade. Sanctions should only be selectively lifted after the Serbs have come to the table, agreed to terms acceptable to their Bosnian counterparts, and begun to implement them in good faith.

Political will, Mr. President, has started us on what may be the path toward peace in the Balkans. We must now have the resolve to see the process through, and not fall into the trap of believing that a peace agreement alone means peace, and that everything can return to normal in Bosnia-Herzegovina overnight. Our commitment to Bosnia and Herzegovina must be firm and long term. We have nothing less at stake than the principles upon which a peaceful and prosperous world order are based.●

## TRIBUTE TO EMBROIDERY SERVICES, INC.

● Mr. McCONNELL. Mr. President, I rise today to pay tribute to two outstanding northern Kentucky businessmen and their company. Embroidery Services, Inc., in Erlanger, KY, was recently recognized by the U.S. Small Business Administration [SBA] as the top small business in Kentucky. Company founder and president George Riggs and vice president Thomas Wells were each named as the 1994 Small Business Person of the Year for the State of Kentucky by SBA.

These outstanding Kentuckians certainly earned this honor. Embroidery Services, Inc., which embroider designs on clothing, began in 1981 as a contract embroiderer with few customers, and even fewer employees. The company had about 20 workers when it began leasing space at the Northern Kentucky University Small Business Incubator in Erlanger almost 5 years ago. Just 3 years ago, the company was enjoying modest success with annual sales at $2.2 million. Today, Embroidery Services has about 100 employees and last year sales topped $10 million.

Mr. President, I visited Mr. Riggs at Embroidery Services last year, and saw firsthand the success of this growing company. With high-technology computerized embroidery machines, the company decorates everything from pillows to polo shirts, producing about 70,000 pieces each month. The quality of work is recognized across the United States and beyond. Ninety percent of the company's sales are to resort areas in the United States and Mexico, and Embroidery Services also ships products to Spain, Italy, and Japan.

During my tour of Embroidery Services, I was equally impressed by the quality workmanship evident in the products, and the business savvy which has enabled Mr. Riggs and Mr. Wells to build such a successful company. Mr. Riggs, who is quite modest about his entrepreneurial achievements, has called himself a bad planner because his company has had to move into larger facilities six times. It is a problem that many companies would like to have. Embroidery Services, which started in a 100-square-foot office, will move into its seventh location in September—a 36,000-square-foot facility. The company also now has an outlet store to sell overrun and slightly damaged merchandise, as well as a smaller production facility.

Mr. President, Embroidery Services, Inc., is truly an outstanding example of a small business success story. Each year, the SBA chooses one business per State to honor during Small Business Week, May 1–3 here in Washington. I am very pleased that such an exceptional business will represent the Commonwealth, and congratulate George Riggs, Tom Wells, and the fine employees of Embroidery Services on this honor.

I ask to insert an article from the Kentucky Post into today's CONGRESSIONAL RECORD.

The article follows:

[From the Kentucky Post]

BOONE HAS BEST SMALL BUSINESS

Embroidery Services Inc., a Boone County company that does decorative embroidery on garments, has added a stitch to its mantle of awards.

The company has been chosen as the top small business in Kentucky by the U.S. Small Business Administration.

Both George J. Riggs, company founder and president, and Thomas R. Wells, vice president, have been notified by the administration of their selections as 1994 Small Business Person of the Year for the State of Kentucky.

"Actually, it comes out that the business is selected. They pick one business per state and all 50 of us will be in Washington in May," Wells said.

State award winners are recognized and national winners are announced as part of Small Business Week events May 1–3 in Washington, D.C.

Embroidery Services, which traces its growth spurt to the Small Business Incubator of Northern Kentucky, has grown to about 100 employees and sales of more than $10 million last year.

The company was singled out last year by the Northern Kentucky Chamber of Commerce as an outstanding example of growing local companies.

Much of the company's recent growth has come from embroidered T-shirts sold in resort areas, but the company embroiders jackets, sweatshirts and T-shirts sold in department stores as well as the resort area specialties.

"Three years ago sales were $2.2 million and that jumped to $7.2 million and we've just finished a year at $10.3 million," Wells said.

The number of employees at the company varies depending on orders, but Wells said he expects employment to peak in the busy season this year at 110 to 120 people.

Riggs started the company in 1981 as a contract embroiderer with a relatively small base of customers. The company was growing and had 20 employees when it began leasing space at the Small Business Incubator in Highland Heights almost five years ago. The company has since moved to a larger space on Cox Avenue in the Mineola Pike industrial area.●

## AMERICAN BAR ASSOCIATION'S EFFORTS TO CONTROL GUN VIOLENCE

● Mr. SIMON. Mr. President, today I rise to commend the continuing efforts

of the American Bar Association [ABA] to control gun violence in our society. For almost 30 years, the ABA has supported policies regulating the sale and use of guns. The ABA began its efforts in 1965, endorsing amendments to the Federal Firearms Act of 1934. Most recently, the ABA supported legislation to limit the availability of assault weapons to military and law enforcement organizations.

In a resolution adopted this February, the ABA observed that guns have played a large role in creating the culture of violence which victimizes our youth, and reaffirmed its opposition to the uncontrolled sale and use of guns. The ABA urged legislative bodies to vigorously pursue solutions to the problem of gun violence.

I greatly appreciate the support and efforts of the ABA, and I commend the ABA for facing this issue.●

## S. 1275

● Mr. DURENBERGER. Mr. President, this past Thursday the Senate passed S. 1275, the Community Development, Credit Enhancement, and Regulatory Improvement Act of 1993.

I congratulate my colleagues for approaching the issue of banking reform in a bipartisan manner. This bill will reduce the onerous burden of unnecessary paperwork and redtape for banking institutions, strengthen the small business and real estate lending markets through the securitization of loans, and increase the availability of credit in distressed communities. I strongly support these important reforms.

However, I oppose the restrictions imposed on so-called high-cost mortgages. I share the concerns of those who seek to end the practice of reverse redlining by unscrupulous lenders who prey on unsophisticated borrowers. However, most lenders engaged in nonstandard mortgages provide essential alternative financial services for homeowners facing a short-term liquidity crisis.

Individuals who are unable to make mortgage payments due to a short-term financial crisis such as the loss of a business or a death in the family need the opportunity to get back on their feet. Unfortunately, due to numerous regulatory and practical restrictions, banks are unable to refinance a loan which is already delinquent. The only lenders who are willing and able to refinance the delinquent mortgage are those engaged in higher cost mortgages—mortgages with balloon payments, high interest rates, or related lending terms. By accepting these terms, the lender is compensated for the inherent risk that he or she accepts in making the loan and the borrower is able to keep his or her home. I do not call this usury; I call it opportunity.

I regret that my colleague from Texas, Senator GRAMM, was unable to offer his amendment which would have recognized the difference between a nonstandard mortgage and an unscrupulous loan. I urge the conference committee to retain financing options for individuals faced with temporary financing options for individuals faced with temporary financial hardships. In my judgment, as long as the terms of these mortgages are disclosed, these options must be preserved.●

## ORDERS FOR TOMORROW

Mr. FEINGOLD. Madam President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Wednesday, March 23; that following the prayer, the Journal of proceedings be approved to date; that the time for the two leaders reserved for their use later in the day; and that the Senate then immediately resume consideration of Senate Concurrent Resolution 63, the concurrent budget resolution, as proved for under the provisions of a previous unanimous-consent agreement.

The PRESIDING OFFICER. Without objection it is so ordered.

## ORDER OF PROCEDURE

Mr. FEINGOLD. Madam President, I ask unanimous consent that the Senate stand in recess, as ordered, upon the conclusion of the remarks of the Republican leader.

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

The Chair recognizes the Republican leader, Mr. DOLE.

## THE 10TH MOUNTAIN DIVISION

Mr. DOLE. Madam President, I want to take a moment to pay tribute to our Armed Forces. Recently, in soldiers, a magazine published by the United States Army, I read an article about the battle that occurred on October 3 and 4, 1993, in Mogadishu, Somalia. The article focused on the brave officers and men from the unit that fought through the darkness to relieve Army Rangers and assist them in their return to safety—the men of the 2d Battalion, 14th Infantry Regiment, known as the Golden Dragons. The 2d Battalion, 14th Infantry is part of the 10th Mountain Division, my old unit, and one with a long history of tackling tough missions for our Nation. These young soldiers, representing America, fought for nearly 18 hours, mostly at night, to come to the aid of their fellow soldiers in the Ranger task force.

These selfless young men represent what is best about the soldiers serving in today's Army. They are highly trained and skilled in their profession; a profession which demands much, and, at a moment's notice, can put them in harm's way.

During World War II, the 10th Mountain Division had a well-deserved reputation for training hard to prepare for the tough, demanding combat missions it would be given. This training paid off well in combat. The performance of the Golden Dragons indicates that today's 10th Mountain soldiers truly carry forward those traditions. Their bravery and devotion to duty is well-documented; their loyalty to our Nation and the accomplishments of their comrades unequaled.

The 14th Infantry Regiment has a long history of outstanding service in both peace and war. At the end of the Civil War, General McClellan recognized the bravery of the men of the regiment by positioning them at the place of honor—the right of the line—during the grand parade in Washington, DC. The unit at the right of the line was the guide unit for all the other regiments during battle and generally was the first to engage the enemy. The regimental motto, "The Right of the Line," reflects this honor and tradition.

The 14th Infantry Regiment is no stranger to peacekeeping or multinational operations, either. The 14th Infantry served with forces from European nations in China during the Boxer Rebellion in 1900. After the 1906 earthquake that nearly leveled San Francisco, the regiment provided disaster relief. More recently, the unit provided humanitarian assistance to Haitian refugees at Guantanamo Bay. And the soldiers of the 14th Infantry Regiment continued this outstanding tradition of selfless service during the deployment to Somalia.

On October 3, 1993, the Golden Dragons were serving as the ready reaction force for the U.N. Forces in Mogadishu. Within minutes of being given the mission to assist the Ranger task force, one company was on the move. Twice, this force found there way blocked by heavy fire; the men fought through the first encounter but were stopped in a second engagement. After regrouping, they again set out in the darkness to assist their beleaguered comrades. Again, they encountered heavy fire, but they fought through to link up with the Rangers. The linkup of forces under fire is one of the most difficult operations a unit can be given, even in full daylight. The fact that this mission was accomplished under conditions of darkness, while receiving heavy fire, attests to the skill, training, and bravery of these fine soldiers.

After the linkup, these soldiers stayed, under fire, for more than 2 hours to free the body of one of their comrades-in-arms trapped in the wreckage of a helicopter downed earlier in the fighting. Only after recovering the body of that soldier and ac-

counting for all remaining Rangers did the combined force withdraw. No doubt about it, the soldiers of the 10th Mountain Division share many common values with the Rangers, including the commitment not to leave fallen comrades on the battlefield.

America and the soldiers of the 2d Battalion, 14th Infantry paid a heavy price for their bravery and dedication; two of these young Americans made the ultimate sacrifice. The commitment, devotion to duty, loyalty to each other and the Nation, and perseverance under fire of these soldiers reflects the finest traditions of the 14th Infantry, the 10th Mountain Division and indeed, America's Army. Their willingness to put their lives on the line in service to the Nation is a shining example of what makes this country, and its Armed Forces, so great. These fine young Americans deserve our deepest thanks and admiration and have again demonstrated that they deserve the honor of serving on the right of the line.

## RECESS UNTIL WEDNESDAY, MARCH 23, 1994, AT 9 A.M.

Mr. DOLE. Madam President, in accordance with the previous order, I move we recess.

The motion was agreed to and, at 6:36 p.m., the Senate recessed until Wednesday, March 23, 1994, at 9 a.m.

## NOMINATIONS

Executive nominations received by the Senate March 22, 1994:

### DEPARTMENT OF STATE

WILLIAM J. CROWE, JR., OF VIRGINIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND.

### THE JUDICIARY

THEODORE ALEXANDER MCKEE, OF PENNSYLVANIA, TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT, VICE A. LEON HIGGINBOTHAM, JR., RETIRED.

RAYMOND L. FINCH, OF VIRGIN ISLANDS, TO BE A JUDGE FOR THE DISTRICT COURT OF THE VIRGIN ISLANDS FOR A TERM OF 10 YEARS, VICE DAVID V. O'BRIEN, DECEASED.

PAUL L. FRIEDMAN, OF THE DISTRICT OF COLUMBIA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, VICE GERHARD A. GESELL, RETIRED.

VANESSA D. GILMORE, OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

GLADYS KESSLER, OF THE DISTRICT OF COLUMBIA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, VICE MICHAEL BOUDIN, RESIGNED.

EMMET G. SULLIVAN, OF DISTRICT OF COLUMBIA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, VICE LOUIS F. OBERDORFER, RETIRED.

RICARDO M. URBINA, OF THE DISTRICT OF COLUMBIA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, VICE AUBREY E. ROBINSON, JR., RETIRED.

### IN THE COAST GUARD

THE FOLLOWING REGULAR AND RESERVE OFFICERS OF THE U.S. COAST GUARD TO BE PERMANENT COMMISSIONED OFFICERS IN THE GRADES INDICATED:

*To be lieutenant commander*

CURTIS B. ODOM
KEVIN P. CARPENTIER
JOSEPH R. CASTILLO

*To be lieutenant*

JOSEPH A. DERIE II
ROBERT M. DEAN IV
JOSEPH A. BOUDROW
JAMES MCLAUGHLIN
LOUISE A. BERNEY
VICTOR E. BLALACK III
TIMOTHY B. MESSINGER
KEVIN C. BURKE
WAYNE F. MACKENZIE
EDWARD J. KREJCI
JEFFERY P. HAYS
DANIEL P. KANE
JEFFREY M. RAMOS
LARRY W. HEWETT
ARTHUR J. SNYDER
KEITH A. LANE
JOHN K. MERRILL
RICHARD J. REINEMANN
DAVID R. XIRAU
JOSEPH J. MAHR
JEFFREY C. JACKSON
RICHARD C. BILBRO
ROBERT W. BILLER
JAMES E. STAMPER
STEVEN K. SHAFFER
JAMES S. ELBE
GUY L. SNYDER
STEVEN A. SUTTON
JUDY A. PERSALL
EARL B. SMITH
RONALD J. CANTIN
OSCAR W. STALLINGS, JR.
FREDERICK T. WILLIAMSON III
KKEVIN L. LEE
TIMOTHY J. CIAMPAGLIO
DONALD R. DYER, JR.
GREGORY D. CASE
JAMES T. HURLEY
JOHN D. RIDDLE
LEE E. JACKSON
KAREN JONES
WILLIAM A. FOX
RONALD L. RIEDINGER
KIRK N. SCHILLING
DIANE W. DURHAM
GARY G. KUNZ
GERALD P. ACHENBACH
PETER M. VANRUITENBEEK
GARY M. MESSMER
JEFFREY A. OVASKA
DANIEL E. MADISON
PHILLIP F. BROOKINGS
ROBERT L. WEGMAN
CHARLES SRIOUDOM
KENNETH M. ALBEE
OZIEL VELA

*To be lieutenant (junior grade)*

MARK S. LENASSI
CHRISTOPHER E. BOEHM
BARRY D. CALHOUN
MARK A. PANICEK
JOHN F. BOURGEOIS
THOMAS P. WALKER
DAVID R. MORGAN
RICHARD E. LORENZEN
GREGORY S. PIERCE
RICK D. CHRISTOFFERSEN
DEAN E. WILLIS
JOHN R. KNOTTS
MARILYN M. DYKMAN
THOMAS O. MURPHY
KEITH B. JANSSEN
JAMES M. KAHRS
BRAD L. SULTZER
RICHARD PINEIRO
STEVEN M. WISCHMANN
CURTIS J. FARRELL
JOHN P. FLYNN
AYLWYN S. YOUNG
PETER A. SCHICHTEL
JON J. BOWEN
DANIEL A. DEMARCHIS
DAVID C. NEUHAUS
LORINDA J. COUCH
STEPHEN G. GIBSON
ROBERT E. O'CONNELL
JOHN T. KONDRATOWICZ
MARSHALL E. WRIGHT
APRIL A. BROWN
VIRGINIA K. ELSESSER
JOHNNY GONZALEZ
ROBERT E. ALLEN
PATRICK W. BAKER
GEORGE P. WELZANT
MARK A. EYLER
JAMES J. VINCENT, JR.
DOUGLAS C. CLEMENTS
NANCY J. NELSEN
MAUREEN P. MARCH
ANDREW C. WISCHMEIER
CHARLES G. MURPHY
TIMOTHY P. CONNORS
ANDREA L. THOMAS
JOEL K. MOORE
TODD A. SCHMIDT
DENNIS E. BRANSON
HAROLD G. WHITLEY
CHRISTOPHER K. PALMER
THOMAS W. GAUNTT, JR.
GREGORY S. HUGHES
SAMUEL R. CREECH, JR.
HOWARD R. SHAW
EILEEN C. NALLY
LLOYD BANKS, JR.
MICHAEL K. HOLLAND
MICHAEL A, EDGERTON
GARY I. TODD, JR.
JOSEPH DIRENZO, III
TIMOTHY J. ESPINOZA
CLIFFORD K. BAYUK
DARRLY P. VERFAILLIE
ROBERT K. MACGREGOR
MARK S. RUSSELL
THOMAS K. OWENS
KENNETH D. DAHLIN
JACQUES L. ROSARIO
TIMOTHY D. SICKLER
JAMES R. DEYO
KENNETH IVERY
DANIEL C. KELLEHER
ANTHONY J. DAVERN
JOHN P. RADZISZEWSKI
BEVERLY A.BUYSSE
JOSE J. RODRIQUEZ
CURTIS J. SHAW
GEORGE J. PAITL, JR.
JEFFREY H. JAGER
PATRICIA J. HILL
GREG A. FONDRAN
RAYMOND M. WOOLDRIDGE
KYLE P. MCAVOY
JOHN T. MCALEESE
THEODORE J. FERRING III
ROBERT E. MCFARLAND
WINSTON E. LESLIE
RONALD W. NORTHRUP
PETER F. MARTIN
SCOTT M. ROGERS
DAVID S. FLURIE
BRENDAN E. O'BRIEN
ANDREW E. TUCCI
GARY L. JONES
HARLAN V. WALLACE
SEAN K. MOON
MICHAEL R. HEISLER
BRIAN P. THOMPSON
JAMES W. TEDTAOTAO
SCOTT K. DOW
JOHN P. NEWBY
BRIAN E. HUDSON
ERIC M. KING
DELWIN R. WITTERS
DOUGLAS E. NASH
JOHN F. CAMERON
JEFFREY A. BENOIST
JAME S. O'KEEFE
STACY L. OTTO
RANDALL E. WATSON
ALAN R. MARTINEZ
JOHN R. BEVILACQUA
RAMON L. GEIGEL, JR.
EUGENE R. LYTTON, JR.

### IN THE ARMY

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE. THE OFFICERS INDICATED BY ASTERISK ARE ALSO NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE:

#### JUDGE ADVOCATE GENERAL'S CORPS

*To be major*

THOMAS E. AYRES, xxx-xx-x...
*BRIAN S. BANKS, xxx-xx-x...
*ELIZABETH BERRIGAN, xxx-xx-x...
*MICHAEL J. BERRIGAN, xxx-xx-xx...
*JOSEPH H. BESTUL, xxx-xx-xx...
*DAVID L. CONN, xxx-xx-x...
*TIMOTHY M. CONNELLY, xxx-xx-x...
*DENISE COUNCILROSS, xxx-xx-x...
*FLORA D. DARPINO, xxx-xx-x...
*JAMES J. DILIBERTI, xxx-xx-xx...
*PHILIP G. EVANS, xxx-xx-xx...
*JANET H. FENTON, xxx-xx-xx...
DAVID B. FREEMAN, xxx-xx-x...
*KEVIN P. FRITZ, xxx-xx-xx...
*MARVIN K. GIBBS, xxx-xx-x...
*KEVIN H. GOVERN, xxx-xx-x...
*MICHAEL J. HARGIS, xxx-xx-x...
*TARA O. HAWK, xxx-xx-x...
*JAMES W. HERRING, xxx-xx-x...
*ROY H. HEWITT xxx-xx-xxxx
FRANK M. HRUBAN, xxx-xx-x...
*ROBIN L. JOHNSON, xxx-xx-x...
*KEVIN D. JONES, xxx-xx-x...
*RANDY T. KIRKVOLD, xxx-xx-x...
*MICHAEL H. LEONARD, xxx-xx-x...
MAURICE A. LESCAULT, xxx-xx-x...
*STEWART MONEYMAKER, xxx-xx-x...
MICHAEL A. NEWTON, xxx-xx-x...
JAMES A. NORTZ, xxx-xx-x...
*CHRISTOPHER OBRIEN, xxx-xx-x...
*JONATHAN F. POTTER, xxx-xx-xx...
*ANTONIO RAIMONDO, xxx-xx-x...
*SCOTT F. ROMANS, xxx-xx-x...
*STEPHEN D. SANDERS, xxx-xx-xx...
*BERTIE A. SMISEK, xxx-xx-xx...
*KYLE D. SMITH, xxx-xx-x...
KATHERIN SPAULDING, xxx-xx-x...
*PAMELA M. STAHL, xxx-xx-x...
FRED P. TAYLOR, xxx-xx-xx...
*GUY J. TAYLOR, xxx-xx-x...
*LINDA D. TAYLOR, xxx-xx-x...
*MARK W. TOOLE, xxx-xx-x...
*RANDALL J. VANCE, xxx-xx-x...
*STEVEN E. WALBURN, xxx-xx-x...
*DAVID A. WALLACE, xxx-xx-x...
*RICKEY WATSON, xxx-xx-x...
*JOEL E. WILSON, xxx-xx-x...

### IN THE NAVY

THE FOLLOWING-NAMED U.S. NAVAL RESERVE OFFICERS TO BE APPOINTED PERMANENT LIEUTENANT IN THE MEDICAL CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

#### MEDICAL CORPS

*To be lieutenant*

DIANA B. BARRETT
JOHN L. BASTIEN
ERIK W. BERGMAN
RONALD J. BOUCHER
CAROL A. CAROTHERS
WILLIAM R. CARTER
JERRY R. CASTRO
MARK E. CHISAM
ALLISON W. COSTE
KURT R. EICHENMULLER
ROBERT P. ENGLERT
JENNIFER L. ERDMAN
JAY B. ERICKSON
DAN E. FISHER
KIM M. FORMAN
WILLIAM C. FREUDENTHAL
ERIC M. GESSLER
BRIAN J. GRADY
JOHN L. GRIMWOOD
CHRISTOPHER A. HAM
JOHN V. HARDAWAY
STEVEN J. HUDSON
JOHN S. KENNEDY
TINA T. LIEBIG
JOHN W. LOVE
JULIE MAURER
MICHAEL T. MAZUREK
CHARLES E. MCCANNON
MICHAEL S. MCCLINCY
KEVIN A. MCKENNEY
THOMAS V. MESSE
STERLING A. MEZA
DAVID P. MURPHY
COUNG TAN NGUYEN
CHRISTOPHER W. NORWOOD
JOHN J. PAPE
MARTIN W. PRUSS
CHRISTOPHER H. REED
LORI M. ROGERS
ERIC M. SERGIENKO
DEANA J. SHANKS
JILL D. SIREN
ROBERT C. STABLEY
CHARLES B. TONER
LINDA C. ULRICH
ANASTASIA F. VALENZUELA
CHRISTINA WALSH
CYNTHIA A. WILKES

### DEPARTMENT OF DEFENSE

ROGER HILSMAN, OF NEW YORK, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF 4 YEARS. (NEW POSITION.)

ROBERT N. SHAMANSKY, OF OHIO, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF 4 YEARS. (NEW POSITION.)

STANLEY K. SHEINBAUM, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF 4 YEARS, VICE JOHN P. ROCHE, RESIGNED.

### IN THE MARINE CORPS

THE FOLLOWING-NAMED MAJORS IN THE U.S. MARINE CORPS FOR PROMOTION TO THE PERMANENT GRADE OF LIEUTENANT COLONEL UNDER THE PROVISIONS OF SECTION 624 OF TITLE 10, UNITED STATES CODE:

*To be lieutenant colonel*

DUNNIGAN, RICHARD M., xx...
BRANCH, RICHARD C., xx...
WHITFIELD, WALTER V., x...
KIRK, JOHN J., JR., xx...
HUGHES, JACK M., xx...
HICKSON, ERNEST E., xx...
HARRIS, WILLIE J., xx...
JOHNSON, EDWARD L., xx...
DOLAN, MICHAEL F., xx...
VIVERETTE, LEE J., III, xx...
VAUGHT, HARVEY D., xx...
HESSLER, WILLIAM G., xx...
DECAMP, WILLIAM T., III, xx...
REED, LOYD W., xx...
MINGO, RICHARD, xx...
ROBINSON, JOSEPH R., xx...
OLSON, JEFFREY L., xx...
ELKINS, STEVEN T., xx...
TRUBA, ROY E., x...
JENNINGS, JAMES M., x...
IRLBACHER, GEORGE W., JR., xx...
SMITH, RICHARD J., xx...
BUTLER, WILLIAM G., III, xx...

MYERS, DILLARD O. [redacted]
COULTER, ALLEN [redacted]
DOZIER, ROBERT D. [redacted]
STEARNS, LEROY D., JR. [redacted]
DIGNAN, JUNE M. [redacted]
FIELDLER, EDWIN JR. [redacted]
SUMMERS, JEFFREY M. [redacted]
PRYOR, ROGER M. [redacted]
THOMAS, JAMES M. [redacted]
LONGORIA, ALFREDO, JR. [redacted]
BOWER, JOHN F. [redacted]
HUFFMAN, LARRY D. [redacted]
TURNER, PAUL F. [redacted]
MCCARTHY, KEVIN J. [redacted]
SMITH, HAROLD G., JR. [redacted]
VANDERMEER, WILLIAM S., JR. [redacted]
BRISTOW, JERRY D. [redacted]
HAND, PAUL A. [redacted]
HOLCOMB, EDDIE L. [redacted]
HASTY, BOYETTE S. [redacted]
BARKER, MICHAEL J. [redacted]
OLSON, FREDRIC M. [redacted]
GUMBEL, JOHN D. [redacted]
CONTI, EUGENE K. [redacted]
ADAMS, PAUL D. [redacted]
JAMES, JOHN W. [redacted]
VALENTINO, ANTHONY W. [redacted]
WESTERVELT, SCOTT [redacted]
LEFEBVRE, PAUL E. [redacted]
INNERST, JOSEPH P. [redacted]
REDMAN, JAMES M. [redacted]
BAIGIS, GERARD B. [redacted]
KAMPSEN, MICHAEL E. [redacted]
SWELTZ, KENNETH W. [redacted]
STRAIN, PATRICK M. [redacted]
DEWITT, JOHN D., JR. [redacted]
MECKEL, RICHARD C., JR. [redacted]
HARRIS, RODGER C. [redacted]
GIANI, VINCENT C. [redacted]
KNOBEL, MICHAEL P. [redacted]
LENAC, RANDOLPH S. [redacted]
LANGDON, LOREN K. [redacted]
SULLIVAN, DANIEL D. [redacted]
WOZNIAK, JOHN L., JR. [redacted]
STINEMETZ, KURT C. [redacted]
EDWARDS, LLOYD P. [redacted]
PACE, JAMES A. [redacted]
MCCLAREN, HARRY E. [redacted]
JENNINGS, GAIL E. [redacted]
DELAIR, CHARLES E. [redacted]
MILLS, JOHN E. [redacted]
DIAZ, GILBERT B. [redacted]
LAKE, RICHARD M. [redacted]
GUILFOYLE, WILLIAM F. [redacted]
FENSTERMACHER, STEPHEN M. [redacted]
MCARTHUR, HEINZ M. [redacted]
HUMMER, STEVEN A. [redacted]
ABBOTT, DAVID J. [redacted]
LEDOUX, JOHN L. [redacted]
DUNN, JOHN M. [redacted]
PEELER, DAVID H. [redacted]
LEE, JOHN S. [redacted]
SMITH, RANDY R. [redacted]
DIFALCO, FRANK J. [redacted]
ENOCH, JOHN T., JR. [redacted]
SHULTIS, STEVEN C. [redacted]
CUNNINGS, JOHN T. [redacted]
BILLIPS, PAUL E. [redacted]
MCGOWAN, JAMES F., III [redacted]
FERGUSON, SAMUEL E. [redacted]
PATTERSON, JEFFREY J. [redacted]
LAMBERT, KIRK S. [redacted]
KACHILLA, MICHAEL A. [redacted]
BUKAUSKAS, JOHN A. [redacted]
ANDERSON, BRUCE C. [redacted]
DEARMAN, MILTON [redacted]
COBB, CARL G. [redacted]
KERRIGAN, TERENCE K. [redacted]
DINGESS, BRIAN D. [redacted]
KOEHLER, WILLIAM C., JR. [redacted]
LESHCHYSHYN, DANIEL D. [redacted]
RYAN, SCOTT D. [redacted]
BIXLER, GLENN C. [redacted]
REUSS, GREGORY C. [redacted]
PUCKETT, NEAL A. [redacted]
NICHOLS, JAMES D. [redacted]
WEIGL, OTTO W., JR. [redacted]
LHUILLIER, THOMAS P. [redacted]
BACON, JOHN L. [redacted]
SWARD, THOMAS B. [redacted]
DAVIS, JAMES M. [redacted]
BERGSTROM, JOHN L., IV [redacted]
GARRARD, DAVID L. [redacted]
JOSEPH, STEPHEN E. [redacted]
SNYDER, MARSHALL K. [redacted]
BARNES, BRUCE M. [redacted]
STEFFANETTA, GENE A. [redacted]
BEAVERS, LARRY G. [redacted]
GREENWOOD, THOMAS C. [redacted]
ROGERS, JAMES A. [redacted]
HAMILTON, TERRY [redacted]
POWERS, JEFFREY A. [redacted]
POMFRET, JOHN J. [redacted]
KOLP, JONATHAN A. [redacted]
ODONOGUE, PATRICK M. [redacted]
FOX, RAYMOND C. [redacted]
STOCKWELL, HARMON A. [redacted]
FARRAR, JAY C. [redacted]
WHITE, JEFFREY A. [redacted]
COOK, TERRENCE P. [redacted]
ALLEN, ANDREW M. [redacted]
POLLOCK, DANIEL J. [redacted]
GARDNER, VICTOR M., III [redacted]
SUPNICK, GARY S. [redacted]
RENDON, MICHAEL P. [redacted]
MEYER, TERENCE J. [redacted]
CREAMER, ROBERT L., JR. [redacted]
TREADWAY, WILLIAM G. [redacted]
BISHOP, DEBORA K. [redacted]
COATES, ROBERT J. [redacted]
DICK, MICHAEL E. [redacted]
HOUSTON, FLOYD D. [redacted]
RODGERS, RONALD L. [redacted]
SIFFORD, MARK D. [redacted]
LISTON, WILLIAM R. [redacted]
INSERRA, GLEN A. [redacted]
BAILEY, RONALD L. [redacted]

## CONFIRMATIONS

### Executive nominations confirmed by the Senate March 22, 1994:

#### DEPARTMENT OF DEFENSE

STEPHEN C. JOSEPH, OF MINNESOTA, TO BE AN ASSISTANT SECRETARY OF DEFENSE.

HELEN THOMAS MCCOY, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF THE ARMY.

#### DEPARTMENT OF JUSTICE

DEVAL L. PATRICK, OF MASSACHUSETTS, TO BE AN ASSISTANT ATTORNEY GENERAL.

JAMIE S. GORELICK, OF MARYLAND, TO BE DEPUTY ATTORNEY GENERAL.

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.