HOUSE OF REPRESENTATIVES—*Friday, February 10, 1995*

The House met at 9 a.m.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Enable us, O Almighty God, to take the heavenly vision of harmony and peace and mercy and truth and translate that vision into the work that we do with our hearts and minds and hands. Encourage to take our ideas and ideals, our hopes and dreams, our faith and our convictions into the realm of daily action and personal responsibility. May we so heed Your word of truth and Your message of justice that Your will may be done on Earth as it is in Heaven. In Your name, we pray. Amen.

THE JOURNAL

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

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

PLEDGE OF ALLEGIANCE

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

Mr. GANSKE led the Pledge of Allegiance as follows:

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

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will announce there will be 5 1-minutes on each side.

REPUBLICAN CONTRACT WITH AMERICA

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

Mr. HAYWORTH. Mr. Speaker, our Contract With America states the following:

On the first day of Congress, a Republican House will: Force Congress to live under the same laws as everyone else; cut committee staffs by one-third; and cut the congressional budget. We have done this.

It goes on to state that in the first 100 days, we will vote on the following items: A balanced budget amendment—we have done this; unfunded mandates legislation—we have done this; line-item veto—we have done this; a new crime package to stop violent criminals—we are doing this now; welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for families to lift Government's burden from middle-income Americans; national security restoration to protect our freedoms; Senior Citizens' Equity Act to allow our seniors to work without Government penalty; Government regulatory reform; commonsense legal reform to end frivolous lawsuits; and congressional term limits to make Congress a citizen legislature.

This is our Contract With America.

APPOINT AN INDEPENDENT COUNSEL

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

Mr. VOLKMER. Mr. Speaker, today marks the third full week since the naming of the House Ethics Committee. As of now the committee has not discussed any of the very important issues before them involving our Speaker.

Mr. Speaker, there is a cloud hovering over the Capitol, a very dark cloud that will not go away until many questions are answered. As each day passes, this cloud grows larger and darker with new questions of ethics violations.

It should not take 100 days for the Ethics Committee to act. In fact it should not take them long at all to decide that an independent counsel is the only way these questions involving our Speaker can be answered.

If there is nothing to hide, let the independent counsel begin immediately. Only an independent counsel can remove this dark cloud over this great House of Representatives.

FOR THE CHILDREN

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

Mr. BARTLETT of Maryland. Mr. Speaker, why are Republicans working to change the way Government works? Why are we working so hard to pass a balanced budget amendment, to enact real anticrime measures, to reform our welfare state? The answer is: for America's children.

We want to get this country in the best possible shape for future generations.

Our democracy must remain strong. We must clean our streets of crime, get our fiscal house in order, and provide every American the greatest opportunity to pursue happiness.

To do these things, we must change direction. We cannot continue to spend and tax our way to financial ruin. We cannot continue a welfare state that destroys opportunity and ruins generations of Americans. We cannot allow lawlessness to rule our streets and thugs to terrorize our citizens.

Mr. Speaker, these are the reasons I support the Contract With America. It represents real change that most Americans can support.

I urge the defenders of the status quo to reflect on one thing: Can our children afford to continue on the path you advocate? For most people, the answer is clearly no.

SOLVING THREE PROBLEMS AT ONE TIME

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

Mr. FLAKE. Mr. Speaker, during the course of the last several months, as we have been in the House there have been three issues that have been discussed in some manner, one of them being capital gains breaks for the rich, one of them being adjusting the minimum wage, trying to adjust the wage by which we increase the payments to those who are the working poor, as well as welfare reform.

I come today offering a solution to all of it. Let us give capital gains reductions, let us target it so we give minimum wage to the working poor, while at the same time as we move persons off of welfare give them an opportunity to work at a job that pays a decent wage.

We can solve all three problems if we can work together. Let us remove all the partisanship, let us not look at these issues as being disjointed, let us hook them up together, capital gains, minimum wage increase while at the same time changing welfare. We can solve the problem for everybody.

Win, win, win.

SAFE STREETS FOR AMERICA

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

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minute and to revise and extend his remarks.)

Mr. HEFLEY. Mr. Speaker, we have all heard the saying, "If you can't do the time, don't do the crime."

Unfortunately, the sad fact is that if you commit a violent felony there is only a 3- to 4-percent chance you will do any jail time. Looking at that another way, 96 to 97 percent of the time a violent criminal never sees the inside of a jail.

No wonder Americans have said that they have had enough and want their streets back.

When people are afraid to step outside their doors at night something is wrong. When people are afraid to sit on their porch, something is wrong. When fear of crime prevents many Americans in our inner-city areas from taking a night job or going to night school, it hurts all of us.

Even the wealthy who live in guarded, gated communities feel an immediate need to do something about violent crime. But for middle class and poorer Americans, who bear the brunt of violent crime, this is a life-and-death issue that affects them every day.

If nothing else, we owe the working men and women of our country, the ones who pay the bills, safe streets.

REINING IN THE IRS

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

Mr. TRAFICANT. Mr. Speaker, the IRS is loading up. Individual dossiers now on every taxpayer, not just your credit history and your wife's background, your speeding tickets, how about news stories, how about informant's tips and how about rumors, ladies and gentleman.

□ 0910

Now, if that is not enough to pirate your software, check this out: It is not even confidential. Last year they slapped on the wrist 300 agents for snooping through tax returns. Unbelievable, ladies and gentleman.

And the Congress of the United States has allowed this to happen. I say it is time for Congress to act. What makes it even worse, when the IRS comes to the door with their Gestapo file and looks you in the eye, you are guilty and have to prove yourself innocent.

Do yourself a favor, do your constituents a service, and cosponsor H.R. 390 and let us put the IRS where they should be. They work for the American people.

APPROVAL RATING FOR CONGRESS HAS DOUBLED

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

Mr. GANSKE. Mr. Speaker, there is a new-found respect for Congress in the country. Republicans have only been in charge for 1 month, and the approval rating for Congress has already doubled.

The reason is obvious. Under Republican leadership we are working hard to keep our promises to bring big change to America.

Nowhere is that more apparent than in the crime package we are now debating. We are making tremendous progress in ensuring that the criminal justice system will be more concerned with the rights of victims and society than the rights of criminals.

And who will benefit most from our rough crime package? The middle and lower income classes, who live with violent crime every day. They know what we need to do: catch, convict, and confine violent criminals.

That is what our crime package is all about. And that is why we will continue working hard to see that it is enacted.

INTRODUCTION OF LEGISLATION TO PROVIDE A LIVABLE WAGE

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

Mr. THOMPSON. Mr. Speaker, I stand in support of livable wage for all Americans by the year 2000. Congressmen CLYBURN and HILLIARD and I have introduced a bill, H.R. 768, that moves the debate from a minimum wage to a livable wage. Many Americans who work in retail establishments such as McDonald's already earn more than $5 per hour. The current minimum wage of $4.25 per hour amounts to approximately $9,000 a year. No individual or family can live at a decent level on this income. Contrary to popular belief, two-thirds of minimum wage workers are adults and not teenagers.

The minimum wage has not been raised since April 1, 1991, nearly 4 years ago. For the richest country in the world, this is a national disgrace. All of us know that the cost of goods and services have risen over this time period. By supporting a liveable wage, we send a clear signal to the Nation of our support for the working poor.

Let us vote for a livable wage and index future increases so that all American families can keep up with the rising cost of living. My constituents in Mississippi deserve it. Your constituents deserve it. We must demand it.

CONGRATULATIONS TO THE SAN FRANCISCO 49ERS

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

Mr. CUNNINGHAM. Mr. Speaker, the San Diego Chargers were picked in their division, but then the season started; our Bolts pursued a vision. Often they would fall behind. They bested the toughest teams in the AFC. In the playoffs they beat Pittsburgh and Miami.

Then on Super Bowl Sunday, the 49ers won. I picked the Chargers. The gentlewoman from California, I had a 19 point advantage on her. I thought I had an advantage. Well, us males have thought that for thousands of years, and I guess we will never learn, because here I am to pay off my Super Bowl bet to the gentlewoman from California, the most prized possession that I could possibly own, El Indio chips and Mexican food, salsa and homemade guacamole, fresh from San Diego.

The 49ers are champs, and they will have our respect. But all the NFL will seek the trophy they protect. Should the San Francisco team return next year, I will still bet on my Chargers.

Ms. PELOSI. Mr. Speaker, will the gentleman yield?

Mr. CUNNINGHAM. I am happy to yield to the gentlewoman from California.

Ms. PELOSI. Mr. Speaker, I congratulate the gentleman for the great, valiant effort of the Chargers. California sent two great teams to the Super Bowl, and I thank the gentleman for his salsa, chips, and guacamole, and give him a T-shirt.

CONGRATULATING TWO GREAT FOOTBALL TEAMS FROM CALIFORNIA

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

Ms. PELOSI. Mr. Speaker, I want to congratulate the Chargers and my colleague, all of my colleagues, from San Diego.

We are very proud in California of two great teams.

The gentleman from California [Mr. CUNNINGHAM] is a good sport. I waited awhile for him to pay off on this debt. His "the chips are on their way" became like "the check is in the mail." You know, the Super Bowl has been over awhile, and I thought that as to this concession he was waiting for Michael Huffington to concede before he conceded the Super Bowl loss.

In any event, he is a great Californian, a great sport. I thank him for that.

I also will have to say how proud I am of the San Francisco 49ers, owner Eddie DeBartolo, president Carmen Policy, you know, quarterback Steve Young, Jerry Rice, Rickey Waters, and the list goes on and on.

It was a great Super Bowl. We are very proud. Five trips to the Super Bowl for the 49ers, five championships, five world championships.

Go '9ers.

INTRODUCTION OF RESOLUTION OF INQUIRY CONCERNING TAXPAYER-BACKED MEXICAN RESCUE PACKAGE

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

Ms. KAPTUR. Mr. Speaker, today with bipartisan cosponsorship, I am introducing a resolution of inquiry concerning the recent U.S. taxpayer-backed Mexican rescue package.

Far too many questions regarding the terms of the financing and the financial risks to our people and our banking system remain unanswered. The purpose of this resolution is to obtain factual information from the Clinton administration on a series of questions contained in the resolution, including the soundness of the collateral backing the agreement, the solvency of PEMEX, the actual terms of the short-, medium-, and long-term loans, and the rate at which funds are being drawn down.

I ask my colleagues to cosponsor this resolution of inquiry and respectfully request the Committee on Banking and Financial Services report it favorably within the 2 weeks required.

VIOLENT CRIMINAL INCARCERATION ACT OF 1995

The SPEAKER pro tempore (Mr. SAM JOHNSON of Texas). Pursuant to House Resolution 63 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 667.

□ 0917

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 667) to control crime by incarcerating violent criminals, with Mr. BARRETT of Nebraska, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on Thursday, February 9, 1995, the amendment offered by the gentleman from Virginia [Mr. SCOTT] had been disposed of, and the bill was open for amendment at any point.

Four hours and ten minutes remain for consideration of the bill under the 5-minute rule.

Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment, amendment No. 2, Watt No. 2.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina: Page 17, strike lines 16–23 and page 18, strike lines 1–3.

Page 18, line 4, strike the letter "g" and insert instead the letter "f".

The CHAIRMAN pro tempore. The gentleman from North Carolina [Mr. WATT] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume. This should not take 5 minutes. I actually engaged in some degree of debate on this amendment during the period of general debate.

This amendment simply would strike the provisions in the bill having to do with the award of attorneys' fees.

I now realize that I may have the wrong amendment at the desk.

Mr. Chairman, I ask unanimous consent to substitute amendment No. 3, Watt No. 3, and have that one read instead. I ask unanimous consent that the amendment that was originally read be withdrawn and that the Watt amendment No. 3 be substituted.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The CHAIRMAN pro tempore. The amendment has been withdrawn.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer my new amendment.

The CHAIRMAN pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina: Page 16, strike lines 10–20.

The CHAIRMAN pro tempore. The gentleman from North Carolina [Mr. WATT] will be recognized for 10 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. WATT].

□ 0920

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment actually relates to the procedure by which an appeal is taken from an order in which relief has been granted in a prison lawsuit.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Florida.

Mr. CANADY of Florida. I thank the gentleman for yielding.

Mr. Chairman, I am uncertain as to what this amendment is. The amendment that was read does not seem to be amendment No. 3 that was printed in the Journal. I would like to understand what amendment we are on at this point.

Mr. WATT of North Carolina. The gentleman's side has a copy of them. We redesignated the amendments because when the bill came out of committee it came out in a different form that the amendments that were printed in the RECORD conform with. So we have gone back and conformed the amendments to comply with the actual printed bill.

Does that address the gentleman's concern?

Mr. CANADY of Florida. It does. I thank the gentleman.

Mr. WATT of North Carolina. I had given the gentleman's side a copy of this amendment and the revised amendments yesterday afternoon.

Mr. Chairman, resuming my time, the bill provides that when an order has been entered by the court and the defendants in the case who have already been found to have violated a constitutional rights by prison overcrowding or in some other way violating a prisoner's rights and an effort has been made to try to correct that, when the motion to revise that order is made, that order continues in effect during the pendency of the motion to revise the court's order. Well, that is exactly what happens in any lawsuit. If the court ever enters an order in a case, that order stays in effect until the court comes back and changes that order or until some higher court changes that order.

The provisions of this bill would say if the court has entered an order, the order is in effect, the defendant files a motion with the court to change that order or to eliminate that order, then simply because the defendant filed a motion to change the order, if the court did not act on that motion within 30 days or some arbitrary time, the defendant would win the motion.

There is absolutely no precedent for this kind of radical change in any area of the law. Basically, what it says is you take overcrowded, overworked Federal courts, and you, without adding any additional personnel, any additional space, any additional opportunity for them to get the aid that they need—and everybody knows the courts are already overworked—and you take that and use it as an excuse to, in effect, change the whole burden of proof and process that we have followed in our country for years and years and years.

Another example of some political sloganeering taking precedence over reasonable public policy and thought in this body.

I would simply submit that this provision makes no sense from a public policy perspective. It may make some sense from an appeal to the political electorate's perspective, but I would even think it does not make any sense once you think about it and talk it out from that perspective.

So I would ask my colleagues to be reasonable, go back to the process that has existed in all other cases in our court system and allow that process to continue to exist in this case.

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

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). Is there a Member in opposition to the amendment of the gentleman from North Carolina?

Mr. CANADY of Florida. Mr. Chairman, may I claim the time in opposition?

The CHAIRMAN pro tempore. The gentleman from Florida [Mr. CANADY] will be recognized for 10 minutes.

The Chair recognizes the gentleman from Florida [Mr. CANADY].

Mr. CANADY of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this provision of the bill which is being attacked by the current amendment is a provision that is simply designed to insure the expeditious consideration of motions for relief filed by States and local governments.

What happens in many of these cases involving prison conditions is, the court, unfortunately, will not expeditiously consider such motions for relief by the States and local governments. In some cases, that can result in dangerous criminals actually being let out on the street.

Now, what we have in the bill is something that is very reasonable; it gives the court adequate time to consider the motions for relief and simply provides that if the court does not act on the motion for relief filed by the State or local government within the time period specified, then there will be a stay.

Now, once the court acts on the motion, the stay goes away. This is simply a mechanism to encourage the court to act swiftly, to consider these matters which are of great public importance. If the court ends up ruling against the State or local government, at that point the State or local government will have the ability to appeal that order of the court.

Now, I think it is important to understand there are two different time periods that are specified in the bill. One time period is for 30 days. That means that a stay will come into effect 30 days after a motion has been filed. But that only happens in circumstances where there has been no prior finding by the court that an individual's constitutional rights have been violated. So that is a very unique circumstance, where there has been an order imposed that is not based on a specific finding of such a constitutional violation.

I believe there is a compelling case in such circumstances for allowing the State or local government to obtain swift relief from onerous impacts of such a court order that is not based on a finding of specific constitutional deprivation.

Now, it is true that other cases, where there may have been a finding of a constitutional deprivation, are subject to the stay provisions, but that stay provision only comes into place after the court has had the motion for more than 180 days.

Now, I believe 180 days is certainly an adequate period of time for a court to consider such a matter, particularly given the fact that these matters involve the public safety and involve the issue in many cases of keeping violent criminals off the street who would otherwise potentially be released under the court's order.

So I believe these are reasonable provisions.

The important thing to understand there is there is nothing, there is absolutely nothing in this bill that keeps the court from keeping in place the provisions of the order. If the court will simply make the findings that are necessary under the law, if the court will simply deal with the matter in an expeditious manner, the court will provide whatever relief is appropriate for a constitutional deprivation.

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

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such additional time as I may consume and would like to address a couple of questions, after I make a comment, to the gentleman from Florida [Mr. CANADY].

Again, this is one of these situations like we saw yesterday and the day before yesterday where I am not sure the other side has read the provisions of its own bill.

Mr. CANADY represents to my colleagues here that under one part of this, the 30-day provision, no order needs to be in effect. But I do not know where he is getting that from if he has read the provisions of his bill.

It says, beginning on the 30th day after such motion is made in the case of a motion made under subsection B. Subsection B of this bill, an order is already in effect by a court because subsection B deals with termination of relief, relief that has already been ordered by the court.

So on that point, I think he is just absolutely wrong in his reading of his own bill.

□ 0930

Second, I would simply ask the gentleman whether he knows of any other situations, legal situations in this country, in which, where an order is in effect by the court, and somebody is trying to get from under that order, and they file a motion with the court to terminate it, a disposition of that motion is made in one way or another without the court having acted on it? Is there any other legal precedent for this that he can cite in any other area of the law?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Florida.

Mr. CANADY of Florida. That is the typical situation in the case of appeals from a judgment of the court.

Mr. WATT of North Carolina. We are not talking about appeals. We are talking about going back to the same court that entered the order. This provision has nothing to do with appeals. This has to do with a motion in the court where the relief was granted. Is there any other precedent in the whole body of law in this country where a similar provision exists?

Mr. CANADY of Florida. There are provisions of law that stay certain orders against governmental entities. I am familiar with those in a variety of States where an order may be entered against a particular governmental entity. There is a stay imposed specifically because of the status of the party as a governmental entity. That is something that is found in the law, but let me go back to this point that the gentleman raises about the 30-day stay.

Now this is a conversation, quite frankly, that we had in the Committee on the Judiciary, and I am simply going to repeat it to my colleague.

Mr. WATT of North Carolina. Mr. Chairman, let me reclaim my time because we are operating on my time here, and I will reserve the balance of my time and let the gentleman make his point on his time since I have limited time here.

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

Mr. CANADY of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as we discussed at length in the Committee on the Judiciary, the 30-day stay only comes into place in circumstances where there is an absence of a finding by the court that prison conditions violated a Federal right.

I say to the gentleman, if you want to look on page 16 of the bill, beginning at line one, that's where you'll find it.

Now obviously there is going to be a court order in place. I never indicated that the stay only comes in place when there has been no court order. Obviously there is nothing to stay if there is no court order. We are talking about a court order, however where the court order does not have a finding by the court that prison conditions violated a Federal right.

Now all we are saying, it is in those circumstances the local government or the State should be entitled to very swift consideration of a motion for relief from an order that has not been based on the finding it should be based on. That is all that we are providing here.

Now, as I said, this is the same explanation that was provided in the Committee on the Judiciary. The plain language of the bill indicates that that is what we are talking about, and the gentleman can see it there on page 16.

Mr. WATT of North Carolina. How much time remains, Mr. Chairman?

The CHAIRMAN. The gentleman from North Carolina has 2 minutes remaining.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself the balance of my time.

I agree with one thing that the gentleman said. This is the explanation they gave for this provision in committee; that is true.

The explanation in committee was wrong. The explanation they are giving on the floor today is wrong. The wording of this bill specifically says the 30-day provision applies in any civil action with respect to prison conditions in which prospective relief has been granted.

So he has got a 30-day provision for that, and he has got a 180-day provision where retrospective relief has been granted, but in both of those cases relief has been granted.

Now let me just say to my colleagues and to the American people that yesterday or the day before yesterday—I am losing track of time now with all of these bills that keep coming at me—we set up a different standard of law with respect to aliens than we set up with respect to gunowners as far as the fourth amendment is concerned. Under that provision we are treating one part of our population differently than we treat other parts of our population. Here we are today setting a lower standard again for the rights of other citizens simply because we do not like those citizens.

I would say to the gentleman from Florida [Mr. CANADY] and to all of my colleagues, We can't set a different standard of law and decide in advance who is a bad guy and who is a good guy. Our whole criminal justice and court system is designed to make those determinations. We can't make those determinations on the floor of the Congress of the United States. It's the courts' responsibility to make those determinations, and when we start with moving the courts' authority, we are undercutting our rights, and this makes no sense, and I hope my colleagues will join me in opposing it.

Mr. CANADY of Florida. Mr. Chairman, I yield myself the balance of my time just to sum up very quickly.

The issue here is whether we are going to allow courts to continue micromanaging prison facilities and to allow them to delay their consideration of motions for relief from their micromanagement. That is the issue. I believe that we have seen a history of abuses in this area. There is a compelling public interest in ensuring that local governments and the States are able to obtain relief in an expeditious manner.

Now we are not tying the courts' hands here. We are simply saying to the court, "Act, consider these matters, deal with them because they are of public import because they are matters that have a grave impact on the public safety. They're matters that in effect are life-and-death matters."

Let me say this also:

We are not setting a lower standard for anybody's rights here. This bill has been carefully crafted to ensure that people who have a legitimate claim, people whose rights, whose constitutional rights, are in fact being violated, can have a remedy. But what we want to stop is the overinvolvement of the courts in managing the prison systems.

I say to my colleagues, That's what this is about, and, if you want to have a more rational policy in this area, you will oppose this unfavorable amendment.

Mr. WATT of North Carolina. Mr. Chairman, would the gentleman yield just so I can make a point?

Mr. CANADY of Florida. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. The issue is not whether the courts will micromanage prisons. The issue is whether Congress will micromanage the courts, and that is what we are doing by putting this provision in the law.

Mr. CANADY of Florida. I respectfully disagree. I think we are addressing an important public matter here, and this is certainly within the province of the Congress' responsibility, and indeed I believe it is incumbent upon the Congress to address this issue.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

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

RECORDED VOTE

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 93, noes 313, not voting 28, as follows:

[Roll No. 112]

AYES—93

Abercrombie
Beilenson
Berman
Bishop
Bonior
Brown (CA)
Brown (FL)
Cardin
Clay
Clayton
Clyburn
Collins (IL)
Conyers
Coyne
Dellums
Dicks
Dingell
Dixon
Durbin
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Frank (MA)
Gejdenson
Gibbons
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hilliard
Hoyer
Jackson-Lee
Johnson, E.B.
Kennedy (MA)
Kennedy (RI)
Kildee
LaFalce
Lantos
Levin
Lewis (GA)
Lowey
Martinez
Matsui
McDermott
McKinney
Meehan
Meek
Menendez
Mineta
Mink
Mollohan
Nadler
Oberstar
Olver
Owens
Pastor
Payne (NJ)
Pelosi
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Stokes
Studds
Thompson
Towns
Velázquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Williams
Wise
Wynn
Yates

NOES—313

Ackerman
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Borski
Brewster
Browder
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clement
Clinger
Coble
Coburn
Coleman
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
DeLay
Diaz-Balart
Dickey
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Furse
Gallegly
Ganske
Gekas
Gephardt
Geren
Gilchrest
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Heineman
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennelly
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Longley
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martini
Mascara
McCarthy
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Moakley
Molinari
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Obey
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer

Rogers	Smith (TX)	Torricelli
Rohrabacher	Smith (WA)	Traficant
Ros-Lehtinen	Solomon	Upton
Roth	Souder	Volkmer
Roukema	Spence	Vucanovich
Royce	Spratt	Waldholtz
Salmon	Stearns	Walker
Sanford	Stenholm	Wamp
Saxton	Stockman	Watts (OK)
Scarborough	Stump	Weldon (PA)
Schaefer	Stupak	Weller
Schiff	Talent	White
Seastrand	Tanner	Whitfield
Sensenbrenner	Tate	Wicker
Shadegg	Tauzin	Wilson
Shaw	Taylor (MS)	Wolf
Shays	Tejeda	Woolsey
Shuster	Thomas	Wyden
Sisisky	Thornberry	Young (FL)
Skeen	Thornton	Zeliff
Skelton	Thurman	Zimmer
Smith (MI)	Tiahrt	
Smith (NJ)	Torkildsen	

NOT VOTING—28

Allard	Gillmor	Stark
Andrews	Greenwood	Taylor (NC)
Becerra	Hayes	Torres
Boucher	Herger	Tucker
Chapman	Hinchey	Walsh
Chrysler	Johnston	Waxman
Collins (MI)	Lofgren	Weldon (FL)
Deutsch	Mfume	Young (AK)
Ford	Miller (CA)	
Frost	Rangel	

□ 0959

The Clerk announced the following pairs:

On this vote:

Miss Collins of Michigan for, with Mr. Chrysler against.

Mr. Johnston of Florida for, with Mr. Weldon of Florida against.

Messrs. POMEROY, FRANKS of New Jersey, and DE LA GARZA, Mrs. MALONEY, Ms. FURSE, and Messrs. COLLINS of Georgia, MARKEY, and ENGEL changed their vote from "aye" to "no."

Mr. FAZIO of California, Mr. MEEHAN, and Mr. STUDDS changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. DEUTSCH. Mr. Chairman, during rollcall vote No. 112 on H.R. 667 I was unavoidably detained. Had I been present I would have voted "no."

PERSONAL EXPLANATION

Mr. ANDREWS. Mr. Speaker, due to circumstances beyond my control I was called away from the floor of the House on February 10, 1995 and missed a vote. Had I been here, I would have voted as follows:

Rollcall No. 112–no.

□ 1000

AMENDMENT OFFERED BY MR. RIGGS

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. RIGGS: After subsection (b) of section 504, insert the following new subsection (and redesignate subsequent subsections accordingly):

"(c) AVAILABILITY OF FUNDS FOR JAIL CONSTRUCTION.—A State may use up to 15 percent of the funds provided under this title for jail construction, if the Attorney General determines that the State has enacted—

"(1) legislation that provides for pretrial release requirements at least as restrictive as those found in section 3142 of title 18, United States Code; or

"(2) legislation that requires an individual charged with an offense for which a sentence of more than one year may be imposed, or charged with an offense involving violence against another person, may not be released before trial without a financial guarantee to ensure appearance before trial.".

The CHAIRMAN. The gentleman from California [Mr. RIGGS] is recognized for 10 minutes.

Mr. RIGGS. Mr. Chairman, my amendment is intended to address the twofold problem of jail overcrowding in many of our communities across the country today, and also it is designed to address the problem of instances where individuals who have been arrested for serious crimes and violent offenders are being released back into our communities after arrest on their own personal recognizance and promise to appear in court.

This has become a particularly exaggerated problem in our communities because in many instances, these individuals are not only failing to appear in court to stand trial on original charges, but too often are going back out into our communities and are committing additional crimes. My amendment might be known as the jail, not bail, amendment to H.R. 667.

Under my amendment, each State would be given the flexibility to use up to 15 percent of its funding under the act for jail construction. However, the chief law enforcement officer of each State, the Attorney General, would have to find that in order for the local communities to utilize these funds, that the State has adopted pretrial release restrictions that are at least as restrictive as those in effect in the Federal system, or that individuals charged with serious offenses or crimes of violence are not released without security. That means without the requirement of posting a commercial bail bond.

Mr. Chairman, I wish to underscore to my colleagues that this is not a mandate, only an additional option for each State that qualifies and utilizes funding under this act.

Let me go back to the original problem that I mentioned, which is the problem of jail overcrowding. There is clearly a need for greater prison capacity in each of our States.

In many instances, and I know this certainly is the case in California, our local jails, and these are the county-run facilities, are often holding individuals who have been convicted of felony charges and are awaiting transfer to State prison, so my amendment is designed to recognize the problem of jail overcrowding and recognize the fact that, again, local correctional facilities are often being used as an adjunct of the State penal system.

Mr. Chairman, we all know that jails are a less secure facility than a prison. Jails are designed to detain temporarily prior to trial those who have been charged with a crime, or to incarcerate minor offenders. Increased enforcement efforts and a heightened public concern about crime have added the pressure on all of our correctional facilities, but certainly, again, our local correctional facilities in communities throughout America.

Let me turn to the other issue, Mr. Chairman, which is the question of requiring secured bail from offenders, and these are individuals who have been charged with crimes, versus free bail, which is the practice of releasing individuals right back out into the community on what is known as OR, their own recognizance, and their personal promise to appear in court at a later date to stand trial on the original charges.

According to the Justice Department's own statistics, 60 percent, 60 percent of State felony defendants who are released prior to trial are not required to post bail. This has created an unintended effect in our local communities, because one-third of these individuals are either rearrested for a new offense before trial, or fail to appear in court as scheduled. Of course, as we all know, failure to appear in court on original charges is in and of itself an additional crime.

Mr. Chairman, of those already on pretrial release, 56 percent are released again when arrested on new felony charges. That literally boggles the mind, the notion that somebody could be released on a felony charge, and this is an initial crime, for an initial crime and an initial arrest, released back into the community, again many times simply on their written promise to appear in court at a later date, and then commit additional felony crimes.

What we know from the research is that those on secured release, that is to say, those who have been required or who have associates or relatives who have assisted them in posting a commercial bail bond, are far more likely to come back to court and answer the charges against them than those who are released on their own recognizance. Fewer people are rearrested while out on secured release.

My amendment, by requiring in most instances the posting of a cash bail, would save the taxpayer money, since private industry is then put in a position of monitoring criminal defendants and not taxpayer-supported officials.

Mr. Chairman, the justice system should favor the victim, not the criminal. That is the common theme that runs throughout our efforts here on the floor over the last few days as we enact the crime provisions, the anticrime provisions, I should say, in the Contract With America.

My amendment, like the rest of the Contract With America, will reduce Government, reduce taxes, and reduce crime.

RIO DELL POLICE DEPARTMENT,
Rio Dell, CA, December 29, 1994.

DEAR CONGRESSMAN RIGGS, I am writing to you on behalf of the Law Enforcement Chiefs Association of Humboldt County. We are facing a critical point in trying to enforce the laws of this state and country. Due to the Humboldt County Jail capacity rating of 200 inmates, we are being forced to cite and release persons for auto theft, persons committing burglary and other types of felonies. All misdemeanors have to be cited and released in the field.

The problem with the cite and release system is that these persons are given a date and time to appear in court. Problem is, they never show up for their court appearance. So then a warrant is issued for them. They are picked up, arrested, and cited and released again. These subjects know they are not going to go to jail, so they don't show up in court, again and again. This goes on and on, month after month, year after year.

It has gotten to the point that it is causing a morale problem with all police officers in all law enforcement agencies in Humboldt County. If a citizen knows that a subject was picked up, arrested, then they think that this person is in jail. So next, they see them on the street the same day and then they come after the officers, wanting to know why the person is not in jail. The officers try to explain to them the way the system is working. But the citizens don't care about that. They blame the police officers and the police departments because these subjects are back out on the street. Ninety five per cent (95%) of the warrants we get from the court state, "Do not cite and release. Mandatory appearance requested." We still have to cite and release these persons because the jail will not take them.

We have a new jail being built that will not be completed until 1997. And even then we will be back to square one again. Within thirty days, we will be facing the same problem again as the new jail will not hold over 250 inmates.

We are losing the streets to these criminals because of the system. They know that if they are arrested, all we can do is cite and release them again. Point. My department arrested the same person three times in one week for burglary. We have had to cite and release persons with over $100,000 in warrants because they did not meet the criteria to be housed in the County Jail.

We are seeking your help in securing the abandoned Navy facility at Centerville Beach in Humboldt County to be used as a County Jail Farm with the following usage; to house all these subjects with these outstanding warrants and persons that are arrested that did not meet the criteria for the main jail.

Also, we wish to establish Project Challenge. At one time, we had Project Challenge but we lost the funds because the state cut funds on us. Project Challenge deals with drug users who will work with us to try to get off drugs, try and make useful citizens out of them.

The Centerville Beach Navy facilities face the Pacific Ocean. It has all the equipment that would be needed. It has its own power system, if needed. It has a large gymnasium that would be beneficial for the inmates, and a large kitchen. There is over 17 acres, nine of those acres could be farmed and used to raise cattle that could be used to feed the inmates at this facility and those at the main jail. They could farm produce.

We, the Chiefs of Law Enforcement of Humboldt County, believe that if we can secure this facility, and if inmates are kept busy and with the clean environment that this location has, it is possible to turn some of these inmates around and make useful citizens out of them. Get these people on the right path and out of the system.

No inmate would be released from this location as it is ten miles out from any city. So all inmates would be transported back to the main jail in Eureka and released from that location.

We, the Chiefs of Law Enforcement Association of Humboldt County, hope that you can help us secure funds, possibly from the new Crime Bill, to secure the facility. We will be forever indebted to you for any help that you can render us.

Sincerely,

G.P. GATTO,
Chief of Police.

[From the Times-Standard, Feb. 8, 1995]

FEDERAL FUNDS FOR POLICE OK'D

(By Kelly Johnson and Christopher Rosche)

Help is on its way in the fight against crime in Eureka, city officials said Tuesday.

Arcata, Fortuna, Rio Dell and the Del Norte County Sheriff's Department also will receive money to cover part of the cost of one new officer each.

The Justice Department announced the grants to the three cities Tuesday as part of anti-crime legislation Congress approved last year. President Clinton, who supported the legislation, had earlier promised federal seed money to put 100,000 more police officers on the nation's streets.

Tuesday's grants went to communities having populations of less than 50,000. California was cleared to receive $16 million to help hire 212 additional officers in cities throughout the state.

Eureka will receive $75,000, Mayor Nancy Flemming told the City Council at a meeting Tuesday night.

Police Chief Arnie Millsap is interviewing officers to fill current vacancies, she said, calling the interviews an "important step forward."

"They're on their way, folks, and it is going to help," she said of the new officers.

Arcata and Fortuna also are eligible for the maximum $75,000. Rio Dell could receive up to $66,883.50, the Justice Department said.

Del Norte County's cap is $70,292.25.

The money to all agencies, however, will not be available until the new officers are sworn in.

The communities in line to receive money must also submit budget information and community-policing plans.

In Eureka, Mayor Flemming thanked her City Council colleagues Tuesday night for "moving forward aggressively to get all these frightening numbers down and get our city back the way we want it."

Legislation introduced by state Assemblyman Dan Hauser, D-Arcata, also would help, Councilwoman Jean Warnes said. His bill would require the state to transport Pelican Bay State Prison parolees back to the counties in which they were convicted.

She urged residents to call or write Rep. Frank Riggs, R-Windsor, for help in fighting crime in Eureka. The city can use its high crime statistics to show the state and federal government that Eureka needs even more help, she said.

In a sampling of two dozen California cities, Eureka appeared to have a 1993 per capita crime rate second only to Oakland's. City statistics show that property crimes in Eureka sharply increased from 1993 to 1994.

A big problem, officials said, is Humboldt County's "cite and release" jail policy. People who commit nonviolent crimes are released because the jail is too crowded.

That policy is "scaring us to death," Flemming said.

Councilman Jim Worthen said he personally will ask federal representatives for help when he travels to Washington, D.C., next month on behalf of the National League of Cities.

Eureka also must continue to work with other local cities to find solutions to the crime problem, Councilman Lance Madsen said.

In its fight against crime, Eureka has to do something about the "conspiracy and blackmail by the homeless movement," Councilman Jack McKellar said. But the city is limited in what it can do about the homeless problem by state and federal requirements and possible legal challenges, he said.

On Capitol Hill, the new Republican majority is working on anti-crime bills that would replace the grants earmarked for police hiring, drug courts and social programs with combined block grants. The money would go directly to local officials who would determine, within some limits, how it would be spent.

The new legislation would not, however, cancel police grants already awarded.

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

Mr. RIGGS. I am happy to yield to the gentleman from Florida, the distinguished subcommittee chairman.

Mr. McCOLLUM. I think the gentleman offers an excellent amendment, Mr. Chairman. What he is doing is carving out an ability for the States, if they want to, to use up to 15 percent of their money for jail construction and jail operation, not just State prison moneys; prison construction, provided that they have the same type of strong, tough bonding requirements on pretrial release that the Federal Government has.

I think that is a very constructive amendment. It limits the amount that could be used for the jail purposes, keeps within the concept of what the prison grant program is all about, and it would add a condition which some States will meet. Some States will not, but it is an excellent carrot, as well, for that purpose, so I commend the gentleman on his amendment.

Mr. RIGGS. I would like to point out, to follow up what the subcommittee chairman said, that we do have current statistics or recent year statistics from the Justice Department, and I would like to point out to my colleague on the other side of the aisle that in the calendar year 1992, and this is Justice Department statistics for those arrested on serious charges, 37 percent of those arrested for violent offenses were released on a nonfinancial basis; 24 percent were released simply on their own recognizance and personal promise to appear in court at a later date.

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

Mr. RIGGS. I am happy to yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, I am curious about the gentleman's amendment. If the court were to devise or a jurisdiction were to devise a system which allowed for a deposit, say, of 10 percent of the amount of bail with the court, refundable if the defendant showed up for trial, would that be an acceptable alternative to buying a bail bond from a private bail bondsman under this proposal?

□ 1010

Mr. RIGGS. Reclaiming my time to respond to the gentleman, because I think that is a very legitimate question, it is the intent of my amendment to let the States develop those standards.

Mr. BERMAN. So one would not be required to utilize a private bail bondsman under this proposal.

Mr. RIGGS. The gentleman is correct, that would not necessarily be the requirement.

Mr. BERMAN. One more question. If the jurisdiction in certain kinds of situations offers a kind of confinement, home monitored confinement or some other alternative to assure themselves the individual's presence, is that a suitable alternative?

It is different, it is more restrictive than OR. It provides security for the law enforcement authorities about where the individual is. Is that an acceptable alternative to buying a private bail bond?

Mr. RIGGS. I think the gentleman makes some very constructive observation and questions, and I appreciate them. As the author of the amendment and maker of the motion I would find that to be an acceptable alternative to simply releasing an offender or defendant on personal recognizance.

Mr. BERMAN. Could I suggest then instead of casting this in terms of without a financial guarantee, strike the word; either put financial guarantee or other suitable guarantee. I think that perhaps will solve the problem, other suitable guarantee.

Mr. RIGGS. Reclaiming my time, I would like to give some further thought to the gentleman's suggestion. What we are striving for here though is a financial guarantee in most instances, not all, but most, because again, the evidence clearly shows that the financial guarantee is much more likely to ensure the defendant's return to court or an appearance in court to stand trial on the initial charges, No. 1, and much less likely to commit a subsequent crime while free on release.

Mr. BERMAN. If the gentleman will continue to yield, and I appreciate him doing so, I do not have my own knowledge of the statistics, but I accept the proposition, and I know that in some jurisdictions there are creative alternatives, electronic monitoring devices that ensure the individual cannot leave the home without the authorities knowing, these kinds of things.

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). The time of the gentleman from California [Mr. RIGGS] has expired.

(On request of Mr. BILBRAY and by unanimous consent, Mr. RIGGS was allowed to proceed for 2 additional minutes.)

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

Mr. RIGGS. I yield to the gentleman from California.

Mr. BILBRAY. Mr. Chairman, I think this issue is the old bracelet concept. As an individual who has operated the system for 10 years, I just would like to point out to my colleague from California that we are really talking about apples and oranges here. This is a great system. We have used it as an alternative to incarceration, but as far as I know they are being used for presentenced individuals, they are not for sentenced individuals, as an addendum to incarceration, not as a guarantee to come back, because there is that issue of processing that has been addressed again and again. We have used that very effectively in San Diego County and across California, but to use it in lieu of bonding, I think we have administrative problems.

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

Mr. RIGGS. Let me suggest at this point to the gentleman that we can informally meet to discuss this.

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

Mr. CONYERS. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding the time. I will just be very quick.

The amendments as proposed is an absolute requirement of a financial guarantee. The gentleman from California, from San Diego spoke about his experiences. He may be right about San Diego. I think there are some other jurisdictions where alternative systems, not simply OR release, but alternative systems are utilized to monitor a defendant in the pretrial phase, and I think providing a little bit of flexibility in this provision so we do not rule out those nonfinancial situations as well as what the gentleman has already done would help to make it clear that you do not have to buy a private bail bond and the gentleman does not intend this to be a bail bondsman bill. This is for law enforcement, and there should be alternatives to the bail bondsman clearly that those are allowed. Those are the only suggestions I would have.

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

Mr. BERMAN. I yield to the gentleman from California.

Mr. RIGGS. I appreciate the gentleman yielding. Again I would be happy to look at the language that would address, as the gentleman from California put it, alternative arrangements. But I would refer the gentleman to paragraph one under clause c in my amendment which allows the Attorney General to make the determination if States have enacted pretrial release requirements, and that is fairly broad, at least as restrictive as those found in the Federal system. And I think the gentleman may be looking at just the second paragraph which talks about a financial guarantee.

Mr. BERMAN. If I can just reclaim my time, section 3142 is what? In other words, at least as restrictive as those in 4132? Those allow alternatives to financial guarantees.

Mr. RIGGS. If the gentleman would withhold for a moment, we can perhaps go right to the United States Code and find those provisions. Will the gentleman yield?

Mr. BERMAN. I am happy to yield to the gentleman from California.

Mr. RIGGS. Under section 3142, which runs a couple of pages at least, it does speak at the beginning of that section about release or detention of a defendant pending trial, and I quote,

> Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—(1) released on personal recognizance or upon execution of an unsecured appearance bond.

That is under subsection b of the section.

Mr. BERMAN. Just to reclaim my time, if what I hear is correct, since the gentleman is providing in subsection c the alternatives of one or two, then the alternatives described in 3142 are sufficient if they exist at the State level to qualify for this provision?

Mr. RIGGS. The gentleman is correct. I think that would address the gentleman's concern.

Mr. BERMAN. Therefore, it is not an automatic requirement of a financial guarantee?

Mr. RIGGS. The gentleman is correct.

Mr. BERMAN. It is that or the provision set forth in section 3142?

Mr. RIGGS. The gentleman is correct.

Mr. BERMAN. I thank the gentleman.

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

Mr. Chairman, this is a disturbing proposal for the following reasons: We are first of all dealing with pretrial and we are requiring cash bail. What if the person does not have cash? What if the person does not have any previous convictions? It is not clear to me at all why we need to be micromanaging into the 50 States in the Union to determine how they ought to have bail requirements in each State, and it is because

of that that I do not have any sympathy for creating new micromanaged requirements that would take 15 percent out of the prison construction to allow for jail construction if in fact we merely tighten up the bail requirement by requiring cash at the beginning when guilt or innocence has not yet been proven.

So I am disturbed about this amendment, and since it has not been passed through the Justice Department, they have given us no indication that they would be supportive of it, and I do not remember it coming up in the committee during the discussion of the crime bill, I am very unexcited about here, with a dozen Members on the floor, we are now going to create another micromanagement position for the States.

□ 1020

And I thoroughly think that we should be getting kind of full of telling States of how to manage their criminal justice system.

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

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. SCOTT. I would like to ask the gentleman: You have indicated we did not have hearings, so we did not have an opportunity to flesh out the constitutional implications.

Do you have any idea how the various States will be affected by this amendment?

Mr. CONYERS. Well, because there was no hearings, we are trying to see how this even fits into the Federal Criminal Code and into the existing sections, and even into the bill itself. So bringing something of this magnitude down on the floor is just to me something that we do not need to deal with now. I mean, maybe there was some reason this did not come up in the hearings, but there is no way that I am going to now suggest that on all of the things that we have put on the States that we are now going to tell them how they ought to handle their pretrial bail circumstances.

You know, can I suggest that may be some bail bondsman's organizations may be, politely, behind some of this emphasize to create new requirements that would need their services? Because I do not know why else we would want to do it this way, and the gentleman is even thinking about the suggestion of the gentleman from California [Mr. BERMAN] that maybe even if it could be paid into the courts would be at least a small amelioration of the problem that I see, and the gentleman is still reflecting on that.

So, as you can tell, there is very little enthusiasm on this side of the aisle for the amendment.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Chairman, I thank the ranking Member for yielding to me.

I guess my concern goes substantially beyond the ones that have been expressed and back to the provisions of the fourth amendment to the Constitution which says excessive bail shall not be required, and yet here we are kind of micromanaging the State courts again and having it done by a group of people who have told us that they believe in all these States' rights, and all of a sudden we are telling the States what to do in every area of the court system, every area of the incarceration system. That is basically where I am.

I mean, I just cannot understand why States' rights advocates are consistently coming into this body and micromanaging what the States have been doing. We have had no involvement in all of this time. I just have trouble understanding that.

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

Mr. CONYERS. I yield to the gentleman from California.

Mr. RIGGS. Mr. Chairman, I thank the distinguished ranking Member for yielding to me.

Mr. Chairman, I want to point out again, as I said in my opening remarks, that my amendment will give greater flexibility to States by permitting those that adopt strict pretrial release practices or, speaking to the concern of the gentleman from California, require cash bail for defendants charged with serious and violent crimes to use some of the funds under the act for jail construction.

This is not a new mandate. It is simply an additional option, and I appreciate the gentleman yielding.

Mr. CONYERS. May I suggest that we do not know what the various States are really doing on a State basis, and so we now have another qualification in the prison construction bill that tells the States what they must do to qualify for construction funds, and then we are now telling them how to run bail bonding at the same time, and then the gentleman from California [Mr. RIGGS] is resisting the modest proposal of the gentleman from California [Mr. BERMAN] which might make it at least palatable to the gentleman from California [Mr. BERMAN], even if it is does not for myself.

So I now find myself more often defending States' and local governments' rights to determine what their laws are going to be. Is there some assumption built into this amendment the States do not know when they have a dangerous crime or a person who may not show up in court, and that the only way that we are going to get them to show up in court is that we give a 15-percent set-aside in prison construction money for them to build more jails? And is that the real reason that they are not keeping people who you apparently think ought to be put on bail?

I mean, what are we doing in this process? Why are we here now? Merely because we have a crime bill to tell the courts that they are letting out too many people without getting cash bail and they are not coming back, and they would come back faster if you put bail requirements, cash bail requirements, on them, and to make sure you do that, we will give you some money to build some more county jails or State jails?

I do not think this is something that this committee has investigated sufficiently for us on our side to give any blessing to it in this brief discussion.

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

Mr. CONYERS. I yield to the gentleman from North Carolina.

Mr. HEINEMAN. Mr. Chairman, I think we have reached an area where we are talking about micromanaging States as it relates to bail and other issues. This is an issue for the Congress to talk about, because it is a national issue; I think just as any other national issue, we do have standing in putting certain qualifications on the States, being it is a country issue, it is an issue of the United States as a whole, and just as there was a bubonic plague in this country at one point, we cannot expect one State to give inoculations and the others not to.

This is just as bad as a disease plague, this crime. We have to treat it across this whole country in the same way in order to have a national effect, and unless I am wrong, I think we do have standing in telling the States that they should be doing this in concert with all the States.

Mr. CONYERS. Reclaiming my time, I am not saying we do not have any right to look into this matter. All I am saying is that we had hearings, witnesses, markup, and now we meet on the floor to pass a pretty complex piece of legislation, and now it comes up, and so it is the timeliness part that I am inquiring into. I need a lot more information.

Mr. RIGGS. Mr. Chairman, I yield myself 1½ minutes, the remainder of my time.

Mr. Chairman, I want to make it very clear to my colleagues, because I think they are expressing genuine concerns, No. 1, I am not acting as a foil for the commercial bail bond industry. I somewhat resent that inference.

I am trying to address, however, a major public safety concern which is related to jail overcrowding and the fact that we have increasingly moved away from financial guarantees or alternative release provisions that will attempt to do two things; first, ensure that that individual appears in court at the scheduled date to stand trial on the original charges, and all the evidence is that they are much less likely to appear in trial if they are released back

into the community on their own recognizance and personal promise to appear, much like signing a traffic citation.

And, second, we are attempting to cut down on the immediate recidivism. The criminal justice system should not have a revolving door at the front. These individuals are going right back out into the community, many times beating the arresting officer back on the street, or committing subsequent serious crimes.

So I am addressing a major public safety concern. I am doing it in the form of flexibility to the States that want to, working with the State attorney general, adopt arrangements that will, in fact, lead to pretrial release form across this country.

□ 1030

That is the intent of my amendment.

Mr. CONYERS. Mr. Chairman, one final question, if I may. Will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding.

Mr. Chairman, why do we assume the State courts cannot figure out that they need more jails to house people?

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). All time has expired.

The question is on the amendment offered by the gentleman from California [Mr. RIGGS].

The amendment was agreed to.

The CHAIRMAN pro tempore. Are there other amendments to the bill?

AMENDMENT OFFERED BY MR. MCCOLLUM

Mr. MCCOLLUM. Mr. Chairman, I offer an amendment marked B.

The Clerk read as follows:

Amendment offered by Mr. MCCOLLUM: add at the end, the following new title:

SEC. 1. BUREAU OF PRISONS COMMUNITY SERVICE PROJECTS.

(a) IN GENERAL.—Chapter 303 of title 18, United States Code, is amended by adding at the end the following:

"§ 4047. Community service projects

"(a) Subject to the limitations of subsection (b), the Chief Executive Officer of a Federal penal or correctional facility may, as part of an inmate work program, provide services to private, nonprofit organizations, as defined in section 501(c)(3) of the Internal Revenue Code of 1986, or to a component of any State government or political subdivision thereof. Such services shall be provided pursuant to rules prescribed by the Attorney General.

"(b) Services provided under subsection (a)—

"(1) shall be used only for the benefit of the recipient entity and not for the benefit of any individual or organization other than the recipient; and

"(2) shall not displace an employee of the recipient or result in a reduction in hours, wages, or employment benefits of any employee of the recipient.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of chapter 303, title 18, United States Code, is amended by adding at the end the following new item:

"4047. Community service projects.".

Mr. MCCOLLUM (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN pro tempore. The gentleman from Florida [Mr. MCCOLLUM] will be recognized for 10 minutes.

Does a Member rise in opposition to the amendment?

Mr. CONYERS. Mr. Chairman, I am not in opposition to the amendment, but I would like to use the time allotted.

The CHAIRMAN pro tempore. Without objection, the gentleman from Michigan [Mr. CONYERS] will be recognized for 10 minutes.

There was no objection.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from Florida [Mr. MCCOLLUM].

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

Mr. Chairman, this amendment is very simple and straightforward. I hope it is noncontroversial and we can dispose of it.

Mr. Chairman, the Bureau of Prisons has informed me that they have some questions that have been raised about their ability to be involved in community service projects with the 95,000 or so Federal prisoners around the country. This would make it possible for the law to let them go do a lot of community service projects, of course under restrictions, for private, nonprofit organizations or local cities or communities.

Apparently, right now the interpretation of the law is they can only do these community projects and work projects, if there is a Federal hook; that is, a Federal program or some Federal nexus being involved in the money perhaps that goes to the local community service group that they are providing work and assistance to.

This would allow them to go out to whatever nonprofit organization, city or county or political subdivision, whatever it may be, and provide community service.

We have been very careful to restrict this; it does not involve the production of any product that would go out, although that might be an arguable thing that we should allow them to do at some point in time in the prison industry. But this does not get involved in that, not involved in the debate over prison expansion or expansion of prison industries.

What it says is, inmate work programs can go out and help people as a community service, a volunteer thing, in lots of ways they are not now allowed to do.

I would think for the purposes of getting more work out of prisoners and getting them to do, giving them an opportunity to do a public service while they are at it, that this is a very good, simple amendment, appropriate to the bill with which we are dealing today. It is something they badly want.

I would encourage its adoption.

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

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

Mr. Chairman, my concern here—and we just received this amendment—is that we are not getting into the very sensitive area of products being produced by inmates. There is a whole area that is very sensitive in this regard, and I am very concerned that that is not happening anywhere throughout this provision.

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

Mr. CONYERS. I yield to the gentleman from Florida.

Mr. MCCOLLUM. I thank the gentleman for yielding.

Mr. Chairman, I have been careful to scrutinize this, very careful. When we saw some language in the Bureau of Prisons they felt was not offensive in that regard because it involved some nature of products which would be exempt normally from all the considerations, I even struck that language from the amendment.

So we are not offering anything that even has the word product in it so we do not get into that kind of debate. We have taken it out of there, any reference to the word product in the original language is gone from this amendment. It is strictly service; literally that is what it is, nothing else. Every reference to any kind of product or prison industry is gone.

What it reads now, so that we will be very clear is: "Subject to the limitations of subsection (b)," which is where we talk about the services provided,

* * * the chief executive officer of a Federal or penal correctional facility may, as part of an inmate work program, provide services to private, nonprofit organizations, as defined is section 501(c)(3) of the Internal Revenue Code of 1986 or to a component of any State government or political subdivision thereof.

Strictly of services.

(b) talks about the services, what the services can be,

* * * shall be used only for the benefit of the recipient entity and not for the benefit of any individual or organization other than the recipient and shall not displace an employee of the recipient or result in a reduction in hours, wages, or employment benefits of any employee of the recipient.

It is really what it says it is, pure volunteer-type community service projects without displacing the worker at all.

As far as the section 501(c)(3) organizations, and State or local units of government, so there is no problem.

Mr. CONYERS. I believe this gentleman is satisfied as to the concern

that I had. I see nothing but services throughout this, and that is the only word repeated throughout this, and the word "product" is crossed out.

I assume that what we see is what we get, and I am prepared to accept the amendment.

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

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

The CHAIRMAN pro tempore. All time has expired.

The question is on the amendment offered by the gentleman from Florida [Mr. McCOLLUM].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. CARDIN

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. CARDIN: Page 8, strike lines 7 through 11, and insert the following:

"(1) $990,300,000 for fiscal year 1996;
"(2) $1,322,800,000 for fiscal year 1997;
"(3) $2,519,800,000 for fiscal year 1998;
"(4) $2,652,800,000 for fiscal year 1999; and
"(5) $2,745,900,000 for fiscal year 2000.

Mr. McCOLLUM. Mr. Chairman, I reserve a point of order on the amendment.

I would like to hear the discussion first before I withdraw or otherwise deal with my point of order.

The CHAIRMAN pro tempore. The gentleman from Maryland [Mr. CARDIN] will be recognized for 10 minutes, and a Member in opposition will be recognized for 10 minutes.

The Chair recognizes the gentleman from Maryland [Mr. CARDIN].

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

Mr. Chairman, the amendment I have offered is a modest cut in the dollars that are provided in this bill for additional prison construction. It is a cut of $7.2 million per year. This will allow us flexibility when we consider H.R. 728, to reinstate the funding level for the GREAT program that was enacted in the 1994 legislation.

The GREAT program is the Gang Resistant Education and Training Program. It is a program that has been very successful, operated by Treasury with local law enforcement and school officials. It provides police officers in our 7th grade in our schools in order to work our youth to prevent gangs from developing. It has worked in many of our communities.

What it does is instill a better attitude with young people concerning police officers, which has been proven to deter gang activities.

Let me just cite some of the results quoted from the Arizona GREAT program. As a result of that program, we have seen a drop in the percentage of all ethnic groups who say they belong to a gang, who want to be gang members. The percentage of students who reported getting into various kinds of trouble decreased after participating in GREAT. The percentage of students who know gang members and who want to be gang members decreased after students participated in the GREAT program.

The GREAT program has worked. It currently is a partnership between the Federal Government and local law enforcement, along with our schools.

Mr. Chairman, we have a problem in Baltimore. I did not realize we had a gang problem in Baltimore. I have met with our police commissioner in our city, Mr. Frazier. He has pointed out that we are starting to see more and more gang activity in our cities. As a result of the legislation passed last year by this Congress, Baltimore is now one of the 11 communities which have a GREAT program operating. It is going to provide police officers in our schools in Baltimore, working with our youth to deter gang activities.

Currently, there are nine communities that had GREAT programs, prior to the enactment last year of this legislation. As a result of last year's legislation, 11 more communities have this program. We are doubling the funds for the GREAT program. Originally only Hawaii; Phoenix; Albuquerque; Portland, OR; Kansas City; Detroit, Philadelphia; Tucson; and Prince George's County had GREAT programs.

As a result of the legislation last year, Trenton, NJ; New York City; Washington; Boston; Miami; Memphis; Las Vegas; Los Angeles; Milwaukee; Wilmington; and Baltimore now are in this program.

Mr. Chairman, I am imploring the sense of fairness of all Members of this House. We are here to set priorities.

The amendment that I am suggesting will be a very modest cut in prison construction, $7.2 million. According to the information that has been made available for me, the average cost of a medium-security prison would cost $36 million today, and a maximum-security prison in Florence, CO, costs $66 million. $7 million will hardly build the entrance to these types of facilities or the reception center.

Compare that to building part of a prison, to developing 11 programs in our communities working with the police and students to stop gang activities.

□ 1040

Clearly we are better served by putting the money into our schools, putting the money into prevention. Yes, prevention. Last year we had a good balance between prevention and prison construction. I am just asking that in this one case a program in which the Federal Government has assumed a good deal of responsibility in making funds available to local governments, that we provide the wherewithal through this amendment so that we will be able to continue that program.

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

Mr. McCOLLUM. Mr. Chairman, I will withdraw the reservation of a point of order.

The CHAIRMAN. The reservation of a point of order is withdrawn.

Mr. McCOLLUM. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Maryland [Mr. CARDIN]. I did not see that there was any problem with this amendment technically. I do, however, oppose the amendment.

What the gentleman is attempting to do is take some money, strike it from this bill, x amount of dollars, and then have it reserved or be able to argue next week, presumably when we bring up the prevention and the local block grant programs, that there is some money available to tack on that he saved to tack on some program for gang prevention.

First of all, I do not like the idea of taking any money out of the prison grant program. I think we got the right amount in here. I see no reason to do that, to reduce it by whatever sum, however paltry it may appear. I think these several millions of dollars over the 5-year period is not that paltry. It is pretty significant. It is, I think, $7 million 1 year, a couple million another, and it all adds up to $20 or $30 million more.

But besides that, in principle we are beginning already by this amendment the debate on the local community block grant concept that is going to come up next week in the block grant bill where we are going to provide, or we do provide in that bill that will come out here on the floor, some $10 billion to the local cities and counties to use as they see fit to fight crime. I am quite sure that when we get to that and we have that debate the point will be well made, and everybody here can see it and understand it, that the best arguments that the gentleman is going to make about having gang prevention programs will succeed in many cities. They will succeed, I think, in quite a number of them, probably in Baltimore, near his area, maybe in Orlando, in my city, when the plea is made to the city council or to the county commission who gets the moneys under that bill, but not every community needs gang prevention programs. Not every community has a gang problem, and it seems to me that that is the essence of what that debate next week is going to be.

We should provide resources to the cities and the counties with maximum flexibility to fight crime, to use in the best way they see fit in their particular community, because what is good for somebody in Fresno, CA, might not be good for somebody in New London, CT.

It is an entirely different scenario in each case, and what the gentleman is suggesting doing here today is take some money, let us save some money today, so I can offer a specific, targeted, categorical grant program for gang prevention in a bill that will come up next week that is not even designed for categorical grants. It is designed entirely the opposition direction, for pure block grants with maximum flexibility that does not designate how this money is to be used, nor do you have to say you have to use it for that in order to qualify for it.

So, I have to oppose this amendment, do oppose it for both the reasons of its cutting the money out of this bill and because of the gentleman's stated purpose for doing it.

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

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

Mr. CARDIN. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, the Treasury Department's gang resistance education amendment is a worthy program, and I think the amount is small enough so that, if it is deleted from prison construction legislation, there will be no great harm done. It is not like we have a whole string of these. This is the only one of this kind that I know that has occurred, and I met several times with the Assistant Secretary of the Treasury, Ron Noble, who is fully committed to eliminating the influence of gangs through demonstration projects.

Now we all complain about the increase of gang participation. Here is something that we can do about it, and so I do not want to jeopardize this provision, and I support very enthusiastically the amendment.

Mr. CARDIN. Mr. Chairman, I thank the gentleman from Michigan [Mr. CONYERS] for his comments.

Clearly we are here to make choices, and this is a very minor cut as far as prisons are concerned, cannot even build part of a prison of any significant size.

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

Mr. CARDIN. I yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, this is a minuscule amount of money, but it is money that will actually work. Gang reduction programs work. A program was studied in a Spokane, WA, school. They used a school to offer at-risk youth a variety of recreational and educational activities just Friday and Saturday nights. There was a volunteer effort of local merchant-donated materials. There was an intense evaluation that found that crime was reduced in the area after the program was implemented. The view of police officers as positive role models by youth was enhanced, and most of the participants recommended the program to their friends.

This will reduce crime. The minuscule amount of money that will get lost in rounding off in the prison construction changed to this kind of program can do the most good. Mr. Chairman, I would hope that we would adopt this very worthwhile amendment.

Mr. CARDIN. Mr. Chairman, it is interesting that my friend from Florida [Mr. MCCOLLUM] cannot point to any harm done by this amendment, yet the absence of enacting this amendment and providing the wherewithal will have severe consequences on communities that are trying to prevent gang activities, working with the police and working with the schools, and I would urge my colleagues to support the amendment.

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

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

I just have to point out the fact that this is not minuscule, and any of us who get here and think that a million dollars, and this is much more than that, this is $20, $30 million when it cumulatively is looked upon over the 5-year life of this bill; anybody that thinks this is minuscule has really got blinders on. This is what the public gets outraged about, to think we can come up here and think that a million dollars, or $2 million, or $3 million, or $7 million, or $30 million, is minuscule. It is not. It is something, real money.

And the second point I would like to make is, yes, I do see some harm in this. This is the camel's nose under the tent, sure enough, because what the gentleman is suggesting is that we take this money and allow him then next week in a different bill to say and make the claim that he is using this money for categorical grant programs when this side of the aisle does not believe there ought to be categorical grant programs for prevention in general. We do not believe that the money ought to be designated by the Federal Government to go for gang prevention any more than we believe it ought to be designated to go for cops on the streets. We believe that the moneys that are submitted to the States, actually submitted directly to the counties and the cities in that bill to be offered out here next week, should be given to them to use in their sole discretion to decide whether they want to use it for gang prevention or something else. But we should not create special programs in this area that weed out all whys, and we do not know that.

So I think this is a very significant amendment. I think it is an amendment that thrusts us into the debate next week, and I think the gentleman from Maryland [Mr. CARDIN] knows good and well that it does, and I strongly oppose it for that reason.

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

Mr. MCCOLLUM. I yield to the gentleman from Maryland.

Mr. CARDIN. Mr. Chairman, does the gentleman know what an average cost for a maximum security prison is today?

Mr. MCCOLLUM. I do not have it off the top of my head, but I am sure it is more than your bill by quite a lot, or your amendment.

Mr. CARDIN. And the same thing with a medium security prison. We cannot build a prison for the amount of money that is in the amendment that I have brought forward, but yet in the absence of this amendment being made available, 11 communities will go without a program dealing with any antigang activities.

I think it is a clear choice.

Mr. MCCOLLUM. Well, reclaiming my time, I would like to say to the gentleman, I don't believe any community is going to go without a gang prevention program that wants it, and we're going to have a bill out here that provides to the cities and communities of this country over $10 billion next week to use as they want to use. Surely those that want gang prevention programs and think they are important will be able to find a lot more than this gentleman's amendment would provide for that purpose next week.

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

Mr. MCCOLLUM. I yield to the gentleman from Maryland.

Mr. WYNN. Mr. Chairman, I rise because I have to point out that just yesterday, after the gentleman tells us today that this money is for prisons and should only be used for prisons, just yesterday, when we were debating the question of unallocated funds, the gentleman hurriedly put together an amendment to send these unallocated funds back to the Federal Government, not to the local governments that he says ought to be the decisionmaking entities, but rather back to Federal Government to build Federal courthouses——

Mr. MCCOLLUM. First of all, reclaiming my time, we did not send the money back by that amendment to build Federal courthouses. We sent it back for very severe law enforcement purposes, including the FBI, the——

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

Mr. MCCOLLUM. I will not right now—to criminal investigators of the INS and for purposes of building more Federal prisons, if that is what is needed.

Second, what we are dealing with are apples and oranges here. We are dealing with are apples and oranges here. We are dealing with a question of prevention programs versus prisons. We are dealing with two different things here.

□ 1050

Yesterday we were dealing with a question of the unallocated funds if we do not use them all up. Today we are stripping money out altogether, not designating 36 or however many million dollars for some other purpose if it is not used in this bill. We are actually stripping money out of this bill altogether presumably so the gentleman from Maryland [Mr. CARDIN] can make an argument next week that he saved this money for another amendment that he can offer for a categorical grant program that this side of the aisle simply does not believe with in principle. Not that we do not believe there should be gang prevention programs, but we do not believe that the Federal Government should be dictating through categorical grants that you have got to have a gang prevention program to get *x* amount of money. That is the difference.

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

Mr. CARDIN. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from Maryland [Mr. CARDIN] has 3 minutes remaining, and the gentleman from Florida [Mr. MCCOLLUM] has 3 minutes remaining.

Mr. CARDIN. Mr. Chairman, I am glad to yield 1 minute to the gentleman from Maryland [Mr. WYNN].

Mr. WYNN. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I want to go back to this point, because I was on the floor when we had the debate about unallocated funds, and I want to really heighten the contradiction that has taken place here today.

In point of fact, the gentleman from Florida did allocate money to Federal courthouses and Federal prosecutors, and, by his own statement, INS, another Federal agency. I do not know how we got from local prison funds back to the INS and back to the FBI and back to the Alcohol, Firearms and Tobacco Bureau and back to Federal courthouses, because that was the testimony of the gentleman from Kentucky [Mr. ROGERS] on this floor when he said yes, we need more Federal courthouses and more Federal prosecutors and we need more Federal this and that.

The fact of the matter is the gentleman had no problem taking money out of the program, unallocated funds, and sending them back to the Federal Government, but yet now when we have the very legitimate program that deserves attention, he resists taking a very small amount of money for a very worthwhile cause.

It seems to me that gang prevention is a better use of our dollars than continuing to build these prisons or, as what happened yesterday, sending money back to Federal agencies.

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

Mr. Chairman, I just want to respond to the gentleman from Maryland [Mr. WYNN] who made the points he did. Yesterday's amendment that he keeps referring to, there was some confusion during the discussion, but there was absolutely no money and is no money being allocated or reserved or blocked off that is not used for the grant programs under the prison program here today for the possible use in constructing or operating a Federal courthouse.

There were several provisions being made though in case the money is not used up in this bill, in case the States do not use it all. I think they will use it all for building prisons or operating State prisons, but if they do not, then the appropriators may use the moneys left from these grant programs at the end of the periods of time out where they are not used, for the purpose of the Federal Bureau of Investigation, INS investigators, U.S. attorneys, as I recall, and the National Institute of Justice for Technology Development.

I believe that was the limit of what we did yesterday. The point is still the same, and that is that Mr. CARDIN's amendment is not designed to tell us where to put unallocated, unused funds in this bill. The gentleman is striking several million dollars from this bill altogether. That is quite a different matter.

I am strongly opposed to that, and I am strongly opposed to the principles being espoused to use that money, to hold it back somehow so it might support an argument on an amendment next week that we set up a new categorical grant program which will be in violation of the basic principles of the bill produced next week.

So I am very strongly opposed to this amendment.

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

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

Mr. Chairman, I think the gentleman from Florida [Mr. MCCOLLUM] is pretty direct in that there is no money left over, so this is the only opportunity we have to preserve the GREAT anti-gang program.

There are two parts to this program, if I could point out to my friend from Florida. One is yes, it preserves the money, which is absolutely essential if we are going to be able to have the programs continued. But it does a second thing. The GREAT Program is a partnership in more than just dollars with Federal law enforcement. It also is cooperation between Federal law enforcement and local law enforcement. The police officers locally are trained through the National Police Service, so we use the training facilities nationally. Without the Federal program existing, it is going to be much more difficult to be able to continue this type of partnership.

I would urge my colleague to think about what we are doing here today. We are here to make choices. We have passed many amendments that restrict what States can do, how they can receive moneys for prison construction. When it suits us, we have a Federal involvement in micro-managing and establishing national priorities, however you want to characterize it. When it is appropriate for us to say we cannot let people out on their own recognizance, to get Federal funds, we say that. If the locals must have certain guidelines on sentencing, we say that.

But I would hope that we would have a national policy that our law enforcement people would work with local law enforcement to stop juvenile gang activities, to work in our schools. The GREAT Program offers us that opportunity. This amendment preserves it, and I urge my colleagues to support the amendment.

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

Mr. MCCOLLUM. Mr. Chairman, I yield myself such time as I may consume, only to say in closing that this amendment would strike a sizable amount of money, several millions of dollars from the Prison Grant Program. The bottom line of what it does is try to lay a predicate for a debate next week over the whole premise of the local community Block Grant Program.

It would be an undermining amendment. It is a camel's nose under the tent. It is a bad amendment, and I urge a no vote.

Mr. CARDIN. Mr. Chairman, I urge my colleagues to support the amendment, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland [Mr. CARDIN].

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 129, noes 295, not voting 10, as follows:

[Roll No. 113]

YEAS—129

Abercrombie	Clayton	Doggett
Ackerman	Clyburn	Dooley
Barrett (WI)	Coleman	Durbin
Beilenson	Collins (IL)	Edwards
Bentsen	Conyers	Ehlers
Berman	Coyne	Engel
Bishop	Cramer	Eshoo
Bonior	de la Garza	Evans
Borski	Deal	Fattah
Brown (CA)	DeFazio	Fazio
Brown (FL)	DeLauro	Fields (LA)
Brown (OH)	Dellums	Filner
Bryant (TX)	Dicks	Flake
Cardin	Dingell	Foglietta
Clay	Dixon	Frank (MA)

Gejdenson
Gephardt
Gibbons
Gonzalez
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson, E.B.
Kennedy (MA)
Kennedy (RI)
Kildee
Kleczka
LaFalce
Lantos
Levin
Lewis (GA)
Luther
Markey
Matsui
McCarthy
McDermott
McKinney
McNulty
Meehan
Meek
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Moran
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pastor
Payne (NJ)
Pelosi
Pomeroy
Porter
Rangel
Reynolds
Richardson
Rivers
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Scott
Serrano
Shays
Skaggs
Slaughter
Stokes
Studds
Tejeda
Thompson
Torres
Towns
Tucker
Velázquez
Vento
Waters
Watt (NC)
Waxman
Williams
Woolsey
Wynn
Yates

NAYS—295

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
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Bonilla
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Brownback
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Collins (GA)
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Doolittle
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Emerson
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Everett
Ewing
Farr
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Fields (TX)
Flanagan
Foley
Forbes
Fox
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Furse
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
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Hansen
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Hastings (WA)
Hayes
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Hefley
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Herger
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Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (SD)
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennelly
Kim
King
Kingston
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Longley
Lowey
Lucas
Maloney
Manton
Manzullo
Martinez
Mascara
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
Menendez
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Reed
Regula
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Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Visclosky
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wise
Wolf
Wyden
Young (AK)
Young (FL)
Zimmer

NOT VOTING—10

Becerra
Collins (MI)
Ford (TN)
Frost
Johnston
Lofgren
Martini
Smith (TX)
Stark
Zeliff

□ 1116

The Clerk announced the following pairs:

On this vote:

Miss Collins of Michigan for, with Mr. Martini against.

Mr. Johnston of Florida for, with Mr. Zeliff against.

Mrs. MALONEY and Mr. TALENT changed their vote from "aye" to "no."

Ms. RIVERS, Mr. MORAN, Mr. DOGGETT, Mrs. COLLINS of Illinois, Mrs. MEEK of Florida, and Mr. COLEMAN changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. MCCOLLUM

Mr. MCCOLLUM. Mr. Chairman, I offer an amendment, marked amendment "A."

The Clerk read as follows:

Amendment offered by Mr. MCCOLLUM: Add at the end, the following new title: Section 1. Administration of Federal Prison Commissaries.

Section 4043 of title 18, United States Code, is amended by striking the current language and inserting the following:

"(a) The Director of the Bureau of Prisons may establish, operate, and maintain commissaries in federal penal or correctional facilities, from and through which articles and services may be procured, sold, rendered, or otherwise provided or made available for the benefit of inmates confined within those facilities. Only those articles or services authorized by the Director of the Bureau of Prisons may be procured from or through prison commissaries for the use of inmates.

"(b) There is established in the Treasury of the United States a revolving fund to be called the Prison Commissary Fund which shall be available to the Federal Bureau of Prisons without fiscal-year limitation to carry out the purposes, functions and powers authorized by this section. Funds currently on deposit in the "Commissary Funds, Federal Prisons" account of the Treasury shall be transferred to the Prison Commissary Fund.

"(c) The Director of the Federal Bureau of Prisons may accept gifts or bequests of money for credit to the Fund. The Director may also accept gifts or bequests of other property, real or personal, for use or other disposition by the Bureau of Prisons. A gift or bequest under this section is a gift or bequest to or for the use of the United States under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

"(d) Amounts in the Prison Commissary Fund which are not currently needed for operations shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investments shall be deposited in the Prison Commissary Fund.

"(e) There shall be deposited in the Fund, subject to withdrawal by the Federal Bureau of Prisons—

(1) revenues received from the sale of articles through prison commissaries;

(2) revenues received from services rendered by prison commissaries;

(3) a gift or bequest of money for credit to the Fund;

(4) proceeds from the sale or disposal of donated property, real or personal, for credit to the Fund;

(5) earnings or interest which may be derived from investments of the Fund;

"(f) The Fund shall be available for the payment of any expenses incurred by the Federal Bureau of Prisons in establishing, operating, and maintaining prison commissaries and the Prison Commissary Fund, including the employment of personnel, the purchase of equipment, security-related or otherwise, and those expenses incurred in the provision of articles or services procured, sold, rendered, or otherwise provided or made available to inmates.

"(g) The Director of the Bureau of Prisons is authorized to use monies from the Prison Commissary Fund for the general welfare of inmates. No inmate shall be entitled to any portion of the Fund.

"(h) Employees compensated by or through the Prison Commissary Fund may be assigned additional duties other than those directly related to commissary activities.

"(i) The provisions of sections 554 and 555 and 701 through 706 of title 5, United States Code, do not apply to the making of any determination, decision, or order under this section.".

SECTION 2. TECHNICAL AMENDMENT.

Section 1321(b) of title 31, United States Code, is amended by striking "Commissary Funds, Federal Prisons".

Mr. MCCOLLUM (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN. Pursuant to the order of the House of Thursday, February 9, the gentleman from Florida [Mr. MCCOLLUM] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from Florida [Mr. MCCOLLUM].

Mr. McCOLLUM. Mr. Chairman, right now under the Federal law there is simply one sentence or two, I guess it is, under section 4043 of title XVIII of the United States Code dealing with prison commissaries.

It simply says: "The Attorney General may accept gifts or bequests of money for credit to the 'Commissary Funds, Federal Prisons.' A gift or bequest under this section is a gift or bequest to or for the use of the United States under the Internal Revenue Code of 1954," et cetera.

□ 1120

The problem has been expressed to me in the strongest of terms by the Federal Bureau of Prisons and its Director, Ms. Hawk, that we do need to have some clarification of the authority that they have to operate Federal prison commissaries, and this bill is a perfect bill to give that which should be a very noncontroversial opportunity for us to do it.

Right now the prison commissaries are being operated under DOJ circular No. 2126, under which a lot of questions have arisen about the authority of the department and the Director to operate these commissaries for the benefit of the prisoners and to collect funds and receive gifts and whether or not the prison inmates have some right to these funds and so on and so forth.

What this amendment does today is to provide express statutory authority for the Director of the Federal Bureau of Prisons to establish, operate and maintain commissaries within Federal prisons.

It also provides the Director has the exclusive authority to determine which articles or services will be provided by or through the commissaries.

We also have a provision that establishes in the U.S. Treasury a revolving fund which will be used to carry out the establishment, operation, and maintenance of a Federal prison commissary system. It authorizes the Director of the Bureau of Prisons to accept gifts or bequests of money as she can right now for a credit to the fund or gifts of real or personal property for the use or deposition by the Bureau of Prisons as can be done now but clearly clarifies where it goes.

It allows for the investment of these funds prudently and wisely where they are established in the Treasury. It provides for the authorization of departments to effect the revenues from the sale of commissary articles; it authorizes payment of expenses from the fund including the payment of expenses for the operation of prison commissaries and for the operation of a commissary fund and the expenses of commissary employees' salaries and the purchase of security equipment and nonsecurity equipment for the commissaries.

It authorizes the director to use the moneys from the fund for the benefit if inmates, and it specifies that no inmate has any interest, property or otherwise, in the moneys deposited or withdrawn from the fund.

It recognizes that employees compensated through the fund have a responsibility to perform commissary-related duties as well as general institutional and security-related duties, and it provides that judicial review is not available for any decision or determination made by the Federal Bureau of Prisons regarding the maintenance, operation, et cetera of commissaries.

I believe that this is a very necessary thing to do. We are beginning to see through the Federal prison system great questions raised about the authority for commissaries that have existed for years and years, as a matter of fact, since 1930 in our Federal prisons, and they are operating with actually no statutory authority other than the fact that they can receive gifts. It does not make a lot of sense and people want to litigate this now, and quite frankly this is a very straightforward procedure. There are no hidden anything's in it, and this prison bill seems to me to be an excellent opportunity to clarify once and for all the question of prison commissaries.

I would hope the other side would accept this in the noncontroversial intent that it is offered.

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

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

I have only had a brief chance to peruse this. Let me ask the gentleman a couple of questions.

First of all this has been sent over by the Bureau of Prisons and is supported by the administration?

Mr. McCOLLUM. If the gentleman will yield, that is correct.

Mr. SCHUMER. Second of all, it would allow people to give gifts to prisoners?

Mr. McCOLLUM. It would, but the gifts are already permitted under section 4043. That is all that they have, though. We do not have a formal framework for how they utilize it or set it up. This does not add anything new, but it does allow gifts. It does continue that practice.

Mr. SCHUMER. So present law allows gifts?

Mr. McCOLLUM. That is correct. That is correct.

Mr. SCHUMER. What if these gifts were of a nature that conflicted with the amendment of the gentleman from New Jersey, an amendment I supported?

Mr. McCOLLUM. We have restrictive language on gifts that are already going to prohibit them from taking anything that has been passed subsequent to the law that is already on the books, so I would presume the court would interpret the restrictions as applicable that we are passing here today.

Mr. SCHUMER. I take it the gentleman would not characterize this as soft on prisoners in any way?

Mr. McCOLLUM. If the gentleman will yield, absolutely not. This is not in any way soft on prisoners. This is strictly giving the prisoner—in fact the prisoners may have restricted authority here because the Bureau of Prisons has it all. It has the authority over the commissaries.

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

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

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). The question is on the amendment offered by the gentleman from Florida [Mr. McCOLLUM].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina: Page 5, line 21, strike the word "and"

Page 6, line 2, strike the period and add ", and"

Page 6, after line 2, insert the following: "(4) The State has adopted procedures for the collection of reliable statistical data which compiles the rate of serious violent felonies after the receipt of grant funds under Section 502 or Section 503 in comparison to the rate of serious violent felonies before receipt of such funds and will report such statistical data to the Attorney General."

The CHAIRMAN pro tempore. The gentleman from North Carolina [Mr. WATT] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

This simply requires the States to have a process for collecting reliable statistical data regarding the impact of grants that are being made under sections 502 and 503 of this bill on the incidence of violent felonies and reporting that statistical information to the attorney general.

Mr. Chairman, on yesterday afternoon, the gentleman from Virginia [Mr. SCOTT] offered an amendment which would have taken a small amount of funds and allowed a process to be put into place at the Federal level to monitor the impact of these programs on crime. I offered and then withdrew a more aggressive amendment than this one which would have denied funds unless there was a showing that the increased sentencing and the truth-in-sentencing legislation was having some impact on crime, and I withdrew that amendment.

This simply asks the States to have a process for collecting data on the impact that these moneys are having on the incidence of violent crime.

I should point out that on the next bills that are coming, the prevention bills, I intend to offer the same kind of language.

One of the concerns that I really have is that because of the outcry of the public to do something about crime, we are trying to respond legislatively to that outcry, and I commend my colleagues for trying to do that, but in the haste of doing it, we are not providing any process for determining what things are having an impact on crime and what things are not having an impact on crime. So even if we end up reducing the incidence of crime, we are not going to know which programs we should continue to support and which programs we should be pulling back from and withdrawing our support from.

What we should be doing is trying to get some handle on what kind of programs, whether they are Federal programs, State programs or local programs, are in fact having an impact on crime, whether it is prevention, whether it is increased sentencing, whether it is building more prisons, I do not care. All of those things need to have an assessment process built into them and all of them need to have some process for assuring the collection of statistical data that at least allows the government, either State, local or Federal, to make an assessment of their impact. This begins in that direction with respect to the grants only that are made under sections 502 and 503 of this bill, but I would say I am not trying to attach this only to these programs.

□ 1130

I will be offering a similar amendment on the prevention programs, on the cops programs. We ought to be trying to assess what is working and what is not working.

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

The CHAIRMAN pro tempore. The Chair would remind the body that we still continue to operate under the 10 and 10 rule, 10 in favor, 10 opposed.

Mr. McCOLLUM. Mr. Chairman, I rise in opposition to claim that 10 minutes in opposition.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from Florida [Mr. McCOLLUM].

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

I am reluctant to support this amendment even though I know what the gentleman wants is data which I think we should have.

The reason I am reluctant is because I believe that data, I say to the gentleman from North Carolina [Mr. WATT], is already available under the uniform reporting acts, the statistical reporting acts, that come in. What you are doing here is conditioning receipt of the grant moneys in this bill on the States providing still a separate type of report.

My judgment is that we can gain this data. We should have this data already available to our subcommittee. I would be glad to work with the gentleman in order to make sure that we bring and highlight whatever data he wants. If we do not have this power or if for any reason we are wrong about it, then we will find a way to get that data and make sure it does come independent of this. Because I do believe our subcommittee ought to have this data. You should have it. I do not think we should add something that messes up, or potentially does, an already working reporting program or add another layer of bureaucracy or restriction on the grant program.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Just for the purpose of inquiring whether you might entertain a revision, this just simply says that if the information has already been checked under some other process, we would exempt that State from it.

Mr. McCOLLUM. Reclaiming my time, the gentleman has been kind enough to furnish us the amendment this morning which we do have, but it is one of those things which, like some we furnished over there, we have not had time to digest. I would prefer not to put anything in the law right now. I would simply assure the gentleman this type of data is something the chairman of the Subcommittee on Crime wants, would like to have. If we do not have it, I believe we do have it, based on representations made to me in limited resources we have this morning, I would be happy to work with him to make sure we do get it in some other form, but not as a restriction or a caveat as a condition precedent to allowing these grants to flow.

If the gentleman would accept that, I would urge him to withdraw this amendment and let us proceed with the rest of them and we will go forward in the committee and make sure we get this data, but not through the use of this bill or through the restraints he is trying to impose today.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I yield to the gentleman from North Carolina for a response.

Mr. WATT of North Carolina. I appreciate the gentleman yielding. I am not inclined to withdraw it, because if we are already checking the data, it seems to me that this amendment is harmless, because all the State would have to do, and if the gentleman will look at the bill where I have put this, this is under an additional requirement, and all the State would have do, if they are already providing the information, is to assure, and that is the bill's term, now, not my term, is assure that the information is being collected already, and so even if we do have a process already for doing this, all the State would be required to do is give the assurance that there is a process already in effect, and I do not know what harm that would do.

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

Mr. McCOLLUM. I yield to the gentleman from New York.

Mr. SCHUMER. Mr. Chairman, I probably have voted against more of the amendments offered by the gentleman from North Carolina than for, but this one seems to me to be so reasonable. All it is saying is let us measure it. I think we should measure every prevention program. I think we should measure every police program.

One of the reasons perhaps that your side gained the majority is because Government programs were passed without seeing their effect.

What is the harm of this language? It is done. I voted against the gentleman's amendment in committee, because what that did, it said if you measured it and it was negative, you stopped the money, and you would not build any prisons. He has taken that out. All he says is let us measure. How can you be against that? It is sort of Luddite. We ought to see the results of what we are doing.

I would ask the gentleman to reconsider his opposition or perhaps mute it when the vote is called.

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

Mr. McCOLLUM. I yield to the gentleman from California.

Mr. CUNNINGHAM. I myself am not sure it is that bad of an amendment. Let me tell you what some of my heartburn might be, if I understand it right.

In education or law enforcement, one of the problems we have is too much paperwork. I know when I was in the service, during the war, all our paperwork went in the trash barrel. We went out on the carrier level and did what we had to do, and we were able to be much more effective.

After the war back in the squadrons at the bases, I spent 80 percent of my time filling out Federal reports on what we should be doing and what we should not, and I was not able to do the things I really needed to do to train the unit.

This Member's idea is I do not want the Federal Government, the bureaucracy back here, to have to receive reports. I want the State and local, I want us to have goals and let the State and local establish in their own particular area what they need to do and

what those standards should be. What might be good for Tommy Thompson in Wisconsin might not be good for Pete Wilson in California.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. MCCOLLUM. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I just want to point out to the gentleman from California that this amendment, if the gentleman from Florida [Mr. MCCOLLUM] is right, that the States are already required to do it. We are not adding one iota of paperwork other than one page in the grant request that says, "We have a process for doing this," where one sentence in the grant request says that.

But if he is wrong, that we are not collecting it, I cannot believe we would take the position that we are setting up for program grants billions of dollars of money and will not require the States that are applying for the money to at least have in place some process for tracking the impacts on crime.

Mr. MCCOLLUM. Reclaiming my time, Mr. Chairman, I will ask a question of the author. The gentleman has a handwritten piece of my copy of the amendment. It says, "The state has adopted procedures for the collection of reliable statistical data," and is that "which compiles the rate of serious"?

Mr. WATT of North Carolina. Yes; yes.

Mr. MCCOLLUM. I just wanted to make sure the word was compiles, c-o-m-p-i-l-e-s.

If that is the case, if the gentleman would accept a unanimous-consent request, I am going to make it and see if he will agree to add this.

Mr. Chairman, I ask unanimous consent that the gentleman's amendment be modified at the end to add the words "if such data is not already provided," and I will send this down to the desk right now.

Mr. WATT of North Carolina. Mr. Chairman, reserving the right to object, I happily accept that proposed modification.

Mr. Chairman, I withdraw my reservation of objection.

Mr. MCCOLLUM. Mr. Chairman, I ask unanimous consent that that modification to the amendment be accepted.

The text of the modification is as follows:

Modification offered by Mr. MCCOLLUM to the amendment offered by Mr. WATT of North Carolina: At the end of the amendment offered by Mr. WATT of North Carolina, insert "if such data is not already provided."

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. WATT of North Carolina, as modified: Page 5, line 21, strike the word "and"

Page 6, line 2, strike the period and add " ; and"

Page 6, after line 2, insert the following:

"(4) The State has adopted procedures for the collection of reliable statistical data which compiles the rate of serious violent felonies after the receipt of grant funds under Section 502 or Section 503 in comparison to the rate of serious violent felonies before receipt of such funds and will report such statistical data to the Attorney General, if such data is not already provided.

Mr. MCCOLLUM. Mr. Chairman, with the modification, I would agree to concur in the amendment as the gentleman has drafted it. I think he has made a good argument. We want the data. I believe it is already here. If it is not, then we will get it. That is the end of that.

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

Mr. WATT of North Carolina. Mr. Chairman, I appreciate the gentleman making my amendment better and clarifying it, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment, as modified, offered by the gentleman from North Carolina [Mr. WATT].

The amendment, as modified, was agreed to.

The CHAIRMAN. Are there further amendments?

AMENDMENT OFFERED BY MR. CHAPMAN

Mr. CHAPMAN. Mr. Chairman, I offer an amendment printed in the RECORD, designated No. 20.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. CHAPMAN: Page 2, lines 24 and 25, strike "either a general grant" and insert "general grants".

Page 2, line 25, strike "or" and insert "and".

Page 6, line 6, strike "title, if the State" and insert "title if,"

Page 6, line 7, strike "title—" and all that follows down through "the" on line 9, and insert "title, the".

The CHAIRMAN. The gentleman from Texas [Mr. CHAPMAN] will be recognized for 10 minutes.

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

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

Once again, I want to take just a couple of minutes and an opportunity to lay the groundwork on where I think we are now in the bill, and I hope my colleagues will pay attention to what the underlying legislation requires and what the amending process to this point has done.

Because what my amendment does is broaden the eligibility of States to apply for grants under H.R. 667. I want to read from the bill as it is filed and as it currently exists, under section 501(b), and the caption of the section is "limitation." What this bill does is say an eligible State or States may receive either, either a general grant under section 502, which is the general grant fund, or, either/or, a truth-in-sentencing incentive grant under 503. Under the section of "limitation," this law will prevent States from applying for both even if those States are meeting the requirements of both sections. That is clearly what the statute says.

What my amendment says it should not be an either/or situation. Those States that are doing the deal and getting the job done and increasing their sentencing in meeting an appropriate threshold ought to be able to apply for all the funds in both pots. That is the current law. That is current law. Even though the current crime bill authorizes slightly less money than this one does, this one divides $10 billion into 2 pots and says the State can only apply for one or the other.

□ 1140

So under this law there is actually less prison money available to States, less prison money available to the States than under current law. Surely that cannot be the intended consequence of the author of the bill, who is wanting to expand prison construction and put more criminals in prison for longer periods of time all over this country. Yet that is the result.

My amendment will change that. It breaks down the wall between two grant funds and says a State doing the job can apply for both grant funds or funds from both pots.

It also says—and it makes a very important change, and I want all my colleagues to understand this change—under this bill the bar is set so high that every State, to be eligible, must meet an 85 percent truth-in-sentencing standard, and my colleague, the friend, the gentleman from Florida, said yesterday that to qualify for that, States may have to lower their penalties. Did I stand up in my chair? Lower their penalties for violent crime so they can qualify for the second pot of money? Is that what this is about, lessening the penalties for violent crime in America so we can meet an 85 percent standard? Surely that is not the intended result.

What my amendment will do, it will say, if you are meeting the criteria of increasing sentences, putting more violent prisoners in prison and doing it longer and you are doing it so good that the entire country moves toward tougher sentencing, you are still 10 percent better than the national average, then you can qualify for the second pot of money even if you have not quite reached the 85 percent standard. Surely, surely no question, no State in America, according to the Department of Justice—arguably, only three—but if you do not live in North Carolina, Arizona or Delaware, you cannot qualify. Your State cannot qualify for the second pot of money.

If you are doing the job, under my amendment, doing it right, moving toward increasing your sentences, and

beating the national average every year by 10 percent, then you can. It is a commonsense amendment. It makes sense, and it should be adopted.

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

Mr. CHAPMAN. I yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for yielding.

Mr. Chairman, this is a dramatic improvement on H.R. 3. If you want to build more prisons, that is. Yet maybe there was some who did not like the block grant approach because they did want to move the States along rather than give them the money and move along by themselves.

It is a compromise amendment. It is one of these rare instances where you can have your cake and eat it too, because we are encouraging the States, under the Chapman amendment, to have tougher sentences. I think we need that.

We are also saying they have a real chance, if they toughen up their sentences, to get their money. Let us face it, under H.R. 3, as we made the point yesterday, not only the 3 States be eligible, but for the other 47 to be eligible they would have to spend some $60 billion on their own before being able to meet the 85 percent standard.

My colleagues, let us not wish something to be so. The public, the Congress, the legislatures, the mayors, we have been wishing crime to go down for decades. But it keeps going up. It does not go down to the levels where it should. This amendment is not a wishing amendment, this is an actuality amendment. It greatly improves H.R. 3, and I compliment the gentleman for offering it.

Mr. CHAPMAN. Reclaiming my time, let us not ignore what we did yesterday. We plucked the pocket, yesterday, of 47 States. This bill takes money passed by Congress, signed by the President, currently in the law for prison construction to fight violent crime, will rescind money already in the pipeline, it is going to rescind money already in the pipeline going to every State in America.

Surely, if we are serious about wanting to fight violent crime, we need to get the funds out there, and this amendment gets it to States that are doing the job.

If we are going to expand prison construction, let us not trick the American people, let us not trick the Members of Congress by saying we are going to put $10 billion in prison construction funds but you cannot apply for both pots.

Under the statute, that is what this law will do. This is a commonsense amendment that ought to be adopted.

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

Mr. CHAPMAN. I yield to the gentleman from North Dakota.

Mr. POMEROY. I thank the gentleman for yielding.

Mr. Chairman, I commend the gentleman [Mr. CHAPMAN] for his amendment.

You know, in the 104th Congress so far we have heard an awful lot about giving more flexibility to the States. I find it highly ironic that the bill before us takes flexibility away from North Dakota's prison plan to make people serve 85 percent or greater of their sentences. I might add, North Dakota has people serving a longer portion of their sentence than any other State in the country.

Under the bill passed last year, we were set to get eligible to receive $8.8 million for prison construction, but under the language—this is a quote from the law—"to construct, develop, expand, modify, operate or improve correctional facilities to insure such space is available for violent offenders."

Let me read to you the language in the bill that is before us. It would allow us to take the money to build, expand, and operate. This is a critical distinction. They have taken from North Dakota the ability to advance plans that take prisoners out of the State penitentiary, the nonviolent ones, send them out to county jails, to make bed space for violent offenders in the State penitentiaries, just what we want to accomplish.

But because of a drafting error, they have taken from North Dakota this right to access money for bed space for violent offenders. We have done it because we have been overly prescriptive. We have taken from States flexibility. We have imposed a one-size-fits-all approach out of Washington, DC.

I just wonder how many Members, and goodness knows I will be watching when they vote for this, are going to actually be voting taking money away from their States, money their States would have been eligible for that would not be because they will be voting for language that simply does not work relative to the scheme of State flexibility as we approach the lengthening of time violent offenders serve.

That is why I commend the gentleman for his amendment and yield back to him in this discussion.

PARLIAMENTARY INQUIRY

Mr. CHAPMAN. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). The gentleman will state it.

Mr. CHAPMAN. Are we proceeding under the 5-minute rule today?

The CHAIRMAN pro tempore. We are proceeding under the 10-minute rule, 10 minutes for each side.

Mr. CHAPMAN. Then at this point I would like to ask if the gentleman from Florida [Mr. MCCOLLUM] will proceed. I would like to reserve the balance of my time at this time.

The CHAIRMAN pro tempore. A Member opposed to the amendment will be recognized for 10 minutes.

Mr. MCCOLLUM. Mr. Chairman, I am opposed to the amendment.

The CHAIRMAN pro tempore. The gentleman from Florida [Mr. MCCOLLUM] will be recognized for 10 minutes.

The Chair recognizes the gentleman from Florida [Mr. MCCOLLUM].

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

Mr. Chairman, what the gentleman is doing, make no mistake about it, is to strike the truth-in-sentencing incentive program that is in this bill. The $5 billion setaside is set aside in order to encourage the States to move to the provision we would like for them to do in their laws, of abolishing parole for violent felons in their State, to make them serve at least 85 percent of their sentences.

If you are a serious violent felon, the objective of this whole exercise is to get you incarcerated, locked up, and have the key thrown away so that you are not out there going through this revolving door and preying on a lot of people again and again and again, as has been happening. We will, by passing this gentleman's amendment today, destroy that incentive altogether. The carrot will be gone. The offer of $5 billion out there, if you are just changing your laws, will not be out there anymore. Sure, we know only a handful of States qualify today for that pot of money, but that is the idea, the whole idea behind having that pot of money reserved strictly for those States to change their laws to comply, to get them to change them, to get them to make that step that has been so difficult for them to do, by saying, "Look, we will give you the money to build the prison beds. We will give you 75 percent of the money it takes to build every single prison bed that is required for you to remove every single serious violent felon in your State off the streets and make them serve at least 85 percent of their sentences." It would make the States do this if they are to get the money.

They obviously do not have to do it today or will not have to do it not tomorrow if they do not want this money. But the idea is to build the political pressure in those States. I think once this bill passes, the public in every State in the Union will demand that their legislatures and Governors change their laws immediately to do it and spend whatever State resources are necessary to do that.

□ 1150

Mr. Chairman, it is my judgment, and most Republicans on this side of the aisle agree with me, that this is perhaps the most important thing we could do today in crime fighting at all in this country, is to provide this carrot out there to build the public pressure to get the resources necessary,

and we provide most of them probably the vast majority of what is necessary from the Federal end to take the repeat violent felons off the street and stop this revolving door. If the amendment offered by the gentleman from Texas prevails, he will simply have for the whole $10.5 billion the easy requirements. Just making progress toward incarcerating people for longer sentences is good enough to get the entire amount of money, and I would submit that that is a wrong-headed approach, it is not what we should be doing out here today. It destroys completely the effort to control the violent criminal revolving door in this country, and this is, in my judgment, the most serious killer amendment of the day, and I would urge its defeat in no uncertain terms.

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

The CHAIRMAN. The Chair recognizes the gentleman from Texas [Mr. CHAPMAN] for 30 seconds.

Mr. CHAPMAN. Mr. Chairman, at this point I ask unanimous consent to have an additional 5 minutes of debate in addition to 30 seconds.

The CHAIRMAN. Would that be on each side?

Mr. CHAPMAN. Yes.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

Mr. MCCOLLUM. Reserving the right to object, Mr. Chairman, is that 5 minutes on each side?

We are getting an additional 5 minutes? That, I believe, is the construct; is it not?

The CHAIRMAN. That is the request.

Mr. MCCOLLUM. All right Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas [Mr. CHAPMAN]?

There was no objection.

The CHAIRMAN. The gentleman from Texas [Mr. CHAPMAN] will be recognized for 5 minutes, and the gentleman from Florida [Mr. MCCOLLUM] will be recognized for 5 minutes.

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

Mr. CHAPMAN. Mr. Chairman, let me just say the easy standards that the gentleman from Florida [Mr. MCCOLLUM] talks about, the law requires that to be eligible for even the easy money. States must put more violent criminals in prison every year than they did the year before, States must put them there for longer periods of time every year than they did before, and they must parole them less frequently every year than they did the year before. That is not an easy burden to meet, and to meet under this amendment the second pot of funds, not only do you have to do that, but you must out-reform the national average each and every year by 10 percent. If States are doing that, the very idea that we would tell them they are not eligible for the funding.

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

Mr. CHAPMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. Mr. Chairman, I thank the gentleman from Texas [Mr. CHAPMAN] and want to make a point about how strongly I am in favor of the Chapman amendment because it clarifies the two vital and fundamental weaknesses in the bill before us.

On February 1, 9 days ago, we passed H.R. 5 right here. It prohibited unfunded mandates. We passed this law 9 days ago prohibiting unfunded mandates.

On page 3 of H.R. 5 it says, to begin consideration of methods to relieve States, local governments, of unfunded mandates imposed by Federal court interpretation of Federal statutes and regulations. It says further, to end the imposition by Congress of Federal mandates. It goes on, and on, and on.

I voted for this. Many people on both sides voted for this. Yet in this bill we are providing exactly the kind of unfunded mandates that we just 9 days ago prohibited.

Let me read for my colleagues page 3 of this bill, H.R. 667, page 3. We not only are talking about tougher sentences, which I am for; I voted for the gentleman's tougher habeas corpus and exclusionary rules, but now we are telling the States, "You have to, in order to be eligible to receive funds under subsection A, one, increase the percentage of convicted violent offenders; two, increase the average prison time actually served; three, increase the percentage of sentence to be actually served.

We are mandating down the line not just tougher penalties, percentages, average time, percentage of convicted violent offenders. Are we not saying 9 days ago we are not going to do anything more like this? And we do it.

Second, the fundamental flaw in this bill, in addition to the unfunded mandates, is that this is the bailout bill. This is the bailout bill for States that have not made the tough decisions to build some of these prisons. We are going to funnel money to them. We are going to take the money away from States like Indiana, which will lose $48 million, and States that have made tough decisions and sometimes said to their citizens, "You have to pay up to build these new prisons." Now we are saying with these unfunded mandates we are going to steer moneys to the States that have not made these tough decisions. We are going to provide Federal funds to do it, and we are going to bail these States out.

That is not right.

Mr. Chairman, the amendment offered by the gentleman from Texas [Mr. CHAPMAN] tries to clean up the unfunded mandates and the fairness to different States that is terribly skewed in the formula in this bill. Forty Republicans voted for current law. The Chapman amendment tries to steer us back to current law, and I would encourage some bipartisan support for this amendment. If this does not pass, I would encourage defeat of this bill.

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

Mr. Chairman, first of all, I think everybody has to understand that this is a repeat of yesterday's debate. We have already had a couple of amendments to try to get at the truth in sentencing and knock it out. This is just another effort to do that. That needs to be clearly understood.

I know there are people who do not agree with truth in sentencing, and they obviously strongly do not agree because that is the reason why they are making a third try at this today.

There are over 6 million violent crimes every year in this Nation. Only 150,000 people are convicted of violent crime out of the million crimes that are committed. Now some of them obviously are being committed by the same people. Only 90,000 of the 150,000, that is 60 percent of those convicted, ever go to prison for committing a violent crime, and those who do go to prison of that 60 percent of the 100,000 that are convicted of the 6 million crimes that are committed every year that are violent, they only serve an average of 38 percent of their sentences.

So, what we are saying is here today, in this bill, we want to get these people to serve their time. We want to make sure that the carrot is out for them to do that and that we actually provide the resources to the States to make sure that they have their folks locked up. I doubt if very many States, if any in this Union today, are locking up near enough prisoners in their prisons to comply with this in any sense of the word that we would like for them to do, but what we have set forth, for the first pot of money, the $5 billion that is out there in part A, that is not disturbed in our judgment in any way from last year's bill to amount to a hill of beans, and we are simply going to require three little things to be done by the States to qualify for that money, and virtually every State has already qualified.

Just look back at the statistics down at the Justice Department of the last 10 years that are submitted, published every 2 years, by the State, and my colleagues will see that every State is marching toward increasing the length of time somebody has to serve, increasing the actual sentence for some of these violent criminals, all these violent criminals, and increasing the percentage of time, and there are three separate things, but they are complying. It is not hard to comply with. I

would say 99 percent of the States, probably all the States, will receive money under part A without having to do anything more than assure the Federal Government of what they are already doing.

But what this amendment does that is mischievous about it is, first of all, it strikes all three of these requirements. It in essence says, notwithstanding anything else in this bill, all you got to do is show a 10 percent average increase in the time served over the entire course of whatever in your State, and, by God, you get the money for part A, and you get the money for part B because we are going to do away with any qualifications for part B that are different from part A. In other words, you strike truth in sentencing altogether, and you just say, "If you have increased the average times served by 10 percent of your violent felons in your prisons, you can get every penny in this bill," and I think that is absurd. That is precisely why we are having the debate out here today, and it is a very wrong-headed thing to do.

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

Mr. MCCOLLUM. I yield to the gentleman from California.

Mr. CUNNINGHAM. Mr. Chairman, I thank the gentleman from Florida [Mr. MCCOLLUM].

First of all, of all the amendments that I have had come forward, this one is the most obtrusive. The gentleman fails to see the solution to a very simple problem, that, if you let criminals out early, they are going to commit more crimes. Our intent is to keep them in there for the longest amount of time.

Governor Allen's idea of no parole at all; if you get a sentence, that is what you are going to stay in there for; that is what I would like to see. But, if you let, as James Cagney said, let these low-down, dirty rats back out, they are going to be low-down, dirty rats on our streets, and the gentleman is talking about an unfunded mandate. We are giving the States a positive incentive to do this. This is not an unfunded mandate.

□ 1200

What we want to do is make sure that if someone is sentenced to an amount of time that is a felon, that they are going to serve their time, and not get back out early and do the same thing. Because it is proven by statistics they get back out, and they have not been helped, we want to make sure that is done.

The gentleman says that the law requires that we put them in longer and that we parole fewer. But it is not working again. This again is another positive incentive for the States that are not living up to that to follow through and keep these critters in longer.

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

Mr. MCCOLLUM. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, I would say to the distinguished gentleman from California that I serve with on the Committee on Economic and Educational Opportunities, that whether you call it a positive incentive or an unfunded mandate, you are stipulating in law three things: From percentage of convicted offenders, to average prison time, to percentage of sentence to be actually served. That is not a positive incentive for some States. That is a very specific mandate.

I am for truth in sentencing, as the gentleman from Florida [Mr. MCCOLLUM] knows. But I do not think we should prescribe down to three and four different criterion variables what these States have to do.

Mr. Chairman, if I could ask a question of the gentleman from Florida [Mr. MCCOLLUM], he said in his comments that some States will have to change laws, that the people will force the State legislatures to meet and change laws. That will take some time. The gentleman from Florida knows that some States are in short session this next meeting period. Indiana may only meet for a couple of months. Other States may not have the time to qualify for this.

Mr. MCCOLLUM. Reclaiming my time, there is no question that States will have to change their laws, most of them will. To get the second pot of $5 billion for truth in sentencing, they will have to go to the 85-percent rule. There is no question about that. That is the idea.

But they will not have to change their laws to qualify for the first pot of money. I believe 99 percent, from what we have seen, already qualify for part A of the money.

I would also like to respond to the gentleman on the unfunded mandate. This is not an unfunded mandate in any way, shape or form. This is a grant program, clearly distinguished from the bills we had out here earlier that ban unfunded mandates.

If the States do not want this money, they do not have to do what we require them to do. We are not mandating they do these things. We simply say if you want to get this money, here is the carrot. You have got to come get it. Unfunded mandates do not yield carrots.

Mr. Chairman, I yield 30 seconds to the gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Chairman, I think the gentleman just made the point. Illegal immigration in our State, we have a policy and the Government does not support it, they do not get the money. It is not an unfunded mandate. They do not have to participate if they do not want. We are not mandating that they do it. But if they do not, they do not get the money.

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

Mr. CHAPMAN. Mr. Chairman, I yield myself such time as I may consume, to respond briefly.

Mr. Chairman, it is important that I think we understand that this bill picks the pockets of the States of hundreds of millions of dollars that are currently in the pipeline under current law.

The gentleman from California makes a good point. We want folks to put people in prison that are violent criminals and keep them there. That is what last year's crime bill did.

This takes the money back. This sets the bar so high that the progress that is being made cannot be met. I do not understand why the gentleman would want to set a standard that the Attorney General, you say 99 percent of the States meet it. Are you sure? The Attorney General has looked at it and says none of the States meet it.

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

Mr. CHAPMAN. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Mr. Chairman, first of all, I would just like to point out that there was no money appropriated for prison construction for this fiscal year, so we are not taking any money back in what we are doing.

Second, the statistics that the Attorney General has collected over several years that we have seen shows that progress is being made and States would qualify. So I beg to differ with the gentleman.

Mr. CHAPMAN. Mr. Chairman, reclaiming my time, progress may be being made, but the States do not qualify. They are not going to be eligible under the law, and the gentleman has set the standard so high that he is making it impossible to comply.

Mr. Chairman, I yield such time as he may consume to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I have two quick points. Under the gentleman's own bill, the Attorney General would be the administrator. So even though the gentleman from Florida [Mr. MCCOLLUM] may say States qualify, unfortunately, if I were a Governor who wanted to build prisons, I would have to put more stock in what the Attorney General said, because she is giving out the money, not the gentleman from Florida.

Second point: The gentleman from California said we want a carrot to encourage the States to increase sentence time. Agreed. But when you put a carrot out there, you want them to be able to reach it, so they can jump. If you put the carrot up so high that they cannot even see it, they are not going to try to reach for it.

The CHAIRMAN. The time of the gentleman from Texas [Mr. CHAPMAN]

has expired, and the gentleman from Florida [Mr. MCCOLLUM] has 5 minutes remaining.

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

Mr. Chairman, interestingly enough, I do not see how anyone can argue that under what the gentleman's amendment does, States would qualify who will not qualify for part A of the grant money under what is in the bill. Now, you can debate all you want on part B, the truth in sentencing, 85 percent rule, because I am willing to concede only three or four States, half a dozen States, currently qualify for that. That has never been in question, because the fact of the matter is States are being given this money as the carrot.

But under part A, what the gentleman would have after I read his amendment, what he is doing in striking indeterminate sentencing as an exception out of this, he is saying,

Notwithstanding the provisions in paragraphs 1 and 2 of section 502(b), a State shall be eligible for grants under this title if, not later than the date of enactment of this title, the offenses of murder, rape, robbery, and assault exceed by 10 percent or greater the national average of time served for such offenses.

Well, that is still going to be a requirement to qualify for part A. It will be the only requirement for parts A or B under your amendment.

What we are suggesting is you do not even have to have a 10-percent variation with regard to the national average. You just have to have some for ours. You have to show an increase since 1993 of the percentage of convicted violent offenders sentenced to prison of the percentage. Just any increase. Not 10 percent, but any increase. Your own State has to show that increase.

Second, you have to show an increase in the average prison time actually to be served, that you bumped up the time under the regulations for sentencing. If somebody got 6 years, the sentence they have been given, and they are serving only two now in your State, you have to show that your actual prison time is going to be 2 years and 1 day. But it does not require a big 10-percent increase.

Third, you have to show an increase in the percentage of the sentence to be actually served, the percentage of the 6 years, from whatever it was before. If it was 2 years, it is one-third, you have to bump up by whatever little fraction that would be; 2.1 years obviously shows an increase in the percentage of the sentence. That is not actually hard to comply with.

What the gentleman is doing by all of the debate and all of what he is saying out here today is simply arguing the same old point he argued yesterday and that we have heard argued on two major amendments out here before, and that is the gentleman does not like the carrot. The gentleman does not like the second pot, which is what you destroy. There is nothing about the first pot that we are doing anything with. It is very easy to get the first pot.

But what we are all arguing about today is whether we set aside $5 billion and say to the States we want you to get this money, to change your laws to make sure that serious violent felons serve at least 85 percent of their sentences. Truth in sentencing. Essentially abolish parole and only have good time.

That is what we want them to do with the 85-percent pot of money, $5 billion. And what the gentleman from Texas [Mr. CHAPMAN] would do by his amendment, make no mistake about it, would absolutely strike that out of this bill. There would be no truth in sentencing requirement whatsoever to get any money in this bill at all. It would disappear, and the whole thrust of the whole truth in sentencing debate would be resolved in favor of those States and those groups that do not want any restrictions and do not want to go to that. And I think that would be absolutely the height of folly. It would be an undermining of a basic principle that the Republican side of the aisle believes deeply in our crime legislation, what we offered last year, and what is part of the Contract With America.

So this is a killer amendment. It strikes the guts out of this bill as we have written it, and I strongly urge a "no" vote.

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

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Texas [Mr. CHAPMAN].

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 176, noes 247, not voting 11, as follows:

[Roll No. 114]

AYES—176

Abercrombie
Ackerman
Baesler
Baldacci
Barrett (WI)
Barton
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Brewster
Browder
Brown (FL)
Brown (OH)
Bryant (TX)
Camp
Cardin
Chapman
Clay
Clyburn
Coleman
Collins (IL)
Conyers
Coyne
Cramer
Danner
DeFazio
de la Garza
DeLauro
Dellums
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford (TN)
Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Gillmor
Gonzalez
Gordon
Green
Gutierrez
Hall (TX)
Hamilton
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Hoekstra
Holden
Hoyer
Inglis
Jackson-Lee
Johnson, E.B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Longley
Lowey
Maloney
Manton
Markey
Mascara
Matsui
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Portman
Rahall
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Smith (MI)
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thornton
Torres
Towns
Tucker
Upton
Velázquez
Vento
Visclosky
Volkmer
Ward
Waters
Waxman
Williams
Wilson
Wise
Woolsey
Wynn
Yates

NOES—248

Allard
Andrews
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clayton
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gilman
Gingrich
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Istook
Jacobs
Jefferson
Johnson (CT)
Johnson, Sam
Johnson (SD)
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
LoBiondo
Lucas
Luther
Manzullo
Martinez
Martini
McCarthy
McCollum
McCrery
McDade

McHugh	Ramstad	Stump
McInnis	Regula	Talent
McIntosh	Riggs	Tate
McKeon	Roberts	Taylor (MS)
Metcalf	Rogers	Taylor (NC)
Meyers	Rohrabacher	Thomas
Mica	Ros-Lehtinen	Thornberry
Miller (FL)	Roth	Thurman
Molinari	Roukema	Tiahrt
Montgomery	Royce	Torkildsen
Moorhead	Salmon	Torricelli
Morella	Sanford	Traficant
Myers	Saxton	Vucanovich
Myrick	Scarborough	Waldholtz
Nethercutt	Schaefer	Walker
Neumann	Schiff	Walsh
Ney	Seastrand	Wamp
Norwood	Sensenbrenner	Watt (NC)
Nussle	Shadegg	Watts (OK)
Oxley	Shaw	Weldon (FL)
Packard	Shays	Weldon (PA)
Parker	Shuster	Weller
Paxon	Sisisky	White
Payne (VA)	Skeen	Whitfield
Petri	Smith (NJ)	Wicker
Pombo	Solomon	Wolf
Porter	Souder	Wyden
Poshard	Spence	Young (AK)
Pryce	Spratt	Young (FL)
Quillen	Stearns	Zeliff
Quinn	Stenholm	Zimmer
Radanovich	Stockman	

NOT VOTING—11

Becerra	Hall (OH)	Smith (WA)
Brown (CA)	Johnston	Stark
Collins (MI)	Lofgren	Tauzin
Frost	Smith (TX)	

□ 1228

The Clerk announced the following pairs:

On this vote:

Miss Collins of Michigan for, with Mr. Smith of Texas against.

Mr. Johnston for, with Mrs. Smith of Washington against.

Mrs. CLAYTON changed her vote from "aye" to "no."

Mr. EDWARDS changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

□ 1230

PARLIAMENTARY INQUIRY

Mr. COLEMAN. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). The gentleman will state his inquiry.

Mr. COLEMAN. I would just inquire of the Chair in terms of statements that had been made earlier in respect to the length of time that we have for votes. I noted, just as a housekeeping matter, that the Chair in my view correctly permitted about 20 minutes, or I assume 20. When I came in, it said zero. We waited another 5 minutes to finish the vote. I think the Chair correctly did that, because of the crowding on the elevators and attempting to get here from committees by many of the Members.

I was just wondering whether or not the Chair would permit an expansion on the statement earlier made by the Speaker with respect to the amount of time we will be allowed to have for votes. We were told 17 minutes would be all we would get. I notice we just got 20, maybe more. I am wondering whether or not we are going to continue to have that kind of leeway in the event crowds occur in coming to the House floor to cast our votes.

The CHAIRMAN pro tempore. The Speaker was very clear when he stated his position that he would not stop a Member from voting who is in the well.

Mr. COLEMAN. Actually that is not my inquiry. I was just wondering whether or not we were going to all be given some additional opportunity in the case of crowding to get here to cast our votes. I think that without any question, statements to the contrary notwithstanding, the Chair correctly handled this vote by allowing at least 20 minutes for us to cast this vote. I am just hoping that the Speaker will be advised of the amount of time it took today and perhaps we can relax the hard-and-fast rule we were told applied on the first day.

The CHAIRMAN pro tempore. The Chair would advise the gentleman that this vote did proceed in conformity with the Speaker's advisement.

Mr. COLEMAN. Well, Mr. Chairman, it was certainly in excess of 17 minutes, was it not?

The CHAIRMAN pro tempore. What the Speaker said about Members proceeding to the well and being allowed to vote still holds.

Mr. COLEMAN. But after 17 minutes they will not be allowed to vote from the well; is that my understanding?

The CHAIRMAN pro tempore. The 17-minute restriction still holds. Members should come to the Chamber and to the well as quickly as they possibly can.

Mr. COLEMAN. But the chair was correct in allowing extra time. I think all of the Members attempted to do that on both sides of the aisle. The attempts, I just advise the Chair, will continue to be made more difficult by having, as you know, more citizens inside the Capitol utilizing many of these same elevators.

I just suggest to the Chairman that he handled it correctly. I hope that we could get the Speaker to agree that the hard-and-fast rule of 17 minutes is going to be very difficult for some Members to make. Out of a mere courtesy to our colleagues, I would hope that we would not hold hard and fast to some of these stated rules that we started the first of the session with.

I thank the Chairman for his consideration.

The CHAIRMAN pro tempore. The Chair thanks the gentleman for his observation.

AMENDMENT OFFERED BY MR. SCOTT

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. SCOTT:

Page 2, strike line 4 and all that follows through the matter preceding line 1, page 12 and insert the following:

TITLE I—PRISON GRANT PROGRAM

SEC. 1. GRANT PROGRAM.

Title V of the Violent Crime Control and Law Enforcement Act of 1994 is amended to read as follows:

"TITLE V—PRISON GRANTS

"SEC. 501. AUTHORIZATION OF GRANTS.

"The Attorney General is authorized to provide grants to eligible States and to eligible States organized as a regional compact to build, expand, and operate space in correctional facilities in order to increase the prison bed capacity in such facilities for the confinement of persons convicted of a serious violent felony and to build, expand, and operate temporary or permanent correctional facilities, including facilities on military bases, for the confinement of convicted nonviolent offenders and criminal aliens for the purpose of freeing suitable existing prison space for the confinement of persons convicted of a serious violent felony.

"SEC. 502. GENERAL GRANTS.

"In order to be eligible to receive funds under this title, a State or States organized as a regional compact shall submit an application to the Attorney General that provides assurances that such State since 1993 has—

"(1) increased the percentage of convicted violent offenders sentenced to prison.

"(2) increased the average prison time actually to be served in prison by convicted violent offenders sentenced to prison.

"SEC. 503. SPECIAL RULES.

"Notwithstanding the provisions of paragraphs (1) through (2) to section 502, a State shall be eligible for grants under this title, if the State, not later than the date of the enactment of this title—

"(1) practices indeterminent sentencing; and

"(2) the average times served in such State for the offenses of murder, rape, robbery, and assault exceed, by 10 percent or greater, the national average of times served for such offenses.

"SEC. 504. FORMULA FOR GRANTS.

"To determine the amount of funds that each eligible State or eligible States organized as a regional compact may receive to carry out programs under section 502, the Attorney General shall apply the following formula:

"(1) $500,000 or 0.40 percent, whichever is greater shall be allocated to each participating State or compact, as the case may be; and

"(2) of the total amount of funds remaining after the allocation under paragraph (1), there shall be allocated to each State or compact, as the case may be, an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State or compact, as the case may be, bears to the population of all the States.

"SEC. 505. ACCOUNTABILITY.

"(a) FISCAL REQUIREMENT.—A State or States organized as a regional compact that receives funds under this title shall use accounting, audit, and fiscal procedures that conform to guidelines which shall be prescribed by the Attorney General.

"(b) REPORTING.—Each State that receives funds under this title shall submit an annual report, beginning on January 1, 1996, and each January 1 thereafter, to the Congress regarding compliance with the requirements of this title.

"(c) ADMINISTRATIVE PROVISIONS.—The administrative provisions of sections 801 and 802 of the Omnibus Crime Control and Safe

Streets Act of 1068 shall apply to the Attorney General in the same manner as such provisions apply to the officials listed in such sections.

"SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this title—

"(1) $497,500,000 for fiscal year 1996;

"(2) $830,000,000 for fiscal year 1997;

"(3) $2,027,000,000 for fiscal year 1998;

"(4) $2,160,000,000 for fiscal year 1999; and

"(5) $2,253,100,000 for fiscal year 2000.

"(b) LIMITATIONS ON FUNDS.—

"(1) USES OF FUNDS.—Funds made available under this title may be used to carry out the purposes described in section 501(a).

"(2) NONSUPPLANTING REQUIREMENT.—Funds made available under this section shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources.

"(3) ADMINISTRATIVE COSTS.—Not more than three percent of the funds available under this section may be used for administrative costs.

"(4) MATCHING FUNDS.—The Federal share of a grant received under this may not exceed 75 percent of the costs of a proposal as described in an application approved under this title.

"(5) CARRY OVER OF APPROPRIATIONS.—Any funds appropriated but not expended as provided by this section during any fiscal year shall remain available until expended.

"(c) EVALUATION.—From the amounts authorized to be appropriated under subsection (a) for each fiscal year, the Attorney General shall reserve 1 percent for use by the National Institute of Justice to evaluate the effectiveness of programs established under this title by units of local government and the benefits of such programs in relation to the cost of such programs.

"SEC. 507. DEFINITIONS.

"As used in this title—

"(1) the term 'indeterminate sentencing' means a system by which—

"(A) the court has discretion on imposing the actual length of the sentence imposed, up to the statutory maximum; and

"(B) an administrative agency, generally the parole board, controls release between court-ordered minimum and maximum sentence;

"(2) the term 'serious violent felony' means—

"(A) an offense that is a felony and has as an element the use, attempted use, or threatened use of physical force against the person or property of another and has a maximum term of imprisonment of 10 years or more.

"(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense and has a maximum term of imprisonment of 10 years or more, or

"(C) such crimes include murder, assault with intent to commit murder, arson, armed burglary, rape, assault with intent to commit rape, kidnapping, and armed robbery; and

"(3) the term 'State' means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.".

The CHAIRMAN pro tempore. Pursuant to the order of the House of Thursday, February 9, the gentleman from Virginia [Mr. SCOTT] will be recognized for 10 minutes, and a Member in opposition will be recognized for 10 minutes.

The Chair recognizes the gentleman from Virginia [Mr. SCOTT].

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

Mr. Chairman, the series of crime bills we have now effectively block-grant the prevention and police money from the 1994 bill and then cut that block of money by $2.5 billion and increase the prison construction money by $2.5 billion.

This amendment restores the $2.5 billion to the prevention and cops block grant.

We have already seen, Mr. Chairman, the good work in getting the police out on the street. Many of the police have already been funded. The bill has only been in effect a few months and police have been funded already. Those cops are on the street practicing community policing and effectively reducing crime.

Mr. Chairman, during the hearings on H.R. 3 and in the Committee on the Judiciary consideration of the bill, we also heard reams of testimony on crime reduction that can be effectuated by primary prevention programs.

Mr. Chairman, we heard testimony that the cost of drug courts was about one-twentieth of what it cost to put people in prison, and the recidivism rate was so low that you cut crime by approximately 80 percent. Head Start and Job Corps both save more money than they cost, Mr. Chairman.

We have testimony in the record showing drug treatment programs which are so effective, they save $7 for every $1 that you put into the program. We have seen recreational programs. Mr. Chairman, where for 60 cents per participant, the crime rate in Phoenix, AZ, was cut significantly. Fort Myers, FL, 28 percent reduction in crime for very minimal expenditures. Gang intervention programs, drug courts, early childhood development, vocational training. Those kind of programs, Mr. Chairman, will reduce crime.

The $2.5 billion that is added to the prisons in this series of bills which we seek to transfer will be an insignificant portion of the money spent on prisons. Virginia has adopted a truth-in-sentencing or so-called truth-in-sentencing provision. The way we got to 85 percent, Mr. Chairman, was to reduce the sentence 50 percent, letting those who could not make parole, the most heinous of our criminals, let them out in 50 percent of the time so that the less risky prisoners could serve more time. That cost us $7 billion

Mr. Chairman, if we are going to spend that kind of money, we ought to put it in programs that will actually work.

Mr. Chairman, the $30 billion crime bill from last year designated 75 percent of the money for law enforcement and prisons, despite all of the overwhelming evidence that vastly more crime reduction can be accomplished through prevention programs. The present bill compounds the problem by increasing the prisons and decreasing the money that could go to police and prevention.

If our goal is to prevent crime, Mr. Chairman, we should take the politics out of crime, spend the money where it will actually do some good, and, that is, on prevention and police officers.

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

The CHAIRMAN. The gentleman from Florida [Mr. MCCOLLUM] is recognized for 10 minutes in opposition to the amendment.

Mr. MCCOLLUM. Mr. Chairman, I yield myself such time as I may consume, and I am not going to consume much on this amendment. I think it should be clear that if we voted, as many of us, in fact the clear majority did, a very large majority, against the amendment earlier offered by the gentleman from Maryland [Mr. CARDIN], to strike $30 million, $36 million from the prison grant program, we certainly would want to oppose an amendment that would strike $2.5 billion from the program.

The gentleman obviously who is offering this amendment is offering it in sincere concern for the prevention programs which he liked in the last Congress, which this side of the aisle wants to do away with, did not agree with, and does not want to put more money into.

Next week we will have an opportunity to vote on a combination of local block grant programs that will combine the prevention and the cops on the street programs of the last Congress into a $10 billion program to let the cities and the counties of this Nation, their local governments, decide how to best fight crime in their community, whether that be by hiring a new police officer or doing some kind of prevention program, whatever that they may choose to do. I think $10 billion is plenty of money for that. I think most Americans believe that.

Some money has already been granted out this year under the existing law. So actually more than that would be eligible to be spent according to my calculations.

I see no reason whatsoever to take $2.5 billion from the prison program, strike it altogether, to give the gentleman from Virginia an opportunity next week to argue that he has stricken this money, now that he has done that, he has saved it, he can now increase or add to or argue for more money under the $10 billion program. I suspect next week he is going to be opposed based on his arguments in committee to the concept of block grants, anyway, as opposed to doing it under the categoricals that are in current law.

I understand the opposition and the differences of opinion. I just want the Members to understand clearly that what the gentleman wants to do is to strike a very sizable proportion, $2.5 billion, from this prison grant construction and operation program that is designed to take the violent felons off the streets and provide money to the States so that they can build the prison beds necessary to get an end to parole for these serious violent felons. He wants to strike the money that would allow the States to do this, a huge $2.5 billion amount, and I am very strongly opposed and urge the rejection of this amendment.

□ 1240

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

Mr. SCOTT. Mr. Chairman, could the Chair advise how much time I have remaining?

The CHAIRMAN. The gentleman from Virginia [Mr. SCOTT] has 7 minutes remaining.

Mr. SCOTT. Mr. Chairman, I yield 3 minutes to the gentleman from Maryland [Mr. WYNN].

Mr. WYNN. Mr. Chairman, I would like to thank the gentleman from Virginia for yielding me this time.

Mr. Chairman, I rise today because although I support truth in sentencing, I do not support pork, and that is the problem with the bill as it is currently drafted.

We watched yesterday afternoon when the Republicans basically presented us with a porkfest. We had a lengthy debate, and in the course of that debate it was pointed out that there is a $5 billion pot of money called truth in sentencing incentive grants, $5 billion, but of that $5 billion what we found out was only three States could qualify, and the gentleman suggested, "Oh, no, more States would want to do this." But I checked with my people in Maryland and they said even though we have already doubled our sentencing requirements, the time-served requirements, that even with this bill Maryland would probably not be able to get any money because it would not be cost-effective, it would cost the State too much money to build the prisons even with the grant that we could get from the Federal Government.

So the debate went on and finally the gentleman conceded that yes, there are probably going to be some States that would not be able to take advantage of this money, so the question became what do we do with the unallocated funds? To those of you who are deficit hawks, watch out. Unallocated funds, rather than have these funds go back to the Treasury for deficit reduction, these funds, which could be $2 billion, $3 billion, because remember only three States qualify, the funds would be suddenly given back to the Justice Department for Federal courthouses and Federal magistrates and to the INS Service.

So I see a grave contradiction today, Mr. Chairman. While the Republican chairman suggests we ought to give all of this money to the local governments for prisons, not only is the money not going for prisons, it is not going to the local government, it is reverting back to the Federal Government, not for prisons but for courthouses and INS and other Federal investigatory bureaus.

I do not think that is what the American people want. I think yes, we can have truth in sentencing and yes, serious violators ought to serve more time, no disagreement there.

The issue becomes whether we take the unallocated funds and have a porkfest for Federal investigatory agencies or whether we use unallocated funds and spend it on deficit reduction. I believe we ought to spend it on deficit reduction, which is why I support the amendment of the gentleman from Virginia which suggests that this money ought to be cut.

Mr. MCCOLLUM. Mr. Chairman, I have no requests for speakers, and I reserve the right to close.

Mr. SCOTT. Mr. Chairman, I yield 3 minutes to the gentlewoman from New York [Ms. VELÁZQUEZ].

Ms. VELAZQUEZ. Mr. Chairman, I rise in strong support of the Scott amendment. The people of my district are as concerned about crime as any of my colleagues on the other side of the aisle. In fact, crime is a defining issue in urban centers like the one I represent. Every time I meet with constituents, crime is at or near the top of the agenda. In my district kids grow up on street corners because there are few healthy alternatives. There are no parks, no playgrounds, and no recreational centers, and overcrowded, ill-equipped schools neither prepare nor inspire the children for useful and productive careers.

Prisons alone are not the solution. Without prevention, we will never get control of the crime problem. Punishment and prevention are flip sides of the same coin.

Last year we struck a difficult balance between those two impulses. The Crime Control Act provided for more prisons and stiffer sentences. It also made an investment in proven crime prevention programs for education, recreation, and drug treatment. It offered the kids on the corners alternatives and hope for a better future.

This bill upsets the delicate balance between punishment and prevention. I support this amendment because it helps get us back to the middle ground that we found last year. This bill pledges $12.5 billion for prison construction, $2.5 billion more than was authorized in the 1994 act.

Where will this money come from? From prevention programs? That is $2.5 billion less for our kids. No after-school and summer programs for at-risk youth, no antigang initiatives, no sports leagues or recreational facilities, no drug treatment programs. With this bill we will be saying to your youth, "We don't care about you, we do not expect anything from you. Prison is okay."

Mr. Chairman, I understand that the American people are desperate for urgent action. I understand the temptation to adopt catchy phrases and simple solutions like lock them up and throw away the key. But forget it. It is not about catchy phrases, it is about solutions.

I urge the President and the leadership of this House to maintain the delicate balance that was reached last year. I cannot and I will not support a measure that slashes critical social programs in order to appease the critics on the right. I will not play politics with the future of America's youth.

I urge my colleagues and the American people to see through this Republican charade of deception.

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

Mr. Chairman, the gentleman from Florida has indicated that there will be a block grant of $10 billion for localities to decide what they want to do in terms of prevention or police. Obviously they will have the discretion to do what they want, but they will have $2.5 billion less to do it with if the bill is passed without this amendment.

Mr. Chairman, if we had a problem of people falling off a cliff, we could decide to build a fence on the cliff or we could decide to buy ambulances at the bottom of the cliff.

Mr. Chairman, this amendment allows us to build a fence, save money, prevent crime, and I would hope it would be the pleasure of the House to adopt the amendment.

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

Mr. MCCOLLUM. Mr. Chairman, I yield myself such time as I may consume. Mr. Chairman, I simply want to make an observation on the comments made earlier by the gentleman from Maryland [Mr. WYNN] only to the extent of explaining once more that the unallocated funds in the prison construction program, if the States do not claim those moneys, which I think they will claim virtually all of them, that is a bone of contention I suppose with some of the others of the other side, but if they do not claim all of the money even under the $10½ billion allocated here, then the moneys here are cordoned off and reserved for use by the appropriators for use in the expenses of the Immigration and Naturalization Service for investigators and for expenses of the Bureau of Prisons, the Federal Bureau of Investigation, and the U.S. attorneys for activities and operations related to the investigation, prosecution, and conviction of

persons accused of serious violent felony and incarceration of persons convicted of such offenses.

So it is not court houses and it has very direct preferences related to what we are doing here today in trying to get the kind of money necessary to the States that they can take this group of prisoners, these felons off the streets and lock them up for very extended periods of time. And the gentleman wants to take $2½ billion out of this today so that he can urge you next week that he is going to put that money in prevention programs instead of into building more prisons.

It is just a difference of opinion. But make no mistake, this would take a huge amount, $2½ billion, out of the prison program, $2½ billion that are really needed if we are going to finally stop the revolving door involving serious violent felons who just commit crime after crime in this country.

I urge a "no" vote.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia [Mr. SCOTT].

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

RECORDED VOTE

Mr. MILLER of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 155, noes 268, not voting 11, as follows:

[Roll No. 115]

YEAS—155

Abercrombie
Ackerman
Baldacci
Barcia
Barrett (WI)
Beilenson
Berman
Bishop
Boehlert
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Burton
Camp
Cardin
Castle
Chapman
Clay
Clayton
Clyburn
Collins (IL)
Conyers
Coyne
DeFazio
DeLauro
Dellums
Dingell
Dixon
Doggett
Dooley
Duncan
Durbin
Ehlers
Ensign
Eshoo
Farr
Fattah
Fawell
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford (TN)
Frank (MA)
Franks (NJ)
Funderburk
Gejdenson
Gephardt
Gilchrest
Green
Greenwood
Gunderson
Gutierrez
Hancock
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoekstra
Hoyer
Hutchinson
Inglis
Jackson-Lee
Jacobs
Johnson (CT)
Johnson, E.B.
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kleczka
Klug
LaFalce
Lantos
Lazio
Leach
Lewis (GA)
LoBiondo
Longley
Markey
Martinez
Martini
Matsui
McDermott
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Morella
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Porter
Quinn
Ramstad
Rangel
Reed
Reynolds
Rivers
Rohrabacher
Rose
Roth
Roybal-Allard
Royce
Rush
Sabo
Sanders
Sanford
Sawyer
Schroeder
Scott
Sensenbrenner
Serrano
Shays
Skaggs
Slaughter
Smith (MI)
Stokes
Studds
Thompson
Tiahrt
Torkildsen
Torres
Towns
Tucker
Upton
Velázquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Woolsey
Wynn
Yates
Zimmer

NAYS—268

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehner
Bonilla
Bono
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Buyer
Callahan
Calvert
Canady
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Coleman
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Doolittle
Dornan
Doyle
Dreier
Edwards
Ehrlich
Emerson
Engel
English
Evans
Everett
Ewing
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Frelinghuysen
Frisa
Furse
Gallegly
Ganske
Gekas
Geren
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Graham
Gutknecht
Hall (TX)
Hamilton
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hyde
Istook
Jefferson
Johnson (SD)
Johnson, Sam
Jones
Kanjorski
Kasich
Kelly
Kildee
Kim
King
Kingston
Klink
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Levin
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Mascara
McCarthy
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Moran
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Portman
Poshard
Pryce
Quillen
Radanovich
Rahall
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Ros-Lehtinen
Roukema
Salmon
Saxton
Scarborough
Schaefer
Schiff
Schumer
Seastrand
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (NJ)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Torricelli
Traficant
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wise
Wolf
Wyden
Young (AK)
Young (FL)
Zeliff

NOT VOTING—11

Becerra
Collins (MI)
Dunn
Frost
Gibbons
Hall (OH)
Johnston
Lofgren
Smith (TX)
Smith (WA)
Stark

□ 1306

The Clerk announced the following pairs:

On this vote:

Miss Collins of Michigan for, with Mr. Smith of Texas against.

Mr. Johnston for, with Mrs. Smith of Washington against.

Mr. PALLONE and Mr. SPRATT changed their vote from "aye" to "no."

Messrs. SANFORD, WARD, ENSIGN, GREENWOOD, and ROTH changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to the bill? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. BLILEY) having assumed the chair, Mr. KOLBE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 667) to control crime by incarcerating violent criminals, pursuant to House Resolution 63, he reported the bill back to the House with an amendment adopted by the Committee of the Whole House.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute, as amended? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

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

MOTION TO RECOMMIT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CONYERS. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CONYERS moves to recommit the bill to the Committee on the Judiciary with instructions to report the bill back to the House forthwith, with the following amendment: Page 9, after line 6, insert the following:

"(7) UNALLOCATED FUNDS FOR PUBLIC SAFETY AND COMMUNITY POLICING.—Notwithstanding any other provision of this title, funds transferred under paragraph (6) may only be made available for the program under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1965.

Mr. McCOLLUM. Mr. Speaker, I reserve a point of order.

□ 1310

Mr. Speaker, I withdraw my reservation of a point of order.

The SPEAKER pro tempore. (Mr. BLILEY). The gentleman from Florida withdraws his reservation of a point of order

The gentleman from Michigan [Mr. CONYERS] is recognized for 5 minutes in support of his motion.

Mr. CONYERS. Mr. Chairman and my colleagues of the Congress, this recommit motion takes, perhaps, up to $5 billion in unallocated funds and puts back into the cops on the beat program.

Now, yesterday the new majority whispered a secret about this prison funding proposal on the floor today. They finally admitted that the truth-in-sentencing scheme would probably be so burdensome on the States that most would never qualify for it, and then the gentleman from Florida offered what I call a "cover your back" amendment saying that unexpended funds would be used for Federal law enforcement. This motion to recommit would allow those unexpended funds, which we are all sure will happen, to be used for the most important program we have in the crime bill, the cops on the beat program.

Mr. Chairman, the President's police program is the single most desired crime-fighting response demanded by our citizens across the several States. The Republican majority is proposing to repeal the program and put in its place revenue sharing and a prison funding program that in the end will actually provide less money for prisons and not one guarantee for a single community policeman.

People are afraid to go out of their houses to the corner store. The average response time in our neighborhoods to violent crime is getting longer and longer, and people, are demanding change. We can build all the prisons we want, but without police officers on the beat we will never apprehend them.

So let us do what the police are asking us to do, to get them from behind their desks and on the beat, provide them more resources to fight crime. No one, no one can deny the effectiveness of this program, and this will be the far better place to put those unexpended funds.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Speaker, I thank the gentleman from Michigan [Mr. CONYERS] for yielding this time to me. I rise in full support of the motion to recommit.

Let me just recollect to all of my colleagues our view, the attorney general's view, the Justice Department's view, which gives out this money. Under present law, every State qualifies. Under this law, no State qualifies.

Even the gentleman from Florida earlier this morning in the debate admitted that presently, in his views, only three States, three medium and little States, medium sized and little States, would qualify. So, let us assume that we are right. I ask, Shouldn't that money go to put officers on the beat instead of just sitting there? By all means.

I say to my colleagues, If you are right, the money will be spent on prisons, but if this amendment passes, if you're wrong, which most people will look at it and think at least the money will be spent on cops walking the beat.

I say to my colleagues, Don't, sell out your States. Don't for some nice ideological model way up in the sky that's unattainable, tell your States they can't get millions of dollars to build prisons. Don't sell out your police.

Please support the motion to recommit.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. Mr. Speaker, I thank the gentleman from Michigan [Mr. CONYERS] for yielding, and I just want to remind the Members of the House that the gentleman from Florida with his amendment last night has readily admitted that we are not going to spend all this money on prisons. Otherwise why would he have offered the amendment that leaves this money, after 2 years, to go to the Department of Justice to be used for their program? Well, if that is the case, and I agree with the gentleman from Florida; I said that before; there are not going to be very many prisons built with this bill. We have a present law that is a lot better than their program, that is a lot better, but if this is going to be the case, instead of putting it all in the FBI, or all in the Department of Justice, can we not use some for cops on the beat? I think that is where crime fighting actually begins, with the policemen on the beat, in our local communities.

I ask, What's wrong with saying that, if we don't spend it on prisons, let's use some of it to help our local law enforcement?

I strongly urge Members to vote for the motion to recommit.

Mr. McCOLLUM. Mr. Speaker, I rise in opposition to the motion to recommit.

Mr. Speaker, I yield myself such time as I may consume, and I strongly oppose this motion to recommit. I have had some words that I have heard from the other side over there that have misstated at least what I said earlier in the debate and a lot of words that have gone through. I want to make it perfectly clear in my judgment, and the judgment of the vast majority of our side of the aisle, I believe that every State of the Union is going to qualify for part A, the pot that has $5 billion in it with virtually no restrictions on it. Part B, the pot that has the truth in sentencing money in it for requiring the States in order to get it to change their laws to require serious violent felons to serve at least 85 percent of their time, is going to be a carrot where most States will not have, and that is our idea, have not qualified, though I think somewhere in the neighborhood of six or eight States already are in that posture as opposed to the three the gentleman from New York [Mr. SCHUMER] keep stating to us. I believe that virtually all of this money will be consumed, probably all of it, by the States by time the 5 years runs out in both pots, but yesterday we passed a particular amendment which is being proposed today by this motion to recommit with instructions to be changed of what would happen to any moneys that were not actually given out by the Attorney General in these grants because there were not requests for them or whatever, and we said yesterday, and we voted yesterday, to do this in this committee, that the funds, if there were any unused ones, would go for the purposes of Immigration and Naturalization Service investigators, and the expenses of the Bureau of Prisons, the Federal Bureau of Prisons, and Lord knows they need a lot of it, the Federal Bureau of Investigation and U.S. attorneys for activities and operations related to the investigation, prosecution, and conviction of persons accused of a serious violent felony, and the incarceration of persons convicted of such offenses.

It seems to me that that is an appropriate place to place the residual money, if there is any, which I do not think there will be from the prison grant program that is designed to try to get the serious violent felons off the street and solve the revolving door. We do not need to have a big debate out here tonight over cops on the street again.

What the gentleman's motion to recommit would do would be to say every single penny will go, not for the purposes I just enumerated, which is what we passed yesterday, but every single penny, if any is not spent in this bill, would go instead to the President's cops on the streets program which we will address next week.

□ 1320

We on this side of the aisle think that program needs to be merged into a community block grant program. We do not agree with that program. So consequently the purposes for which this is intended are not going to be served by the motion to recommit if it is passed today. So I urge in the strongest of terms a no vote to the motion to recommit.

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

The SPEAKER pro tempore (Mr. BLILEY). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electornic device, and there were—yeas 193, nays 227, not voting 14, as follows:

[Roll No. 116]

AYES—193

Abercrombie
Ackerman
Baesler
Baldacci
Barcia
Barrett (WI)
Bellenson
Bentsen
Bevill
Bishop
Bonior
Borski
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Camp
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Condit
Conyers
Costello
Coyne
Cramer
Danner
de la Garza
Deal
DeFazio
DeLauro
Dellums
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford (TN)
Frank (MA)
Furse
Gejdenson
Gephardt
Geren
Gonzalez
Gordon
Green
Gutierrez
Hall (TX)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson, E.B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Parker
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Rahall
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Sisisky
Skaggs
Skelton
Slaughter
Spratt
Stenholm
Stokes
Studds
Stupak
Tanner
Tauzin
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Tucker
Velázquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOES—227

Allard
Andrews
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
DeLay
Deutsch
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Paxon
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Skeen
Smith (MI)
Smith (NJ)
Solomon
Souder
Spence
Stearns
Stockman
Stump
Talent
Tate
Taylor (NC)
Thornberry
Tiahrt
Torkildsen
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—14

Becerra
Berman
Boucher
Coburn
Collins (MI)
Frost
Gibbons
Hall (OH)
Johnston
Lofgren
Smith (TX)
Smith (WA)
Stark
Thomas

□ 1336

The Clerk announced the following pairs:

On this vote:

Miss Collins of Michigan for, with Mr. Smith of Texas against.

Mr. Johnston of Florida for, with Mrs. Smith of Washington against.

Mr. LoBIONDO changed his vote from "aye" to "no."

Mr. HILLIARD and Mr. PETE GEREN of Texas changed their vote from "no" to "aye."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. BLILEY). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 265, noes 156, not voting 13, as follows:

[Roll No. 117]

YEAS—265

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Boehner
Bonilla
Bono
Borski
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Canady
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doggett
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehrlich
Emerson
Engel
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Jefferson
Johnson (CT)
Johnson, Sam
Johnson (SD)
Jones
Kasich
Kelly
Kennedy (RI)
Kim
King
Kingston
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski

Livingston
LoBiondo
Lucas
Manton
Manzullo
Martini
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Menendez
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Poshard
Pryce
Quillen
Radanovich
Reed
Regula
Reynolds
Richardson
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (NJ)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thurman
Tiahrt
Torricelli
Traficant
Visclosky
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Wyden
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—156

Abercrombie
Ackerman
Baldacci
Barcia
Barrett (WI)
Beilenson
Bentsen
Bishop
Blute
Boehlert
Bonior
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Camp
Cardin
Castle
Chapman
Clay
Clayton
Clinger
Clyburn
Coleman
Collins (IL)
Conyers
Coyne
Cubin
Danner
DeFazio
de la Garza
DeLauro
Dellums
Dicks
Dingell
Dixon
Doyle
Durbin
Edwards
Ehlers
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Furse
Gejdenson
Gephardt
Gonzalez
Green
Gunderson
Gutierrez
Hamilton
Hastings (FL)
Hilliard
Hinchey
Hoekstra
Holden
Hoyer
Jackson-Lee
Johnson, E.B.
Kanjorski
Kaptur
Kennedy (MA)
Kennelly
Kildee
Kleczka
Klink
Klug
LaFalce
Lantos
Levin
Lewis (GA)
Longley
Lowey
Luther
Maloney
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McKinney
Meehan
Meek
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Payne (NJ)
Pelosi
Pomeroy
Portman
Quinn
Rahall
Ramstad
Rangel
Rivers
Roemer
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Scarborough
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Smith (MI)
Stokes
Studds
Stupak
Tejeda
Thompson
Thornton
Torkildsen
Torres
Towns
Tucker
Upton
Velázquez
Vento
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wynn
Yates

NOT VOTING—13

Becerra
Berman
Collins (MI)
Deutsch
Frisa
Frost
Gibbons
Hall (OH)
Johnston
Lofgren
Smith (TX)
Smith (WA)
Stark

□ 1354

The Clerk announced the following pairs:

On this vote:

Mr. Smith of Texas for, with Miss Collins of Michigan against.

Mrs. Smith of Washington for, with Mr. Johnston against.

Mr. Deutsch for, with Mr. Berman against.

Mrs. MALONEY, Mr. LUTHER, and Mr. FORD changed their vote from "aye" to "no."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. FRISA. Mr. Speaker, on rollcall 117, final passage of the prison construction legislation, I was unavoidably absent.

Had I been present, I would have voted "aye."

PERSONAL EXPLANATION

Mr. STARK. Mr. Speaker, on Friday, February 10, 1995, I missed six recorded votes because of a bad case of the flu. Rather than infect the rest of the House, I stayed home.

If I had been present, I would have voted as follows:

On rollcall No. 112, the amendment by Mr. WATTS, to strike the automatic stay provisions relating to relief lawsuits brought by inmates, "aye."

On rollcall No. 113, the amendment by Mr. CARDIN to reduce by $36 million over 5 years the authorization for prison grants, "aye."

On rollcall No. 114, the amendment by Mr. CHAPMAN to make States eligible for both general and "truth in sentencing" prison grants rat her than either one or the other, "aye."

On rollcall No. 115, the amendment by Mr. SCOTT, to decrease by $2.5 billion the total funding for State and regional prison grants, "aye."

On rollcall No. 116, the motion to recommit by Mr. CONYERS, to allocate any unallocated funds for public safety and community policing, "aye."

On rollcall No. 117, final passage, "no."

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 667, VIOLENT CRIMINAL INCARCERATION ACT OF 1995

Mr. MCCOLLUM. Mr. Speaker, I ask unanimous consent that, in the engrossment of the bill, H.R. 667, as amended, the Clerk be authorized to correct section numbers, cross-references, an punctuation, and to make such stylistic, clerical, technical, conforming, and other changes as may be necessary to reflect the actions of the House in amending the bill.

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

There was no objection.

GENERAL LEAVE

Mr. MCCOLLUM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 667 and H.R. 668.

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

There was no objection.

DISCUSSION OF REGULATORY REFORM BILL IN GOVERNMENT OVERSIGHT COMMITTEE

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

Mr. FAZIO of California. Mr. Speaker, I know we have been able to reach agreement apparently on this rule and I know people would people would like to have no further votes so we can move on. It is after all Friday. But I am told by members of the Committee on Government Reform and Oversight that they have run into a rather difficult problem within their committee. They have been told by the gentleman from Pennsylvania [Mr. CLINGER], the chairman, that they have to put out the regulatory reform bill this afternoon or waive their rights to a 3-day layover if it were to be taken up on Monday.

I think on behalf of the minority, we find that a rather difficult choice to have to make, one that really truncates our ability to have full debate and full consideration of this very important legislation on regulatory relief.

I am wondering if we could hear from those on the majority side about how we could accommodate those concerns. We understand the schedule you are trying to keep, but this is one of the most important bills to come out of that committee in this session. Perhaps the majority leader may wish to respond or the majority whip. I am not sure. I know the majority whip has a great interest in this bill.

Mr. DELAY. Mr. Speaker, will the gentleman yield?

Mr. FAZIO of California. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Speaker, I understand the gentleman's concern and as we have during this entire process ever since January 4, we have been diligently trying to, and have protected the rights of the minority. We are running into scheduling problems. We are trying to get this bill out. We do not want to limit any kind of opportunities

for Members to offer amendments. But as we have seen on other bills and we feel that at least on this particular bill that there are an inordinate number of amendments to the moratorium bill, a moratorium bill that gives the President the right to actually exempt regulations.

Mr. FAZIO of California. If the gentleman would allow me to reclaim my time, the question of what is an inordinate amount is often in the eye of the beholder.

Mr. DELAY. That is true. And the majority beholder thinks that there are a lot of amendments that really have nothing to do with the bill and could be construed as being a little dilatory. We are just trying to accommodate the minority in trying to say, look, we will go through the whole process and allow you to offer all amendments and keep the process open, but we would appreciate you working with us and maybe, in order to accommodate the schedule and not be here late at night and through weekends, be able to ask the minority if laying the bill out for the 3 days could be accommodated.

Mr. FAZIO of California. If the gentleman would allow me to continue, the Members I think are already expecting to spend Saturdays here in March. That word is all over the institution, so we all know we are running up against deadlines. But we cannot let those deadlines get in the way of due deliberation. To say that that bill has to be put out today I think really stretches.

Mr. DELAY. Mr. Speaker, will the gentleman yield?

Mr. FAZIO of California. I yield to the gentleman from Texas.

Mr. DELAY. We want due deliberation, but as the gentleman knows, from the time a bill gets out of committee to the time it gets to the floor, it could be 10 days in order to protect the minority's right of allowing a bill to sit around for 3 days for comments before it gets to rules, and then after rules it lays for 3 days before it can come to the floor. We are just saying that maybe we could do a little negotiating here and the committee could deliberate and take all amendments if the minority would only allow it to lay out 2 days.

□ 1400

The SPEAKER pro tempore (Mr. BLILEY). Perhaps the distinguished gentleman from California and the majority whip might retire and negotiate.

Mr. FAZIO of California. Mr. Speaker, if we could proceed for ½ minute, it would seem to me if the leadership would proceed to communicate with our leadership about how we are going to handle this bill in committee, to give our members adequate time to offer amendments that are in fundamental ways important to what is one of the most significant bills we are going to deal with in the first 100 days, let alone this Congress, then I think perhaps we could continue in the commodious way we have been. I am sorry to say that we may have to have votes on this noncontroversial rule if we do not have that kind of a dialog.

Mr. DELAY. If the gentleman will yield briefly, I am looking forward to negotiating with the gentleman. We just thought, maybe wrongly, that the chairman of the committee and the ranking member could do that kind of negotiations for the committee, but if it takes the leadership level of negotiations we are happy to do it.

Mr. FAZIO of California. I think it may have been elevated.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 728, LAW ENFORCEMENT BLOCK GRANTS

Ms. PRYCE, from the Committee on Rules, submitted a privileged report (Rept. No. 104–27) on the resolution (H. Res. 79) providing for consideration of the bill (H.R. 728) to control crime by providing law enforcement block grants, which was referred to the House Calendar and ordered to be printed.

CRIMINAL ALIEN DEPORTATION IMPROVEMENTS ACT OF 1995

Mr. SOLOMON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 69 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 69

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for consideration of the bill (H.R. 668) to control crime by further streamlining deportation of criminal aliens. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with section 302(f) or section 303(a) of the Congressional Budget Act of 1974 are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, modified by the amendment printed in section 2 of this resolution. All points of order against the committee amendment in the nature of a substitute for failure to comply with clause 5(a) of rule XXI are waived. Each section of the committee amendment in the nature of a substitute, as modified, shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute, as modified. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. The amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill is modified by the following amendment: "Strike section 11 and redesignate the succeeding sections accordingly.".

The SPEAKER pro tempore. The gentleman from New York [Mr. SOLOMON] is recognized for 1 hour.

Mr. SOLOMON. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from California [Mr. BEILENSON], pending which I yield myself such time as I might consume. During consideration of this resolution, all time yielded is for the purposes of debate only.

Mr. Speaker, in keeping with our promise to have a more open process in the House, the Rules Committee is bringing to the floor today another open rule.

This one provides for the consideration of H.R. 668, the Criminal Alien Deportation Improvements Act with 1 hour of general debate.

While any Member of the House may offer an amendment under this rule, priority in recognition will be given to those Members who pre-print their amendments in the CONGRESSIONAL RECORD.

This procedure means that Members can be better informed about the issues they will have to vote on, and reduces the possibility of legislation by ambush.

During its consideration of this bill, the Judiciary Committee adopted an amendment by the gentleman from California [Mr. BERMAN] which would have provided a new entitlement which was not paid for.

The Rules Committee was faced with a situation where this bill could not even have been considered unless the Budget Act was waived, and if the original provision had been left in place, the total cost of the amendment would have been added to the deficit.

At the same time, many of us were sympathetic to what the gentleman from California was trying to do—namely reimburse State and local governments for the cost of incarcerating illegal aliens who commit serious crimes.

My State of New York, along with a number of others, has been saddled

with heavy financial burdens because the Federal Government has failed to control the Nation's borders effectively.

The compromise solution which was worked out involves two steps.

First, the House agreed to an amendment to the prisons bill, H.R. 667, which would authorize the funds necessary to reimburse States and localities for the cost of incarcerating illegal aliens who have committed serious crimes.

Next the Rules Committee put a provision in this rule which made in order as a new base text the Judiciary Committee amendment in the nature of a substitute minus the Berman amendment which violated the Budget Act.

This took out the budget busting provision from the text that the House will be amending.

However, since the bill reported from the Judiciary Committee still has the language in it which violates the Budget Act, it is necessary to waive two sections of the Budget Act in order to call up the bill. But these are in effect only technical waivers because the offending language is being deleted by the adoption of the rule.

The first technical waiver is included because the Judiciary Committee bill proposed new entitlement authority beyond the committee's allocation. The second technical waiver is necessary because the committee reported bill provides new entitlement authority prior to the adoption of the budget resolution.

I repeat—these Budget Act waivers are necessary only to allow the House to consider the alien deportation bill. The provision which violated the Budget Act is being eliminated by the rule.

There is one other provision adopted by the Judiciary Committee which requires a waiver of points of order.

This provision was offered by the gentleman from California [Mr. MOORHEAD]. It allows reimbursement for the cost of incarcerating illegal aliens to be paid to the localities as well as to the States.

This amendment was adopted by voice vote in the Judiciary Committee and is widely approved. It does not involve any additional cost, but it does require a waiver of the rule prohibiting appropriations on legislation, because technically it is possible that previously appropriated funds could be used for a new purpose.

Finally, the rule provides for one motion to recommit, with or without instructions.

This provides the minority one final chance to offer its best alternative to the bill.

Mr. Speaker, this rule provides a fair process.

It is important to keep in mind, that this is a completely open rule. Any member can offer any amendment that complies with House rules. While there are three waivers that are largely technical, these waivers do not in any way limit a Member's ability to offer his or her ideas to improve the bill.

Mr. Speaker, it is long past time that this Congress started getting serious about the problem of illegal immigration in this country.

The Governor of California has noted, for example, that today in Los Angeles alone illegal immigrants and their children total nearly 1 million. That is more than any congressional district.

Governor Wilson has also noted that two-thirds of the babies born in Los Angeles public hospitals are born to parents who have illegally entered the United States. These are awesome numbers. And the problem is not limited to California, Texas, and Florida. In my own State of New York, the cost of providing services to illegal aliens is a burden on all the taxpayers of the State.

The bill before us now is a first step toward dealing with the larger problem. This bill will streamline the process of deporting illegal aliens who have committed serious crimes. For example, the bill adds a number of crimes for which illegal aliens can be deported.

Crimes such as trafficking in counterfeit immigration documents, serious bribery, and transporting persons for the purpose of prostitution can become a basis for deportation.

The Criminal Alien Identification System is given the mission of assisting Federal, State, and local law enforcement agencies in identifying and locating aliens who may be deportable because they have committed aggravated felonies.

The bill is a good beginning in dealing with a serious problem. There is much more that needs to be done to prevent the illegal immigration in the first place. I support this bill and the open rule which provides for its consideration.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding. I would simply like to rise and congratulate the chairman of the Committee on Rules for underscoring the fact that public-policy questions that in the past have only been dealt with by waiving the rules of the House can in fact be addressed by looking head-on at creative ways to comply with the standing rules of the House and actually solve those problems. That is exactly what we were able to do, and that is exactly what this rule does once again, so we can in fact meet the needs of the American people, the issues that the American people want us to address, and we can do it under the rules that the Founders put in place for this institution.

Again I thank my friend for yielding.

Mr. SOLOMON. The gentleman's points are so well taken. The truth of the matter is that the Committee on Rules has put their foot down on these so-called budget waivers that have gotten us into these problems over the years. We are not going to try to do that anymore, and that is one way that we have stopped a new entitlement program from going through, yet helped those States and municipalities that desperately need the help.

Mr. BENTSEN. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I am glad to yield to the gentleman from Texas.

Mr. BENTSEN. Mr. Speaker, just so I understand what the gentleman is saying, this rule will effectively knock out the Berman language as it relates to reimbursement to the States?

Mr. SOLOMON. The gentleman is correct, because it has been taken care of in the previous bill.

Mr. BENTSEN. So everything we rely on is what was done in H.R. 667, in the previous bill, and there will be no Berman language in this bill?

Mr. SOLOMON. The gentleman is absolutely correct.

Mr. BENTSEN. I thank the gentleman.

Mr. SOLOMON. I hope we can move this rule through on a voice vote.

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

□ 1410

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

The gentleman has fully explained the terms of the rule before us. It is an open rule. We support the rule. We encourage our colleagues to do the same.

Among the waivers provided by the rule, all of which are technical in nature, is a waiver of clause 5(a) of rule XXI prohibiting appropriations in an authorization bill. That waiver was agreed to by the Committee on Rules without objection at the request of this gentleman from California and is needed to protect a provision in the bill as reported by the Committee on the Judiciary. That provision, offered by the gentleman from California [Mr. MOORHEAD], was approved by voice vote in that committee.

The Moorhead amendment seeks to insure funds appropriated for fiscal year 1995 for the purposes of reimbursing States and local governments for the cost of incarcerating illegal aliens convicted of felonies are available to local as well as to State governments. The Moorhead amendment is, in fact, merely a restatement of existing law as approved in last year's crime bill.

No new spending is involved, as the gentleman from New York [Mr. SOLOMON] explained, so the waiver of clause 5(a), rule XXI, is a technical one as well. This is an issue—this particular one of reimbursement to localities—is

an issue that this particular gentleman, along with several others, including especially the gentleman from California [Mr. BERMAN], has been working on for some time now.

In fact, my amendment to the 1994 crime bill not only required for the first time that these reimbursement payments be made to the States but also for the first time directed local governments be eligible to receive those funds as well.

Mr. Speaker, H.R. 668, the Criminal Alien Deportation Improvement Act, is intended to strengthen existing laws to ensure the swift deportation of aliens who commit crimes and to crack down on alien smuggling.

For example, the bill expands the number of aggravated felonies for which an alien can be deported and limits the review of deportation orders for criminal aliens.

The rule permits any germane amendments to be offered, so any concerns that our colleagues may have with specific provisions of the bill can be addressed under this rule.

Mr. Speaker, to repeat, we support this rule. It is, in fact, an open rule. We urge our colleagues to approve it so that we may commence consideration of this important legislation today.

Mr. Chairman, I yield such time as he may consume to our distinguished colleague, the gentleman from Massachusetts [Mr. MOAKLEY], the ranking member.

Mr. MOAKLEY. Mr. Speaker, I think the gentleman for yielding me this time.

Mr. Speaker, yesterday in the Committee on Rules a wonderful thing happened. In the interest of bipartisan cooperation, Democrats and Republicans worked out an agreement to allow the Moorhead amendment.

I thank Chairman SOLOMON for his wisdom and for his going beyond the call and also the Republican members on the Committee on Rules for working with us.

Mr. Speaker, I look forward to many, many more of these problems being worked out in the Committee on Rules, and maybe a new day is dawning.

Mr. BEILENSON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GOSS. Mr. Speaker, once again I am delighted to rise in support of a wide open rule that offers all Members the chance to become involved in this important debate. The issue of crime as it relates to illegal immigration is one of great significance to many Americans, and especially to the people of Florida. The statistics tell the story of how illegal immigration and crime have joined together to wreak havoc in States like Florida. In Florida, we would need to build 4 to 5 more prisons just to house criminal aliens—at an estimated cost of $80 to $120 million. By strengthening the laws providing for prompt deportation of criminal aliens and making penalties more certain for deported aliens who return to this country illegally, we take a big step in helping States—especially border States—cope with the complex challenges and of illegal immigration. Obviously Florida will benefit in the long run by a more efficient system for speeding deportations, but in the meantime, the costs continue to mount as we grapple with the fact that approximately 10 percent of our prison population is made up of illegal aliens.

For too long, illegal immigration has been a problem sloughed off onto the States. This is a Federal problem—caused by failures in Federal policies—and it is highly appropriate that the Federal Government step in with solutions. H.R. 668 is just such a step forward.

I am grateful for the bipartisan effort in the Rules Committee—led by Mr. BEILENSON and Mr. DREIER—to come up with a creative way to solve a thorny Budget Act problem posed by language in this bill. In considering the preceding crime bill—the prison bill—yesterday, we demonstrated that the spirit of compromise can lead to a win-win situation. We included important language in the prison bill providing priority in securing crucial resources to States that have been straining to meet the demands of illegal immigration on their prison systems. Deliberative democracy has been working at its best in this House during the course of this debate and I commend all of those involved for their persistence. I urge support of this rule and H.R. 668.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 69 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 668.

□ 1414

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 668) to control crime by further streamlining deportation of criminal aliens, with Mr. DREIER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Florida [Mr. MCCOLLUM] will be recognized for 30 minutes, and the gentleman from Michigan [Mr. CONYERS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. MCCOLLUM].

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

Mr. Chairman, H.R. 668 makes several amendments to the immigration laws to further address the problem of aliens who commit serious crimes while they are in the United States. While several bills in the last Congress began to address this problem, they have not gone far enough.

Of particular concern is the recent increase in alien smuggling crime. Organized crime rings in this country, with ties to others abroad, have developed to prey upon illegal immigrants who want to come to the United States. These criminals extort large sums from these illegal immigrants in return for passage to the United States and for the fraudulent documents they need to obtain entry. In many cases, these illegal immigrants cannot pay these fees and, once they arrive here, are forced into involuntary servitude, prostitution, and other crimes in order to repay these fees. In some cases, such as the "Golden Venture" in New York City, the attempt to smuggle these illegals goes tragically wrong and people die.

H.R. 668 attempts to deal with this problem by designating a number of offenses common to organized immigration crime as "aggravated felonies." Aliens who commit aggravated felonies can be deported from the country following their incarceration. These changes will enable the Government to deport those aliens who commit alien smuggling crimes after they serve their incarceration.

The bill also strengthens the expedited deportation procedures of existing law. These procedures streamline the deportation process with respect to criminal aliens who are not legal permanent residents. Under H.R. 668, aliens who enter the country as permanent residents on a conditional basis and then commit serious crimes will also be placed into this expedited deportation process.

The bill also tightens one of the defenses to deportation. Under present law, persons who are legal permanent residents and have lived in the country for 7 years may assert their years of residence as a defense to deportation, but this defense does not apply if they have been convicted of an aggravated felony and served 5 years in prison. Unfortunately, for all practical purposes, the Government must wait 5 years to begin deportation proceedings against these criminals. Not only does this result in administrative inefficiency but, on occasion, allows criminal aliens to escape deportation when their incarceration ends before the deportation process is completed. H.R. 668 would remedy these problems by allowing the Government to bring deportation proceedings against the alien whenever the alien is sentenced to 5 or more years in prison, regardless of the time actually served.

H.R. 668 will also allow the Government to deport aliens who have resided in the country for less than 10 years and who are convicted of any felony crime involving moral turpitude. Under current law, persons convicted of crimes of moral turpitude can only be

deported if they have been sentenced to, or serve, at least 1 year in prison.

Finally, in order to help Federal law enforcement officials combat organized immigration crime, the bill adds a number of immigration-related offenses as predicate acts under the Rico statute, one of the principal tools that Federal law enforcement officials use to fight organized crime. And to complement this provision, the bill also gives Federal law enforcement officials the authority to utilize wiretaps to investigate certain immigration-related crime.

Mr. Chairman, this bill is modest in length but is a sizable step forward in the Government's effort to fight alien smuggling and to rid ourselves of those noncitizens who commit serious crimes in our country. By removing from our society those aliens who do not respect our laws, we make our streets safer for citizens and noncitizens alike. I urge my colleagues to vote for this bill.

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

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

Mr. Chairman, the subcommittee chairman, the distinguished gentleman from Florida, has very adequately described the bill. I agree with his interpretations.

H.R. 668 would amend the Immigration and Naturalization Act and other laws to make it easier to deport aliens who commit crimes in the United States and to provide law enforcement officials with additional tools to fight violations of immigration laws.

The bill would broaden the definition of "aggravated felony" established by the 1994 crime bill so as to expand the reach of the summary deportation procedures that were put into effect last year.

The 1994 act permits the INS to use an abbreviated administrative process with no right to an administrative hearing and with a limited right to judicial review to deport an alien—other than a lawful permanent resident—who commits an "aggravated felony." The Attorney General is specifically denied the ability to withhold deportation of such individual on other grounds; for example, asylum.

The list of offenses that would be considered to be "aggravated" felonies would be expanded to include certain crimes related to gambling, prostitution, document fraud, reentry of deported alien at improper time or place, commercial bribery, counterfeiting, forgery, trafficking in vehicles the identification numbers of which have been altered, perjury, bribery of a witness, and failure to appear to answer charges.

The procedures for removal of such aliens would be further streamlined and their reach extended to include aliens who are admitted to the United States as lawful permanent residents, but on a "conditional bases." Such conditional status is conferred on the spouses—and spouses' children—of citizens and lawful permanent residents as a device to discourage fraudulent marriages and deny participants of such fraudulent marriages the benefits of lawful permanent resident status. The bill also adds a requirement that expedited proceedings be conducted, in or translated for the alien into, a language the alien understands.

In addition, H.R. 668 would amend the Immigration and Nationality Act to extend a restriction that exists on the Attorney General's discretion to provide relief from deportation—under INA section 212(c)—for lawful permanent residents who have committed an "aggravated" felony. Such relief is now limited to individuals who have lived in the United States for more than 7 years, but who have served sentences of less than 5 years. The bill amends the law to deny the availability of section 212(c) relief to lawful permanent residents who are sentenced, rather than serve 5 years.

Other significant provisions of H.R. 668:

Collateral attacks of a deportation order in a subsequent prosecution that is based on violation of the order would be limited;

Certain alien smuggling-related offenses would be added to the list of Rico-predicate offenses;

The Attorney General would be granted authority to seek wiretaps in connection with alien smuggling investigations; and

Aliens who are convicted of a felony crime involving moral turpitude within 5 years of entry—10 years in the case of legal permanent resident aliens—would be deportable, regardless of sentence actually imposed. Under current law, aliens who commit crimes of moral turpitude can only be deported if they are actually sentenced to or serve at least 1 year in prison.

Finally, the Violent Crime Control and Law Enforcement Act of 1994 would be amended to ensure that units of local government are eligible for reimbursement for the cost of incarcerating convicted criminal aliens.

□ 1420

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

Mr. McCOLLUM. Mr. Chairman, I have no more requests for time, and I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey [Mr. MENENDEZ].

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

Mr. Chairman, I rise today to support this legislation. New Jersey's 13th District is the home to many immigrants, immigrants who are proud to reside in this great land and immigrants who abide by her laws.

For most of these individuals, America is an opportunity, an opportunity to work, an opportunity to succeed, and an opportunity to provide a better life for their children.

However, I believe it is time we send the message that America is also a privilege and if you choose to violate her laws, your privileges will be revoked. You will be tried, you will be convicted, and you will be deported.

It is right to seek reimbursement to States for the incarceration of criminal aliens. The burden on the State for the incarceration of criminal aliens is overwhelming, and it is unfair to expect the American people to bear this expense. In June 1989, the GAO estimated that 22 percent of the Federal prison population were aliens and over half had been convicted of a crime for which they could be deported; at a cost of over $15,000 per prisoner per year this is unacceptable. For New Jersey this means annual costs of $6.6 million for the incarceration of criminal aliens. And in New York City, across the Hudson River from my district, in a 15-month period 12,300 aliens were arrested for felonies.

In the same way that we revoke the privilege of freedom from other criminals, we should revoke that which is most sacred to criminal aliens, their residence in the United States.

Mr. Chairman, I join in supporting the deportation of criminal aliens. The American people cannot afford to support the costs of criminal aliens and, more important, they should not have to.

Mrs. FOWLER. Mr. Chairman, I rise today in support of H.R. 668, the Criminal Alien Deportation Improvements Act. As a member of the Florida delegation, I am a strong supporter of legislation which effectively and fairly addresses immigration-related problems. H.R. 668 does just that, by making it easier to deport criminal aliens who have been convicted of a felony. Any Representative who values law and order should be proud to support this bill.

In the past, it has sometimes been difficult for the Government to deport even those aliens who have committed very serious crimes. It is time that we correct this problem. There is absolutely no reason that such people should enjoy the benefits of living in the United States after committing crimes.

H.R. 668 does more than just streamline deportation procedures for criminal aliens. It also establishes a criminal alien identification center which will help law enforcement authorities locate criminal aliens. It is an excellent commonsense bill, and I urge my colleagues to support it.

Mr. KENNEDY of Massachusetts. Mr. Chairman, PETER KING of New York and I have been working hard on a provision of this bill for the past year. This particular provision would apply the RICO statute to alien smuggling crimes. This means that when a criminal act involves the trafficking of human beings, the Department of Justice can use the full scope of the law to prosecute the smugglers

by allowing higher fines, longer prison sentences, and seizing the assets of the organized enterprises committing these crimes, not just individuals.

In the past couple of years we have heard about boatloads of Chinese immigrants being brought to the United States under horrifying conditions—weeks with no clean water, minimal food, and unsanitary conditions beyond imagination. The gangs responsible for smuggling these people into the United States then force them into slave labor, working 12- to 14-hour days, 7 days a week in gruesome conditions just to pay off the $30,000 to $40,000 debt they incurred. These horrible abuses at the hands of people willing to profit from the trade of human beings must be stopped.

Mr. Chairman, I want to be perfectly clear. Some people are trying to flee their homelands for legitimate reasons. This country has a longstanding tradition of granting asylum to people who are fleeing their home because of political persecution. I believe very strongly in this policy. What we are talking about here today is very different. The purpose of this provision is to address the problem of slave trade, where traffickers use the dream of America and freedom to lure people into the bondage of slavery for their own profit.

Mr. PACKARD, Mr. Chairman, there are over 450,000 criminal aliens on probation, in prison, or on parole in the United States. Our Federal, State, and county criminal justice systems can no longer bear this awesome burden. The Republican crimefighting agenda seeks to ease this troublesome load by providing more effective crimefighting tools.

The Criminal Alien Deportation Act, H.R. 668, cracks down on criminal aliens by allowing swifter deportation procedures and stiffer smuggling penalties. Speeding up the deportation process frees up more of our scarce prison resource. Currently, criminal aliens constitute one-fourth of our prison population.

Our Republican crime bill recognizes the staggering costs that criminal aliens place on our judicial system. Criminal immigrants cost the State and county criminal justice systems more than $500 million per year. These are costs we cannot sustain.

Mr. Chairman, the Criminal Alien Deportation Act affects every taxpayer in America. Speeding up the deportation process saves American taxpayer dollars and frees up jail space to allow us to keep more criminals off our streets.

Mr. SMITH of Texas. Mr. Chairman, I would like to enter into the RECORD my strong support of H.R. 668, the Criminal Alien Deportation Improvements Act of 1995.

The escalation of crime is robbing Americans of the freedom to walk their neighborhood streets, the right to feel secure in their homes, and the ability to feel confident that their children are safe in their schools.

An increasing amount of crime is being committed by noncitizens: both legal and illegal aliens. About 25 percent of all Federal prisoners are foreign-born. An astounding 42 percent of all Federal prisoners in my State of Texas are foreign-born. Recidivism rates for criminal aliens are high—a recent GAO study revealed that 77 percent of noncitizens convicted of felonies go on to be arrested at least one more time.

The Bureau of Prisons estimates that over 75 percent of noncitizen inmates are confined for drug law violations. Drug law violations are serious and these criminals should be required to serve their full sentences. Because of the porous nature of the border, drug traffickers who are deported before the completion of their sentences often come back across the border into the United States.

The Criminal Alien Improvements Act of 1995 further expedites the deportation of criminal aliens after they have served their sentences. The act contains many of the provisions I sought in an amendment to last year's crime bill and I thank the bill's authors for including those.

This bill increases the list of aggravated felonies for which an alien can be deported. Transportation for the purposes of prostitution, smuggling aliens, counterfeiting, trafficking in stolen vehicles, and bribery of a witness are all very serious crimes. Aliens who commit these offenses should be deported immediately upon the completion of their sentences. Under H.R. 668, the Attorney General will no longer have the ability to grant relief from deportation to aliens convicted of aggravated felonies.

The bill also expands the number of crimes for which failing to appear to serve a sentence qualifies as an aggravated felony. This sanction has only applied in the past to crimes that carry a sentence of 15 or more years. H.R. 668 lowers the floor to 5 years, and will send a strong message to criminal aliens who fail to show up for sentencing.

H.R. 668 allows the INS to exclude aliens who commit serious aggravated felonies, and are sentenced to at least 5 years, but are released in less than 5 years on parole or due to prison overcrowding. Noncitizen aggravated felons should not be admitted to the United States, and those who are here should be deported as soon as possible. This bill significantly strengthens the Government's ability to deport criminal aliens by eliminating the gap between the end of their sentences and the date of deportation.

H.R. 668 also ensures that an alien who illegally reenters the country after being deported, may only challenge the original deportation order after exhausting all administrative remedies, and only if the deportation order was unfair. It further provides that any alien convicted of an aggravated felony who is not a legal permanent resident is presumed to be deportable. Judicial review of a petition to stay the deportation order will be limited only to determining the identity of the alien and confirming that he or she was convicted of an aggravated felony.

Too few criminal aliens are being deported today. The deportation process can be years in length. H.R. 668 will streamline the process by eliminating frivolous challenges to deportation orders. The INS needs all the help they can get in speeding up deportations, and we can give them that help by passing this bill.

Americans should not have to tolerate the presence of those who abuse both our immigration and criminal laws. Criminal aliens should be on the fast track out of the country. This bill addresses the concerns of the American people by giving the INS and prosecutors tools they need to expedite the deportation of criminal aliens.

I am especially pleased that the bill includes provisions granting wiretap authority to assist INS in apprehending alien smugglers. Alien smuggling is a most despicable crime. It hurts Americans by facilitating illegal immigration, and places illegal aliens in human bondage. Those smuggled by organized rings are often required to work off the smuggling fees. Others must sell drugs or their bodies for the smugglers.

These organized smuggling rings are a grave threat to the welfare of all individuals—both Americans and aliens. For this reason, I am also pleased to see a provision that makes alien smuggling a predicate offense for the application of RICO laws. It is imperative that we send the strongest possible message to alien smugglers; a message that will be enforced to the full extent of the law.

Finally, H.R. 668 transfers control of the Criminal Alien Tracking Center created in last year's crime bill from the Attorney General to the INS Commissioner. I believe that this is a positive step toward removing bureaucracy and excessive redtape from the deportation process. I am also pleased that the tracking center, renamed the Criminal Alien Identification System, is directed to work closely with Federal, State, and local law enforcement agencies to identify criminal aliens for deportation.

This Nation can no longer tolerate an increasing population of noncitizen criminals. The American people made it very clear on November 8 that they expect us to eliminate the problem of criminal aliens, and this bill is a significant step toward doing that.

Mr. YOUNG of Florida. Mr. Chairman, I rise today in support of H.R. 668, the Criminal Alien Deportation Act. This legislation represents title VIII of the Taking Back Our Streets Act, one of the 10 points of the Republican Contract With America, and continues our efforts here in the House to address our Nation's crime problem.

The legislation we consider today makes several amendments to the Immigration and Nationality Act and other immigration laws to address the problem of aliens who commit serious crimes while they are in the United States, and gives federal law enforcement officials additional tools with which to combat organized immigration crime.

The most significant provisions of H.R. 668 are intended to accomplish one or both of two broad goals. First, the bill strengthens the Government's ability to efficiently deport aliens who are convicted of serious crimes. Second, the legislation adds immigration crimes to those crimes that the Federal Government may investigate under the Racketeering Influenced Corrupt Organization [RICO] law, and adds certain other crimes to the definition of "aggravated felonies," thereby expanding the number of criminal aliens who can be deported. The bill makes it clear that expedited deportation procedures that currently apply to nonresident aliens also apply to aliens who have been conditionally granted permanent residence.

Finally, in an effort to identify criminal aliens who may flee jurisdiction to avoid deportation, the bill directs the Criminal Alien Identification System, formerly the Criminal Alien Tracking Center created by the Violent Crime Control

and Law Enforcement Act, to assist Federal, State, and local law enforcement agencies in identifying and locating criminal aliens who may be deported.

Mr. Speaker, the passage of proposition 187 in California in 1994, was indicative of the frustration of the American people with the number of illegal aliens in this country. Ironically, under the California law, a 7- or 8-year-old child can be deported, yet the Federal Government still has difficulty deporting some criminal aliens. Under current law we may not deport aliens who have been convicted of crimes such as serious bribery, counterfeiting and forgery, perjury or bribery of a witness, or trafficking in stolen vehicles. In addition, aliens who have been sentenced to 5 or more years in prison, but have not served a full 5 years may not be deported. Sometimes they have been released early simply because of prison overcrowding. Furthermore, the INS may not initiate deportation proceedings against a criminal alien in prison until he has served 5 years, which means that sometimes, the criminal alien is released before the deportation order is ready and cannot be captured to be deported.

The costs to States for incarcerating these criminal aliens is a serious matter for our consideration as well. Yesterday, the House, with my strong support, approved an important amendment which would reimburse States with large immigration populations for these costs. The provision, approved as part of our crime legislation, sets aside a total of $650 million annually for the next 5 years. My State of Florida houses over 5,500 criminal aliens within its correctional system. Consequently, criminal aliens are approximately 10 percent of the near 57,000 inmates in Florida's 50 correctional centers. Under this plan, Florida will be eligible to receive more than $80 million to offset these costs.

Mr. Speaker, yesterday we took the first step in paying for the costs incurred by States to house criminal aliens. However, many aliens who commit serious crimes are released into American society before even serving out their sentences—where they continue to pose a threat to the American people. Today we provide our Nation with the means to remove these individuals from our society altogether, and I urge support for this legislation.

Mr. CONYERS. Mr. Chairman, I have no other requests for time, and I yield back the balance of my time.

Mr. McCOLLUM. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

The committee amendment in the nature of a substitute printed in the bill, as modified by the amendment printed in section 2 of House Resolution 69, shall be considered by sections as an original bill for the purpose of amendment, and pursuant to the rule each section is considered as having been read.

During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition to a Member offering an amendment that has been printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered as having been read.

The Clerk will designate section 1.

The text of section 1 is as follows:

H.R. 668

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 "Criminal Alien Deportation Improvements Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Additional expansion of definition of aggravated felony.
Sec. 3. Deportation procedures for certain criminal aliens who are not permanent residents.
Sec. 4. Restricting the defense to exclusion based on 7 years permanent residence for certain criminal aliens.
Sec. 5. Limitation on collateral attacks on underlying deportation order.
Sec. 6. Criminal alien identification system.
Sec. 7. Establishing certain alien smuggling-related crimes as RICO-predicate offenses.
Sec. 8. Wiretap authority for alien smuggling investigations.
Sec. 9. Expansion of criteria for deportation for crimes of moral turpitude.
Sec. 10. Payments to political subdivisions for costs of incarcerating illegal aliens.
Sec. 11. Compensation for incarceration of undocumented criminal aliens.
Sec. 12. Miscellaneous provisions.
Sec. 13. Construction of expedited deportation requirements.

Mr. McCOLLUM. Mr. Chairman, I ask unanimous consent that debate on any amendment offered to this bill and any amendments thereto be limited to 10 minutes per side for the duration of the consideration of this bill today or should it continue to the following week.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN. Are there any amendments to section 1? If not, the Clerk will designate section 2.

The text of section 2 is as follows:

SEC. 2. ADDITIONAL EXPANSION OF DEFINITION OF AGGRAVATED FELONY.

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), as amended by section 222 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103-416), is amended—

(1) in subparagraph (J), by inserting ", or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses)," after "corrupt organizations)";

(2) in subparagraph (K)—

(A) by striking "or" at the end of clause (i),

(B) by redesignating clause (ii) as clause (iii), and

(C) by inserting after clause (i) the following new clause:

"(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) for commercial advantage; or";

(3) by amending subparagraph (N) to read as follows:

"(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;";

(4) by amending subparagraph (O) to read as follows:

"(O) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 18 months;"

(5) in subparagraph (P), by striking "15 years" and inserting "5 years", and by striking "and" at the end;

(6) by redesignating subparagraphs (O), (P), and (Q) as subparagraphs (P), (Q), and (U), respectively;

(7) by inserting after subparagraph (N) the following new subparagraph:

"(O) an offense described in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;"; and

(8) by inserting after subparagraph (Q), as so redesignated, the following new subparagraphs:

"(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which a sentence of 5 years' imprisonment or more may be imposed;

"(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which a sentence of 5 years' imprisonment or more may be imposed;

"(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to convictions entered on or after the date of the enactment of this Act, except that the amendment made by subsection (a)(3) shall take effect as if included in the enactment of section 222 of the Immigration and Nationality Technical Corrections Act of 1994.

The CHAIRMAN. Are there amendments to section 2? If not, the Clerk will designate section 3.

The text of section 3 is as follows:

SEC. 3. DEPORTATION PROCEDURES FOR CERTAIN CRIMINAL ALIENS WHO ARE NOT PERMANENT RESIDENTS.

(a) ADMINISTRATIVE HEARINGS.—Section 242A(b) of the Immigration and Nationality Act (8 U.S.C. 1252a(b)), as added by section 130004(a) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), is amended—

(1) in paragraph (2)—

(A) by striking "and" at the end of subparagraph (A) and inserting "or", and

(B) by amending subparagraph (B) to read as follows:

"(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.";

(2) in paragraph (3), by striking "30 calendar days" and inserting "14 calendar days";

(3) in paragraph (4)(B), by striking "proccedings" and inserting "proceedings";

(4) in paragraph (4)—

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (F) and (G), respectively; and

(B) by adding after subparagraph (C) the following new subparagraphs:

"(D) such proceedings are conducted in, or translated for the alien into, a language the alien understands;

"(E) a determination is made for the record at such proceedings that the individual who appears to respond in such a proceeding is an alien subject to such an expedited proceeding under this section and is, in fact, the alien named in the notice for such proceeding;".

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

"(5) No alien described in this section shall be eligible for any relief from deportation that the Attorney General may grant in the Attorney General's discretion.".

(b) LIMIT ON JUDICIAL REVIEW.—Subsection (d) of section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a), as added by section 130004(b) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), is amended to read as follows:

"(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien is in fact an alien described in such section, and no court shall have jurisdiction to review any other issue.".

(c) PRESUMPTION OF DEPORTABILITY.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by inserting after subsection (b) the following new subsection:

"(c) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of the enactment of this Act.

The CHAIRMAN. Are there amendments to section 3? If not, the Clerk will designate section 4.

The text of section 4 is as follows:

SEC. 4. RESTRICTING THE DEFENSE TO EXCLUSION BASED ON 7 YEARS PERMANENT RESIDENCE FOR CERTAIN CRIMINAL ALIENS.

The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking "has served for such felony or felonies" and all that follows through the period and inserting "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years, if the time for appealing such conviction or sentence has expired and the sentence has become final.".

The CHAIRMAN. Are there amendments to section 4? If not, the Clerk will designate section 5.

The text of section 5 is as follows:

SEC. 5. LIMITATION ON COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.

(a) IN GENERAL.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by adding at the end the following new subsection:

"(c) In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

"(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

"(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

"(3) the entry of the order was fundamentally unfair.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to criminal proceedings initiated after the date of the enactment of this Act.

The CHAIRMAN. Are there amendments to section 5? If not, the Clerk will designate section 6.

The text of section 6 is as follows:

SEC. 6. CRIMINAL ALIEN IDENTIFICATION SYSTEM.

Section 130002(a) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-312) is amended to read as follows:

"(a) OPERATION AND PURPOSE.—The Commissioner of Immigration and Naturalization shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien identification system. The criminal alien identification system shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies.".

The CHAIRMAN. Are there amendments to section 6? If not, the Clerk will designate section 7.

The text of section 7 is as follows:

SEC. 7. ESTABLISHING CERTAIN ALIEN SMUGGLING-RELATED CRIMES AS RICO-PREDICATE OFFENSES.

Section 1961(1) of title 18, United States Code, is amended

(1) by inserting "section 1028 (relating to fraud and related activity in connection with identification documents) is the act indictable under section 1028 was committed for the purpose of financial gain," before "section 1029";

(2) by inserting "section 1542 (relating to false statement in application and use of passport) if the act indictable under section 1542 was committed for the purpose of financial gain, section 1543 (relating to forgery or false use of passport) if the act indictable under section 1543 was committed for the purpose of financial gain, section 1544 (relating to misuse of passport) if the act indictable under section 1544 was committed for the purpose of financial gain, section 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under section 1546 was committed for the purpose of financial gain, sections 1581–1588 (relating to peonage and slavery)," after "section 1513 (relating to retaliating against a witness, victim, or an informant),";

(3) by striking "or" before "(E)"; and

(4) by inserting before the period at the end the following: ", or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain".

The CHAIRMAN. Are there amendments to section 7? If not, the Clerk will designate section 8.

The text of section 8 is as follows:

SEC. 8. WIRETAP AUTHORITY FOR ALIEN SMUGGLING INVESTIGATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (n),

(2) by redesignating paragraph (o) as paragraph (p), and

(3) by inserting after paragraph (n) the following new paragraph:

"(o) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or".

The CHAIRMAN. Are there amendments to section 8? If not, the Clerk will designate section 9.

The text of section 9 is as follows:

SEC. 9. EXPANSION OF CRITERIA FOR DEPORTATION FOR CRIMES OF MORAL TURPITUDE.

(a) IN GENERAL.—Section 241(a)(2)(A)(i)(II) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(2)(A)(i)(II)) is amended to read as follows:

"(II) is convicted of a crime for which a sentence of one year or longer may be imposed,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to aliens against whom deportation proceedings are initiated after the date of the enactment of this Act.

The CHAIRMAN. Are there amendments to section 9? If not, the Clerk will designate section 10.

The text of section 10 is as follows:

SEC. 10. PAYMENTS TO POLITICAL SUBDIVISIONS FOR COSTS OF INCARCERATING ILLEGAL ALIENS.

Amounts appropriated to carry out section 501 of the Immigration Reform and Control Act of 1986 for fiscal year 1995 shall be available to carry out section 242(j) of the Immigration and Nationality Act in that fiscal year with respect to undocumented criminal aliens incarcerated under the authority of political subdivisions of a State.

The CHAIRMAN. Are there amendments to section 10? If not, the Clerk will designate section 11.

The text of section 11 is as follows:

SEC. 11. MISCELLANEOUS PROVISIONS.

(a) USE OF ELECTRONIC AND TELEPHONIC MEDIA IN DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien".

(b) CODIFICATION.—

(1) Section 242(i) of such Act (8 U.S.C. 1252(i)) is amended by adding at the end the following: "Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.".

(2) Section 225 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416) is amended by striking "and nothing in" and all that follows through "1252(i))".

(3) The amendments made by this subsection shall take effect as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416).

The CHAIRMAN. Are there amendments to section 11? If not, the Clerk will designate section 12.

The text of section 12 is as follows:

SEC. 12. CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.

No amendment made by this title shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

The CHAIRMAN. Are there amendments to section 12, the last section of the bill?

If not, are there amendments at the end of the bill?

AMENDMENT OFFERED BY MR. CUNNINGHAM

Mr. CUNNINGHAM. Mr. Chairman, I offer an amendment, amendment No. 4.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. CUNNINGHAM:

At the end insert the following new section (and conform the table of contents accordingly):

SEC. 14. STUDY OF PRISONER TRANSFER TREATY WITH MEXICO.

(a) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State and the Attorney General shall submit to the Congress a report that describes the use and effectiveness of the Prisoner Transfer Treaty with Mexico (in this section referred to as the "Treaty") to remove from the United States aliens who have been convicted of crimes in the United States.

(b) USE OF TREATY.—The report under subsection (a) shall include the following information:

(1) The number of aliens convicted of a criminal offense in the United States since November 30, 1977, who would have been or are eligible for transfer pursuant to the Treaty.

(2) The number of aliens described in paragraph (1) who have been transferred pursuant to the Treaty.

(3) The number of aliens described in paragraph (2) who have been incarcerated in full compliance with the Treaty.

(4) The number of aliens who are incarcerated in a penal institution in the United States who are eligible for transfer pursuant to the Treaty.

(5) The number of aliens described in paragraph (4) who are incarcerated in State and local penal institutions.

(c) EFFECTIVENESS OF TREATY.—The report under subsection (a) shall include the recommendations of the Secretary of State and the Attorney General to increase the effectiveness and use of, and full compliance with, the Treaty. In considering the recommendations under this subsection, the Secretary and the Attorney General shall consult with such State and local officials in areas disproportionately impacted by aliens convicted of criminal offenses as the Secretary and the Attorney General consider appropriate. Such recommendations shall address the following areas:

(1) Changes in Federal laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed a criminal offense in the United States.

(2) Changes in State and local laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed a criminal offense in the United States.

(3) Changes in the Treaty that may be necessary to increase the number of aliens convicted of crimes who may be transferred pursuant to the Treaty.

(4) Methods for preventing the unlawful reentry into the United States of aliens who have been convicted of criminal offenses in the United States and transferred pursuant to the Treaty.

(5) Any recommendations or appropriate officials of the Mexican Government on programs to achieve the goals of, and ensure full compliance with the Treaty.

(6) An assessment of whether the recommendations under this subsection require the renegotiation of the Treaty.

(7) The additional funds required to implement each recommendation under this subsection.

The CHAIRMAN. Pursuant to the unanimous consent request, the gentleman from California [Mr. CUNNINGHAM] will be recognized for 10 minutes.

The Chair recognizes the gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Chairman, this amendment directs the Secretary of State and the Attorney General to study and report to Congress within 6 months a report on the use and effectiveness of the Prisoner Transfer Treaty with Mexico. The report will be valuable to Congress as we begin a broader overhaul of immigration policy.

Specifically, the report is to outline the number of criminal aliens who have been or are eligible for transfer under the treaty.

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Specifically, the report is to outline the number of criminal aliens who have been or are eligible for transfer under the treaty, the current treaty, and the number who actually have been transferred by Federal, State, and local institutions. The administration is directed to recommend to Congress changes in policy and consult with the Mexican Government to identify where the treaty can be improved. Indeed Attorney General Reno has discussed with her Mexican counterpart to begin looking at ways to improve this treaty.

This amendment is in line with the recommendations of the Jordan Commission, sanctioned by President Clinton, who supports efforts to simplify the process for transferring criminal aliens to prisons in the country of their origin to serve out there terms.

One of the problems we have, Mr. Chairman, is that our system and the treaty has not been working. We are looking for a faster method to transfer prisoners from country to country with the acceptance of both of those countries.

As of June 1994, there were some 8,000 Mexicans in Federal prisons eligible for transfer. There are also a large number serving in State prisons. According to the Urban Institute's 1994 report on the fiscal impact of illegal immigration, there were some 21,395 illegal aliens incarcerated in California, New York, Florida, Texas, Illinois, New Jersey, and Arizona. In California, the Urban Institute concluded the State bears an annual cost of $368 million to incarcerate approximately 15,000 illegal aliens, and I will not go through the rest of it, Mr. Chairman.

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

Mr. CUNNINGHAM. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I have looked this amendment over, and there is no problem with directing a study to be completed, within 6 months back to us, about the prisoner transfer treaty with Mexico, and so on this side we would be delighted to accept the amendment.

Mr. MCCOLLUM. Mr. Speaker, will the gentleman yield?

Mr. CUNNINGHAM. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Mr. Chairman, we have examined the amendment as well, and the Crime Subcommittee and others who are involved in this bill and the management of it find it to be a good amendment, and we would urge its adoption.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. CUNNINGHAM].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to the last section?

AMENDMENT OFFERED BY MR. MORAN

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. MORAN: Page 14, line 6, insert the following new section (and conform the table of contents accordingly):

SEC. 14. JUSTICE DEPARTMENT ASSISTANCE IN BRINGING TO JUSTICE ALIENS WHO FLEE PROSECUTION FOR CRIMES IN THE UNITED STATES.

(a) ASSISTANCE TO STATES.—The Attorney General, in cooperation with the Commissioner of Immigration and Naturalization and the Secretary of State, shall designate an office within the Department of Justice to provide technical and prosecutorial assistance to State and political subdivisions of States in efforts to bring to justice aliens who flee prosecution for crimes in the United States.

(b) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of

this Act, the Attorney General shall compile and submit to the Congress a report which assesses the nature and extent of the problem of bringing to justice aliens who flee prosecution for crimes in the United States.

Mr. MORAN. Mr. Chairman, the purpose of this amendment is simple. It establishes an office within the Department of Justice which would provide assistance to State and local governments seeking to try aliens who commit crimes in this country and then flee to their homeland in order to escape justice.

A classical example occurred in Arlington, VA, with an illegal immigrant from El Salvador:

John Douglas was an elderly man. He was walking home from a metro, and he was shot in cold blood. Attempted robbery; I do not think he even had any money on him. But the person who killed him, Mr. Eduardo Lazarios, was an illegal alien from El Salvador. He was indicted, but he could not be prosecuted because he fled to his homeland shortly after the murder. He is not the first to take advantage of the fact that a criminal from El Salvador can flee to El Salvador and escape punishment. The only recourse for the Douglas family was to attempt to try him in his homeland. This, however, is very complicated. The witnesses do not have to be transported necessarily, but all the documents have to be gathered, they have to be translated, they have to be submitted to the nation where the offender resides. Smaller police departments cannot do this.

In fact, I asked how often this occurs. Just in Arlington County alone, which is a relatively small county, there is another criminal who hit and killed a little 3-year-old girl. He was an illegal immigrant from El Salvador. He has escaped justice completely. We have another murderer who escaped justice in this way.

We have two other criminals in Alexandria. We have a similar situation, a list of people who have escaped to El Salvador.

Now these are just two counties that I happen to represent. There must be thousands of people across the country who have escaped prosecution by being able to go to a country that does not have a reciprocal agreement with the United States.

Mr. Chairman, all we are asking that we do is to have the resources within the Justice Department to enable State and local police departments and prosecutorial offices to be able to pursue these people. Ultimately I would like to do something with foreign aid that says that rather than the millions of dollars we are giving to El Salvador and asking for very little in return, that at the very least we ask for reciprocal agreements so they send these people, these criminals, back to this country so they can be prosecuted.

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

Mr. MORAN. I yield to the gentleman from Florida.

Mr. McCOLLUM. I think the gentleman from Virginia [Mr. MORAN] is offering a very constructive amendment to this bill. I wholeheartedly concur in it, and I will join with him in voting for this amendment and encourage my colleagues to do so. It is perfectly acceptable on our side.

Mr. MORAN. Mr. Chairman, I thank the gentleman from Florida.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia [Mr. MORAN].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments?

AMENDMENT OFFERED BY MR. HORN

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HORN: At the end insert the following new section (and conform the table of contents accordingly):

SEC. 14. PRISONER TRANSFER TREATIES.

(a) NEGOTIATION.—Congress advises the President to begin to negotiate and renegotiate, not later than 90 days after the date of the enactment of this Act, bilateral prisoner transfer treaties. The focus of such negotiations shall be to expedite the transfer of aliens unlawfully in the United States who are incarcerated in United States prisons, to ensure that a transferred prisoner serves the balance of the sentence imposed by the United States courts, and to eliminate any requirements of prisoner consent to such a transfer.

(b) CERTIFICATION.—The President shall submit to the Congress, annually, a certification as to whether each prisoner transfer treaty in force is effective in returning aliens unlawfully in the United States who have committed offenses for which they are incarcerated in the United States to their country of nationality for further incarceration.

Mr. HORN. Mr. Chairman, this proposal is bipartisan in origin. I have nine cosponsors: The gentleman from California [Mr. BEILENSON], the gentleman from California [Mr. BILBRAY], the gentleman from California [Mr. CONDIT], the gentleman from California [Mr. GALLEGLY], the gentleman from Michigan [Mr. KNOLLENBERG], the gentleman from California [Mr. MOORHEAD], the gentleman from New Jersey [Mr. SAXTON], the gentlewoman from Florida [Mrs. THURMAN], and the gentlewoman from California [Ms. WOOLSEY].

What this does is asks the President, advises him, to begin negotiations, renegotiations no later than 90 days after the date of enactment of this act of the bilateral prisoner transfer treaties, and the focus is on expediting the transfer of aliens unlawfully in the United States to ensure that the transferred prisoner goes back to the country from which he illegally came, and that he serves the balance of the sentence imposed by the U.S. courts, and to eliminate any requirement of prisoner consent to such transfer, and then we ask the President, after that negotiation, to submit to Congress annually a certification as to whether or not the prisoner transfer treaties in force are effective in returning aliens unlawfully in this country who have committed offenses for which they are incarcerated in the United States.

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

Mr. HORN. I yield to the gentleman from Florida.

Mr. McCOLLUM. This is a very good amendment, certainly acceptable on my side. I hope it is acceptable to the gentleman from New York and the gentleman from Michigan. We find this to be a noncontroversial amendment and agree to accept it.

Mr. HORN. Mr. Chairman, I am delighted to say that the gentleman from Michigan [Mr. CONYERS] did consent to this amendment.

Mr. Chairman, at this point in my remarks I submit for the RECORD the text of a statement concerning the amendment.

The statement referred to is as follows:

Mr. Chairman, today, I rise to offer an amendment to H.R. 668, the Criminal Alien Deportation Act. Bipartisan cosponsors include Mr. BEILENSON, Mr. BILBRAY, Mr. CONDIT, Mr. GALLEGLY, Mr. KNOLLENBERG, Mr. MOORHEAD, Mr. SKELTON, Mrs. THURMAN, and Ms. WOOLSEY.

The amendment urges the President to renegotiate the existing bilateral Prisoner Transfer treaties with Mexico and other countries which have large numbers of criminal aliens in United States prisons. Specifically, the President needs to ensure that a transferred prisoner serves out the balance of the sentence imposed by Federal and State courts, and to eliminate any requirement of prisoner consent to such a transfer.

Current treaty language stipulates that incarcerated aliens must consent to their transfer. This is an outrageous option to provide those who have not only crossed our borders illegally but who have also committed crimes while they have been here.

Many States, including California, will no longer release incarcerated aliens for deportation, prior to the completion of their sentence, because there are no guarantees that they will serve out the remainder of the sentence upon transfer. In many cases, these criminals have returned to the United States to commit additional crimes.

Currently, the American taxpayer is paying the toll twice—for the crimes committed here and for the cost of housing alien inmates in our already overcrowded prison system. The Federal Bureau of Prisons reports that approximately 24 percent of those in Federal prisons are non-U.S. citizens, at a cost per inmate of $20,803 per year. Expenses associated with the arrest, prosecution, court proceedings, housing, and parole supervision of these criminal aliens are estimated to cost California approximately $475 million for fiscal

year 1995. Last year the estimate was between $350 and $375 million.

Mr. Speaker, the House has debated, at length, the issue of reimbursement to States for the incarceration of criminal aliens. Last year's crime bill authorized a reimbursement plan of $1.8 billion over the next 6 years to offset State costs. As we can see these costs will only continue to escalate. It is futile for Congress to simply react, rather than prevent, the problems resulting from criminal aliens. Without addressing the need to renegotiate the prisoner transfer treaties, all proposed remedies are nothing more than one bag of sand trying to stop the waters released by a ruptured dam.

These treaties have not been addressed since 1976, almost two decades ago. The language that currently exists is insufficient and has not yielded effective results. The treaties are outdated and it is time we change our approach.

I thank the majority and minority leadership for accepting this long overdue proposal.

□ 1440

The CHAIRMAN. Is the gentleman from New York [Mr. SCHUMER] seeking time in opposition to the amendment?

Mr. SCHUMER. Mr. Chairman, I am not opposed, but I wish to seek time.

The CHAIRMAN. The gentleman from New York is recognized for 10 minutes.

Mr. SCHUMER. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. NADLER].

Mr. NADLER. Mr. Chairman, I rise in opposition to this legislation because it is written so broadly that our Government will inevitably use it to send political and religious refugees back to their oppressors. As such, it is at odds with our Nation's highest traditions and goes well beyond what is needed to protect the American people from criminals.

No reasonable person wants to see criminals go free. No citizen wants to see the United States become a haven for criminals from around the world. No taxpayer wants to get stuck with the tab for the upkeep of criminals who come here to prey on Americans.

If this bill provided simply for the detention of criminals, there would be no controversy.

If this bill provided simply for the deportation of violent felons, there would be no debate.

Existing law already provides for this. In fact, criminals are detained and deported every day.

But this bill provides near-summary deportation of people without so much as a hearing to determine whether the individual is a legitimate refugee, that is someone who has fled his or her homeland because of a well founded fear of persecution.

This is something that should be of profound concern to each of us. Many of our families came here fleeing persecution and extermination. As the representative of more holocaust survivors and their children than any Member of this body, I can tell you that the memory of people being sent back to die in the Nazi concentration camps by our Government is still vivid and bitter in the communities I represent.

People should be punished for their crimes, but do we want to have the death penalty for car theft? That is what this bill would do. A person convicted of trafficking in stolen cars could be deported and could not even have a court hear evidence that he would be persecuted or murdered if deported.

Is that really what our constituents want? Send car thieves summarily back to the Nazis? Is that what America stands for?

Sure we want to be protected from criminals. I can tell you that I have to walk on the streets of New York and Washington just like my neighbors. I am not immune from crime. My family is not immune. But there is no need for us to behave in such a senselessly barbarous manner. Let us enforce the laws, but let us do it right and let us not lose sight of who we are or what this country is about.

Mr. SCHUMER. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. HORN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment of the gentleman from California [Mr. HORN].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to the last section?

AMENDMENT OFFERED BY MR. CUNNINGHAM

Mr. CUNNINGHAM. Mr. Chairman, I offer an amendment, designated No. 3.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. CUNNINGHAM: At the end insert the following new section (and conform the table of contents accordingly):

SEC. 14. INTERIOR REPATRIATION PROGRAM.

Not later than 180 days after the date of enactment of this Act, the Attorney General and the Commissioner of Immigration and Naturalization shall develop and implement a program in which aliens who previously have illegally entered the United States not less than 3 times and are deported or returned to a country contiguous to the United States will be returned to locations not less than 500 kilometers from that country's border with the United States.

The CHAIRMAN. The gentleman from California [Mr. CUNNINGHAM] is recognized for 10 minutes in support of his amendment.

Mr. CUNNINGHAM. Mr. Chairman, my amendment requires the Attorney General and the Commissioner of the INS to develop and implement a program for interior repatriation.

This amendment is in line with recommendations of the Jordan Commission which concluded,

In the case of Mexico, repatriation of deported criminal aliens to the area of Mexico from which they came, rather than simply to the border. Removals should be done in coordination with Mexican authorities who may then determine if there is a warrant for the arrest of the criminal alien for crimes committed in Mexico.

The Jordan Commission concluded that interior repatriation "increases the cost and logistical difficulty to criminal aliens who try to reenter the United States. Interior repatriation can be a deterrent * * *"

One of the biggest problems we face with illegal immigration is that we are fighting the same battle over and over again. Every night, the Border Patrol picks up many of the same aliens, processes them, and drives them to the border gate. Within hours, the same aliens are crossing the border again.

The INS announced this week their intention of establishing a pilot program in the area of interior repatriation. They are planning a limited trial of voluntary interior repatriation, for those involved in deportation hearings. While this is a step in the right direction, I believe we need to be bolder.

My amendment is straightforward. Within 6 months of enactment the Justice Department and the INS need to get a program in place. Aliens from Canada or Mexico who have entered this country illegally at least three times are to be returned to locations not less than 500 kilometers from the border.

In the midst of this larger debate over criminal aliens, we should not forget that illegal immigration is itself a crime. Each and every alien who enters this country illegally has broken our laws and is in fact a criminal alien.

I believe this amendment will help to stem the tide of illegal immigration and I urge its adoption by the Committee.

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

Mr. BILBRAY. Mr. Chairman, I rise in support of this amendment. Let me just say as an individual who lives on the Mexican border, or very close, I look out my front doorstep and I can see the bull ring by the sea in Tijuana, the northern side, the fact is that it is very frustrating for everyone, including the law enforcement agencies that have to enforce our laws, but especially the citizens that have chosen their home to happen to be in the corner of our Nation. But too often it is treated almost as if we are not part of this Nation.

Mr. Chairman, I strongly support the Cunningham amendment for the reason that the revolving door that we find on the border has to be stopped. Frankly, I think we could get a lot more attention from our neighbors to the south about this problem if we could make sure that those who are chronic crossers could be returned all the way to the

Federal District so that they would see in Mexico City exactly what we that live along the border have to confront.

Let me close by saying, Mr. Chairman, that this is not just a problem that impacts those of us who live on the north side of the frontier. The citizens of Baja California Norte and citizens of Mexico along the border suffer again and again from the crime and the smuggling activity that this bill is trying to address. I think for those of us that live on both sides of the border along our frontiers, we need to be represented with this amendment, and I strongly ask Members to adopt this amendment.

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

Mr. Chairman, the gentleman from California [Mr. BILBRAY] was not only a mayor in south San Diego, but also was a county commissioner, and has the expertise in this area and has seen it as well as we have in north San Diego County.

Mr. SCHUMER. Mr. Chairman, I yield such time as he may consume to the gentleman from New York [Mr. SERRANO].

Mr. SERRANO. Mr. Chairman, I was concerned. Let me first say I am in support of the bill in general, and I am in support of the provisions of having aliens who commit crimes be deported. But I am wondering now on the question of Mexico's sovereignty and how you impose this kind of a situation? Maybe I missed that part of the gentleman's statement. Is this an agreement that you hope will be signed in Mexico determining where the person must be deported to?

Mr. CUNNINGHAM. If the gentleman will yield, first of all, the Jordan Commission recommended that the 500 kilometers be adopted; second, that there would be a negotiation with the host country, whether it be Canada or Mexico, where that would be resolved. I will not restate the problem. All we are trying to do is have them repatriated deep into the interior so they do not turn around and come back the next night.

The CHAIRMAN. If there are no further requests for time, the question is on the amendment of the gentleman from California [Mr. CUNNINGHAM].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. FOLEY

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. FOLEY: At the end insert the following section (and conform the table of contents accordingly):

SECTION 14. DEPORTATION OF NONVIOLENT OFFENDERS PRIOR TO COMPLETION OF SENTENCE OF IMPRISONMENT.

(a) IN GENERAL.—Section 242(h) of the Immigration and Nationality Act (8 U.S.C. 1252(h)) is amended to read as follows:

"(h)(1) Except as provided in paragraph (2), an alien sentenced to imprisonment may not be deported until such imprisonment has been terminated by the release of the alien from confinement. Parole, supervised release, probation, or possibility of rearrest or further confinement in respect of the same offense shall not be a ground for deferral of deportation.

"(2) The Attorney General is authorized to deport an alien in accordance with applicable procedures under this Act prior to the completion of a sentence of imprisonment—

"(A) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (i) the alien is confined pursuant to a final conviction for a nonviolent offense and (ii) such deportation of the alien is appropriate and in the best interest of the United States; or

"(B) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (i) the alien is confined pursuant to a final conviction for a nonviolent offense, and (ii) such deportation is appropriate and in the best interest of the State, and (iii) submits a written request to the Attorney General that such alien be so deported.

"(3) Any alien deported pursuant to this subsection shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly and expanded penalties for aliens deported under paragraph (2)."

(b) REENTRY OF ALIEN DEPORTED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) amended by adding at the end the following new subsection:

"(c) Any alien deported pursuant to section 242(h)(2) who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.".

The CHAIRMAN. The gentleman from Florida is recognized for 10 minutes in support of his amendment.

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

Mr. FOLEY. I yield to the gentleman from New York.

Mr. SCHUMER. Mr. Chairman, I will make the gentleman a deal here. If the gentleman will speak for less than 1 minute, we will not oppose the amendment and we will not call a vote, so we can get Members out of here. It is a bipartisan group asking for that.

Mr. FOLEY. Mr. Chairman, I rise in support of this amendment. I am being supported by my good colleague, the gentleman from North Carolina [Mr. BURR]. We hope to provide for early release and deportation of criminals within our prison system who have committed crimes of a nonviolent manner. Currently we have an overcrowding in all of our prisons, both State and Federal. This would provide the U.S. attorney and the Attorney General to be able to release those and send them home prior to the completion of their sentence.

Mr. Chairman, I rise today to offer an amendment to H.R. 668 with my colleague from North Carolina, Congressman BURR.

The purpose of our amendment is to authorize the Attorney General to deport criminal aliens who have been convicted of nonviolent offenses before the completion of their prison sentence in Federal or State prisons.

This problem is especially pervasive at the State level. For example, the State of Florida has approximately 5,504 criminal aliens in State corrections facilities on any given day, annually costing Florida taxpayers on average more than $14,000 per inmate. Therefore, the U.S. Attorney General will work in conjunction with the States to determine which nonviolent criminal aliens will be deported.

Our amendment also establishes stiff penalties for deported aliens who return to the United States. They will be forced to serve the remainder of their original sentence, plus expanded penalties for reentry under current law, with no possibility of parole or supervised release. Any alien who is deported pursuant to this provision will be notified of these penalties at the time of their deportation.

The reason we are offering this amendment is twofold: to keep violent criminals in jail and to save taxpayer dollars for the incarceration of nonviolent criminal aliens.

In the face of soaring crime rates and overcrowded prisons, law enforcement officials are releasing criminals, many of whom are violent offenders, before they have been justly punished. On average, State inmates who have been convicted of any offense only serve about 40 percent of their sentence. This sobering realization is a tragedy for America.

The question we are asked today is no longer "Do we have to release criminals early?" Rather, it has become, "Which criminals do we release early?" This is a sad commentary on our criminal justice system, but today we have the opportunity to change this mindset and ensure that violent criminals are kept where they belong: behind bars.

Our prison system is failing to adequately protect U.S. citizens from violent criminals.

Revolving door syndrome: releasing murderers, rapists, child molesters back into our neighborhoods before they have served their time, only to commit another crime.

How many times have we heard the consequences of their release on the evening news or in the local newspaper?

I call your attention to a newspaper headline about the senseless murder of a Florida State student and the rape of his sister in Ocala, FL. One of the men charged with the vicious attack was on early release from an overcrowded Florida prison where he was serving time for a grand theft conviction. He had an arrest record dating back to 1985, for charges ranging from contempt of court to burglary and grand theft.

The question we must ask ourselves today is how can we bring some order back to our criminal justice system?

The amendment Congressman BURR and I have offered addresses one aspect of this problem.

As many of my colleagues are aware, criminal aliens have flooded our prisons in recent

years. We provide them with clothes, food, and a bed—all at taxpayer expense.

One in four Federal inmates are not U.S. citizens, costing American taxpayers more than $400 million annually. (Justice Department.)

The number of noncitizens in U.S. prisons has nearly tripled in the past 5 years. (U.S. Bureau of Prisons.)

Nonviolent criminal aliens are using scarce prison space which should be used for violent criminals. Under our amendment, approximately 15,774 criminal aliens would be eligible for deportation.

This problem is underscored by the inability of the Immigration and Naturalization Service [INS] to effectively deport criminal aliens after they serve their sentence; under current law, they must complete their sentence before deportation.

Most aliens are notified by mail about their deportation date. Not surprisingly, they rarely show up for scheduled deportation.

In fact, the INS has a list of more than 48,000 fugitives who failed to show up for their scheduled deportation.

Our amendment would expedite the deportation process while they are in prison by authorizing the Attorney General to deport nonviolent criminal aliens following their final conviction and before they have completed their sentence.

UNQUALIFIED SUCCESS OF PILOT PROGRAM IN FLORIDA

Approximately 225 alien inmates were deported from Florida prior to completing their sentence, saving State taxpayers more than $6 million.

Texas comptroller estimates the State could save $10 million over 5 years in prison costs and $42.4 million in construction costs by deporting nonviolent criminal aliens.

In these days where priorities are a buzzword in Congress, I ask my colleagues, is the detention of nonviolent criminal aliens truly a priority when we are releasing violent criminals to continue their assault on society?

It is more sensible to deport nonviolent criminal aliens to their own countries, saving taxpayer dollars and reducing the burdens on our Federal and State prison system.

We have a valuable opportunity to calm the fears of Americans and keep violent criminals behind bars.

I want to thank my colleague from North Carolina. We had similar amendments to address the flood of criminal aliens in our prison system and I am glad we have joined together in this endeavor.

Urge colleagues to support the amendment. I yield back the balance of my time.

AMENDMENT OFFERED BY MR. BURR TO THE AMENDMENT OFFERED BY MR. FOLEY

Mr. BURR. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. BURR to the amendment offered by Mr. FOLEY: Strike paragraph (2) of the quoted material in section 14(a) and insert the following:

"(2) The Attorney General is authorized to deport an alien in accordance with applicable procedures under this Act prior to the completion of a sentence of imprisonment—

"(A) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (i) the alien is confined pursuant to a final conviction for a nonviolent offense (other than alien smuggling), and (ii) such deportation of the alien is appropriate and in the best interest of the United States; or

"(B) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (i) the alien is confined pursuant to a final conviction for a nonviolent offense (other than alien smuggling), (ii) such deportation is appropriate and in the best interest of the State, and (iii) submits a written request to the Attorney General that such alien be so deported.

The CHAIRMAN (during the reading). Without objection, the amendment is considered as read and will be printed in the RECORD.

There was no objection.

□ 1450

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

Mr. Chairman, I rise today to offer a modification to the amendment offered by the gentleman from Florida and myself. In short, this amendment would include alien smuggling in the list of violent offenses that require a criminal alien to complete his sentence prior to execution of a final order of deportation.

I would like to provide you with some facts about criminal aliens you may or may not already know.

Approximately 27 percent of the Federal prison population is considered noncitizens.

The American taxpayer pays almost half a billion dollars per year to feed, clothe, and house these inmates.

Number of noncitizen Federal inmates, 22,326.

Cost per inmate per year, $20,885.

Cost per year for all noncitizen inmates, $466 million.

Number of criminal aliens eligible for early deportation under this amendment, 15,774.

Estimated maximum savings if Attorney General deports all eligible criminal aliens, $329 million.

H.R. 668 is a good bill because it takes major strides toward quick and effective deportation of criminal aliens.

It shortens the Attorney General's time limit for obtaining deportation orders, expands the definition of aggravated felony, and severely limits the types of relief from deportation the Attorney General can provide.

However, it lacks the provisions necessary to deal with the unsettling realities I noted earlier.

Specifically, the Foley-Burr amendment would give the Attorney General the ability, at her discretion, to execute a deportation order of a criminal alien prior to completion of his sentence. However, the Attorney General cannot deport a criminal alien early if the criminal alien has been convicted of a violent offense or, as my modification stipulates, alien smuggling.

By making this distinction, we ensure that the worst of the criminal aliens receive their due punishment while alleviating a weighty financial burden on the taxpayer.

Mr. Chairman, I urge acceptance of this modification which the gentleman from Florida graciously accepts, acceptance of this amendment to H.R. 668, and support for the bill itself.

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

Mr. BURR. I yield to the gentleman from New York.

Mr. SCHUMER. Mr. Chairman, we have seen the amendment and can accept it, without any speeches at all.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. BURR] to the amendment offered by the gentleman from Florida [Mr. FOLEY].

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. FOLEY] as amended.

The amendment, as amended, was agreed to.

The CHAIRMAN. Are there further amendments to the bill?

The question is on the committee amendment in the nature of a substitute, as modified, as amended.

The committee amendment in the nature of a substitute, as modified, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. BILIRAKIS) having assumed the chair, Mr. DREIER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, (H.R. 668) to control crime by further streamlining deportation of criminal aliens, pursuant to House Resolution 69, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

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

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

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

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 380, nays 20, not voting 34, as follows:

[Roll No. 118]

YEAS—380

Abercrombie
Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Beilenson
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Blute
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Browder
Brown (CA)
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clayton
Clement
Clinger
Coburn
Coleman
Collins (GA)
Collins (IL)
Combest
Condit
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
DeLay
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Flanagan
Foglietta
Foley
Forbes
Ford
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Furse
Gallegly
Ganske
Gekas
Gephardt
Geren
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Gordon
Goss
Graham
Green
Gunderson
Gutierrez
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hinchey
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McKinney
Meek
Menendez
Meyers
Mfume
Mica
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Oxley
Packard
Pallone
Pastor
Paxon
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quinn
Radanovich
Rahall
Ramstad
Reed
Regula
Richardson
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Roybal-Allard
Royce
Rush
Sabo
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schroeder
Schumer
Seastrand
Sensenbrenner
Serrano
Shadegg
Shays
Shuster
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stokes
Studds
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Torricelli
Traficant
Tucker
Upton
Velazquez
Vento
Visclosky
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Waters
Waxman
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wise
Wolf
Wyden
Wynn
Yates
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—20

Clay
Clyburn
Conyers
Dellums
Fattah
Flake
Greenwood
Hastings (FL)
Hilliard
McDermott
Nadler
Owens
Payne (NJ)
Rangel
Reynolds
Scott
Thompson
Towns
Watt (NC)
Williams

NOT VOTING—34

Ballenger
Becerra
Berman
Bliley
Boucher
Brewster
Brown (FL)
Coble
Collins (MI)
Deutsch
Edwards
Frost
Gejdenson
Gibbons
Goodling
Hall (OH)
Houghton
Johnson, Sam
Johnston
Lantos
Lofgren
McNulty
Meehan
Metcalf
Parker
Quillen
Rose
Shaw
Sisisky
Smith (TX)
Smith (WA)
Stark
Watts (OK)
Woolsey

□ 1513

Messrs. SHADEGG, COLEMAN, and BARR and Mrs. MEEK of Florida changed their vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. COBLE. Mr. Speaker, I was not present on the floor when the rollcall vote for H.R. 668 was taken, the Alien Deportation Act. Had I been present and on the floor, Mr. Speaker, I would have voted "aye."

PERSONAL EXPLANATION

Mr. SAM JOHNSON of Texas. Mr. Speaker, on rollcall vote 118 on passage of H.R. 668, the Criminal Alien Deportation Improvements Act, I was unable to be here due to travel constraints.

Had I been able to vote, I would have voted "yea."

PERSONAL EXPLANATION

Mr. METCALF. Mr. Speaker, due to prior travel commitments I missed the final vote on H.R. 668. If I had been present, I would have voted "yes."

PERSONAL EXPLANATION

Mr. GOODLING. Mr. Speaker, because it was necessary for me to be in Pennsylvania on Friday, February 10, 1995, I regret that I was not present to vote on final passage of H.R. 668, the Criminal Alien Deportation Improvements Act, (Roll No. 118). Had I been present, I would have voted "yea."

PERSONAL EXPLANATION

Mr. GREENWOOD. Mr. Speaker, on February 10, 1995, I inadvertently voted "nay" on rollcall vote 118, on passage of the Criminal Alien Deportation Act. I support the bill and intended to vote "yea."

PERSONAL EXPLANATION

Mr. McNULTY. Mr. Speaker, I was absent from the Chamber for rollcall No. 118 on H.R. 668. Had I been present and voting, I would have voted in the affirmative.

PERSONAL EXPLANATION

Mr. BALLENGER. Mr. Speaker, on February 10, 1995, I was absent for rollcall vote No. 118. Had I been present, I would have voted in favor of final passage of H.R. 668, the Criminal Alien Deportation Improvements Act.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 668, CRIMINAL ALIEN DEPORTATION IMPROVEMENTS ACT OF 1995

Mr. McCOLLUM. Mr. Speaker, I ask unanimous consent that the Clerk be authorized to make technical and conforming changes in the engrossment of H.R. 668.

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

There was no objection.

PERMISSION FOR MEMBERS TO FILE AMENDMENTS TO H.R. 728, LOCAL GOVERNMENT LAW ENFORCEMENT BLOCK GRANTS ACT

Mr. McCOLLUM. Mr. Speaker, I ask unanimous consent that Members have until 7 p.m. today, February 10, 1995, to file amendments in the RECORD to H.R. 728.

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

There was no objection.

REPORT ON H.R. 889, DEPARTMENT OF DEFENSE EMERGENCY SUPPLEMENTAL APPROPRIATIONS, 1995

Mr. LIVINGSTON, from the Committee on Appropriations, submitted a privileged report (Rept. No. 104-29) on the bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

The SPEAKER pro tempore. All points of order are reserved on the bill.

LEGISLATIVE PROGRAM

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

Mr. GEPHARDT. Mr. Speaker, my request is for the purpose of inquiring about the schedule.

I yield to the distinguished majority leader to inquire about the schedule for the rest of this week and next week.

Mr. ARMEY. I thank the gentleman for yielding. Let me thank the gentleman again, another week, for your patience and for all the cooperation that we have on both sides of the aisle with moving this very difficult agenda.

With respect to next week, on Monday, February 13, the House will meet at 12:30 p.m. for morning hour and 2 p.m. for the legislative business.

We will take up the rule for H.R. 728, the Local Government Law Enforcement Block Grants Act and then move into general debate. We expect no votes before 5 p.m. on Monday. However, Members should be advised that the House may work late on Monday night.

On Tuesday, February 14, the House will meet at 9:30 a.m. for morning hour and at 11 a.m. for legislative business. We expect to complete consideration of H.R. 728 on Tuesday, so Members should be advised that the House may also work late on Tuesday night. However, let me just say that Tuesday is a very special day for many of us and we have high hopes of being out at an early enough hour so that we can go to dinner with that person with respect to whom we hold the greatest affection.

Mr. ROEMER. Mr. Speaker, will the gentleman yield?

Mr. GEPHARDT. I yield to the gentleman from Indiana.

Mr. ROEMER. The gentleman and I had an interesting conversation last week on the family friendly agenda, and he told me that he had a date last Friday with his lovely wife Susan. I hope the gentleman made that date and had a great time, and I hope that he can give the House assurances, concrete assurances on Tuesday night that we will be out by a time certain, such as 7, so that he can enjoy some time with Susan once again and all of us can enjoy some time with our loved ones.

We have a resolution that we put forward:

Roses are red,
Violets are blue,
If we're not home by 7,
We're in deep stew.

We would encourage the gentleman to give us a more definite time on Tuesday night.

Mr. ARMEY. I appreciate the sentiment. Let me just say, I believe that we will probably work hard and late Monday night and I think with good cooperation we can all have a high confidence that we will be able to make what I am sure for all of us will be a lovely dinner on Tuesday night.

Mr. ROEMER. So we still do not have an assurance of 7 yet?

Mr. ARMEY. This gentleman just needs to see how deep it will be, that to which you earlier referred.

Mr. ROEMER. I do not want to be in any.

Mr. ARMEY. I assure the gentleman, I appreciate your point of view. To be as assertive as prudence would allow me to be, let me just say, I have high hopes and great expectations that we will accommodate to an early enough evening on Tuesday so that we can all have a lovely dinner with a lovely person.

Mr. ROEMER. If we do not, you are buying the roses for all of us to get us out of that deep stew?

Mr. ARMEY. I am sure I understand the point.

Mr. ROEMER. I thank the gentleman.

Mr. ARMEY. If the gentleman will continue to yield, now that we have all survived Tuesday, we can move on to Wednesday, February 15.

The House will meet at 11 a.m. and will begin consideration of H.R. 7, the National Security Restoration Act, subject to a rule. Once again Members should be advised that the House may work late on Wednesday night.

On Thursday, February 16, the House will meet at 10 a.m. to complete consideration of H.R. 7. We expect to have Members on their way home around 3 p.m. for the Presidents' Day district work period.

Mr. GEPHARDT. I thank the gentleman.

I have a couple of questions. First, I want to reiterate the 3 p.m. time on Thursday. I know a lot of Members on both sides have travel plans, and so you are really trying as we did today to get done by 3. Is that my understanding?

Mr. ARMEY. Yes, the gentleman is correct.

Mr. GEPHARDT. Could the gentleman give us some sense of what kind of rule? Would there be an open rule providing for consideration of the National Security Restoration Act?

Mr. ARMEY. The gentleman might address the question.

Mr. GEPHARDT. Mr. Speaker, I yield to the gentleman from New York, the chairman of the Committee on Rules.

Mr. SOLOMON. I would be glad to. As a matter of fact, I was just about to enter into consultation with the minority ranking member of the Committee on National Security, the very distinguished and respected gentleman, to talk about that. But we certainly want to consult with the minority. We would like to have an open rule. Because of time constraints, it is going to be necessary to follow the orders of the gentleman from Texas [Mr. ARMEY] over here and move these bills. So that I think you would be happy with the final result and we intend to talk about it and see if we can work out an agreement.

Mr. GEPHARDT. I thank the gentleman. Obviously we want as open a rule I think as can be put together. We would be happy to consult with you. The gentleman from California is well equipped to do that and we will hope for a good result.

Can I just make one other comment and perhaps pose a question. I want to say to the gentleman that we have encountered a continuation of serious problems with committees meeting at the same time that committees are on the floor. I want to commend the gentleman from Illinois [Mr. HYDE] for negotiating with the gentleman from Michigan [Mr. CONYERS] in trying to work out a hearing schedule in their committee that would accommodate both of them and many of their members being on the floor through the continuation of the consideration of these crime bills. But I would say to the gentleman that as you know, having this 100-day calendar requirement, which we do not necessarily share—we understand the majority's desire to meet this promise, but I do not think any of us should believe that meeting that promise should get in the way of what is a reasonable schedule for Members to be able to meet. It is not reasonable if we cannot work out accommodations so that Members can both make their assignments in committee and meet their responsibilities here on the floor.

In that regard, and in a spirit of trying to work this out, it would be very helpful to the minority if the majority when they are able to do it could give us a complete calendar schedule of how you are trying to meet this 100-day requirement so that we can make sensible suggestions to the extent we can for how all of this can work.

□ 1520

I am getting very spirited objections from my Members who are truly distraught because they are not able to meet their responsibilities to vote in the committee, and we all know we

banned proxy voting, and that is the regime we are operating under, and also meet the responsibilities on the floor. And the gentleman knows the tension is high on these matters, and we will do everything in our power to work this out. But we need as much advance information as we can get.

Mr. ARMEY. If the gentleman will yield, I thank the gentleman for that observation. Many Members from both sides of the aisle have again brought that to my attention.

Again I think the gentleman has made a good suggestion. We will try to share Monday morning as much information as we can and continue to try to work on that.

However, as I have said before, we are, of course, all of us engaged in hard work, very hard work in a short period of time, and we are trying to make a big change and keep our promises. And while I thank the Members on both sides of the aisle for their patience and their diligence, I agree with the gentleman from Missouri, we need to continue working on finding ways to relieve people of some of these pressures, and we will continue to do so.

Mr. GEPHARDT. Just one additional question. Could the gentleman tell us what time votes will begin on Tuesday, February 21, which is the first day back after the President's Day recess? The schedule says 5 p.m. I am wondering if that is something that we can rely on at this point.

Mr. ARMEY. If the gentleman will yield, yes, we can rely on that, 5 o'clock on Tuesday, the day we return.

If I might bet the indulgence of the gentleman from Missouri, I see Grandfather DELLUMS is with us here on the floor. I hope he did have an opportunity to see his new grandbaby last weekend, and that is in light of the remarks we made earlier here about the things that we hold most dear. And I am proud that the gentleman from California [Mr. DELLUMS] has a grandbaby, and can only wish I had one too.

Mr. ROEMER. Mr. Speaker, will the gentleman yield?

Mr. GEPHARDT. I yield to the gentleman from Indiana.

Mr. ROEMER. Could the gentleman just whisper in my ear or tell me now if he has a reservation. What time that reservation is on Tuesday night so I can make that with my wife Tuesday night for a restaurant?

Mr. ARMEY. If the gentleman will yield, let me say I have just checked with Dan Cupid here, and he has assured me that by 7 o'clock on Tuesday, Valentine's Eve, we should be able to join our loved ones for dinner.

Mr. ROEMER. I thank the majority leader, and we all thank him.

ADJOURNMENT TO MONDAY, FEBRUARY 13, 1995

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 12:30 p.m. on Monday next for morning hour debates.

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

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

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

There was no objection.

REQUEST FOR PERMISSION TO DISPENSE WITH SPECIAL ORDERS ON TUESDAY, FEBRUARY 14, 1995

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that on Tuesday next the House dispense with special orders out of consideration for the loyal staff that all too often have stayed here all too late for Members to have special orders, so on Tuesday next I ask unanimous consent that we dispense with the special orders so they too can join with their loved ones for an evening celebration of Valentine's Day.

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

Mr. HOYER. Mr. Speaker, reserving the right to object, I would say to the majority leader, as one who for years and years has had very friendly discussions with the gentleman's side of the aisle on consideration for our staff in evenings, particularly as it relates to special orders, I want to say that I certainly will not object to that request, and I admire and congratulate the majority leader for making it.

Mr. ARMEY. I thank the gentleman.

Mr. HOYER. Further reserving the right to object, I apologize, my Majority Leader. I was being somewhat facetious, but I am told that we have a number of Members signed up. Can we maybe wait just a couple of minutes or till Monday and do it on Monday?

Mr. ARMEY. I would be happy to. I was being impulsive, and I thought maybe the staff would have an opportunity to make their dates.

But let us go ahead and check on Monday.

Mr. HOYER. Reclaiming my time, I want to assure the majority leader that I will be lobbying for the staff, but we will check with the Members who have special orders.

Mr. ARMEY. I suppose with the Members we will check on that, but there are at least two Members that will be fighting for the staff to have the night off early.

Mr. Speaker, I withdraw the request.

□ 1530

MANDATED SENTENCING: LISTEN TO THE GOVERNORS

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

Mr. HOYER. Mr. Speaker, unfortunately I did not have in my possession a letter which I now have from Governor Carnahan of Missouri and Governor Carson of Minnesota. It deals with H.R. 667, the Violent Criminal Incarceration Act of 1995.

We have just passed that act, and I voted for a couple of amendments that lost. But I would want the Members to have this brought to their attention.

Obviously a Democrat and a Republican Governor in speaking to it, they say, "This would make it difficult for many of our States to participate in the proposed requirements." What they were referring to were the sentencing requirements. The Governors go on to say, and I think this is important for us to note in consideration of the Federal mandate bill that we debated extensively, the govenors say, "Federally mandated sentencing structure could disrupt the State efforts." The efforts to which they were referring was beefing up sentencing.

They conclude by saying, Mr. Speaker, "as Governors, we support maximum flexibility that recognizes the efforts currently in place or under way in many of our States. We urge you to strike the sentencing requirements in H.R. 667 and allow States to utilize Federal funds to establish truth-in-sentencing as it relates to the laws in our individual States."

Mr. Speaker, I believe as that legislation moves further through the process and comes back here, we ought to take into consideration the Governors' words.

LET FARMERS FARM

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

Mr. FUNDERBURK. Mr. Speaker, I am pleased to join with my colleague from Indiana, Mr. HOSTETTLER, the American Farm Bureau, the American soybean Association, and the National Pork Producers Council, in supporting the Agricultural Lands Protection Act.

Mr. Speaker, the Second District of North Carolina is the second largest producer of tobacco in America. We also have hundreds of soybean, peanut, and livestock farms. Farmers are the backbone of my district. Unfortunately, Washington treats these hard-

working Americans like criminals. Its agents invade their land. Federal bureaucrats tell them what they can and can't do on their own farms. Instead of spending their time in the fields and barns, our farmers are now spending their days filling our forms and applying for permits.

Mr. Speaker, the madness has to stop. The Agricultural Lands Protection Act is a first step in restoring some sanity to agricultural policy. It says that the Federal Government will no longer classify land historically used for farming and ranching as wetlands. No longer will farmers have to bend to the whim of some hard core environmentalist at the Department of Agriculture or the Corps of Engineers. This bill restores fundamental property rights to the men and women who put food on our table. It's long past time that this House put the interests of the farmer above bureaucrats and academics, lets pass the Agricultural Lands Protection Act.

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. ZELIFF). Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

A TRIBUTE TO ORNA SIEGEL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. TUCKER] is recognized for 5 minutes.

Mr. TUCKER. Mr. Speaker, in the past I have stood on the floor of this Chamber to pontificate on matters of local, State, and national importance. In the future, I will stand in this well and articulate the concerns of those in need of a voice to speak for them.

But today, Mr. Speaker, I rise for a different reason. I rise to pay tribute to a very special woman. A woman of substance, style, grace, and an inner beauty that would pale the brightest star. A committed leader in the struggle to enhance the pro-Israel cause; a heroine who speaks out while others remain silent; a wife to the man she calls her prince; a wonderful mother to her daughter Shana and her son Jonathan; a friend to those in need of friendship; she is my friend, the "red-hair," Orna Siegel.

Mr. Speaker, Orna Siegel was born Orna Tieb in Tunisia. She is the seventh of eight children that moved to a small town in Israel when she was four. At the age of 18 she served her country as a member of the Israeli Defense Forces as a sergeant in its' Air Force. She was educated at the Seminar Hakibutzim in Tel Aviv, Israel. There at the university she met her prince charming, American businessman, Saul Siegel. Cupid's arrow hit its' mark and Saul proposed to the lovely red head on the very day the couple met.

A true servant to her homeland, Orna founded the Summit Club, an Israeli-American leadership organization. She was the chairwoman of the annual fundraising gala dinner for the Friends of the Israel Defense Forces, a support group for the Israeli counterpart to the USO. You can find the spirited redhead giving her time to the Jewish national fund as a hostess and fundraiser; the Jewish institute for National Security Affairs as a member and a participant in its national meetings; she is a member of the national executive committee, the Capitol Club and a local officer of the American Israel Public Affairs Committee [AIPAC], a pro-Israel lobby here in our Nation's Capitol. Orna is also a volunteer fundraiser, as well as, the chairwoman of government relations for Yad B'Yad, which means hand in hand, a human life saving fund that takes sick people from Israel to wherever in the world they can get the life saving medical attention they need. At a recent Yad B'Yad fundraising dinner for which Orna was the primary organizer, an eleven year old boy made a speech. He told how a bone marrow transplant paid for by Yad B'Yad had cured his leukemia—he told how this transplant has saved his life.

Mr. Speaker, all to often I hear people say that they wish that they could live a normal life. I have never heard those words uttered by Orna Siegel. Because I think more than anyone Orna knows that in this life there is no normal or abnormal, there is only life, and that we must live our lives to the fullest. More than anyone that I have had the opportunity to meet in recent years, Orna Siegel knows that we must seize each day and cherish the moments that life has to offer us. That we must wake up every morning and face each day unafraid, with a new faith—and the hope that somehow we can positively affect the lives of those we meet from one day to the next. For life has no meaning except for its impact on others. For all of the lives that she has touched, it would be hard to imagine a world without the one that so many affectionately call the "red hair."

Mr. Speaker, to talk about Orna Siegel is to speak in superlatives. She is a woman who has given her heart and soul to the support of her homeland and to affecting positive change in the lives of those that she meets. Her unwavering leadership and commitment goes well beyond the funds that she has raised for the numerous organizations to which she belongs. It goes to the very fiber of who she is, what she stands for, and the type of leadership she believes is important to demonstrate every day, no matter her physical state.

Mr. Speaker, I am honored to know Orna Siegel, she is a leader, a heroine, a wife, a mother, and friend. She is my friend and I am honored to pay tribute to her.

TRIBUTE TO GREGORY CHIEDOZIE ACHOLONU

Mr. Speaker, I rise today to pay tribute to a man each and every one of us can look to as an example of discipline, of strength, of courage, of compassion and most importantly as an example of humility.

Mr. Speaker, I speak of Mr. Gregory Chiedozie Acholonu a native of Washington, DC.

In the world of chess Mr. Speaker, there are few peers to Mr. Acholonu. As a young child Greg was introduced to the world of chess by a family friend.

By 1972 Greg was reading Horowitz's chess theory and practice and Reti's modern ideas in chess.

By 1981 with the help of experts like Emory Tate and Stan Fink, Greg had achieved the rank of master.

In December 1992, Greg won the Maryland closed. In early 1993, at the age of 33, Greg achieved a rating over 2,400 and became a senior master.

In 1988, Greg was hired part-time by the U.S. Chess Center to, among other duties, teach, "the little players program."

With enthusiasm and love for the game Mr. Acholonu's instruction has inspired countless numbers of local kids and adults to strive for the top.

In the month of February, when the achievements and contributions of Americans of African decent are being highlighted to the world, I take pleasure in highlighting Mr. Acholonu's achievements and offer to our children and ourselves, a man worthy of emulating.

□ 1540

H.R. 7, THE NATIONAL SECURITY REVITALIZATION ACT

The SPEAKER pro tempore (Mr. ZELIFF). Under a previous order of the House, the gentleman from California [Mr. KIM] is recognized for 5 minutes.

Mr. KIM. Mr. Speaker, I rise today, as a new member of the International Relations Committee, in support of H.R. 7, the National Security Revitalization Act.

Our committee has passed this legislation and it will be on the floor next week.

For too long the United States has been paying too large a share of the military tab for United Nations peacekeeping missions. This, at a time when this Nation faces its own peacekeeping concerns on our neighborhood streets with the continued increase in violent crime.

I believe it is time that we control in the wild spending of taxpayer dollars on questionable peacekeeping missions abroad.

It is unacceptable to ask the American people to settle for less—through

cuts in Federal programs—while at the same time giving disproportionate huge handouts to the United Nations.

Many Americans are being laid off by budget cuts and downsizing in both the public and private sectors while billions of dollars go to the U.N. bureaucracy.

They must stop.

That is why I am in full support of H.R. 7 which will bring an honest public accounting of actual U.S. contributions to U.N. peacekeeping activities.

Today the United Nations does not make a fair and full accounting of our inkind contributions.

These millions of dollars of in-kind contributions that we have made are not credited against U.S. assessments.

Some 90 countries around the world pay less than one-tenth of 1 percent of U.N. peacekeeping costs while only 10 countries pay more than 1 percent of these costs.

The United States pays 32 percent of those peacekeeping costs—32 percent.

That is 2½ times more than the next largest contributor to the United Nations, which is Japan, second highest at 12.5 percent. Out of 186 nations, 160 of them pay less than a fraction of 1 percent. The United States pays 32 percent. And that's just what the United Nations gives us credit for.

In addition, the United States is also paying added Department of Defense in-kind costs of more than $1.5 billion a year for related peacekeeping activities such as foreign troop transportation.

We get no credit for these extra expenditures.

H.R. 7 will require that the United States be credited for our own military expenditures as they relate to such peacekeeping operations. Every day the U.S. military is being called upon to support U.N. military operations.

Most recently, the United States has been called on in Somalia, Rwanda, Iraq, Cambodia, Haiti, and the former Yugoslavia.

Requests for U.N. involvement throughout the world continue to increase.

For example, just in the past couple of days the United States military has been sent again into Somalia to help protect and withdraw other U.N. peacekeepers.

Once again, Uncle Sam to the rescue.

But, if we were not there, most of these U.N. operations would collapse.

H.R. 7 will accomplish two important goals:

First, it will allow the U.S. Congress and the American people to understand how much the United States is actually contributing to support U.N. peacekeeping missions around the world.

Second, it will provide for a more equitable cost sharing of the real cost for such actions which is something that I believe the American people expect and deserve.

I would like to emphasize that this bill is not, an anti-United Nations, anti-peacekeeping measure.

It does not tie the hands of the President in pursuing multilateral U.N. solutions, nor end the United Nation's ability to conduct peace activities.

It does not cut off U.S. support for the United Nations.

All that H.R. 7 does is simply allow Congress to be involved in a comprehensive, rational, decisionmaking process related to the resources expended in the U.N. peacekeeping mission of the United Nations.

Let us see all the costs and determine what we can and cannot afford.

Congress has the constitutional power to control these costs and it should do so when it relates to using taxpayer dollars to finance foreign operations which have limited importance in relation to our own national security.

H.R. 7 does not preclude other members of the United Nations from paying their fair share of United Nations operations that they deem to be important.

What it does do is close the open-ended bank account the United Nations has at the U.S. Treasury.

U.N. peacekeeping has overdrawn.

The United States is the only superpower left, but it is not a nation with an unlimited budget.

There are other wealthy nations that also have direct national interests in global peace and stability.

Japan and Germany are two such nations.

We ought to be encouraging them—strongly encouraging them—to become permanent members of the U.N. Security Council.

That way, these two wealthy countries can justify carrying more of the U.N.'s financial burden.

UPDATE ON REPUBLICANS' CONTRACT WITH AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. SMITH] is recognized for 5 minutes.

Mr. SMITH of Michigan. Mr. Speaker, in the first week of January the U.S. House of Representatives got rid of 3 standing committees, 25 subcommittees; we fired 682 congressional bureaucrats, and we totally reformed the procedures of the House of Representatives in addition to passing a bill that would make the Members of Congress live under the same laws and rules that we make everybody else in our society live under.

A couple of weeks ago we passed a balanced budget amendment. Week before last we passed legislation to keep the Federal Government from imposing unfunded mandates on the States.

Last Monday, on Ronald Reagan's birthday, we passed the line-item veto.

For conservatives across America, it is beginning to sink in: We won the election last November 8.

I think Republicans now have a great opportunity, but make no mistake, the responsibilities that come with victory are much greater than the responsibilities that come with defeat.

It seems to me we are now at a crossroads where we can change from being a nation at risk to being a nation with a hopeful future. I do hope all Americans realize they are part of a historic group, they are in a historic time as we try to revolutionize the Federal Government's role in our lives.

Thirty-three years ago, when I got out of the Air Force and I bought my farm and I joined the local Hillsdale County Republican Party in Michigan, I was concerned because I was faced with a Federal Government that was telling me how many acres of different crops that I had to plant on my farm. It seemed important that I try to tell the Federal Government that if they want efficient farming, they cannot pass those kinds of mandates, not only on farmers but on all businesses of this country.

I think we all should be energized and excited to have this historic opportunity to bring about what many of us have been fighting for for many years, that is a leaner, more efficient Government, lower taxes, and stronger family values with more control and responsibility over our own lives.

But we can assume it is automatically going to happen. The forces of big government liberalism are stunned and in retreat, but they are not defeated. To make the spending cuts necessary to stop mortgaging our children's future will be very difficult. We are going to have to say "no" to the special interest groups and the lobbyists who fight for their pet projects.

It would seem to me that if we really wanted to look out for the future of this country and for future generations, we Republicans and Democrats and the President's people would get in a room and we would kick out the pollsters and the specialists of the special-interest lobbying groups and we would make the kind of tough decisions that we know must be made if we are going to cut down the overspending and overregulation of this Government.

By cutting some of the programs we can no longer afford, even some of the good ones, Americans will have to make tough sacrifices.

□ 1550

But one lesson we have learned over the last 40 years is that, if we do not have the energy, and ability and willingness to do it today, it is not going to be done. I, for one, am willing to say no to that additional spending.

The time for talking is over. I think the American people will no longer tolerate excuses from Government, and I am giving this speech today because I am already seeing some traditionally conservative Members of this Chamber, even some Republicans, that are talking about backing away from the tough

spending cuts. For this Chamber, for this Congress, to be successful, people all over America are going to have to do two things, I think. They are going to have to be willing for Government to do less for them, and they are going to have to be active in helping explain how serious this problem really is.

In conclusion let me challenge you, Mr. Speaker, and the Members of this body with a few statistics:

The interest on the Federal debt this year will be $339 billion. That is more money than we take in, as my colleagues know, in total—one quarter, 25 percent of all the total revenues coming into this national Federal Government will be used, utilized, in paying the interest on the Federal debt. We are mortgaging our children's future, and I hope we will all be industrious and energetic in trying to make the tough spending cuts that we are going to be faced with.

DISCUSSION OF WELFARE REFORM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Kentucky [Mr. BAESLER] is recognized for 60 minutes as the designee of the minority leader.

Mr. BAESLER. Mr. Speaker, today what I would like to take the opportunity to discuss is the proposed welfare programs that we have been talking about here in the Capitol and throughout the country over the last several months. The question, I think, is why are we discussing welfare reform today in the Capitol and throughout the country? I think there are four basic reasons.

Everybody in the country, from whatever community you might live in, has seen abuses. They follow people through the food lines and see food stamps being used for things they did not think they ought to be used for. They know circumstances where food stamps have been sold for cash, trafficking in different stores throughout the community. They know people who live in section 8 housing who are not supposed to have other people live with them, but they know they are there. They report them, and nothing has happened. They know there are folks who could work that are not working who could do something constructive and are not doing something constructive. They know there are folks that all their life in all the generations have been on food stamps, poverty, other type of welfare programs, and they are frustrated. The public generally is frustrated and angry.

The second reason we are discussing welfare is because most of us understand that a welfare system itself breeds a great deal of crime, a disproportionate amount of crime. People who commit crime are those who are on welfare, more than those who are not.

A third reason that we are discussing welfare today is because we know we have to stop this cycle of poverty, we have to stop this generation, or we are going to have more and more generations going through welfare and becoming dysfunctional in society.

A fourth reason we have talked about is to save money.

Now what are we talking about when we talk about welfare?

Welfare constitutes 13 percent of our Federal budget. Eighty-seven percent of the other spending does not constitute welfare. What makes up that 13 percent? Housing benefits are 11 percent of the 13 percent, food benefits, including food stamps, are 18 percent of the 13 percent, Medicaid is 44 percent, almost half, AFDC is about 1 percent of the total budget, and SSI is 39 percent.

Now why is this chart important? It is important because most all the discussion taking place here in Washington today, whether it, is through the President's program, or through the Republican plan or other plans, are talking about only AFDC.

Now why is that the case? I submit to you the reason we are talking about only AFDC is because that is the easiest group to attack, basically single mothers with children. I ask, Why shouldn't we include as part of our discussion food stamps wherein Kentucky alone we have 500,000 people on food stamps, we spend almost $400 million a year? Why shouldn't that be a topic of our discussion when we are talking about reforming welfare?

Part of the Republican plan does talk about block grants for food programs like child nutrition, WIC programs and so forth. We will talk about that a little bit later, but that will be very difficult to impose on the States because how are we going to guarantee that the young person gets their only warm meal in the morning or at noon at school? A very difficult situation. Why are we not talking about the housing section 8 certificates? Why are we not talking about public housing when we talk about welfare reform? And why are we not talking about Medicaid, which is one-half? And why are we not talking about Social Security insurance, which is rising considerably faster than is AFDC?

I suggest to you all the discussion we are having here in Washington today just on AFDC I think is not—it is appropriate, but it is not complete, and it is only dealing with a very small portion of welfare, and for us to suggest, whether we are Republican or Democrat, that we are going to have welfare reform and deal only with AFDC is very misleading at the least and a travesty to the public, I think, at the most. We cannot just suggest to the public that the only people that are abusing and need to be looked at, the only people, the only system that needs to be reformed, are those that deal with mothers with children, aid for dependent children.

Now what are the general principles when we talk about welfare? I think there are two or three that the public generally will agree upon.

No. 1 is responsibility, whose responsibility? Most everyone will agree that the individual has some responsibility for their family, and they should have responsibility to do something for any benefits they receive, whether it is work, whether it is education, or whether it is just to take care of their family proper.

But there is a second responsibility, the responsibility of government. I think also everyone agrees that government itself has responsibility to take care of those who cannot take care of themselves.

The second word that I think generally describes what people feel is accountability. Most people think, if you receive a cash payment, you should have some accountability on what that cash payment is used for, whether it is in SSI or whether it is in AFDC, and most people feel that the government should be able to hold you accountable, to be able to, if you do not want to participate in the programs available, then the government should have the ability to basically take you off that benefit.

Third, I think most people think work should pay more than welfare. What has frustrated the folks is that they look at people out there, and they are making money, but those on welfare are doing better than they are. Now I guess the working people would say,

> I work every day hard, hard for 20–25 years, and I look over to the next house, and I know people who can work are not working, and they're living better than I do. They drive a better car. They eat better. Their children have better medical care than I do, and I'm trying.

It is that anger and that frustration that most people want to make sure that they can somehow understand it, and that is what welfare is directed at.

□ 1600

The fourth principle is whatever we do in welfare reform, whether it is in AFDC, Medicaid, food stamps or whatever, we have to do it with the intentions that we want to break the cycle.

If 5 years from now we have had all this great discussion and all this rhetoric, and from this hall and all these other halls we have welfare reform, and if it does not allow us to break the cycle of poverty, we have done nothing. Absolutely nothing. So what do we do? How do we reform it?

First of all, let's just talk about the administration of it. Today, without question, it is the most confusing process in the country to administer welfare, including all of these. The major welfare programs have different rules on income, deductions, resources, and

other eligibility criteria, and different application forms.

We should make the requirements for accessing Medicaid, AFDC, food stamps, and public housing all the same. The form that needs to be filled out and the information that needs to be verified should be the same for all these programs as well.

Finally, applicants should be able to go to one stop, one place, to fill out the forms.

You say why is this important? I am worried about the fraud. In food stamps alone, a major portion of the food stamps that go inadvertently and illegally to people is because of the confusion in the forms filled out by the individuals and the people processing them.

Administrative simplification will make it much easier for policymakers to turn the goals of the current welfare nonsystem into an integrated system. Is there any reason whatsoever that these systems should not be integrated? There is none. In certain instances, if you receive housing benefits section 8 has absolutely no influence on whether or not you receive food stamps or not. That is not correct. They are all separate. They should be integrated. The way we do it is basically bring the administration together.

Speaking of administration, I think we are going to have to work with the States in making sure we can share some of the savings. There is a great deal of discussion on food stamps about the electronic transfer. But the problem is basically it will cost the States more money, not less. We have got to make sure they share in any savings that we have.

Let's talk about the program specifically. AFDC. If you look at the short list put out by Personal Responsibility Act No. 4, by the President's program earlier, every entry, every entry, every line except one, deals with AFDC.

It is important that we reform AFDC, but it is equally important that we acknowledge honestly that AFDC does not even cover half the green part of this chart. But every line but one just deals with AFDC. It think that is unfair, and it is unfairly placing all the welfare situation upon single mothers. I think that is incorrect.

When we deal with AFDC, however, I think we need to step back one point. If you look at the proposals before us today, each one of them says you are going to work, you are going to work, you are going to work. It is not bad in its approach. But what we need to say is who would like to go to work today, and what is in your way?

Often it is not the attitude, but the physical circumstances that keep people from working. Let me pose a question. If I am a single mother, I have two kids, I want to go to work. I make $5 an hour, maybe $5.50. Immediately when I do that, the first question that arises is, who is taking care of my children? How much does child care cost?

The second question arises, how am I going to get to work? I can't qualify if I have a car that is valued over $1,500. I probably wouldn't have one.

The third question, if I go to work after a period of time I lose my Medicaid card. I don't have any coverage for my young children.

So how is that individual going to work? They are not. And I will come back to the child care issue and these other issues later in the discussion.

Before we start making rules today that say everybody is to work tomorrow when this program is imposed, why don't we step back and do what many of the States have done and pass legislation that would allow the States, without asking for waivers, to have longer transition periods before the individual would lose their Medicaid card; have longer periods before they would lose a portion of their food stamps, housing benefits, or whatever other benefits they are getting.

I would suggest to you if we did that, we will find there are many more people going onto the work rolls voluntarily tomorrow than there are today.

Now, after that group, we are going to have to address those folks who maybe do not want to go to work. The President's program and the Republican program talk a great deal about eligibility, eligibility of AFDC children.

Let's talk about some myths at AFDC just a little bit. Who are we talking about on AFDC? Most people think you are talking about the momma sitting on the porch that has got three or four kids and wants three or four more. That is not the case.

Most people think we are talking about young ladies, under 20 years old, who have got two kids or more. As a matter of fact, less than 8 percent of the women on AFDC are under 20 years old. Seventy-three percent of the women on AFDC have two kids or less. Most people think we are just talking about basically most people on AFDC are black, not white. In Kentucky, 73 percent of AFDC recipients are white. Nationwide, it is about split even-even.

Most people think they are on AFDC and they want to have more children so they can have more payments. In Kentucky alone, you can get $200 more for the extra child. I will suggest to you not many people have the child just for $200 more.

So all these myths we have about who we are talking about on AFDC, and I am emphasizing it because it is appalling to me that here in Congress that the President and the Republican plan basically initially are only dealing with AFDC.

So let's talk about the AFDC programs that are before us. In Kentucky, $203 million is spent for the benefit of 211,000 people on AFDC. The Federal Government alone is spending 15.5 percent.

Here are some recommendations that I make, that I have, based basically on what both the President's program and the Republicans are talking about.

In order to receive AFDC payments, I believe an unwed parent who is under the age of 18 and has a child should be required to live in the home of the minor's parents under adult supervision. I do not believe, as suggested by the Republican program, if a child is born to a person under 18 that there be no benefits coming forth. Who are we penalizing? The mother? No, we are penalizing the child.

Also if new babies are born to AFDC recipients, States should have the option of saying they will not increase the benefits if they want to. Without question, AFDC recipients should have a requirement, I think, to finish the schooling. I think they should have a requirement if they are able to work, to work in a limited period of time. And there are several other recommendations of AFDC, and I would like to come back to a couple of them.

Recently, it was presented yesterday by the Contract on America plan for welfare reform that we were going to block grant the AFDC payments to the States, and we were going to try to reduce it from $15 billion down to $12 billion.

Let me tell you what we are forgetting here. We are assuming we are going to spend less money on this program by putting more people to work. Let me point out to you very clearly, let's assume there are some working now, they have their child care payments paid for, help with child care. Now we are going to put even another group on. Where is the child care coming from? Where is the transitional expenditure coming for transportation? Not that the program is not good, but if we try to sell to the American public that we are going to increase the rolls of AFDC recipients working, and we are not going to increase child care, we are selling the American public a bill of goods that will come back to haunt us.

□ 1610

It is not possible, it is not possible for this country or any State to increase the number of folks on AFDC working without having more money for child care. They say, let us block grant child care. What does that mean? If we are just talking about the same amount of money, it means that you could very well be, under the plan presented, taking child care from those who are the working poor presently. So somebody is going to lose. Any program that is passed in this Congress that does not acknowledge and provide for additional child care funding is a fraud to try to say you are going to

work and not have more child care. It is a fraud.

Mr. Speaker, when we deal with it, it is not necessarily bad, we do want them to go to work, but when we want them to go to work, let us be brace enough to acknowledge it is going to cost some money to do it. Transportation, child care, and other changes we are going to have to make.

That is what AFDC is, where most of our effort has been made. And I want to reemphasize, that is not welfare reform. That is a portion of welfare reform, but it is AFDC reform, Aid for Dependent Children, the most defenseless group we have in this country today, and we are going to say we are going to have all the welfare reform on their backs alone. Should they be required to do something? Yes. Should they be required to work if they can? Yes. Should they, if they do not want to cooperate, should they be put off the program? Yes.

We also have to acknowledge there are food stamps, housing benefits, Medicaid, all these others, all the people, anybody that abuses it should have the same requirement. You should have requirements for food stamps to work. You should have requirements for housing benefits to do something. And Medicaid, for certain people, to have copayments. But that is not what is proposed today. I think that is shortsighted, and I think it is selling the public short and, more importantly, I think calling it welfare reform, it is not what it is. It is sort of a sheep in wolf's clothing.

Let us talk about SSI—SSI, Social Security insurance. Why should it be talked about? First of all, up until last year, there was a great hue and cry in the country when people found that folks with alcoholic problems and drug addiction problems were receiving SSI payments. Last year there was a change where after the statute runs out, after 3 years you have to go off. Has some tightening up, but no more tightening up. If we are talking about reforming welfare on the backs of AFDC mothers, why should we not be talking about reforming welfare on folks who have alcoholic problems or drug addiction problems? Why should we be paying them a cash payment each month?

We should not. There is no accountability. There was no accountability on how that money was to be used. Now you can require that you have to have treatment. But unfortunately, in several States, Kentucky included, there are very few places that treatment can actually be purchased. So once again, the cash payment sets out, and once again there is no accountability.

Let us talk about SSI with other programs, like attention deficit disorders. Obviously, there are young people throughout this country who deserve Social Security Insurance, but obviously, there are others who do not. And if we just ignore that issue and the rising cost with the cash payment, then we are not doing justice to the other welfare discussions. What can we do with SSI?

First of all, I think it is suggested that we should have a cap on how many SSI payments can go to one family. Second, on the attention disorder, deficit disorder for young people, why should not the parent have to account for how the money is used? It is a cash payment today. You could do what you want to do with it. Nobody comes to check. Nobody cares. You send the cash payment, and that is it. There is no requirement that you even have to get treatment. There is no requirement that you try to turn the young person's situation around so they no longer suffer from that illness.

Should there be a requirement for job responsibility on SSI? I submit there is just as much requirement to be required of those individuals as AFDC. But somehow we want to step back from it. We want to say, no, we want welfare reform but we just want this little green portion, not the whole portion. I also suggest that we should change the cash payment to a voucher which says, particularly in the situation where you might have some treatment available to you, says, here is a voucher. Here is the situation. You go get the treatment, here, because we want to see you get better.

In Kentucky, $45 million was spent on 153,000 beneficiaries for SSI. The Federal Government alone spend $24.5 billion; $10 billion—$10 billion more than we spent on AFDC. Yet we are saying, welfare reform is just AFDC and not SSI, $10 billion. And keep in mind, AFDC is the lowest among program which we spend, the lowest amount of any of these except the housing benefits.

Let us talk about the food programs. The Republican contract has suggested that we are going to block grant the food programs, which are the nutrition programs for, like I said earlier, the WIC Program, programs in the schools and food stamps. Let me tell you what happens in Kentucky under that scenario. We will lose 33 percent of the money we are presently getting, not new money but we are presently getting. Basically we are going to tell the State of Kentucky and also other States which also likewise will lose; fine, you have an option to make, after we block grant it, you can tell folks, you are out, even though you might qualify, you are out, that is tough. And even future ones come on, you cannot even come on, even though they were deserving and not folks who abuse the system.

In food stamps alone, in Kentucky we spent, as I said, $41 million for 524,000 people. The Federal Government spends $24.5 billion this year on food stamps. Without question, the fraud and abuse sometimes runs rampant in the Food Stamp Program. In 1994, food stamps were issued to purchase food to over 207,000 retail stores. I do believe that the inspector general and others of oversight are making some good recommendations on how we should treat the retailers. Congress should authorize the forfeiture of proceeds for materials that facilitate the violation of food stamps. Those retailers who traffic in food stamps should be permanently disqualified from the program. Stores that are disqualified from participation in the WIC Program should also be disqualified from other programs. But that is just the people. What about the people that use them?

Obviously, we have got to have tougher sanctions. We have to stop the trafficking. All of you have seen television shows about the traffic in food stamps. But, again, I come back to my central theme. We have a lot of discussion on welfare reform up here. But the proposals that have been produced to date do not include food stamp reform. Why not? It constitutes a larger portion of the welfare budget than AFDC does, in fact, everything except Medicaid.

Let us talk about related issues. I am going to come back to AFDC one more time. It is easy to pick on the single Mommas and the children. It is easy. People know examples all over the country. Where are the Daddies? Where are the Daddies? Thirty-four billion dollars of uncollected child support today throughout this country—$34 billion. Should not the child support issues be a factor in welfare reform? Should not the missing and absent parent have some responsibility to help us curb the cost of raising their children? Obviously, the answer is yes.

Again, when we talk about welfare. I suggest to you that child support issues need to be made an integral part of the whole package.

□ 1620

We will not just try to get past AFDC and say, "We are there." We are not there. It is my suggestion that all these issues have to be put together in one package to address, if we are going to have true welfare reform, because it is going to be too easy to say after one passes, "We have done our job; we have met our responsibility; we have hit our contract; let's go home." We should not do that.

Mr. Speaker, whatever reform we make—whatever reform we make, it will not work unless we curb the abuse that people experience every day. How do we do that? I suggest that we need to involve the local communities more and more in reporting the abuse and in prosecuting the cases. Some States do this already.

We have to involve the locals. The people next door know who is cheating.

The people next door know who is trying to beat the system. We need to bring them into the discussion. We have to give incentives back to the State to help us collect the money.

For instance, on Medicaid, in the State of Kentucky, the Federal pays 70 percent, the State pays 30 percent of Medicaid. I think it would be pursuant to law if the State of Kentucky increased their enforcement provisions on Medicaid fraud, and give them a larger portion back, so they could do other things with other programs.

We have to have tougher sanctions for the violators. It is not enough to get your hands slapped and say you cannot participate in a program for 6 months. It is not enough to say, "We caught you now. That is tough. We are going to let you go; don't do it anymore." People who violate the system, who do not cooperate with what we are trying to do with our work programs and everything else should be dealt with swiftly and, I think, firmly.

Last, we have to make sure that folks who are enforcing have the tools for enforcement. We talk about welfare and we talk about AFDC. What we really want to accomplish is self-sufficiency.

I submit to you that in every community we have what it takes to make self-sufficiency. We have United Ways, we have the community activities, whether it is tenant services or whatever. We have the housing corporation. We have section 8 certificates. We have hospitals. We have the local governments, State governments. We have colleges of dentistry, home economics, whatever.

The Federal Government, I submit, Mr. Speaker, when we are talking about money, when we decide we are going to spend some money on welfare reform, we need to provide the incentive to suggest to the communities, if you will work with these folks and try to get them toward self-sufficiency, and if you will integrate all the resources available to you in your community, and if you will have housing, child care, transitional help, and you will help provide it, we will help you do that, and it will work.

Our ultimate goal is to take people off of welfare to self-sufficiency. But I submit that ultimate goal has to apply not only to AFDC, it has to apply to SSI, it has to apply to food benefits, food stamps, housing benefits, and I think we have to have some responsibility tied to Medicaid.

In conclusion, Mr. Speaker, there is a lot that has been discussed up here on welfare about the Contract With America, and I understand it and appreciate it. But I would like to submit to you, there is another contract we have to be concerned with.

It is easy to talk about welfare reform, because we are going to have very few people up here talking on the other side. Most of us agree what has to be done. However, we are going to do this and do that with contracts, let us not forget one of the contracts I think we have which is most important of all. That is a contract with our conscience.

THE MEXICAN BAILOUT

The SPEAKER pro tempore (Mr. ZELIFF). Under the Speaker's announced policy of January 4, 1995, the Chair recognizes the gentleman from Mississippi [Mr. TAYLOR] for 60 minutes.

Mr. TAYLOR of Mississippi. Mr. Speaker, I yield to the gentleman from California [Mr. BROWN], my distinguished colleague.

REMEMBERING CONGRESSMAN CHET HOLIFIELD

Mr. BROWN of California. Mr. Speaker, I appreciate the gentleman yielding to me.

Mr. Speaker, I would like to draw the attention of the Congress and the Nation for a few moments to the memory of former Congressman Chet Holifield of California, who passed away on February 6 from pneumonia at the age of 91.

Mr. Speaker, Chet Holifield devoted 32 years of his working life to this institution and to serving the American people. To review his accomplishments in Congress is to review some of the key developments in American Government and public policy in the years after World War II.

Chet Holifield was deeply involved in congressional policymaking about the peaceful and military applications of atomic power after the Second World War. He was a vigorous advocate for the peaceful use of atomic power and pushed hard to have the U.S. atomic energy program placed under civilian, rather than military, control.

In 1957, he headed the first full-scale congressional hearings on the implication of radioactive fallout from nuclear testing. At the same time, Chet believed strongly in—and was a strong advocate for—the development of the hydrogen bomb and he was a strong supporter of Adm. Hyman Rickover in his program to build a nuclear navy and submarine fleet. Congressman Holifield's decades of experience and detailed involvement in nuclear policymaking gained him the respect of colleagues in both political parties, the scientific and professional communities, and environmental groups.

During the last 4 years of his congressional service, from 1967 to 1971, Chet Holifield was the chairman of the House Government Operations Committee, the House committee primarily involved in promoting the efficient operation of Federal Government agencies. Chet authored the legislation establishing the General Services Administration, which does most of the purchasing for the civil departments of the Government and manages most Federal buildings. And, during the growth of the Federal Government in the 1960's, Chet Holifield was personally involved in managing legislation that created two Cabinet-level departments: The Department of Housing and Urban Development and the Department of Transportation.

Chet was born in Mayfield, KY, grew up in Arkansas, and spent some of his teen years working in the wheat fields of Kansas and the oil fields of Oklahoma. He later hitchhiked to California where he found a job in a Pasadena cleaning and dyeing shop.

Ultimately, he worked his way up to his own small business: A men's clothing store. Chet was first elected to Congress in 1942 and was reelected 15 times by the people of eastern Los Angeles County, CA, finally becoming the dean of the California congressional delegation.

He voluntarily retired in 1971, and returned to California to run his clothing store in Montebello. After finally retiring from his business work, Chet moved to the beachside community of Balboa, CA.

Through his efforts in Congress and his involvement in the public affairs of our Nation, Chet Holifield's work helped shape modern America, and his life's accomplishments will live on for a long time.

Mr. TAYLOR of Mississippi. Mr. Speaker, I want to begin by apologizing to the approximately 80 House employees who will be kept a little bit late this afternoon as a result of this. What the people in the gallery and many of the folks back home do not realize is that under the present system these employees have to stick around as long as we have special orders. There is a room right up there that has a television camera.

I have asked the previous Speaker, and I'm going to ask that the Speaker try to change that policy. There is really no reason to keep these people around late, but I would not keep them here if it was not worthwhile.

What we have to talk about today is of the utmost importance to our Nation. We are talking about $20 billion for the single largest expenditure on the part of this country that has ever been made without the consent of Congress, and the potential for an additional $15 billion to be spent at any moment by the President of the United States, again without the consent of Congress.

It is particularly frustrating as a Member of Congress that earlier in this week, when the gentlewoman from Ohio [Ms. KAPTUR], seven Republicans, an equal number of Democrats, and the body's only Independent Member offered a resolution to demand of the Comptroller General the information as to whether or not what President Clinton did last week, when he guaranteed the loan to bail out Wall Street,

to bail out the Mexican peso, whether or not that was even legal.

Second, we wanted to know how often this fund has been used, and what amounts of money have been appropriated over the past. We also wanted to know who knew that the bailout was going to take place. We know that Speaker GINGRICH knew; we know that President of the Senate, Senator DOLE, knew. We know that the President knew. Who else knew that this was going to take place?

The reason that this is so important is, they knew before the announcement that the value of the peso was going to jump dramatically. It has now been shown that it jumped 20 percent in less than 48 hours. For those who have a small savings account, for those who might own a stock, can they imagine having a guaranteed 20-percent return on their investment in only 48 hours?

That is why it is important, and that is why it was so wrong, that this deal was cut with the Speaker, with the President, with the President of the Senate, in secret, without the approval of Congress to bail out the peso, but most importantly, to bail out Wall Street, the same people who just 15 months ago said "We have to have NAFTA, even if it means that the garment workers down in rural communities like south Mississippi will be thrown out of work, even if it means that the fishermen and the shrimpers down in the Gulf Coast States will be put at a severe disadvantage," because they have to live by all of our laws, our minimum wage laws, our OSHA laws, the pollution laws. They have to pay our taxes.

□ 1630

And they will be competing with shrimp brought in from Communist China, for which there is no import fee at all. They said it was economic Darwinism and that we had to have NAFTA because the chips are just going to fall where they are.

It is kind of strange, then, that 15 months later when Wall Street is hurting, when Wall Street is losing a few bucks on their investments down in Mexico that they run to this body, that they run to the President and demand to be bailed out. It is not right. It is not fair. And it is your money.

I think the people of America need to realize that these are unsecured loans. Now, the President will tell you and Speaker GINGRICH will tell you that the Mexicans have pledged the oil revenues to pay these loans back. Who's kidding whom? If those oil revenues had not already been pledged in a dozen different places, do you think they would be having to borrow $20 billion? That oil revenue has been pledged long ago and will not be available to repay those loans and $20 billion of your tax dollars have already gone down the rathole.

Some of the older Members of this body tell me that this is much like the S&L crisis where they came to Congress and said, "You know, for $5 billion we can solve the problem," only a few months later to come back and say, "Well, you've now invested $5 billion, you have to invest some more to get your money back." There is not a doubt in my mind that within a certain period of time, the President of the United States will be asking for the remaining $15 billion. And it is your money. And it is the only money spent without the approval of Congress. It is the only money spent without the approval of the Senate. And if you take the time to read our Nation's Constitution, it is very clear in article I, section 9 which says the Congress shall have the power to coin money. No money shall be spent from the Treasury without an appropriation by the Congress. And yet what the President did was completely contrary to that.

He will point to an old law from 1934 that was meant to get us out of the depression, that was meant to prop up our currency, that has never been used for more than $1 billion at a time and say that that $20 billion somehow benefits us. Who's kidding whom?

Who is to bail out Wall Street? And again no one will ever really know if some phone calls were made to some people who happen to be Wall Street buddies and said, "Go out and buy a bunch of pesos because the value's going to go up very quickly and very soon," and your money was used to guarantee that.

It is wrong, and that is why what the gentlewoman from Ohio [Ms. KAPTUR], the gentleman from Vermont [Mr. SANDERS], a number of Republicans including the gentleman from California [Mr. ROHRABACHER], the gentleman from California [Mr. HUNTER], the gentleman from Kentucky [Mr. BUNNING], that is why we are trying to find out what happened and that is why equally importantly we have a bill in the Banking Committee to say that this cannot happen again, that from now on these moneys have to be appropriated by Congress.

At this time I would like to yield to my distinguished colleague, the gentlewoman from Ohio [Ms. KAPTUR], who has been most instrumental in doing the research on this matter.

Ms. KAPTUR. I want to thank Congressman TAYLOR for his extraordinary leadership on this effort and for gaining the special order time this evening. It is my privilege to join him and to thank him so very much for cosponsoring the special resolution of inquiry that was filed today here in the House of Representatives asking the President of the United States to submit information to this House within the next 2 weeks answering questions that we cannot answer for the American people simply because the executive branch chose to take a unilateral action without a vote of the Congress of the United States. Congressman TAYLOR has outlined the amount of money that is on the line initially, money that is flowing out of our Treasury, not just in the form of loan guarantees, although we cannot get specifics on this, but we understand direct loans as well. We do not know for what duration, we do not know what the terms are. We do not know exactly what the purpose is. But we know that part of the money is being used to help Mexico refinance what are called pesobonos, the bonds that she holds, that creditors hold against her that she has to refinance. Approximately 10 billion to 16 billion dollars' worth of those are owed to U.S. investors.

I would just ask our colleagues and people around the country to be aware that this resolution of inquiry asks very specific questions of the administration asking them to give us the assured source of repayment to our country for any of the short, intermediate or long-term credit facilities that were designed by the administration and made available to Mexico, to give us any documents—we are just asking for facts here—concerning the net worth of Pemex, the state-owned oil company, the historical annual revenues of Pemex and as Congressman TAYLOR mentioned, to what other purposes those revenues have already been dedicated, which means that the collateral really is not worth anything.

As one of our colleagues over in the other body said, we may have to send in the 82d Airborne to collect on the oil collateral because it has been so overpledged.

We are asking for other information concerning what criteria the administration used in deciding to make loans from this fund to Mexico when in fact it has refused so many other countries around the world access to funds through that particular credit facility. So why should this situation be different and why should the Executive go around the Congress of the United States?

We are also very interested in knowing what additional replenishment of funds will be required in the International Monetary Fund and Bank of International Settlements, because they have now been drawn into this agreement and the United States does provide some of their working capital. What are the nature of those arrangements and what additional amounts of taxpayer dollars will be required to replenish those funds?

In any case, there are over seven pages of questions here, and this particular resolution was today referred to the Banking Committee. The Banking Committee under the rules of the House has 14 days in which to respond.

If I just might take 2 extra minutes here, I want to say something very important tonight that we did not talk about during the day today. That is, as

a result of press clips today in the Washington Post, the New York Times, and other newspapers, the President of Mexico evidently yesterday effectively declared an end to that Government's peace efforts in that country to try to keep the lid on the uprisings that are occurring, particularly in the southern part of Mexico, and I want to say something about this, because it cuts to the quick of what is happening in relations between our two nations.

It is not enough for just the President of the United States to be friends with the President of Mexico or the biggest banks in America to be friends with the biggest banks in Mexico. Good relations between our countries depend on the people of the United States being friends with the people of Mexico. As we watch the people of Mexico stream across our borders, stream across our borders because they are hungry, our response as a nation is, well, we have to close the borders, because the exodus is so huge.

But let me say this: That all the interests on Wall Street that are watching what we do here, and I will call some of them by name, Citibank, Chase Manhattan Bank, the Fidelity mutual funds. Over there in Illinois, Archer-Daniel-Midland, you sell a lot of grain down in Mexico, but I will say this tonight: There is not one share of your stock that is worth the life of one Mexican peasant fighting for enough to eat off their land that they are being divested of. And we have to speak out for those people here in the Congress of the United States. It is not reported in the press, it is not reported on television, it is hardly reported in the newspapers. In fact one of the newspapers says today, many investors in America here have said that continuing political instability in Mexico is the main reason that they are withdrawing their money from Mexico. They have been withdrawing their money from Mexico in recent months.

It is very interesting that they are worried about the political instability. Yet you do not hear one call for democracy building in Mexico.

□ 1640

We do not hear one call out of Wall Street for human rights. We do not hear one call of sympathy for the farmers in Chiapas who literally plant coffee with their hands on the hillsides, and as a result of this NAFTA agreement are being thrown off of their land, and they call it in the paper, they call them rebels, and call them insurrectionists, and make them seem like they are traitors. Well, they are not traitors to the ordinary people of that land, and frankly, I think they had the real true belief in democracy in their hearts.

I would hope that our country would listen to the Catholic prelates who spoke out this morning in the New York Times, Bishop Samuel Ruiz Garcia, who said that this is a very, very serious situation. It is pointing to a solution of war, and it breaks the process of dialog.

This is not a situation that will be solved with guns or with the President of Mexico sending in the federal police. We can take a lot more lives, and I would hate to see the biggest financial interests in this country part and party to killing the common people of Mexico. That will not build friendships over the years.

But the biggest interests in this country, political and economic, ought to be for democracy-building south of our border, because only when the people there have a right to have a decent wage and to own a piece of property and have enough to eat will there be political stability and economic stability in that country and four our own country.

I felt compelled to speak out. I am very worried about what could happen over this weekend when Congress goes home with that cease-fire having been lifted, and at least I wanted to put something on record about my deep concerns, and also that those who have their monied interests at heart would also put to heart the interests of the people of Mexico and be a voice for them.

The SPEAKER pro tempore (Mr. ZELIFF). The Chair would remind Members to address the Chair and not those outside the Chamber.

Mr. TAYLOR of Mississippi. Mr. Speaker, reclaiming my time, I want to thank the gentlewoman from Ohio [Ms. KAPTUR] for her remarks. It is strange that she used the word "rebel." It reminded me of some other people who really need to be commended for what happened earlier here in the week. There was a vote on Tuesday, or at least we had hoped to get a vote on whether or not we could investigate this. If you happen to have been following the House proceedings you would know the majority leader, Mr. ARMEY, stood up and called for tabling of that motion, and what that means is that it cannot even be debated, that the American people would not even have 1 hour to hear what was the information we were looking for, why we were looking for it, and what we hope to do with it and how we hoped to change things. It is interesting that there were 14 Republicans who went out on a limb and opposed their leadership because they knew that what was going on was so wrong that they would not give their blessing to it. I really think those Members, there were about 150 Democrats, and I thank all of them for their help, but in particular I want to thank Congressman BILBRAY, Congressman COBLE, Congressman DUNCAN, Congressman ENGLISH, Congressman HUNTER, Congressman ISTOOK, Congressman KLUG, Congressman LARGENT, Congressman MYERS, Congressman ROHRABACHER, Congressman STEARNS, and my friend but not relative, CHARLIE TAYLOR from North Carolina, Congressman WELDON, and Congressman WHITFIELD.

It was my understanding, as reported today in the Washington Times, that rather than being applauded by their colleagues in the Republican Conference for their brave stand in putting the American people before party politics, and I quote, "they were castigated by House Majority Whip TOM DELAY for opposing Mr. GINGRICH on the vote to bring this before the public."

I want to make it very clear to the Speaker, I want to make it very clear to the American public, this issue will not go away. They hope it will be forgotten. How can you forget $20 billion and how can you forget the potential for this Nation to lose another $15 billion? That is $35 billion, and for those who want to know what that is the equivalent of, that is the equivalent of what this Nation spends on the entire budget for the Veterans' Administration for a whole year, and it is gone, and it is wrong.

Mr. SANDERS. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to my colleague, the gentleman from Vermont, the only independent Member of this body, and the gentleman who has introduced legislation to make this fund subject to an annual appropriation process like every other dollar that is in the Treasury.

Mr. SANDERS. Mr. Speaker, I thank the gentleman very much for yielding and congratulate him on his leadership, as well as that of the gentlewoman from Ohio [Ms. KAPTUR]. It is nice to be here this evening with them. I share the concerns they have articulated.

It seems to me to be rather incredible that at a time when we spend huge amounts of time right here on the floor of the House debating the appropriation for the National Council for the Humanities and the National Council for the Arts, and $100 million here and $100 million there, that this institution presumably which represents the American people has not been able to debate and vote on a $20 billion-plus package which puts taxpayers' money at risk. Maybe people agree with what the President and Mr. GINGRICH are doing, maybe they do not. But I cannot believe that many Americans think it proper that the U.S. Congress does not debate that issue and vote it up or vote it down right here on the floor of the House.

As the gentleman from Mississippi [Mr. TAYLOR] indicated, I have introduced H.R. 867. What H.R. 867 does is it says that the world has changed markedly since 1934 when the legislation that the President authorized was first enacted. A lot has changed. Under H.R.

867 loans from the Exchange Stabilization Fund would only be allowed, as the gentleman from Mississippi indicated, to the extent that Congress has previously authorized it in an annual appropriation bill. In other words, like all of the other appropriations in this Congress that come through this Congress, this fund also would have to be appropriated by Congress.

I would point out to my colleagues that this would mean that the fund would be treated in the exact same manner that we treat the funds held by the Export-Import Bank. Both funds are self-sufficient and do not require annual contributions in appropriation bills. However, loans made by the Export-Import Bank are subject to congressional approval given under authorization and appropriation bills. This bill would simply subject the Exchange Stabilization Fund to congressional approval.

We have just introduced this bill on Wednesday, and I am delighted that we have already received significant support for it of both the gentlewoman from Ohio [Ms. KAPTUR] and the gentleman from Mississippi [Mr. TAYLOR], but also on board are the gentleman from Oregon [Mr. DEFAZIO], the gentlewoman from Missouri [Ms. DANNER], the gentleman from Pennsylvania [Mr. KLINK], the gentleman from Ohio [Mr. TRAFICANT], the gentleman from California [Mr. ROHRABACHER], the gentleman from Illinois [Mr. EVANS], the gentleman from Indiana [Mr. VISCLOSKY], the gentlewoman from New York [Mrs. MALONEY], the gentleman from Illinois [Mr. LIPINSKI], and the gentleman from Washington [Mr. METCALF]. Included in those Members are some who consider themselves pretty conservative and some who consider themselves pretty progressive. But I think the bottom line for all of us and for the American people is that at a time when this country has a $200 billion deficit, at a time in which Members of this Congress are talking about cuts in Medicare, Medicaid, veterans' programs, nutrition programs for hungry children, that before $20 billion-plus of taxpayers' money is put at risk, that issue must be discussed and must be debated and must be voted upon on the floor of the House, or else we as Members of Congress are not doing our job.

I thank the gentleman for inviting me. I have to run, but I thank him.

Mr. TAYLOR of Mississippi. Mr. Speaker, I want to thank the gentleman for being here today, and I want to again remind everyone that this was never brought before Congress. The reason it was not brought before Congress is because both sides, the Democrats and the Republicans, knew that had it been brought before Congress, Congress would have voted it down, and that is the greatest outrage of all, that the will of the majority as expressed through their elected representatives was never heard. The gentleman from Vermont [Mr. SANDERS] is trying to correct that. It is a shame that a little-known provision of a law had to be used to thwart the will of the majority.

But I really do want to thank the gentleman for trying to correct that.

Mr. SANDERS. If the gentleman will yield, and not only are a majority of Republicans against this bailout and a majority of Democrats, polls indicate that the vast majority of the American people are in opposition, and as the gentlewoman form Ohio [Ms. KAPTUR] has pointed out on many occasions, a majority of the people in Mexico are in opposition to this bailout.

So who is for it? I think we know who is for it, and that is the people who have the money, and that is the people who have the power in this country, our friends in the large commercial banks and in the investment houses on Wall Street. But we all and many of our colleagues are going to demand that this issue be debated and voted upon here on the floor of the House. We do not intend to abdicate our responsibility.

Again I thank the gentleman for yielding.

Ms. KAPTUR. If the gentleman will yield, I just wanted to say it is rather interesting when you look at who will get the $20 billion as it is drawn down from the Treasury, it will not be the people in the United States who have lost their jobs to Mexico. We have had over 18,000 Americans since January 1, 1994, lose their jobs to Mexico already because the wages down there are so cheap. Our plants, several thousand of them, have been relocating down there over the years, and after NAFTA that exodus accelerated. So our people will not be getting the money. In fact the money is being taken from our taxpayers to bail out the big financial institutions.

□ 1650

We know the money will not go to feed the people of Mexico. The people of Mexico understand that their government will not help them, because it is in fact a one-party government and an authoritarian state that has been in power since before my grandmother was born. So they know that they will not get assistance from there. So it is interesting to think about who the money is really going to and at the same time as those dollars flow between the central bank of Mexico and its public treasury and Wall Street here in the United States and the central bank of Germany and Japan, when you think about that movement of money, and then you think about the fact that some of those very same institutions, especially the private creditors, have said very quietly to our government it is all right, let Mexico clean up its problems in Chiapas, clean up its problems in Tabasco state, in other words, kill the people of Mexico who are fighting because they basically do not have enough money to survive for life, enough to eat.

I remember one woman said to me when I visited down there, "Well, Ms. KAPTUR, you do not understand. We work for hunger wages." I said, "I beg your pardon? I never heard that term." She said, "People get about 80 percent of the calories that it takes to keep a person's weight in balance," so in the part of the countryside that we were in, the people were very thin, and they were very hungry, and it was very hard to even get tortillas. The children were eating tortillas. They did not have fresh water. It is hard for Americans to imagine if they have not visited the inland area how people are actually living in that nation of nearly 100 million people, yet the dollars will not go to help those people. In fact, the people that are suffering most, the ones who are crying out for their own government, for their own government to help them, are being felled by the federal police.

And so we ask ourselves, what are we doing as a country; what are the major institutions of this country doing, political and economic? Are we standing up for the best ideals that are in the Constitution?

I think not.

And so it is my pleasure to join with the gentleman from Mississippi [Mr. TAYLOR] this evening and to be a voice for people on both sides of the border who feel that this money is being incorrectly used to support a government that does not represent the majority of people in that nation.

Mr. TAYLOR of Mississippi. I say to the gentlewoman from Ohio [Ms. KAPTUR], it has really become apparent to me in phone calls I have had, letters, faxes from around the country that the American people feel powerless against Wall Street. They feel powerless against the people who benefited from this.

You pointed out very well that is not the Mexican people. It is Wall Street. It is the people who reaped tremendous profits down there last year, because they took risky investments. When those risky investments went sour, then they called upon the taxpayers to bail them out, and that is wrong, that is not free enterprise.

Ms. KAPTUR. USA Today last week had a big page in the business section that showed all the different funds, the stock and bond funds, the mutual funds in the United States and what their earnings had been since 1991, and the emerging market fund under which this would fall, investments in Mexico had yielded a 66-percent return over the last 4 years.

So the companies that we are talking about are not poor little lambs. These

institutions have made incredible profits, and as they made those profits, why should they not eat their losses? And for the big banks, this has been a great time to be in banking in America. They put a fee on everything, right, if we go down here to the little checking machine and I try to get some money from my bank in Ohio, they charge $2.50 or $3.50 for the transfer. You pay for your checks. You pay for everything. You practically pay to go into the bank. They are making lots of money off of customers.

So this is true. Banking has been very profitable over the last 5 years. Why should they not eat their losses? Why have they come to the taxpayers?

Mr. TAYLOR of Mississippi. Reclaiming my time, I want to thank the gentlewoman for her help.

I would like to encourage those who are listening to get in touch with their elected Representatives. I think a few questions are fair to ask: Who agreed to the bailout? What were the names of the congressional leaders who met with the President and agreed to the bailout? When did they know? Who did they tell prior to the bailout so that people could call and buy millions of pesos and get a 20-percent return on their investment with your money that they get the profits? And above all, what can we do as a Nation to keep this from happening again?

And I hope that the American people will not let this slide. There are still $15 billion in that account that could be spent, and we have already seen the President use it once. It should not be used again.

But until we can pass legislation which is going to take awhile and will only take place if the people of America demand it, then they have to be held accountable by the voice of the American people.

I again want to thank the approximately 80 House employees that we have kept late. It is almost 5 o'clock, Friday afternoon. I would like to let them go home. I thank the gentlewoman from Ohio [Ms. KAPTUR] very much.

Ms. KAPTUR. Mr. Speaker, I thank the gentleman from Mississippi [Mr. TAYLOR] for this special order.

RULES OF PROCEDURE FOR THE COMMITTEE ON SMALL BUSINESS FOR THE 104TH CONGRESS

(Mrs. MEYERS of Kansas asked and was given permission to extend her remarks at this point in the RECORD and to include extraneous matter.)

Mrs. MEYERS of Kansas. Mr. Speaker, pursuant to rule XI, clause 2(a) of the House rules, I am submitting a copy of the rules of the Committee on Small Business to be printed in the RECORD.

RULES AND PROCEDURES OF THE COMMITTEE ON SMALL BUSINESS, U.S. HOUSE OF REPRESENTATIVES, 104TH CONGRESS

1. GENERAL PROVISIONS

The Rules of the House of Representatives, and in particular the committee rules enumerated in Rule XI, are the rules of the Committee on Small Business to the extent applicable and by this reference are incorporated. Each subcommittee of the Committee on Small Business (hereinafter referred to as the "Committee") is a part of the Committee and is subject to the authority and direction of the Committee, and to its rules to the extent applicable.

2. REFERRAL OF BILLS BY CHAIR

Unless retained for consideration by the full Committee, all legislation and other matters referred to the Committee shall be referred by the Chair to the subcommittee of appropriate jurisdiction within two weeks. Where the subject matter of the referral involves the jurisdiction of more than one subcommittee or does not fall within any previously assigned jurisdictions, the Chair shall refer the matter as she may deem advisable. Bills, resolutions and other matters referred to subcommittees may be reassigned by the Chair when, in her judgment, the subcommittee is not able to complete its work or cannot reach agreement thereon.

3. DATE OF MEETING

The regular meeting date of the Committee shall be the second Wednesday of every month when the House is in session. Additional meetings may be called by the Chair as she may deem necessary or at the request of a majority of the members of the Committee in accordance with clause 2(c) of Rule XI of the House.

At least three days' notice of such additional meeting shall be given unless the Chair determines that there is good cause to call the meeting on less notice.

The determination of the business to be considered at each meeting shall be made by the Chair subject to clause 2(c) of Rule XI of the House.

A regularly scheduled meeting need not be held if there is no business to be considered or, upon at least three days' notice, it may be set for a different date.

4. ANNOUNCEMENT OF HEARINGS

Unless the Chair, or the Committee by majority vote, determines that there is good cause to begin a hearing at an earlier date, public announcement shall be made of the date, place and subject matter of any hearing to be conducted by the Committee at least one week before the commencement of that hearing.

5. MEETINGS AND HEARINGS OPEN TO THE PUBLIC

(A) Meetings.—Each meeting for the transaction of business, including the markup of legislation, of the Committee or its subcommittees, shall be open to the public, including to radio, television and still photography coverage, except as provided by clause 3(f)(2) of Rule XI of the House, except when the Committee or subcommittee, in open session and with a majority present, determines by rollcall vote that all or part of the remainder of the meeting on that day shall be closed to the public because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would tend to defame, degrade or incriminate any person or otherwise would violate any law or rule of the House: *Provided, however*, That no person other than members of the Committee, and such congressional staff and such executive branch representatives as they may authorize, shall be present in any business or markup session which has been closed to the public.

(B) Hearings.—Each hearing conducted by the Committee or its subcommittees shall be open to the public, including to radio, television and still photography coverage, except when the Committee or subcommittee, in open session and with a majority present, determines by rollcall vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence or other matters to be considered would endanger the national security or would violate any law or rule of the House: *Provided, however*, That the Committee or subcommittee may by the same procedure vote to close one subsequent day of hearings. Notwithstanding the requirements of the preceding sentence, a majority of those present, there being in attendance the requisite number required under the rules of the Committee to be present for the purpose of taking testimony, (i) may vote to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger the national security or violate clause 2(k)(5) of Rule XI of the House; or (ii) may vote to close the hearing, as provided in clause 2(k)(5) of Rule XI of the House.

No member of the House may be excluded from nonparticipatory attendance at any hearing of the Committee or any subcommittee, unless the House of Representatives shall by majority vote authorize the Committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearing to members by the same procedures designated for closing hearings to the public.

6. WITNESSES

(A) Statement of witnesses.—Each witness shall file with the Committee, forty-eight hours in advance of his or her appearance, fifty copies of his or her proposed testimony and shall limit the oral presentation at such appearance to a brief summary of his or her views.

(B) Interrogation of witnesses.—The right to interrogate witnesses before the Committee or any of its subcommittee shall alternate between the majority members and the minority members. In recognizing members to question witnesses, the Chair may take into consideration the ratio of majority and minority members present. Each member shall be limited to five minutes in the interrogation of witnesses until such time as each member of the Committee who so desires has had an opportunity to question each witness.

7. SUBPOENAS

A subpoena may be authorized and issued by the Chair of the Committee in the conduct of any investigation or series of investigations or activities to require the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers and documents as she deems necessary. The ranking minority member shall be promptly notified of the issuance of such a subpoena.

Such a subpoena may be authorized and issued by the chair of a subcommittee with the approval of a majority of the members of the subcommittee and the approval of the Chair of the Committee.

8. QUORUM

No measure of recommendation shall be reported unless a majority of the Committee

was actually present. For purposes of taking testimony or receiving evidence, two members shall constitute a quorum. For all other purposes, one-third of the members shall constitute a quorum.

9. AMENDMENTS DURING MARKUP

Any amendment offered by any pending legislation before the Committee must be made available in written form when requested by any member of the Committee. If such amendment is not available in written form when requested, the Chair shall allow an appropriate period for the provision thereof.

10. PROXIES

No vote by any member of the Committee or any of its subcommittees with respect to any measure or matter may be cast by proxy.

11. NUMBER AND JURISDICTION OF SUBCOMMITTEES

There will be four subcommittees as follows:

Government Programs (seven Republicans and five Democrats).

Procurement, Exports and Business Opportunities (eight Republicans and six Democrats).

Regulation and Paperwork (eight Republicans and six Democrats).

Taxation and Finance (eight Republicans and six Democrats).

During the 104th Congress, the Chair and ranking minority member shall be ex officio members of all subcommittees, without vote, and the full Committee shall conduct oversight of all areas of the Committee's jurisdiction.

In addition to conducting oversight in the area of their respective jurisdiction, each subcommittee shall have the following jurisdiction:

Government programs

Small Business Act, Small Business Investment Act, and related legislation.

Federal government programs that are designed to assist business generally.

Small Business Innovation and Research Program.

Opportunities for minority and women-owned businesses.

Procurement, exports and business opportunities

Participation of small business in Federal procurement.

Export opportunities.

General promotion of business opportunities.

General economic problems.

Regulation and paperwork

Responsibility for, and investigative authority over, the regulatory and paperwork policies of all Federal departments and agencies.

Regulatory Flexibility Act.

Paperwork Reduction Act.

Competition policy generally.

Taxation and finance

Tax policy and its impact on small business.

Access to capital.

Finance issues generally.

12. COMMITTEE STAFF

(A) Majority staff.—The employees of the Committee, except those assigned to the minority as provided below, shall be appointed and assigned, and may be removed, by the Chair. Their remuneration shall be fixed by the Chair, and they shall be under the general supervision and direction of the Chair.

(B) Minority staff.—The employees of the Committee assigned to the minority shall be appointed and assigned, and their remuneration determined, as the ranking minority member of the Committee shall determine.

(C) Subcommittee staff.—The Chair and ranking minority member of the full Committee shall endeavor to ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the Rules of the Committee.

13. POWERS AND DUTIES OF SUBCOMMITTEES

Each subcommittee is authorized to meet, hold hearings, receive evidence, and report to the full Committee on all matters referred to it. Subcommittee chairs shall set meeting and hearing dates after consultation with the Chair of the full Committee. Meetings and hearings of subcommittees shall not be scheduled to occur simultaneously with meetings of the full Committee.

14. SUBCOMMITTEE REPORTS

(A) Investigative hearings.—The report of any subcommittee on a matter which was the topic of a study or investigation shall include a statement concerning the subject of the study or investigation, the findings and conclusions, and recommendations for corrective action, if any, together with such other material as the subcommittee deems appropriate.

Such proposed report shall first be approved by a majority of the subcommittee members. After such approval has been secured, the proposed report shall be sent to each member of the full Committee for his or her supplemental, minority or additional views.

Any such views shall be in writing and signed by the member and filed with the clerk of the full Committee within five calendar days (excluding Saturdays, Sundays and legal holidays) from the date of the transmittal of the proposed report to the members. Transmittal of the proposed report to members shall be by hand delivery to the members' offices.

After the expiration of such five calendar days, the report may be filed as a House report.

(B) End of Congress.—Each subcommittee shall submit to the full Committee, not later than November 15th of each even-numbered year, a report on the activities of the subcommittee during the Congress.

15. RECORDS

The Committee shall keep a complete record of all actions which shall include a record of the votes on any question on which a rollcall vote is demanded. The result of each subcommittee rollcall vote, together with a description of the matter voted upon, shall promptly be made available to the full Committee. A record of such votes shall be made available for inspection by the public at reasonable times in the offices of the Committee.

The Committee shall keep a complete record of all Committee and subcommittee activity which, in the case of any meeting or hearing transcript, shall include a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved.

The records of the Committee at the National Archives and Records Administration shall be made available in accordance with Rule XXXVI of the Rules of the House. The Chair of the full Committee shall notify the ranking minority member of the full Committee of any decision, pursuant to clause 3(b)(3) or clause 4(b) of Rule XXXVI of the House, to withhold a record otherwise available, and the matter shall be presented to the Committee for a determination on the written request of any member of the Committee.

16. ACCESS TO CLASSIFIED OR SENSITIVE INFORMATION

Access to classified or sensitive information supplied to the Committee and attendance at closed sessions of the Committee or its subcommittees shall be limited to members and necessary Committee staff and stenographic reporters who have appropriate security clearance when the Chair determines that such access or attendance is essential to the functioning of the Committee.

The procedure to be followed in granting access to those hearings, records, data, charts, and files of the Committee which involve classified information or information deemed to be sensitive shall be as follows:

(A) Only Members of the House of Representatives and specifically designated Committee staff of the Committee on Small Business may have access to such information.

(B) Members who desire to read materials that are in the possession of the Committee should notify the clerk of the Committee or the subcommittee possession the materials.

(C) The clerk will maintain an accurate access log which identifies the circumstances surrounding access to the information, without revealing the material examined.

(D) If the material desired to be reviewed is material which the Committee or subcommittee deems to be sensitive enough to require special handling, before receiving access to such information, individuals will be required to sign an access information sheet acknowledging such access and that the individual has read and understands the procedures under which access is being granted.

(E) Material provided for review under this rule shall not be removed from a specified room within the Committee offices.

(F) Individuals reviewing materials under this rule shall make certain that the materials are returned to the proper custodian.

(G) No reproductions or recordings may be made of any portion of such material.

(H) The contents of such information shall not be divulged to any person in any way, form, shape or manner, and shall not be discussed with any person who has not received the information in an authorized manner.

(I) When not being examined in the manner described herein, such information will be kept in secure safes or locked file cabinets in the Committee offices.

(J) These procedures only address access to information the Committee or a subcommittee deems to be sensitive enough to require special treatment.

(K) If a Member of the House of Representatives believes that certain sensitive information should not be restricted as to dissemination or use, the Member may petition the Committee or subcommittee to so rule. With respect to information and materials provided to the Committee by the executive branch, the classification of information and materials as determined by the executive branch shall prevail unless affirmatively changed by the Committee or the subcommittee involved, after consultation with the appropriate executive agencies.

(L) Other materials in the possession of the Committee are to be handled in accordance with the normal practices and traditions of the Committee.

17. OTHER PROCEDURES

The Chair of the full Committee may establish such other procedures and take such

actions as may be necessary to carry out the foregoing rules or to facilitate the effective operation of the Committee.

The Committee may not be committed to any expense whatever without the prior approval of the Chair of the full Committee.

18. AMENDMENTS TO COMMITTEE RULES

The Rules of the Committee may be modified, amended or repealed by a majority vote of the members, at a meeting specifically called for such purpose, but only if written notice of the proposed change has been provided to each such member at least forty-eight hours before the time of the meeting.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. MCNULTY (at the request of Mr. GEPHARDT), for today after 2 p.m., on account of personal business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. TUCKER) to revise and extend their remarks and include extraneous material:)

Mr. TUCKER, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. OWENS, for 5 minutes, today.

(The following Members (at the request of Mr. SMITH of Michigan) to revise and extend their remarks and include extraneous material:)

Mr. KIM, for 5 minutes, today.

Mr. SMITH of Michigan, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. TUCKER) and to include extraneous matter:)

Mr. UNDERWOOD.

Mr. DEUTSCH.

Mr. MCNULTY.

Mr. LUTHER.

Mr. JACOBS.

Mr. KENNEDY of Massachusetts.

Mr. MURTHA.

(The following Members (at the request of Mr. SMITH of Michigan) and to include extraneous matter:)

Mr. PACKARD.

Mr. CUNNINGHAM.

Mr. SMITH of New Jersey in two instances.

Mr. FIELD of Texas.

Mr. MCINTOSH.

Mr. QUINN.

(The following Members (at the request of Mr. TAYLOR of Mississippi) and to include extraneous matter:)

Mr. CLINGER.

Mr. DAVIS.

ADJOURNMENT

Mr. TAYLOR of Mississippi. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 56 minutes p.m.), under its previous order, the House adjourned until Monday, February 13, 1995, at 12:30 p.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

361. A letter from the Director, Congressional Budget Office, transmitting a report entitled "The Economic and Budget Outlook: Fiscal Years 1996-2000"; jointly, to the Committees on Appropriations and the Budget.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Ms. PRYCE: Committee on Rules. House Resolution 79. Resolution providing for the consideration of the bill (H.R. 728) to control crime by providing enforcement block grants (Rept. 104-27). Referred to the House Calendar.

Mr. YOUNG of Alaska: Committee on Resources. H.R. 256. A bill to withdraw and reserve certain public lands and minerals within the State of Colorado for military uses, and for other purposes (Rept. 104-28, Pt. 1). Ordered to be printed.

Mr. LIVINGSTON: Committee on Appropriations. H.R. 889. A bill making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes (Rept. 104-29). Referred to the Committee of the Whole House on the State of the Union.

Mr. LIVINGSTON: Committee on Appropriations. H.R. 845. A bill rescinding certain budget authority, and for other purposes (Rept. 104-30). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GONZALEZ (for himself, Mr. HINCHEY, Mr. MFUME, Mr. WYNN, Mr. TRAFICANT, Mr. FRANK of Massachusetts, and Mr. DEFAZIO):

H.R. 888. A bill to promote accountability and the public interest in the operation of the Federal Reserve System, and for other purposes; to the Committee on Banking and Financial Services.

By Mr. LIVINGSTON:

H.R. 889. A bill making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes; to the Committee on Appropriations.

By Mr. ANDREWS:

H.R. 890. A bill to provide for economic growth by reducing income taxes for most Americans, by encouraging the purchase of American-made products, and by extending transportation-related spending, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Transportation and Infrastructure, Banking and Financial Services, Government Reform and Oversight, and Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CONYERS (for himself and Mr. MINETA):

H.R. 891. A bill to acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to examine the institution of slavery, subsequent de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African-Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes; to the Committee on the Judiciary.

By Mr. DICKEY (for himself, Mr. SHAYS, Mr. INGLIS of South Carolina, and Mr. BONILLA):

H.R. 892. A bill to reauthorize the independent counsel statute, and for other purposes; to the Committee on the Judiciary.

By Mr. GILLMOR (for himself and Mr. BONIOR):

H.R. 893. A bill to require the Secretary of the Treasury to mint coins in commemoration of the sesquicentennial of the birth of Thomas Alva Edison, to redesign the half dollar circulating coin for 1997 to commemorate Thomas Edison, and for other purposes; to the Committee on Banking and Financial Services.

By Mr. MCNULTY:

H.R. 894. A bill to amend title 10, United States Code, to provide military reservists who are retained in active status after qualifying for reserve retired pay credit toward computation of retired pay for service performed after so qualifying; to the Committee on National Security.

By Mr. MCNULTY (for himself, Mr. UNDERWOOD, Mr. ACKERMAN, Mr. SERRANO, Mr. KING, Mr. PASTOR, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. PALLONE, Mr. BURTON of Indiana, Mrs. CHENOWETH, Mr. STEARNS, Mr. RANGEL, Mr. EVANS, Mrs. SEASTRAND, Mr. MONTGOMERY, Ms. RIVERS, and Mr. ROYCE):

H.R. 895. A bill to provide for retroactive award of the Navy Combat Action Ribbon based upon participation in ground or surface combat as a member of the Navy or Marine Corps during the period between July 4, 1943, and March 1, 1961; to the Committee on National Security.

By Mr. SCHUMER (for himself and Mr. DICKS):

H.R. 896. A bill to improve the ability of the United States to respond to the international terrorist threat; to the Committee on the Judiciary.

By Mr. TAUZIN (for himself, Mr. PARKER, Mr. HALL of Texas, Mr. PETERSON of Minnesota, Mr. BREWSTER, Mr. CONDIT, and Mr. LAUGHLIN):

H.R. 897. A bill to terminate the Office of the Surgeon General of the Public Health Service; to the Committee on Commerce.

By Mr. YOUNG of Alaska:

H.R. 898. A bill to prohibit high seas fishing vessels from engaging in harvesting operations on the high seas without specific authorization from the Secretary of Commerce,

and for other purposes; to the Committee on Resources.

By Mr. YOUNG of Alaska (for himself, Mr. BOEHNER, Mr. BARCIA, Mr. FLANAGAN, Mr. PALLONE, Mr. KLUG, Mr. HUTCHINSON, Mr. COSTELLO, Mr. NEY, Mr. BROWN of Ohio, Mr. STUMP, Mr. RAMSTAD, Mr. ROHRABACHER, Mr. WELLER, Mr. HAMILTON, Mr. LIGHTFOOT, Mr. GOSS, Mr. HASTERT, Mr. MANZULLO, Mr. HANCOCK, Mr. ROEMER, Ms. DUNN of Washington, Mr. BREWSTER, Mr. TAYLOR of North Carolina, Mr. CUNNINGHAM, Mr. POMEROY, Mr. LATOURETTE, Mr. ORTON, Mr. ANDREWS, Mr. SENSENBRENNER, Mr. SOUDER, Mr. BILBRAY, Mr. LONGLEY, Mr. CRANE, Mr. ROTH, Mr. PETERSON of Minnesota, Mrs. WALDHOLTZ, Mr. HASTINGS of Washington, Mr. TRAFICANT, Mr. THORNBERRY, Mr. WALSH, Mr. CLINGER, Mr. HOYER, Mr. WELDON of Pennsylvania, Mr. JACOBS, Mr. KENNEDY of Rhode Island, Mr. EHRLICH, Mr. LINDER, Mr. LUCAS, Mr. POSHARD, Mr. SHAYS, Ms. DANNER, Mr. BARR, Mr. NORWOOD, Mr. SCHAEFER, Mr. LAHOOD, Mr. MCKEON, Mr. FILNER, Mr. GUNDERSON, and Mr. REGULA):

H.R. 899. A bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets; to the Committee on Transportation and Infrastructure.

By Ms. KAPTUR (for herself, Mr. ABERCROMBIE, Mr. DEFAZIO, Mr. EVANS, Mr. HUNTER, Mr. KLINK, Mr. LIPINSKI, Mr. ROHRABACHER, Mr. SANDERS, Mr. TAYLOR of Mississippi, Mrs. THURMAN, Mr. VISCLOSKY, and Ms. DANNER):

H. Res. 80. Resolution requesting the President to submit information to the House of Representatives concerning actions taken through the exchange stabilization fund to strengthen the Mexican peso and stabilize the economy of Mexico; to the Committee on Banking and Financial Services.

By Mr. WALKER:

H. Res. 81. Resolution providing amounts for the expenses of the Committee on Science in the 104th Congress; to the Committee on House Oversight.

By Mr. YOUNG of Alaska:

H. Res. 82. Resolution providing amounts for the expenses of the Committee on Resources in the 104th Congress; to the Committee on House Oversight.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mrs. FOWLER:

H.R. 900. A bill to direct the Secretary of Transportation to issue certificates of documentation with appropriate endorsement for employment in coastwise trade for each of 2 vessels named *Gallant Lady*, subject to certain conditions, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. TOWNS:

H.R. 901. A bill to renew patent numbered 3,387,268, relating to a quotation monitoring unit, for a period of 10 years; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Mr. CAMP.

H.R. 26: Mr. LUTHER and Mr. GREENWOOD.

H.R. 29: Mrs. SCHROEDER.

H.R. 46: Mr. KLINK, Mr. FLANAGAN, Mr. BASS, Mr. DOYLE, Mr. ZELIFF, Mr. KING, Mr. GENE GREEN of Texas, Mr. SMITH of Texas, Mr. FIELDS of Texas, and Mr. SISISKY.

H.R. 52: Mr. CALVERT, Mr. KLINK, Mr. JOHNSON of South Dakota, and Ms. RIVERS.

H.R. 70: Mr. MANTON, Mr. HUNTER, Mr. COMBEST, Mr. THORNBERRY, and Mrs. LINCOLN.

H.R. 97: Mr. FOGLIETTA.

H.R. 104: Ms. RIVERS.

H.R. 122: Mr. TORKILDSEN and Mr. HALL of Texas.

H.R. 217: Mr. FILNER.

H.R. 219: Mr. FILNER.

H.R. 246: Mr. BONO and Mr. PAXON.

H.R. 260: Mr. ROYCE.

H.R. 305: Mr. CASTLE and Mr. BEREUTER.

H.R. 311: Mr. LEVIN.

H.R. 325: Mr. FIELDS of Texas and Mr. TAUZIN.

H.R. 326: Mr. FIELDS of Texas.

H.R. 328: Mr. FIELDS of Texas.

H.R. 354: Mr. LIVINGSTON and Mr. KIM.

H.R. 370: Mr. OXLEY, Mrs. WALDHOLTZ, Mr. RIGGS, Mr. QUILLEN, Mr. HASTINGS of Washington, Mr. THORNBERRY, Mrs. ROUKEMA, Mr. BARR, Mr. WHITFIELD, Mr. FRELINGHUYSEN, and Mr. WELDON of Pennsylvania.

H.R. 377: Mr. TOWNS.

H.R. 398: Mr. CONYERS, Mr. FRAZER, Mr. HILLIARD, and Mr. BARRETT of Wisconsin.

H.R. 483: Mr. GUNDERSON, Mr. DREIER, Mr. ROTH, Mr. BURR, Mr. MCCRERY, Mr. EDWARDS, Mr. CALVERT, Mr. MCKEON, Mr. VENTO, Mr. BEVILL, Mr. DELAY, Mr. TRAFICANT, Mr. HASTINGS of Florida, Mr. BAESLER, Mr. JACOBS, Mr. FOGLIETTA, Mr. ENGEL, Mr. CANADY, Mr. FROST, and Mr. SKELTON.

H.R. 499: Mr. DELLUMS, Mr. WILLIAMS, Mr. STARK, and Mrs. CHENOWETH.

H.R. 514: Mr. PAXON.

H.R. 553: Mr. DEUTSCH and Mr. OWENS.

H.R. 560: Ms. HARMAN, Mr. PETE GEREN of Texas, Mr. FIELDS of Texas, Mr. CUNNINGHAM, Mr. SAXTON, Mr. WILSON, Mr. SOLOMON, Mr. LIVINGSTON, Mr. GORDON, Mr. MCKEON, Mr. SHAYS, Mr. GUTKNECHT, Mr. CALVERT, and Mrs. MEYERS OF KANSAS.

H.R. 593: Mr. FIELDS of Texas.

H.R. 612: Ms. KAPTUR.

H.R. 678: Mr. SMITH of Michigan.

H.R. 682: Mr. RICHARDSON.

H.R. 692: Mr. FALEOMAVAEGA and Mr. BISHOP.

H.R. 697: Mrs. VUCANOVICH, Mr. ORTON, and Mr. FIELDS of Texas.

H.R. 698: Mr. WISE, Mr. STUMP, and Mr. BRYANT of Tennessee.

H.R. 704: Ms. MOLINARI, Ms. RIVERS, Mr. SHAYS, Mr. MARKEY, Mr. UPTON, Mrs. SEASTRAND, Mr. CALVERT, and Mr. BOEHLERT.

H.R. 705: Mr. STUMP and Mr. SHAYS.

H.R. 708: Mrs. SEASTRAND, Mr. SENSENBRENNER, Ms. PRYCE, Mr. LIVINGSTON, Ms. LOFGREN, and Mr. FIELDS of Texas.

H.R. 726: Mr. ACKERMAN, Mr. CANADY, Mr. DEUTSCH, Mr. DOOLITTLE, Mr. DORNAN, Mr. GEJDENSON, Mrs. MALONEY, Mr. PARKER, Mr. SMITH of Texas, Mr. TORRES, and Mr. TOWNS.

H.R. 733: Ms. PRYCE, Mr. BEREUTER, and Mr. EHLERS.

H.R. 734: Mr. EHLERS.

H.R. 743: Mr. MCKEON, Mr. WELDON of Florida, Mr. FUNDERBURK, Mrs. MEYERS of Kansas, Mr. SAM JOHNSON, Mr. BATEMAN, Mr. UPTON, and Mr. KNOLLENBERG.

H.R. 768: Mr. MARTINEZ.

H.R. 783: Mr. PASTOR, Mr. CLYBURN, Mr. SMITH of Michigan, and Mr. COLLINS of Georgia.

H.R. 789: Mr. KNOLLENBERG.

H.R. 791: Mr. FOLEY, Mr. SENSENBRENNER, Mr. WALSH, Mr. COX, Mr. CHABOT, Mr. GRAHAM and Mrs. WALDHOLTZ.

H.R. 803: Mr. SENSENBRENNER, Mr. ENGLISH of Pennsylvania, Ms. ESHOO, Mr. GENE GREEN of Texas, Mr. FOX, Ms. PRYCE, and Mr. COX.

H.R. 804: Mr. RADANOVICH.

H.R. 851: Mr. HILLIARD, Mr. FROST and Mrs. MINK of Hawaii.

H.J. Res. 8: Mr. FIELDS of Texas.

H.J. Res. 64: Mr. STUMP, Mr. SHAYS, and Mr. BEREUTER.

H. Con. Res. 12: Mr. WALSH, Mr. THOMPSON, and Mr. SHAYS.

H. Con. Res. 22: Mr. TORRICELLI, Mr. ACKERMAN, Mrs. MALONEY, Mr. ABERCROMBIE, Mr. FRAZER, Mr. HILLIARD, Mr. BOUCHER, Mr. BUNN of Oregon, Ms. WOOLSEY, Mr. LIPINSKI, Mr. KLECZKA, Mr. MORAN, Mr. JOHNSTON of Florida, Mr. REED, Mr. SANDERS, Mr. FROST, Mr. SERRANO, Mr. KENNEDY of Massachusetts, Ms. ROYBAL-ALLARD, Mr. BEILENSON, Mr. MARTINEZ, Mrs. MEEK of Florida, Mr. FOGLIETTA, Mr. STUDDS, Mr. MANTON, and Mr. RAHALL.

H. Con. Res. 23: Mr. RICHARDSON, Mr. FOGLIETTA, Mr. MANTON, Mr. MASCARA, Mr. FROST, Mr. UNDERWOOD, Mr. TRAFICANT, Mr. BROWN of California, Mr. LEACH, Mr. GEJDENSON, Mr. HALL of Ohio, Mr. BAESLER, and Mr. KENNEDY of Rhode Island.

H. Res. 24: Mrs. MEYERS of Kansas, Mr. CALVERT, Mr. COX, Ms. DUNN of Washington, Mr. HOEKSTRA, Mr. KNOLLENBERG, and Ms. MOLINARI.

H. Res. 40: Mr. JOHNSON of South Dakota.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 7

OFFERED BY: MS. HARMAN

(Page and line references are to H.R. 872)

AMENDMENT NO. 1: Strike title III (page 13, line 1, through page 21, line 22).

H.R. 7

OFFERED BY: MR. MENENDEZ

(Page and line references are to H.R. 872)

AMENDMENT NO. 2: Strike title III (page 13, line 1, through page 21, line 22).

H.R. 728

OFFERED BY: MR. ACKERMAN

AMENDMENT NO. 4: Page 9, after line 17, add the following new paragraph (and designate the preceding sentence as paragraph (1)):

"(2) PREFERENCE FOR FORMER MEMBERS OF THE ARMED FORCES.—As a condition on the provision of funds under section 101, the Director shall require each unit of local government qualifying for such funds to give members of the Armed Forces who, on or after October 1, 1990, were or are selected for involuntary separation (as described in section 1141 of title 10, United States Code), approved for separation under section 1174a or 1175 of such title, or retired pursuant to the authority provided under section 4403 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102-484; 10 U.S.C. 1293 note), a suitable preferene in the employment of persons as additional law enforcement officers or support personnel using such funds. The nature and extent of such employment preference shall be jointly established by the Attorney General and the Secretary of Defense.

To the extent practicable, the Director shall endeavor to inform members who were separated between October 1, 1990, and the date of the enactment of this section of their eligibility for the employment preference.

H.R. 728

OFFERED BY: MS. FURSE

AMENDMENT NO. 5: Page 12, line 4, strike "and".

Page 12, line 7, strike "101(a)(2)." and insert "101(a)(2); and".

Page 12, after line 7, insert the following:

"(10) the unit of local government permits a health care provider who provides medical care in a health care facility immediately after a motor vehicle accident to a person in the accident to notify an officer investigating the accident who was present at the facility (or, if no such officer exists, the law enforcement agency that has jurisdiction over the accident site, if such site is known) that the person's blood alcohol level exceeds the maximum level permitted under State law for the operation of a motor vehicle where—

"(A) the health care facility is subject to regulation by the unit of local government;

"(B) the health care provider becomes aware of the person's blood alcohol level as a result of a blood test performed in the course or providing care to the person;

"(C) the health care provider has been informed by a provider of emergency services at the accident site that the person was the driver of the motor vehicle involved in the accident; and

"(D) the health care provider provides the notice as soon as is reasonably possible.

Page 13, after line 4, insert the following:

"(e) IMMUNITY FOR HEALTH CARE PROVIDERS MAKING CERTAIN REPORTS.—A health care provider who in good faith makes a report to a law enforcement officer or a law enforcement agency under the circumstances described in subsection (c)(10) shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed with respect to the making or the content of such report. Such a health care provider shall have the same immunity with respect to participating in any judicial proceeding resulting from such report.

H.R. 728

OFFERED BY: MR. HYDE

AMENDMENT NO. 6: On page 9, strike lines 3 through 8, and insert the following:

"(b) OVERSIGHT, ACCOUNTABILITY AND ADMINISTRATION.—Not more than 3 percent of the amount authorized to be appropriated under subsection (a) for each of the fiscal years 1996 through 2000 shall be available to the Attorney General for assuring compliance with the provisions of this title and for administrative costs to carry out the purposes of this title. The Attorney General shall establish and execute an oversight plan for monitoring the activities of grant recipients. Such sums are to remain available until expended."

H.R. 728

OFFERED BY: MR. KENNEDY OF MASSACHUSETTS

AMENDMENT NO. 7, Page 25, strike lines 11 through 13 and insert the following:

(j) COMMUNITY-BASED JUSTICE GRANTS FOR PROSECUTORS.—Section 31701 of the Violent Crime Control and Law Enforcement Act of 1994 is amended—

(1) by string "(a) IN GENERAL.—"; and

(2) by striking subsection (b).

H.R. 728

OFFERED BY: MR. MARTINI

AMENDMENT NO. 8: Page 10, after line 24, insert the following (and redesignate subsequent paragraphs accordingly);

"(4) the unit of local government—

"(A) will provide for each payment period non-Federal matching funds equal to not less than 10 percent of the amount paid to the unit under this title for the period;

"(B) will deposit the matching funds for a payment period in the trust fund established by the unit under paragraph (3) on the same day on which the unit deposits the amount paid under this title for the period; and

"(C) will spend the matching funds only for the purposes set forth in section 101(a)(2)

H.R. 728

OFFERED BY: MR. MCCOLLUM

AMENDMENT NO. 9: Page 8, after line 19, insert the following new subsection:

"(h) MATCHING FUNDS.—The Federal share of a grant received under this title may not exceed 90 percent of the costs of a program or proposal funded under this title.

H.R. 728

OFFERED BY: MR. MENENDEZ

AMENDMENT NO. 10: Page 8, after line 19, insert the following:

"(h) SET-ASIDE FOR COMMUNITY-ORIENTED POLICING.—A unit of local government that receives funds under this title for a payment period shall allocate not less than 50 percent of such funds for the purpose of hiring (or rehiring), training, and employing on a continuing basis law enforcement officers who engage in community-oriented policing by carrying out with members of the community cooperative efforts to address crime and disorder problems or otherwise to enhance public safety.

H.R. 728

OFFERED BY: MR. MENENDEZ

AMENDMENT NO. 11: Page 13, after line 4, insert the following:

"(e) MANTENANCE OF EFFORT REQUIREMENT.—A unit of local government qualifies for a payment under this title for a payment period only if the unit's expenditures on law enforcement services (as reported by the Bureau of the Census) for the fiscal year preceding the fiscal year in which the payment period occurs were not less than 90 percent of the unit's expenditures on such services for the second fiscal year preceding the fiscal year in which the payment period occurs.

H.R. 728

OFFERED BY: MRS. SCHROEDER

AMENDMENT NO. 12: Section 102. Authorization of Appropriations.

Add (c)

TECHNOLOGY ASSISTANCE

(1) The Attorney General shall reserve $25 million in FY 1996 and $40 million in FY 1997 authorized to be appropriated under subsection (a) for use by the National Institute of Justice to support local units in making fully informed decisions in identifying, selecting, modernizing and purchasing new technologies for use by law enforcement. This may include the development of less than lethal technologies; development of technologies to enhance officer safety; other research and development projects; the development of law enforcement technology standards; establishing test beds involving state or local law enforcement agencies; and development of a national communications infrastructure to disseminate information on law enforcement technologies to state and local law enforcement agencies.

The National Institute of Justice, Office of Science and Technology shall be responsible for providing grants for those projects supported by the Law Enforcement Technology Advisory Council of the National Institute of Justice and the Law Enforcement Advisory Boards of the Regional Law Enforcement Technology Centers of the National Law Enforcement Technology Center system.

H.R. 728

OFFERED BY: MRS. SCHROEDER

AMENDMENT NO. 13: Page 4, after line 5, insert the following:

"(D) Enhancing health care clinic security measures to protect against violence directed against the free exercise of constitutional rights, including—

"(i) overtime pay for law enforcement officers;

"(ii) security assessments by law enforcement officers;

"(iii) when recommended by law enforcement officials, purchases of materials to enhance the physical safety of clinics, including, bulletproof glass and security cameras.".

H.R. 728

OFFERED BY: MR. SCHUMER

AMENDMENT NO. 14: Page 2, beginning on line 21, strike "for reducing" and all that follows through page 4, line 5, and insert the following:

for—

"(A) programs, projects, and other activities to—

"(i) rehire law enforcement officers who have been laid off as a result of State and local budget reductions for deployment in community-oriented policing;

"(ii) hire and train new, additional career law enforcement officers for deployment in community-oriented policing across the Nation;

"(iii) procure equipment, technology, or support systems, or pay overtime, if the applicant for such a grant demonstrates to the satisfaction of the Attorney General that expenditures for such purposes would result in an increase in the number of officers deployed in community-oriented policing equal to or greater than the increase in the number of officers that would result from a grant for a like amount for the purposes specified in clause (i) or (ii);

"(iv) hire former members of the Armed Forces to serve as career law enforcement officers for deployment in community-oriented policing, particularly in communities that are adversely affected by a recent military base closing.

"(v) increase the number of law enforcement officers involved in activities that are focused on interaction with members of the community on proactive crime control and prevention by redeploying officers to such activities;

"(vi) develop new technologies to assist State and local law enforcement agencies in reorienting the emphasis of their activities from reacting to crime to preventing crime; and

"(B) the establishment of crime prevention programs that involve the substantial participation of community-based groups, schools, and local educational agencies, relieve conditions that encourage crime, and provide meaningful and lasting alternatives to involvement of youth in crime, including—

"(i) supervised academic, sports, or extracurricular school, after school, summer and vacation period programs that provide children alternatives to involvement in gangs, drugs, and violent crime;

"(ii) programs for the prevention and treatment of substance abuse, especially among children and youth;

"(iii) programs that provide increased security in and around schools, parks, and other recreational areas that are the site of programs directed toward children and youth;

"(iv) programs to prevent and suppress violent youth gang activity and trafficking of firearms among youths;

"(v) neighborhood programs intended to discourage, disrupt, or interfere with crime, including neighborhood watch, community-based justice, and citizen patrol programs."

"(vi) establishing or supporting drug courts."

Page 6, after line 2, insert: "(c) 'Former member of the Armed Forces' means a member of the Armed Forces of the United States who is involuntarily separated from the Armed Forces within the meaning of section 1141 of title 10, United States Code.

Page 8, strike line 21 and all that follows through page 9, line 2 and insert the following:

"(a) AUTHORIZATION OF APPROPRIATIONS.—

"(1) LAW ENFORCEMENT PROGRAMS.—There are authorized to be appropriated to carry out subparagraph (A) of section 101(a)(2)—

"(A) $1,500,000,000 for fiscal year 1996;

"(B) $1,500,000,000 for fiscal year 1997;

"(C) $1,500,000,000 for fiscal year 1998;

"(D) $1,500,000,000 for fiscal year 1999; and

"(E) $1,500,000,000 for fiscal year 2000.

"(2) PREVENTION PROGRAMS.—There are authorized to be appropriated to carry out subparagraphs (B) and (C) of section 101(a)(2)—

"(A) $1,000,000,000 for fiscal year 1996;

"(B) $1,000,000,000 for fiscal year 1997;

"(C) $1,000,000,000 for fiscal year 1998;

"(D) $1,000,000,000 for fiscal year 1999; and

"(E) $1,000,000,000 for fiscal year 2000.

H.R. 728

OFFERED BY: MR. SCHUMER

AMENDMENT NO. 15: Page 2, beginning on line 21, strike "for reducing" and all that follows through page 3, line 7, and insert the following:

for—

"(A) programs, projects, and other activities to—

"(i) rehire law enforcement officers who have been laid off as a result of State and local budget reductions for deployment in community-oriented policing;

"(ii) hire and train new, additional career law enforcement officers for deployment in community-oriented policing across the Nation;

"(iii) procure equipment, technology, or support systems, or pay overtime, if the applicant for such a grant demonstrates to the satisfaction of the Attorney General that expenditures for such purposes would result in an increase in the number of officers deployed in community-oriented policing equal to or greater than the increase in the number of officers that would result from a grant for a like amount for the purposes specified in clause (i) or (ii);

"(iv) hire former members of the Armed Forces to serve as career law enforcement officers for deployment in community-oriented policing, particularly in communities that are adversely affected by a recent military base closing.

"(v) increase the number of law enforcement officers involved in activities that are focused on interaction with members of the community on proactive crime control and prevention by redeploying officers to such activities;

"(vi) develop new technologies to assist State and local law enforcement agencies in reorienting the emphasis of their activities from reacting to crime to preventing crime; and

Page 6, after line 2, insert the following:

"(c) 'Former member of the Armed Forces' means a member of the Armed Forces of the United States who is involuntarily separated from the Armed Forces within the meaning of section 1141 of title 10, United States Code.

Page 8, strike line 21 and all that follows through page 9, line 2 and insert the following:

"(a) AUTHORIZATION OF APPROPRIATIONS.—

"(1) LAW ENFORCEMENT PROGRAMS.—There are authorized to be appropriated to carry out subparagraph (A) of section 101(a)(2)—

"(A) $1,500,000,000 for fiscal year 1996;

"(B) $1,500,000,000 for fiscal year 1997;

"(C) $1,500,000,000 for fiscal year 1998;

"(D) $1,500,000,000 for fiscal year 1999; and

"(E) $1,500,000,000 for fiscal year 2000.

"(2) PREVENTION PROGRAMS.—There are authorized to be appropriated to carry out subparagraphs (B) and (C) of section 101(a)(2)—

"(A) $500,000,000 for fiscal year 1996;

"(B) $500,000,000 for fiscal year 1997;

"(C) $500,000,000 for fiscal year 1998;

"(D) $500,000,000 for fiscal year 1999; and

"(E) $500,000,000 for fiscal year 2000.

H.R. 728

OFFERED BY: MR. STUPAK

AMENDMENT NO. 16: Page 9, after line 2, insert the following (and redesignate any subsequent subsections accordingly):

"(b) RESERVATION FOR BYRNE PROGRAMS.—The Attorney General shall reserve $450,000,000 of the amounts authorized under this section in each fiscal year to carry out the programs under part E of title I of the Omnibus Crime Control and Safe Streets Act of 1965.

H.R. 728

OFFERED BY: MR. STUPAK

AMENDMENT NO. 17: Page 16, after line 15, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

"(6) MINIMUM ALLOCATION TO RURAL AREAS.—

"(A) IN GENERAL.—If, but for this paragraph, the rural set-aside requirement of this paragraph would not be met by any State—

"(i) rural areas in such State shall receive an additional allocation of the reserved amount for such State in an amount necessary to satisfy such requirement, and

"(ii) the allocation of all other areas in such State shall be reduced to the extent necessary to accommodate the allocation under clause (i).

"(B) RURAL SET-ASIDE REQUIREMENT.—The rural set-aside requirement of this paragraph is met by a State if 30 percent of the amount reserved to such State under subsection (a) is allocated to rural areas.

"(C) INCREASES AND DECREASES IN ALLOCATIONS DONE ON PROPORTIONAL BASIS.—Any increase or decrease required by subparagraph (A) shall be allocated among the areas to which the increase or decrease applies in the same proportions as the reserved amount would have been allocated but for this paragraph.

"(D) RURAL AREAS.—For purposes of this paragraph, the term 'rural area' means any local governmental unit having a population of less than 50,000.

H.R. 728

OFFERED BY: Mr. WATT of North Carolina

AMENDMENT NO. 18: Page 4, after line 5, insert the following:

"(D) Establishing the programs described in the following subtitles of title III of the Violent Crime Control and Law Enforcement Act of 1994 (as such title and the amendments made by such title were in effect on the day preceding the date of the enactment of this Act):

"(i) Ounce of Prevention Council under subtitle A.

"(ii) Local Crime Prevention Block Grant Program under subtitle B.

"(iii) Model Intensive Grant Program under subtitle C.

"(iv) Family and Community Endeavor Schools Grant Program under subtitle D.

"(v) Assistance for Delinquent and At-Risk Youth under subtitle G.

"(vi) Police Retirement under subtitle H.

"(vii) Local Partnership Act under subtitle J which made amendments to chapter 67 of title 31, United States Code.

"(viii) National Community Economic Partnership under subtitle K.

"(ix) Urban Recreation and At-Risk Youth subtitle O which made amendments to the Urban Park and Recreation Recovery Act of 1978.

"(x) Community-Based Justice Grants under subtitle Q.

"(xi) Family Unity Demonstration Project under subtitle S.

"(xiii) Gang Resistance and Education Training under subtitle X.

"(xiii) Any other Crime Prevention Program proposed by a unit of local government and approved by the Director of the Bureau of Justice Assistance which contains a process for assessing such program's impact on the incidence of crime; provided that not more than 25% funds approved under this Bill shall be available for grant under this section.

Page 6, after line 24, insert the following (and redesignate any subsequent subsections accordingly):

"(c) SET-ASIDE FOR PREVENTION.—Of the amounts authorized to be appropriated under subsection (a), the Attorney General shall allocate $1,000,000,000 of such funds for each of fiscal years 1996 through 2000 to carry out the purposes of subparagraph (D) of section 101(a)(2). Any program funded under this Set Aside for Prevention shall contain a component which includes a process for assessing the impact of such program on the incidence of crime.

H.R. 728, AS REPORTED

OFFERED BY: MR. WISE

AMENDMENT NO. 19: At page 4, after line 19, insert:

(G) "Enhance programs under subpart 1 of part E of the Omnibus Crime Control and Safe Streets Act of 1968.

H.R. 728

OFFERED BY: MR. WISE

AMENDMENT NO. 20: At page 20, after line 16, after "purposes" insert the following:

"Or the designated state agency or its equivalent of state enforcement"

SENATE—*Friday, February 10, 1995*

(Legislative day of Monday, January 30, 1995)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, the Reverend Richard C. Halverson, Jr., of Arlington, VA.

PRAYER

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

Let us pray:

God of the Nations, Lord of History, Thy Word declares that, "Except the Lord build the house, they labour in vain that build it: except the Lord keep the city, the watchman waketh but in vain."—Psalms 127:1. Again, it is written, "* * * let every man take heed how he buildeth * * *."—1 Cor. 3:10b.

Though much of the burden for building our Nation rests upon the "council of elders"[1] within this Senate, we know that unless Thy decrees uphold us, the hours we spend in our best legislation are in vain.

In the words of President Lincoln, whose birth we soon celebrate: "Without the assistance of that Divine Being * * * I cannot succeed. With that assistance, I cannot fail. Trusting in Him, let us confidently hope that all will yet be well."[2]

Once again, in the urgency of this hour, we beseech Thee for divine assistance. We pray for a hedge of enlightened restraint around this "necessary fence"[3] of the Senate. For through this body, regulations must pass that will either strengthen or weaken our country.

As pressures mount for instant solutions to complex problems, grant those who hold this "senatorial trust"[4] the calm resolve to be not driven by public restlessness, nor drifting in stubborn idleness, but drawn by Thy vision of righteousness—which upholdeth the Nation.

And if the machinery of government seems to turn too slowly against the tide of national anxiety, may those who labor here take courage from the tortoise who, by perseverance, reached the ark, even in the face of an impending flood. In the name of Jesus Christ, we pray. Amen.

[1]The word "Senate" is derived from the Latin word, "senatus", "council of elders".

[2]These words were spoken by President-elect Lincoln as he left Springfield, Illinois, for Washington, D.C., in February, 1861 (McCollister, John. "So Help Me God", Landmark Books, p. 81 (1982)).

[3]James Madison referred to the Senate as a "necessary fence" of "enlightened citizens" whose responsibility it was to protect the rights and property of its citizens against "public impetuosity".

[4]Alexander Hamilton spoke of a "senatorial trust."

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. LOTT. Mr. President, this morning the time for the two leaders has been reserved and there will now be a period for the transaction of morning business until the hour of 10 a.m, with Senators permitted to speak for up to 5 minutes each, with the following Senators to speak for up to the designated times: Senator THURMOND, 15 minutes; Senator CAMPBELL, 10 minutes, and Senator ROBB 5 minutes.

At the hour of 10 a.m, the Senate will resume consideration of House Joint Resolution 1, the balanced budget constitutional amendment, with Senator PACKWOOD to be recognized for up to 60 minutes. At the hour of 11 o'clock, Senator DASCHLE will be recognized for up to 15 minutes, to be followed by Senator DOLE for up to 15 minutes. At the hour of 11:30, the Senate will vote on or in relation to a second-degree amendment to the motion to refer.

Therefore, Senators should be on notice that there will be a rollcall vote at 11:30 this morning.

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

The PRESIDING OFFICER (Mr. COVERDELL). 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.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from South Carolina [Mr. THURMOND] is recognized to speak for up to 15 minutes.

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

(The remarks of Mr. THURMOND pertaining to the introduction of S. 383 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. HATFIELD. Mr. President, today, it is my distinct honor to reflect on the accomplishments of Rabbi Joshua O. Haberman, who has been serving as our guest Chaplain for this week. Rabbi Haberman's credentials and accomplishments are numerous, but let me take a minute to highlight some of his achievements.

Rabbi Haberman is the founder and president of the Foundation for Jewish Studies which sponsors a large variety of Jewish Study programs for the Greater Washington community. He is rabbi emeritus of the Washington Hebrew Congregation, the largest and oldest congregation in the District of Columbia and a past-president of the Washington Board of Rabbis.

Rabbi Haberman is a graduate of the University of Cincinnati, he was ordained as rabbi at the Hebrew Union College—Jewish Institute of Religion in Cincinnati, OH, where he also earned the degree of doctor of Hebrew letters. Also of interest regarding his academic background is the fact that he is the last Austrian to be enrolled for rabbinic studies at the Jewish Theological Institute of Vienna and he later left the institute following the Nazi invasion in 1938 and continued his studies in the United States.

He is a member of the board of alumni overseers of the HUC–JIR and he has served on the executive board of the Central Conference of American Rabbis. In addition he was the cochairman of the North American board of the World Union for Progressive Judaism.

Rabbi Haberman's academic accomplishments include authoring a book titled, "The God I Believe In," which is conversations about Judaism with 14 prominent Jews in our society. He has also authored an academic work titled, "Philosopher of Revelation: The Life and Thought of S.L. Steinheim." In addition to being an author, Rabbi Haberman has served as an adjunct professor at many institutions including: Georgetown, Wesley Theological Seminary, American University, and Rutgers.

Rabbi Haberman was also instrumental in developing a very important religious dialog with the Roman Catholic diocese of Washington, DC, and evangelical Christian leaders as well. In addition to his ecumenical work, he initiated a Moslem-Jewish dialog with Imam Wallace D. Muhammad of the World Community of Islam in the West. The two above-mentioned accomplishments demonstrate Rabbi Haberman's dedication to working across religious and cultural barriers. They demonstrate the rabbi's willingness to leave his comfort zone and

build bridges with those of different religious and cultural affiliations.

It is evident by these accomplishments that he is a man who is truly driven by his religious convictions rather than ideological associations. He has demonstrated that his life is wholly affected by his religious commitments. It is an honor to share the floor with him.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COCHRAN. 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. COCHRAN. Mr. President, I understand the status of the situation on the floor is that we are in morning business; is that correct?

The PRESIDING OFFICER. The Senator is correct.

THE BUDGET AND THE CHALLENGE OF CONTROLLING DEFICITS

Mr. COCHRAN. Mr. President, to put this debate on the budget situation in context, I hope that we will keep in mind the difficulty that Congress has had over the years, and each administration in recent years, in trying to cope with this very, very difficult challenge of controlling deficits.

In 1960, for example, interest payments on our national debt amounted to 6 percent of the Federal budget. Today, that figure has grown to 16 percent. That is the percentage of the total expenditures that will be required to be appropriated and paid in interest on the current debt in the next fiscal year, according to the President's budget.

Last year, the Federal Government paid a total of $203 billion in interest on the existing debt. The budget just submitted by the President calls for spending $257 billion in the next fiscal year on interest on the accumulated debt.

By comparison, Senators might be interested to know that if these interest costs are as they are projected to be next year by the President's budget, we will spend just about as much on interest payments as we will on national defense.

The national defense dollars that are requested by the President to be appropriated for our Nation's security next year are at $262 billion in the President's budget; the interest payments, $257 billion, a $5 billion difference. In a $1.6 trillion budget, the percentage is about the same, 16 percent.

It seems to me that to believe we are going to be able to meet this challenge of controlling deficits more effectively without some requirement to do so or some new procedures in place such as this constitutional amendment to require a balanced budget is a triumph of hope over experience.

One item that I received in my mail this week from a constituent was very interesting from a historical perspective. Andy Halbrook is a resident of Greenville, MS. His father, David Halbrook, has been a member of our State legislature for a number of years and one of our important influences in State government. He sent me a Reader's Digest article of July 1979 which talked about the origin of the movement for State legislators to petition the Government for a constitutional convention to require a balanced budget.

I am going to read the first paragraph and put the rest of it in the RECORD with this letter for the information of Senators.

In Ollie Mohamed's Belzoni, Miss., department store—

Ollie Mohamed was a State Senator at the time—

a group was discussing Federal spending, inflation and Congress's perennial inability to balance the budget. State legislator David Halbrook spoke of his new grandchild: "That baby is going to have to pay for the things I'm enjoying. It ought to be the other way around. I ought to leave the world a little better for him."

This article goes on to talk about the conversation that then led to, well, what are we going to do about it? And one of them got the Constitution down and read here where it is provided the State legislatures can petition the Congress to convene a constitutional convention to amend the Constitution, and they decided that it ought to be done. And so David Halbrook led the effort in the Mississippi legislature to have that resolution passed. Then some other States got involved. The National Taxpayers Union got involved. And according to this article, over a period of years they almost reached the point where they were successful. They were four States short at the time this article was written in 1979.

Andrew—"Andy"—Halbrook, David's son, suggests that we ought to name this legislation the "David Halbrook Act," requiring the Congress to balance the budget as a matter of constitutional amendment. I think it is a good suggestion.

I ask unanimous consent that Andy Halbrook's letter be printed in the RECORD, along with the article from the Reader's Digest.

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

GREENVILLE, MS,
February 2, 1995.

Hon. THAD COCHRAN,
U.S. Senate,
Washington, DC.

Dear SENATOR COCHRAN: The balanced budget amendment is one of the most important pieces of legislation that will be considered in my lifetime and possibly in the lifetime of my children. It will have a much tougher row to hoe in the Senate than in the House. In light of this I would like to offer a suggestion that could perhaps significantly help to assure its passage.

In positioning for public approval, acceptance and support a product or a service or even a piece of legislation, perception is reality. Unless the populace can be overwhelmingly convinced to support something as broad-ranging as the balanced budget amendment it may be doomed to failure no matter how good its attributes. The way to get the popular support needed to be indomitably successful in this venture is to personalize it and to make everyone realize this is a grassroots idea from outside the beltway. In light of this please consider the following:

The balanced budget amendment was spawned in Belzoni, Mississippi by my father, Rep. David Halbrook and former Senator Ollie Mohamed. Please see the attached Reader's Digest article in testimony to this fact.

Due to his continuity of service in the Mississippi Legislature and active leadership roles in the American Legislative Exchange Council, the National Conference of State Legislators, the Southern Legislative Conference and other organizations, David Halbrook has been the torch-bearer for this idea since its inception.

Based on these facts I am asking that you consider naming the balanced budget amendment "The Halbrook Amendment". This will do many things to accelerate and maintain the momentum of this legislation.

David Halbrook is a life-long Democrat. Putting his name on this amendment could greatly enhance bipartisan support of this endeavor.

David Halbrook is a common man with uncommon talents and ideas, a business man, a farmer and a father concerned about his children's and grandchildren's future. The mainstream will immediately identify with him and his purpose for starting this process.

By putting a name and a face with something that can be as nebulous to the common man as a piece of federal legislation, such as was done with the Brady Bill, the public's perception of the process at hand can be immediately transformed into a tidal wave of support.

David Halbrook is a life-long Mississippian. Mississippi is in the midst of one of the most dynamic economic growth cycles in the nation. These factors could be coupled when titling this legislation the Halbrook Amendment to bring recognition to your leadership in bringing Mississippi to its current status as a good place to do business.

Finally, David Halbrook deserves this honor. He personally laid much of the groundwork for what is being debated today on Capitol Hill. I well remember his many trips to testify before one state legislative assembly after another in order to get them to put forth the call for a constitutional convention to take up this matter. As a seven term Democrat he is the senior member of the Mississippi House of Representatives. This adds credibility to his commonality. Most importantly, he is a loving and devoted father that has always tried to do the right thing by making this world a better place for his children along with everyone else.

In closing, I am requesting this not only because I have been taught to "honor thy father and thy mother", but I have also been taught to do the right thing. In my opinion, a balanced budget amendment is the right

thing to do, and by personalizing this piece of legislation, its chances of passage will be greatly enhanced. I appreciate your consideration of my request and ideas.

Sincerely,

ANDREW L. "ANDY" HALBROOK,
Concerned Constituent.

[From the Reader's Digest, July 1979]

A CONSTITUTIONAL AMENDMENT TO BALANCE THE BUDGET?

(By Eugene H. Methvin)

In OLLIE MOHAMED'S Belzoni, Miss., department store, a group was discussing federal spending, inflation and Congress's perennial inability to balance the budget. State legislator David Halbrook spoke of his new grandchild: "That baby is going to have to pay for the things I'm enjoying. It ought to be the other way around. I ought to leave the world a little better for him."

That gave Mohamed, a former legislator, an idea. He found a copy of the Constitution and began to read from Article V: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case shall be valid * * * when ratified by the Legislatures of three fourths of the several States. * * *"

That day in 1974, a national crusade was born to compel Congress by constitutional amendment to balance the federal budget. (An exception would occur in national emergencies, when both houses could agree by two-thirds vote to permit deficit spending.) A few months later, Representative Halbrook got the Mississippi state legislature to pass a resolution calling for a constitutional convention. Acting independently, lawmakers in Maryland, Delaware and North Dakota passed similar resolutions. The National Taxpayers Union, a feisty new citizens' lobby, took up the cause, and by April 1979 convention-call resolutions had been passed by 30 states. If four more act, Congress will be required to call a constitutional convention.

The pressure is growing. CBS and the New York Times interviewed voters last November and found that 82 percent of Democrats and 86 percent of Republicans favor a balanced-budget amendment. Five Presidential contenders (Republicans Reagan, Connally, Dole, Baker and Democrat Brown) have endorsed it. Observed Oregon senate president Jason Boe, "This thing is coming like a 100-car freight train at Congress, and they haven't done a thing about it."

The realization that the budget-balancers are only four states away from a constitutional convention has startled and disturbed many Washington politicians. Senate Budget Committee Chairman Edmund Muskie (D., Maine) growled that if state legislators continued their rebellion, Congress might balance the budget by cutting the $83 billion in grants and revenue sharing it gives states and localities. House Speaker Tip O'Neill's son Thomas, the Massachusetts lieutenant governor, took the lead in organizing an anti-amendment coalition of the special-interest groups that benefit most from deficit spending, including the AFL–CIO, the National Education Association and other public employee unions. President Carter assailed the proposition as "political gimmickry" and formed a White House task force to lobby state legislators.

Washington mobilization had effect. The Montana senate bowed to lobbying efforts and in March defeated an amendment resolution. And the Administration has promised an all-out fight in each of the 15 state legislatures that have yet to act.

Clearly, the battle lines are drawn between the Washington establishment and a disillusioned grassroots groundswell. Never before in the nation's history has so widespread a movement for constitutional change developed over such fundamental issues as the proper size of government and the way our elected representatives wield the powers to tax and spend. If the convention drive succeeds, says The Wall Street Journal the people would be saying that they have finally decided Congress can't be trusted with their money."

Few even on Capitol Hill dispute that there is genuine ground for wondering these days. Between 1946 and 1961, Congress managed seven deficits and seven surpluses, with an overall approximate balance—and low inflation. But in the 19 years since, Congress has balanced the budget only once, in 1919, and the net deficit over those years has been a aggering $377 billion. Washington has continued the deficits in boom times as well as bust. This year, President Carter offered a 1980 budget with a $29 billion deficit—plus $12 billion more in "off budget items—and called it "austere."

Two decades of Congressional and White House profligacy have helped produce severe inflation that threatens to halve the value of every dollar in five and a half years. Obvious victims include the poor and the elderly, but in the end, everybody suffers. The average family last year paid almost $800 interest on past government deficits, and inflation robbed another $800 from its purchasing power.

In 1976, running against the Washington establishment, candidate Jimmy Carter promised to balance the budget by 1979. Now that President Carter has proffered a $29 billion deficit, the public is turning to the constitutional amendment as a solution. The Associated Press found in a poll last February that "distrust of policitians is so deep that Americans do not believe their elected officials will act. Seventy percent said politicians will not work to wipe out the deficit."

Even without a constitutional convention, the budget-balancers may get what they want. State legislatures have used the convention call in the past to lever balky Congresses into proposing needed amendments. In fact, no amendment has ever come directly from the convention approach. State convention calls have helped prompt Congress to submit amendments to provide for direct election of Senators, repeal Prohibition, limit a President to two terms and provide for Presidential succession in case of disability.

In this session of Congress, 203 Representatives and 39 Senators support a wide variety of amendment proposals which they want Congress to submit directly to the states, circumventing a convention call. (Three-fourths of the state legislature, 38, are required to ratify an amendment.) One group would require a "super-majority" of either two-thirds or three-fourths of the members of Congress, in an emergency such as war or deep depression, to vote for a deficit budget. Otherwise, the legislators would have to match outlays with revenues. If revenues fell short, Congress would have to slash spending or impose a surtax. Knowing they would have to go on record in favor of higher taxes, the legislators would be certain to look harder at some of their spending ideas.

Another proposal has come from Senators Richard Stone (D., Fla.) and H. John Heinz (R., Pa.). Their amendment, drafted by a group including Novel Prize-winning economist Milton Friedman, would limit federal spending increases to the growth in the Gross National Product. If inflation is greater than three percent, the proposal would impose an even tighter limit on spending.

President Carter and Democratic leaders in Congress protest that any constitutional amendment would "tie the hands" of the nation in time of crisis, since a determined minority of either house could block needed appropriations. Proponents respond that a stubborn minority blocking obviously needed action would be swiftly punished at the polls. Congress could still act by majority vote in an emergency by levying taxes to finance needed spending; a minority could only block deficit spending.

Whatever the outcome of these proposed amendments, and the call for a constitutional convention, the balance-the-budget movement has triggered a mighty debate. Says the National Taxpayers Union's Jim Davidson: "As people see their real spending power decline, this issue will not fade away." Adds Sen. Gary Hart (D., Colo.), "It's a sorry state of affairs when the American people are demanding a constitutional convention because they don't trust us, and Congress is saying, 'No, you can't have one because we don't trust you.'"

This contentious scene would not faze the men who wrote the Constitution, for the debate has focused public attention once again on some eternal verities about public power, its exercise, abuse and safeguards. What healthier way for Americans to celebrate the approaching 200th birthday of their Constitution.

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

Mr. CRAIG. What is the order of business we are in at this time?

The PRESIDING OFFICER. Morning business.

MOVEMENT TO A CONSTITUTIONAL AMENDMENT TO BALANCE THE BUDGET

Mr. CRAIG. Mr. President, I appreciate what the Senator from Mississippi has just spoken of, the issue of the State legislator beginning the movement to petition Congress.

When I was a State senator in Idaho in the 1970's, I became involved in that very movement and actually brought a resolution before the State senate, and it passed the Idaho Legislature, to petition Congress for a balanced budget amendment because clearly at that time, at the State legislative level, as we were looking at what the Congress of the United States was doing and what the Federal Government was doing, we were growing increasingly fearful that debt would continue to mount and power of the Government at the central level in Washington would continue to grow, and it would, if you will, deny or weaken the ability of State legislatures and State governments to act responsibly.

When I then came to Congress in 1980 and started serving in 1981, that movement was well underway. And as the

Senator from Mississippi has just mentioned, we were at that time four States short of the necessary requirements under article V of the Constitution from petitioning and therefore forcing the Congress to bring forth a resolution convening a constitutional convention.

Citizens across the country, though, at that time grew increasingly fearful of a constitutional convention, as to whether you could limit it to a single issue like a balanced budget amendment, and that if you opened up a constitutional convention and Congress in essence handed the power to craft a constitutional amendment to an autonomous body, we might see other issues come forth that many of us would not like.

So that movement stalled out at about a remaining two States and it began to back off. Congresswoman Barbara Conable of New York at that time was a leader. I became a leader involved and traveled around to the States encouraging them to continue to do so, not because I wanted a constitutional convention but because I thought it was terribly important we show that the second portion of article V of the Constitution remains a viable power inside the Constitution but that the alternative—and that is the first portion of article V—would be that Congress can propose amendments to the citizens on the Constitution and that we were in essence the always-standing, always-in-power constitutional convention, that at any time with the necessary supermajority vote, the Congress itself could bring forth an amendment to be ratified by the States.

I say to the Senator from Mississippi, as he well knows, that is exactly what we are doing at this time, and that is why some of us have worked as long as we have to assure that this process go forward and why we are so concerned today we do not put anything in the path of this amendment that could trip it up in what is, I believe, a constitutional responsibility on our part to provide a clean, simply directed amendment to the people.

We have seen an amendment—and thank goodness just this week the Senate has denied it—that would have said prior to sending forth an amendment we have to do the following things. That is not what article V says. It says you put forth an amendment and it goes straight to the States because we can only propose. It is the States that have the responsibility, or in essence the citizens themselves, to ratify an amendment because the Constitution as the organic law of our land is the people's law. We operate under it.

That is why we are here today and will be for the next week or so debating a balanced budget amendment to our Constitution because it is the adjusting, if you will, of the organic law of our land that governs us, that governs the central government, that controls the Congress of the United States, and it is the ability of the people to speak up. So what we are doing here is extending or offering to the people of this country the opportunity to speak on the issue of how the Federal Government manages its fiscal house and its budget. And I wish to thank the Senator from Mississippi for recognizing as he has that on all of these kinds of issues they really begin at the grassroots. It is the people at the very lowest level of our governments stepping forward and saying we believe the central government ought to change; it is doing things in an improper way, and the way we will change them is to adjust the Constitution of our country to cause them to act differently.

That was back in the 1970's, and it has taken now over two decades to bring forth this issue to the point where it has now passed the House of Representatives and we are within weeks of voting on it here with a strong likelihood that it can pass the Congress of the United States and pass the Senate and it will go forth to the people. So those citizens of Mississippi, through their State legislators, will have an opportunity to decide how the central government of our country ought to be run in the area of its fiscal responsibilities and matters.

CFTC REAUTHORIZATION ACT

Mr. CRAIG. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item No. 20, S. 178, a bill to amend the Commodity Exchange Act to extend the authorization for the Commodity Futures Trading Commission; that the bill be deemed read a third time, passed, and a motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

Mr. President, let me say this has been cleared by the minority.

The PRESIDING OFFICER (Mr. INHOFE). Is there objection? Without objection, it is so ordered.

Mr. LUGAR. Mr. President, today, we consider S. 178, the CFTC Reauthorization Act of 1995. This legislation was sponsored by myself and Senator LEAHY, and requested by the Commodity Futures Trading Commission. The only provision of this legislation is to authorize appropriations for the CFTC through fiscal year 2000. While enactment of S. 178 merely continues the CFTC's responsibilities under existing law, it is important that Congress act now to leave no doubt about the continuing role of the CFTC. Further, Congress spent considerable time and effort addressing futures related issues before enacting the Futures Trading Practices Act of 1992. The bill before us will give the Commission adequate time to complete implementation of the 1992 act and allow time for review by Congress of that implementation and the CFTC's overall performance.

A hearing on this legislation was held on Thursday, January 26, to review the CFTC's performance to date in implementing the requirements of the 1992 act, as well as access its operations generally. Testimony was taken from the CFTC, the four largest U.S. futures exchanges, two futures industry trade groups, and the National Futures Association, a self-regulatory organization.

Concerns had been raised by some exchanges about the implementation of the enhanced audit trail requirements in the 1992 act which go into effect in October of this year. However, in the testimony of the CFTC Chairman, and in her responses to questions, it was made clear that the CFTC has not held that an electronic hand-held device is necessary to meet the enhanced requirements. Further, the CFTC Chairman assured the committee that after the exchanges have attained a high level of compliance, further incremental improvements will only be required as practicable and the cost of the improvements will certainly be an issue in determining what is practicable. In short, common sense prevailed. All witnesses at the hearing supported the reauthorization without amendments. In addition to the futures industry, this legislation has received the support of a number of agricultural groups including the American Farm Bureau Federation, the National Grain Trade Council, the American Cotton Shippers Association, and the National Grain and Feed Association. No futures industry groups, or agricultural groups have notified the committee of their opposition to this bill.

The committee held a business meeting on February 1 to consider the bill. No amendments were offered and S. 178 was ordered reported favorably by the committee.

Of course, reauthorization does not preclude other futures-related legislation during the next 5 years. In fact, I expect the committee will want to conduct vigorous oversight and consider futures legislation as needed.

Mr. President, I urge my colleagues to give their approval to S. 178.

Mr. LEAHY. Mr. President, I am pleased to join Senator LUGAR today in supporting the passage of S. 178, which reauthorizes the Commodity Futures Trading Commission [CFTC]. The last authorization for appropriations for the CFTC expired in 1994. An authorization for appropriations through fiscal year 2000 is necessary to continue orderly funding of the Commission and support for its activities.

The CFTC is a small agency with an important mission—protecting the integrity and effective functioning of our

Nation's futures markets. The volume of commodity futures and options contracts traded on the Nation's commodity exchanges exceeded half a billion transactions last year. Since 1974, the year Congress created the CFTC, trading on U.S. futures exchanges has increased by more than 1,500 percent. The pricing and hedging functions of these markets are vital to our economic well-being.

The last reauthorization of the agency occurred only 2 years ago with passage of the 1992 Futures Trading Practices Act [FTPA]. Passage of that bill was one of the outstanding achievements of the Agriculture Committee during my tenure as chairman. The FTPA was the toughest, proconsumer futures reform package in a generation.

The 1992 reforms are the right course for the CFTC and the exchanges to pursue. I am pleased that all witnesses and committee members agreed at the January 26 hearing that no changes to the FPTA are necessary at this time.

The Agriculture Committee will continue its careful oversight of the Commission and the exchanges. Compliance with the enhanced audit trail standard and developments in derivatives markets will receive my close attention.

I expect the exchanges and the CFTC to work diligently to complete the 1992 reforms on a timely basis. With the leadership of the Commission's new Chairman, Mary Schapiro, I am confident this will happen.

So the bill (S. 178) was deemed to have been read three times and passed, as follows:

S. 178

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 "CFTC Reauthorization Act of 1995".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 12(d) of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended to read as follows:

"(d) There are authorized to be appropriated such sums as are necessary to carry out this Act for each of fiscal years 1995 through 2000.".

U.S. FOREIGN ASSISTANCE PRIORITIES IN AFRICA

Mrs. KASSEBAUM. Mr. President, I recently received a copy of a speech delivered February 3 by Brian Atwood, Director of the Agency for International Development. He outlines several thoughts on directions for U.S. assistance in Africa.

In light of the current debate over U.S. foreign assistance programs in general, and particularly in Africa, I thought my colleagues would find Mr. Atwood's comments useful. I ask that the text of Mr. Atwood's remarks be included in the RECORD at this point.

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

REMARKS OF J. BRIAN ATWOOD, SUMMIT ON AFRICA AID

I am pleased to be with you today as President Clinton's representative. I understand that the President has issued a statement that was shared with you. As you heard, it underscores the abiding commitment of this Administration to Africa.

From time to time American ballot boxes produce what are called revolutions. We know about the revolution sparked by the Voting Rights Act. Franklin Roosevelt's election created a revolution. So did Ronald Reagan's.

We are in the early stages of a revolution in Washington today. And, as in every other time in our history, good can emerge from the changes this revolution brings.

Congressional reform—the streamlining of the institution, the increased transparency, open rules—this is all long overdue. A Gore-Gingrich collaboration to reinvent government is something the American people welcome. This is not politics-as-usual, and it can produce positive change.

But in the fervor that accompanies the early stages of a revolution, incautious positions are often asserted. At the least, before such positions become the accepted wisdom, someone must challenge them, civilly, but forcefully. That is the only way we can keep revolution on a healthy course. Indeed, that is the way mandates for change are interpreted and given real meaning.

A case in point is the assertion that we have no national interests in Africa. That we must reduce or eliminate development assistance to that continent. That Africa has neither geopolitical importance for the United States nor economic value.

With all the force we can muster, we say: That is just plain wrong.

Let's examine the question objectively. For just a moment, let's leave out America's humanitarian values. Let's put aside our historic ties to Africa. Let's forget sentimentality. Instead, let's talk about hard economic facts and markets and sales. Let's ask ourselves: is Africa worth the investment? Is a continent of half a billion people worth one-half of one-tenth of one percent of the federal budget, which is what we now spend on it? Is the three dollars and change that each American family pays each year to help several dozen sub-Saharan nations a burden worth the price?

Of course it is. It is not welfare, nor is it charity. It is an investment we make in other people for our own self-interest.

How do we build markets? The answer is simple: we do it by making investments for the future. That is what vision is all about. That is what practical reality teaches us, too. If we want to talk economic rationales, then we must look at Africa as the last great developing market. We must look at it the way we looked at Latin America and Asia a generation ago.

Consider Latin America; today it is the fastest growing market for American goods. This is a huge new middle class market of 350 million people. It got that way because of investments made during the last forty years—$30.7 billion in economic assistance from the United States between 1949 and 1993. Yet our exports to all of Latin America in 1993 alone were more than two-and-a-half times that amount—$78 billion. Quite a payoff in jobs and income, and that was just one year. And the Latin American market is likely to grow three times larger in the next decade.

Where would we be if John F. Kennedy, Lyndon Johnson and Richard Nixon had not committed themselves to the Alliance for Progress and the education programs that helped create a generation of economists and technicians who now lead South America's impressive growth? What kind of customers would we have if we had not supported health and education programs that invested in the human capital of Latin America, an investment that now is producing an educated, healthy workforce that can afford to buy our goods and services? What kind of stability would we have in this market if we had not supported democracy-building programs that have made military juntas and coups a thing of the past?

It is an interesting exercise to compare sub-Saharan Africa today to three of the newest "Asian Tigers"—Malaysia, Indonesia, and Thailand—as they were in 1960: African per capita income is today 80% of what it was in Malaysia, Indonesia, and Thailand 35 years ago. But Africa today has four times the number of people Malaysia, Indonesia, and Thailand had in 1960. Think of the potential of this African market, even at its current stage of development.

The bottom line is that Africa today is not significantly behind where the "Asian Tigers" were in 1960. In the three decades since, Malaysia, Indonesia, and Thailand substantially reduced poverty, their rates of population growth, infant mortality, and illiteracy. These countries are now major players in the world economy. We believe Africa can do as well.

The doubters should not just look at Africa's potential; the market is already significant, and like other developing markets, it is growing far faster than our markets in Europe. In 1992, sub-Saharan Africa imported $63 billion worth of merchandise from the world. African imports have risen by around 7.0% per year for the past decade. At this rate, the African market would amount to $480 billion by the year 2025. That is approximately $267 billion in today's dollars.

The U.S. currently accounts for nearly 10% of the African market. Do the arithmetic. Each American family now spends about $3 annually on aid to Africa. At current growth rates, that will produce something like $50 billion worth of American exports to Africa each year in 30 years. In 2025, the U.S. is projected to have a population of 320 million. Again, do the arithmetic. $50 billion worth of exports would work out to about $600 worth of exports per family, annually, in 2025. And that is if Africa's growth remains at its current level; if we make the investments Africa needs, and if African nations implement the kind of policies that have benefitted Asia and Latin America, the return for each American family in thirty years could be as much as $2000 per year.

These are not trivial amounts. They represent millions of jobs for our children financial health for our nation.

Isn't Africa worth the investments now that we made in Asia and Latin America? Those who argue against such investments are shortchanging the next generation of Americans. There is, of course, no guarantee that our investment will pay dividends, but it is as good a bet as most mutual funds. Moreover, the cost of not acting could overwhelm our treasury, and, I fear, our consciences.

Those who say we have no strategic interest in Africa should understand that if African nations fail to make progress, if they descend into chaos and decay, the tragedy will not take place in a vacuum. Chaos there will affect our interests here. As long as we remain true to our values—and there is a strong bipartisan consensus that suggests we

will (even Pat Buchanan supports disaster relief)—the costs of humanitarian operations will continue to be borne in part by the United States. If more African nations fail, we will share the costs of caring for the millions of refugees. We will shoulder the burdens of dealing with endless famine. And we will have to confront the spreading political disorder, the environmental damage, and the consequent loss of markets for our goods.

Parts of Africa are living on the edge. Many African nations face adverse climatic and soil conditions. Each day, people in these countries face problems of poor health and malnutrition and illiteracy that few other people confront.

Yet lost in the apocalyptic descriptions of an Africa seemingly falling apart is genuine reason for encouragement. The headlines rarely report the many positive developments and success stories in Africa. Yet in a number of African nations, democratically-elected, enlightened leaders, committed to broadening participation and undertaking reforms necessary for development, are creating an environment for success. This, too, is the reality of Africa:

USAID today is working in 35 African nations that, in our judgment, are in various phases of consolidating their democracies, creating free markets, and implementing serious economic reforms. Conversely, we have ended our involvement in several nations where the governments refuse to commit themselves to reform or to a development partnership with their own citizens.

A new generation of African leaders is pursuing extensive economic restructuring programs, including privatization of state-owned enterprises, reducing government functions and budgets, stabilizing the economy, and implementing policy changes that help the private sector expand.

New crops and market liberalization are expanding food production, raising farmer income and reducing food prices for consumers.

More children, especially girls, are attending school so that they can become more productive members of society. And we know from our own experience that more than any other factor, improving the education of girls and the status of women enhances the economy, the environment, and the prospects of democracy.

Programs to expand immunization and use of oral rehydration therapy are saving an estimated 800,000 African children each year.

Fertility is starting to fall as more and more parents use family planning services.

I am proud that USAID has played a role in every one of these achievements.

For every Rwanda there is a Ghana—a nation that has begun revitalizing its economy and is intent on being part of the worldwide economic expansion.

For every Somalia, there is a South Africa or a Namibia—nations that have successfully implemented democracy and peaceful change.

For every Angola, there is a Mozambique, emerging now from civil conflict.

For every tragedy, there are a half dozen islands of hope. Progress is still tentative, often fragile. Which is precisely why we must not hesitate now. But this continent is no write-off. It is a good investment.

We have learned from the mistakes we made during the Cold War. We now are concentrating our aid in countries that are implementing sound economic policies, promoting an open and democratic society, and investing their own resources in broad-based development. That is exactly what the Congress wanted to accomplish with the Development Fund for Africa. And that is why this Administration strongly supports the Development Fund for Africa. Under this fund, we have taken a longer-term approach to Africa's development, systematically addressing the root causes—economic, social, and political—of underdevelopment.

In those countries stricken with disaster or famine, we are treating emergency relief as more than an end in itself. Rather, we are structuring it to help nations make the difficult transition from crisis to the path of sustainable development.

President Clinton's Initiative for the Greater Horn of Africa is designed to apply the lessons we learned in the Sahel and Southern Africa is a troubled region that now consumes nearly half of all African relief. By emphasizing regional cooperation and planning, by helping nations acquire the ability to respond to food crises early on, we can prevent droughts from becoming famines. This Initiative, we believe, will save lives and resources. The partnerships it builds will enable the donor community to save billions of dollars in relief assistance over the next fifteen years and focus resources instead on recovery efforts and long-term development.

To prevent more failed nations, the United States must strengthen our efforts to prevent crisis and to encourage others to do so as well. While we only provide five percent of the development assistance that Africa receives, we provide 30 percent of the relief assistance directed at the continent's emergencies. It is a lot less expensive to lead the way on prevention than it is to pay the costs of failure.

I am able to make the case for assistance to Africa today because USAID has reorganized itself to be an effective instrument of development. Many of our reforms were pioneered by the Development Fund for Africa. The DEA forced us to measure results and now we are going to do this everywhere. Our work in Africa has been an essential part of our identity, and must remain so.

So, now we have a fight on our hands. We welcome it. If the revolution has indeed begun, then each of us must do everything we can to ensure that the well-being of our children—and the children of Africa—is advanced by the vision today's revolution produces. We cannot be silent. We cannot wring our hands. The case for Africa gives us the opportunity to be the champions of common sense. This is a battle well worth waging. Not for African Americans, not for historical reasons, not even for our humanitarian values, though we must never forget them. This is a battle worth waging for America's national interests and the future of *our* children. We *will* wage it. And I am confident that, in the end, common sense will prevail.

RETIREMENT OF C. WAYNE HAWKINS

Mr. SIMPSON. Mr. President, I appreciate the opportunity to take a few brief moments of the Senate's time to acknowledge the recent retirement, on January 31, 1995, of Mr. C. Wayne Hawkins from Federal service.

Mr. Hawkins most recently served as the Department of Veterans Affairs' Deputy Under Secretary for Health for Administration and Operations, capping a distinguished Federal career that spanned 37 years. As one of VA's two Deputy Under Secretaries for Health, Mr. Hawkins was the senior non-physician official in the VA's Veterans Health Administration [VHA], the VA organization of 171 hospitals, 353 outpatient clinics, 128 nursing home care units, and 37 domiciliaries. In this capacity, he served as Chief Operating Officer of VHA—an organization which provides health care services to over two million veterans per year, and which is the largest "chain" of health care facilities in the United States.

Mr. Hawkins began his VA career in 1957 as a rehabilitation specialist at the Mountain Home VA Medical Center in Johnson City, TN. From that assignment, he progressed up the VA career ladder, becoming a personnel manager, then an Associate Director at a number of VA hospitals. Ultimately, he was appointed Director of the VA Medical Center in Dallas, TX, a post in which he served for 15 years before coming to Washington to serve as VHA's Deputy Under secretary. Under his steady leadership, the Dallas VA Medical Center became one of VA's flagship hospitals.

Through it all, Mr. Hawkins also served in the military's active and reserve ranks, retiring as an Army colonel in 1987 after 33 years service. He also served in major leadership capacities in the Texas Hospital Association, the American Hospital Association, and the VA Chapter of the Senior Executive Association. In 1991, he was inducted as a fellow, American College of Health Care Executives.

Mr. Hawkins received a B.S. degree in 1957 from East Tennessee State University, and an M.S. degree in 1971 in health care administration from the University of Minnesota. He completed graduate work in health systems management at Harvard University, and is a graduate of the U.S. Army Command and General Staff College. Among other honors, Mr. Hawkins is a recipient of VA's Distinguished Career Award, Presidential Rank Awards for Distinguished Executives and Meritorious Executives, the Ray E. Brown Award for Outstanding Accomplishment in Health Care Management, and numerous other Government, military and civilian awards for excellence in health care management.

Mr. President, VA will truly miss this distinguished and visionary health care executive. We who care about veterans regret that he is retiring from a role of day to day management of VA's health care system. Gladly, Wayne Hawkins is not withdrawing completely from participation in veterans affairs and health care management, so we expect to reap the benefit of his experience, intelligence and integrity for many years to come.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, as of the close of business on Thursday, February 9, the Federal debt stood at $4,803,442,790,295.83 meaning that on a per capita basis, every man, woman, and child in America owes $18,233.95 as his or her share of that debt.

SENATOR FULBRIGHT

Mr. HELMS. Mr. President, all of us who knew and/or served with Senator J. William Fulbright were saddened at the news of his passing. I had the privilege of serving my first 2 years in the Senate with this distinguished gentleman. He was an able U.S. Senator.

Senator Fulbright presided over the Senate Foreign Relations Committee with dignity and distinction. I join the American people in extending my deepest sympathies to his family.

TRIBUTE TO BEN R. RICH

Mr. NUNN. Mr. President, I would like for my colleagues in the Senate and my fellow citizens throughout the country to note the passing of Ben R. Rich. Ben was a long-time employee at the famed Lockheed "Skunk Works" in California.

Ben had just recently published a book, "Skunk Works: A Personal Memoir of My Years at Lockheed," with Leo Janos. This book provided us an insight into what was an outstanding career of service and dedication to having our country maintain its technological edge over any potential adversary. During his tenure at the Skunk Works from the mid-1950's until his retirement in 1991, Ben worked on a number of very important aircraft programs, such as the SR-71, the U-2, and the F-104. Perhaps his greatest contribution was to the so-called Stealth fighter program, the F-117. Ben headed the Skunk Works during the development and production of the F-117. We saw the fruits of his leadership on F-117 in the Persian Gulf war, where, more than any other system, the F-117 and its stealth gave our forces the capability to attack any of the Iraqi's highest value targets with impunity. This system is revolutionary, and Ben Rich's leadership was critical to making it a success.

Mr. President, this country will be a poorer place with his loss. We will all sorely miss Ben and his dedication to excellence. Ben Rich made a difference.

WILLIAM Mc. COCHRANE: HISTORICAL CONSULTANT

Mr. PELL. Mr. President, I am very pleased to note that William McWhorter Cochrane, who until this year was one of the Senate's most venerable staff members, is continuing his service to the legislative branch in a new capacity at the Library of Congress.

Bill Cochrane began his Senate service in 1954, thus predating all sitting Members of this body today. Over the years, he has truly become an institution in his own right.

Always faithful to his home State of North Carolina, Mr. Cochrane began his Senate career as counsel to Senator Kerr Scott, and 4 years later became administrative assistant to Senator B. Everett Jordan. In 1972, he joined the staff of the Committee on Rules and Administration, serving as staff director until 1980, a period which included my own tenure as chairman of the committee in the 95th and 96th Congresses.

One of Mr. Cochrane's special areas of interest has always been the Library of Congress, and his knowledge of that institution is encyclopedic. So it is altogether fitting that he has been named Honorary Historical Consultant to the Library, especially at this time when the Library is preparing to observe its 200th anniversary in the year 2000.

I congratulate Bill Cochrane on this occasion and I also congratulate the Librarian of Congress, Dr. James Billington, for making this appointment. I ask unanimous consent that a news release from the Library of Congress on Mr. Cochrane's appointment be printed in the RECORD at this point.

[From the Library of Congress News, Washington, DC]

WILLIAM McW. COCHRANE NAMED HONORARY HISTORICAL CONSULTANT TO LIBRARY OF CONGRESS

Librarian of Congress James H. Billington announced today the appointment of William McW. Cochrane as the Honorary Historical Consultant to the Library of Congress. Mr. Cochrane's career in the U.S. Senate spanned 40 years.

In making the announcement, Dr. Billington said, "As the Library of Congress approaches its 200th anniversary in the year 2000, we are fortunate to be able to draw on the knowledge and wisdom of this distinguished public servant. Bill's respect for and knowledge of the Congress, and of its Library, will bring a unique historical perspective to our bicentennial planning."

Following service in World War II and administrative and teaching positions at the University of North Carolina, Cochrane came to the Senate in 1954 as counsel to Senator Kerr Scott (D-N.C.). From 1958 to 1972, he served as administrative assistant to Sen. B. Everett Jordan (D-N.C.). From 1972 through the 103rd Congress, he worked for the Senate Committee on Rules and Administration as staff director from 1972-1980, as Democratic staff director from 1981-1986, and as senior advisor from 1987. In addition, he held several senior positions with the Joint Committee on Inaugural Ceremonies. His work with the Joint Committee on the Library of Congress, the oldest continuous joint committee of Congress, totaled more than 30 years.

Among his numerous honors, he has received the Distinguished Alumnus Award for Public Service from the University of North Carolina and the 20th Annual Roll Call Congressional Staff Award. In 1992, he was one of six recipients of the State of North Carolina Award for Public Service.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of House Joint Resolution 1, which the clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

The Senate resumed consideration of the joint resolution.

Pending:

Reid amendment No. 236, to protect the Social Security system by excluding the receipts and outlays of Social Security from balanced budget calculations.

Dole motion to refer H.J. Res. 1, Balanced Budget Constitutional Amendment, to the Committee on the Budget, with instructions.

Dole amendment No. 237, as a substitute to the instructions (to instructions on the motion to refer H.J. Res. 1 to the Committee on the Budget).

Dole amendment No. 238 (to amendment No. 237), of a perfecting nature.

The PRESIDING OFFICER. Under the previous order, the Senator from Oregon [Mr. PACKWOOD] is recognized to speak for up to 60 minutes.

Mr. PACKWOOD. Mr. President, I had prepared over several days a speech for this morning. But because of a news article this morning on the death of Senator Fulbright the day before yesterday, I decided to change my approach and have thrown away all of the comments I was going to make. I will try to put this debate in a different light.

The Washington Post article on Senator Fulbright is well worth reading, because he was a figure of great consequence here. As we are debating this, another matter of great consequence, I look back at some of the other events that have taken place in my career on this Senate floor. I will not use Yogi Berra's famous expression, "It's déjà vu all over again," because I think a more apt expression might be Justice Holmes' comment about the law, but it really relates to all of us. He said, "The life of the law has not been logic. It has been experience."

I think, as we look at this balanced budget amendment, we are better off to look at it in the light of experience rather than the light of logic.

I mentioned Senator Fulbright because I recall in this Chamber the most extraordinary event—certainly the most extraordinary debate, but extraordinary event—that I have ever witnessed in my life.

It was an unusual situation. It was a closed session of the Senate on the debate—this was in 1969—on the antiballistic missile system. There were two extraordinary Senators who were going to carry the battle for and against that: Senator Symington of Missouri, high up on the Armed Services Committee, was unalterably opposed; Senator Jackson of Washington, high up on the Armed Services Committee, was unalterably in support. These two Senators had access to identical witnesses, identical information, and came down on absolute opposite sides. The antiballistic missile was a touchstone between the so-called hawks and doves.

We were then enmeshed heavily in Vietnam. This, I suppose, would have been the equivalent of the star wars of its day. Could we invent a missile that would go up in the air and shoot down other missiles? We finally agreed, under a unanimous consent, as I recall, to either 6 or 8 hours of debate. And because it was going to be highly sensitive, classified information, the Senate was cleared of all press. The galleries were closed. The staff left. We had all 100 Senators on the floor and the Vice President presiding.

We started the debate. Senator Symington, in opposition, spoke first. He spoke for an hour without notes. The only references he had were some charts behind him, showing the Russian missile system and its progress. When he finished speaking, I thought to myself, that is the end of the ABM, the antiballistic missile. No one can rebut that argument.

Then, Senator Jackson arose and spoke for an hour, without notes. I remember him turning to Stewart Symington and saying: "Let me take you just a few charts further than where my distinguished colleague from Missouri left off." And Senator Jackson went on with his seven or eight charts, taking us up to what was probably the SS–18 or SS–19 at the time—a brilliant argument. And I thought when he finished, that is it. We are going to have an antiballistic missile system. No one can rebut that argument.

Then these two giants began to ask questions of each other. Like great fencers, they parried and thrusted. They each knew the answers to the questions they were asking. They hoped that somehow they could pinion the other. And the reason the questions and answers were so critical is everyone knew this was a close vote, just like this coming vote on the balanced budget amendment. Everyone knew it was one or two votes, one way or the other.

President Nixon desperately wanted the ABM because he needed it as a bargaining chip with the Soviets to attempt to begin arms reduction. Without it, he knew he could not begin. So when the two had finished their speeches and had finished questioning each other, then the rest of us had an opportunity to ask questions.

Again, you have to picture a full Chamber, 100 Senators, in closed session. There was no one here but us: no press, no gallery, no staff. And the third or fourth question was from Senator Fulbright to Senator Jackson.

Senator Fulbright said, "Would my good friend from Washington yield to a question?"

"Yes," Senator Jackson said.

Senator Fulbright said, "Has my good friend had a chance, yet, to digest the remarks of the Russian Foreign Minister, Andrei Gromyko, in Warsaw last week, in which the Soviet Foreign Minister said that the Soviet Union wanted to reach a new era of détente—of cordiality with the United States? And doesn't my friend from Washington think that before we rush pellmell into this unproven missile system, we should give just some little credence to the words of the Russian Foreign Minister?"

Senator Jackson shot back, as if it had been a prompted question. He pointed his finger at Senator Fulbright. I remember the gesture so well. They sat no more than two or three desks apart.

He said, "Let me call to memory for my friend from Arkansas" and then Scoop Jackson moved his hand like this and said to the—others, who were not here at that time—"that morning, when President Kennedy, in October 1962, asked Russian Foreign Minister Gromyko, who had been at the United Nations the day before, to come to Washington to chat with him. Andrei Gromyko flew down from New York and went to the White House."

Scoop Jackson related this scene: "That day, the President asked Gromyko, if there were any Russian missiles in Cuba."

"No, came the answer."

"Were there any Warsaw Pact country missiles in Cuba?"

"No."

"Had any missiles been transported on Russian ships to Cuba?"

"No."

"Were there any Russian troops in Cuba assembling missiles?"

"No."

Then Scoop Jackson made this gesture. He reached down and said—"Then the President opened the drawer of his desk, took out the pictures from the U–2, threw them in front of Mr. Gromyko—showing the missiles, showing the ships, pictures so good that you could see the chevrons on the sleeves of the Russian troops in Cuba assembling the missiles."

Scoop Jackson said, "Andrei Gromyko left that room an acknowledged liar. If my friend from Arkansas wants to rest the security of this country on the truthfulness and credibility of Andrei Gromyko, that's his business. I would not ask a single American to sleep safely tonight based upon the credibility of Andrei Gromyko."

The vote that afternoon was 51 to 50, with the Vice President breaking the tie. And the answer to that question was the difference of one or two votes.

So do we on occasion have the opportunity to participate in great events where we can make a difference? We do. With that vote, President Nixon was able to start negotiations with the Soviet Union, and it was the first of our major negotiations leading to arms reductions over the years.

I cite that moment because I think we are approaching a similar moment again. This time on the balanced budget amendment and just one or two of us may make an extraordinary difference for the future. I have said, quoting Holmes, it is experience, not logic.

Let us take a look at some of our experiences from that time on. In 1972—this was an open debate, it is in the RECORD—we did not have budget bills in those days. We thought we had a terrible budget problem. The deficit was $15 billion. The budget was $245 billion. This is in my lifetime in the Senate; 1972, barely 20 years ago, a budget that was smaller than some of our deficits have been in the last few years. But we thought this was so terrible that we were going to vote on a bill to delegate to President Nixon the power to cut the budget anyplace he wanted—once it exceeded $250 billion. You talk about a line-item veto. This was not just a line-item veto. It was carte blanche power to cut it wherever he wanted it. It had passed the House with Wilbur Mills leading the fight for it. It came to this body. We had an extraordinary debate. There is not even a baker's dozen of us left now from that time. I am not going to read into the RECORD all of the debate. Most of the people who were involved are now gone. But interestingly there are still a few left that opposed that effort. I was one that opposed it. I made what I thought was an extraordinary speech on the history and the power of the purse, going into the parliamentary debates and the fights with the kings' efforts over the centuries to gain power over the purse. Did we want to give to the President a power which the Parliament and the Congress had fought for the better part of 500 years to gain for itself? I said no. And all of us who talked and opted against that legislation said we the Congress can do it. We have the courage in Congress to narrow a $15 billion deficit. We do not need to give away the power to balance the budget.

It is particularly interesting to read the statements of one or two of the Democratic Senators who were in opposition to the balanced budget amendment, speaking in opposition to this particular bill in 1972, as to how we in Congress could do it. That is almost now 25 years ago. The deficit was $15 billion.

In 1978—there have been several people who have made reference to it—we had the Byrd amendment. This is not ROBERT BYRD of West Virginia. This is Harry Byrd of Virginia. We passed it in 1978. It is very simple. All it says is beginning with fiscal year 1981 the total budget outlays of the Federal Government shall not exceed its receipts. It is pretty easy to understand. It is a balanced budget statute. Somehow we did not make it. We did not even come close.

Do you know what the problem with a statute is? Every time you pass another statute later that is in conflict, the later one governs. So we passed a later nonbinding law that says in 3 years we have to balance the budget, and, then, this Byrd law is just irrelevant. We just ignored it. I thought it was ridiculous. It was embarrassing to have it on the books and ignore it year after year. So in essence, we repealed it. Then we knew that we had to face the deficit ourselves. We had the courage to do it. We in Congress could do it. Even then we were starting to talk about constitutional amendments. But we had not quite gotten to there yet.

Now I want to go to 1981, again this experience. It is amazing how myths are perpetrated. "The Reagan tax cuts are what led to the deficits." How many times have we heard that? Again, I was here. I was on the Finance Committee. But sometimes when you hear it long enough your memory plays tricks on you, and you wonder if you remember as it actually happened.

So I had Dr. Reischauer, the head of the CBO, check it for me. And indeed my memory was right. From roughly January 1980 until July 1981, a period of about 18 months, every budget projection we had from the Congressional Budget Office, from the Office of Management and Budget, from the Joint Committee on Taxation and private economists said we were going to have by 1985 between a $150 billion and a $200 billion surplus—not a deficit; a surplus.

So President Reagan proposed tax cuts in 1981. I want to emphasize something. His Treasury Department came and made staging estimates. They assumed that the tax cuts would parallel these projected $150 to $200 billion in deficits. President Reagan correctly understood that if we did not give this money back to the taxpayers, we would spend it; no question about that. Do not worry. We have plenty of experience on that. But they were to parallel the projected surpluses.

Well then, did we ever become generous. The House Ways and Means Committee took the President's bill and added to it more tax cuts. Then it came to the Senate Finance Committee. We added tax cuts to the House version. We even gave real estate 15 years for depreciation. It is no wonder that we had a building boom—built on taxes, not on economics—from 1981 on—when you could depreciate real property over 15 years. You could not lose. You did not even have to rent the building. In fact, many of them were not rented. That is what happened. But that is not the point. They were not being built to be rented. They were built for tax losses. We piled everything on we could. We went to conference, and we took the most expensive provisions of both bills and sent it down to the President. He signed it.

What the economists did not foresee in those 18 months were three things: First, the rapid decline in inflation. This was before we had, indexed, the Tax Code. We had run 4 years of inflation of 13, 14, or 15 percent. We could presume that before we indexed the Tax Code we would get about 1.7 percent increase in revenues for each 1 percent of inflation.

So if you could presume 10 or 11 or 12 percent inflation compounded from 1981 to 1985, it is no wonder we were projecting surpluses. But we did not foresee that inflation would absolutely nosedive, nor did we foresee that recession. It wasn't anybody's fault. It was not President Reagan's fault. It was a rosy scenario. This was everybody's projection. When the recession comes down, revenues go down, expenses go up.

So we had an immense shortfall by 1982. Just to corroborate this, so that those that believe in the myth do not think that I do not know of what I speak, I want to insert two letters from Dr. Reischauer in the RECORD, one of November 8, 1994, and one of December 15, 1994, and then just a portion of his testimony, just 2 weeks ago on January 26, 1995, before the Finance Committee. I will quote just one sentence when he is referring to this period.

It is reasonable then to ascribe nearly all of the underestimate of deficits during that period to errors in economic forecasts.

Mr. President, I ask unanimous consent that those three documents be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 8, 1994.

Hon. BOB PACKWOOD,
U.S. Senate,
Washington, DC.

DEAR SENATOR: This is in response to your request of November 3, asking CBO to provide additional information about budget projections done almost 15 years ago, before enactment of the Economic Recovery Tax Act [ERTA] of 1981. As you recognize, many changes in budget policy and presentation hamper our ability to answer questions about projections that are so widely separated in time. Nevertheless, we will answer the questions posed in your letter as best we can.

Briefly, before the enactment of ERTA, CBO's budget reports routinely warned that a continuation of current tax and spending laws would lead to a surplus that would act as a drag on the economy. The late 1970s and early 1980s were a period of high inflation. Key features of the individual income-tax—brackets, personal exemptions, and standard deductions—were not indexed for inflation, even though inflation tended to push taxpayers into progressively higher tax brackets. In response, policymakers typically enacted ad hoc tax reductions every few years to keep the revenue-to-GDP ratio from spiraling. Examples are the tax cuts enacted in 1964, 1969, 1971, 1975, 1976, 1977, and 1978. On the spending side of the budget, many entitlement programs (such as Social Security) were automatically indexed to inflation, but discretionary programs had no such automatic feature and relied on the annual appropriation process for funding (if any) to compensate them for inflation.

In doing its pre-ERTA projections, then, CBO faced a dilemma: literal projections of current-law revenues and spending implied a fiscal drag that was viewed as incompatible with long-term growth. Therefore, CBO's economic projections assumed changes in fiscal policy sufficient to offset this effect and were not predicated on unchanged laws. The tax cuts enacted in 1981 and subsequent economic developments, of course, erased projected surpluses from CBO's reports.

CBO FEBRUARY 1980 PROJECTIONS

Illustrating this dilemma, in its February 1980 report Five-Year Budget Projections: Fiscal Years 1981-85, CBO projected that the revenues collected under current tax law would climb from about 21 percent of GNP in 1981 to 24 percent by 1985. Simple arithmetic pointed to enormous surpluses in the outyears. For example, current-law revenues exceeded outlays by a projected $98 billion for 1984 and $178 billion for 1985.

CBO purposely did not, however, publish these surpluses, which it called the "budget margin." The reasons was one of internal consistency. CBO's assumptions of economic performance beyond the two-year forecasting horizon were based on an analysis of historical trends and the economy's long-run growth potential. Thus, the February 1980 report assumed that the economy would grow at a real rate of 3.8 percent a year in 1982 through 1985. Such growth was incompatible with a rising revenue-to-GDP ratio; in fact, the report stated that "fiscal policy changes that would use up most of the burden margin would be required if the economic growth path were to be achieved." The economic assumptions assumed approximately budget balance in 1983 through 1985 but did not assume specific tax cuts or changes in spending.

EARLY 1981 PROJECTIONS

The tax environment changed in 1981. By mid-1981, the Congress and the Administration had agreed on a large multi-year tax cut. The budget resolution prescribing the appropriate size of the cuts was adopted in May, and ERTA itself was enacted in August. Indexing for inflation was not a feature of the Administration's tax proposal submitted in March 1981, but was a part of ERTA. It did not take effect until 1985, after an intervening series of three cuts in individual income taxes effective at the start of calender years 1982, 1983, and 1984.

Economic assumptions. CBO presented its baseline projections in 1981 using two different sets of economic assumptions—those contained in the budget resolution (resembling the Reagan Administration's assumptions), and an alternative set developed independently by CBO. For the reasons described above, economic forecasts require an assumption about fiscal policy; the CBO assumptions explicitly assumed adoption of a

package of tax cuts and spending cuts like those advocated by the Administration.

Budget projections. Without the tax cuts, long-run surpluses still appeared likely from the vantage point of early 1981. For example, using the economic assumptions dictated by the budget resolution, OMB envisioned a surplus of $76 billion in 1984 and $209 billion in 1986 if no changes in tax law or spending policy were adopted (Baseline Budget Projections: Fiscal Years 1982–1986, July 1981). Those economic assumptions were rosier than the set developed independently by CBO. Budget projections based on CBO's economic assumptions, which were more fully documented in a March 1981 report (An Analysis of President Reagan's Budget Revisions), foresaw smaller surpluses amounting to $23 billion in 1984 and $148 billion in 1986.

The budget resolution was expected to generate a bare $1 billion surplus in 1984, under the economic assumptions contained therein. That would presumably imply a deficit of roughly $50 billion under CBO's less rosy assumptions.

In sum, given the best information available at the time, the Congress and the Administration reasonably thought that surpluses loomed under current law. Analysts differed, however, on whether following the policies of the first budget resolution would put the government on a balanced-budget footing or would lead to deficits.

POST-1981 DETERIORATION

Economic developments led to far bigger deficits than even relatively pessimistic participants in the 1981 debate envisioned. As you requested, we have prepared a comparison of the economic assumptions contained in the fiscal year 1982 budget resolution with the actual outcomes (see attached Table 1). For completeness, we also include a comparison with the CBO alternative forecast published in March 1981. Revisions by the Department of Commerce to economic data (such as the shift in the base year for measuring real growth) prevent the actuals from being perfectly comparable to the projections, but do not distort the overall story.

Compared with the budget resolution, the most dramatic deviations in economic performance were sharply lower real growth and sharply lower inflation. The economy plunged into recession, registered negative growth in 1982, and then recovered. Even so, real growth over the 1981–1986 period (including recession and recovery years) averaged 2.6 percent, versus the budget resolution's assumption of 4 percent. Inflation was sharply lower than in the budget resolution, averaging 4.9 percent over the 1981–1986 period (when measured by the CPI) versus the 6.6 percent assumed in the resolution. These two factors—lower real growth and lower inflation—caused nominal GNP to be about $700 billion smaller by 1986 than assumed in the resolution, with a corresponding drop in the tax base. Interest rates, however, did not behave very differently than assumed in the resolution—implying that real interest rates (nominal rates adjusted for inflation) were much higher than foreseen.

In one crucial respect, the economy performed closer to CBO's early-1981 alternative forecast. Although CBO did not foresee the recession, it did envision average real growth of 2.8 percent over the 1981–1986 period, compared with an actual rate of 2.6 percent. CBO overestimated inflation, and underestimated real interest rates (as proxied by nominal Treasury bill rates minus inflation).

The post-1981 deterioration in the budget picture cannot be allocated to individual economic variables—real growth, inflation, and interest rates—as you requested. But it is clear that economic factors were mostly responsible, with so-called technical factors running a distant second. In 1986, the deficit was more than $400 billion greater than in the CBO July 1981 baseline projections (see attached Table 2). Policy changes contributed slightly over $100 billion; this figure includes not just the impact of ERTA and other changes adopted in 1981 but also the effects of later changes, such as the Tax Equity and Fiscal Responsibility Act and the 1983 Social Security Amendments, enacted to curb the burgeoning deficit. Economic and technical changes contributed the remaining $300 billion. The deterioration was overwhelmingly in the areas of revenues and net interest and it is reasonable to ascribe nearly all of it to errors in the economic forecast.

Of course, the indexation of the tax system contributed very little to the deterioration in this five-year period, because indexing did not take effect unit 1985. By then, CBO estimated that repealing it would generate a mere $5 billion in fiscal year 1985 and less than $15 billion in 1986. Since 1985, indexation—the annual adjustment to tax brackets and other features of the individual income tax code—has operated, other things being equal, to keep such taxes roughly constant as a share of GDP.

I hope that this information is helpful to you. If you have additional questions, please do not hesitate to contact me. The principal CBO staff contact is Kathy Ruffing (X62880); more detailed questions about revenues can be answered by Rosemary Marcuss (X62680) and inquiries about CBO's economic forecast by Robert Dennis (X627750).

Sincerely,

ROBERT D. REISCHAUER,
Director.

TABLE 1.—ECONOMIC ASSUMPTIONS IN THE FIRST BUDGET RESOLUTION FOR FISCAL YEAR 1982 AND ACTUAL OUTCOMES

[By calendar year]

Nov. 8, 1994	1980	1981	1982	1983	1984	1985	1986
	First Budget Resolution for 1982 [1]						
Nominal GNP (dollars)	2,626	2,941	3,323	3,734	4,135	4,641	4,983
Real GNP growth (percentage change)	−0.2	2.0	4.1	5.0	4.5	4.2	4.2
Consumer price index (percentage change)	13.5	11.0	8.3	6.2	5.5	4.7	4.2
Unemployment rate	7.1	7.5	7.2	6.6	6.4	5.9	5.6
3-month Treasury bill rate	11.4	13.5	10.5	9.4	8.2	7.0	6.0
	CBO Alternative Assumptions of March 1981 [2]						
Nominal GNP (dollars) [3]	2,626	2,936	3,285	3,663	4,081	4,558	5,055
Real GNP growth (percentage change)	−0.2	1.3	2.5	2.7	3.0	3.8	3.7
Consumer price index (percentage change)	13.6	11.3	9.6	8.9	8.2	7.7	7.1
Unemployment rate	7.1	7.8	7.9	7.8	7.7	7.5	7.2
3-month Treasury bill rate	11.4	12.6	13.7	11.5	10.2	9.7	9.3
	Actual [4]						
Nominal GDP (dollars)	2,708	3,031	3,150	3,405	3,777	4,039	4,269
Real GDP growth (percentage change)	−0.6	1.8	−2.2	3.9	6.2	3.2	2.9
Consumer price index (percentage change)	13.6	10.3	6.2	3.2	4.3	3.6	1.9
Unemployment rate	7.1	7.6	9.7	9.6	7.5	7.2	7.0
3-month Treasury bill rate	11.4	14.0	10.6	8.6	9.5	7.5	6.0

[1] The budget resolution contained assumptions through 1984; assumptions for 1985 and 1986 are a CBO extrapolation. They were published in Baseline Budget Projections: Fiscal Years 1982–1986 (July 1981).

[2] CBO's alternative assumptions assumed fiscal policy changes comparable to those contained in President Reagan's March 1981 budget revisions. These alternative projections were published in An Analysis of President Reagan's Budget Revisions for Fiscal Year 1982 (March 1981) and in Baseline Budget Projections: Fiscal Years 1982–1986 (July 1981).

[3] Nominal GNP was not published; these levels are estimated using the published growth rates.

[4] The actuals are not strictly comparable to the 1981 projections. They reflect the shift in emphasis from GNP to GDP and the redefinition of the base year used in measuring real economic growth (from 1972 at the time of the 1981 projections to 1987 for the most recent actuals). These changes, however, do not seriously distort the comparison.

TABLE 7.—CHANGES IN BUDGET OUTLOOK, 1982–86, FROM CBO JULY 1981 BASELINE

Nov. 8, 1994	1982	1983	1984	1985	1986
	CBO July 1981 Baseline [1]				
Revenue	709	810	920	1033	1159
Outlays:					
Net Interest	72	70	67	62	59
Other [2]	687	742	796	853	911
Total	759	812	863	915	970
Deficit or surplus (-)	50	2	−56	−118	−189

TABLE 7.—CHANGES IN BUDGET OUTLOOK, 1982–86, FROM CBO JULY 1981 BASELINE—Continued

Nov. 8, 1994	1982	1983	1984	1985	1986
	Changes				
Policy changes:					
Revenues	−43	−75	−100	−117	−133
Outlays:					
Net interest	0	1	6	16	29
Other [3]	−40	−39	−36	−15	−51
Total	−40	−38	−30	1	−23
Deficit	3	37	70	118	110

TABLE 7.—CHANGES IN BUDGET OUTLOOK, 1982–86, FROM CBO JULY 1981 BASELINE—Continued

Nov. 8, 1994	1982	1983	1984	1985	1986
Economic and technical changes:					
Revenues	−48	−135	−153	−182	−257
Outlays:					
Net interest	13	19	38	51	48
Other [2]	14	16	−20	−21	−5
Total	26	35	19	30	43
Deficit	75	169	171	212	300

TABLE 7.—CHANGES IN BUDGET OUTLOOK, 1982–86, FROM CBO JULY 1981 BASELINE—Continued

Nov. 8, 1994	1982	1983	1984	1985	1986
Total changes:					
Revenues	−91	−210	−253	−299	−390
Outlays:					
Net interest	13	20	44	67	77
Other [1]	−26	−24	−56	−36	−57
Total	−13	−4	−11	32	20
Deficit	78	206	242	331	410
	Actual Outcomes				
Revenues	618	601	666	734	769
Outlays:					
Net interest	85	90	111	130	136
Other [1]	661	719	741	817	854
Total	746	808	852	946	990
Deficit	128	208	185	212	221

[1] The July 1981 baseline was based on the economic assumptions of the first concurrent resolution, not those of CBO.

[2] Adjusted by approximately $20 billion a year in formerly off-budget outlays (chiefly lending by the Federal Financing Bank).

[3] Includes a one-time cost of about $12 billion for the purchase of maturing subsidized housing notes in fiscal year 1985.

Source: CBO memorandum, "Changes in Budgetary Policies since January 1981" (May 30, 1986), updated for fiscal year 1985 actuals.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 15, 1994.

Hon. BOB PACKWOOD,
U.S. Senate,
Washington, DC.

DEAR SENATOR: This responds to your request for additional information about budget projections done before the 1981 tax cuts were enacted. The conclusions that follow were discussed more extensively in my letter to you of November 8, 1994.

Before enactment of the 1981 tax cuts, CBO's budget reports routinely projected that a continuation of current tax and spending laws would lead to large budget surpluses. CBO also warned that such levels of taxes and spending would act as a drag on the economy.

The primary reason for this outlook was that high inflation was expected to drive up revenues dramatically. Because key features of the federal individual income tax were not automatically adjusted for inflation, periods of high inflation—like the late 1970s and early 1980s—pushed individuals into higher tax rate brackets and caused revenues to increase rapidly. In response, policymakers cut taxes every few years on an ad hoc basis—five times in the 1970s alone.

Illustrating this dilemma, in its February 1980 report Five-Year Budget Projections: Fiscal Years 1981–1985, CBO projected that revenues collected under current tax law would climb from about 21 percent of GNP in 1981 to 24 percent by 1985. Simple arithmetic pointed to enormous surpluses in the outyears. For example, current-law revenues exceeded outlays by a projected $98 billion for 1984 and $178 billion for 1985. Similarly, in its July 1981 report Baseline Budget Projections: Fiscal Years 1982–1986, CBO projected budget surpluses of between $148 billion and $209 billion for 1986, depending on the economic assumptions used.

In the same report, CBO estimated that the 1981 tax cuts and other policies that were called for in the May 1981 budget resolution would generate a balanced budget or a small deficit (roughly $50 billion) by 1984—again, depending on the economic assumptions employed.

This was the budget background leading to the 1981 tax cuts. Given the best information available at that time, the Congress and the Administration reasonably thought that significant budget surpluses loomed under current law. Analysts differed, however, on whether the 1981 tax cuts would put the government on a balanced-budget footing or would lead to small budget deficits.

As it turned out, the federal government ran budget deficits of about $200 billion a year from 1983 through 1986. Economic performance was poorer than envisioned in projections of either CBO or the Administration at the time of the 1981 tax bill. The economy plunged into recession, registered negative growth in 1982, and then recovered. The rate of inflation dropped sharply. By 1986 nominal GNP was about $700 billion smaller than assumed in 1981, which caused a corresponding drop in tax revenues. And interest rates remained high despite the plunge in inflation. It is reasonable to ascribe nearly all of the underestimate of deficits during this period to errors in economic forecasts.

Sincerely,

ROBERT D. REISCHAUER,
Director.

STATEMENT OF ROBERT D. REISCHAUER, DIRECTOR, CONGRESSIONAL BUDGET OFFICE, ON THE ECONOMIC AND BUDGET OUTLOOK: FISCAL YEARS 1996–2000, BEFORE THE COMMITTEE ON FINANCE, UNITED STATES SENATE, JANUARY 26, 1995

THE BUDGET OUTLOOK DIFFERS FROM THE OUTLOOK IN 1980 AND 1981

At the request of Chairman Packwood, CBO has also examined how the current outlook compares with the economic forecast and budget projects CBO made before the Economic Recovery Tax Act of 1981 was enacted. The many changes in budget policy and presentation made since 1981 limit our ability to provide a detailed analysis of the differences between projections that are so widely separated in time. Nevertheless, we can explain the primary reasons for the fundamental differences between the outlook now and the outlook then.

Unlike the current Economic and Budget Outlook, CBO's budget reports issued before enactment of 1981 tax cuts routinely projected that a continuation of current tax and spending laws would lead to large budget surpluses. CBO also warned that such levels of taxes and spending would act as a drug on the economy.

The primary reason for those projections was that high inflation was expected to drive up revenues dramatically. Because key features of the Federal individual income tax were not automatically adjusted for inflation, periods of higher inflation—such as the late 1970's and early 1980's—pushed individuals into higher tax rate brackets and caused revenues to increase rapidly. In response, policymakers cut taxes every few years on an ad hoc basis—five times in the 1970s, for instance.

Illustrating this dilemma, in its February 1980 report Five-Year Budget Projections: Fiscal Years 1981–1985, CBO projected that revenues collected under current tax law would climb from about 21 percent of GNP in 1981 to 24 percent by 1985. Simple arithmetic pointed to enormous surpluses in the outyears. For example, current-law revenues exceeded outlays by a projected $98 billion for 1984 and $178 billion for 1985. Similarly, in its July 1981 report Baseline Budget Projections: Fiscal Years 1982–1986, CBO projected budget surpluses of between $148 billion and $209 billion for 1986, depending on the economic assumptions used.

In the same report, CBO estimated that the 1981 tax cuts and other policies that were called for in the May 1981 budget resolution would generate a balanced budget or a small deficit of roughly $50 billion by 1984—again, depending on the economic assumptions employed.

That budget background led to the 1981 tax cuts. Given the best information available at that time, the Congress and the Administration reasonably thought that significant budget surpluses loomed under current law. Analysts differed, however, on whether the 1981 tax cuts would put the government on a balanced-budget footing or would lead to small budget deficits.

As it turned out, the federal government ran budget deficits of about $200 billion a year from 1983 through 1986. Economic performance was poorer than envisioned in projections of either CBO or the Administration at the time of the 1981 tax bill. The economy plunged into recession, registered negative growth in 1982, and then recovered. The rate of inflation dropped sharply. By 1986, nominal gross national product was about $700 billion smaller than assumed in 1981, which caused a corresponding drop in tax revenues. Furthermore, interest rates remained high despite the plunge in inflation. It is reasonable, then, to ascribe nearly all of the underestimate of deficits during that period to errors in economic forecasts.

ILLUSTRATIVE PATH TO A BALANCED BUDGET

A constitutional amendment requiring a balanced federal budget will be considered during the early days of the 104th Congress. If the Congress adopts such an amendment this year and three-quarters of the state legislatures ratify it over the next few years, the requirement could apply to the budget for fiscal year 2002. If the budget is to be balanced by 2002, it is important that the Congress and the President begin immediately to put into effect policies that will achieve that goal. According to CBO's latest projections of a baseline that adjusts discretionary spending for inflation after 1998, some combination of spending cuts and tax increases totaling $322 billion in 2002 would be needed to eliminate the deficit in that year. The amounts of deficit reduction called for in years preceding 2002 depend on both the exact policies adopted and when the process is begun.

Mr. PACKWOOD. It was not President Reagan's fault, not really our fault. We were just wrong. The only reason I say that is because now we are not facing the same situation we were facing on projections in 1981. Now we are projecting $200 billion to $400 billion deficits as far as the eye can see. Could we be wrong? I suppose so. We were wrong in 1981. Should we base the budgeting of this Congress on the assumption that we are wrong, we are not going to have these deficits? I do not think so. I do not think so.

Let us go on to 1982. We have the recession. So a number of people say to President Reagan, we are going to have to increase the taxes to cut this deficit. He was not wild about that. To the best of my knowledge, President Reagan is perhaps the only person that ever lived who actually paid 91 percent in income taxes. He hit it in Hollywood when the rates were 91 percent, and I do not think he had to count. I think he remembered 91 percent. He was reluctant to go back to a tax increase. We promised him—we the Congress—if he will give us $1 in real tax increases, we will give him $3 in real spending cuts. Mr.

President, it is not logic. It is experience. He did not get a dime of those spending cuts. We did not pass them. All he got was a tax increase.

None of us should start down that road again of promises in this Congress. I am not here attacking anybody as being immoral, malevolent, or anything else. We should not accept promises that we do not need a balanced budget amendment and we will pass spending cuts. We have not done it, and we will not do it. Anybody that was here in 1982 and bought that charade maybe can excuse themselves the first time. Remember the old adage, "Fool me once, shame on you; fool me twice, shame on me." That was 1982. That is when we first had the balanced budget amendment vote in this Senate. Up until 1981—or maybe 1982, I cannot remember —I had been opposed to a balanced budget amendment. I believed we could do it. But I realized after 1981 and 1982—and especially 1982—there was never any hope that we would have the courage, and unless we were compelled to do what every city, county, and State has to do, we would never, ever, ever balance the budget. So I voted for the balanced budget amendment in 1982.

Now, let us go forward a bit again, to 1985. I feel privileged to have been a part of the 1985 budget bill. Bob DOLE, in one of the most extraordinary acts of leadership I have ever seen, from a Republican or a Democrat, managed to cobble together the Republicans—because we only got one Democratic vote—on a budget bill that had a 1-year freeze on Social Security COLA's. We were not eliminating them. We were not cutting them back to the Consumer Price Index. A 1-year freeze. It passed by one vote. It passed because we wheeled Pete Wilson into this Chamber—now the Governor of California, then a Senator—who had an appendectomy just 24 hours before and could not walk. We wheeled him in and he voted from a gurney right over there. The controversial part of it was this 1-year freeze on the COLA's on Social Security.

Unfortunately, here I have to be critical of President Reagan. Before it got to the House, he said he would not accept it. That finished it; it was over. The Republicans had to pay for it in 1986. We had already paid for it once, politically, in 1982. Budget Director Stockman, at that time, suggested a modest change in the amount of money you could get in your Social Security benefits if you retired at 62. For that suggestion, we never even got to the place of seriously considering it. For that suggestion, he got unshirted hell. The Democrats used it in 1982 to further their campaign, and they clobbered us.

I remember a cartoon afterward—Tip O'Neill was Speaker at that time—that showed Tip O'Neill and he has his mother there, and it says "Social Security" on her. He is dropping her off at the nursing home, saying, "Good to see you, Ma. I will call you in 2 years when we need you once more." From that day on, the Republicans have been frightened of ever talking about Social Security.

The fright is on both sides. You will recall the 1984 Democratic convention in San Francisco, where Fritz Mondale said, "The President has a secret plan to raise taxes. He will not tell you, but I am courageous enough." And President Reagan says, "There he goes again." For the rest of that campaign, Fritz Mondale was on the defensive about tax increases. So we are all skittish.

It is understandable why we are politically skittish. None of us, Republicans or Democrats, or the President, want to take the step forward that we all know needs to be done. The most freshman Member of this Congress, who has never been in politics before, knows what the problem is. This argument about term limits and that you have to have 8, or 9, or 10 terms to understand the problems—no, no, no. You do not have to be here 10 minutes to understand the problem. Maybe you have to be here 8, 9, or 10 terms to have the courage, when you finally feel safe enough to face the problem and say, let us solve it. We know what the problem is.

Well, where are we now? The President has given up. He, in essence, has thrown in the towel. Last year, when he proposed his health bill, he had $475 billion in Medicare and Medicaid restraints. Someone called them "cuts" because they were not lower than we were, but over the period of 5 years, $475 billion in Medicare and Medicaid restraints. He has no health care in the budget this year and has no restraints of any consequence in Medicare or Medicaid—as if to sort of say it is Congress' problem, or maybe the Republicans' problem, to come up with a budget.

You know, it is funny. It is all right to have those $475 billion in reductions if we were going to spend them, but it is not all right to have them if we are going to save them and apply them to the deficit. At least that is what the President is saying.

Then the critics say, well, we cannot vote for this until we know the direction we are going to go in. I have heard the Senator from Ohio, the Senator from Michigan, the Senator from South Dakota say that, until we know specifically what the roadmap is, we cannot vote for this. I would defy any Governor in this country right now —and nearly all of them operate under a balanced budget requirement—to tell me how they are going to balance their budget in 2002. I bet you they could not. They will have to raise the sales tax, or cut welfare, cut the highway fund and say we can use the State highway funds for the State. They know they have to do it and will do it, and they will do it because they have to do it. And we will do it if we have to do it. But if we use the excuse that because we do not have a roadmap now as to how it is going to be done, we will not vote for this amendment. That is a patsy's way out. That means we do not want to face the problem. This is an excuse to avoid it.

But if they want suggestions, I will give them some. My favorite one that everybody comes up with is that we will tax the rich—however you define who is rich. If we just tax the rich, that will take care of our problem. Well, I had the Joint Tax Committee do a chart for me, an estimate and a letter of how much money we could get. I asked how much money could we confiscate from those earning over $200,000? We will have a 100 percent rate of taxation. We will take it all.

They said they could not quite answer that question. They had never run that on their computers, but they could tell me how much untaxed income there was with people above $200,000. So, they sent me the letter. And this year, if we were to tax all of the rest of the income that is not now taxed above $200,000, 100 percent of it, we would get about $182 billion,—billion, with a "b"—not enough to narrow our deficit.

My hunch is we would never get it again, because I do not think anybody would ever, ever again make over $200,000 if they had to give it all to the Government.

And the Joint Committee had a wonderful paragraph in this letter. I will just read the paragraph and then put the whole letter in. This is the effect of a 100 percent rate of taxation. These effects would be extraordinary.

> If the 100 percent tax rates were to be in effect for a substantial period of time. . . then in our judgment there would be a substantial reduction in income-producing activity in the economy and, thus, a significant reduction in tax receipts to the Federal Government.

I do not know why that should surprise anybody. But so much for the goose and the golden egg. We can get it once, then that deficit problem is right back with us again.

Mr. President, I ask unanimous consent that the text of the letter from the Joint Committee on Taxation be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, October 12, 1994.

Hon. BOB PACKWOOD,
U.S. Senate,
Washington, DC.

DEAR SENATOR PACKWOOD: This is in response to your letter of September 30, 1994,

for revenue estimates of imposing a 100-percent tax on all income over $100,000, and alternatively, income over $200,000. We are unable to provide a revenue estimate for these options for the reasons given below. However, the following table, which gives the amount of taxable income above those levels reduced by the current Federal income tax attributable to such income shows the amount of tax that could be raised by such change assuming no behavioral or macroeconomic responses.

[In billions of dollars]

Item	1995	1996	1997	1998	1999	1999–95
After tax income in excess of:						
100,000	289.1	314.4	342.8	370.1	399.6	1,716.1
200,000	182.3	195.5	212.6	227.0	243.5	1,061.9

As mentioned above, we are unable to provide a complete analysis of the proposal outlined. Our estimating models and methodology incorporate behavioral effects based on available empirical evidence to produce reliable estimates of the effects of tax changes in general. Even when tax rate changes are relatively small, our analyses include significant changes in behavior to account for portfolio shifts and the timing of income realizations. At a proposed tax rate of 100 percent, however, we lack historical experience on which to base an estimate of the significant behavioral effects. One may speculate that these effects would be extraordinary. If the 100-percent tax rate were to be in effect for a substantial period of time, so that taxpayers would have no rational hope of avoiding or evading the 100-percent tax in the outyears by deferring income to lower rate years or using other tax avoidance or deferral plans, then in our judgment there would be a substantial reduction in income-producing activity in the economy and, thus, a significant reduction in tax receipts to the Federal government.

I hope this information is helpful to you. If we can be of further assistance, please let me know.

Sincerely,

JOHN L. BUCKLEY.

Mr. PACKWOOD. So, let us go on down some other suggestions.

Restrain spending. We all get this from home. If we just spent no more next year than we spend now, in 3 years we will balance the budget. If we spend no more than we spend now, we will balance the budget.

I will give you some problems. You can decide what you want to do with them.

Let us just take Social Security. Let us assume Social Security now spends $1,000. You have 10 recipients and they each get $100 apiece; $1,000, that is all we spend on Social Security.

And let us say there is 10 percent inflation. Under the present law, all of those recipients would get a 10-percent increase. They would all get $110, and we would spend $1,100 on Social Security. But we said we are not going to spend any more than we spend now. Therefore, do they all get just $100 and their purchasing power declines a bit?

Or I will give you another scenario. We are only going to spend $1,000. There are 10 recipients on Social Security. But the population is aging. Let us say next year one more person becomes eligible. Now we have 11, not 10. But we are only going to spend $1,000. Do they all get about $90 instead of the 10 that got $100? When you pose this to people, they say, "Well, we did not think about that. Maybe we can give Social Security recipients their cost-of-living increase and still hold all others."

But now they do not expect to hold all other things this year. You are going to have to spend less this year. Do you know what you get? "Well, we have to spend more for defense. Don't spend any more than we spent last year. Increase defense, increase education, increase health, but don't spend any more than you spent last year and take it out of somebody else. Don't take it out of me."

I was intrigued with a statement in the paper, if quoted accurately, by the American Medical Association the day before yesterday. I like the American Medical Association, but here is the statement.

AMA leaders said at a news conference here that Medicare needs a major restructuring to save it from bankruptcy, but insisted that should not be achieved by slashing doctors' or other health care providers' fees. The American Hospital Association and others that provide health services have taken a similar position and a coalition is forming to fight such cuts.

Mr. President, there are only two expenses to Medicare. One is we reimburse the patient on occasion and the other is we pay the doctors and hospitals and labs and what not. That is all there is. Those who provide the services say, "Not us," and the beneficiaries say, "Not us, but cut spending."

Well, if you do not cut those who provide the medical services and if you do not cut those who get the medical services, where do you cut the spending? You do not. These are the things we want to gloss over.

The same problem exists if, instead of cutting spending, you say, "Well, let's do it at the Consumer Price Index minus 1 percent or minus 2 percent." You have these same variations all the way through. I am not saying it cannot be done, but you have to realize that while Social Security only goes up with the cost of living each year, plus any new members that come on—it is not just the cost of living; you have more people, more expenses—but Medicaid and Medicare go up anywhere from 7 or 8 percent, at a minimum, to 15 to 16 percent a year—a year.

Do you know what would happen if we take a 15-percent increase and compound it over 5 years? You have more than doubled your spending.

So we say, "Well, still spend the same we spent last year. Spend what we spent last year plus inflation. It is doable and, if we are forced to do it, we will do it and we should do it."

And everybody says the problems are the entitlements. That is a term we use here in Washington. It is not a term any ordinary American uses.

Entitlement means nothing more than a Government program that is passed and put into law and we never have to appropriate the money for it. Again, you get it automatically, unless we change the law. Social Security is the one that is best known. Medicare is one. Unless we change the law—positively vote to change it, the President has to sign it, or if he vetoes it we have to override the veto—this law goes on forever and it spends money forever.

They say, "Take it out of the entitlements." We have about 410 entitlement programs in this country—410—that automatically spend money, so surely we can find some money in entitlements.

So I took a look at some of the entitlements. I have some where we can save some money.

The Canal Zone Biological Area gets $150,000 a year. This is an island in the Panama Canal Zone. The money comes out of the Department of the Interior, administered by the Smithsonian, but it is an entitlement. Well, there is one we could save. There is 150,000 bucks.

The John C. Stennis Center for Public Service Development trust fund. Now this is a big one—$680,000. This program trains State and local public servants to become more efficient. This program ought to be applied to the Federal Government, not the State and local governments. It also "increases awareness about the importance of public service." We all revere John Stennis and we would hate to do anything to demean his memory, but this is $680,000 in spending.

Now, another: The Pershing Hall revolving fund. General Pershing, of course, was the commander of our troops in Europe in World War I. Pershing Hall is a Department of Veterans Affairs building in Paris, France. It does not get many tourists. It is currently being subleased to a hotel firm which is gutting the building and will turn it into a hotel. A hotel firm is going to gut the building, and turn it into a hotel. But it is an entitlement of $114,000 in fiscal year 1996.

Let us take the last one. Payment of Government losses in shipment fund. This is a permanent, indefinite appropriation in the Treasury Department. The fund would cover losses incurred by the Postal Service or any Federal agency in shipping coins, currency, and savings bonds—$500,000.

I have added up these four, and I think they come to a couple million total for these four entitlements. I said we have 410 entitlements. These are four inexpensive ones. But the bottom 400 of them altogether—there are about 410—the bottom 400, in terms of expense, cost about plus or minus $50 billion. Fifty-billion dollars is big money, but it is for 400 of the entitlements—$50 billion.

The top four entitlements, plus interest—and the top three are Medicare, Medicaid, and Social Security, and then fourth is other Government retirements, military, civilian retirements—just those four, plus interest, are $900 billion a year. You know interest is the ultimate entitlement. We have to pay it or we can be sued. The entire cost of the bottom 400, the $50 billion, is less than the amount that these four, plus interest, goes up a year.

You want to get rid of the 400? Go ahead. Save the $50 billion and the deficit, then, instead of being $200 billion will be $150 billion.

The problem is, we are all afraid to approach these big entitlements.

Now what is the old expression? If you want to go duck hunting, you go where the ducks are. The ducks are these big programs.

You think they are growing? Boy, are they growing. You take those four that I mentioned, plus interest, in 1964 those four, plus interest, were 23 percent of all of the money that the Federal Government spends—23 percent. Ten years later, in 1974, they were 39 percent. In 1984, they were 48 percent. In 1994, they were 56 percent. In the year 2004, they will be 67 percent.

One day all the money the Federal Government spends will go for these four programs, plus interest. And we are afraid to touch them.

One of two things happens, or maybe three things, if we do not do something soon. First, as we begin to spend more and more and more on these programs, if we do not increase taxes, all the other programs of Government get squeezed. We spend less on the Coast Guard and less on education and less on environmental protection and less on defense. Less on everything. So we can fund these four.

Or we raise taxes—and I am not suggesting that, and I do not want that—we raise taxes to try to fund the other programs. Do not worry about narrowing the deficit. We will not use the taxes to narrow the deficit. We will spend it if we have it, so we still have a deficit. That is the other alternative.

Or maybe we do nothing and we finally get to the place where there is a cataclysmic catastrophe coming. It is coming first in Medicare. There are two parts to Medicare. One is part A, that is hospital payments; the other is part B, and that is doctor payments.

In the year 2000 to 2001, the part A trust fund is exhausted. The part B portion which is the doctor payment—on which we now spend $47 billion out of the general fund—this is general taxpayers' money. This is not from the beneficiaries' premium that is deducted from a Social Security check.

But this scenario does not hold a candle to where we will be in Social Security in the lifetime of most of the Members of this Senate. At the moment, Social Security is taking in more money than it pays out. We will take in $70 to $80 billion more this year than we take out. That will continue on until about the year 2013.

The reason we are doing that is because we know the baby boomers born from 1945 to 1965 start to retire in about the year 2010. Give or take a few years or so from 2010—2013—the Social Security starts to pay out more than it takes in.

But at the moment it is taking in more money and investing it in Government bonds. That is all we allow it to do, Government bonds. If we had cut them lose and let them invest what they wanted in 1978, they might have invested in Texas real estate and they would be broke now.

Here comes the $70 billion more than we pay out. In it comes. Social Security administration, in essence, gives the $70 billion to the Treasury Department. The Treasury Department gives the Social Security administration a bond for $70 billion, a Government bond. We, thereupon, spend that money now, the $70 billion. We spend it on the Coast Guard, on education. We spend it on defense, we spend it on environmental protection, we spend it on everything Government spends money on. The $70 billion is gone.

This continues, in the next year, the year after that, the year after that until about the year 2013 when I estimate Social Security will probably hold almost 3 trillion dollars' worth of Government bonds. Now, at this stage they start to pay out more than they take in. The Social Security Administrator takes their bond to the Treasurer of the United States and says, "Here, give me some money to pay these benefits." The Treasurer looks at the Administrator and says, "Are you crazy? We spent that money 20 years ago. What do you mean, give you money? I don't have any money."

At that stage we have to start redeeming the bonds. For example, if we keep faith with the recipients we have to raise the taxes to pay those bonds. That is not bad enough. About the year 2013 we start to pay out more money than we take in. By about the year 2029, only 34 years from now—look backward 34 years and that is but a memory. That is not history. Much of it is as clear today as it was 34 years ago. We think that is not a very long time. Yet think ahead and we think it is an eternity.

About the year 2029, not only is Social Security paying out a lot more than it takes in, all of the bonds are gone. They have now redeemed all of the bonds, and by that year Social Security is paying out about $3 trillion a year. Unfortunately, it is only taking in about $2.2 trillion, roughly, $700 to $800 billion shortfall and no bonds to turn in.

At that stage, if we are going to keep faith, and we are going to do it with a payroll tax we will have a whopping increase in the payroll taxes. I cannot even estimate how high it will have to be to pay that kind of a deficit.

What I fear is going to happen is this: Your children or your grandchildren at that stage will say, "I am not going to pay that money. I will not pay that much. And I will not vote for anybody that will tax me that much," and this is where the cataclysmic coalition comes between generations.

We can cure that if we would face the problem now. But we are not going to, I fear. We are not going to unless we pass the balanced budget amendment. Then what does that require of Members? It does not require a cut. We spend, this year, 1995, rounded off to the nearest $100 billion, we will spend this year about $1.5 trillion, $1.5 trillion if we spend in what I referred to earlier as baseline.

If we do not change the laws at all, we do not add new spending, we do not add prescription drugs to Medicare, we do not add long-term care to Medicare, we spend as we are doing under the present law, in 7 years, in the year 2002, instead of spending $1.5 trillion, we will spend $2.2 trillion—$700 billion more.

When people talk about cutting, that is not a cut. We are not talking about cutting. In order to balance the budget in the year 2002, instead of spending $2.2 trillion we might have to spend $2 trillion. Now we are spending $1.5. Now to balance the budget we would have to spend about $2 trillion instead of $2.2. Is that impossible? Can we not do that?

The answer is, based upon experience, no. Better phrase it differently. We will not do that. Because in order to do it, we would have to undertake steps that we do not politically want to undertake and we are afraid.

I talked about some of the significant debates of 20–25 years ago and some of the steps we took and the one-vote margins that made a difference. And yet in my quarter of a century in this Senate there probably will be no more important vote that I have cast, or if I stayed here another quarter of a century, that I ever would cast than the one that says to my kids and my grandkids I was able to help save this country.

Sometimes what you do is a holding action. In the military it is referred to as a holding action. Major Devereux at Wake Island, shortly after the Japanese bombed Pearl Harbor, 200, 225 marines on this atoll, and the Japanese invaded it and we can see the footage of it, men swarming to shore like ants. There is Major Devereux, and his men, holding on, knowing they were defeated, waiting for the time.

Or maybe it was General Wainwright at Corregidor, when we moved in and it was clearly a loss. Or Jack Kennedy, a young PT boat commander being part of that rescue. Or Colonel Travis at the Alamo, extraordinary courage, when

Sam Houston says to him, "We need a holding action until we can get our army organized." And when the siege starts February 23, and the battle is on March 6, for 2 weeks they held out, wiped out the men but gave Sam Houston time to put the army together and win at the battle of San Jacinto. These actions made a major difference in American history.

Well, we are at that point now, but I think it is not a holding action. Every now and then, there is a difference between a holding action and an action you are going to take that is priceless. It is not Corregidor Island or Wake Island or San Jacinto.

Shakespeare said it best in Henry V. You recall the history. The French and the English in the Hundred Years War had been battling. France had clearly the superior position in geography, and they were a unified nation and the biggest nation in Europe. The British had beat them at Poitiers and then at Crecy in the early part of the Hundred Years War. But the final battle was coming at Agincourt, and the English were utterly at a disadvantage—foreign soil, 9,000 troops, the French had 30,000.

Picture Shakespeare's opening scene: Westmoreland is the king's cousin, and Westmoreland comes in. They know the battle is going to take place the next day.

He said:

O', that we now had here
But one ten thousand of those men in England
That do no work today!

And the king responds:

What's he that wishes so?
My cousin Westmoreland? No, my fair cousin.
If we are marked to die, we are enow
To do our country proud, and if we live,
The fewer the men, the greater share of honor.

Going on he says:

This day is called the feast of Crispian.
He that outlives this day and comes safe home
Will stand a-tiptoe when this day is named
He that shall see this day and live old age
Will yearly on the vigil feast his neighbors
And say "Tomorrow is Saint Crispian."
Then will he strip his sleeve and show his scars,
[And say "These wounds I had on Crispin's day."]
And gentlemen in England now abed
Shall think themselves accurs'd they were not here,
And hold their manhoods cheap whiles any speaks
That fought with us on Saint Crispin's day.

Today is an interesting day. Fortunately, there is a feast day for almost everyday. Today is Saint Scholastica Day, named after Saint Scholastica. It means "learned."

And we are going to vote on this day on a significant amendment that I think will determine whether or not we pass the balanced budget amendment. Some will flee, some will stand.

I quote one other part from the soliloquy that I left out at the time when Henry turns to his troops and says:

Let he which hath no stomach for this fight depart.
His passport shall be made
And crowns for convoy put into his purse.
I would not die in that man's company
That fears his fellowship to die with us.

On this Feast Day of Saint Scholastica, the "learned," we are going to vote. The vote we make will probably have a greater effect on our children and grandchildren than anything else we will ever do, and I would hate to be that man or woman that serves in this Senate whose child or grandchild comes to you 10 or 20 or 50 years from now and says: "Where were you on Saint Scholastica Day?"

And you say: "I fled the battlefield."

I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I have spoken with the manager of the bill on the other side, and we ask that we go to the constitutional amendment to balance the budget, which will be the order at 11 o'clock, and that we divide the approximately 12 minutes equally between the two sides.

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

Mr. REID. If the Chair will advise me when I have used 6 minutes, I would appreciate it.

The PRESIDING OFFICER. The Chair will advise you.

Mr. REID. Mr. President, I refer at this time to a statement that is on this chart behind me from the majority leader of the other body in the House of Representatives, the Honorable RICHARD ARMEY.

He said:

We have the serious business of passing a balanced budget amendment, and I am profoundly convinced that putting the details out would make that virtually impossible.

There has been an attempt to keep from the American people what would happen to Social Security if it is not exempted from a balanced budget amendment. Why? The answer is in another statement made by the same majority leader, Congressman ARMEY, when he was asked the question why they had not produced a detailed plan for balancing the budget, wherein he responded, and I quote:

Because the fact of the matter is that once Members of Congress know exactly chapter and verse, the pain that the Government must live with in order to get a balanced budget, their knees will buckle.

Mr. President, there are a lot of people whose knees are buckling as a result of the fact that they are going to have to vote whether or not to exempt Social Security from the balanced budget amendment. However, the amendment before this body that we will vote on at 11:30 is a mockery. It is an effort to allow people to walk from this Chamber and say, "I voted to protect Social Security," when, in fact, they did just the opposite.

This fig-leaf amendment that is now before this body will be adopted today, just like it did in the other body. But passage means nothing, just as it meant nothing in the House of Representatives.

What it does provide is a fig leaf, a cover, a sham, a farce, a mockery to cloak, to conceal, to hide and mask the fact that Social Security will never be the same if the Reid amendment is not adopted, and this amendment will do nothing to conceal that, even though there is an attempt to conceal it.

Mr. President, virtually everybody will vote for this weak, infirmed, ineffectual amendment that we will be called upon to cast our ballot at 11:30. We will do it because it is just barely—just barely—better than nothing.

This amendment allows some to go home and say, "I protected Social Security," but all should smile when a Member of Congress uses this amendment to say they protected Social Security because that Member of Congress will have trouble keeping a straight face when those words are spoken: "I protected Social Security."

I repeat, the only way to prevent the raping of Social Security is to vote for the Reid amendment next week. Today's vote is posturing and posturing only.

My amendment excludes Social Security from the general revenues of this country. This forces Social Security into the pot of red ink; that is, the general revenues of the United States. This vote is a fig leaf, but sadly, Mr. President, it does not cover even the bare essentials.

If the balanced budget amendment is ratified, then Congress is without authority to exclude Social Security trust funds from the calculations of total receipts and outlays under section 1 of the amendment, as stated by the Senate's leading legal scholar, Senator HOWELL HEFLIN, of Alabama, and the Congressional Reference Service, a man by the name of Kenneth Thomas.

So this amendment does nothing to change the direct words of the underlying constitutional amendment. Not only do we have the words of the amendment which jeopardize Social Security, but we have the report from the committee of jurisdiction, the Judiciary Committee, which reported the bill. This report is an effort by the committee—it is done on every piece of legislation—to clarify the intent of the legislation. But let us listen to what the report says. On page 19, it states that social insurance should be included in receipts.

The report on the same page excluded, or exempted, the Tennessee Valley Authority but not Social Security. This should give everyone an idea of the priorities of this body: Power over senior citizens. This amendment will do nothing for the tens of millions of Americans who pay their hard-earned money into Social Security and then expect to receive this retirement in their golden years.

No one watching this debate should be mistaken about what is happening in this Chamber this day. It is not the politics of meaning, but the politics of meaninglessness. If it is adopted, which I believe it will be, it will provide meaningless protection to the Social Security trust funds.

On the other hand, it provides meaningful protection to politics. It does not take great courage to vote for this amendment. However, it is a lot like the old beer commercial: Tastes great, less filling. It will do nothing to prevent the future raiding of the escalating surpluses that will be used to pay back the baby boomers. It does nothing to allay the fears of today's senior citizens that they will not receive what is rightfully theirs.

The PRESIDING OFFICER. The Senator has used 6 minutes.

Mr. REID. Could I have 1 more minute?

Mr. DASCHLE. I yield the Senator another minute.

Mr. REID. But it should create a state of despair for all generations, not only my generation, but my children's generation and their grandchildren. I have three grandchildren, all girls: Two age 4, one age 2. I want to protect them, because the real contract with America, the real contract with my grandchildren is not a contract of passing fancy but the Social Security contract. This contract, Social Security, deserves our defense. The vote today is a clever effort to let down our defense, to allow the destruction of the greatest social program the world has ever known, Social Security.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, let me thank the distinguished Senator from Nevada for his statement this morning and for the great leadership he has shown on this issue. This has been an issue that the Senator from Nevada has been associated with now for a long period of time. He has led our caucus, he has led the Senate, and I commend him for the tremendous effort that he has put forth, especially now over the last couple of days.

As our colleagues know, we are about to vote on a motion by the majority leader to request a Budget Committee report on how to protect current Social Security from the effects of a balanced budget amendment. I support that request, but unfortunately, we all know that approach, while well-intentioned, just is not going to get the job done.

First, the request is just that, it is a request. It does not bind the Congress. It does not bind any future Congresses.

Second, the job is more significant than that. It is more significant than simply requesting that somehow at some point in the future we hope that Congresses can protect this important trust fund. The real job is to protect it, and the only way to protect the dedicated funds into which every working American pays to help secure his or her future or the futures of their parents or their children, the only way to do that is to do as the Senator from Nevada has now proposed.

Even if the majority leader's request was binding, which we all know it is not, it would do nothing to protect those funds in the future. There is no way that we can guarantee future Congresses are going to do what we ask them to do this year. And so they remain vulnerable to the inevitable attempts to use these funds in future Congresses as we have used them in past Congresses: To hide the true size of the deficit.

So as we contemplate amending the Constitution, it is essential—it is essential—that we completely be up front with the American people about how we are going to do it. If we want to build a trust, a faith, a confidence in this institution, we have to level with the public and acknowledge that the nonbinding request upon which we are about to vote is fine, but it simply does nothing, nothing to protect Social Security in the future. When we talk about amending the Constitution, it is the future that we are obligated to consider.

The Senate has been debating this issue for some time now, and as it has, many of us have attempted to put teeth and honesty into this particular amendment. We have done so because it is evident from the so-called Contract With America that the only reliable cutting promised by the new congressional majority is going to be made in revenues. The Contract With America promises no spending cuts at all.

Let me repeat that. The Contract With America does not delineate any cuts whatsoever in spending. To the contrary, it would commit the Government to substantial new spending. At the same time, it offers a balanced constitutional amendment—a promise with no hint on how it will be fulfilled. And that responsibility is ultimately passed on to future Congresses in a future year. It avoids the responsibility, it avoids outlining the spending cuts that will be required, and we all know we are going to have to vote for if we are here over the next 7 years.

In November of last year, the majority told us they would show us a budget cutting plan that would establish a glidepath to a balanced budget. Well, we are still waiting.

Then we began to hear that we would reach a budgetary balance painlessly by curtailing program inflation. But we have now looked at the numbers and this easy, pain-free method will not work. It will not work because the numbers do not add up.

Then the idea was to wait for the President's 1996 budget and complain that he did not do what the majority said they themselves would do in November—set out a plan to cut spending and balance the budget by the year 2002.

So since November, we have heard pledges that Social Security will not be touched, promises that a plan will be written, and declarations that it is not fair to ask when.

Current Medicare enrollees were told earlier that Medicare would not be on the chopping block. Now we are hearing complaints that the President did not put it there.

I weigh the promises against the hard facts of budget numbers, and I think a lot of colleagues would share my view that the promises do not add up, but the numbers do. And what the numbers add up to is that these promises are, frankly, unrealistic. The promise to lay out a spending plan has not been kept and apparently will not be.

Intentionally or not, the new majority sent that signal 2 days ago when every single Senator on the other side voted against telling the American people how the budget would be balanced in 7 years' time. And now they want us to accept on faith the promise to protect Social Security.

While I have no doubt that many of my colleagues truly want to keep that promise, the fact is we all know that the pending motion does not bind even this Congress, much less future Congresses. There is no binding way with which we can take this resolution and tell anybody in the future that anything is changed that would give them confidence in knowing their benefits will be there.

So, Mr. President, that is why the Reid-Feinstein amendment is necessary, to ensure that our good intentions will be realized. The amendment solidifies the Social Security promise. It writes into the Constitution, it says to Social Security enrollees, who include virtually all working people in this country, as well as their retired parents, that these trust funds will be protected from ever being used in the future to balance the Federal budget. It is the only thing—the only thing we know of that will absolutely guarantee in writing, in black and white, that Social Security is a trust fund that will always be there. I supported it last year. I will vote for it again this year. It is just as necessary today as it was back then.

Why does it deserve special treatment? Because it is a contract between generations, that is why. Because it

protects older Americans against poverty, that is why. Because it protects working families in case of premature death, that is why. Because it protects workers if they are disabled by illness or accident; that is why, too.

It says to every working person: You pay into these trust funds and when it is your turn, when it is time for you to use them—when you are too old, when you are too sick, too disabled to work—your Nation will make sure you do not lose everything, everything that you have worked for.

Today, 60 years after President Franklin Roosevelt sealed the real contract with Americans, Social Security is still a promise that is honored by Government. It is something people can count on to be there when they need it. It is a contract which recognizes that we are all human, that we all grow old, we are all vulnerable to illness and to ill health and to accident. It says that we, as Americans, will not let hard-working people sink into poverty through no fault of their own regardless of the circumstances. And that is a contract.

That is a commitment that has not withstood 1 year, or one election, but generations—lifetimes. From its very creation in 1935 until 1969, everyone here knows that the program was off budget. And then everyone also knows what happened in 1969. In an attempt to mask the costs of the Vietnam war and the growing deficit, guess what happened? Social Security was put back on the budget.

Then, in 1990, Congress again voted to take it off budget. We may have forgotten what that vote was, Mr. President. It was 98 to 2—98 to 2, almost unanimous. The people in this body said Social Security ought to be off budget and not used for other things, not used to mask the debt, not used to pay for other things that may come along, whether foreign or domestic. We said then that Social Security revenues held in trust for retirement should not be used to balance the Federal budget. And we did the right thing.

The flaw in the proposal now before us is that it includes in the budget Social Security surpluses that should be set aside to pay future retirement benefits. That is the flaw. Everybody knows it is there. Everybody knows we do not want it to be there. The question is, How serious are we about taking it out of there?

Social Security is not responsible for one dime of the national debt, and it should not be raided to pay off that debt now. Those who oppose the Reid amendment argue that while Social Security did not cause the deficit, they are very concerned about what happens if we take it off the table to pay down that deficit. They do not want to acknowledge the Reid amendment can be used to ensure we protect it in the future. As long as the trust funds are part of the unified budget, we all know that they help hide the real dimensions of the budgetary imbalance. The program is currently generating a surplus. We all know that, too.

There is a critical reason for accumulating those surpluses. It was laid out very explicitly by the senior Senator from New York just yesterday. Following World War II, the level of Social Security taxes was raised so that adequate funds would be available to pay the retirement benefits that will come due as those of us who are baby boomers retire. Those surpluses are meant to be there as a confidence-building effort to ensure the trust fund meets the predictable benefit payments in the future. If they are not there, from where will they come?

The Federal Government will owe the Social Security system nearly $3 trillion by the year 2017—$3 trillion. That is why we need to preserve the surpluses and protect them, because that $3 trillion is going to come due one day. Whether we have masked the deficit, whether we have used those funds to pay for other things or not, that money will be needed.

So the Social Security system today is taking in far more revenues than it is paying out in benefits for that reason alone. This year it will take in $69 billion more than it pays out. Between now and 2002, when the balanced budget amendment would take effect, Social Security will have amassed $705 billion in additional revenue.

Here is the point. If there is one point to the vote we are about to take, it is this. Without the Reid amendment, every dollar of those revenues will be placed on budget—every dollar—to give the false impression that there is $705 billion in available cash. Future Congresses would be able to avoid reducing the deficit by that amount, by $705 billion, in the next 7 years alone. That is why this issue is so important. The threat of the use of trust funds is a very real one. It is happening right now. It has been tried before. It will be tried again.

Our late colleague, the highly respected Senator from Pennsylvania, John Heinz, used the right word, "embezzlement," when he helped to lead the fight to take Social Security off the budget.

The Senator from New York, the one to whom I have just recently referred, Senator MOYNIHAN, has described it as "thievery."

I have supported a balanced budget amendment because I believe it is completely unfair to leave the current legacy of debt to our children and grandchildren. But what happens if we deplete the Social Security trust fund that they are now counting on for their retirements? We will have failed. It is that simple. We will have failed to live up to our commitment to them.

The Reid amendment would restore budgetary honesty by requiring an accurate accounting of the true size of the Nation's deficit problem. That is what it does. Taking Social Security out of the calculation would protect the fiscal integrity of the Social Security trust funds. It would require us to enact the tough policies needed to eliminate the deficit.

Many of our colleagues argue it is unnecessary, that they will help protect Social Security in the future. But I urge those Senators, if they are truly sincere, to solidify that commitment in the Constitution itself to put an end to public concerns that the budget will be balanced at the expense of trust funds.

So again, I remind everyone that less than 5 years ago, 98 Senators, across party lines, voted to take Social Security off the unified budget. Solemn commitments were made then—no less solemn than today's promises—that the special status of Social Security is acknowledged and, more important, will be respected by this Congress and by future Congresses. But the future is now, and it is again necessary to defend Social Security's unique mission.

So I hope my colleagues will do the only thing that will ensure that Social Security is able to continue that mission into the future. We need to support the Reid amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, may I ask how much time the majority side has?

The PRESIDING OFFICER. The majority side has 17 minutes.

Mr. HATCH. Mr. President, let us just all understand here, the Social Security trust fund is now filled with a bunch of IOU papers because the Federal Government has been borrowing from that trust fund and has been using that money to pay off Federal obligations. By agreeing to the Reid amendment, that does not solve that problem at all. The trust fund is a bunch of IOU's. Frankly, unless we get spending under control, unless we get this Government's fiscal house in order, all that is going to be left is that pile of papers, those IOU's, because all of that money will have been spent.

So this is not that issue. Just look at this debt tracker that we have here. We are now in our 12th day. I might as well put that one up here: 12th day of debate. During these 12 days, we have gone above $4.8 trillion. We are now almost $10 billion in additional deficit in just the 12 days we have been debating this.

This is serious stuff. And, frankly, if we do not keep the balanced budget amendment intact to cover everything in the Federal Government, we will not get this under control.

I would like to congratulate Senator DOLE and all of my colleagues who support offering this motion to refer this

measure. This motion requires that the Budget Committee report how, in implementing the balanced budget amendment, Congress will move toward balancing the budget without reducing Social Security benefits or increasing Social Security taxes. Let me repeat that. Congress will neither cut Social Security benefits nor increase Social Security taxes to balance the budget. I have maintained that this is an achievable goal, and now we have the first vehicle to demonstrate it.

The next step, of course, is to pass the balanced budget amendment and start the Nation down the road to fiscal responsibility. This is a very good approach to ensuring that we will not harm either our current or our future retirees as we get this Nation's fiscal house in order. And the only thing that is going to do that is the balanced budget amendment as it is written now. It is bipartisan. It is consensus. It is Democrat-Republican. It is the only one that we can get through, and we should not try to change it with issues that can be solved like this, which does solve them.

For all of our generations this is important. We want to protect Social Security. There is not a person in this body or in the other body who is not going to do that. I do not know of anyone in the House or the Senate who is not going to protect Social Security under the balanced budget amendment. And this measure that Senator DOLE, Senator DOMENICI, and others have helped with will prove it.

But everybody knows that, if we amend the balanced budget amendment to exclude Social Security from its features, the balanced budget amendment will not be worth the paper it is written on. Everybody knows that because that would be the loophole through which they would drive every program there is. We have already seen that with SSI. SSI is paid out of general revenues, but it is part of Social Security. That would be the first thing they would turn over to Social Security revenues. I will say that you can add almost any other social spending program just by calling it Social Security.

So everybody knows what I am talking about, including those who are arguing this issue. Anyone who says otherwise is simply using a scare tactic, trying to scare our seniors into believing that they are going to be hurt by a balanced budget amendment while the exact opposite is true. They are going to be killed if we do not get spending under control, and if we do not get this Government's fiscal house in order. We have to do it. And it is in the interest of our seniors to do it, and I think most seniors understand that, and I think they know these scare tactics for what they are. There is no question that we will protect Social Security as we implement the balanced budget amendment. We provide in the amendment for implementing legislation in which Congress will do that, as Senator DOLE's motion shows today.

We all want to protect Social Security. It holds a special place in our Nation's programs. We will protect Social Security and in an appropriate and reasonable way. The report required by this motion will show that we can do that. It is wholly appropriate. It is the reasonable way to do it. It is wholly reasonable, and it points the way to real protection for those who are relying upon the Social Security trust funds as well as future generations who will depend on our disciplining ourselves and our deficit spending habits.

This provision goes to the heart of the concern of some that Social Security benefit cuts or tax hikes could result from attempts to balance the budget. It shows that, as we move to balancing the budget, we will not cut benefits or raise taxes in the Social Security trust funds in order to balance the budget.

I wholly agree with the intention of this motion, and I urge my colleagues, all those who, like me, support a real balanced budget, and all of those who, like me—meaning everybody—support protecting Social Security, I ask all of them, to vote for this measure. Let us adopt this reasonable and appropriate approach showing that we will protect Social Security as we move toward balancing our Federal budget.

This motion requires simply that the Budget Committee of the Senate report to the Congress how we can balance the budget without touching Social Security. It will show that we can do what we have said we could, and it is the right way to do it without writing a statute into this amendment.

We are talking about the Constitution that we are amending. We do not need a statute, and we need to do something about this ever-increasing debt. This is only a modest illustration. But, in 12 days our debt has gone up $9,953,280,000, in the 12 days that we have been debating this matter and delaying and putting it off. Now we are getting down to brass tacks. It is time to vote for this.

I hope that our colleagues will support the leader, Senator DOLE, and the leadership in doing this.

I yield 5 minutes to the distinguished Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, it is fair and I believe proper that the Senate of the United States speak to the citizens of this country as to our intent about how we plan to handle Social Security as we move toward a balanced budget. Therefore, I strongly support the Dole motion and encourage all Senators to vote for it because it is the appropriate way to express our will and to direct the Budget Committee in its proceedings once we have sent a balanced budget amendment to the States for their consideration and, hopefully, their ratification.

What is important is that it is separate and apart from the amendment itself because it expresses the will of Congress, and it does not clutter up the Constitution the way the Senator from Utah has so clearly spoken. It does not create the massive loophole that the Senator from Nevada is attempting to carve inside the Constitution that would allow future Congresses to drive ever-increasing social programs through the Social Security loophole and, in fact, potentially destroy the Social Security Program.

The strength of the Social Security Program has never been the law itself. The strength of the Social Security Program is right here on the floor of the U.S. Senate. It is the obligation of every Senator to honor what we believe to be a commitment to the citizens of this country who pay into a supplemental income program as to our obligation to ensure that program remain sound and stable throughout all time. There is no statute in the Constitution today singling out any special program of Government guaranteeing to the citizens how that program will be operated for all time. The Constitution has been, and must remain, a code, a sense of principle and an organic act that says here is how the collective government of our country operates. It is then Government's responsibility and this Senate's responsibility, once we have passed legislation and created law as we did with the Social Security System, to honor the commitment of that law so spoken to the American people.

Mr. President, the threat to Social Security is not the Senate of the United States. The threat to Social Security is the debt. It is the debt that is the threat. And if we fail to balance the Federal budget, Social Security will go down in 25 or 30 years. The obligations this Government will have will be so large that the tax increases that will be demanded to stabilize the system will be so large and overpowering that the average taxpayer will not be able to pay them, and by the Office of Management and Budget's own confession, 84 to 85 percent of the gross pay of the average worker out there in the future will have to go to the Government in taxes. You know what is going to happen, Mr. President, if that ever were to occur. They would look at me because, by then I would be on Social Security, and they would say, "I am sorry, LARRY, we cannot afford you because we cannot afford to pay our bills and put our kids through school and buy a home because you are asking too much of us for your own benefit."

That is why this motion is important, to say that it is the sense of the Congress in directing the Budget Committee, as we move to balance the budget, to do so without increasing

revenues or depleting the trust funds of Social Security. That is a clear intent, a clear expression of what this Senate will do. It is not unlike what the House did before they voted on the balanced budget amendment by a vote of over 418 to say to themselves and to the American people watching that they will not balance the Federal budget on the backs of the Social Security recipients.

But what they did not do and what we must not do is to clutter up the Constitution of this country by creating political loopholes. The American people are already suspicious of us. They know that we craft laws and we create special exemptions and special and unique opportunities with inside the law. We must never do that within our Constitution. That is why the Dole motion is so important and why I urge all of my colleagues to vote in support of that motion.

The PRESIDING OFFICER. The Senator from Utah controls 5 minutes.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. 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. HATFIELD. Mr. President, removing Social Security from the provisions of the balanced budget constitutional amendment misleads the American public and the current and future beneficiaries of the Social Security system. While removing Social Security from the balanced budget amendment is purported to protect its beneficiaries, in effect that action would threaten the long-term viability of the system. As noted in the report to the President from the Commission on Entitlement and Tax Reform, benefit payments under the Social Security system will exceed dedicated revenues for the program by the year 2013. This cash-flow shortfall will result in the Social Security trust fund becoming insolvent by the year 2029. Given these projections, removing Social Security from the table as we debate our Nation's fiscal problems would be irresponsible. The Congress owes it to the current and future beneficiaries of Social Security to address this long-term problem. Removing Social Security from the balanced budget amendment addresses a short-term politically sensitive issue; however, it does not address the long-term facts that reform is needed for this program to remain solvent.

Mr. DOLE. Mr. President, this motion presents us with another opportunity to demonstrate to America's seniors that there is broad bipartisan support for protecting Social Security as we move toward a balanced budget. On January 26, the Senate voted 83 to 16 to adopt a sense-of-the-Senate amendment stating that we intend to protect Social Security. The House of Representatives endorsed a similar concurrent resolution to protect Social Security by a vote of 412 to 18.

Mr. President, we need to put a halt to the scare tactics and reassure America's seniors.

Later this year, Republicans will put forward a detailed 5-year plan to put the budget on a path to balance by 2002. Our plan will not raise taxes. Our plan will not touch Social Security. Everything else, every Federal program from Amtrak to Zebra Mussel research will be on the table.

Mr. President, I urge my colleagues on both sides of the aisle to go on record to reassure America's seniors and vote for this motion.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

Mr. LOTT. I announce that the Senator from Wyoming [Mr. SIMPSON] is absent due to a death in the family.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON] would vote "yea."

Mr. FORD. I announce that the Senator from Louisiana [Mr. JOHNSTON] and the Senator from Minnesota [Mr. WELLSTONE] are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota [Mr. WELLSTONE] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 87, nays 10, as follows:

[Rollcall Vote No. 63 Leg.]

YEAS—87

Abraham	Dole	Kempthorne
Akaka	Domenici	Kennedy
Ashcroft	Dorgan	Kerrey
Baucus	Faircloth	Kerry
Bennett	Feingold	Kohl
Bond	Feinstein	Kyl
Boxer	Ford	Lautenberg
Breaux	Frist	Leahy
Brown	Glenn	Levin
Bryan	Gorton	Lieberman
Bumpers	Graham	Lott
Burns	Gramm	Lugar
Campbell	Grams	Mack
Chafee	Grassley	McCain
Coats	Gregg	McConnell
Cochran	Harkin	Mikulski
Cohen	Hatch	Moseley-Braun
Conrad	Heflin	Moynihan
Coverdell	Helms	Murkowski
Craig	Hutchison	Murray
D'Amato	Inhofe	Nickles
Daschle	Inouye	Pell
DeWine	Jeffords	Pressler
Dodd	Kassebaum	Pryor
Reid	Shelby	Stevens
Robb	Simon	Thomas
Rockefeller	Smith	Thompson
Roth	Snowe	Thurmond
Santorum	Specter	Warner

NAYS—10

Biden	Exon	Packwood
Bingaman	Hatfield	Sarbanes
Bradley	Hollings	
Byrd	Nunn	

NOT VOTING—3

Johnston	Simpson	Wellstone

So the amendment (No. 238) was agreed to.

Mr. CRAIG. Mr. President, I ask unanimous consent that it be in order to vitiate the yeas and nays on the amendment numbered 237.

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

The question is on agreeing to the amendment, as amended.

So the amendment (No. 237), as amended, was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the motion to refer, as amended.

So the motion, as amended, was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

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

HELIUM PROGRAM

Mr. FEINGOLD. Mr. President, Tuesday's business section of the Washington Post had an interesting article in it on the termination of the helium program, which is a target as elusive and difficult to rein in as the helium gas itself. The subheading of the article was entitled, "Helium Bureaucracy Targeted by Clinton Has Survived Many Budget Cutters."

The story in the Post went on to recount how termination of the helium program has been on the target list for elimination by those seeking to find ways to reduce the Federal bureaucracy.

The story talks about how this helium program has been on the list for ways to reduce the Federal bureaucracy and the Federal deficit, but that it has survived many attempts under the Reagan, Bush, and Clinton administrations, precisely because of the usual constituencies and political horse trading that tends to keep these programs alive.

Mr. President, I suggest that this helium program is exactly what this balanced budget amendment debate is all about, or maybe the better way to say it is, is what this balanced budget amendment debate should be about. It should be about how we are actually going to balance the budget.

On January 4, the first day of this Congress, I introduced legislation, S. 45, which would terminate the Federal helium program and sell off the crude helium that the Federal Government has stockpiled to pay off the $1.4 billion in program debt that has accumulated. We have good bipartisan support on the legislation. Senators HARKIN, LAUTENBERG, LEAHY, REID, KYL, BUMPERS, and CAMPBELL have all cosponsored this effort, once again, to try to get rid of the helium program.

It did not happen to be part of the plan I proposed to reduce the deficit during my campaign. But I had not thought about that one. It is important to add new ideas because, obviously, some of the things I wanted to cut, you cannot cut. There are not the votes for it.

So the helium program was a great one to add on because we found out it really does not make sense anymore. I, along with the cosponsors, want to see the 104th Congress be the Congress that finally gets rid of this program.

For this reason, I was delighted when the President highlighted, as the first program he mentioned for a cut in his State of the Union Address on January 24, the helium program. He said it is one of the businesses that the Federal Government ought to get out of running. I was also pleased, of course, to see that the President added this proposal into his budget, and that the President submitted that to Congress on Monday of this week.

In my mind, this is exactly the step-by-step approach that real deficit reduction is all about: Proposing a bill, hoping the President will push for it in his budget, getting it down here, and hoping we will get to work on it right away instead of waiting for the balanced budget amendment to be approved or not and waiting for the States to ratify it or not.

I hope, before this Congress adjourns, we will have completed this task and turned this program over to the private sector. If there is any reality at all to all this talk behind a balanced budget amendment, then surely the helium program should be on its way out.

There is simply no good reason for the Federal Government to continue to stockpile helium or run a public program when a perfectly viable private industry has developed that supply that we need for all of the Nation's helium requirements.

Mr. President, this program, like many of the deficit reduction targets that I have been involved with trying to get rid of—like Radio Free Europe or the wool and mohair program—was begun decades ago, when there was a different need and purpose. These programs, however, seem to survive long after the original purpose, because the constituencies build up that are dedicated to one cause, and that is simply preserving and continuing their existence whether we need the program or not. This is certainly true of the helium program.

This program dates back to the Wilson administration, when observation balloons were thought to have strategic merit. The Helium Act of 1925 authorized the Bureau of Mines to build and operate a helium extraction and purification plant in Amarillo, TX, in 1929.

According to the GAO, a nominal private helium industry existed in the United States before 1937. Between 1937 and 1960, the Bureau of Mines was the only domestic helium producer, selling most of what it produced to other Federal agencies, but also supplying some to private firms.

This program got an additional boost in 1960 when the Eisenhower administration feared there would not be a sufficient supply of helium to meet the demand for strategic blimps to spot enemy submarines in the Atlantic, and for maintaining fuel tank pressure and rocket engines for the fledgling space program at the time.

The 1960 act created incentives for private companies to return to the market and, as a result, we finally did have four private natural gas producing companies building five helium extraction facilities, and they entered the market.

What is happening now, as of 1995, is that 90 percent of the helium produced in this country does come from these private operations.

Unfortunately, though, the 1960 act also led to a growing Government-run operation and the stockpiling of helium purchased by the Federal Government.

The act also stipulated that the Bureau of Mines set prices that would cover all of this Government-run program's costs, including its debt and interest, and that Federal agencies and contractors were then required to buy helium from the Bureau of Mines.

Today, Mr. President, that debt is approximately $1.4 billion, and some have suggested that our current stockpile could supply the Government's needs, if you can believe it, for the next 80 to 100 years. Although the proponents of the program have a complicated argument about how this program does not really cost the Federal Government any money, the point is that the Federal Government does not need to run a helium program anymore. There is a private sector helium industry that can and does provide the necessary helium to the Government.

By terminating the program now, Mr. President, selling off the helium reserves over time to ensure that the taxpayers receive a fair price for the helium they have financed, we can pay off the debt and, according to the CBO, we could recover between $1 and $1.6 billion from the reserves if sold at current prices. CBO also believes that we can double annual revenues from the program by doing this over time.

Mr. President, achieving deficit reduction is a very difficult task. Programs like the helium program were created to meet certain needs. The defenders of the program have a variety of arguments to justify its continued existence, but the reality is that it appears over and over again on target lists for deficit reduction because it no longer makes any sense for the Federal Government to continue to run this program. It has not been terminated despite attempts of the Reagan, Bush, and now the Clinton administration because powerful constituencies fight to keep these types of programs alive.

Mr. President we simply cannot afford to keep these programs going. The 104th Congress should be the place where this program is terminated.

Mr. President, I ask unanimous consent that the article I referred to earlier from the Washington Post February 7, 1995, business section relating to the helium program be printed in the RECORD.

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

[From the Washington Post, Feb. 7, 1995]

ODORLESS, COLORLESS—AND HARD TO KILL

(By Cindy Skrzycki)

Deep in the earth near Amarillo, Tex., the federal government is sitting on a 32 billion-cubic-foot stash of crude helium—enough to last 100 years—and an inflated bureaucracy built on the premise that you can never have too much helium.

President Clinton burst the balloons of the helium reserve program's 195 workers in his budget request yesterday, singling out the federal program as one that had outlived its usefulness and proposing that it be phased out. Estimated savings: $16 million by 2000.

The program dates back to the observation balloons of World War I and got another boost in 1960, when Congress and the Eisenhower administration feared there would not be enough helium for Cold War strategic uses, including the expanding space program. The program's debt to the U.S. Treasury has grown from $252 million to $1.3 billion—just as impressive as the supply of helium in its Texas stockpile.

Yesterday, Clinton proposed canceling the debt, saying that it would not affect the federal budget deficit.

Its tale is one of yet another federal government program that has had more than nine lives. The program has ducked budget cutters in the Reagan, Bush and Clinton administration, allowing employees such as Armond Sonnek, assistant director for helium, and Dale Bippus, the plant's general manager, to amass about 75 years of combined federal service until their recent retirements. Still on the job is John D. Morgan Jr., 74, chief staff officer of the Interior Department's Bureau of Mines, who can trace the origins and applications of helium in his head.

Ironically, the helium program escaped its latest brush with death in the name of stemming the growth of the deficit. Just when it looked like getting rid of the program was what Clinton-style reinvention of government was all about, the now-defeated congressman from Amarillo, Democrat Bill Sarpalius, became a key vote for the president when Clinton was trying to pass his contentious budget bill in 1993.

After Sarpalius voted with the president—providing Clinton's 218 to 216 margin of victory—the program was floating high again. The administration offered legislation to cancel the program's debt and make it more efficient. The measure never got off the ground.

Now, the administration proposes getting out of the helium business, liquidating the stockpile and selling the production facility in Amarillo.

That would end the government's involvement in helium, which began in 1971, when the Bureau of Mines began researching uses of the odorless gas for the military. Research and production continued through World War II, when the government used blimps to spot enemy submarines in the Atlantic Ocean. Even now, though using helium for blimps is a tiny portion of its consumption, the airships are used for surveillance on the U.S. borders and weather observation—and, it has been reported, there may even be a stealth blimp.

The gas, a nonrenewable resource, is more commonly used today for special welding procedures, the fueling process of space shuttles and magnetic resonance imaging. For those applications, it has no replacement.

It wasn't until 1960 that the Cold War scared the government into buying, refining and stockpiling helium. It feared shortages that would leave the National Aeronautics and Space Administration and the Pentagon flat. So the Bureau of Mines became owner and operator of a helium-refining plant, a 425-mile pipeline, railroad cars and an unusual underground helium storage facility.

It filled an underground reservoir called the Cliffside Field, near Amarillo, with helium crude bought from natural gas companies. Helium, which natural gas producers had vented into the air, was being captured and sold to the government.

"It was a good investment," said Carl Johnson, Chairman of the Helium Advisory Council, a trade organization representing the nation's 11 helium producers, refiners and marketers. "Without the helium collected in Cliffside field, the industry wouldn't be as vibrant as it is now."

All this was done with a $252 million loan from the Treasury to the Interior Department—which has never been repaid. With back interest, the debt has grown to $1.3 billion. The program was intended to be self-supporting through the sale of helium, but sales projections proved too optimistic.

In the minds of some, such as officials at the General Accounting Office, the debt doesn't exist—it was merely an intergovernmental transaction between the Treasury and the late Fred Andrew Seaton, President Dwight D. Eisenhower's interior secretary, who signed the note.

Helium program staffers like to think they cost the government no money since the program covers its operating costs and, in 1994, returned $10 million to the federal till. Plus, they point out, the government does own 32 billion cubic feet of crude, unrefined helium which, at current prices, is worth about $600 million.

"Our employees think they are giving money back to the taxpayer," said David Barna, spokesman for the Bureau of Mines. "They feel pretty good about it."

There is some dispute over how the government should phase out the helium program. The companies that now supply 90 percent of the market don't want the government opening the spigot and depressing prices. After all, how many Barney balloons can you sell? There also is a vocal constituency for paying back the loan from the sale of the crude.

An administration source said the government wants to "sell into a rising market" but it needs to start liquidating. The calculation is that the market could absorb 300 cubic feet of crude helium annually and not be the worse for it.

And, the $1.3 billion debt?

Ever heard of forgive and forget?

UNITED STATES-CUBAN RELATIONS

Mr. FEINGOLD. Mr. President, yesterday, the chairman of the Senate Foreign Relations Committee, the Senator from North Carolina, introduced legislation on Cuba which, with all due respect to the chairman, I think is the wrong policy at the wrong time. In seeking to strengthen an already tight trade embargo, punish non-American investment in Cuba, and increase funding for TV Marti, this proposal puts United States policy toward Cuba on the wrong track. While I oppose strongly the totalitarian rule imposed by Cuban President Fidel Castro, I do not see any way that the island Nation of Cuba now poses a military or economic threat to the United States which warrants such a new hostile policy.

I have believed for some time that an expanded dialog with the Cuban Government is in the interest of the United States and Cuba. With the cold war over and little or no Soviet or Russian presence in Cuba, it simply does not make sense to completely ignore a country in our hemisphere because it is nondemocratic. Indeed, discussions and contacts on issues such as human rights, market economies, commercial relations, arms control, Caribbean affairs, the free flow of information, refugee affairs, and family visitation rights could actually help facilitate resolution of these complex problems and, I think, would do it, Mr. President, far better than nonengagement and isolation.

We have ongoing discussions with other nondemocratic countries like Saudi Arabia, Indonesia, and North Korea, and we recently opened a liaison office in Vietnam. Mr. President, we have even granted most-favored-nation status to China, so it makes little sense to outlaw virtually any contact with Cuba.

This proposal also threatens the United States effectiveness in international organizations by requiring the United States representatives to seek a United Nations embargo against Cuba and to oppose Cuban membership in international financial institutions. Mr. President, the United States has more important and pressing problems which require multilateral support and should not be required to pursue an outdated and misguided policy in an international forum.

Finally, Mr. President, I am particularly amused by the support of the Senator from North Carolina for more money for TV Marti. This program has been documented time and time again as ineffective. Certainly in times of serious fiscal constraint TV Marti should be eliminated; it should not be enlarged. It is very ironic that during the debate on the balanced budget amendment, when we are all claiming we are going to identify more specific cuts and cut out the fat in Government, here is a proposal which exemplifies the waste that has helped jack up the Federal deficit in the first place.

Mr. President, the chairman's proposal is provocative but it is unrealistic and shortsighted. I hope the administration will work with partners in the hemisphere to develop a multilateral strategy to promote democracy and human rights in Cuba and prepare for that day to which we all look forward, the transition of power in Cuba.

I thank the Chair and I yield the floor.

Mr. ROBB addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Mr. President, I ask unanimous consent that I be recognized to speak as if in morning business for not to exceed 4 minutes.

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

Mr. ROBB. I thank the Chair.

THE 50TH ANNIVERSARY OF THE INVASION AT IWO JIMA

Mr. ROBB. Mr. President, today marks an important anniversary for all of us who served in the Marine Corps and for freedom-loving Americans everywhere. On this date 50 years ago, the largest force of U.S. marines ever assembled prepared to embark on the most savage and most costly battle in the history of the Marine Corps. Nearly 100,000 troops, American and Japanese, were ready to fight to the death on the most heavily fortified island in the world, 8 square miles of volcanic ash and rock known as Iwo Jima.

Since the turn of the century, marines had pioneered and developed the capability for seizing advanced naval bases. The payoff for those many years of planning and training was seen in the successive, hard-fought victories in the amphibious landings throughout the Pacific in places like Guadalcanal, Bougainville, Tarawa, and New Britain, and on Saipan, Guam, Tinian, and Peleliu.

But now in February 1945 marine forces were approaching within 1,000 miles of the Japanese homeland for the first time and would face a determined,

fanatically brave enemy who had constructed the most elaborate and ingenious system of underground fortifications ever devised. Despite thorough allied planning and preparation and all the naval and air support available, it was ultimately the marine on the beach with the rifle who eventually won this critical battle for America.

Mr. President, one out of every three marines who set foot on Iwo Jima was killed or wounded, so great was the price of victory. As Gen. Holland M. Smith, Commanding General, Expeditionary Troops, Iwo Jima, said later of his marines, "They took Iwo Jima the hard way, the marine way, the way we had trained them to take it when everything else failed. They took Iwo Jima with sweat, guts, and determination."

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

AUTHORIZING BIENNIAL EXPENDITURES BY COMMITTEES OF THE SENATE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of Senate Resolution 73, which the clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 73) authorizing biennial expenditures by committees of the Senate.

The Senate proceeded to consider the resolution.

Mr. STEVENS. Mr. President, is there a time agreement on this resolution?

The PRESIDING OFFICER. One hour evenly divided.

Mr. STEVENS. I yield myself such time as I may require.

Mr. President, on January 25, the Senate Rules Committee reported a biennial omnibus committee funding resolution. It is Senate Resolution 73 and it is reports No. 104–6.

The Senate has authorized the committee funding on a biennial basis since 1989, primarily due to the good work of my great friend from Kentucky, who is the former chairman of the committee. We have worked together many years now. Senator FORD has insisted on a biennial funding resolution.

The resolution before us today is a biennial funding resolution, and it is consistent with the direction of the conference of the majority to cut committee budgets by 15 percent. Senate Resolution 73 cuts 15 percent from the 1994 total recurring budget authority. It will add 2 percent for a cost-of-living adjustment for the 1995 recurring salaries and authorize a 2.4 percent COLA for 1996 for recurring salaries. There is also a 2.4-percent COLA for January and February 1997. The 1996 and 1997 COLA will be subject to the approval of the President pro tempore of the Senate.

This resolution authorizes $49,394,804 for the period from March 1, 1995, and September 30, 1996, and $50,521,131 between March 1, 1996, and February 28, 1997.

Mr. President, this is a reduction of $7,641,011 from the 1994 funding level.

I have a chart here that shows the change in committee budget authority since 1980, and the Senate will note there has been a considerable shift in budget authority. The real dollar amount is in blue and the dollar amount adjusted for inflation is in orange. You can see that we have maintained a steady decline in the adjusted-for-inflation level of expenditures by the Senate.

We also have a second chart which shows the level of authorized committee staff since 1980. Since last year, the level of committee staff is reduced by 20 percent. In 1994, there were 1,185 authorized committee staff positions, and in 1995 there will be 947.

Again, I wish to point out that we are continuing the good work of my friend, the former chairman, the Senator from Kentucky, Mr. FORD, because these cuts are in addition to the 10-percent decrease that committee budgets took in the last Congress pursuant to his leadership.

Between 1980 and 1994, the Senate committees will have taken a 16.7 percent reduction in staff. I might say the House of Representatives took about a 5 percent reduction during that same time and that fact explains the difference in the amount of reductions currently being taken in the House compared to what we are taking in the Senate this year. But, I believe this additional cut in committee funding is a good faith showing to the American people that we are serious about our partnership with them to reduce the size of Government.

Our people sent us a message in the last election that they want less Government. This resolution is another step toward a reduction in size of Government. This is not a new step, it is an ongoing process. It was something we have been working toward. But it is an example of the Senate's commitment to provide a more effective and efficient Government.

On a deflated basis, the total authorized dollar value in 1996 for Senate committees will be less than in 1980.

Last year all of the Senate committees combined only accounted for 17 percent of the total Senate budget.

Senate Resolution 73 continues the practice of allowing committees to carry over funds from the first year to the second year during the same Congress. This policy provides the committees with added flexibility to meet their anticipated needs and eliminates the incentive to spend or lose their money.

This resolution does not permit committees to carry over unexpended funds from the 103d Congress to the 104th Congress.

Any unexpended balances of the committees after obligations incurred during the funding period ending on February 28, 1995, will be transferred to a special reserve fund which shall be used to provide nonrecurring funds to committees that demonstrate a need for funds to meet an unusual workload or unanticipated issue that comes before them. I urge committees not to race to spend the moneys that are available for them to spend before February 28. That would diminish the special reserve and the reserve fund is of great importance to the Senate.

Last Congress the special reserve fund allowed the Senate to meet additional unforeseen needs of committees without requiring the Senate to spend new funds.

For example, after committee budgets were completed, the Armed Services Committee was required by law to conduct a major series of hearings on the issue of homosexuals in the Armed Forces. Those hearings required the Armed Services Committee to hire additional professional and support staff due to the substantial amount of work involved in the preparation and conduct of those hearings.

The guidelines of the Conference of the Majority provided for a total funding target that is 15 percent below the 1994 level plus COLA with directions that the Rules Committee consider a variety of factors and apply the cuts fairly. I believe this proposal is fair and balanced.

This resolution which was worked out by Senator FORD and myself and adopted by the committee takes into consideration the size of the committees, their workload, the growth that has accompanied the committee during the 1980's, as well as other responsibilities of the committee.

Some committee reductions are more than 15 percent. Labor's is 25 percent. Governmental Affairs, Judiciary and Intelligence are each downsized by 16.5 percent.

The smaller committees—Veterans' Affairs, Small Business, and Aging were cut 10 percent.

There is a big difference between the impact of a 5-percent cut on a $1 budget compared to 2 percent on a $4 million budget.

What I am really saying is the administrative costs of a committee are almost the same. A committee that has a smaller amount of total funds is going to be excessively impacted in their ability to get their substantive work done if we do not recognize the difference between the large and small committees and the impact of across-the-board cuts. We have attempted to recognize, this problem in this resolution.

There are certain minimum administrative costs associated with running a

committee. Every committee must have a receptionist, a clerk, a systems administrative person, as well as other positions specific to the duties of that committee.

With that in mind, it was the Rules Committee's determination that the smaller committees should not take a full 15-percent cut but should take only a 10-percent cut.

The impact of the 10-percent cut on those smaller committees is just as severe if not worse than the impact of the 15- and 16.5-percent cuts the larger committees received.

There is one exception to our policy. Senator MCCAIN, the chairman of the Indian Affairs Committee, has informed me he intends to adhere to the 15-percent reduction that applies to all committees as originally submitted. That was his request to the Rules Committee. I am advised Senator MCCAIN was going to make a statement to that effect but that he is not available to do so now. It is my understanding that he intends not to spend the full amount authorized. We commend him on that position. We merely wanted to recognize the impact on small committees by our decision.

A few committees presented cases for including nonrecurring money which was not authorized in their baseline. Only authorized recurring funds were included in the baseline.

Senate Resolution 73 also contains a sense of the Senate that space assigned to the committees of the Senate covered by this resolution shall be reduced commensurate with the reductions in authorized staff.

The Committee on Rules and Administration is expected to recover space for the purpose of equalizing Senators' offices to the extent possible, taking into consideration the population of the respective States according to the existing procedures and to consolidate the space for Senate committees, in order to reduce the cost of moving Senate offices and to reduce the cost of support equipment, office furniture, and office accessories.

I believe this recommendation distributes the Senate's limited resources between the committees in a fair and equitable fashion.

I will soon move its adoption.

Before I yield to my good friend from Kentucky, let me ask for the yeas and nays on this resolution.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, as my good friend from Alaska, the chairman of the Rules Committee, has stated, before the Senate this afternoon is Senate Resolution 73. It is the 2-year budget authorization for Senate committees for the years 1995 and 1996. It continues the policy of biennial budgets established in the Rules Committee in 1989. We have 2-year budgets and we cannot get the Federal Government on 2-year budgets, which I think would save money. It would not balance the budget but it certainly would help us, give us some time for oversight.

But in the Rules Committee, and the committee chairmen have accepted it, where the money would lapse at the end of the first year, it would carry over into the second year of the biennium. The committees were not anxious then to spend the money, come back to us prove they needed it, and then prove they need more. So at the end of this year we had a considerable surplus as a result of the 2-year budget. That was returned. I think the proof is in the pudding and I am very pleased the 2-year budget authorization has worked so well.

The Rules Committee's job in markup was to find the minimum figure—and I underscore minimum figure—that will permit the committees to function effectively and efficiently. The committee conducted a review on a committee-by-committee basis. It was not all thrown in a pot and stirred up and figures pulled out. But my good friend from Alaska went committee by committee, colleague by colleague, and reviewed each committee's request with those chairmen and ranking members very closely.

Reaching a satisfactory compromise on the level of Senate committee funding is never easy. This year the problem was compounded, as my friend has said, by the overall goal of a 15 percent reduction coming on top of a 10 percent reduction last Congress. So, in essence, there was some shock as it related to the two cuts.

Senate Resolution 73 does not cover printing, but the report notes that the various Senate committees cut the cost of printing during the 103d Congress. In the last 10 years, expenses for printing and binding were reduced almost 40 percent. That is a giant step. Expenses for detailed printers were reduced almost 35 percent. We saved, in those two reductions, $5 million. The Rules Committee reduced committee funding 10 percent in 1993, another 15 percent under this resolution, and $5 million was saved in printing costs.

These facts indicate to this member of the Rules Committee that it is doing an excellent job of controlling costs, and thereby saving taxpayers' dollars.

I believe the 15 percent reduction cuts most committees to the bare bone. To cut further would impede, in this Senator's opinion, them from fulfilling their responsibilities to the Senate.

Senate Resolution 73 does not include extra funds that would permit us to add moneys to committees unless funds were reduced from one or more committees.

Mr. President, I have worked with my friend from Alaska now for a good many years. I was chairman, he was ranking. Now it is reversed. I do not see much change in the committee. Our friendship is the same. Our way of working together is the same. The accommodations are the same. We have, I feel, done an excellent job of working with the members of the Rules Committee and then transferring that out to the membership of the various committees. Some did not like the cut, told us so, and asked for something less. But when all was said and done, the 15-percent criteria was adhered to, and I believe it is proper.

But I want to reiterate that, if we cut much more and we have already cut to the barebone, the committees are responsible for certain reports and certain bills to report to the Senate. They have an obligation to their colleagues to do a good job, and I think if we cut more than 15 percent we would have restricted our committees in their ability to do this job as it relate to this institution.

So I am very pleased where we are. I believe the Rules Committee has reached a fair balance in funding Senate committees for 1995 and 1996.

I urge my colleagues to support this resolution. And my chairman has asked for the yeas and nays. It is my understanding, so there will not be any misunderstanding, that under the unanimous-consent agreement yesterday there will be no votes before 5 o'clock on Monday. And, therefore, the vote on this particular resolution will be at some time after 5 o'clock on Monday next.

I thank the Chair. I thank my good friend from Alaska.

I yield the floor.

Mr. STEVENS. Mr. President, I thank my good friend for his comments.

I want to emphasize what he said. It is not pleasant to turn to the colleagues and say that they must cut their staff or expenditures of their committees must be reduced. But that was our task. I think we have done it as fairly as we can. I think the fact that, to my knowledge, no amendments will be offered to this resolution indicates that we have either achieved our goal or intimidated our colleagues. But let history determine which is correct. We were fair. The Senator from Kentucky says we were fair. I think we have been fair. I do believe that it is an indication of what is coming in this Congress; that is, that we are going to be as frugal as possible in carrying out our duties in spending the taxpayers' money.

I do not have any other requests on this side. I might ask my friend if he has any request for time on that side.

CONGRATULATING THE RULES COMMITTEE FOR REDUCING THE SIZE OF SENATE COMMITTEES

Mr. CHAFEE. Mr. President, today we are considering the resolution that

authorizes the funding levels for Senate committees for the next 2 years. I would like to offer hearty congratulations to the chairman and ranking member of the Committee on Rules and Administration for making substantial progress in reducing the growth of Senate committees.

The resolution before us authorizes $7.6 million less for this year than the 1994 authorization, and that is a step in the right direction. Most of the committee budgets were reduced by 15 percent plus a 2-percent COLA for salaries. Of particular significance are the cuts in the budgets for the three largest committees: The Committees on Governmental Affairs, the Judiciary, and Labor and Human Resources. The Rules Committee should be commended for reducing the budgets of Governmental Affairs and Judiciary by 1.5 percent above the 15-percent cut received by other committees. The chairwoman of the Labor Committee also deserves enormous praise for submitting a budget that cuts expenses by a whopping 25 percent.

During the 102d and 103d Congresses I offered amendments to reduce overstaffing on these three committees.

In 1991, I proposed capping the number of available committee staff positions at 1990 levels. The amendment I proposed in the 103d Congress would have used the Finance Committee, with its substantial workload, as a benchmark. Each committee's funding level for 1993 would have been the lesser of either 95 percent of the 1992 funding level, or 95 percent of the Finance Committee's funding level—except for the Appropriations Committee, which would be funded at 95 percent of its 1992 level.

Since the beginning of the committee system as we know it today, we have seen a rapid growth in the size of committee staffs. Some of that growth is understandable, but some is not. In 1950, there were 300 committee staff positions. By 1970, that number had more than doubled to 635. It had nearly doubled again to 1,212 by 1990. In 1992, there were 1,257 committee staff positions.

In 1993 some progress was made and the number of committee staff positions for which funding was made available went down to 1,196. Nevertheless, the number of staff positions for the three big committees remained at well over 100 for each—Governmental Affairs at 120, Judiciary at 128, and Labor at 127. This year, there are 947 authorized staff positions, and only one committee has more than 100 authorized positions.

I am very pleased to support this resolution.

Mr. FORD. Mr. President, I say to the Senator from Alaska that I have no requests for statements or amendments. I believe the unanimous-consent agreement last evening prevented amendments. Therefore, I have no one seeking the floor to make a statement today. I am ready and prepared to yield the time that has been allotted to me.

Mr. STEVENS. Mr. President, I yield the time allotted to me.

Mr. FORD. Mr. President, I yield the time allotted to me.

The PRESIDING OFFICER. All time is yielded.

Mr. STEVENS. Mr. President, As I understand it, we are off this resolution, and all time has been yielded on this resolution, and that there will be no further action necessary with regard to Senate Resolution 73. Is that correct?

The PRESIDING OFFICER. The Senator from Alaska is correct.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. STEVENS. Would the Chair report the pending business at this time?

The PRESIDING OFFICER. The pending question is House Joint Resolution 1. The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

The Senate continued with the consideration of the joint resolution.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I would like to take a few minutes this afternoon, until other speakers come to speak on the matter before this body, to kind of review what has taken place over the last few days in regard to the balanced budget amendment, and, specifically, the amendment that is now pending before this body, namely the Reid amendment to exempt Social Security.

There have been, I think, a number of interesting statements made. The one that has stuck in my mind since it was made is the one made by the Senator from North Dakota [Mr. DORGAN] where he talked about a trip that he took to Central America, and a helicopter in which he was flying ran out of fuel and he landed. While on the ground waiting to be rescued, he spoke to a number of Nicaraguans or Hondurans—I do not remember which—who were native to the area. One of the questions that he asked to a young woman there was, How many children do you have? She said, Three. He noted in the tone of her voice that she was disappointed. As the Senator from North Dakota went on to explain, in many parts of the world a person's security and their golden years is how many children they have been able to have because it is through the network of the children that they hope they will be maintained in dignity.

Mr. President, that is not the Social Security we have in this country. The Social Security that we have in this country is by virtue of an agreement made by the Congress of the United States in 1935 with the people of this country—60 years ago—where a very noble experiment was undertaken. That experiment said let us have an employee contribute a certain amount of their wages along with an equal amount from the employer, and we will put that into a trust fund. When that person, that employee, gets older, and is of retirement age, they will be able to draw in their retirement years money, an old age pension, if you will.

So I think it says a lot. It speaks volumes; that in this country the dignity of a person in their golden years is not determined by how many children they have been able to have but rather the fact that in this country we have a program that is no longer experimental but a program that works which is called Social Security. This, of course, does not take away from the fact that we should all be proud of the children we have. But certainly, this takes a burden away from the children, a burden that certainly becomes too much of a burden on occasion.

As we have proceeded with the debate, one of the things that I have noted with interest is the participation in these proceedings by the junior Senator from South Carolina [Mr. HOLLINGS]. The Senator from South Carolina has been in this body 28 years. He served as Governor of the State of South Carolina. He has been chairman of the Budget Committee. He is now the ranking member of the Budget Committee. He is a person that we look to for fiscal guidance.

I was, therefore, pleased that he joined in support of the Reid amendment, and as the debate has proceeded I think succinctly stated and summarized in a letter his position that he wrote to each U.S. Senator on the 9th of February where he said:

Left alone, this provision would repeal Section 13301 and constitutionally endorse the violation. The Reid amendment presently under consideration corrects this unintended repeal by stating that the Social Security trust fund " . . . should not be counted as receipts or outlays for the purposes of this article."

Senator HOLLINGS goes on in his letter:

John Mitchell, the former Attorney General, is known for the axiom, Watch what we do, not what we say. It should be made crystal clear that we mean what we say. If you want to continue to use the trust fund in breach of the trust, vote against the Reid amendment. If you want to maintain the trust—the contract with America made back in 1935—then please support the Reid amendment.

Mr. President, the fact is that in addition to the support of the Senator from South Carolina, we have also received the support of the senior Senator from Alabama [Mr. HEFLIN]. Senator HEFLIN is the Senate's legal scholar and I would like to read a great

statement that he made. Senator HEFLIN, a member of the Judiciary Committee, put out this bill with the report attached thereto. He recognized in the report, on page 72—I should tell those watching on C-SPAN, those in the offices who may not know, that a report is put out by the committee of jurisdiction on a particular piece of legislation.

The balanced budget amendment went to the Judiciary Committee. The Judiciary Committee reported out the bill with a report. Every piece of legislation, with rare exception, that comes to this floor is accompanied with a report. The purpose of the report, among other things, is it gives the Senate the views of what the committee meant in passing out the bill.

Senator HEFLIN filed a minority report and, among other things, in this statement he said—as you will recall, Senator FEINSTEIN, a member of the Judiciary Committee, offered an amendment that was the same as mine in the Judiciary Committee, which they turned down. Senator HEFLIN says in the report:

I also support Senator FEINSTEIN's amendment to exempt Social Security from the balanced budget calculation. In the Budget Enforcement Act of 1990, Congress clearly declared that the Social Security trust fund is offbudget. In the past, surplus which has accumulated in the trust fund has been used to mask the true size of the Federal budget deficit.

I part briefly from the report language of Senator HEFLIN and state that it has been fairly well established on this floor on both sides of the aisle that this started in 1969, during the Vietnam war, when there were efforts made by the Congress and President Johnson to mask the size of the deficit that had accumulated as a result of the Vietnam war. So they started using, at that time, Social Security trust fund moneys to offset the deficit. That is what Senator HEFLIN is talking about here.

He goes on to say:

Social Security is a self-financing contributory requirement program. Workers must contribute 6.2 percent of their salaries to the program, and employers are required to match that amount. These funds, by law, are held in trust, and the American people have a right to expect that Congress will maintain the integrity of that fund. The funds are now in surplus, and this is expected to continue until 2012.

That is what he said in the report. But he has come to the floor on more than one occasion during the past week and talked about this proposal; namely, that the opponents of my amendment are saying that they can use implementing legislation to exempt Social Security from the balanced budget calculations. Well, it is clear that attempts to protect Social Security through implementing legislation would simply be futile. Once the Constitution is amended to require that "Total outlays for any fiscal year shall not exceed total receipts for that fiscal year," Social Security is certainly in danger. And that is my authority that is renowned in the legal circles—Senator HOWELL HEFLIN, who previously was chief justice of the Alabama Supreme Court.

Senator HEFLIN said:

This means that there will be a constitutional requirement that Social Security funds be considered onbudget. If the balanced budget amendment is adopted as presently worded, it would prohibit Congress from legislatively taking Social Security funds offbudget and would nullify the provisions of the 1990 Budget Enforcement Act, which requires Social Security funds to be considered offbudget.

Senator HEFLIN is a supporter of the balanced budget amendment, as is the Senator from Nevada, the minority leader, and the minority whip. But we have some significant concerns, Mr. President, about Social Security being used to offset the deficit, especially when we consider, as Senator HEFLIN said in the report, that Social Security moneys are accumulated in a trust fund.

It has been talked about here on the floor lots of times. The Senator from North Dakota [Mr. CONRAD] compared it to Jim Bakker, the infamous clergyman who went to jail because of his misrepresentations. The Senator from North Dakota said that he went to jail—Jim Bakker—as a result of saying he was collecting money for one reason and using it for another reason. Well, that is one way to describe our fiduciary relationship to trust fund moneys accumulated in the Social Security trust fund. We cannot spend those moneys for some other purpose.

Senator HEFLIN talked about implementing legislation, but just so the record is clear, it is not only Democratic Senator HOWELL HEFLIN, a person whose integrity is unmatched, whose legal prowess is unmatched in this body. Let us look to someone else to see if they would come up with the same conclusion. Sure enough, we went to the Congressional Research Service, an arm of the Congress, and one of the attorneys in the law division, Kenneth Thomas, had this to say:

Under the proposed language——

He is talking about the constitutional amendment.

——it would appear that the receipts received by the United States which go to the trust fund and the Federal disability insurance trust fund would be included in the calculations of total receipts, and that payments from those funds would similarly be considered in the calculation of total outlays. Thus, if the proposed amendment was ratified, then Congress would appear to be without the authority to exclude the Social Security . . .

I will read that again:

Thus, if the proposed amendment was ratified, then Congress would appear to be without the authority to exclude the Social Security trust funds from the calculations of total receipts and outlays under section 1 of the amendment.

That says it real clear—namely, that if House Joint Resolution 1 passes, it does not matter what Congress does with implementing legislation—or any other kind of legislation—to exclude Social Security; they cannot and we cannot. A future Congress cannot, because to do so would violate the Constitution, which would be House Joint Resolution 1. In effect, it says you must include the Social Security trust fund in balancing the budget. So that thing we passed earlier today is not worth the paper it is written on.

It is not worth the paper it is written on. It is only for show that people can go home and say, "I voted to protect Social Security." It cannot happen.

Social Security has to be included. To not do so would be violating the Constitution. I did not write the constitutional amendment that is being sought to be adopted. It was written by someone else. And, sure enough, that is what it says. "Total outlays shall include all outlays of U.S. Government except for the repayment of debt principle." That is what it says.

There has also been statements made from time to time that, "Well, there are other ways we could legislate." Well, according to Senator HEFLIN it simply will not work. In fact, what we have done is made it even worse.

The House has passed a measure that is comparable to what we did here today. We are going to vote on my amendment on Monday or Tuesday. If the same action is taken in the Senate that was taken in the House, that would mean both bodies of this legislature, our bicameral system of government, both bodies turned down exclusion of Social Security. So if any court later considered the constitutionality of implementing legislation, I think they would have to look to the legislative history and they would determine it was not Congress's intent to keep Social Security off budget.

First, the House defeated a proposal to exempt Social Security. And if my amendment does not pass, you would have a second time. So there would be similar authority from this body as in the House. And a court reviewing the legislative history would likely determine that Congress had its opportunity to maintain the Social Security trust funds off budget but refused to do so.

If my amendment does not pass, Social Security trust funds, I believe, are gone. The great experiment that we have had for some 60-odd years will then have failed, not because Social Security has added one penny to the debt, because it has not, but because we in Congress were unwilling to exclude Social Security from trying to balance the budget.

It is really unfair that we would use Social Security receipts—unless there were an effort made really to do that—

that behind all this there is a subtle effort made to get through this part of it and then go use the Social Security moneys.

One day this week, I was on a television program at noon with a little minidebate with former Senator Tsongas. And he was very candid. He said, "Yes, we will use Social Security moneys to balance the budget." He did not mince any words. He was pretty clear.

The L.A. Times set out a little quote that I made here on the floor this week, where I said that there is about as much chance for this body to balance the budget without using Social Security trust funds as Evel Knievel was going to jump the fountain at Caesar's Palace. He just would have a real difficult time doing it. It could be done, but it would be difficult.

So I think we should stop playing games and recognize that there are some who want to use these moneys. I think we should exclude Social Security and then ratchet down to do what we can to balance the budget, which we would be obligated to do under the constitutional amendment.

Opponents of my amendment argue that statutes have never been incorporated into the Constitution and this would be an unprecedented constitutionalizing of a statute. But this is pure poppycock, Mr. President. Because this is the first time, of course, that we have tried to deal with an amendment to the Constitution dealing with fiscal policy. So certainly with a program as large as Social Security, we should understand in the confines of the balanced budget how we are going handle that.

The only way to protect Social Security is to specifically exclude it from the constitutional amendment because Congress would be without authority to attempt to exclude Social Security from the balanced budget calculations for any type of implementing legislation.

The Senator from California, Senator FEINSTEIN, has said the only way to save Social Security surpluses to pay for future retirements is to balance the budget exclusive of Social Security.

Opponents have also argued, Mr. President, if Social Security is put off budget, then Congress would have to raise taxes or cut spending, $69 billion this year alone, just to keep the deficit at the current level. This is what Chairman HYDE of the House Judiciary Committee referred to when he said, "The effect on the other Federal programs will be draconian if Social Security is excluded from the balanced budget amendment."

That is exactly the point that I am making. We are against using Social Security trust funds to balance the budget. We want to exempt Social Security because that is where the money is and that is what we must protect.

I have said a number of different times over this last couple of weeks that famous bank robber Willie Sutton, when released from prison, was asked why he robbed banks. He responded, "Because that's where the money is."

Well, Mr. President, in the next few years the huge amounts of money that will be accumulating in the Social Security trust fund will be where the money is. That is where people will look to balance the budget—this year, $70 billion; next year, $80 billion; the year 2002, over $700 billion; and a few years later $1 trillion and then $2 trillion and it rises to the point where there is $3 trillion in the Social Security trust fund if we do not take those moneys as we have in the past and divert them to deficit reduction.

Fifty-eight percent of all workers pay more FICA taxes than they do Federal income tax. Over half of the people in this country pay more in FICA taxes, that is Social Security taxes, than they do in income taxes.

And, as stated repeatedly, this Social Security is the most important contract we have with America. These surplus funds should be saved and not used to balance the budget.

Opponents also argue, Mr. President, that exempting Social Security in the constitutional amendment would create a loophole. That argument was made by my friend from Idaho this morning; that passing this amendment creates a loophole through which you could add other programs, try to define them in Social Security, and thus would be exempted from the requirements of the balanced budget amendment. That argument makes no sense, no sense, because the amendment offered by the Senator from Nevada is very specific. The argument is an exaggeration that it would create a loophole.

My amendment is intended to safeguard an easily identifiable and narrowly defined program—the old-age pension and disability insurance. Anything that changes the long-term actuarial plan of Social Security is subject to a 60-vote point of order before this body. If someone wanted to place education or foreign aid or aid to families with dependent children with Social Security, it would not work. You would need 60 votes to waive that.

Having Social Security exempted from the balanced budget amendment does not—I repeat, does not—create a loophole.

Legislation which proposes either increased Social Security expenditures or decreased taxes would be in violation of 302(F) and 311(A) of the Budget Act, and thus it would be subject to a budget point of order and require, I repeat, 60 votes to waive the Budget Act.

Some have also argued, Mr. President, that an exemption for Social Security would remove the incentive Congress would have in a balanced budget amendment to provide for a long-term solvency of the trust fund. One of the most interesting—and I cannot say most pleasant, but one of the most interesting—and educational times I have spent in Government was being a member of the Entitlement Commission which completed its work recently.

The Entitlement Commission, chaired by Senators Danforth and KERREY, was a bipartisan commission with an equal number of Democrats and Republicans. The commission was made up of elected Members of Congress, mayors, union leaders, and business leaders. A wide range of people made up that bipartisan commission. During the year we worked on that, it was very clear that the entitlements in existence in this country needed some work done on them.

It is also very clear one of the obligations we have is to look at tax policy in this country. It appears very clear to me that we must also examine tax policy in this country.

So, to say that an exemption for Social Security would remove incentive to strengthen Social Security is wrong. We all know that there has to be some changes made to Social Security. But they should be made separate and apart from the problems we are having with the rest of the Government. The Social Security trust fund should rise or fall on its own merits.

Therefore, Mr. President, I think this argument is fallacious. Social Security has also been funded by FICA tax to which over 95 percent of Americans contribute. These funds are used to pay recipients presently receiving Social Security. In the past, when it appeared to Congress that Social Security might be in jeopardy, we took care of that. We did it in 1977 and 1983. The proposal I have that is appearing before this body would not prevent Congress from making future adjustments in either the benefits or the FICA tax to keep it solvent.

The Republican measure, though, what is called S. 290, would prevent both the benefits and the FICA taxes from being changed. By freezing the levels of the benefits and the taxes, S. 290 guarantees Social Security's insolvency by the year 2029.

With Social Security, I think we can liken it to a ship which keeps itself afloat. Opponents of the Reid amendment tend to want to have the ship at least list if not sink. Social Security is a program that is publicly administered, a compulsory contributing retirement program. Financing to cover the cost of Social Security is provided by the flat tax levied on wages. They are not the Federal Government's funds, but are contributions that workers pay in and expect to get back.

Mr. President, I see my friend, the Senator from Iowa is present in the Chamber. I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Iowa.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HARKIN. 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. HARKIN. Mr. President, I first want to thank my friend and colleague, Senator REID, for his long and diligent efforts to ensure that the Social Security system in America remains sound and separate, to make sure that the people who are now receiving Social Security are not threatened by its reduction, and those who are working hard and paying into the system are assured it will be there for them when they retire. There is no one who has worked harder and longer and fought harder to protect Social Security than Senator REID from Nevada. I am proud to join him as a cosponsor on this amendment.

I am delighted to yield.

Mr. REID. I wanted the Senator to yield for a question or perhaps a statement.

I want to spread across this record one reason this debate has been so fruitful is that during the unfunded mandates debate, the Senator from Iowa offered a sense-of-the-Senate resolution to exclude Social Security from the balanced budget amendment. But for the Senator's aggressiveness on that matter during the days we spent debating that, we would not be in the posture we are today. This Senator from Nevada and the other 14 cosponsors extend to the Senator our appreciation.

Mr. HARKIN. Mr. President, I thank the Senator for those fine words, but I am literally following in his footsteps and proud to be a cosponsor with him on this amendment.

Mr. President, I have long supported a balanced budget amendment. I expect to do so again this year. However, there have been a number of issues raised concerning the amendment. Should there be a supermajority requirement for tax increases? Should there be truth in budgeting to require that the cuts necessary to reach a balanced budget by 2002 be specified? Should we make provision for times of recession when there are more demands on the Federal Government and tax receipts are down?

Each of these questions is very important and should be given the attention they deserve. Mr. President, the one issue that is of greatest concern and one that I think is necessary to address immediately, is whether Social Security should be allowed to be cut as part of the balanced budget amendment. Should Social Security funds be included along with all the receipts and deficits in calculating whether we have a balanced budget?

I have received hundreds of calls and even more letters from older Iowans who are scared to death that their Social Security will be cut to balance the budget. Almost all of these people subsist on little or nothing more than their monthly Social Security checks. They live on fixed incomes and are already struggling to meet the basics to pay for their food, utilities, and medical bills. A cut in their Social Security would literally mean for many not enough to eat or not enough to pay for their heating or phone or their medical bills.

When we talk about the average Social Security recipients, we are talking about people of very modest means. The average monthly Social Security payment to retirees is now $679 a month. That is $8,148 a year, just above the poverty level for a household of one.

Remember, for many senior citizens, Social Security represents 90 percent or more of their entire income. This is particularly true for older widows. For the majority of older widows, Social Security represents the bulk of what they have to live on. So it is perfectly understandable for them to be very fearful of potential Social Security cuts.

Mr. President, I should also note I am not just hearing from senior citizens. I am also hearing from middle-aged workers who are concerned that the surplus in the Social Security trust funds that are necessary to pay benefits when they retire will not be there. They are worried because they know that it may be just too tempting for politicians to dip into the growing Social Security trust fund surpluses to pay down the deficit.

And our workers have every reason to be worried. Today the surplus stands at about one-half trillion dollars. By the year 2010, the Social Security surplus is projected to reach $2.1 trillion. And by 2020 it will grow to an astounding $3 trillion surplus. That surplus is nearly two times the entire Federal budget for this year. It will be very tempting to be used to balance the budget. Some will say, a little bit out will not hurt. But, in fact, Mr. President, we need to not only protect against cuts in Social Security but in the coming years we will have to add to that surplus.

The current projections are that even with a $3 trillion surplus in the year 2020, the system will go bankrupt by around the year 2030, a mere 10 years later. So in the next 25 to 30 years, we are going to have to make some adjustments in the Social Security program to ensure that it remains sound beyond the year 2030.

But that is nothing new, we have made those adjustments in the past, and we will make those adjustments in the future. I will point out one that could be considered. We have a cap on income for those paying into the system. I think it is around $60,000 or $62,000 a year. So if you are making a million dollars a year in income, you pay the same into Social Security as someone making $60,000 a year, and that is not right. I think that level is going to have to be raised. That adjustment alone would help us immensely with the Social Security trust funds.

Mr. President, I hope the Senate does the right thing and adopts the amendment offered by Senator REID. A number of our colleagues, including myself, have cosponsored this. The Reid amendment is simple and straightforward. It is not convoluted. It simply puts in writing what just about everyone in this body says they are committed to. It explicitly exempts Social Security income and outlays from balanced budget calculations in the constitutional amendment.

Now, there will be some who say, Why do we need this? We just adopted the Dole resolution a couple of hours ago. The Dole resolution agrees with the Reid amendment that Social Security is important and deserves to be protected. But, Mr. President, the Dole amendment is only a fig leaf and, I might add, a very small and a very transparent fig leaf. It offers little comfort to the millions of Americans who are so concerned about and dependent upon Social Security. What it says to them is clear: Protecting Social Security is not as important as balancing the budget. It says we need a constitutional amendment to balance the budget, but protecting Social Security, the financial security of millions of Americans, is not deserving of that same kind of protection and elevation in our system.

People who say that the Dole provision is enough are basically saying that protecting Social Security is not important enough to actually include in the Constitution.

The people who support the Dole resolution—I voted for it as a prelude to voting for the Reid amendment—but those who say they voted for the Dole resolution so now they do not need to vote for Reid are basically saying Social Security is important enough only to be protected through legislation to implement the balanced budget amendment, legislation that can be adopted and changed virtually overnight by a simple majority vote in the Congress.

What the Dole amendment says to senior citizens and future Social Security recipients is: Trust us, we'll protect you.

We have heard that one before. We have taken a number of important steps over the past few years to protect Social Security from abuse. In 1990, we took it off budget. This past year, we

passed legislation to make Social Security an independent agency, so as to insulate it from politics and other programs. If we fail to specifically exempt Social Security from the proposed balanced budget amendment, we will effectively put Social Security back in the budget, and this would be a great step backward.

So, Mr. President, those who support the Dole amendment and say now they do not have to support the Reid amendment are sort of like a used car salesman that says to a person buying a used car: Well, you don't need a warranty, just trust me. If anything happens to the car, just trust me, but you don't need a warranty. Just as none of us would do that and plunk down cold hard cash to buy something without some kind of warranty, we should not buy just the Dole amendment. We have to pass the Reid amendment to, once and for all, say to the people of this country that Social Security is so important, so important a part of our social and economic system that it deserves to be in the Constitution of the United States.

So let us do the right thing. Let us put our commitment into writing. Let us adopt the Reid amendment and really protect Social Security.

Mr. President, if the proponents of the balanced budget amendment are really serious—if they are really serious, as I am—about passing and getting it out into a form the States can support, then they ought to support the Reid amendment.

I have heard some rumors around here—and I am sure it comes as no surprise to anyone; I have not heard it said in any debate, but I am going to say it—I have heard it said around here that some of our friends on the other side of the aisle, some of the Republicans, are kind of secretly hoping that this does not pass because if it does not pass, then they can blame Democrats for not passing an amendment to balance the budget and use it in upcoming campaigns.

I hope that is not true, but it has been said around here, and I have heard it. I am sure everyone else has heard it, too. I hope that is not the case.

So I say to my friends on the other side of the aisle, especially those who rushed to support the Dole amendment, the fig leaf, if you really want to pass a constitutional amendment to balance the budget, you ought to support the Reid amendment. There are many in this body who, if the Reid amendment is adopted to exempt Social Security from the balanced budget amendment will then vote for the constitutional amendment to balance the budget, and I think then there would clearly be the votes to pass it.

I have heard, again, that there are some games being played. Then again, if the Reid amendment can be defeated, the balanced budget amendment will be defeated and it can be used as a campaign issue. Like I say, I hope that is not true. It is being said around here. We all know it.

So I say to those who like me are truly serious about having a balanced budget amendment, you ought to support the Reid amendment and do not in any way think that by supporting the Dole resolution that the elderly of this country are going to be fooled. There is not a smarter, more intuitively sage voter or citizen than our senior citizens. They have been around the block. They have watched us over the years. They know what happens in this place when Social Security gets a surplus and becomes very tempting to use to balance the budget. They are not going to be fooled by a fig-leaf vote for the Dole amendment.

I say to those who are really, truly serious about, A, protecting Social Security and, B, getting a constitutional amendment to balance the budget, I invite them to support the Reid amendment.

With that, I yield the floor.

Mr. CAMPBELL. Mr. President, I would like to take this opportunity to respond to the amendment introduced by my friend, the Senator from Nevada, Senator REID, and my other distinguished colleagues on this side.

Social Security, as well as Medicare, has been one of the most successful Government-run programs in the history of this country. Every hard-working, tax-paying American participates in these programs—we all have a vested interest in the Social Security program whether we are present or future beneficiaries.

As it stands now, Social Security is set to go bankrupt in 2029. Only a few years ago, the Social Security program was projected to go broke in 2036.

I acknowledge the fact that Social Security may be on the caboose of this balanced budget train because of its current surplus versus other more problematic programs like Medicare and Medicaid, but this program is still connected to the budget as a whole.

This Senator believes Social Security is vital to a high quality of life for all Americans. It is my belief that the Senators who are offering this amendment are doing so because they, too, believe Social Security is vital to our Nation.

There are indications that an exemption for Social Security is the only way to get the balanced budget amendment through the Senate. As a supporter of the balanced budget amendment, I hope that is not the case. Even so, to keep one of the largest programs in our country out of the balanced budget amendment discussion is fiscally irresponsible and wrong.

It's wrong because it would provide constitutional protection to a single statutory program—Social Security. The Constitution should not be used for this purpose. There are sound reasons to consider ways to keep Social Security solvent beyond 2029 in the coming years. Codifying Social Security in the U.S. Constitution prevents Congress from considering anything that may in fact be intended to preserve Social Security for the future.

The Constitution is not the place to set budget priorities, nor to enshrine statutes passed by Congress. Congress can exempt Social Security through statute.

I would also ask why not, if Social Security, any other worthy program? The argument that Americans have paid into Social Security and should not be denied getting those benefits rings hollow when we all know for a fact that a majority of current and past retirees are receiving or will receive far more in benefits than what they paid into Social Security plus interest. Americans also pay into a variety of very good and worthy programs as well, in the form of taxes. Should those worthy programs also be exempted using that kind of argument?

Keep in mind that the balanced budget amendment does not specify where the cuts will take place. This language only forces Congress to balance the budget by the year 2002. Year after year, Congress will have the authority, should this measure pass, to choose what cuts will come from what programs. Social Security would not necessarily have to be cut. This hype we are getting about how necessary it is to have a Social Security exemption in order to preserve benefits is driven by powerful lobbying groups and is unjustified. You and I know that Congress will not vote to cut Social Security benefits to those who need those benefits. There may be trimmings of benefits for the wealthiest of Americans, but we are not about to vote to deny benefits to the millions of Americans who rely on Social Security as their only source of retirement income. So a constitutional exemption is not necessary.

To prioritize which program or programs are worthy of exemption in the balanced budget amendment will only chip away, piece by piece, the value of a balanced budget amendment and pit one program against another.

Let me take just a few more minutes and read to you a couple letters I have received this month from Coloradans regarding the treatment of Social Security and Medicare, the two largest entitlement programs in our Federal budget. Take for example,

Donald Kynion, from Walsenburg, CO, who says "I feel you should do what is best for the country. If changes in Social Security and Medicare are necessary then make them. Cut spending and too much government!"

Or listen to 72-year-old Edith Seppi from Leadville, CO, who says "I hope you will be fair to all Americans and

pass legislation that will cut the debt, even if we all must be a part of the cuts. I hope interest groups will not control the decisions you make. I hope you do what you believe is best for our country. So, count me in on the side that says do the best that you can."

Doing the best that we can, is not allowing certain privileged programs to be exempt from this difficult task of balancing our budget.

If a family was forced to balance their budget for the month, could they be successful by omitting their mortgage payments? Where should this family then get the money to make this payment? Where then should Congress find the funds to pay the baby boomers when they retire?

I beg my colleagues not to exempt any program, no matter how successful or useful it is to us, from the balanced budget amendment. If we are forced to balance the budget, all programs on this train, whether they are Medicare, veterans pensions, unemployment compensation, SSI, and Social Security, will have a chance for a better tomorrow if we balance our budget today.

The balanced budget amendment gives this country hope for a better quality of life further down the tracks. Let's not derail this effort.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I would like to address the underlying amendment, the basic resolution seeking to amend the Constitution of the United States to put into the Constitution a provision requiring a balanced budget.

In my view, amending the Constitution would be economically unwise and constitutionally irresponsible. The amendment would have the very substantial risk of promoting economic instability, retarding economic growth and shifting the basis of our democracy from majority to minority rule.

Every time you talk about the problems connected with the implementation of this amendment, things get very fuzzy around here, but I think it is clear that we are inviting fiscal paralysis or court intervention in the conduct of economic policy, or both.

I wish to address two concepts that I think are very important in thinking about this amendment to the Constitution to require a balanced budget. One is the argument that is made and drawing a supposed analogy with the States that State and local governments have to balance their budgets; businesses have to balance their budgets; individuals have to balance their budgets; why does not the Federal Government operate under the same constraint?

Now, not only is this argument wrong factually—most State and local governments actually run deficits if they use the accounting principles which are used to compute the Federal budget—but this argument also fails to recognize the different responsibilities of the Federal as opposed to the State and local governments with respect to the overall functioning of the economy.

The State analogy is superficially attractive. Most States have some form of balanced budget requirement, either statutory or constitutional. But it needs to be clearly understood that many States maintain capital budgets which are not subject to the balancing requirement. Others have developed off-budget funding mechanisms to circumvent the balance requirement, or they use accounting rules which count some borrowing as a form of revenue for the balancing requirement.

Official data on the debt incurred by State and local governments gives a very different picture from this assertion that the States run balanced budgets. This chart shows that State and local government debt has been growing year by year. This chart begins in 1972 and runs out here to 1992, the amount of borrowing has increased steadily since 1972..

Now, how can this be? Everyone says State and local governments have to balance their budgets. Yet the amount of State and local debt has been on the upswing. In fact, we had a hearing before the Joint Economic Committee. Two Governors testified that having a balanced budget requirement in their State which they had to adhere to assured them a good credit rating.

Of course, the question then is why is a good credit rating relevant to you if you are required to run a balanced budget? They need a good credit rating because they do not run a balanced budget. They have a capital budget which they fund by borrowing. So they acknowledge that the balance requirement for the budget is only on their operating budget and that they make active use of a capital budget for which borrowing is allowed.

Now, this proposal before us makes no provision in the Federal accounting regime for a capital budget. It, in effect, would require the Federal Government every year to balance receipts with outlays, and it makes no provision whatever for what in most places is treated as a capital budget. Not only do State and local governments borrow for investment; the same thing is true of businesses and individuals. I could show you a similar chart geared to each of the major corporations in this country which would show that their amount of outstanding debt had increased over the years because they make prudent borrowing in order to enhance the investment capacity of their business and in order to be in a better position to compete.

Individuals do not balance their budgets every year. They run huge deficits in the year they buy a home or a car because they borrow in order to fund it. Yet everyone regards it as a prudent and reasonable practice to borrow on a capital debt, the use of which you then have over an extended period of time and to pay back over the lifetime of that capital asset the amount that you have borrowed and the interest charges upon it. Then you get the use of the capital asset now, in the present, and you amortize its use over time.

That is how people buy houses. The only people in the country who could afford to buy houses, if they were required to do it under the kind of regime you want to impose on the Federal budget, would be the very wealthy, who are in a position to pay for it out of their flow of income. The overwhelming percentage of people in this country are in no position to do that, and of course, what they do is they borrow. They incur a large deficit in the year they make the purchase, but they set it up with a schedule over time in order to make the repayment. As long as the amount they are borrowing is reasonably related to what their income is and their ability to repay it, everyone regards that as a wise and prudent policy to follow.

So the first point I wish to make is that the very concept of a balanced budget amendment is flawed in the sense that we do not have a capital budget at the Federal level. This requirement would require the Federal Government to fund capital expenditures in the operating budget, which, as I pointed out, is not done by State and local governments, it is not done by businesses, and it is not done by individuals.

Now, let me turn from this flaw in terms of not providing for a capital budget to address the fact that it does not allow for the workings of what is called countercyclical fiscal policy. Countercyclical fiscal policy is the effort to ameliorate the ups and downs of the business cycle. The fact is, that in the current budget framework we automatically try to offset the economic downturn. The deficits automatically increase because revenues decrease and the payout of unemployment insurance, food stamps, and other income stabilizers increase. If, in fact, in an economic downturn you try to balance the budget, you would only contribute to the downturn. You would make it worse. You would have deeper cycles of boom and bust. And that, of course, is what occurred throughout a good part of our history.

This chart shows the percentage change in our gross national product, beginning in 1890 and coming forward to today.

What this chart shows—and I think it is very important—is that after World War II we put into place what we called automatic fiscal stabilizers. We broke out of that pattern of thinking where we tried, when we went into a recession or an economic downturn, to balance

the budget, thereby driving the economy even further into downturn.

That is what we used to do. And you can see when we tried to balance the budget during recessions we had tremendous fluctuations that took place in the economy. We had these huge swings up and down, and the downturns would go very deep.

During the Great Depression negative growth was 15 percent. As those who have read history know, it was an incredible time in this country. People were selling apples on the street corner, grass was growing in the streets, the wind was whistling through deserted homes in the rural areas of our country. We had other downturns where we had 8-, 10-, 12-percent negative growth in the course of the cycle.

Now, what has happened in large part as a consequence of these fiscal stabilizers is we have to be able to ameliorate the huge swings of the business cycle.

We still get the ups and downs, but they do not have the wild gyrations with all extremely harmful consequences. In fact, since the economic stabilizers have been in place we have rarely gone into a negative growth experience. Most of the fluctuations take place above the negative growth line. So while we get the ups and downs, we still manage to keep it within the positive growth range.

A rigid balanced budget requirement would have its most perverse effect during recessions. It would require the deepest spending cuts or tax increases in recessions, when revenues automatically fall far short of expenditures. We have learned over these last 50 years, as this chart demonstrates, to be more flexible with fiscal and monetary policy in responding to business cycle downturns. As a result, we have experienced less violent downturns than before. This chart clearly illustrates the moderation of downturns that have accompanied the more flexible fiscal policy of roughly the last 50 years.

Just this week, the Chairperson of the Council of Economic Advisers, Laura Tyson, wrote an op-ed piece entitled "It's a Recipe for Economic Chaos," speaking on the proposal to amend the Constitution to require an annual balance budget. I want just briefly to quote some parts of that article.

Mr. President, I ask unanimous consent the full article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SARBANES. Ms. Tyson says:

> Continued progress on reducing the deficit is sound economic policy, but a constitutional amendment requiring annual balance of the federal budget is not. The fallacy in the logic behind the balanced budget amendment begins with the premise that the size of the federal deficit is the result of conscious policy decisions. This is only partly the case. The pace of economic activity also plays an important role in determining the deficit. An economic slowdown automatically depresses tax revenues and increases government spending on such programs as unemployment compensation, food stamps and welfare.

Let me just comment on that. As she points out, an economic slowdown automatically brings about an increase in the deficit because you lose tax revenues and you make payments out of the Treasury in terms of income support programs.

She goes on to note, then:

> Such temporary increases in the deficit act as "automatic stabilizers," offsetting some of the reduction in the purchasing power of the private sector and cushioning the economy's slide. Moreover, they do so quickly and automatically, without the need for lengthy debates about the state of the economy and the appropriate policy response.

In other words, the economic downturn adjusts automatically. You do not have to wait until you are deep into the trough and you recognize that you are deep in the trough to take some action to do something about it. This proposal has a waiver provision in it which requires an extraordinary 60 votes, which of course raises the question: Would you be able to get that vote even if you were in a difficult circumstance? But even if we assume you can, by the time you are aware and perceive that you are in a difficult circumstance, you are well into your downturn. The downward momentum has begun.

The automatic stabilizers check that downward momentum the moment it begins to happen. So they act as a counterbalance. Not completely, because we get the ups and downs. But, as you can see over the experience of the last 50 years, we have markedly improved this performance and we no longer had the very deep dips into negative growth that we used to experience.

These deep dips into the negative represent people out on the street, unemployed. These represent the foreclosures on farms and on homes. These represent the bankruptcy of businesses, small and large. That is what these deep dips represent. They are not just lines on a chart. They represent a lack of activity out in the economy. As I have indicated, we have been able to check a good part of this over the last 50 years.

As Dr. Tyson goes on to say in her article:

> A balanced budget amendment would throw the automatic stabilizers into reverse. Congress would be required to raise tax rates or cut spending programs in the face of recession to counteract temporary increases in the deficit. Rather than moderating the normal ups and downs of the business cycle, fiscal policy would be required to aggravate them.

Let me just repeat that:

> Rather than moderating the normal ups and downs of the business cycle, fiscal policy would be required to aggravate them.

So Mr. President I hope people will think long and hard before we put ourselves back in a box that will return us to the approach that was taken before World War II. This problem extends back into the 19th century. This chart begins in the late 1800's, where we had these tremendous boom and bust swings in the economy, and we paid a very heavy price for that from time to time.

We have a situation now in which these automatic stabilizers work as we go into an economic downturn in order to help ameliorate the volatility of the economy and, as a consequence, we have experienced far less violent downturns in the last 50 years.

Finally, I want to just make reference to the assertions that are made that we can simply waive the balanced budget requirement. We are going to waive the Constitution. That is an interesting concept. There are no other provisions in the Constitution that are waivable. No one talks about waiving the Bill of Rights. I do not quite know how you have waivable principles in your Constitution which is, after all, designed for a statement of fundamental principle, not for matter to be waived away.

We do not put substantive policy into the Constitution. This is what will be happening here. In order to counter that problem, they say we are going to provide for a waiver through a three-fifths override provision. The waiver provision says this requirement is not an enduring principle, it is a matter of current judgment. As I say, no other constitutional principle—free speech, individual rights, or equal protection—can be waived by a three-fifths vote.

Finally, such a provision would permanently shift the balance of power from majorities to minorities in our society, violating the democratic principles upon which our Government is based. A three-fifths supermajority effectively gives control over fiscal policy to a minority in either House, not what the framers of the Constitution had in mind when they established our democratic form of Government.

I just want to quote from James Madison—he is the father of our Constitution—with respect to supermajorities.

This proposal before us has a three-fifths requirement, a 60-vote requirement. It is not three-fifths of those present and voting, it is a flat 60-vote requirement. It also has a requirement of 51 votes—again, not a majority of those present and voting—but of 51. You actually have to produce 51 affirmative votes to invoke other provisions.

Madison, in Federalist Papers No. 58, in addressing questions about supermajorities says, and I am now quoting in Federalist No. 58:

It has been said that more than a majority ought to have been required for a quorum; and in particular cases, if not in all, more than a majority of a quorum for a decision. That some advantages might have resulted from such a precaution cannot be denied. It might have been an additional shield to some particular interests, and another obstacle generally to hasty impartial measures. But these considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable indulgences.

That was James Madison's view of requiring extra supermajorities. In fact, the founders of the Constitution were very careful. They had this debate. It was an extended part of the debates in Philadelphia at the Constitutional Convention in the summer of 1787, and again it was the subject of debate in the ratification process across the States. But in those deliberations in Philadelphia, the founders were very careful. They required supermajorities in certain very, very limited instances. Of course, amending the Constitution itself was one of those very limited instances. Impeachment was another. Ratification of treaty was yet another. But I think it is very important to appreciate what Madison's perception was, and it was this perception that was reflected in the basic document.

I am not going to discuss today the danger that the courts would come in and intervene to implement this requirement although I think it is a very real danger, and I know Robert Bork and other scholars have written expressing that very concern.

We have amended the Constitution only 27 times in the history of the Republic. The first 10 amendments took place almost immediately. Those were the Bill of Rights. So I think it is accurate to say that we have amended it literally 17 times over the life of the Republic, over 205 years.

We have been very careful about amending this Constitution. It has been done only in certain, very limited instances, and I think in situations in which we had a very clear view of what the consequences would be. We lowered the voting age. That was a very clear provision. We provided for the direct election of Senators by the people rather than by the States. We changed the term dates for the President and the Congress. But the basic document has held steady throughout the more than two centuries of our Republic's history.

But putting this balanced budget requirement in the Constitution will undercut countercyclical economic policy, the very policy that has led to this very substantial improvement in economic performance in the post-World War II period. It would burden the Constitution and the courts with issues which should probably be decided by the President and by the Congress.

I think we need to be very careful. The courts have in some instances assumed jurisdiction over what I think are essentially executive and legislative policy matters. They have done that with respect to prison systems, for instance, in some States in the country, and there is a very real possibility that under this proposal they would be assuming an extended authority with respect to budget and fiscal decisions, decisions which should properly in my view be decided by the executive and the legislative branches interacting as provided for in the Constitution. In addition, it would shift the principles of our democracy from majority to minority rule.

The Constitution is a relatively brief general statement defining the political and civil liberties of our citizens and the defining of the framework of our Government. It does not establish any specific domestic policy or foreign policy or economic policy. We do not put the substance of policy into the Constitution out of a belief that you make substantive policy through the interaction of the Congress and the President.

Because of its focus on universal principles, the Constitution has endured for over two centuries despite the dramatic changes in American society.

I think it is clear that we should proceed with great caution any time we come up against amending our basic charter.

The desire to put a balanced budget amendment into the Constitution is frequently justified in the name of political expediency. It is put forward as a way of supposedly addressing the problem of the deficit. I have voted here on occasions for both spending cuts and tax increases in order to bring about a deficit reduction. And I have a concern about placing on future generations the consumption of the current generation. I have a different view when we talk about capital investment, as I indicated at the outset, because I think a very prudent case can be made as to why it is a sensible and wise economic policy to borrow in order to purchase a capital asset which will then be used over an extended period of time.

Enacting a constitutional amendment itself will not bring about that deficit reduction. The deficit reduction will come about through the actual enactment of measures involving expenditures and revenues, as we did in August 1993 when we passed the deficit reduction program which has worked quite well and has brought down the deficit in a very significant and substantial way.

I just want to come back to this point of the fluctuation for a moment. It is very important to understand that if the economy starts downward, and we do not try to offset that as we have done by these fiscal stabilizers, the economy will worsen. As it worsens, your deficit grows. If you take more and more extreme measures to try to bring the deficit under control during an economic downturn, you only drive the economy further down which means your deficit only gets larger. So the problem compounds itself. You in effect end up working at counterpurposes. No one wants to go back to this situation that we used to confront before economic stabilizers were in place. But I say to my colleagues, we have to be exceedingly careful. We may be throwing ourselves right back into the difficulties that we confronted earlier in this century and which were particularly marked with the Great Depression.

Mr. President, you address the deficit by dealing with real measures to address spending and revenues. We ought not to lock into the Constitution a provision which is faulty in its concept since it lacks a capital budget, which all the State and local governments have, and which is faulty in not providing for a way to address economic downturns and, therefore, it carries the risk with it that the economy would be precipitated into very deep downswings in the economic cycle, and we would pay the price across the country of people out of work, the mortgages on homes being foreclosed, small farmers losing their farms, and small businesses going bankrupt.

Mr. President, I yield the floor.

EXHIBIT 1

[From the Washington Post, February 7, 1995]

IT'S A RECIPE FOR ECONOMIC CHAOS

(By Laura D'Andrea Tyson)

Continued progress on reducing the deficit is sound economic policy, but a constitutional amendment requiring annual balance of the federal budget is not. The fallacy in the logic behind the balanced budget amendment begins with the premise that the size of the federal deficit is the result of conscious policy decisions. This is only partly the case. The pace of economic activity also plays an important role in determining the deficit. An economic slowdown automatically depresses tax revenues and increases government spending on such programs as unemployment compensation, food stamps and welfare.

Such temporary increases in the deficit act as "automatic stabilizers," offsetting some of the reduction in the purchasing power of the private sector and cushioning the economy's slide. Moreover, they do so quickly and automatically, without the need for lengthy debates about the state of the economy and the appropriate policy response.

By the same token, when the economy strengthens again, the automatic stabilizers work in the other direction: tax revenues rise, spending for unemployment benefits and other social safety net programs falls, and the deficit narrows.

A balanced budget amendment would throw the automatic stabilizers into reverse. Congress would be required to raise tax rates or cut spending programs in the face of a recession to counteract temporary increases in the deficit. Rather than moderating the normal ups and downs of the business cycle, fiscal policy would be required to aggravate them.

A simple example from recent economic history should serve as a cautionary tale. In fiscal year 1991, the economy's unanticipated slowdown caused actual government spending for unemployment insurance and related items to exceed the budgeted amount by $6 billion, and actual revenues to fall short of the budgeted amount by some $67 billion. In a balanced-budget world, Congress would have been required to offset the resulting shift of more than $70 billion in the deficit by a combination of tax hikes and spending cuts that by themselves would have sharply worsened the economic downturn—resulting in an additional loss of 1¼ percent of GDP and 750,000 jobs.

The version of the amendment passed by the House has no special "escape clause" for recessions—only the general provision that the budget could be in deficit if three-fifths of both the House and Senate agree. This is a far cry from an automatic stabilizer. It is easy to imagine a well-organized minority in either House of Congress holding this provision hostage to its particular political agenda.

In a balanced-budget world—with fiscal policy enjoined to destabilize rather than stabilize the economy—all responsibility for counteracting the economic effects of the business cycle would be placed at the doorstep of the Federal Reserve. The Fed could attempt to meet this increased responsibility by pushing interest rates down more aggressively when the economy softens and raising them more vigorously when it strengthens. But there are several reasons why the Fed would not be able to moderate the ups and downs of the business cycle on its own as well as it can with the help of the automatic fiscal stabilizers.

First, monetary policy affects the economy indirectly and with notoriously long lags, making it difficult to time the desired effects with precision. By contrast, the automatic stabilizers of fiscal policy swing into action as soon as the economy begins to slow, often well before the Federal Reserve even recognizes the need for compensating action.

Second, the Fed could become handcuffed in the event of a major recession—its scope for action limited by the fact that it can push short-term interest rates no lower than zero, and probably not even that low. By historical standards, the spread between today's short rates of 6 percent and zero leaves uncomfortably little room for maneuver. Between the middle of 1990 and the end of 1992, the Fed reduced the short-term interest rate it controls by a cumulative total of 5¼ percentage points. Even so, the economy sank into a recession from which it has only recently fully recovered—a recession whose severity was moderated by the very automatic stabilizers of fiscal policy the balanced budget amendment would destroy.

Third, the more aggressive actions required of the Fed to limit the increase in the variability of output and employment could actually increase the volatility of financial markets—an ironic possibility, given that many of the amendment's proponents may well believe they are promoting financial stability.

Finally, a balanced budget amendment would create an automatic and undesirable link between interest rates and fiscal policy. An unanticipated increase in interest rates would boost federal interest expense and thus the deficit. The balanced budget amendments under consideration would require that such an unanticipated increase in the deficit be offset within the fiscal year!

In other words, independent monetary policy decisions by the Federal Reserve would require immediate and painful budgetary adjustments. Where would they come from? Not from interest payments and not, with such short notice, from entitlement programs. Rather they would have to come from either a tax increase or from cuts or possible shutdowns in discretionary programs whose funds had not yet been obligated. This is not a sensible way to establish budgetary priorities or maintain the health interaction and independence of monetary and fiscal policy.

One of the great discoveries of modern economics is the role that fiscal policy can play in moderating the business cycle. Few if any members of the Senate about to vote on a balanced budget amendment experienced the tragic human costs of the Great Depression, costs made more severe by President Herbert Hoover's well-intentioned but misguided efforts to balance the budget. Unfortunately, the huge deficits inherited from the last decade of fiscal profligacy have rendered discretionary changes in fiscal policy in response to the business cycle all but impossible. Now many of those responsible for the massive run-up in debt during the 1980s are leading the charge to eliminate the automatic stabilizers as well by voting for a balanced budget amendment.

Instead of undermining the government's ability to moderate the economy's cyclical fluctuations by passing such an amendment, why not simply make the hard choices and cast the courageous votes required to reduce the deficit—the kind of hard choices and courageous votes delivered by members of the 103rd Congress when they passed the administration's $505 billion deficit reduction package?

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington [Mr. GORTON] is recognized.

Mr. GORTON. Mr. President, the debate over the relationship between Social Security and the balanced budget amendment seems now to be drawing to a close. The truly vital vote on the subject was cast just a few hours ago, evidencing the attention this Congress will pay to the security of our Social Security system.

Early next week, I believe the Reid amendment will be tabled. A mention of Social Security will not be added to the Constitution of the United States. I believe that both sides in this debate share a deep and sober dedication to the viability of our Social Security system. I am delighted that we had an opportunity earlier today to vote overwhelmingly our dedication to seeing to it that none of the promises made to our senior community are repudiated in any respect whatsoever.

Now it is only required of us that we deal decisively with this proposed addition to the Constitution on the subject of Social Security and go on to passing a balanced budget itself, the prospects for which, it seems to me at least, have increased dramatically during the course of this week.

Despite the dedication of those who have proposed this addition to the Constitution, in fact, adding this reference to Social Security to the Constitution of the United States would clearly undercut the very security they say they seek. Once you take this large, vital portion of the money which is collected by the Government in the United States and distribute it to beneficiaries by the Government of the United States and place it outside of the constitutional limitations on spending, which we propose, you run the overwhelming risk that some new Congress, faced with the unpleasant task of balancing the budget without ever being able to count Social Security, would simply lower the Social Security payroll tax and substitute for it a new general fund tax to balance an incomplete budget, while at the same time greatly risking the sanctity and the security of the Social Security trust fund.

Or perhaps an equally imaginative Congress, faced with the same difficult choices but with this huge loophole, will simply define other programs for the benefit of the elderly; for veterans; or for that matter, for children; as Social Security, and have them paid for out of the trust fund, therefore saving money on the balance of the budget and making the tasks of those Members of Congress easier than they otherwise would have been.

The common thread running through these and other similar examples, Mr. President, is the fact that we do not treat the budget of the United States as a unitary whole. We give future Members of Congress the ability overwhelmingly to play games—games which have nothing to do with the amount of money the United States is taking in in taxes and fees, or alternatively with the amount of money that is going out, being spent. A simple redefinition of the tax, a simple redefinition of a spending program without any change in substance, could manipulate the impacts of the balanced budget amendment. Almost certainly, any such manipulation would be to the detriment of the Social Security trust fund.

So, Mr. President, rather than buttressing our promises with respect to Social Security, the Reid amendment, over a period of years, will seriously undercut them. Those who drafted and those who most enthusiastically supported the motion of the distinguished majority leader, Mr. DOLE, on this subject are, by and large, those in this body like myself who, 2 years ago, repudiated the President's attempt to limit or even eliminate certain Social Security cost-of-living adjustments. They were those, like myself, who fought—unfortunately, unsuccessfully—against a 70-percent tax increase

on a number of Social Security recipients' incomes just 2 years ago. They are, by and large, the people who believe, as I do, that we should reduce or eliminate the earnings test on the earned income of Social Security recipients and encourage them to keep on contributing to our society.

Those of us who wish to protect Social Security by defeating the Reid amendment, who have shown our dedication to Social Security by our enthusiastic support of the Dole motion, and who have shown that in past years by our actions with respect to Social Security are truly those who will protect those whose lives depend on the security and sanctity of that system.

So, as I have said, Mr. President, I believe we are close to the end of this debate and that this debate will end, as it should, in retaining the balanced budget amendment in its original and pristine form, and at the same time providing the highest degree of protection for the Social Security system itself. As a consequence, we will, once again, be back debating the fundamental issue which has been before this body: Are we for the status quo? Do we think the system which has led to a $4 trillion debt, which promises us, through the President's budget, $200 billion, more or less—generally more—in deficits forever; that this is a system with which we should be content; that generalized promises of doing better in the future are all that is required? Or, Mr. President, will we be found with those who say the system is broken down and that only outside discipline, only a discipline which can be provided effectively by the Constitution of the United States itself, will cause Presidents and all Members of Congress, Republicans and Democrats, liberals and conservatives, to operate under the same rules and will require them to exercise the discipline necessary to balance the budget of the United States?

Those who are comfortable with, those who favor, the status quo, those who think that the job that has been done is a fine job will align themselves with the opponents to this constitutional amendment. Those who feel that we need to act differently, that we need to operate under different rules, that we need to be a part of a constructive resolution to do the job this country demands of us will vote in favor of House Joint Resolution 1 and submit this constitutional amendment to the people of the States.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business for not to exceed 10 minutes for the purpose of introducing a bill and making a brief explanation of it.

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

The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair.

(The remarks of Mr. EXON and Mr. DORGAN pertaining to the introduction of S. 387 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

(Mr. COCHRAN assumed the Chair.)

Mr. DORGAN. Mr. President, I would like to turn now to the Reid amendment and the constitutional amendment to balance the budget.

Senator REID has done, I think, a great service for this institution to raise this issue, and it is a critically important issue. This is not a debate about whether we should balance the budget. Everyone here in this Chamber understands our responsibilities. This is not a debate about "whether"; it is a debate about "how" we address this crippling fiscal policy problem in this country.

Some have said that there is great uncertainty and it is hard to estimate what a deficit might be. I heard the Senator from Nevada earlier, I believe probably yesterday, in which he talked about one of the reasons for the uncertainty is that we do not always know what will happen to change the deficit or change the receipts or change expenditures.

He mentioned the Federal Reserve Board. Actually, the Federal Reserve Board has increased interest rates seven times in a year. Seven times the Open Market Committee—paradoxically it is called the Open Market Committee, though it meets in a closed room, behind closed doors. I call it the "closed market committee." They had a national mandate for all Americans. What does it do to the Federal budget? It increases the cost of the Federal budget.

I just received some information that I had asked be developed by a number of sources, and I would like to share it with the Members of the Senate, that respond to some of the points that the Senator from Nevada made.

First, let me talk about the national costs. The Federal Reserve Board-imposed interest rate hikes in the last year or so have been the following:

Home mortgages will be increased by $35 billion over the next 5 years. That is what people will pay additional on their home mortgages. In other words, the Fed has said to people out there who own homes, we will send you a bill for $35 billion more dollars. No democracy there. There is no debate about that. That is what the Fed said: We will send this bill.

Small businesses will pay about $96 billion more in the next 5 years as a result of the seven interest-rate increases.

Home equity and credit card loans will increase $86 billion over the next 5 years.

And especially, the point the Senator from Nevada was making, the Federal Reserve Board by its action has increased the cost to the Federal Government during this coming 5-year budget period, has increased Federal spending by $171 billion. How did it do that? The Federal Government will pay now $171 billion more to finance its debt than it was estimated to have to pay under the old interest rates.

So, when we talk about balancing the budget in revenues and expenditures, here is something the Fed did that says we will ask the Federal Government to assume $171 billion in higher deficits over the next 5 years because we are imposing higher interest rates.

I suppose one could say this ought not be criticized if one thought that the Fed was doing it in a justifiable way. The fact is, there is no credible evidence of inflation on the horizon. They are fighting a phantom, nearly invisible, opponent and, in my judgment, they simply believe they are a set of human brake pedals whose sole design is to bring the economy to a standstill. They apparently believe their mission in life is making sure unemployment never goes below 5 percent and making sure economic growth never goes above 3 percent.

I have no idea how they came up with those economic theories. I have no idea which schools teach that. Obviously, they collected it from somewhere and they are able to impose it because the Federal Reserve Board is unaccountable to virtually anyone at this point.

The point the Senator from Nevada made is that some things are very hard to predict. And $171 billion added to the deficit in 5 years is hard to predict, especially if no one is able to determine what the Federal Reserve Board is going to do.

I feel very strongly, as I think do many Republicans and Democrats in this Chamber, that if you were to rank the challenges we face in this country, near the top of that list—maybe at the top of the list—is the challenge of bringing this crippling fiscal policy problem under control. These budget deficits threaten this country's future. It is very simple. Everybody says it. Nobody ever does much about it.

All of us—I say us—want to appear to be the ones to have the answer and the others do not. The conservatives especially say, "We're, the conservatives, and it's the other people's fault." We say, "Gee, it's—." It is everybody's fault. Republicans and Democrats, Presidents and Congresses, have been unable to come to grips with a budget which links entitlement programs to inflation so they continue to increase automatically, and links taxes to inflation the other way so it holds them down and you have a disconnection; therefore, you have very significant budget deficits. And it does threaten this country's future.

So the question we come to the floor with today is, how do we respond? Not

whether—how? The Senator from Utah asked the question whether some want to respond to this by raiding Social Security trust funds, a program which, incidentally, does not cause one cent of the Federal budget deficit. This year the Social Security System will take in nearly $70 billion more than it spends, so it is not causing one penny of the Federal budget deficit. That is by design. We want to save by design right now to be able to pay for the baby boomers when they retire.

So the question the Senator from Nevada asks is a simple question: Do those who want to balance the Federal budget want to break the promise and go into the Social Security trust funds, yes or no? It is like the old binary system, you have two choices, yes or no. It is not difficult. It is not rocket science. One can answer that yes or no.

I want to tell a brief story about something that happened in North Dakota in the year 1867. In the year 1867, the Philadelphia Inquirer, a newspaper in Philadelphia, published a story in their newspaper about how the military garrison at Fort Buford, ND, had been wiped out. This Philadelphia Inquirer story said the military garrison under the command of Col. William Rankin up at Fort Buford, northwestern North Dakota, had fallen. Thousands of Indians, they said in their story, swept down and took over that Fort Buford and wiped it out. It said Rankin actually shot his wife rather than let her be captured during that siege. Then it said Colonel Rankin himself, who led that military outpost, was burned at the stake.

President Andrew Johnson, President at the time, came under attack by political foes, and congressional investigations were called, wondering how could this happen in our country. General Sherman said that he was embarrassed that he had no firsthand information about it.

And then later the truth.

The story was an April fool's story. It never happened. It just did not happen. The worst episode at that Fort had been a single cannon shot which had scattered a small band of Indians. So this story about massacre that spread across the Nation, had the President responding, generals embarrassed, and Congress calling for investigations during a time, of course, of slower communications, radically slower communications in 1867, never happened. It was a hoax. The massacre hoax at Fort Buford, ND.

Well, we have seen a lot of hoaxes. The American people have seen a lot of hoaxes. The question, I suppose, one might ask now is: What is the hoax here? Is it a hoax for people to believe that maybe we can deal with these budget deficits and try and respond to our children's future in a positive way, or is it a hoax? Is it just one more empty promise, one more promise to make and then break? That is the question.

I have spoken several times on this, and I have not been one who said if this amendment does not pass, I am going to vote this way or that way on the underlying constitutional amendment. I have avoided saying that for a very specific reason. Because I view this as a very solemn responsibility.

The U.S. Constitution, which I brought to the floor before, is quite a sacred document. It says, "We the people." That is the way it starts, "We the people." Senator BYRD says this is "my contract with America," the American Constitution. It is a pretty good contract to start with and to end with. "We the people."

What can "we the people" in this country expect from our leaders? The senior Senator from Utah, Senator HATCH, for whom I have great affection, says, "Let's pass an amendment to change the U.S. Constitution." The senior Senator from Maryland, Senator SARBANES, someone for whom I have great respect, says, "No, that would be the wrong thing to do." There is real division in this Chamber about what to do. Not whether it is a good idea to bring into balance the budget deficits, to strive to stop spending money we do not have, often on things we do not need and mortgaging our children's future. It is not a question of whether or a difference on whether, it is a question of how.

I take a look at what we face in the coming years, and I see enormous deficits in the out years, under virtually everyone's proposals.

I have said, and I do not mean this in a pejorative way, the conservatives say, "Gee, we have this Contract With America and here is what our plan is: We want to increase defense spending, we want to cut taxes and we want to balance the budget."

And we said, "Gee, we know you are people of good faith, but could you share with us how that is all possible? Haven't we heard this before? How could you possibly do that? How do you cut your revenue, increase one of the largest areas of spending and balance the budget?"

So we offer a right-to-know amendment, and they say, "No, we do not want to get into details and make people's legs buckle." A Congressman in the other body said, "If we provide the details, it would make people's legs buckle." What would make them buckle? We would like to understand how you get from here to there, because we want to get there as well. We share the desire to get to the same destination.

The question that Senator REID is asking with his amendment is not whether we should pass this constitutional amendment to balance the budget. I have voted for one in the past and may vote for one again. The question he asks is how, in doing so, will the Social Security funds be treated? Will we decide on the one part of the Contract With America to increase defense spending, at a time, incidentally, when the U.S.S.R. is gone, there is no Soviet Union, the Berlin Wall is down, the cold war is largely over? Will we increase defense spending and resurrect Star Wars, one of the goofiest gold-plated weapons systems, so out of step with reality and so unnecessary for this country? Will we do that? And if we do that, how will we pay for it?

Will some decide, "Well, there is one way to pay for it. There is $70 billion in the Social Security trust funds just this year we raised but did not spend. That is sitting there. We can pay for it that way." Except, that is a contract. We said to the American people we are going to collect more from your paychecks in order to save it, and those who say let us balance the budget and increase defense spending and cut taxes, who might look at that Social Security trust funds as one giant golden goose, they, I think, will be breaking a promise with the American people.

So we are saying in this amendment we would like to see if everyone here will pledge to keep the promise.

I would not suggest that there should not ever be changes in the Social Security system. Any changes in that system ought to be made for one reason, and that is to make the system whole. The Social Security system ought to be made viable, and it ought to be made solvent for the long term. But changes in Social Security must be made for its own sake, for the sake of preserving that system, not because someone wanted to do something else to cut taxes or increase defense spending.

We face staggering challenges in this country, and I could list some of them. I do not have to do that at great length. But all of us understand how difficult these challenges are. The challenges include environmental challenges, clean air, clean water. Does anyone here not want clean air to breathe or clean water to drink? Of course, we do. The epidemic of teenage pregnancies among unwed mothers; a welfare system that seems out of whack, has the wrong incentives; a staggering number of people who are left behind in our country.

Two days ago I saw again a press story that said more American children live in poverty today than ever before. More American children are poor than ever before in this country.

These are staggering challenges to which we have a responsibility to respond. The question is, how do we do that? We do that in part with a Federal budget. And there are plenty of needs for which we must make investments. But we must, at the same time we do that, pay for them.

I am not someone who comes here to talk about a balanced budget amendment or the Reid amendment and says,

as far as I am concerned, let us fold up the tent and just shut down shop here at the Government.

There are a lot of things we do I am proud of, I care about, and I am going to fight for. A commitment to this country's children is first and foremost. If we are not willing in these discussions, all of these discussions, even as we strive to balance this budget—and I will help do that—if we are not willing to stand up for this country's children, all of us, and say, those of you who are disadvantaged, we are going to give a head start; those of you who need help, we are going to give you an upward bound program; those of you who are hungry, we are going to give you food, we are going to help you find something to eat; those of you who need shelter, we are going to help; those of you suffering abuse—physical abuse, sexual abuse—we are going to help.

Right now there is a place in this country with a stack of files on the floor. As I speak, a stack of files alleging child abuse against young children is lying unexamined because there are not enough people to investigate these charges. Physical violence and sexual abuse files are sitting on the floor. People have alleged that young children are victims, and there is not enough money for those folks out there to investigate them. It just breaks your heart, brings tears to your eyes to hear stories of these kids. And to think somewhere tonight there is a 3-year-old or 4-year-old out there who is going to suffer abuse and someone knew it, because it was complained about before and it did not even get investigated.

My point is this. We must make a commitment to the children in this country. Someone once said 100 years from now it really will not matter how much your income was, it will not matter how big a house you lived in, if the world is a better place because you were important in the life of one child. We can be important in the lives of every child in this country. It is a question of deciding what is important for us. It is important to balance the budget because those children inherit the debt. If we are unwilling to pay for the things we now consume as a country, the children inherit that debt. So it is important to do that.

It is also important with respect to what we spend money on to understand that children come first in this country. This country's future is the future of its children. We are going to have, I think, very substantial debates, fights later this year about what to spend money on.

Let me go back to this issue because it is not an unimportant issue. It is such a clear issue to me. We have people who, at a time when more children are living in poverty than ever before in the history of this country, when we have children who are hungry and homeless, say, well, now is the time for us to rebuild star wars; it is time now; we need a new gold-plated weapons program in defense; we need to build star wars.

I do not even understand what kind of thinking produces that sort of nonsense, but people believe it. Some people do. If they propose it, they will fight for it. And do you know, it is a lot easier to get money for a weapons program, a lot easier to get money to build a weapons program, than it is to get money to try to investigate charges of child abuse. I tried last year to get $1 million to help those people to investigate those charges.

We have to do better than that. We have to change. We have to change with respect to the priorities we decide are important in this country's future, what we invest in, what makes us a good country with a good future. But we also have to change.

The Senator from Utah and others are absolutely right; we have to change, change this stream of deficits that hurt this country. And we can do it. There is nobody better qualified to do it than the American people now today, to start today. And it may be the constitutional amendment is the way to do that. If it ratchets up even with a small percent the chance of doing it, then I think we will have served some good purpose. But not if while serving that good purpose we break another solemn promise of saying we are going to raid the Social Security trust fund to do it.

Some people in here, it seems to me, are afraid to ask for responsible choices from the American people. I think it is reasonable to ask the people to make choices.

Let me give you an example. In this country, we spend nearly $400 billion on gambling. We gamble more in this country than we spend on defense, which is one of the largest items in the Federal budget. So someone says well, gee, if you propose a 1-cent gas tax, people get all upset. Sure, I understand that. But the fact is we must force people to make choices. Some choices are very hard to make. Nobody would ever want to pay an increased tax and no one wants spending cuts in areas where spending benefited them. And yet the solution, it seems to me, is probably going to have to in the long run be both, in one measure or another.

We cannot continue to ignore the problem, and I say to those who bring this to the floor I think they do justice to this country's agenda because it is something we ought to be debating and we ought to force the Congress to deal with it.

I do hope, however, that as we do this we will do it the right way. And the right way, it seems to me, would be, when we vote on Monday on the Reid amendment, to decide to vote yes, to tell the American people we have a number of contracts going on around this country. One is a political contract called the Contract With America. Another is the fundamental contract called the U.S. Constitution, which supersedes it all and has made it all possible.

Under the Constitution we have made a promise, probably one of the most successful promises ever made and a promise that I expect to be kept for decades to come, and that is the promise of Social Security.

The Senator from Nevada I guess mentioned this morning again the story I told yesterday about landing in a helicopter that was out of gas in Nicaragua. I was up in the mountains actually by Honduras, between the border of Nicaragua and Honduras, and discovering up there for the first time what Social Security meant. I was talking to the people, campesinos, and discovered that they do not have Social Security. They have as many children as they can have during the childbearing years and hope that maybe, if the children are lucky enough to grow old, the children will provide for the parents who raised them. If you are lucky enough to have children grow up with you, that is your Social Security. I had not even thought about it before, until that day out in the jungle of Honduras talking to some of the campesinos.

This is an enormously fortunate Nation, to have had some people to make tough choices but to develop approaches that have been very, very good for this country, one of which is Social Security.

I know we had people who, when it was constructed, said, Gee, this is socialism. What on Earth are we doing?

It is not socialism. Not at all. It has been the most successful program, I think one of the most successful programs, in this country's history. It has been there for every generation and will be there for every generation.

Now, some will say, well, why are you doing this? Why do you raise the question of Social Security, Senator REID? The answer is that just today in The Washington Post and the New York Times, once again there are two more references by public officials who say we are simply going to have to adjust Social Security to deal with the budget deficit.

I say to people, if you adjust Social Security, do it to make the Social Security system solvent if it is necessary, but do not ever do it to deal with the operating budget deficit that this country is running because we cannot reconcile our revenue with things we are spending it on other than Social Security. That really, it seems to me, would be breaking a promise.

So just today, again, with two references, one in the New York Times and one in the Washington Post, again on this subject, it underscores, I think, the need that Senator REID says is

foremost here to pass an amendment that simply says when we amend the Constitution that we will continue the promise. The promise is the Social Security system is a trust fund paid for with dedicated taxes, not running at a loss and not contributing one cent to the Federal deficit, and we promise we will not balance the budget by raiding the Social Security trust funds.

I said before I do not ask for three reasons one would not vote for this, just one good reason, one reason someone would decide not to vote for this amendment. The only conceivable reason I can divine is that some way, somehow, someday down the road, someone wants to use this money in order to make it easier to balance the budget. But of course in my judgment that would be breaking a promise.

So, having said all of that, let me again congratulate the Senator from Nevada, Senator REID, and the Senator from Utah. Again, this is a debate we should be having. It is when we should have it. There are a few left who say this does not matter. This matters more than almost anything else because we are spending tomorrow's money today.

I have a 5-year-old young daughter who is going to grow up and inherit a $10 or $12 or $14 trillion debt. Somehow I am going to try to prevent that from happening with every ounce of my energy because it is unfair, unfair to have her do that. So that is what these debates are about.

I appreciate very much the leadership of the Senator from Nevada and I look forward to the vote Monday.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, prior to the Senator from North Dakota leaving the floor, I want to say to him, and to the senior Senator from Utah, and to the American people, I think what has gone on during the last week or so—I should say more than that—what has gone on since we have started this congressional session has been very constructive. We have had some very difficult debates on coverage, unfunded mandates, and now this balanced budget amendment. But I think these debates have been very good. We have debated issues. We have not gotten involved in personalities. We have, on this issue and a number of other issues, a real difference of opinion and we will debate this—as to whether or not there should be an exemption for Social Security—the rest of this day, Monday, and perhaps Tuesday. But this is drawing to a close.

I say to my friend, the manager of the bill, I think this has been, for lack of a better description, a high-class debate. We are, really, talking about issues that are important to the American public. I hope the debate that will transpire the next few hours on this particular amendment will remain constructive and in so doing I think it brings honor to this institution and to the American public.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I rise in support of the balanced budget amendment.

I have always supported a balanced budget. Montanans want a balanced budget. We must listen to the people and give them a balanced budget. The Federal Government must learn to live within its means—just like the middle-class families we all represent. And I now believe a constitutional amendment is the best way to make that happen.

I questioned this amendment in the past simply because I have a reverence for the Constitution. I do not like the thought of amending it to address any subjects beyond the fundamental questions of our rights and responsibilities as citizens.

There are serious, thoughtful arguments against this amendment, arguments on constitutional principle, and arguments based on its practical effects. But I have seen us evade our responsibility too many times.

Rising interest payments and rising spending are denying our children their shot at the American Dream. They are eating away every essential function of the Federal Government. And when presented last year with a chance to solve part of the problem by containing Government health spending, Congress would not do it.

It is time to send the balanced budget amendment on to the States. It is time to let our Governors, State legislatures, and citizens debate the issue and vote on it. It is time to move beyond the amendment, cut waste in Washington and work with the States to set priorities and control spending. If we work together as a country we can do the job. And if we set our priorities carefully we will find the consequences are not so dire as the opponents of this amendment predict.

Let us begin with a look at the problem we face.

Every year, for the past 14 years, we borrowed $150 or $200 billion. In that time, our national debt grew to its present extravagant size of $4.6 trillion. And not only is debt growing, it is growing faster than our economy.

It rises about 5 percent a year, faster than we can expect GDP to grow in the foreseeable future. That means every year, we give up more of our income to pay interest on the debt.

Each year, more tax dollars go not to useful purposes like defense, fighting crime and drugs, education or promoting public health but to commercial and foreign banks. Our fiscal situation is bad already, and our children will take the worst of it.

Last year, for the first time, Federal net interest payments topped $200 billion. Next year it will be $260 billion, $1,000 for every American man, woman, and child. And without emergency action on the deficit, interest payments will be higher every year from here to eternity.

The question, however, is not whether consistent over-borrowing is wrong. Obviously, there are times—in wars, in depressions—when borrowing is not wrong. But to do it year after year, without any emergency, is scandalous.

Last year the economy grew faster than it has in a decade. Any economist would say that years like 1994 are years in which we should run a surplus and retire some of the debt. Instead we borrowed more.

So we now face two questions.

First is the practical question of how to make enough cuts and raise enough revenue to balance the budget. And the second—the more profound question—is how to establish an ethic that says constant, irresponsible overborrowing is simply wrong.

On the practical side, we have made a start with the normal budget process. In 1993 we made a massive cut in the deficit—$486 billion over 5 years.

That has succeeded. You can see the effects already. In the last year of the Bush administration, the deficit was $222 billion. In fiscal year 1994 it was $203 billion. And this year it will be down to $176 billion. As a percentage of GDP, it has not been this low since 1979.

That is a start, but we must do more. And since the 1993 budget passed, I have kept at it. Last year I looked into overspending on Federal courthouses. And I cut $120 million out of the courthouse construction budgets. Further investigation found judges spending taxpayers' money on private kitchens and rosewood paneled offices.

I worked with Senator DeConcini, then the Intelligence Committee chairman, to cut $50 million from the CIA's National Reconnaissance Office, when we caught them wasting money on a building with a fountain and a sauna.

That is all to the good. But there is more waste to cut.

The Army Corps of Engineers insists on building more and more levees at great expenses to the taxpayer—an expensive, backward policy, which turns damaging floods into disasters like the Missouri flood of 1993.

We cut out the supercollider but we still fund giant boondoggles like the $70 billion space station.

We still pay $12 million a year for an absurdity like TV Marti—the weather balloon unsuccessfully beaming dubbed reruns of "Laverne and Shirley" to Cuba between 3 and 6 in the morning. I have tried to cut both and I will try again.

And on a broader scale, many in Congress like talking about spending cuts in the abstract more then cutting spending in the concrete. Back in 1984,

I joined Senators KASSEBAUM, GRASSLEY, and BIDEN in sponsoring an amendment to freeze all Federal spending across the board for a year. It was simple—some said simplistic—but effective. We got just 33 votes.

Last year, I was one of just 31 Senators to support Senator BOB KERRY'S amendment to cut over $94 billion in Federal spending. Its cuts in Public Law 480 Food Aid and the honey program meant pain at home in Montana. Means testing for Medicare part B would have made wealthy senior citizens pay a bit more.

But it was fair. It spread the pain equally around the country, and we cannot afford to reject deep, fair cuts like that one again.

I have seen this happen one time too often. And I do not believe it will stop unless we make a clean break with the past and establish a new ethic of responsibility. And I conclude that the only way to establish such an ethic is through a step as dramatic as a balanced budget amendment.

So, while I respect and at many points agree with the arguments made by the amendment's opponents, I will support this amendment to our Constitution. But I will also try to improve it, because in three critical areas it falls short.

RIGHT TO KNOW

First, the amendment is only a statement that the budget must be balanced. It contains no plan of how to do it.

That is also a question of values. In Montana, you look people in the eye and tell them the truth. You do not promise to fill them in later. Our State government is the country's most open and accessible. Our State constitution guarantees the people access to virtually every official document or meeting.

It should be the same in Washington. A right to know provision, requiring us to spell out a program that balances the budget within 7 years, is an essential part of a balanced budget amendment. And without a detailed, specific plan to cut spending, reduce interest rates and raise revenue, experience tells us that this amendment will fail to do the job.

Why do I say that? Because I remember the Gramm-Rudman-Hollings Act I voted for back in 1986. That act required us to meet a set of progressively lower deficit targets every year, ultimately balancing the budget by 1992.

Well, we all know what happened. Because it lacked a plan to meet the targets, Gramm-Rudman became an annual exercise in gimmicks. Payment dates delayed or moved up, savings double counted, revenue forecasts artificially pumped up and more. It was a well-intentioned failure, and we must not repeat it.

So because of practical necessity as well as old-fashioned Montana honesty, we need full disclosure in this amendment. We have a right to know—the people have a right to know—the consequences before we act. I deeply regret an earlier attempt to add this right to know concept was defeated.

CAPITAL INVESTMENT AND CONSUMPTION NOT THE SAME

Second, when the Federal Government thinks about how to balance the budget, it can take a good lesson from Montana and from some of the other States.

Our State of Montana Constitution requires a balanced budget. But despite that provision, and without violating it in any way, Montana has a State debt of over $400 million.

How did it happen? Simple. Montana balances its operating budget. But Montana can borrow money to support its capital budget, that is the money it uses to build and improve public highways, buildings, and water systems. That is straightforward, sensible policy. It is not a shell game. And, of course, it is also how businesses and families manage their budgets.

Middle-class families watch their money. They stay on a budget and do not spend more than they earn on luxuries like restaurants and CD players. But when they make major, essential purchases, like cars and homes, they carefully, within their means, borrow. Virtually nobody pays cash for a house.

Likewise, most successful businesses strictly avoid borrowing to pay for operating expenses. But they do borrow at times to expand their working space. A farmer on the Hi-Line borrows to buy a new tractor. A small enviro-technical company in Butte borrows to buy a computer system. Businesses borrow to buy essential capital goods that raise their productivity and mean more profits in the long run, and they are right to do so.

The right policy for Montana, small business and families is also right for the country. On critically important capital projects, borrowing is sometimes right.

CAPITAL BUDGETING AND HIGHWAYS

For example, Dwight Eisenhower asked our generation to accept a significant debt burden to fund the Interstate Highway System. In 1956, when he signed the bill creating the Interstate, we had a balanced budget. But beginning in 1958 and throughout the 1960's, we ran deficits.

And since 1956, we have spent $130 billion on the Interstate. If we had spent nothing, the debt would be lower by $130 billion plus interest. But Ike made the right decision.

Through I-15, I-90, and I-94, the Interstate System makes Montana a viable part of the modern economy. Across the country, it eased the flow of commerce, created millions of jobs, and brought us untold additional wealth. Compared to these benefits, some additional debt is unimportant.

We are now beginning its successor, the National Highway System. The NHS will do for our children what the Interstate did for us. It will mean jobs, growth, and higher productivity, and if we need to accept some debt to build it, that is appropriate.

Passing this amendment, without ensuring that we can keep a separate capital budget, risks destroying the National Highway System. Towns like Lewistown, Glasgow, and Kalispell will remain isolated. Our farmers will be at a competitive disadvantage. Our businesses will see transportation costs higher than they should be, and that would be sad and foolish.

A separate capital budget will make sure that wise capital investments like the National Highway System are protected. Thus, I intend to support an amendment to give us a capital budget as well as an operating budget, and allow us to make the wise choice Dwight Eisenhower made 40 years ago.

EXEMPT SOCIAL SECURITY

Finally, we come to an item of great sensitivity. That is, how will a balanced budget amendment affect Social Security?

Social Security is not really a government program at all. It is essentially a pension fund. People who work contribute to it throughout their career. The Federal Government manages the money and returns it to them with interest on retirement.

So it is not Federal money. It belongs to the people who pay into the system. It is wrong to count payments from the Social Security trust fund as spending, or to count Social Security contributions as revenue. To do either is really a breach of contract.

Robert Olandt, from Rollins in the Flathead, expresses it perfectly in a letter he wrote me 2 weeks ago:

> Sir, you and I and countless others are or have been paying Social Security premiums with the expectation that this program will, in fact, not be diminished . . . that quality of life may be preserved as we enter later maturity. Just getting old is bad enough. There has to be some dignity as well.

When this amendment passes, we can pass budget resolutions which do not cut Social Security. I will work very hard to make sure we do that. But the temptation to include Social Security will be great. And the better course is to say now, in this amendment, that Social Security is off the table.

MONTANANS MUST FACE THIS TOGETHER

Mr. President, we must balance the budget. We must learn to live within our means.

On no issue are Montanans more united. When I walk the highways of our State people stop and tell me we have to balance the budget. I listen to them at workdays, when I spend a day at Ribi Immunochem in Hamilton, on Geoff Foote's ranch on the Blackfoot or the Big Spring Water Plant in Lewistown. And I feel the same as any other Montanan.

But feeling is not doing. And doing will hurt. According to the National Association of State Budget Officers, about 28 percent of Montana's State budget comes from the Federal Government. On top of that the Federal Government spends about $330 million to support Montana crop and livestock producers, $30 million at Glacier and Yellowstone National Parks, and $100 million at Malmstrom Air Force Base.

To balance the budget by 2002—without new Federal taxes, without a separate capital budget, and with each State taking a proportionately equal cut—the Treasury Department predicts that the Federal Government will need to cut spending by $277 million in Montana.

That includes $52 million in highway funding—and when we give up $52 million in highway funding, we lose 2,000 high-paying construction jobs and hundreds of miles of road repair. We give up $123 million in Medicaid. And we lose over $100 million in education funding, welfare payments, environmental protection, housing, help for veterans, and more.

So debate in the Senate is only the beginning. Difficult and painful decisions lie ahead for our State. We must set our priorities. We must decide which programs we are willing to pay for and which we are willing to live without. And all Montanans and Americans ought to shape these priorities together—so that we share the stress fairly, and so that we cut as much waste and as few essential services as possible.

But we must make these decisions. We can no longer postpone them. Because at bottom, they are questions that relate more closely to values than to accounting.

I found the essay Prof. James Wilson published in the Wall Street Journal a few weeks ago very perceptive. He said that in years past:

> something akin to a Victorian ethos and restrained our spending. Now that ethos is gone.

That goes for everyone. The Federal Government has evaded the problems at the root of the deficit for a decade. State governments blame Washington for unfunded mandates without admitting how much Washington pumps into their budgets every year. Citizens write letters demanding tax cuts, money for local projects, and a balanced budget.

That is a failure of values. At every level, it is a failure to admit the truth and take responsibility. It shows how far we have come from the ethos Wilson describes.

Whether or not it passes, we must get back to the values we have lost. Like living within our means. Like thinking more about our children than ourselves. So in the coming months I hope to hear from our State's legislators and elected officials, and most of all from ordinary, middle-class Montanans as to how we start. And I will seek their views on where they see waste in Montana, where Federal spending can be eliminated and where Federal support is essential.

This is a heated, spirited, principled debate. But underneath it is a consensus. We need to live within our means. We need to set priorities. And we need to work together to do it.

That is true of the political parties. It is true of the State and Federal levels of government. Most of all, it is true of us all, as ordinary American citizens. And there is no time better than now to begin.

(Mr. KYL assumed the Chair.)

Mr. HATCH. Mr. President, as far as I know, that may be the last set of remarks. There may be one other Senator coming over to speak. We would like to shut the Senate down because I think everybody has really had a good chance. I first pay tribute to my colleague from Montana and tell him how much we appreciate his willingness to support this balanced budget amendment. I know it has been a very difficult decision for all of us because there are arguments on both sides of this issue.

I also have a great deal of affection not only for him but for my colleague from Nevada, who, it seems to me, has conducted this debate on his amendment with about as much dignity and class as anybody I have ever seen in the history of the Senate. I personally appreciate it. So I thank the Senator from Montana and the Senator from Nevada, as well. Both of you are dear friends. Let us keep fighting, because I personally believe we can pass this joint resolution. I think we have to. Even though nothing is perfect, it is a Democratic and Republican, bipartisan opportunity for us to try and do something.

Mr. President, some of my colleagues have argued that the balanced budget amendment is a figleaf. To the contrary, it is the first step toward our country's fiscal atonement. That is a pretty high-flung term to talk about "atonement," but $5 trillion in debt, going to $6.3 trillion within 3 years, spending our children's and grandchildren's future away, I think this is fiscal atonement. That is what we should do.

We have been unwilling to deal with our exploding debt. The few times we have tried, the short-term benefits of partisan politics consumed our institutional duty to attend to our Nation's long-term interests.

If we have learned anything from recent history, we have learned that we lack the fiscal backbone to make the tough decisions, or restrain ourselves from engaging in shortsighted political assaults when some in Congress demonstrate the willingness to do so. I suggest, perhaps that both sides of the aisle are responsible. When Republicans tried to curb the growth in entitlements by changing Social Security back in 1985, Democrats seized on that opportunity and took back the Senate. When Democrats tried to address the deficit by raising taxes last Congress, Republicans jumped into action and, of course, we took back the Senate.

If we have learned anything from the past decade, it is that we should not raise taxes or play with Social Security. But we have also learned that without the balanced budget amendment to give us the fiscal backbone we need, neither party is willing to restrain itself from partisan politics when it comes to budget cutting. Instead of viewing the balanced budget amendment as a reward for congressional cowardice, my hope is that we will begin to see it as a first step toward our own fiscal penance, and I call it fiscal atonement.

The truth is we must act. If we fail to act here, can any of us honestly admit that, without the balanced budget amendment to give us backbone, we will continue business as usual and we believe the Congress will develop the institutional courage to act responsibly any time in the next several years if we pass this amendment?

Teddy Roosevelt said:

> The danger of American democracy lies not in the concentration of administrative power in responsible hands, it lies in having the power insufficiently concentrated so that no one can be held responsible.

Without the balanced budget amendment, we will be content to hold the other party, or the President, or the past Congresses, responsible in lieu of ourselves.

Why act now? Why should we act? Because such an act is important. So much is riding on our vote. If we do not act, just think of the fate we are leaving for our future generations. As Senator DASCHLE said last Congress when he voted in favor of the balanced budget amendment, "We are leaving a legacy of debt for our children and grandchildren. A lot of people have paraphrased that during this debate.

Every child born in America today comes into this world over $18,500 in debt. And that debt is growing. We are concerned about our children and our grandchildren.

In President Clinton's fiscal year 1959 budget, it was estimated that for children born in 1993—these kids right here—the lifetime net tax rate will be 82 percent. The net tax rate is the estimate of taxes paid to the Government less transfers received, if the Government's total spending is not reduced from its projected path and if we do not pay more than projected. The 82 percent figure for our children stands in stark contrast to the 29 percent net tax rate for the generations of Americans born in the 1920's, and the 34.4-percent net tax rate for the generation born in the 1960's.

Now, that is right from the Clinton administration's 1995 budget, generational forecasting.

Each year that we endure another $200 billion deficit will cost the average child—these children right here and all of our children throughout this country and our grandchildren—over $5,000—$5,000—in taxes over his or her working lifetime. And we have, under this budget, 12 straight years of $200 billion deficits. So just add it up—5,000 bucks per child each year that we endure another $200 billion deficit. It is going to cost the average child over $5,000 in taxes over his or her working lifetime just to pay—now get this—just to pay the interest costs on the debt. President Clinton's conservative deficit estimate alone for the next 5 years will mean a total of $25,000 in taxes for these children, just to pay interest on the debt.

A lot is riding on our vote. When this child is 11 years of age in fiscal year 2005, the CBO's conservative projection shows that the deficit will top $400 billion—more than twice today's level. In that year alone, this child right here will be charged and all of our children will be socked with a $10,000 tax bill, just to pay the interest on the deficit. The debt will reach nearly $6.8 trillion, or 58 percent of our GDP.

That is from the "CBO Economic and Budget Outlook, Fiscal Years 1996–2000."

CBO notes that the growing deficits stem from entitlement spending, particularly by major health care programs. Entitlements will grow from roughly one-half to two-thirds of all Federal spending. Spending for both Medicare and Medicaid is still projected to rise by 10 percent per year through the year 2005. These two programs alone will overtake Social Security in the year 2000 and catch up to total discretionary spending by the year 2005. That is just Medicaid and Medicare alone. In the year 2005, the first baby boomers from our generation will be several years away from eligibility for Social Security. The child in this picture will be over 55 years away from eligibility.

Our debt is ballooning. It took our Nation 205 years—from 1776 to 1981—to reach the first $1 trillion national debt. It took only 11 years to quadruple that figure. Today, the national debt stands at over $4.8 trillion and it is only going to take another 3 years to get it up to $6.3 trillion. Today, the national debt stands at almost $5 trillion. Citizens of other nations, like Argentina, Canada, and Italy have faced stagnant or lower living standards when their Governments ran up huge debts. Future generations face higher interest rates, less affordable housing, fewer jobs, lower wages, and a loss of economic sovereignty.

Let me just say this. We have been talking about Social Security. I want to take care of our senior citizens and I intend to do so, and I think everybody else around here does, too, in spite of this debate.

But I have to tell you something that people have to stop and think about. If we keep running this debt up into the air as we have been doing, if we keep accumulating the deficits that we have and paying so much interest against the national debt, I have to tell you we are robbing our children and our grandchildren and our future generations. And it is not right.

When Social Security came into being, there were 46 workers for every person on Social Security. Today, it is a little bit better than three for every person getting Social Security, and by the year 2020 it is going to be two. It is going to be these kids who are going to share the burden. And we have been robbing our kids. Now, it is time for us to talk about the kids and about our grandchildren, at the same time we are trying to take care of our seniors. But we cannot forget them. And if we do, we deserve the condemnation that should come our way.

Let me tell you something. Sooner or later, if we want Social Security to be strong, we have to have a strong economy. If we want a strong economy, we have to get spending under control. We have not been able to do that for 26 years and certainly not for over the last 14 years.

And I have to tell you, it is getting worse and worse. If we want to get our economy under control, we have to pass this balanced budget constitutional amendment. It is one way we can. It is our only hope right now. It is not a Republican amendment. It is not a Democrat amendment. It is both of us. We have worked together. Seventy-two or seventy-three courageous Democrats voted for this in the House, and we will have a number of them here. All we need are 15.

So I hope the folks out there will get with their Democrat Senators and let them know they expect them to vote for this balanced budget amendment, regardless of what happens. And if we pass this, we will be on the way to some fiscal restraint and some fiscal sanity that may save the lives and the futures of these children that are born today.

Mr. CRAIG. Mr. President, I rise to oppose the Reid amendment. Now that the Dole motion has passed, the Senate has expressed its will to protect Social Security.

The best protection we could provide for the Social Security system, and for the welfare of our senior citizens, in general, is to pass the balanced budget amendment and send it to the States for ratification as soon as possible.

Any amendment, such as the Reid amendment, that claims to do both, require a balanced budget and protect Social Security with an exemption, will do neither.

From every proposal like this that we have seen so far, it seems obvious that there is no practical way to do both those things in one constitutional amendment.

On the other hand, the Dole motion, with the amendments proposed by the majority leader, is the real vote on protecting Social Security.

THE REAL VOTE WAS ON THE DOLE MOTION

The Dole motion, combined with the Kempthorne amendment to S. 1 recently, fully commits this Senate to protect the integrity of the Social Security system and the benefits of seniors who are counting on that system.

The Dole motion deals with how we get to a balanced budget by fiscal year 2002. Even if the Reid amendment worked as its author has indicated, it would not be effective until fiscal year 2002 at the earliest.

To get to a balanced budget by 2002, Congress will need to restrain the growth in spending to 3 percent a year. With Social Security off the table, we will have to hold non-Social Security spending to 2.25 percent growth a year.

That is a reasonable glide path, just slowing the growth in spending between now and 2002. After the budget is balanced in fiscal year 2002, spending can resume growing at the same rate as revenues at that time, now projected at more than 5.2 percent a year.

So, obviously, budget discipline will have to be tighter before fiscal year 2002 than after 2002. The Dole motion sets Social Security aside as a priority immediately, while we are on that deficit-reduction glide path, and after 2002, as well.

The Dole motion protects Social Security when it needs protection. A yes vote on the Dole motion is the real vote to protect Social Security, now and later.

THE REID AMENDMENT WILL NOT WORK

The Reid amendment does not even purport to protect Social Security until 7 or 8 fiscal years from now. In reality, careful examination shows that the Reid amendment will never protect Social Security.

These five facts best summarize what is at stake as we debate the Reid amendment:

First, the debt is the threat to Social Security, our seniors, and the economy.

Second, nothing in the language of the Reid amendment provides any protection for Social Security or seniors.

Third, the Reid amendment would create perverse incentives to raid the Social Security trust funds on both the spending and revenue sides.

Fourth, nothing in the underlying House Joint Resolution 1 would overturn present statutes protecting Social Security or prevent future efforts to strengthen its priority status.

Fifth, a Constitution should include timeless principles, not temporary priorities.

Mr. President, let's be realistic: Social Security has 100 friends in this Senate.

I do not doubt that the supporters of the Reid amendment earnestly seek to protect Social Security. I do think some of them want to vote against the balanced budget amendment, and I hope they will not hide behind Social Security as an excuse.

I share the goal of protecting Social Security benefits from being cut, or Social Security taxes from being raised, to balance the budget and pay for other spending.

But the Reid amendment would take us in the opposite direction from that goal. At the same time, it would undermine the basic purpose of the balanced budget amendment itself.

Let us examine these five principal issues one at a time.

First, the debt is the threat to Social Security, our seniors, and the economy.

Some of our colleagues have taken to the floor to remind us that Social Security has not been contributing to the deficit and to the buildup of the national debt.

I agree. It is exactly the other way around—the debt is the threat to Social Security.

Gross interest on the debt is already approaching one-fifth of total Federal spending. It is the second largest item of Federal spending now and, by the end of the decade it will pass up Social Security as the largest item.

As the debt grows, as the cost of servicing the debt grows, it threatens to crowd out all other budget priorities—including Social Security.

The more debt the Government runs up, the more we have to pay out in interest, the less we will have to pay for anything we want.

We know what happens when any debtor racks up too much debt and heads into bankruptcy—every lender who is owed something by that debtor now stands to lose out.

Current Social Security surpluses represent an obligation, a commitment, to pay those dollars back out in benefits tomorrow. But if the debt keeps growing, in the not-too-distant future, there will be so much debt that the Government will not be able to honor all its obligations.

In the year 2013, the Social Security trustees project that OASDI outlays will exceed FICA tax revenues. The trust funds will start to run an operating deficit. In 2019 total OASDI outlays will exceed total income and Social Security will begin to run annual deficits. In 2029, the trustees estimate, the trust funds will be exhausted.

According to the Kerry-Danforth Entitlement Commission, under current trends, at about that same time, by the year 2030, total Federal spending will top 37 percent of GDP, net interest will exceed 10 percent of GDP, and the deficit will be about 19 percent of GDP.

Contrast that with today: For fiscal year 1995, Federal spending is expected to be 21.8 percent of GDP, net interest 3.3 percent of GDP, and the deficit 2.5 percent of GDP.

How much more pressure will those future deficits, that interest burden, place on future Social Security beneficiaries? An intolerable amount.

Those future trends will be unsustainable for the economy and devastating to seniors depending on Social Security.

The best way to protect Social Security is to protect our future ability to meet all our obligations. And the best way to do that is to pass the balanced budget amendment and send it to the States for ratification.

Second, nothing in the language of the Reid amendment provides any protection for Social Security or seniors.

Let us look at the plain meaning of the language in the Reid amendment.

All the Reid amendment does is provide a simple exemption. It simply exempts receipts and outlays for the Old Age, Survivors, and Disability Insurance [OASDI] from the calculations of total Federal receipts and outlays—from the calculation of balanced budgets.

Nothing in the Reid amendment says, Congress shall not cut Social Security benefits.

Nothing in the Reid amendment says, Congress shall not raise Social Security taxes on working class people.

Nothing in the Reid amendment says, you cannot change the actuarial balances in the Social Security trust funds.

Nothing in the Reid amendment requires Congress to do any of the things to protect Social Security that the supporters of the Reid amendment say they want to do to protect Social Security.

At the very best, the Reid exemption is a fig leaf that does not add one layer of protection for Social Security.

At the very worst, this exemption could be disastrous for Social Security and our seniors, as I will explain next.

Third, the Reid amendment would create perverse incentives to raid the Social Security trust funds on both the spending and revenue sides.

The Reid language is a simple exemption. And it is all loophole.

It exempts anything you put into, and anything you take out of, the OASDI trust funds from the discipline of the balanced budget.

In other words, it allows unlimited deficits, as long as the accountants say you are deficit spending only out of the OASDI trust funds.

Supporters of the Reid exemption acknowledge this. They say they have taken care of that possibility by limiting OASDI outlays to "provide old age, survivors, and disabilities benefits."

But most of the problem remains.

In its own terms, the Reid exemption says that OASDI trust funds can be used to pay for any "old age, survivors, and disabilities benefits," in addition to what we currently call "social security" benefits.

Let us add up what is possible to include in this loophole, if the Reid amendment to the balanced budget amendment were in the Constitution today, for fiscal year 1995.

Under current statutory definitions, $334 billion will be spent for Social Security in fiscal year 1995.

In addition to what we currently consider Social Security, here are some of the programs that obviously would qualify to be paid for out of Social Security trust funds under the Reid amendment, that are paid for from other sources today:

	Billions
Medicare	$176
Supplemental security income	24
Federal civilian retirement and disability	42
Military retirement and disability	28
Veterans' benefits and services	38
Other retirement and disability	5
Subtotal	313

Those, obviously, are programs that provide old age, survivors, and disability benefits, and adding these spending programs to the OASDI trust funds would almost double what we currently spend on Social Security.

Then, a reasonable question arises, what else might be considered disability or survivors benefits? When Aid to Families with Dependent Children [AFDC] was first created, it was portrayed primarily as providing for widows and surviving children. And most social programs aimed at disadvantaged populations could be said to prevent or mitigate a disability.

So, Congress could also go into the Social Security trust funds to pay for programs like these:

	Billions
Medicaid	$90
Housing assistance	27
Food stamps	26
Family support	18
Public Health Service	13
Child nutrition	8
Education for the disadvantaged	7
Head Start	4
Dislocated workers and Job Corps	2
Other social services	6
Subtotal	201
Total, newly exempt spending	514
Grand total, potentially exempt spending	848

In other words, the Reid exemption would open at least a half-trillion-dollar loophole for deficit spending for programs that are not currently funded out of the Social Security trust funds.

Other programs may qualify, as well. The list I have given is what seemed obvious after only a cursory examination of the President's new budget and CBO's January Economic and Budget Outlook.

Senator THOMPSON, during the Judiciary Committee markup of Senate

Joint Resolution 1, envisioned that christening a new aircraft carrier the "U.S.S. Social Security" would allow it to sail through this kind of loophole.

Add that $533 billion in loophole deficit spending to the $334 billion in Social Security spending that the exemption supporters say they want to protect, and you can move half the budget offbudget—$867 billion in fiscal year 1995.

But it gets worse.

The Reid amendment merely says that OASDI receipts are exempt from the balanced budget amendment—it does not guarantee that today's FICA taxes will continue to be deposited in the OASDI trust funds tomorrow.

Under the Reid amendment, Congress could simply deposit FICA tax revenues into the General Treasury, to help balance the budget, instead of putting them into the OASDI trust funds. This year, that will amount to $357 billion.

Far from protecting Social Security, the Reid amendment creates a perverse incentive to raid Social Security revenues, to use them for other purposes, and to shift every spending program possible offbudget, and into deficit spending, by paying for them out of the Social Security trust funds.

At best, if Congress did not exploit the loopholes, the perverse incentives, offered by the Reid amendment, that exemption would provide absolutely no additional protection for Social Security.

But we would not be here debating the Balanced Budget Amendment in the first place if deficit spending were not so tempting as to become a permanent, systemic problem. Therefore:

The Reid amendment would be worse for Social Security, and worse for the national debt, than the status quo.

A balanced budget amendment with the Reid amendment would be more likely than the "clean" balanced budget amendment, without the Reid amendment, to result in raiding the Social Security trust funds for other purposes.

To repeat the conclusion I stated before: Any amendment, such as the Reid amendment, that claims to do both, require a balanced budget and protect Social Security with an exemption, will do neither.

This is exactly the problem created when you try to reference a statutory creation in the Constitution.

The revenues that go into, and spending that comes out of, the Social Security trust funds, have been set by statute. New spending can be added or subtracted by statute. Revenues can be redirected by statute.

If you create a loophole in the Constitution that can be exploited by statute, it will be. That is why you do not find problems like Social Security referenced anywhere else in the Constitution.

Fourth, nothing in the underlying House Joint Resolution 1 would overturn present statutes protecting Social Security or prevent future efforts to improve its priority status.

The balanced budget amendment is all about setting priorities.

No supporter of any one program really has anything to worry about unless they fear that most of the American people and most of the Congress will consider their program a low priority.

Realistically, we know that is not going to be the case with Social Security.

Bob Myers, former Deputy Commissioner of the Social Security Administration, said it well at our press conference earlier last week:

> It's my opinion, very strongly held opinion, that if it (the balanced budget amendment) were to go into effect and into operation, Social Security benefits would be cut. . . . Congress would see that this would not be logical, or would not be fair.

Social Security has numerous protections under current law that would not, in any way, be overridden or changed by the balanced budget amendment.

These current protections include the following:

The Social Security Amendments of 1983 removed the OASDI trust funds from the totals of the official budget as of fiscal year 1993 and made them "exempt from any general budget limitation imposed by statute on expenditures * * *."

Gramm-Rudman-Hollings in 1985 accelerated Social Security's off budget status to fiscal year 1986 and exempted it from the automatic spending-cut sequester.

Gramm-Rudman-Hollings made it out of order—subject to a 60-vote waiver in the Senate—to include Social Security changes in a deficit-reduction reconciliation bill or conference report.

The 1990 Budget Enforcement Act removed Social Security from any parts of the budget process designed to reduce and control budget deficits.

The 1990 act excluded Social Security from all spending caps and any pay-as-you-go limitations.

The 1990 act also created a point of order against making changes in the actuarial balance in the trust funds—subject to a 60-vote waiver in the Senate.

Under House Joint Resolution 1, these statutory protections would continue to set aside Social Security as a special case, as a priority, within a balanced budget. They would keep Social Security off the table when it comes to budget discipline and deficit reduction. Nothing would prevent Congress from acting to wall off Social Security further.

Fifth, a constitution should include timeless principles, not temporary priorities.

A constitution is a document that enumerates and limits the powers of the Government to protect the basic rights of the people.

Within that framework, it sets forth just enough procedures to safeguard its essential operations. It deals with the most fundamental responsibilities of the government and the broadest principles of governance.

Our balanced budget amendment fits squarely within that constitutional tradition. It is dedicated to the same kind of fundamental, timeless principles enshrined elsewhere in the Constitution.

The guiding principle of the balanced budget amendment could be summed up as follows: The ability of the Federal Government to borrow money from future generations involves decisions of such magnitude that they should not be left to the judgments of transient majorities.

That principle will never change. If the Framers of the original Constitution had realized how insufficiently they had provided for that principle, the balanced budget amendment would have been included in 1787 or 1789.

Social Security, however important, is a statutory program. It involves obligations that we all agree we must honor. But we already know that it will go through changes in the future, as the population goes through changes.

For the sake of future retirees, we know that Congress may have to address these trends at some time in the future, as the trends themselves become clearer. We also know that Congress will only make changes that our senior citizens and the rest of the American people support.

But we cannot predict what the American people will want in this program 30, 40, and 50 years from now. We do know that we do not want them to have to amend the Constitution to perfect the operation of that statutory program.

Mr. President, I also ask unanimous consent that I may enter additional materials into the RECORD at this point, including: A letter from the 60/Plus Association, endorsing the balanced budget amendment and opposing the Social Security exemption; materials from the Seniors Coalition; and additional fact sheets and information.

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

TAX FAIRNESS FOR SENIORS,
Arlington, VA, February 9, 1995.

Hon. LARRY E. CRAIG,
U.S. Senate, Washington, DC.

DEAR SENATOR CRAIG: I am writing to you to express the strong support of the 60/Plus Association for the Balanced Budget Amendment to the Constitution, which is now being considered by the U.S. Senate.

The 60/Plus Association is a two-year-old, nonpartisan, seniors advocacy group with more than 225,000 members. For the 103d Congress, we presented the Guardian of Seniors' Rights award to 226 House and Senate Members.

The Balanced Budget Amendment is the best friend the Social Security system and

our nation's seniors could have. The Senate should pass H.J. Res. 1, as passed by the House of Representatives in a strong bipartisan vote, and submit it immediately to the States for ratification.

Continued, growing deficit spending is the greatest threat to the integrity of the Social Security system and to the present and future benefits paid from Social Security trust funds. Past deficits have created a national debt of $4.8 trillin—an alarming 70 percent of our Gross Domestic Product. Gross interest payments now consume nearly one-fifth of total federal spending and will surpass Social Security as the largest item of spending by the end of the decade.

This national debt already has depressed the economy and lowered seniors' standard of living. As the costs of servicing that debt continue to climb and to squeeze all other budget priorities, they threaten the very existence of Social Security. Today's Social Security surpluses represent a commitment to seniors tomorrow. But a debtor bankrupted by an excessive debt load is not able to meet any of its commitments. Bitter experience has shown that only the Balanced Budget Amendment can save our nation from that fate.

While well-intentioned, these attempts to exempt Social Security from the discipline of the Balanced Budget Amendment are completely misguided. Instead of protecting seniors, exemptions like that in the Reid Amendment would allow the Social Security trust funds to run unlimited deficits. This would create an irresistible temptation to pay for all sorts of unrelated programs out of the trust funds, completely destroying the unique purpose for which they were created and rendering them insolvent.

The debt is the threat to Social Security and America's seniors. A "clean" balanced budget amendment, such as H.J. Res. 1, is their best protector. The 60/Plus Association urges you and your colleagues to pass this urgently needed legislation and resist the scare tactics of those who create any loopholes that would compromise either balancing the budget or protecting Social Security.

Former Senator Paul Tsongas summed it up best when he said he was "embarrassed as a Democrat to watch a Democratic President raise the scare tactics of Social Security."

In other words, it's "scare us old folks time again" as opponents drag a 30-year-old red herring across the trail.

Many seniors—including this one—vividly remember the scare tactics then—the LBJ TV ad—a giant pair of scissors cutting through a Social Security card—with the clear implication that a vote for Barry Goldwater and Republicans would mean the end of Social Security.

Seniors didn't buy that canard then, nor do they now, 30 years later, judging by the response we get from the vast majority of seniors.

Sincerely,

JAMES L. MARTIN,
Chairman, 60+.

THE SENIORS COALITION,
Fairfax, VA, January 24, 1995.

Memorandum re balanced budget amendment.

To: Senator CRAIG.

Fr: Jake Hansen, Vice President for Government Relations.

The Seniors Coalition has supported a balanced budget amendment for several years. On behalf of our one million members nationwide, I am requesting your support of S.J. Res. 1 in the next few weeks.

It is vital that Congress pass a measure that would require the federal budget to be balanced. Our members feel that if the government were forced to evaluate its spending the way every family in America evaluates their own, this country would not be "heading down the wrong path." While there are a great many factors that contribute to this public perception, the bottom line for many Americans is that the government takes too much from them and spends too much on programs that do not work. The time to end the cycle of taxing and spending has come.

I also want to touch briefly on the role of Social Security in the balanced budget amendment. We feel that there is no reason to exempt Social Security from a balanced budget. In fact, such an exemption would create a serious policy and political crisis for Congress, and would lead to the destruction of the Social Security system.

If Social Security is exempted, the total force of balancing the budget will find its way to Social Security. There will be an overwhelming temptation to either redefine government programs as Social Security programs, or pull money out of the Trust Fund to balance the budget by cutting Social Security taxes to offset tax increases elsewhere. In fact, there would be nothing to stop Congress from "borrowing" as much money as it wanted from the Trust Funds to finance any other government program.

We feel confident that the political climate surrounding Social Security is enough to protect it, thus engaging in destructive policy in the name of protection will only lead us down the path of truly committing damage to the Social Security system.

What is most important is that America be given a serious balanced budget amendment as soon as possible.

THE SENIORS COALITION,
Fairfax, VA, January 26, 1995.

BALANCED BUDGET AMENDMENT—ALERT

This morning the opponents of a BBA launched a full scale attack on the Balanced Budget Amendment with Social Security bombs. Seniors across the country are watching C-SPAN with renewed and unjustified fear. It is vital that their scare campaign be stopped!

EXEMPTING SOCIAL SECURITY FROM THE BALANCED BUDGET AMENDMENT WILL DESTROY THE SOCIAL SECURITY SYSTEM—NOT PROTECT IT

Balancing the budget will create tremendous pressure and that pressure will blow through any available escape hatch. WHATEVER is exempted from the balanced budget requirement becomes that escape hatch!

As the total force of balancing the budget falls on Social Security, there will be overwhelming pressure to redefine many government programs as Social Security programs. This endangers its original purpose. There would be nothing to stop Congress from "borrowing" as much money as it wanted from the trust fund to finance any government program if Social Security is exempted from the Balanced Budget Amendment.

Exempting Social Security from the Balanced Budget Amendment would open a loophole in the requirement that would completely gut its effectiveness by allowing all social welfare and other programs (such as Medicare and Medicaid) to be financed off-budget, in deficit, as the "New Covenant Social Security."

FAILURE TO PASS A BALANCED BUDGET AMENDMENT WILL DESTROY SOCIAL SECURITY

Eventually, $400 billion plus will have to be returned to the Social Security trust fund to pay benefits to retired baby-boomers. Without starting a balanced budget process NOW, the battle over Social Security will be like nothing Congress has ever seen thirty years from now.

Without balancing the budget, Social Security benefits will always be subject to cuts, new taxes and means-testing. This permanently erodes any confidence in discussions of systemic reforms for future generations.

THE SENIORS COALITION,
Fairfax, VA, January 23, 1995.

TESTIMONY OF JAKE HANSEN, DIRECTOR OF GOVERNMENT AFFAIRS, THE SENIORS COALITION, FOR THE JOINT ECONOMIC COMMITTEE, U.S. CONGRESS

BALANCED BUDGET AMENDMENT: IMPERATIVE TO SOCIAL SECURITY

Mr. Chairman, this is not a new issue to The Seniors Coalition. Since our inception we have fought for a Balanced Budget Amendment. We have had experts on Social Security and expert economist look at the issue, as well as hearing from thousands of our members. Their conclusion: give us a Balanced Budget Amendment.

During the elections and in recent debate, we have heard from many politicians that a Balanced Budget Amendment will destroy Social Security. However, the question is not "Will a Balanced Budget Amendment destroy Social Security", but rather "Can Social Security survive without a Balanced Budget Amendment?"

As you know, up until 1983, the Social Security system ran on a pay-as-you-go basis. That is, the amount of money going into the Trust Funds from payroll deductions was basically equal to the amount of money being paid to beneficiaries of the day.

In the late seventies, the economy was a disaster. Inflation was up, leading to higher cost of living payments than had been anticipated. Unemployment was up, meaning that less money was being paid into the system than had been anticipated. The result: Social Security was headed for bankruptcy at break-neck speed.

In 1983, a bi-partisan effort saved Social Security by changing the benefit structure and raising Social Security payroll taxes. This effort created a new—and potentially worse—problem: a rising fund balance in the Social Security Trust Funds. For the past ten years, more money has been pouring into the Trust Funds than is needed to meet today's obligations.

This balance has been "borrowed" by the federal government. Today, the federal government owes the Trust Funds about $430 billion. By the year 2018, according to the Social Security Board of Trustees, that figure will be a shade over three trillion dollars. At that time, the entire federal debt will be—who knows, eight, ten, twelve trillion dollars?

The point is, how will the government ever pay back the Trust Funds? They could: Turn on the printing presses and monetize the debt, so that a Social Security check would buy a loaf of bread; borrow the money—hurting both the economy and the Federal Budget; make massive cuts in benefits; raise taxes, and thus, destroy the economy for everyone; or simply renege on the debt.

Mr. Chairman, The Seniors Coalition doesn't find any of these alternatives acceptable.

The Chairman of our advisory board, Robert J. Myers (often referred to as the father of Social Security) wrote of his support of a Balanced Budget Amendment last year and said:

"In my opinion, the most serious threat to Social Security is the federal government's fiscal irresponsibility. If we continue to run federal defects year after year, and if interest payments continue to rise at an alarming rate, we will face two dangerous possibilities. Either we will raid the trust funds to pay for our current prolificacy, or we will print money, dishonestly inflating our way out of indebtedness. Both cases would devastate the real value of the Social Security Trust Funds."

The bottom line, is that if we want to protect the integrity of Social Security the only way is through a Balanced Budget Amendment.

With that said, the question becomes will just any old Balanced Budget Amendment do? The answer is, some are better than others, and some are absolutely not acceptable.

First, some people are suggesting that Social Security should be exempted. That should be something that an organization like ours would leap at. The fact is, we are concerned that such an Amendment would end up destroying Social Security as more and more government programs would be moved to Social Security to circumvent the Balanced Budget Amendment. We believe this would destroy Social Security, and will not support such an Amendment.

Our first choice would be a Balanced Budget Amendment that controls taxes as well as spending—such as the Amendment that has been presented by Congressman Barton. We support tax limitation and would like to see this Amendment voted on. We would urge every Member of Congress to vote for this Amendment.

If, this Amendment does not pass, then we willingly support a Balanced Budget Amendment such as the one offered by Senators Hatch and Craig. While I am concerned about taxes, I believe that last year's elections showed us that we, the people, do have the ultimate power. And, I believe that had we been forced to pay for all the government we were being given, we would have made massive changes much sooner.

Mr. Chairman, we believe that what is most important is that America be given a serious Balanced Budget Amendment as soon as possible. We will work with you and your colleagues in every way possible to make that happen. Thank you.

CONGRESSIONAL LEADERS UNITED FOR A BALANCED BUDGET [CLUBB] FACT SHEET, JANUARY 18, 1995

A Balanced Budget Amendment Exemption Would Increase The Threat To Social Security.

A BBA exemption would threaten the revenues for the Social Security Trust Fund. Placing the OASDI/Social Security trust funds outside the Amendment's deficit restrictions would provide a perverse incentive for a future Congress to shift FICA (and related income) taxes out of the trust funds. Portions of those taxes could be transferred to general Treasury accounts to balance the "operating" budget covered by the BBA, but at the cost of gutting the OASDI trust funds. The current stable revenue stream for Social Security could be critically diverted in small steps which would add up to disaster for the system. A precedent for this already exists: The income taxes on Social Security benefits in the 1983 "bailout" go directly into the trust funds, but higher income taxes imposed on Social Security retirees in 1993 are diverted to general Treasury revenues.

Social Security could easily be overwhelmed by non-Social Security programs moved to Social Security's ledger in an attempt to hide them behind the cloak of its exempt status. It's easy to predict well-meaning efforts to protect a whole range of social programs by arguing they fall under the general intent of Social Security to provide a safety net. Contrary to the claims of those who want an exemption, funding for current Social Security would not be set aside for protection, but would be pilfered by reclassifying more and more programs as Social Security. This is an even greater threat than simply providing a loophole for deficit spending. As other programs intrude on Social Security, its stability will steadily erode.

A Social Security exemption defeats the intent of the BBA by providing the greatest deficit loophole in history. As if the direct threat to Social Security isn't enough, exempting it would create an enclave for additional federal debt while at the same time, government could proudly proclaim a "balanced budget." Projects which risk being assigned a low priority under the BBA could avoid facing scrutiny and be paid for by draining the Trust Funds. The Social Security deficit tomorrow could be bigger than the total deficit today.

The debt is the threat! The greatest threat to Social Security is the federal debt itself. Gross interest payments on the debt already are nipping at the heels of Social Security as the second largest single item in the federal budget. Social Security is in no way immune to the increasing pressure interest payments placed on every single federal spending item as the growing debt forces ever larger debt service costs.

Every current statutory protection for Social Security can continue under BBA. Social Security is the best statutorily protected program in the federal budget. Those laws are perfectly compatible with a BBA and can remain in force, continuing to protect the system. The BBA takes away the major threats to Social Security so existing statutes can do their jobs. But if the federal budget does not have the spending restraint imposed on it by a Constitutional Amendment, we cannot guarantee that the statutes which protect Social Security now can be maintained.

CONGRESSIONAL LEADERS UNITED FOR A BALANCED BUDGET [CLUBB] FACT SHEET

HOW THE BALANCED BUDGET AMENDMENT PROTECTS SOCIAL SECURITY

The BBA would put an end to the rapid growth in interest payments that threaten to crowd out Social Security spending.

Interest payments on the federal debt have nearly quadrupled since 1980. Net interest payments in 1993 were $200 billion and are expected to exceed $300 billion annually by the end of the decade. Until we balance the budget, spiralling interest payments will continue to crowd out other spending, including Social Security.

Balancing the budget would avert the threat of runaway inflation.

No industrialized nation has reached the level of debt we will face next century without monetizing the debt by printing more dollars. Monetizing the debt would lead to explosive inflation. Huge debt burdens contributed to ruinious inflation in Germany in the 1920's and several Third World nations in the 1980's. Runaway inflation would have a particularly severe impact on senior citizens living on a fixed income. It would not do any good to get a $1,000 retirement check if bread costs $100 a loaf.

The BBA would force Congress to deal with deficits in time to prevent a budget crisis forcing draconian cuts each year just to "muddle through."

The General Accounting Office has warned that if the amount of deficit reduction required just to limit the deficit to three percent of GDP would increase exponentially by the year 2005. By the year 2020, Congress would be required to enact a half a trillion dollars of additional deficit reduction each year just to restrain the deficit to three percent of GDP. No program—including Social Security—would be able to escape deep spending cuts under this scenario.

Balancing the budget would promote the economic growth necessary to sustain the Social Security trust funds.

GAO, CBO and most economists warn that continued growth in deficit spending would result in lower productivity and deteriorating living standards. As real wages for taxpaying workers decline, there will be increasing resistance to the taxes necessary to meet the growing commitments of the Social Security program. GAO found that balancing the budget by the year 2001 would lead to the higher productivity and growth in real wages that would be necessary to support our commitments to the growing elderly population.

The amendment would help ensure that Congress takes action before the Social Security trust funds begin running yearly deficits.

Although the Social Security trust funds currently run a surplus, within a generation, they will face cash shortfalls. A balanced budget amendment would provide Congress and the President with the necessary incentive to take corrective action to deal with this threat and provide for the long-term solvency of the trust funds.

The amendment preserve statutory provisions protecting Social Security.

The current statutory protections for Social Security would not be eliminated by the BBA. For example, under current law, any legislation that would change the actuarial balance of the social security trust funds are subject to a point of order which requires a 3/5 vote to waive in the Senate. Under the 1985 Gramm-Rudman-Hollings Act and the 1990 Budget Enforcement Act, Social Security was completely protected from all sequesters. Social Security is not subject to the spending caps in the 1990 budget agreement. Given political realities, Congress would be likely to set budget priorities in such a way that protections for Social Security are maintained or even enhanced.

Exempting Social Security would open up a loophole in the BBA and tempt Congress to defund the trust funds, threatening retirement benefits and the trust fund surplusses.

Exempting the Social Security trust funds from the amendment would create a perverse incentive for Congress to use them as a source to fund new or totally unrelated programs, threatening the ability of the trust funds to fulfill their current obligations to retirees. For example, Congress could pay for current and new non-Social Security spending by simply depositing FICA taxes into general Treasury revenues, instead of into the trust funds. Congress also could pass legislation to shift spending for Medicare, other retirement programs, or any number of programs to the Social Security trust funds to avoid a 3/5 vote to unbalance the budget. Thus, non-Social Security outlays and receipts could be "balanced" simply changing program definitions and draining the Social Security trust funds.

The Constitution is not the place to set budget priorities.

A constitutional amendment should be timeless and reflect a broad consensus, not

make narrow policy decisions. As noted above, the financial status of Social Security will change drastically, and perhaps quite unpredictably, in the next century. We should not place technical language or overly complicated mechanisms in the Constitution and undercut the simplicity and universality of the amendment.

SENIORS' SECURITY IN THE BALANCE

(by Larry E. Craig)

SUBMITTED SEPTEMBER 29, 1994, TO UNITED SENIORS OF AMERICA FOR THEIR NEWSLETTER

Early next year, the new Congress will again begin considering the Balanced Budget Amendment to the Constitution (BBA), as well as specific proposals to reduce federal deficit spending. Seniors will be told these efforts are an assault on their rights, economic security, and general well-being.

Don't you believe it.

The BBA and the right package of spending reforms are absolutely critical to preserving not only the well-being of seniors today and tomorrow, but also the American Dream of economic opportunity for our children and grandchildren.

The federal government has spent more than it has taken in for 56 of the last 64 years. The result is a federal debt that now totals $4.6 trillion—more than $18,000 for every man, woman, and child in America—and will reach $9 trillion by the year 2004.

Seniors are paying already, in higher taxes and lower living standards, for the drag this debt puts on our economy. The Federal Reserve Bank of New York estimated that the $3 trillion added to the debt prior to 1990 reduced Americans' standard of living by 5 percent. A General Accounting Office study projected that current trends will reduce our standard of living another 7-to-36 percent by the year 2020.

Gross interest payments on the federal debt now run $300 billion a year, an amount equal to half of all personal income taxes. Every dollar borrowed incurs interest costs that squeeze priority programs—like Medicare—and create pressure for higher taxes—like those raised last year on Social Security benefits. In contrast, if the current federal debt had not been allowed to accumulate, the savings in interest costs would have produced a balanced budget in 1994 and a $64 billion surplus in 1995.

About 10 percent of the federal debt is owed to the Social Security trust funds and is supposed to be paid out eventually in benefits. The more debt the government piles up, the harder it will be to find the cash to honor its obligations.

If the stakes are so high, why has it been so hard to balance the budget? Our system of government has changed fundamentally. While most Americans want a balanced budget, this general public interest is outgunned by the specific demands of mobilized, organized interest groups. The unlimited ability to borrow leads naturally to unlimited demands to spend. If they don't have to say "no," many elected officials see only political peril in doing so.

There's no way to make it a fair fight until we put a balanced budget rule in place that Congress can't ignore, postpone, or repeal at will—and that will be true only if the rule is in the Constitution.

The United Seniors Association endorses the BBA. Unfortunately, however, some groups with an agenda of ever-expanding social programs have resorted to misleading, mass-mail scare tactics claiming the BBA would force severe cutbacks on Social Security.

Nothing could be farther from the truth. The BBA would not change the current statutory protections and priority budgetary status enjoyed by Social Security. It would not prevent Congress from enacting further protections in the future.

Most important, the BBA would do more to protect Social Security than would any other reform, by reversing and reducing the threat now posed by an ever-growing federal debt. Contrary to the alarmist groups' arguments, exempting Social Security from the BBA would not change the government's overall financing needs—it would just shift IOU's from one pocket to the other.

The BBA would be phased in over several years to ease the adjustment. Total federal spending is growing an average of more than 5 percent a year. If we simply held annual spending growth to 2.8 percent a year, we would balance the budget by the year 2001.

In addition to passing the BBA and sending it to the states for ratification, the next Congress should move toward a balanced budget by doing the following:

Give the President a modified line item veto ("expedited rescission") authority, so that billions of dollars in narrow-interest "pork" cannot be hidden away in massive, must-pass pieces of legislation;

Require honesty in budgeting, so technical rules are no longer manipulated to claim that a program's spending has been cut when it actually has been increased;

Cap the overall growth in federal spending, including both the so-called "discretionary" and "entitlement" categories.

Balancing the budget is a key to saving our way of life. No one can be exempt from some belt-tightening once we summon up the discipline to move in that direction. But the Idahoans—and other Americans—I've talked to, from school children to seniors, understand the problem and are willing to bear their share, as long as deficit-reduction is spread out fairly and no one group is singled out. Debt multiplies, but so do savings. The sooner we start, the easier it will be.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, February 14, 1994.

DEAR COLLEAGUE: Recently, certain interest groups have raised fears that the Balanced Budget Amendment to the Constitution somehow threatens Social Security and other important social programs.

Nothing could be further from the truth. The Balanced Budget Amendment will protect the very programs that I have spent my career fighting for: Social Security, health care, education, job training, and other important programs that help people achieve economic security before and after retirement.

The most serious danger to Social Security is our enormous debt burden. If we continue to spend beyond our means, the temptation to pay for our debts by printing more and more money will become irresistible. That remedy, however, would result in the kind of inflation that would devastate the Social Security Trust Fund. After all, what good is a $1,000 social security check if a loaf of bread costs $100?

Dorcas Hardy, the former commissioner of Social Security, emphasized this point in her book "Social Insecurity." Her number one recommendation for protecting the Social Security Trust Fund: balance the federal budget. That is the objective of the Balanced Budget Amendment.

Unfortunately, we still have a long way to go to meet that goal. The budget deficit is projected to remain over $170 billion in 1995. Interest payments on the debt now exceed $290 billion, only a few billion dollars behind social security payments themselves. How can we possibly hope to adequately invest in vital social programs like health care for the elderly if we keep throwing dollars away on interest? Unless we end this trend, federal support for the sick, the poor, and the elderly, as well as programs like education, will indeed be threatened.

The fact that I have spent my legislative career fighting for seniors, for health care, and for other needed social programs would, I hope, at least cause some to pause enough in their passionate rhetoric to listen, and examine. I would not be sponsoring the Constitutional Amendment if it would hurt the investments we need to build a stronger, better nation.

Only with this Amendment can we be confident that all of us will have a secure economic future.

My best wishes.

Cordially,

PAUL SIMON,
U.S. Senator.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, February 16, 1994.

DEAR COLLEAGUE: I recently sent you a "Dear Colleague" letter explaining how the Balanced Budget Amendment will protect Social Security and other important social programs that help people achieve economic security before and after retirement. Unfortunately, the most serious threat to Social Security is our runaway debt.

Subsequent to that "Dear Colleague," I received a letter from Robert J. Myers, a retired public servant who helped write the legislation that created the Social Security system in the 1930's. He worked in the Social Security Administration for a total of 37 years, including 23 years as Chief Actuary and two years as Deputy Commissioner. He was a member of the National Commission on Social Security from 1978–1981 and served as Executive Director of the National Commission on Social Security Reform from 1982–1983. In the past, Mr. Myers worked as a consultant to the American Association of Retired Persons (AARP) on Social Security Issues.

Robert J. Myers is a renowned expert on Social Security matters and is an informed supporter of a sound Social Security program. He has been referred to in this body as a "person of legendary integrity and authority" in this area. His letter succinctly summarizes the real threat to Social Security. Although it speaks for itself, his conclusion bears repeating: "Regaining control of our fiscal affairs is the most important step that we can take to protect the Social Security trust funds." He supports the Balanced Budget Amendment as the appropriate means to exercise that control.

I have enclosed a copy of Mr. Myers letter. I strongly urge you to read it in its entirety.

My best wishes.

Cordially,

PAUL SIMON,
U.S. Senator.

Enclosure.

ROBERT J. MYERS,
Silver Spring, MD, February 15, 1994.

Hon. PAUL SIMON,
U.S. Senate,
Washington, DC.

DEAR SENATOR SIMON: I am pleased to have this opportunity to express my support for the Balanced Budget Amendment.

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For 37 years I worked for the Social Security Administration, serving as Chief Actuary in 1947–70, and as Deputy Commissioner in 1981–82. In 1982–83, I served as Executive Director of the National Commission on Social Security Reform. And I continue to do all that I can to assure that Social Security continues to fulfill its promises.

The Social Security trust funds are one of the great social successes of this century. The program is fully self-sustaining, and is currently running significant excesses of income over outgo. The trust funds will continue to help the elderly for generations to come—so long as the rest of the federal government acts with fiscal prudence. Unfortunately, that is a big "if."

In my opinion, the most serious threat to Social Security is the federal government's fiscal irresponsibility. If we continue to run federal deficits year after year, and if interest payments continue to rise at an alarming rate, we will face two dangerous possibilities. Either we will raid the trust funds to pay for our current profligacy, or we will print money, dishonestly inflating our way out of indebtedness. Both cases would devastate the real value of the Social Security trust funds.

Regaining control of our fiscal affairs is the most important step that we can take to protect the soundness of the Social Security trust funds. I urge the Congress to make that goal a reality—and to pass the Balanced Budget Amendment without delay.

Sincerely,

ROBERT J. MYERS.

CRS REPORT FOR CONGRESS—SOCIAL SECURITY: ITS REMOVAL FROM THE BUDGET AND PROCEDURES FOR CONSIDERING CHANGES TO THE PROGRAM

(By David Koitz)

SUMMARY

Social security and other Federal programs that operate through trust funds first were counted officially in the Federal budget in FY 1969. At the time Congress did not have a budget-making process, and the trust fund programs were added to the budget by administrative action of President Johnson. In 1974, Congress began setting budget goals annually through passage of budget resolutions. Like the budgets the President prepared, these resolutions reflected a "unified budget" approach that included trust fund programs such as social security in the budget totals.

Beginning in the late 1970s, financial problems plaguing social security and concern over the program's growing costs and the duplicative role it performed with other programs gave impetus to measure to curtail benefits. Social security cutbacks were included in the Omnibus Budget Reconciliation Acts of 1980 and 1981 and the Social Security Amendments of 1983. However, despite passage of these cost-saving measures, resolution of the program's financial problems, and the eventual buildup of surpluses in the trust fund accounts, interest in other ways to curb social security expenditures continued because of the large Federal budget deficits that arose in the 1980s.

This routine consideration of social security constraints led to concerns that the public's confidence in the program was being eroded and gave impetus to proposals to remove social security from the budget. The result was that although social security continued to be counted in the budget throughout the decade, measures were enacted in 1983, 1985, and 1987 making the program a more distinct component of the budget and imposing potential procedural hurdles for budgetary bills containing social security changes.

Then, in 1990, reacting to criticism that surplus social security taxes were hiding the size of the budget deficits, Congress removed the program from the budget calculations. This was one of the changes in the budget process included in the $500 billion deficit-reduction legislation enacted at the end of the 101st Congress. The legislation also excluded social security from budget procedures designed to discourage tax reductions or spending increases that would increase the size of the deficits. At the same time, however, because of concern that lifting these constraints would encourage proposals that could weaken the financial condition of social security, Congress adopted new procedural hurdles for bills that would erode the balances of the trust fund accounts.

In the House, these procedures permit points of order to be raised against bills that (1) propose more than $250 million in social security spending increases or revenue reductions over a 5-year period or (2) would increase the average cost or reduce the average income of the program over the long run (considered to be 75 years) by at least 0.02 percent of taxable payroll. In the Senate, budget resolutions set specific amounts for social security income and outgo for a 5-year period, and points of order can be raised against measures that would cause income to be lower or outgo to be higher than these amounts. Approval by three-fifths of the Senate is required to waive the objection. These procedures were made effective beginning with FY 1991.

INTRODUCTION

Social security and other Federal programs that operate through trust funds first were counted officially in the Federal budget in FY 1969. This initiative was taken by President Johnson. At the time Congress did not have a budget-making process. Spending and revenue measures were adopted incrementally through appropriations laws and periodic entitlement legislation. In 1974, with passage of the Congressional Budget and Impoundment Control Act (P.L. 93–344), Congress adopted a process for developing budget goals through passage of annual budget resolutions. Like the annual budgets prepared by the President, these resolutions were to reflect a "unified" approach that included trust fund programs such as social security in the budget totals.

Beginning in the late 1970s, financial problems plaguing the social security trust funds and concern over the program's growing costs and the duplicative role it performed with other programs gave impetus to a variety of measures to curtail certain benefits. A number of cutbacks were included in the Omnibus Budget Reconciliation Acts of 1980 and 1981 and the Social Security Amendments of 1983. However, despite passage of these cost-saving measures, resolution of the program's financial problems, and the eventual buildup of surpluses in the trust fund accounts, interest in other possible ways to curb social security expenditures continued because of the large Federal budget deficits that arose in the 1980s.

This routine consideration of social security constraints led to concerns that the public's confidence in the program was being eroded and gave impetus to proposals to remove social security from the budget. The result was that although social security continued to be counted in the budget totals throughout the decade, a series of measures were enacted in 1983, 1985, and 1987 making the program a more distinct part of the budget and permitting floor objections to be raised against budgetary bills containing social security changes.

Then, in 1990, reacting to criticism that surplus social security taxes were masking the size of the budget deficits, Congress removed the program from the budget calculations. This step was one of the budget process changes included in the $500 billion deficit-reduction legislation passed at the end of the 101st Congress (P.L. 101–508, the Omnibus Budget Reconciliation Act of 1990). The new law also excluded social security from the new procedural aspects of the budget process designed to discourage tax reductions or spending increases that would increase the size of the deficits. At the same time, however, because of concern that lifting these constraints would encourage proposals that could weaken social security's financial condition, Congress included measures in that same act to permit additional forms of floor objections to be raised against bills that would erode the balances of the social security trust fund accounts.

SOCIAL SECURITY'S BUDGET TREATMENT UNDER THE SOCIAL SECURITY AMENDMENTS OF 1983

The Social Security Amendments of 1983 (P.L. 98–21) required that beginning with the Federal budget for FY 1993, income and expenditures for social security—Old Age, Survivors, and Disability Insurance (OASDI)—and the Hospital Insurance (HI) portion of the medicare program would be excluded from the totals of the budget formulated by the President and Congress and would be "exempt from any general budget limitation imposed by statute on expenditures. * * *"[1] The Supplementary Medical Insurance (SMI) portion of medicare, although remaining a component of the official budget figures, was to be more prominently displayed in the budget as a separate functional category.

The amendments also required that for FY 1985–1992 the social security and medicare programs be displayed more prominently in both the President's and congressional budgets as separate major functional categories of the budget. Previously social security was displayed in the category labeled *income security*, which included civil service retirement and disability, railroad retirement, unemployment insurance, food stamps, and other public assistance programs. Medicare was displayed in the category for health activities, which included such programs as medicaid, health block grants to the States, biomedical research, and medical education and health training grants.

SOCIAL SECURITY'S BUDGET TREATMENT UNDER THE 1985 GRAMM-RUDMAN-HOLLINGS PROCEDURES

The Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99–177) included several measures further altering social security's budget treatment. This was the original enabling legislation for the Gramm-Rudman-Hollings (GRH) deficit-reduction provisions, the purpose of which was to bring the Federal budget into balance by FY 1991. Among the changes it made to the budget process, the act accelerated the "off-budget" treatment of social security to FY 1986 (from FY 1993, as prescribed by the Social Security Amendments of 1983).[2] However, for the purpose of setting a schedule for eliminating the deficits, it stipulated that the receipts and expenditures of the social security trust funds be counted in calculating the budget deficits and enforcing the deficit goals established under the act and subsequent budget resolutions. In effect, the

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Footnotes at end of article.

1985 law appeared to make contradictory statements about how social security was to be viewed in the Federal budget.

After passage, the only notable manifestation of the off-budget status of the program was that the President's budget and other tabulations of the budget began to show what the figures would be with and without social security.

Congress altered the GRH procedures and extended the time period over which the budget deficits would be eliminated to FY 1993 (instead of FY 1991) in passing Title I of P.L. 100-119, cited as the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987. Except for the 2-year extension in arriving at a balanced budget, the treatment of social security under the budget process was not altered.[3]

Sequestration and reconciliation to enforce the budget targets

A key element of the GRH procedures was a requirement that the President reduce (or sequester) expenditures if projected budget deficits exceeded the targets set in the law. The idea was that if economic or legislative developments did not lead to meeting the targets, across-the-board spending cuts would be triggered. Social security's income and outgo were counted in determining the deficits; however, social security benefits were exempt from any spending cuts that the President was required to make.[4] Social security's administrative expenses were not exempt.

Congress could take action on its own to bring overall spending and receipts in line with the targets (and avoid sequestration) by enacting so-called budget reconciliation legislation. As part of budget resolutions, specific outlays and/or revenue targets were given to each committee, and if a committee could not meet the targets under present law provisions of the programs under its jurisdiction, it was expected to recommend changes. Recommended changes from the various committees would then be joined together by the budget committees in each House and passed as a single budget reconciliation act.[5] Social security benefits were again protected from potential cutbacks through rules that made it out of order for either the House or Senate to take up social security changes in a reconciliation bill, resolution, or conference report thereon. If an objection were raised (a so-called section 310(g) objection) against a bill that did so, a separate vote, suspending the rules under which the respective bodies operate, was required. In the Senate, this required approval by three-fifths of its Members.[6]

Procedures to maintain budget discipline

Also enacted with the GRH procedures were restrictions on bringing up legislative changes that would violate budget resolution totals (including, with respect to the Senate, the GRH deficit target) or the separate spending and revenue allocations made to each committee. Social security was affected by these restrictions in the same way as other programs; points of order (so-called sections 302 and 311 objections) could be raised against social security legislation that violated the resolution totals or committee allocations. These, too, could be overridden only by a vote of three-fifths of the Senate.[7]

SOCIAL SECURITY'S BUDGET TREATMENT UNDER THE 1990 BUDGET ENFORCEMENT ACT

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) again made substantial changes in the budget process (under Title XIII, entitled the Budget Enforcement Act of 1990). Among them was the removal of the income and outgo of the social security trust funds from all calculations of the Federal budget, including the budget deficit or surplus. This measure applied to the budgets prepared by the President, to the Federal budgets formulated by the Congress (e.g., budget resolutions), and to the budget process provisions designed to reduce and control the budget deficits.[8] In the Senate, budget resolutions were to contain income and outgo targets for social security, but they were to be set separately and not be included in the budget totals themselves.[9]

Exclusion of Social Security benefits from spending limits and deficit-reduction targets

A key element of the current budget process put in place by the Budget Enforcement Act is a set of specific limits on discretionary spending (encompassing most programs requiring annual appropriations) and a "pay-as-you-go" requirement for direct spending (mostly entitlement programs) and revenues. For FY 1991-93, these limits and the pay-as-you-go requirement, for the most part, took the place of the overall deficit-reduction targets established under the former GRH procedures.[10] For FY 1994-95, overall deficit targets again may become critical limits in the process (although it should be noted that a balanced budget is not set forth as the ultimate target, i.e., for FY 1995). Under the old procedures, the income and outgo of social security were included in estimating the budget deficit to determine if the deficit was expected to fall within the targets set under the law. In contrast, under the current procedures social security's income and outgo are excluded from calculations of the limits (including the pay-as-you-go rule) and overall targets, with the exception of administrative expenditures, which are incorporated in a limit on discretionary spending.

As under the old law, if any of the spending limits or the "pay-as-you-go" rule are violated (i.e., breached or exceeded), the President may be required to issue sequestration orders to bring spending down to the prescribed limits. Social security would be exempt as it was under the old law (again, with the exception of administrative expenses).

The 1990 law also continued the old law provision (section 310 (g)) that permits points of order to be raised against reconciliation bills or resolutions that contain social security measures.

Inclusion of Social Security's administrative expenses under the spending limits and deficit-reduction targets

Under the pre-1990 law social security's administrative expenses were subject to sequestration of the GRH deficit targets were exceeded. While the 1990 law stated that social security was not be counted as "budget authority or outlays for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985," there was some ambiguity about how the program's administrative costs were to be treated. The accompanying explanatory statement of the conferees reiterated that social security benefits were exempt from sequestration, but made no mention of administrative expenses. However, social security was listed among the programs subject to the limit on discretionary domestic spending with a footnote stating that portions of the social security accounts are "non-appropriated mandatory." One interpretation is that the only reason social security was listed in the discretionary domestic category was to subject its administrative expenses to the limit, since benefit payments, interest, and payments to the trust funds all were explicitly excluded. An alternative interpretation is that the new provision stating that social security is not to be counted for budget act purposes was sufficient language to exempt all aspects of the program from the discretionary limit. The lack of specificity gave the Office of Management and Budget (OMB) latitude to make either interpretation, and early in 1990 OMB chose to include it in the discretionary category of the budget as domestic spending. Hence, social security's administrative expenses are subject to the 1990 budget rules and the process.[11]

Procedures to protect the Social Security trust funds

The 1990 law also made changes in House and Senate procedures intended to protect the social security trust funds from benefit liberalizations or revenue reductions that would erode their balances. Under the old law, social security's inclusion in the budget had the potential effect of thwarting attempts to increase social security spending or cut its revenue base. Points of order could be raised against such actions for violating the budget resolution totals or spending and revenue allocations if the action would be effective in the year of the budget resolution. Moreover, these violations would have potentially threatened other programs with sequestration, and posed difficulty for Congress and the President in reaching subsequent budget targets. In effect, the former process imposed a fiscal discipline on social security.

Since social security benefits are now not part of the budget, the fiscal constraints of the budget process technically no longer apply. In their place, the 1990 law established separate rules for the House and Senate that attempt to make it difficult to bring measures for a vote in the respective chambers that would weaken the financial condition of the program by reducing revenue or increasing spending without offsetting changes.

In the House, a point of order can be raised against a bill that proposes more than $250 million in social security spending increases or revenue reductions over the 5-year period consisting of the fiscal year in which the legislation becomes effective and the following 4 years, unless the bill also contains other offsetting spending reductions or tax increases that bring the net impact of the measures within the $250 million limit. In calculating the impact, any costs from prior legislation (i.e., enacted in the current or previous 4 years) that fall within the 5-year period would be counted in calculating whether the pending legislation falls within the limit. A point of order also can be raised against a measure that would increase long-range (75 years) average costs or reduce long-range revenues by at least 0.02 percent of taxable payroll. Hence, a bill whose financial impact fell within the 5-year $250 million limit could still be subject to a point of order if its long-range costs were equal to or greater than 0.02 percent of taxable payroll.

In the Senate, budget resolutions must include separate amounts for social security income and outgo for the first year and 5-year period (cumulatively) covered by the resolution. (They are separate in the sense that they are not counted in the budget resolution totals themselves.) These amounts cannot reflect a narrowing in the surplus of income (or larger deficit) from what is projected under current law. Recommended resolutions or amendments that do so could draw an objection that can be overridden only by approval of three-fifths of the Senate.[12] Simply stated, Senate rules preclude

consideration of budget resolutions that would erode the "near-term" balances of the social security trust funds. In addition, once a conference agreement on the budget resolution is reached, allocations of the social security amounts included in the resolution must be made to the Finance Committee, and budget act points of order (under sections 302 and 311) can then be brought up against subsequent social security measures that would cause outlays to be increased or revenues to be reduced (without offsetting changes) from those reflected in the allocations to the Committee. To override these objections requires approval by three-fifths of the Senate.

Report to Congress on the actuarial balance of the trust fund by the trustees

The 1990 law also added a provision requiring the social security board of trustees to include in its annual report a statement as to whether the OASI and DI trust funds are in "close actuarial balance." Traditionally, close actuarial balance is said to exist if average income over the trustees' estimating period as a whole (which extends 75 years into the future) falls within 95 percent and 105 percent of the average cost of the program. Over the years, it has been considered a primary indicator of the long-range soundness of the program. Although trustees' reports routinely have made a statement about the program's actuarial balance, the practice of doing so was not required by law. In their 1989 report, the trustees declined to make such a statement (the projections themselves showed that the program was slightly outside the lower limit of actuarial balance with average income projected to be 94.9 percent of average costs). Its absence drew an objection from the chief actuary of the Social Security Administration in his legislatively required certification of the report. The 1990 law required a statement by the trustees about close actuarial balance to be included in each trustees' report.

All reports issued since enactment of this provision have included a substantive analysis of the close actuarial balance of the system and a statement about it by the trustees.

Display of retirement trust fund balances

The 1990 law further required that budget resolutions display the balances of Federal retirement trust fund programs, presumably including social security. This display must show the amount of the securities expected to be recorded to the trust funds.

FOOTNOTES

[1] This provision became section 710 of the Social Security Act.

[2] The measure did not accelerate the "off-budget" treatment of HI (i.e., under the 1983 Social Security Amendments, HI was not to be taken "off-budget" until FY 1993).

[3] The law also contained a provision that stated that no legislation enacted after December 12, 1985, could authorize payments from the General Fund of the Treasury to the OASDI and HI trust funds and vice versa (with the exception of appropriation measures for which authority existed on or before that date). This item did not create any practical changes in the process. Basically, it was a statement of principle that no new provisions should be enacted that would authorize new forms of interfund "payments" between the Government's General Fund and the OASDI and HI trust funds.

[4] Interest earned on the holdings of the social security trust funds and appropriated "payments to the social security trust funds" for military wage credits and benefits paid to certain uninsured recipients also were exempted.

[5] Special procedures also existed in the Senate under which a reconciliation bill could be initiated to alter a sequestration order issued by the President.

[6] The period in which the three-fifths rule would apply was extended through FY 1993 with enactment of P.L. 100–119 (under prior law, the three-fifths rule applied through FY 1991). An additional technical change was included in P.L. 100–119 altering Senate rules that previously had the effect of permitting waivers of the three-fifths requirement as it pertained to the social security and other potential "points of order" authorized in the 1974 and 1985 budget acts.

[7] A section 311 objection existed under the original budget act for violations of the budget resolution totals, although it was modified somewhat by the 1985 act.

[8] It should be noted that removing social security officially from the budget totals does not change how social security funds are actually handled. Social security taxes continue to be deposited in the U.S. treasury (with the appropriate crediting of securities to the trust funds) and social security expenses continue to be paid from the treasury. Hence, those who are interested in the aggregate financial flows of the Government and the impact those flows have on the economy are likely to continue to view the financial affairs of the Government on a unified budget basis (which means they would count social security in computing revenue and spending totals).

[9] These changes did not affect medicare. Although HI is scheduled to be removed from the budget totals in FY 1993 as a result of the 1983 social security amendments, it will be counted in the budget through FY 1995 for purposes of the Budget Enforcement Act rules.

[10] For FY 1991–93, the 1990 law set limits on three categories of discretionary spending: defense, international, and domestic. There is no dollar limit on the "direct spending" category, but it is subject to a "pay-as-you-go" rule requiring that any new spending increases or revenue reductions be offset with spending reductions or revenue increases enacted by the end of the session. Overall deficit targets, such as existed under the former GRH procedures, also were prescribed for these fiscal years, but adherence to the discretionary spending rules and the "pay-as-you-go" requirement, and required economic and technical adjustments to the budget totals made by the Office of Management and Budget (OMB), have basically made them irrelevant.

[11] Note that in FY 1994–1995, the domestic spending portion of the budget is merged with the defense and international spending portions, making a single discretionary category of the budget. Under OMB's 1991 interpretation, social security administrative expenses would be counted in this category.

[12] In its original form, this provision only precluded the Senate Budget Committee from recommending a budget resolution that would reduce the current law balances of the trust funds. It was not out of order to subsequently consider floor amendments to modify the resolution to reflect measures that would reduce the trust fund balances. Such amendments could be passed by a simple majority. In enacting the FY 1992 Budget Resolution, the Senate adopted a rule making it out of order to consider measures (including amendments to budget resolutions) that would erode the balances of the trust funds for the period covered by that resolution (and requiring approval of three-fifths of the Senate to suspend the rules to do so). In enacting the FY 1993 Budget Resolution, the Senate made this a permanent rule.

CHRONOLOGY

1990—P.L. 101–508 enacted, including among its titles, the Budget Enforcement Act of 1990. This law establishes new budget procedures to enforce a 5-year $500 billion deficit-reduction package. It includes provisions officially taking social security out of all calculations of the budget totals and creates new floor procedures (for considering social security legislation) intended to protect the balances of the OASDI trust funds.

1987—P.L. 100–119 enacted, including among its titles, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987. This law makes changes to the Gramm-Rudman-Hollings (GRH) procedures, including extending the point at which a balanced budget would be reached to FY 1993. The financial operations of the social security trust funds remain part of the budget calculations for GRH purposes.

1985—P.L. 99–177 enacted, including among its titles, the Balanced Budget and Emergency Deficit Control Act of 1985, better known as the Gramm-Rudman-Hollings (GRH) deficit reduction law. Although technically removing social security from the budget totals effective for FY 1986, this law includes social security in the budget totals through FY 1991 for GRH purposes.

1983—P.L. 98–21 enacted, the Social Security Amendments of 1983, including a provision calling for removal of the social security and the medicare Hospital Insurance (HI) trust funds from the budget totals beginning in FY 1993.

1974—P.L. 93–344 enacted, the Congressional Budget and Impoundment Control Act of 1974, establishing new procedures to formulate and control the budget that encompass a "unified" approach to the budget that includes social security and other trust fund programs in the budget totals.

1968—President Johnson issued a "unified" Federal budget for FY 1969.

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MY VOTE ON THE DOLE AMENDMENT

Mr. HOLLINGS. Mr. President, I rise today to make a brief comment on the Dole amendment which the Senate agreed to today by a vote of 87–10. I voted against this amendment and was tempted to call it a fig leaf. But upon reflection, I think the Dole amendment is more accurately an octopus amendment: It squirts out dark ink and obscures what's really going on.

The plain language of House Joint Resolution 1 constitutionally requires that the revenues in the Social Security trust fund be included in the sum of total receipts. Neither a report from the Senate Budget Committee nor any other legislative fix can override this constitutional mandate. The Reid amendment would correct this problem by changing the language of the constitutional amendment and removing Social Security from deficit calculations.

Mr. President, if Members wish to see how a balanced budget can be achieved

without raiding Social Security, they should not wait on a report from the Senate Budget Committee, but instead should examine the table that I have included in the CONGRESSIONAL RECORD on January 24 and February 7 of this year. We know that we can balance the budget without looting the Social Security trust fund, but no amount of wishing will allow us to override the Constitution if the Reid amendment is rejected.

THE PROSPECT OF STABILITY, 1993–95

IN OPPOSITION TO H.J. RES. 1: THE BALANCED BUDGET AMENDMENT

Mr. MOYNIHAN. Mr. President, this will be the third and last of the papers I have presented to the Senate in opposition to House Joint Resolution 1, Proposing an amendment to the Constitution of the United States to require a balanced budget.

In the first paper I described the development of fiscal policy in postwar America, following the huge swings of the Great Depression and the Second World War. I described an economic profession growing in understanding and reach. I made the point that I saw this happen. In 1961, I joined the Kennedy administration. I became Assistant Secretary of Labor for policy planning and research. Unemployment that year reached 6.7 percent, the second highest it had been since annual rates were first recorded in 1948. There was a sense of emergency. But also a confidence that we knew what to do. The Federal Government was running a surplus. The result was fiscal drag. We would contrive to spend more and tax less, so as to stimulate the economy toward full employment.

We did and it worked. By 1966, unemployment dropped to 3.8 percent and by 1969, it reached 3.5 percent. A level, incidentally, never reached since.

Those were heady days. In 1965, in an article in "The Public Interest" entitled, "The Professionalization of Reform," I noted that the Council of Economic Advisers forecast for GNP for 1964 was off by only $400 million in a total of $623 billion, while the unemployment forecast was on the nose. Recalling events that followed World War II, I noted that in 1964 the unemployment rate in West Germany was 0.4 percent, and not much higher in the rest of Western Europe. Indeed, unprecedented low levels for peacetime.

There had been some social learning. In the first year of the Nixon administration, contractionary fiscal policies were put in place designed to cool off an overheated economy following the buildup for the Vietnam war. Then in 1972 expansionary policies put in place by then-Director of OMB George P. Shultz stimulated the economy following the 1970–71 recession—the first since that which Kennedy inherited from Eisenhower.

In truth, the record is extraordinary. The great issue of the 19th century—the economic swings accompanied by vast unemployment—the issue which gave rise to the radical totalitarian movements that were to prove the agony of the 20th century—that issue has been resolved. A chart prepared by the Joint Economic Committee illustrates this with great clarity. Between 1890 and 1945, real growth in the economy dropped by 5 percent on three occasions, dropped by 10 percent on two occasions, and on two other occasions dropped almost 15 percent. Since 1945, there have been four tiny declines, and only one serious one, that of the recession of 1982, say 2 to 3 percent. Hardly worth noting in the pre-war economy.

We had "fine tuned," as the phrase went. The contractionary policies of 1969 were, in retrospect, a little too large; while the expansionary policy of 1972 came a little too late. But the theories seemed sound and the timing likely to improve.

Both theory and practice centered on the problem of underconsumption and the avoidance of what was seen as the problem of persistent cyclical surpluses in the Federal budget.

Then came the Reagan Revolution. Earlier doctrines were succeeded by supply side economics. To say again, I saw this happen. Huge deficits appeared which were not cyclical, and which were of no possible use. To the contrary, just yesterday at the Finance Committee, Matthew P. Pink, president of the Investment Company Institute testified:

> Government statistics show that personal saving as a percent of disposable personal income has tumbled over the last decade—from a high of 8.0 percent in 1984, to a low of 4.0 percent in 1993. If government deficits are factored in, the situation appears even more bleak: since the 1960s, "net national saving" has dropped from more than 8 percent to less than 2 percent today.

In 1984, the Council of Economic Advisers, then headed by Martin Feldstein, the eminent Harvard economist, now head of the National Bureau of Economic Research, reported the grim news that a structural as against cyclical deficit had appeared and was not going away:

REDUCING THE BUDGET DEFICIT

> Despite the dramatic reduction in the share of national income taken by government domestic spending and the fundamental improvement in the character of our tax system, the Nation still faces the serious potential problem of a long string of huge budget deficits. Vigorous economic growth can eliminate the cyclical component of the deficit. But without legislative action, the structural component is likely to grow just as fast as the cyclical one shrinks. The Administration's economic projections imply that the budget deficit will remain roughly $200 billion a year—or about 5 percent of GNP—for the rest of the decade unless there is legislative action to reduce spending or raise revenue. Deficits of that size would represent a serious potential threat to the health of the American economy in the second half of this decade and in the more distant future.

DEFICIT PROJECTION

> The cyclical component of the budget deficit is the party of the deficit that occurs because the unemployment rate exceeds the inflation threshold level of unemployment, i.e., the minimum level of unemployment that can be sustained without raising the rate of inflation. This excess unemployment raises the deficit by depressing tax revenues and by increasing outlays on unemployment benefits and other cyclically sensitive programs.
>
> The remaining part of the budget deficit, known as the structural component, is the amount of the deficit that would remain even if the unemployment rate were at the inflation threshold level. The Administration estimates that the inflation threshold level of unemployment is now 6.5 percent and will decline in the coming years as the relative number of inexperienced workers declines and as the Administration's employment policies are enacted and take effect.
>
> Table I–2 presents the cyclical and structural components of the budget deficit for 1980 through 1989. The 1983 deficit of $195 billion was divided about evenly between the cyclical and structural components. Because of the lower level of unemployment projected for 1984, a much larger share of the current year's deficit is structural. The projected deficit of $187 billion includes a cyclical component of $49 billion and a structural component of $138 billion. By 1989, the entire projected budget deficit is structural.

TABLE I–2—CYCLICAL AND STRUCTURAL COMPONENTS OF THE DEFICIT, FISCAL YEARS 1980–1989

[In billions of dollars]

Fiscal year	Total	Cyclical	Structural
Actual:			
1980	60	4	55
1981	58	19	39
1982	111	62	48
1983	195	95	101
Estimates (current services):			
1984	187	49	138
1985	208	44	163
1986	216	45	171
1987	220	34	187
1988	203	16	187
1989	193	−4	197

And so the idea of making it go away by amending the Constitution gained greater strength.

This idea was already part of the public discourse. The new economics was hard to understand. It seemed to contradict common sense. To cite the work of Thomas Kuhn, many or most Americans lived within an economic paradigm in which countercyclical spending made no sense whatever. Would it not be agreed that Herbert Hoover had the most practical and governmental experience in national and international economics of any American President? And yet, he did not grasp the new economics. Mind, the new economics had not yet evolved, but the point is that much of President Hoover's instinctive response to the Depression of the 1930's only worsened that Depression. President Roosevelt had more of an excuse, in that he knew nothing of economics, or as near as makes no matter. But his instincts were almost exactly those of his predecessor, even denouncing in 1932 the few countercyclical measures that Hoover has instituted.

In the 1970's a grassroots movement got underway to call a constitutional convention to adopt a balanced budget amendment. In the event, some 30 State legislatures joined in this call, only four fewer than the required two-thirds. Note that the final four were not forthcoming: The prospect of hanging concentrates the minds of legislators along with other folk. But I, for one, grew alarmed. At a meeting of the Budget Committee, I asked the newest Chairman of the Council, the estimable Charles L. Schultze, if he would run the 1975 recession on their computer. He agreed and reported back a while later. They had carried out the simulation. The computer "blew up." I, in turn, reported this in an article in the Wall Street Journal of March, 1981. In specific terms, Dr. Schultze reported that Federal spending dropped something like $100 billion, and GNP dropped 12 percent. Back, that is to the wild swings of the last century. Save. that there might be no upswing.

In the Wall Street Journal, I asked if we really wanted to write algebra into the Constitution.

Obviously, a majority, but not yet two-thirds of the Members of the U.S. Senate are disposed to do just that, And so I have now asked Dr. David Podoff, sometime Chief Economist of the Senate Committee on Finance and now Chief Minority Economist, if he would construct an example of what might occur if we attempted to balance the budget in the middle of a recession.

Dr. Podoff was well trained at M.I.T. by a distinguished faculty, including three Novel laureates, Professors Paul Samuelson, Robert Solow, and Fransisco Modigliani. Not surprisingly, Podoff's analysis brings Schultze's up-to-date, and quite conforms the professional judgment of, well, the profession. It is as follows:

Assume that for 1995 our $7 trillion economy is roughly at full employment—which it is—and that under the requirements of the Constitution the budget is balanced. The economy is then buffeted by external or what economists call exogenous shocks. These shocks, which could be due to financial dislocation in international currency markets which disrupt trade—a second run on the Mexican peso—oil price shocks, or world-wide natural disasters are assumed to result in an increase in the unemployment rate from 5.5 to 8.5 percent. At the height of the 1981-82 recession the unemployment rate reached 9.7 percent, so this is not an implausible level for unemployment.

Most economic models suggest that a 3-percentage point increase in the unemployment rate is associated with a 7.5-percent reduction in GDP. In turn, sensitivity analysis published by CBO in its Economic and Budget Outlook indicate that a reduction in GDP of about $500 billion leads to an increase in the deficit of $150 billion, as tax collections fall and outlays for unemployment compensation and other income maintenance programs increase.

But now the budget must be balanced. Outlays are reduced and/or taxes are increased by a total of $150 billion. This reduction in the deficit leads to further decreases in output which again increase the deficit which cause another round of budget cuts and on and on.

When this so-called multiplier process is finally completed, the downward spiral in economic activity will leave the economy in a new low level equilibrium, with output 18 percent below its potential and an unemployment rate of 12 percent.

Note the symmetry between Schultze's simulation of 1975 and Podoff's of 1995. Schultze projected 12-percent drop of GDP in an economy operating at less than full potential, off about 5 percentage points. In 1995, we are close to full employment, which is a sufficient shorthand for producing at potential GDP. Podoff suggests a drop of 18 percentage points. We may be onto an important economic insight here, but let us hope this remains in the realm of theoretical economics!

Another distinguished economist, Laura D'Andrea Tyson, current Chair of the Council of Economic Advisers, in the Washington Post, February 7, reinforced the perverse nature of balancing the budget in a recession. As she put it:

> A balanced budget amendment would throw the automatic stabilizers into reverse. Congress would be required to raise tax rates or cut spending programs in the face of a recession to counteract temporary increases in the deficit. Rather than moderating the normal ups and downs of the business cycle, fiscal policy would be required to aggravate them.

Monetary policy could moderate the swing in economic activity described in the simulations above. But as Dr. Tyson further notes in her op-ed piece:

> In a balanced-budget world—with fiscal policy enjoined to destabilize rather than stabilize the economy—all responsibility for counteracting the economic effects of the business cycle would be placed at the doorstep of the Federal Reserve.

Compared to fiscal actions, the Federal Reserve monetary actions could be constrained. Concerns about inflation, interest rates and exchange rates may prevent the Fed from acting quickly and forceful. For example, over the last year the Fed has increased short-term interest rates in seven small measured steps; and many analysts believe that the full impact of these contractionary actions have not yet been felt.

However, under the constitutional amendment, required fiscal actions to balance the budget would come quickly, unless waived by a three-fifths vote. The amendment (section 6) states:

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

In the absence of a waiver, what legislator would dare not vote quickly to balance the budget using the most up-to-date estimates of outlays and receipts? Indeed, respect for the Constitution, irrespective of the economic consequences, would require quick action.

On February 3, our revered sometime President pro tempore, Senator ROBERT C. BYRD, invited Senator PAUL S. SARBANES, formerly chairman of the Joint Economic Committee, and this Senator to join him in the Mansfield room to hear a number of economists, led by Jeff Faux of the Economic Policy Institute, present their views on the inadvisability and peril of a balanced budget amendment. Dr. Faux, incidentally, correctly predicted the devaluation of the Mexican peso in the course of the debate over the North American Free-Trade Agreement. Among those who spoke, for himself and his fellow Nobel laureate at M.I.T., was Robert M. Solow, who stated in part:

> Many economists have pointed out how perverse the Amendment can be when the economy falls into recession. Then the appearance of a cyclical deficit is a desirable, functional event, not an undesirable one. At such a moment, the higher taxes or reduced transfers or lower expenditures that would be needed to restore balance will worsen the recession and do relatively little to reduce the budget deficit. Of course some escape mechanisms will be built into the amendment. But they will inevitably be slow, uncertain in their scope, and subject to manipulation by a minority. (This would be an obvious occasion for dissidents to challenge the accounting conventions in use.)

As I have remarked earlier, in the early 1980's, deficits were not viewed as a tool to stabilize the economy. Rather, they were used as a way to reduce the size of government. A debt in excess of $4 trillion is the legacy of the misuse of fiscal policy. We should not use the legacy of the 1980's as an excuse to abdicate control of fiscal policy by passing a constitutional amendment to balance the budget. Abdication would, in the words of a statement issued February 3 by several hundred economists of every political persuasion, who joined Senator BYRD, lead to the following results:

> When the private economy is in recession, a constitutional requirement that would force cuts in public spending or tax increases could worsen the economic downturn, causing greater loss of jobs, production, and income.

And, as noted in the examples of Dr. Schultze and Dr. Podoff, that is surely what will happen in a recession if we have a balanced budget amendment.

Not only were the budget policies of the early 1980's an aberration, which should not be used as a justification for adopting a constitutional amendment to balance the budget, but in the last 2 years we have been making progress toward achieving a balanced budget.

In the "Economic and Budget Outlook: Fiscal Years 1994–1998" report of

January 1993, CBO projected that, by the year 2000, the deficit would reach $455 billion and exceed 5 percent of GDP.

In the "Economic and Budget Outlook: Fiscal Years 1996-2000," issued last month, CBO now projects a deficit of $284 billion or about 3 percent of GDP. The proposals recently submitted by the President in his fiscal year 1996 budget message would reduce the deficit below 3 percent of GDP.

What accounts for this remarkable turnaround in the budget?

Two inter-related factors explain the reduction in the deficit. First, the Administration proposed, and Congress adopted a sizable deficit reduction package. Second, the economy performed better than expected, in part, because Congress adopted a creditable deficit reduction plan. In part, also, because, as Secretary of the Treasury Rubin remarked to the Finance Committee this Wednesday, the deficit reduction program squeezed the deficit premium, as he put it, out of real long-term interest rates. If financial markets do not believe the deficit is under control, they will levy a deficit premium on capital lending. In 1993 and 1994, we clearly persuaded the markets that we were finally serious.

I do not wish to be partisan in these remarks, and I hope I have not been. But will not forebear to note that the 1993 deficit reduction program was enacted with Democratic votes and only Democratic votes. I understand that Republican Senators are committed to House Joint Resolution 1, all but one that is, and I do not expect that to change. But I would hope Democratic Senators will recognize what I believe to be the error of the views of the other side of the aisle.

CBO estimated that the deficit reduction package enacted by Congress in August 1993 would reduce the deficit by more than $400 billion over 5 years. The budget resolution adopted by Congress in 1993—which required enactment of the deficit reduction package—anticipated a decrease in the fiscal year 1994 deficit of $33 billion, from an estimated baseline deficit of $287 billion to $254 billion. The actual deficit turned out to be $203 billion, in part because of higher economic growth than projected. CBO estimates that a stronger economy reduced the fiscal year 1994 deficit by $21 billion.

The vigorous expansion was not unrelated to the adoption of a creditable deficit reduction program, which led to a reduction in real interest rates. Again, as Secretary Rubin stated, "the deficit premium—on interest rates * * * is in my judgement largely gone."

As a result of the deficit reduction policies we have had 3 straight years of deficit reduction—the first such string of declines since the administration of President Harry S. Truman. Here are the numbers:

Fiscal year:	*Deficit in billions*
1992	$290.4
1993	255.1
1994	203.2
OMB 1995 est.	192.5
CBO 1995 est.	176

But the legacy of debt for the 12 year period 1980-92 will not go away quickly and can be seen in three aspects of fiscal and budget policy.

First, net interest on the increase in the publicly held debt—accumulated during the 12 year period 1980-1992—is about $180 billion or roughly the size of the annual deficit.

Second, even without a balanced budget amendment fiscal policy remains paralyzed—as long as we are running deficits of $200 billion, for whatever reason, it is difficult to deliberately increase the deficit as an anti-inflationary measure. The public will just not accept that.

Third, the legacy of annual deficits of almost $300 billion must be reduced gradually, so as not to depress the economy. Consequently, we will continue to add to the debt. By the end of the century the gross Federal debt will approach $7 trillion.

But it can be done. Note once more. Spending on Government programs is less than taxes for the first time since the 1960s. If we keep at it, do more, the deficit could start declining in 5 years surely. The decline accelerates as smaller debt leads to lesser borrowing for interest which leads to smaller debt. But can we not do this on our own, of our own free will? I say to Senators that it won't happen otherwise. The Courts, to which all disputes under that misbegotten amendment will be referred, are not capable of making even remotely sensible decisions on fiscal policy.

Some 40 years ago, Guthrie Birkhead, professor, later dean of the Maxwell School of Citizenship and Government at Syracuse University, remarked that Americans are gadget-minded about government. The proposed balanced budget amendment is nothing if not a gadget. Allow me to offer a cautionary tale from New York history. On March 3, 1858, the New York Times reported from Albany that 86 State senators had presented a petition so brief and so explicit that it was given in its entirety:

> The undersigned, citizens of the State, would respectfully represent: That owing to the great falling off of the Canal revenue, as well as the increasing drafts upon the State Treasury, and the large expenses of carrying on the several departments of the State Government, thereby swelling up the taxes; therefore, with the view of relieving the people from the large amount now unnecessarily expended to sustain the Executive and Legislative Departments, and to secure the *honest* and better administration thereof: your petitioners respectfully ask that your Honorable body pass an act for calling a Convention to so alter the Constitution as to abolish both the Executive and Legislative Departments, as they now exist, and to vest the powers and duties thereof on the President, Vice President, and Directors of the New York Central railroad Company.

The Times special correspondent, an early advocacy journalist, explained that the proposal, while intended as a joke, nonetheless conveyed a bitter satire, a satire which is deserved and just, such were the depredations of the ruling Democrats. The time would come, he concluded, when "after long suffering" the people would rise and "retaliate."

They almost did and not long thereafter. Joke or not, the proposal passed the legislature, went on the ballot the next fall, and failed by only 6,360 votes.

The amendment failed, but retaliation came even so. The New York Democrats scarcely held office for the rest of the century. But retaliation has pursued us into the twentieth century, even to this time. The New York Democrats have controlled the New York State legislature for a total of 4 years in the whole of the 20th century so far. Let Republicans beware. This amendment could pass.

Mr. HATCH. Mr. President, I see the distinguished Senator from Oklahoma is here. I am hoping that after he speaks, we will be able to close out the Senate for the day.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NICKLES. 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. NICKLES. I ask unanimous consent to proceed as if in morning business.

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

FOSTER NOMINATION OBJECTION

Mr. NICKLES. Mr. President, over the last 9 days, a firestorm has erupted over President Clinton's announcement that he intends to nominate Dr. Henry W. Foster as the Surgeon General of the United States.

I believe that the President erred when he chose Dr. Foster as Surgeon General, and I believe the President should withdraw his nomination. I would also recommend to Dr. Foster that he withdraw his name from consideration.

Mr. President, much has been made about the fact that Dr. Foster, by his own admission, has performed abortions. President Clinton said yesterday when he was defending Dr. Foster that the only people who are fighting this nomination are people who oppose abortion. I believe the President is wrong.

Mr. President, I might mention that I do oppose abortion. I do not make

any qualms about that. I do believe it is the deliberate taking of a human life, and I think it is a mistake to have as our Surgeon General a person who routinely performs abortions. To be named as Surgeon General, you are named as the Nation's No. 1 public health officer.

Some people say, should a person be totally disqualified because of that? I would not vote for him, but that does not mean that this body would not. Likewise, I could not help but think of the reaction of many people in this body and what they would say if the medical researcher for American Tobacco Institute was appointed as Surgeon General. Smoking, like abortion, is legal, but I expect that there would be significant opposition because that is probably, again, not the right person to have as the Surgeon General.

Mr. President, my reason for speaking today and my reason for saying that the President should withdraw the nomination, is not just because Dr. Foster has performed a lot of abortions. It is because in this period of 9 days, there has been a real lack of candor from Dr. Foster. There has been a real misleading of the American people and the American Congress to the facts. I think that alone disqualifies him for this office.

The office of Surgeon General has been referred to as a bully pulpit, and it is. It is an office which gives the Surgeon General the ability to educate and to lead. And it is an office that, if one is going to educate and to lead by speaking, one has to have credibility. I think Dr. Foster has lost that credibility.

Mr. President, this morning's New York Times, in the lead editorial, calls on President Clinton to withdraw the Foster nomination. The editorial states:

Although Dr. Foster is a highly respected obstetrician, his lack of candor about his abortion record disqualifies him from serious consideration. Misleading statements by candidates for high position cannot be condoned.

The editorial concludes:

President Clinton promises to fight for his nominee and Dr. Foster pledges to stay the course. But this is a fight that neither the White House nor Congress really wants over a crippled candidacy. It is time to withdraw the nomination.

Mr. President, I ask unanimous consent to have the New York Times editorial printed in the RECORD at this point.

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

[From the New York Times, Feb. 10, 1995]

THE TAINTED FOSTER NOMINATION

The nomination of Dr. Henry Foster Jr. to be surgeon general has been so badly bungled, by the White House and by Dr. Foster himself, that there is little choice but to hope it dies quickly. Although Dr. Foster is a highly respected obstetrician, his lack of candor about his abortion record disqualifies him from serious consideration. Misleading statements by candidates for high position simply cannot be condoned.

Of course the chief blame for this debacle lies with the White House, which once again put forth in a nominee without adequately vetting the person's background or knowing the answers to potentially explosive questions. As a result, the Administration put out false information on the number of abortions performed by Dr. Foster. In this as in earlier episodes, White House bungling makes it difficult for President Clinton's natural allies to support him fully. The situation moves from difficult to impossible for pro-choice Republicans like Senator Nancy Kassebaum of Kansas, who cannot reasonably be expected to take a political gamble amid such swirling incompetence.

That is a shame because Dr. Foster, based on his past record, is a good choice to succeed Dr. Joycelyn Elders, who was pushed from the job after her repeated intemperate language made her a target for conservative attacks. Dr. Foster, the acting director of Meharry Medical College in Tennessee, is deeply committed to delaying child-bearing among adolescents, one of the most pressing social issues confronting the nation. He developed a highly successful program, called "I Have a Future," in Nashville that was honored by President Bush as one of his "points of light."

During a 30-year practice Dr. Foster, like many obstetricians, performed a number of abortions. In doing so he was providing a legal, constitutionally protected medical service. If the latest numbers put forth are correct, he performed 39 surgical abortions during his 38-year medical career, a once-a-year rate that seems modest for a very busy practitioner serving a needy population. He was also the titular head of a federally sanctioned test of a potential abortion suppository.

This record would in any case have probably inflamed America's anti-choice minority, which is fierce and well organized and has good friends in Congress. But since most Americans believe that women should retain the right to choose, Dr. Foster's nomination might well have been pushed through the Senate had his record been forthrightly presented. Instead both he and the Administration made it look as if there accounts were unreliable or designed to mask a more troubling history.

President Clinton promises to fight for his nominee and Dr. Foster pledges to stay the course. But this is a fight that neither the White House nor Congress really wants over a crippled candidacy. It is time to withdraw the nomination.

Mr. NICKLES. Mr. President, I do not often agree with the New York Times editorial page, but I think this editorial is correct. President Clinton should withdraw this nomination immediately because Dr. Foster has serious credibility problems.

The New York Times editorial says Dr. Foster is guilty of lack of candor in making misleading statements about his abortion record. They are correct.

In less than a week, he has given three different estimates on the number of abortions he has performed. Initially, he told the administration officials he had performed just one abortion. Then, last Friday, he issued a statement that said:

As a private practicing physician, I believed that I performed fewer than a dozen pregnancy terminations.

Mr. President, I ask unanimous consent that a statement by Dr. Henry Foster on February 3, 1995, be printed in the RECORD.

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

PRESS RELEASE: STATEMENT BY DR. HENRY FOSTER, NOMINEE FOR U.S. SURGEON GENERAL, FEB. 3, 1995

My specialty in the practice of medicine is obstetrics/gynecology. I have personally delivered more than 10,000 babies in nearly 30 years of practice including my service in the military.

In that period of almost three decades as a private practicing physician, I believed that I performed fewer than a dozen pregnancy terminations. None were in out-patient settings; all were in hospitals and were primarily to save the lives of the women or because the women had been the victims of rape or incest.

I was also Chief of Service at two major teaching institutions where many physicians held hospital privileges. A wide variety of medical procedures and research was performed at both. To my knowledge, all were in accordance with the law and educational requirements.

I have dedicated my life's work to improving access to medical care and improving quality of life for women and children, a passion rooted in my early years of practice in the rural South. I have placed particular emphasis on prevention, especially in such areas as teen pregnancy, drug abuse and smoking cessation in children. In my work with teenagers, abstinence has always been stressed as my first priority.

Through my long affiliation with Planned Parenthood Federation of America, my person goal has always been to provide education, counseling, preventive health care and contraceptive access to patients needing such services. If abortion is provided, my wish is that it be safe, legal and rare.

I am proud of my affiliation with Planned Parenthood just as I am of my affiliation with many other prestigious organizations such as the March of Dimes Foundation, the American Cancer Society, the Y.W.C.A. and my church.

Mr. NICKLES. Mr. President, on Wednesday, on ABC's "Nightline," Dr. Foster recanted an earlier estimate and provided a new estimate of the number of abortions he has performed.

Dr. Foster said:

I have worked at George W. Hubbard Hospital. At Meharry Medical College, all of my patient records and all of the operative logs from the time I went to Meharry in 1973 until tonight have revealed that I was listed as the physician of record on 39 of those cases, in 38 years of practice, in 22 years at Meharry.

Dr. Foster's statement on "Nightline" indicates he performed a grand total of 39 abortions in 38 years of medical practice, and all of those abortions were performed since 1973. But the Associated Press today reports that Dr. Foster performed an undetermined number of abortions prior to 1973, abortions that are not included in the 39 abortions he admitted on "Nightline" to having performed.

The article quotes Dr. Calvin Dowe, general practitioner and then a colleague of Dr. Foster at John A. Andrew Hospital in Tuskegee, AL, with William Hill, Dr. Foster's uncle, as saying Dr. Foster performed abortions in Alabama during the period from 1965 to 1973.

The article states:

Dowe and William Hill, Foster's uncle, said they do not know how many abortions he performed at Andrew Hospital, which closed in 1987. But both said Foster did only what was medically necessary.

The article also quotes Dr. Dowe as saying:

I don't see how any obstetrician has said he has never done an abortion. It's the nature of the business.

Mr. President, I ask unanimous consent to have printed in the RECORD the article I just referred to.

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

[From the Associated Press, Feb. 10, 1995]

FOSTER WAS LONE OBSTETRICIAN FOR EAST ALABAMA'S BLACK WOMEN

(By Jay Reeves)

BIRMINGHAM, AL.—As the lone obstetrician at a black hospital during the days of racial segregation, Dr. Henry Foster was the only source of health care for thousands of poor, pregnant women in rural east Alabama.

Foster delivered hundreds of babies at John A. Andrew Hospital in Tuskegee from 1965 to 1973. When complications left him no other choice, he sometimes did abortions, a colleague and a relative say.

"Back then the medical treatment for Negroes was just deplorable," Dr. Calvin Dowe, a former colleague of Foster, recalled Thursday. "Hospitals in the surrounding areas didn't even consider them people."

While medical services were not segregated by law, Foster cared for almost every pregnant black woman in at least five counties.

Dowe, a general practitioner who is black, said he never referred women to Foster for abortions and did not know anyone who did. Women simply went to him because there was nowhere else to turn.

"Realistically, I don't see how any obstetrician can say he never has done an abortion. It's the nature of the business," Dowe said.

Abortions performed by Foster over his 38-year medical career have become a source of controversy since President Clinton nominated him to replace fired Surgeon General Joycelyn Elders. Foster, 61, initially acknowledged fewer than a dozen of the procedures but now says he did 39.

Dowe and William Hill, Foster's uncle, said they do not know how many abortions he performed at Andrew Hospital, which closed in 1987. But both said Foster did only what was medically necessary.

"He had to perform some for medical emergencies. He wasn't an abortion doctor," said Hill, 90, who still lives in Tuskegee.

Foster moved to Tuskegee in 1965 after completing his residency at Meharry Medical College in Nashville, Tenn. Dowe said the head of obstetrics at Andrew died about the same time, and Foster agreed to take over.

"With the training he had, he could have gone a lot of places. It was a form of mission work," Dowe said.

Foster was a member of a Baptist church in Tuskegee, and he took flying lessons under Charles A. Anderson, leader of the famed Tuskegee Airmen, an all-black squadron during World War II.

Foster also developed what became a national model for regional perinatal health systems. The White House was drawn to Foster by programs he started later in Nashville combatting teen-age pregnancy.

Mr. NICKLES. These statements by Dr. Foster's former colleague and Dr. Foster's uncle indicate he has done more than 39 abortions in his 38-year career.

Again, we are talking about credibility. They indicate that Dr. Foster misrepresented his abortion record three times in the last week, and we still do not know, despite three different estimates supplied by the nominee, how many abortions Dr. Foster has performed.

Mr. President, there is a record that was made on Friday, November 10, 1978, at the Federal Building in Seattle, WA, before the Department of Health, Education, and Welfare, Office of the Secretary, an ethics advisory board.

A list of participants included: Henry W. Foster, M.D., professor and chairman, department of obstetrics and gynecology, Meharry Medical College, Nashville, TN.

Mr. President, on page 180 of this record, under Dr. Foster's name, it says:

I have done a lot of amniocentesis and therapeutic abortions, probably near 700.

There is a lot in this transcript, Mr. President. There is a lot in this transcript, but this one line, Dr. Foster's words, "probably near 700." Initially from the White House we heard maybe the transcript was a forgery. Then we heard it probably was not this Dr. Foster, maybe it was a different Dr. Foster; maybe he was not there. I think they have recanted those statements and they said this probably is a legitimate transcript and it probably is the same person they nominated to be Surgeon General, but he did not say what the official transcript of the meeting says he said.

Again, credibility. Was it 1 or was it 12 or was it 39 or was it a lot more before 1973? So we do not know how many.

And, oh, yes, in his original comments he forgot that he was chief investigator of a drug, a suppository that would induce abortion that they gave to 60 people that he has written a report on, and I will include that for the RECORD as well. Out of the 60 pregnant women who participated in the study, 55 had their pregnancies aborted by the drug, and those abortions were not medically necessary. I think 58 of those who participated in the study were black women, ages 15 to 32; in 55 of the 60 cases, the drug successfully induced abortion; in 4 other cases, they had to go ahead and complete a surgical abortion procedure; and in one case, the mother changed her mind and carried the baby to term.

There are other things in this report. I am going to include this for the RECORD, not the entire report but I will include about 40 pages.

This transcript includes a discussion about research, trying to do research to determine whether the fetus has a disease called sickle cell anemia and whether or not they can detect that disease prenatally or find out whether the fetus is affected in time so there could be a therapeutic abortion; in other words, abort a fetus because it happens to have sickle cell anemia.

Mr. President, there are millions of Americans, I think it is estimated 2 or 3 million Americans who today have sickle cell anemia, and yet in this research proposal that they are talking to HEW about, they want to determine whether the fetus has sickle cell anemia so it would be in time to find out if the mother, I guess, would like to have an abortion, a therapeutic abortion. Not very therapeutic for the fetus, I might mention.

It even goes on further, and I do not even like talking about this. It talks about research on human ova fertilized in a laboratory setting. Dr. Foster is saying, "Well, if we have spares that are not used for insemination, they could be used for research."

It happens to be against the law right now, but he was advocating they would use fertilized ovum for research. That bothers me. This is a report, this is a transcript of a hearing. Maybe a lot of us speak at hearings and we forget we are recorded. I do not know. But these are statements.

Mr. President, I would like to keep the CONGRESSIONAL RECORD very short, but this is a very controversial nominee and I think people are entitled to find out what the facts are. So I ask unanimous consent this portion of a copy of the ethics advisory board meeting dated November 10, 1978, be printed in the RECORD.

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

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, OFFICE OF THE SECRETARY, ETHICS ADVISORY BOARD, MEETING V, NOVEMBER 10, 1978

MEMBERS OF THE ETHICS ADVISORY BOARD

Gaither, James C., J.D., Chairman, Cooley, Godward, Castro, Huddleson and Tatum, San Francisco, California.

Hamburg, David A., M.D., Vice Chairman, President, Institute of Medicine, Washington, D.C.

Conway, Jack T., Senior Vice President, Government and Labor Movement Relations, United Way of America, Washington, D.C.

Foster, Henry W., M.D., Professor and Chairman, Department of Obstetrics and Gynecology, Meharry Medical College, Nashville, Tennessee.

Henderson, Donald A., M.D., Dean, The Johns Hopkins School of Hygiene and Public Health, Baltimore, Maryland.

Lazarus, Maurice, Chairman, Finance Committee, Federated Department Stores, Inc., Boston, Massachusetts.

McCormick, Richard A., S.T.D., Professor of Christian Ethics, Kennedy Institute for the Study of Reproduction and Bioethics, Washington, D.C.

Spellman, Mitchell W., M.D., Dean for Medical Services and Professor or Surgery, Harvard Medical School, Boston, Massachusetts.

Williams, Agnes N., LL.B., Potomac, Maryland.

Zwieback, Eugene M., M.D., Surgeon, Omaha, Nebraska.

STAFF MEMBERS

Dr. Charles McCarthy, Staff Director, EAB.

Ms. Barbara Mishkin, Deputy Staff Director, EAB.

Ms. Roberta Garfinkle, Assistant to EAB.

Mr. William Dommel, Special Assistant to Staff Director, EAB.

Mr. Philip Halpern, Special Counsel to Chairman, EAB.

EXCERPTS FROM HEARING

. . . given the risk benefit ratio and whatever—it would not be ethical and moral for the government to pay for that process.

Dr. LEIMAN. So long as we are leaving the conceptus out of the discussion, I think so.

Mr. GAITHER. Dr. Henderson, one last question.

Dr. HENDERSON. Just an observation. I wonder if we are really looking at proceeding on the assumption that there is no additional risk. As one looks at the whole field of medicine, almost any procedure one does, any drug one takes, there is some minimal additional risk. Acceptable minimal additional risk I think is the way we are really looking at this and to say there is probably no additional risk I think is probably not the way we can look at this. I think we must say minimally acceptable additional risk.

Mr. GAITHER. I think the acceptable is still at issue. But I think that the point is well taken.

Rabbi Leiman, thank you very much. We appreciate it.

Let's take a short break and figure out how we can get back to our schedule.

(Brief recess.)

Mr. GAITHER. Needless to say, we have fallen a bit behind schedule, and I would suggest that we postpone for the time being the legal discussion regarding in vitro fertilization, and proceed at this time to a consideration of the research application involving fetoscopy, submitted by the Charles Drew Postgraduate Medical School.

I would like to note at the outset that Dr. Spellman, formerly Dean at that medical school has asked that he be excused from the deliberation on this issue. I hope that you will stay with us and listen to it, but I understand your reluctance to become involved, and we will assume that you will not be involved in either the discussion or the decision on this issue.

Dr. HAMBURG. However, as a point of personal privilege, you may respond to insulting remarks. (Laughter.)

Mr. GAITHER. Mrs. Mishkin, we will let you describe the issue before us, and I would ask that you start by describing why the application is before us and what we are expected to do with it.

Ms. MISHKIN. The HEW regulations governing research involving the human fetus lay down certain conditions which must be met in order for an institutional review board to approve that research. If the institutional review board is not able to determine that all of the conditions have been met, and if it considers that the research nevertheless is important, it may refer that research proposal to this Board for review. And if the Board determines that the research should go on, it may recommend to the Secretary that he waive those parts of the regulations that the research proposal cannot meet.

Now, the proposal before the Board at this point is a proposal to perform fetoscopy on mothers who have elected to have abortions for reasons totally unrelated to the research, in order to discover and to document what the risk to mothers and fetuses might be from the procedure of fetoscopy. The purpose of developing the fetoscopy is to be able to diagnose prenatally certain conditions for which the parents are at risk. In this particular research proposal the focus is primarily on prenatal diagnosis of sickle cell disease.

Now, the reason that this proposal is before the Board is that it cannot meet or at least cannot clearly meet provisions of the HEW regulations set forth in sections 46.206(a), 46.207(a), and 46.208(a) which briefly, taken together, require that the activities in the research proposal be designed to meet the health needs of either the mother or the particular fetus involved, or, if that is not the case, that the procedures present no more than minimal risk to the fetus.

Now, the problem in this proposal is that it is not designed, as written, to provide therapy for the mother, nor is it designed to provide therapy for the fetus, because the purpose is to assess safety of a technique and to do it in mothers who have already elected to undergo abortion. So there is no question as to whether or not it is or not so-called therapeutic research. It clearly is not. Therefore, it does not meet that first condition.

It does not seem to meet the second condition because the risks, I think, must be considered undetermined. Although the HEW regulations do not define minimal risk, it is possible to go and look behind those regulations to the Commission's discussion of what they intended, because the regulations were an attempt by the Department fully to implement the Commission's recommendations on research involving the fetus.

So I am going to offer to you for your guidance what the Commission's intentions were when they made their recommendations to the Secretary. That does not mean that you must follow the Commission's intentions; it is only to elucidate for you somewhat what the Commission had in mind, because the regulations themselves give this Board no guidance. The only guidance in the regulations is to the institutional review boards.

Mr. GAITHER. Let me interrupt for just one second, because I think it is important that we understand the standards which we are to apply. I gather what you are saying is that this particular application is not therapeutic and not clearly within the category or at least so determined by the institutional review board, as involving no more than minimal risk.

Ms. MISHKIN. That is correct.

Mr. GAITHER. Therefore, it can only be funded if this Board determines that it is ethically acceptable? Is that the standard?

Ms. MISHKIN. Essentially, yes. If we recommend to the Secretary that he waive those provisions that we just mentioned because we feel the research is important and justified by the benefits to be obtained from the—the anticipated benefits.

Mr. GAITHER. So there is no particular standard other than for us to say to the Secretary whether or not we feel that he should go ahead despite that provision in the regulations?

Mr. HALPERN. Mr. Gaither, if I could be of help, if you look at subpart 5 under Tab I in our book, giving us the regulation, Section 46.211 provides some guidance as to the standard, at least which will guide the Secretary in his decision to accept our recommendation.

Ms. MISHKIN. At Tab I of your book, we have reproduced the applicable provisions of 45 CFR 46, and it simply says if this Board feels that the risk is justified by the sum of the benefit to the subject, which is not in question here, or the importance of the knowledge to be gained.

Mr. CONWAY. And you are referring us to 46.211?

Ms. MISHKIN. Yes.

Mr. HALPERN. In fact, it doesn't say that the Board should be guided by the risk benefit analysis, it says that the Board should consider whether waiver, which is what we are talking about, is appropriate in this particular instance. Then it says in making the decision the Secretary will consider whether the risks to the subject are so outweighed by the sum of the benefit to the subject and the importance of the knowledge to be gained as to warrant such a modification or a waiver.

Mr. GAITHER. But it seems to me that it is important for us to note that .211 states that the Secretary can only waive, unlike the other situation before us, with our approval. So that is the question, whether we would approve a modification or waiver of these regulations to permit this research to continue. And basically there are no specific standards imposed upon us. Is that correct?

Ms. MISHKIN. That is correct.

Mr. GAITHER. And what you are giving us is the background, now, for these particular regulations why the Commission suggested that a body such as ours be involved in the deliberations.

Ms. MISHKIN. And what the Commission coped with when it discussed the problem of research on fetuses to be aborted, and what standard might be appropriate in considering acceptable risk to fetuses about to be aborted or whose mothers intend to go through with an abortion. It was a very, very difficult problem for the Commission. Any of you who followed the Commission's activities in this area will know they spent a long time on this, and this was one of the areas in which there was not a full consensus among the Commission members.

First of all, let me say that this particular application underwent six reviews prior to coming before this Board. That included reviews by the appropriate IRB at the Drew Center; a review by the community board which is a separate community representative board at the Drew Center; review by the appropriate study section at HEW; review by a site visit team from study section, members ad hoc; review by the National Advisory Council under whose auspices this particular application came—if that is not six I have left one out, but they are all listed there anyway.

The staff of the Board then shipped the whole thing out to two additional people for independent reviews, and those have been mailed to you and are reproduced in your book. Dr. Haig Kazazian at Johns Hopkins University Hospital, and Dr. Dwayne Alexander at the National Institute of Child Health and Human Development.

Dr. Kazazian has done fetoscopy himself; he no longer does so. Dr. Alexander has not done fetoscopy. He was a member of the staff of the Commission and he ran the amniocentesis collaborative research program, and is very familiar with questions of

prenatal diagnosis, and the risks of various procedures associated with prenatal diagnosis.

All of the review boards and the individual reviewers have recommended approval of this research application based on the importance of being able to diagnose prenatally certain conditions which, up until now, have not been diagnosable through amniocentesis. Fetoscopy has been the only possible way to diagnose sickle cell disease, among other diseases, in fetuses prior to birth.

Now, there was one problem that we had in reviewing this particular proposal, and that was it was not entirely clear from the proposal, because we had conflicting statements—the site visit review said one thing, and the proposal said something else—as to whether or not the investigators planned to delay abortion for more then 24 hours after fetoscopy. The point of the research is to do the fetoscopy, monitor the women after fetoscopy, and look for complications as a result of fetoscopy. Complications include possible infection of the woman, possible bleeding of the fetus, and subsequent abortion prior to the induced abortion which is anticipated.

What is present in the research application is a plan to perform the fetoscopy, monitor the woman for 24 hours, and then go ahead with the abortion as planned. What is present in the site visit's review, however, is a plan to continue monitoring, if they are satisfied that a 24 hour delay poses no risk, to increase that delay step by step, until they reach, finally, a two-week delay during which they would monitor the woman for two weeks following fetoscopy before going ahead with the abortion.

I called the principal investigator to find out what in fact was their intent, and he said that this does seem—that it is his intent to go incrementally if they are satisfied at any one stage as to the risk to mother and fetus, to go incrementally up to a two-week delay. This raises a very important concern that their subject population is women who are in their 16th to 20th week of gestation. A two-week delay in a woman who presents at 20 weeks would take that woman past 20 weeks gestation before her abortion, and this then would run into the possibility of a viable fetus being aborted, or of having a viable product of the abortion. This is one problem that the Commission was very much concerned about. That is why the staff recommendation on this particular proposal includes the provision that no abortion be postponed for reasons of this research that would then have to be performed after the 20th week of gestation. This is compatible with the regulations that no timing or methodological change be introduced for reasons of research that would add additional risk to the mother or the fetus. And surely the risk of having a viable product of abortion is an additional risk.

The current regulations note that viability is possible at 20 weeks, and that is why the staff recommends that no procedure be delayed beyond the 20th gestational week for purposes of this research.

Now, the whole thing was complicated by an article in the Washington Post that appeared on Saturday, November 4th, while we were in the process of preparing this memorandum of recommendations to you. That article indicates that a physician at the University of California at San Francisco believes he has developed a procedure to diagnose sickle cell disease through amniocentesis, thus avoiding the necessity to go to fetoscopy in order to diagnose sickle cell disease. These findings are supposed to have been in the most recent issue of the journal Lancet. We were unable to find whatever issue that was. It must not be out yet. If it is out it is not available in any of the libraries we had access to in Washington.

We tried very hard to call the investigator at the University of California at San Francisco, and we were unable to reach him. We do, however, have some further information on that. Dr. Alexander was able to reach Dr. Michael Kaback, who is Assistant Professor of Pediatrics and Medical Genetics at the University of California at Los Angeles, and who is familiar with the work of the investigators at San Francisco.

What I am going to give you now is my understanding of Dr. Alexander's understanding of Dr. Kaback's understanding of what they are doing in San Francisco. If all of that is clear, you will know how far we are removed from firsthand information. But nevertheless I will give it to you, because I think it is important.

It goes as follows: 85 percent of sickle cell carriers have an extra large piece of DNA on the gene that has the sickle cell trait. Now, this condition of having the extra large clump of DNA material is calling polymorphism. Thus, it is possible assuming the test works as reported, to diagnose approximately two-thirds or more of sickle cell babies through amniocentesis and looking for this enlarged DNA clump.

Now, let me break that out for you. What they have to do if they identify both parents as carriers, they then look for this polymorphism, in other words, the extra clump of DNA in the parents. If those parents have that extra clump of DNA, that is, if they fall within the 85 percent of sickle cell carriers who have that polymorphism, then it is possible to perform amniocentesis—yes?

Dr. FOSTER. I should clarify something at this point. You are using a medical term, and I am not sure—you are saying "carriers." do you really mean carriers, or do you mean sickle cell disease?

Ms. MISHKIN. No, I mean carriers.

Dr. FOSTER. That is not a person with sickle cell disease.

Ms. MISHKIN. That is correct.

Dr. FOSTER. Okay.

Ms. MISHKIN. But again, this is my understanding from Dr. Alexander through Dr. Kaback. That is the best we can give you.

Dr. FOSTER. Go ahead and let me hear you out, then.

Ms. MISHKIN. My understanding is this is carriers.

Dr. FOSTER. Okay, go ahead. I will hear you out.

Ms. MISHKIN. So if both parents are carriers, either with or without the disease—

Dr. FOSTER. It is the previous I am concerned about.

Ms. MISHKIN. Right. If both parents are carriers and have this trait of the polymorphism, and it is possible to be a—15 percent of carriers do not show this trait. If they are among the 85 percent of carriers who show this trait, then through amniocentesis they can look for the segments in the fetus. If the fetus has two segments showing the polymorphi, that is a child with sickle cell disease. If the fetus has one segment that child is a carrier. If the fetus has no segments, that is a normal child.

Now, I went back and asked again whether that child could be one of the 15 percent that do not show the polymorphism, and the answer was that Dr. Alexander believes not. The answer is if they have done this whole procedure and the child does not carry that polymorphism, that child is not a carrier or a diseased child with respect to sickle cell.

Now, if either parent is not polymorphic, does not have this additional clump, is within that 15 percent of parents who are carriers but do not have this change of the DNA, then it is impossible to diagnose the sickle cell disease in the fetus through this amniocentesis procedure, and that would mean that for those parents the only way to diagnose the sickle cell disease in the fetus would be through fetoscopy, which brings us back to the Drew application.

Now, what all this means is there has been a shift in the risk benefit analysis that all of the reviewers performed on the Drew application, because when they looked at the Drew application fetoscopy was the only method for diagnosing sickle cell disease prenatally. Now it appears, although we do not have the documentation to give you, that it is possible in 85 percent of sickle cell carrier parents to diagnose the presence or absence of sickle cell disease by anmniocentesis which is agreed to be a safer procedure than fetoscopy.

So your job is somewhat more difficult, but I don't think it is impossible. One is left with the question of whether it is appropriate for the investigators at Drew to do the research, to assess the risks of fetoscopy as a tool for prenatal diagnosis of sickle cell disease in their subject population, and the reason I am emphasizing this is that if it were the case that all sickle cell disease could be diagnosed prenatally through any other method, amniocentesis or any other, then the board would have to face the question of whether the subject population which the Drew Medical Center serves is an appropriate population to develop the methods of fetoscopy. Fetoscopy is useful for prenatal diagnosis of other disorders, but not disorders which are disorders of the black population, which is the subject population which the Drew Center serves. So then one would have to question whether the black population is an appropriate subject population for developing fetoscopy if they are not going to be the population which will benefit from the development of that diagnostic tool.

In other words, one wants to have the population that will benefit from the research, participate as subjects and accept the risks of that research if possible.

Mr. HALPERN. Just related to this, are we not also in the position of asking whether or not we should remand this issue to Drew and the community that Drew serves for them to make the risk benefit analysis again, in light of this new data?

Ms. MISHKIN. Absolutely. That is a very viable option, and it certainly has a great deal of merit. I think one might reasonably ask for a total reassessment, by that IRB or by any number of other people, even including the study section that reviewed it, in the light of the new information. But I think we would want to get the actual information documented before we remanded it.

I don't know if this has been clear, and if you want more elucidation of the Commission's intent or of my understanding of the regulations, I would be glad to go forward with more.

Mr. GAITHER. Hank, would you say something about the science of this?

Dr. FOSTER. Yes, I am going to say something about the science and the sociology, if you will indulge me.

I heard of Kan's work just a few days ago, and I knew clearly like a shock wave that it

was inevitably going to affect what we have to do, or what we recommended. But I want to say some things as we go through all of this deliberation, which may take me a few moments, but I really want to run through these steps that I have written down here. Some food for thought.

I just have one question. The genetic polymorphism that is necessary in the parents—is it required in both parents? In other words, you know, both parents may be carriers, but only one may show the polymorphism and the other may not. Is it a requirement for both parents? Do you recall?

Ms. MISHKIN. My understanding is that it is not going to be a reliable test through amniocentesis unless both parents show the polymorphism.

Dr. FOSTER. Now, the next question I have—and then I will make my comments—now, I read the research proposal, and I missed this delay. That bothers me a little bit, first. I have got to really clear that in my mind.

I have done a lot of amniocentesis and therapeutic abortions, probably near 700. As I read the protocol, the patient would be brought in the hospital, and that would be a 24 hour delay, which was not inordinate, based on the information that we have. It is very reasonable. But the clinical part, catheter is introduced into the amniotic cavity, and that is the time when the fetus is studied, the blood vessels, and the sample is taken. Then the fetoscope is withdrawn, but the catheter is left in place, which is quite acceptable. In fact, this is one of the techniques we use for continuous prostaglandin infusion.

But there gets to be a real question with regard to infection after a 24 hour period with an indwelling connection to the outside. I missed the entire reviewer's section about some extension beyond 24 hours, and if there is an extension of observation beyond 24 hours, does it involve the catheter being in place? This would be critical in my mind.

Dr. MCCARTHY. Yes, it certainly does.

Dr. FOSTER. I think that is something that really needs to be addressed in terms of the details of the research.

Ms. MISHKIN. I am frankly bothered by anything coming as far as to the Ethics Advisory Board through all those reviews without this being quite clear. It was in the site visit review, and it was because of the ambiquity that I called the principal investigator.

Now, Dwayne Alexander was working on the application in front of him, and so he really addressed only the 24 hour delay. But because of the ambiguities I did call, and the investigators do intend to go to two weeks. I think it might not be inappropriate for the Board to make some strong statement about wanting to be clear on what the procedures proposed are here.

Mr. LAZARUS. I wasn't clear either on the consent procedures.

Dr. FOSTER. That doesn't come through. But the one thing I do want to say, and then I will get to the other points I want to make about what all of the implications of fetoscopy are as I see it. I do think a longer observational period is an acceptable research modality provided safeguards are there. We have already talked about extending beyond the 20 weeks. That can be controlled for fairly well with ultrasonography for establishing fetal age, and a few other things. But I think you might want to consider the observation period without the catheter in place, because repeated amniocentesis has proven to be relatively safe in terms—the danger is in leaving a conduit for bacterial migration.

So what I am really saying is I can see the investigators making a justification for an observation period of longer than 24 hours, but I find it a little difficult at this point to see that justification with an indwelling catheter in beyond this point.

And now I think the things we need to be concerned about irrespective of what we ultimately recommend in terms of going back or whatever. There was very, very strong community support for this proposal. Anyone who read the type of support, and the rather incisive and critical questions, I thought, that the community asked in regard to many of the social and medical implications. I think it is keen that we remember that there have been so many charges of disregard for ethic makeups of our research, genocide and all the issues, if this is an indigenous decision by a community, I think we need to give that great respect, because it is a justification for us to say this is a decision that you made. If we say to the community no, we shouldn't do this, the community in a sense has a right to say you are willing to impose certain things on us externally that we feel are an abridgment, but here when we see something clearly directing us, you deny it. So that is something that has to be considered strongly in terms of sociology.

I think another thing that is very important from what I know about this—Drew has been one of the few centers that had federal support prior to the moratorium in 1973, I believe, involving aborted fetal subjects on the research, has gone through the steps of animal experiments. They have used the ovine model very well with sheep and I think we certainly have to give that some accord. They have gone through all the steps prior to using humans.

Now, the implications of Kan's work I don't need to go over. You have made that very clear. So I will move on to my fourth point.

Mitch Spellman makes this point a lot, and it is a good point. There is a basis for basic research with regard to doing fetoscopy, irrespective of Kan's work. There is a basic need. Now, I am going to go slowly and really try to make this point.

Kan's approach right now is the acceptable one. It is a reaction. It is an after-the-fact approach. It gives us an option simply to abort a defective pregnancy. Basic research will afford us a much broader and brighter horizon, might I add. And that is the possibility of diagnosing the defective fetus and then preventing the development of sickle cell disease in that fetus.

Now, I will try and paint a picture. In utero, for all of us normally, there is a different set of protein in two of the chains of our hemoglobin in early fetal life. The normal hemoglobin molecule has four chains, two upper alpha chains, which are proteins in a set sequence, and two lower, somewhat larger, beta chains in a set sequence.

The only difference between one who has sickle cell hemoglobin and a normal person is out of 184 amino acids in one of those chains, and that is in set sequence, there is an exchange of valine for glutanic acid, in the sixth position from the end. One of 184 chains. That is the only difference. But because of this change in the chain, certain physical and chemical defects, as you may call them, are imparted into the hemoglobin. It makes it less stable. Its ability to hold and release oxygen is affected. The stability of the red cell membrane is affected. It changes its pattern of migration in an electrical field. This is how we do our hemoglobin electrophoresis.

Back to in utero, none of us has these beta chains when we are developing. We have another chain called a gamma chain, and that gamma chain is provided for through a mechanism which we yet do not fully understand, and this is where our basic research should continue. There are repressor genes and activator genes. Rarely, through chance, some people who were destined to have sickle cell disease never develop it. But they continue to make the gamma chains which make fetal hemoglobin throughout life, even in the postnatal period. And these people have absolutely no trouble. That is the ideal situation for the sickle cell person, is to be able to find that mechanism that will prevent the turning on of the activator genes from going from gamma chains to defective beta chains. So there is a clear need for this kind of research in spite of the work by Kahn and his group.

It is at this basic step where not only will we be able to diagnose the child destined to have sickle cell disease, but indeed, to prevent it. So I think that alone justifies continuation of this basic research approach.

Lastly—well, that includes—I wanted to say something about the basic science of the molecule. So there is a real horizon out there that has to be untapped, and that is the ability to diagnose the abnormal hemoglobin but not by default to get rid of the fetus. That is the thinking that if you want to prevent forest fires, cut down all the trees. I want to take a different approach. I want to see can we afford this fetus that was destined to be one thing, that our basic research will continue to allow us to do something about it.

So I just wanted these thoughts to be in the back of our minds, particularly in light of Kan's recent work as to the obsoleteness of this continued basic research approach.

Ms. MISHKIN. Is the research to develop that therapy now ready for pursuing through fetoscopy now, or does one have to wait for more development in animals and other methods before you actually go to fetuses in utero?

Dr. FOSTER. I think I understand your question, Barbara. Are you saying is our technique to such a point that we can go ahead with just the technique of amnioscopy?

Ms. MISHKIN. No, I am asking whether one would endorse the Drew application today on the basis of the need to develop the prenatal therapy, or are we not yet there with respect to the therapy, with the animal work and so forth?

Dr. FOSTER. I think the animal work has been done. I think that has been satisfied.

Ms. MISHKIN. There is one other thing I forgot to mention on the risk benefit analysis, and that is the concern about using fetuses to be aborted. There is not much direction in the HEW regulations on this matter, but the Commission came down to a guideline that may or may not be useful for you, but I think it has some merit. That is, they felt that it was ethically acceptable to perform procedures on a fetus to be aborted if one would feel ready to perform those procedures on a fetus intended to go to term.

In other words, if one had done all of the animal work, including primate work, which they have done in this case, and if they were unable to do it on fetuses to be aborted to further assess the risk, if they would be willing then to go forward therapeutically with it on fetuses going to term. That condition has been met in this case, because there are apparently several groups who are performing amniocentesis on fetuses intended to go to term.

Father McCORMICK. Fetoscopy, you mean?

Ms. MISHKIN. In fetoscopy, yes.

Mr. GAITHER. In somebody's judgment.

Ms. MISHIKIN. I mean the condition of its being performed on fetuses going to term has been met, and the question is whether or not that meets your feeling of acceptability for performing the procedure on fetuses to be aborted. But this procedure is being performed on fetuses going to term.

Mr. GAITHER. Can I just ask for some clarification, first? One, what are the purposes of this particular protocol? Is it particularly experience and safety, or does it get into the basic research questions that Dr. Foster was mentioning?

Ms. MISHKIN. My understanding of the protocol is that it is to assess the risks of infection, of bleeding, of premature abortion, and so forth, that are attendant with fetoscopy. Now, Dr. Alexander also sees an additional benefit, which is developing the competence of the investigators to perform the procedure prior to trying to do it on fetuses going to term. That also is included. That is not the primary purpose of the application as written. The application is to determine with somewhat better certainty the risks involved to mother and fetus.

Dr. FOSTER. And a part of that is improving the technique. It is not basically designed to go into a specific basic research question. As I understand it, it is what Barbara says, to assess the safety and to improve the technique. That is going to evolve from that. And that is one of the reasons I feel they are asking for a somewhat longer observation period, because if you do the procedure and then proceed directly to the termination, you would deny some of the longer term effects, delayed bleeding and the like.

Mr. GAITHER. Two further points of clarification, and then I will open the discussion. The work that is presently going on at Yale and the University of California, has that been subjected to these regulations and approved, the distinction being that it was therapeutic, that is, regarded to be of benefit to a possible child, and that is why it is different, or not? Do you know what the status is?

Ms. MISHKIN. I am not entirely clear. My understanding is probably not with respect to the Yale group, because I do not think that is funded by HEW. I believe that is the information we got from Jerry Mahoney just recently. But as you know, the regulations are somewhat ambiguous with respect to whether or not research conducted at an institution but not funded by HEW must be reviewed by the IRB, and also subject to the same review standards. So it is a somewhat unclear point with respect to the Yale group.

Dr. McCARTHY. It is perfectly clear that the Yale group felt obliged under Section 474(b) of the Public Health Service Act to have Dr. Mahoney's research involving fetoscopy reviewed by the IRB. They also made the interpretation, which I think is a reasonable one, although not the only possible one—they made the interpretation that they need not review according to HEW standards. And in fact, there is some question in my mind as to whether Dr. Mahoney's work would have been acceptable under HEW standards, because I think they regard this as more than minimal risk—not a great deal more, but somewhat more than minimal risk. Therefore, if they had followed our standards, his work would have had to come to the Board. Because it is not funded by HEW, they decided they could make that decision and they have made it and are carrying out that work.

Mr. GAITHER. There would not have been a distinction based on their work being therapeutic and this work not, because of the abortion?

Dr. McCARTHY. No. As I understand it, initially they—and I am not quite sure at what phase they are in. They have planned a series of steps, the later stages of which they intend to be therapeutic. As I understand it, they are still in the diagnostic phase of those steps, but I believe their approval goes all the way to—assuming all the other stages are carried out with no untoward events—they intend to go all the way to applying fetoscopy to therapeutic interventions to try to assist fetuses that are in one way or another abnormal.

Mr. GAITHER. Mr. Lazarus?

Mr. LAZARUS. I think one of the key issues in this request is the problem of risk and how it is presented to the patient. Barbara says in her note that the risk presented by research cannot be characterized as minimal. Rather, it should be considered undetermined. And yet, the patient consent states that "I have been advised that these risks are minimal to me and to my fetus."

I think that one of the items that must be clarified is the whole consent procedure, and the nature of the risk must be spelled out a lot more consistently than they are spelled out under the present consent procedure that has been presented by Drew.

Ms. MISHKIN. I think one of the problems is that minimal risk, as I pointed out, is not defined in the HEW regulations, and in the Commission's report and its deliberations, that was a problem in two areas. At one point they indicate—and they indicate more strongly in subsequent reports—that risk which has not yet been determined should not be classified as minimal, but should remain under the categorization of undetermined.

On the other hand, there were some Commissioners although not all of them—there was a difference of opinion on this point, as to whether when you are talking about a fetus to be aborted, one can consider risk of abortion as a minimal risk to that fetus, whereas one would not consider risk of abortion a minimal risk to a fetus intended to go to term. This was one of the very difficult points where there was a lack of consensus among the Commission members.

So I think that when the IRB and the various people who reviewed the Drew application determined that it was minimal risk, that was not a clearly unacceptable determination. It was simply their interpretation, given very little guidance from the Department as to how to assess and categorize that risk.

Mr. LAZARUS. It would seem to me, though, that a patient's consent is very important with the nature of the risk, which is undetermined. It should be very carefully spelled out.

Mr. GAITHER. Particularly when one is conducting the research for the purpose of finding out how risky the procedure is.

Mr. LAZARUS. Right.

Mr. HALPERN. Underlining the illogic of the word "minimal" where you are saying we don't know what it means, well, the problem is it is in our HEW regulations, and if in fact the risk is minimal as the patient is told, it wouldn't be here.

Ms. MISHKIN. That is right. It would not be before this Board if the risk were minimal. Then the IRB could have approved the project by themselves, although there is another provision that would need a waiver, so it probably would come here anyway. That is, the regulations currently provide that there be no change in timing or procedure of an abortion for research purposes that would add any additional risk, and that provision does not say "that would add more than minimal risk," but that "would add any additional risk." So it might have had to come here even so.

Dr. McCARTHY. But the determination, the very point that Mr. Lazarus made, was picked up in the Office for Protection from Research Risks, which refused to—even though it had been reviewed by all of the subsidiary bodies—refused to go ahead and fund until and unless it has been approved by this Board.

So it is that very point: If you are doing research to assess risk, it does not seem possible then to prejudge the outcome by calling it minimal. It may turn out to be minimal, but there is no justification for the research if you already know it is minimal.

Mr. LAZARUS. And you are getting your consents under a false clause.

Dr. McCARTHY. Yes, and I think the Office for Protection from Research Risks was correct in making the judgment that it should come before this Board to comply with HEW regs.

Mr. GAITHER. Yes, Dr. Henderson?

Dr. HENDERSON. Let me just carry that a little further. One of the important criteria here is that the research is important and justified. I think this is what is indicated. Clearly we have got investigators who are very competent people and they have obviously proceeded step by step in reaching the point they have.

I guess there are a couple of things in my own mind that are rather unclear. There are two centers where the work is being done now, Toronto and New Haven, where the risks now appear to be rather small. I think this is perhaps where the statement is that it is probably a minimal risk, that experienced people following along with two other centers, and doing what I interpret or what I understand is the same procedure that they are doing in New Haven and Toronto.

The question I guess I have, then is is it necessary to fund yet a third center? Should HEW fund a third center to be doing this? What are the advantages?

The initial point here, as they say, initially it is limited to an assessment of the safety. I find that fully justified to go—initially one is doing a study to assess the safety. But then I ask what is the ultimate objective, because we want research which is important and justified. What is it leading to? Obviously there is an objective here.

I believe, as I interpret it, that they would hope to be defining sickle cell disease. Now, I think in talking with you earlier, the question is can you identify either the sickle cell trait or sickle cell disease before 30 weeks? Can you define it at this period in time?

Perhaps we are talking about, as you mentioned earlier, longer term basic research, which requires this technique to be used. Is it enough to say that it is important that we do longer term basic research employing this technique without defining what is that basic long term research, and are we at the point now to approve of this sort of application which is based on safety, for some sort of ill-defined subsequent future, when in fact we are supposed to be judging this that the research is important and justified.

Now, it is obvious that there are a lot of very good people who have looked at this, and I am asking the questions, I would say, out of ignorance, because I found some contradictions here which I am having trouble with.

Father MCCARTHY. Do you want to respond to that, because I have got a different point I want to raise.

Dr. FOSTER. Well, yes. I tried to make some of them and I will try again. I think there are quite a number of justifications, Don, for continuing. One of the biggest reasons—I think the assumption is not completely correct that this work is being done at the other centers. I don't think there is anywhere the proportionate interest in sickle cell disease at either other center, nor is there the particular population base in either other center to be able to address this effectively.

Even if Kan's work proves to be what it is purported to be, based on what Ms. Mishkin has said, we are still left with 15 percent of a large population that is at great need, as you are probably aware. About eight percent of the blacks in this country harbor the sickle cell trait, and that is 2.5 million people, and 15 percent of that is a large port of the population.

So I think there is still in our current state of the art to continue to try and be able to diagnose sickle hemogloginopathies prior to the 30th week. I think there may be ways that we can do it. As yet we can't do it very reliably.

So I think the justification for continuing this work is clearly there. The justification may not be as strong as it was, but I certainly think it is within the realm of acceptability. This is what I personally feel.

Let me say one other question while I have the microphone. Let me address one other question regarding therapy versus research. I have not seen the research proposals that John Hobbins had at Yale, or what Kan has done at USC. But I do know that a lot of their fetoscopy work was therapeutic. The work on thalassemia was clearly therapeutic. It was done for the same reasons that we do amniocentesis, to decide whether or not the pregnancy should continue, and to provide a therapeutic abortion. In fact, I know much of that.

Hobbins' most recent article, which I believe was December of last year where he had, as I recall, about six or seven patients with sickle cell disease which he was working with. These were all therapeutic. He had tried to make a determination as to what type of hemoglobinopathy, whether it would be homozygous or heterozygous around the 22nd week, and the results were just inconclusive. His conclusion at the end of the article was that at this point we still can't do it. But that was clearly done to be therapeutic. Had he felt that he could have made the determination, he would have offered therapeutic abortion. So I do know that some of the work has been therapeutic.

Dr. MCCARTHY. That is correct. I should amend what I said. I think what Mahoney is doing is now tending to move into the preventive therapy and not—so I would like to amend what I said before about therapy, because it was clearly for the purpose of giving parents the option of a therapeutic abortion. But now they hope to move into preventive therapy, which is the sense in which I was using "therapeutic."

Mr. GAITHER. Is there an answer to Dr. Henderson's question, though? Do we know whether this technique will enable the researcher to determine the presence of the sickle cell disease?

Dr. FOSTER. We never know that until we do the research. I mean, no, I don't think we know it beforehand.

Mr. GAITHER. I think that is kind of a fundamental point here, because implicit in all of these papers, it seems to me, is precisely that, that this technique will enable the discovery of whether or not the disease is present. The question is whether it can be safely done. Now, if that is wrong, my whole reading of all of these papers is very much mistaken. I think it is a very fundamental point.

Either we are dealing with something that we know can help, and the question is whether it is safe, or we are dealing with something that we don't know much about.

Dr. HENDERSON. I am puzzled by your statement that the sickle cell trait is not identifiable before the 30th week. This is what is concerning me at the moment. And if it isn't identifiable before the 30th week, because you do have fetal hemoglobin present, I am not quite sure where this technique leads. I think this is information which we do have a reasonable body of knowledge on, do we not?

Dr. FOSTER. I don't know. The only thing that I do know is that the struggle has been to try and be able to diagnose sickle cell—homozygous sickle cell disease at a point at which therapeutic abortion could be offered. Right now we don't have that capability, and it was my understanding that one of the thrusts of this research proposal was to help to try and find that capability.

I would certainly think that this is an issue that again could be raised with the team, the basic research team who conducted the site visit. I think that these might be some issues that Jim and the staff might wish to bring up.

Mr. HALPERN. Dr. Henderson, it might be helpful.

Mr. NICKLES. Mr. President, we have the nominee saying a week ago Friday he performed less than 12 abortions. On the "Nightline" show, Dr. Foster said he did 39. Now we have the AP report saying that other physicians said he did many more than that in the years prior.

We have a transcript of a meeting where he said he did about 700 amniocentesis and therapeutic abortions. There are a lot of inconsistencies.

Again, I say, this nominee should be withdrawn or he should withdraw himself because of these inconsistencies, because I think there has been a deliberate attempt to mislead Congress.

Finally, I will say a couple of other things. Dr. Foster's credibility has been called into question, not only because of his inconsistent statements about abortion, but also because of other public statements. For example, during the same "Nightline" appearance, Dr. Foster said,

We have a responsibility in training residents to maintain our accreditation, a very difficult job. I maintained an accredited residence program for 17 years.

But as today's Washington Times reports, the obstetrics residency program at Meharry Medical College lost accreditation in May 1990 when Dr. Foster was department chairman.

I watched a tape of that program, and I heard him say he maintained accreditation for 17 years. He kind of forgot to say that it lost accreditation when he was department chairman. Maybe he just forgot to say that. I do not know why it lost accreditation. I have heard, but I am not even going to mention that. I am not even faulting him for that. I am just saying his record before the public is misleading because he lost accreditation in that program. As a matter of fact, that accreditation, according to this article, has not been recovered, meaning Meharry Medical College cannot place students in hospital residency programs in obstetrics.

I ask unanimous consent to print the Washington Times article in the RECORD.

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

[From the Washington Times, Feb. 10, 1995]

MED SCHOOL FALTERED WITH FOSTER AT HELM

(By Paul Bedard)

The obstetrics and gynecology residency program at Meharry Medical College in Nashville, Tenn., permanently lost its accreditation when surgeon general nominee Henry W. Foster Jr. ran the department—countering his characterization that he kept it operational.

Senate critics of President Clinton's nominee said Dr. Foster misled them on his administration of the department and the college and said it was another example of the gynecologist hiding his record, especially on the number of abortions he has performed.

"He is not being straightforward with the American people and the administration is trying to cover up," said Sen. Dan Coats, Indiana Republican.

Mr. Coats and other Senate Republicans joined Sen. Don Nickles, Oklahoma Republican, in calling on Mr. Clinton to withdraw the nomination because of the differing accounts by Dr. Foster and the White House on the number of abortions he has done in a 37-year medical career.

The growing chorus of GOP voices demanding the withdrawal muted the support for Dr. Foster stated yesterday by six Senate Democrats.

Meanwhile, White House officials vented their frustration with Dr. Foster's inability to settle on a concrete figure on the number of abortions he has performed.

On the same "Nightline" show Wednesday night, the 61-year-old former Planned Parenthood board director said he had done 39 abortions since 1973, but he didn't address his eight-year stint as chief of obstetrics and gynecology at John A. Andrew Memorial Hospital at Tuskegee University in Alabama.

Asked if the White House was satisfied with Dr. Foster's answer that he had performed 39 abortions, White House spokesman Michael McCurry said: "No, we're not satisfied. We will continue to work with Dr. Foster. Many of the records he described last night are only available to him because he's the only person that can request those records."

Dr. Foster had previously said he performed one, then "fewer than a dozen" abortions. He also headed a study on an abortion pill that led to 55 more abortions. And he has disavowed an official government transcript in which he indicates he may have done hundreds more abortions.

Officials at historically black Meharry said that Dr. Foster's obstetrics-gynecology residency program lost accreditation in May 1990 and the withdrawal took place a year later—after Dr. Foster had been promoted to the

dean of medicine and vice president of health services.

Several efforts to restore the accreditation have failed. Without accreditation, medical schools can't place students in hospital residency programs, according to the American Medical Association.

Meharry spokeswoman Martha Robinson said the program failed because there weren't enough patients to sustain a residency internship. "It was clearly a numbers problem. It wasn't a quality issue," she said.

Dr. Edward R. Hill, who was vice chairman of Dr. Foster's program from 1982 until it ended in 1991, explained that black patients chose suburban hospitals in the late 1980's. "We lost a very significant market share among the poor who now had a ticket, Medicaid, to more affluent areas," he said in an interview.

But a prominent Nashville doctor familiar with the program and Dr. Foster said the University of Arkansas-trained physician was a poor administrator.

"He's a great idea guy but not with following through or getting the job done," said the doctor, who requested anonymity.

Senate Republicans and a White House team are studying Dr. Foster's management at Meharry, which twice received government financial bailouts while Dr. Foster was associated with the school.

"One day after he goes on 'Nightline' to brag about running his department we learn it crashed on his watch and he failed to get it accredited. He has a very deep credibility problem," said an aide with the Senate Republican Conference.

Mr. Nickles said that termination of the obstetrics-gynecology program clashed with the impression Dr. Foster left "Nightline" viewers with when he explained the reason for accepting a grant to do a study on an abortion pill in the early 1980s.

On that show, Dr. Foster said, "We have a responsibility in training residents to maintain our accreditation. It's a very difficult job. I maintained an accredited residency program for 17 years [1973 to 1990]. We have a responsibility to teach all residents how to manage the complications of abortion."

Dr. Foster's changing stories on the number of abortions he did along with concerns about his management of the Meharry obstetrics-gynecology program sparked moves by Republicans to kill the nomination. Dr. Foster is to replace outspoken former Surgeon General Joycelyn Elders, fired for controversial statements on child masturbation and sexual conduct.

"In the wake of Dr. Joycelyn Elders' discordant and failed tenure, I believe that America deserves to have a surgeon general capable of inspiring Americans on a broad range of public health issues. Plainly, Dr. Henry Foster's background and the White House's mishandling of his nomination renders him incapable of achieving that goal," said Sen. Phil Gramm, Texas Republican.

"As a result, I intend to strenuously oppose the confirmation of Dr. Foster to become surgeon general of the United States," he said.

Mr. Coats, a member of the Labor and Human Resources Committee, which will vote on the Foster nomination said, "There is a litmus test here and it is not abortion. It's the truth."

Liberal groups supporting Dr. Foster have charged that the "radical right" is using the Foster nomination to push its anti-abortion agenda.

But Mr. Coats said that Dr. Foster simply hasn't told the truth about his past. "You make the same accident three or four times and you begin to wonder if it's an accident."

After watching the nominee get hit for eight straight days, Senate Democrats finally began to rally behind Mr. Clinton's choice. The president also used a press conference with German Chancellor Helmut Kohl to speak in favor of Dr. Foster.

"I think he's a good man, I think he'll be a good surgeon general, and I think that that ought to be the issue," he said.

The president also joined with Dr. Elders in bashing Dr. Foster's opponents as ardent anti-abortion radicals.

"Now, I know that those who believe that we should abolish the right to choose and make conduct which is now legal criminal will try to seize upon this nomination to negate the work of a man's life and define him in cardboard-cutout terms, but I think that is wrong," he said.

Sen. Frank Lautenberg, New Jersey Democrat, said, "This is a vendetta, this is a witch hunt."

A day after giving Dr. Foster a 50-50 chance of winning approval by the Senate, Sen. Barbara Mikulski, Maryland Democrat, said: "Unfortunately, the White House did not do the best job in putting doctor Foster's nomination forward. Maybe that's the way the White House does such things."

Mr. NICKLES. Mr. President, Dr. Foster became dean of Meharry Medical College later in 1990. The following year, according to the June 26, 1991, edition of USA Today, two other residency programs at Meharry also lost accredition—pediatrics and surgery. So while he was dean of the medical school, they lost pediatrics and surgery accreditation.

I ask unanimous consent to print the USA Today article in the RECORD.

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

[From USA Today, June 26, 1991]

PROGNOSIS: POOR—MED SCHOOL'S CRITICAL ROLE IS IN PERIL

(By Mark Mayfield)

For 115 years, Meharry Medical College has trained more black doctors than any other school in the nation, earning a reputation for excellence.

But now Meharry's doctors are facing their toughest case: the school itself.

Lack of patients at Meharry's modern, 12-story training hospital is jeopardizing the school's medical residency programs.

And that means trouble for the national health-care system because Meharry is a top provider of doctors for low-income rural areas and medically starved inner cities.

"If the Meharrys and other minority medical schools slide into a crisis situation, it will have a serious long-term impact on health care in low-income areas around the country," says Thomas W. Chapman, president of Greater Southeast Community Hospital in Washington, D.C.

"They play a critical role in continuing to sustain a appropriate levels of health care in low-income communities."

This week, Meharry's obstetrics-gynecology residency program loses its accreditation; residents in pediatrics must transfer to a New York hospital to finish their training. The same problem cost Meharry its surgical training program.

"When you don't have enough patients, you don't have enough cases and not enough experience for your residents," says Dr. Washington Hill, Meharry's chairman of obstetrics and gynecology.

Loss of the school's teaching hospital programs could limit its ability to attract minorities to medical careers.

"When Meharry has a serious problem, that obviously has an impact on the opportunity of black students to go to medical school," says David Denton of the Southern Regional Education Board, which has just completed a study of minority medical student education.

"In absolute terms, if you don't have residency programs in pediatrics or obstetrics-gynecology, two primary health-care fields, * * * it affects the whole teaching atmosphere of a medical school."

But Denton says the school's overall quality isn't a problem.

"People shouldn't confuse the residency problems with the quality of teaching at Meharry. It has been very effective in getting its graduates licensed," he says.

Nearly 40% of the nation's practicing black doctors and dentists are Meharry graduates. Most of them work where doctors are needed the most—poor urban areas and under-served rural towns.

"Our graduates are working in inner cities, in New York, in downtown Detroit, here in downtown Nashville," Hill says. "Nobody wants to practice in inner cities. But our graduates do."

Meharry also has produced four of every 10 black faculty members in the nation's 126 medical schools.

Until the 1970s, Meharry and Howard University School of Medicine in Washington, D.C., trained nearly 80% of the nation's black doctors. But with desegregation of what were once all-white schools, just 20% of the nation's black doctors now graduate from any one of the four black medical schools.

Nevertheless, under 7% of all first-year medical students nationally are black, so educators say Meharry gives opportunity to those who would not otherwise have it. More than 50 of the 80 first-year students enrolled at Meharry this year were accepted nowhere else.

"We take kids knowing they bring (academic) baggage," says Dr. Henry Foster, Meharry's medical school dean. "We know they can catch up. It's not how they enter that counts, it's how they exit. We'll put our graduates up against anybody."

Administrators and students cite a "cultural sensitivity" that graduates may not get elsewhere, based partly on the school being located in a poor, mostly black section of north Nashville.

"Being here is like being in the giant arms of a loving mother," says fourth-year student Andi Coleman, 28, of Greenville, Miss. "Meharry * * * sends its students out to take care of the poor, of the homeless. There is a warmth here you don't find in other programs."

Says Dr. David Satcher, Meharry's president: "African-Americans face a chronic health problem when you look at life-expectancy rates, infant mortality, death rates from treatable health problems. Meharry is not just a black institution. It's the leading hospital for the care of the poor and indigent. In all of our history, we have been involved with people who are disproportionately poor."

Meharry's patient shortage stems from a combination of politics, tough competition for patients in one of the nation's best medically served cities and financial woes inherent to black colleges.

Nashville, with 510,000 residents, has one of the highest per-capita number of hospital beds: 6,000 in 17 hospitals. It is home to the largest private hospital corporation in the nation, HCA, and Vanderbilt University Medical Center, which employs 10,000 people.

To solve Meharry's residency problem, administrators have proposed merging two hospitals—Meharry-Hubbard, where most patients are black, and Metro General, a dilapidated downtown hospital where most patients are white.

Meharry-Hubbard, with 235 beds, rarely has more than 100 patients at a time. "We have a relatively modern, empty plant," says Dr. Rupert Francis, chairman of family and preventive medicine. "We have to get patients back."

The 200-bed Metro General also rarely has more than half its beds filled.

A merger "will benefit people who are using a very antiquated facility, and it will provide more patients in which to train medical students," Hill says.

Among those supporting the merge is Vanderbilt, which now provides most of the doctors at Metro General.

But Nashville's Metro Board of Hospitals, in a 4-2 vote, rejected the merger in February, citing economic reasons.

"Some of us call (the vote) racism. The more dignified way is to call it Southern politics," Francis says.

Meharry administrators are confident they'll get the merger and re-establish accreditation for residency programs.

"Every hospital located in a low-income community is having a problem," Satcher says. "If you're in that business, you take a beating. You're punished for your commitment. We'll struggle to hold on, until one's ability to pay does not control access to health care in this country."

Says Dr. Tim Holcomb, a white Meharry resident in family medicine: "We have an emphasis on care for the poor. If I went to a big-city type of residency, I'd see sniffles and colds. Here, I see people who haven't seen a doctor in 20 years. I have absolutely no regrets coming here."

Mr. NICKLES. Mr. President, in my opinion, this raises further questions concerning Dr. Foster's credibility. On "Nightline," he presented himself as someone who had maintained accreditation at Meharry obstetrics residency program. He neglected to mention that he was department chairman when that accreditation was lost.

In my opinion, this nomination should not go forward. Some people say, "Let's wait until we have a hearing and get all the facts out." But these are statements that came from Dr. Foster himself. This statement came from Dr. Foster himself before a committee. It directly contradicts the statement he made on "Nightline." The "Nightline" statement directly contradicts a statement that he made and gave to the press, which I inserted in the RECORD, that he gave a week ago. Dr. Foster's statements are totally inconsistent. They have been misleading. His statement about the accreditation of Meharry was misleading.

So, Mr. President, I do reluctantly—I do not do this often—but reluctantly, I urge Dr. Foster to withdraw his name from consideration or urge the President to withdraw his name from consideration to be the next U.S. Surgeon General.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

SENATOR WILLIAM FULBRIGHT

Mr. DASCHLE. Mr. President, the British poet John Donne said that "every person's death diminishes us." That is certainly true, and it is especially true today, for yesterday America and, indeed, the world said goodbye to a man whose death diminishes us all, Senator William Fulbright.

He served in the Senate for 30 years. He served with distinction. Some in this Chamber had the privilege of working with him. But whether or not we knew Senator Fulbright personally, we were all touched by him. Our Nation and our world are better for him having passed through it.

Senator Fulbright understood that the most powerful deterrent to war is not bombs, not some mysterious shield we might try in vain to erect, but simply understanding.

The cornerstone of his legacy, the Fulbright scholars program, has created more than 200,000 ambassadors for peace and for progress throughout the world. These are bright young men and women who have traveled from America to study in 130 nations as well as men and women from around the globe who have come here to our Nation to learn. Our world is safer for the work of these Fulbright scholars and for the vision of the man who made their studies possible.

He was a son of Arkansas, but his influence was felt throughout the world, and it will be, I suspect, for generations to come.

Today, as we remember Senator Fulbright, it is easy to feel diminished by his passing. But let us also remember how enlarged we are by his life. As we struggle to find America's place in the post-cold war world, let us remember the lesson Senator Fulbright taught us about the formidable power of understanding. Let us also remember that America has a responsibility to be not only a military leader in this world, but a moral leader as well. And we must never shrink from either role.

William Fulbright, the "Chairman," as he was fondly known, was a diplomat, an idealist with a strong heart, an uncommon vision, a dogged fighter for what he believed was right. He was unafraid to stand against public opinion when his conscience told him he must.

To the Senator's family, his wife Harriet, his daughters, his grandchildren, and to his great grandchildren, and certainly to all of his many, many friends, we offer our sympathy and our prayers. William Fulbright truly was a gentleman, a scholar, a statesman, a national leader who made a positive and indelible mark on this country. We will never forget him.

THE NOMINATION OF DR. HENRY FOSTER

Mr. DASCHLE. Mr. President, I would like to talk for just a moment about the nomination of Dr. Henry W. Foster, Jr., to be Surgeon General of the United States. No one could deny that Dr. Foster has had a distinguished career both in terms of his service as a practicing physician as well as his contributions as a medical educator and community leader. No one can deny that.

For the last two decades now, Dr. Foster has served in the department of obstetrics and gynecology at Meharry Medical College where he has helped to train some of our Nation's finest doctors. At Meharry, Dr. Foster has demonstrated his vast leadership abilities by serving not only as professor and chairman of the department, but also as dean of the school of medicine and the acting president of the college.

Throughout his distinguished career, Dr. Foster has been a clear voice for personal responsibility. His work on teen pregnancy prevention has been a valuable contribution at a time when we are struggling desperately to identify effective solutions to this nationwide problem.

The "I Have A Future" program which Dr. Foster developed and directed was chosen by President Bush as one of his "thousand points of light." The program stresses abstinence. It engages communities in helping teenagers make positive decisions about their future.

Dr. Foster is endorsed by the American Medical Association, the Association of Schools of Public Health, the National Medical Association, the American College of Obstetricians and Gynecologists. He has been endorsed by Dr. Sullivan, Secretary of Health and Human Services under President Bush.

I have no doubt that this man's background makes him well qualified to be Surgeon General. It is a shame that his distinguished career and many contributions to society have now been clouded by his opponents' attempts to turn this nomination into a debate about abortion. But this debate is not about abortion. No doctor in this country should be disqualified from consideration for the post of Surgeon General for performing a legal medical procedure.

This debate is about qualifications. Dr. Foster is the President's choice for

the position of Surgeon General. He is qualified for this position and I daresay most people know that today. Of course, the Senate has a constitutional advice and consent role. Any remaining questions about this nominee should be dealt with during the confirmation process where they belong. This is what we do with every nomination, and it is critically important.

I must say, this town can be pretty mean. I hope, as we consider this nomination, we remember that Dr. Foster is a man who has come forward to serve his country at the request of the President of the United States to serve in an important role. It is a role to help children, to help families, to make as positive a contribution as possible in what time he may have to do it.

We ought to respect that. We ought to be careful about what we say and about asking people to join in public service if every time they accept the call to public service they are beaten down, and ultimately characterized as people they are not. Let us be careful about that.

Let us also recognize if we are going to deal in a bipartisan manner, as we have attempted to do on a whole array of issues, it must be a two-way street.

Democrats and Republicans need to work with one another. But if this becomes a one-way street, if this becomes a partisan issue, that sends a clear message, it seems to me, about what expectations the majority may have as they look to us for cooperation on many issues in the future.

This man deserves confirmation. This man deserves our support. And I hope we will all give it to him.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

MORNING BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak for not exceeding 10 minutes each.

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

MEASURES REFERRED

The following bill, pursuant to the order of February 9, 1995, was read the first and second times by unanimous consent and referred as indicated:

S. 381. A bill to strengthen international sanctions against the Castro government in Cuba, to develop a plan to support a transition government leading to a democratically elected government in Cuba, and for other purposes; to the Committee on Foreign Relations.

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. THURMOND (for himself, Mr. KYL, Mr. SMITH, Mr. LOTT, Mr. INHOFE, Mr. MCCAIN, and Mr. KEMPTHORNE):

S. 383. A bill to provide for the establishment of policy on the deployment by the United States of an antiballistic missile system and of advanced theater missile defense systems; to the Committee on Armed Services.

By Mr. BROWN (for himself and Mr. HELMS):

S. 384. A bill to require a report on United States support for Mexico during its debt crises, and for other purposes; to the Committee on Foreign Relations.

By Mr. GREGG:

S. 385. A bill to amend title 23, United States Code, to eliminate the penalties imposed on States for failure to require the use of safety belts in passenger vehicles, and for other purposes; to the Committee on Environment and Public Works.

By Mr. MCCONNELL:

S. 386. A bill to amend the Internal Revenue Code of 1986 to provide for the tax-free treatment of education savings accounts established through certain State programs, and for other purposes; to the Committee on Finance.

By Mr. EXON:

S. 387. A bill to encourage enhanced State and Federal efforts to reduce traffic deaths and injuries and improve traffic safety among young, old, and high-risk drivers; to the Committee on Commerce, Science, and Transportation.

By Ms. SNOWE (for herself, Mr. COHEN, Mr. CAMPBELL, Mr. GRASSLEY, Mr. INHOFE, Mr. ROTH, Mr. GREGG, Ms. MOSELEY-BRAUN, Mr. MURKOWSKI, Mr. KOHL, Mr. BENNETT, Mr. LUGAR, Mr. GRAMS, Mr. THOMAS, Mr. COATS, and Mr. HATCH):

S. 388. A bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes; to the Committee on Environment and Public Works.

By Mr. JOHNSTON (for himself, Mr. BENNETT, Mr. HATFIELD, Mr. NICKLES, Mr. SHELBY, and Mr. SPECTER):

S. 389. A bill for the relief of Nguyen Quy An and his daughter, Nguyen Ngoc Kim Quy; to the Committee on the Judiciary.

By Mr. BIDEN (for himself, Mr. SPECTER, Mr. KOHL, Mr. KERREY, and Mr. D'AMATO) (by request):

S. 390. A bill to improve the ability of the United States to respond to the international terrorist threat; to the Committee on the Judiciary.

By Mr. CRAIG (for himself, Mr. HEFLIN, Mr. BURNS, Mr. DOMENICI, Mr. GORTON, Mr. KEMPTHORNE, Mr. MURKOWSKI, and Mr. PACKWOOD):

S. 391. A bill to authorize and direct the Secretaries of the Interior and Agriculture to undertake activities to halt and reverse the decline in forest health on Federal lands, and for other purposes; to the Committee on Energy and Natural Resources, that when reported the bill be referred jointly to the Committees on Agriculture, Nutrition, and Forestry and Environment and Public Works, for a period not to exceed 20 days of session to report or be discharged.

By Mr. GLENN (for himself and Mr. DEWINE):

S. 392. A bill to amend the Dayton Aviation Heritage Preservation Act of 1992 with regard to appointment of members of the Dayton Aviation Heritage Commission, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. BOXER:

S. 393. A bill to prohibit the Secretary of Agriculture from transferring any national forest system lands in the Angeles National Forest in California out of Federal ownership for use as a solid waste landfill; to the Committee on Energy and Natural Resources.

By Mr. D'AMATO:

S. 394. A bill to clarify the liability of banking and lending agencies, lenders, and fiduciaries, and for other purposes; to the Committee on Environment and Public Works.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND (for himself, Mr. KYL, Mr. SMITH, Mr. LOTT, Mr. INHOFE, Mr. MCCAIN, and Mr. KEMPTHORNE):

S. 383. A bill to provide for the establishment of policy on the deployment by the United States of an antiballistic missile system and of advanced theater missile defense systems; to the Committee on Armed Services.

BALLISTIC MISSILE DEFENSE LEGISLATION

Mr. THURMOND. Mr. President, I rise today to introduce legislation that would establish as U.S. policy the goal of developing and deploying as soon as practical defenses to defend the American people and our forces overseas against ballistic missile attack. This bill is identical to a provision recently passed by the House National Security Committee, which will soon be considered by the full House of Representatives.

The administration has proposed a ballistic missile defense program that focuses almost exclusively on theater missile defense. While I strongly support a robust theater program, as reflected in this bill, I believe that the administration's program is not well balanced.

It is my belief that the administration has failed to put together an adequate national missile defense program to defend the American people against the emerging threat posed by long-range ballistic missiles. Today, the United States faces ballistic missile threats, but has no defense. In the future, there will be more countries which will be able to pose such threats to our country. Therefore, we must begin today to plan for the creation of a highly effective national defense that initially will be able to defend against a limited ballistic missile attack.

In the coming months, the Senate Armed Services Committee will be examining a wide range of options for a national missile defense system. Our decisions will become apparent in the fiscal year 1996 defense authorization bill. The purpose of the bill I am introducing today, is to establish a general policy and to require the Secretary of

Defense to establish a plan for developing and deploying a national missile defense system.

I would like to thank Senator KYL for his work in this area and for being a principal cosponsor of this bill. A number of my colleagues from the Armed Services Committee are also joining me in introducing this important legislation, and I thank them all for their support and hard work on this issue.

Mr. KYL. Mr. President, today, along with Senator THURMOND and other Senate Armed Services Committee members, I am introducing the Ballistic Missile Defense Revitalization Act of 1995, for the purpose of requiring the Secretary of Defense to develop for deployment, at the earliest practical date, national and theater ballistic missile defense systems. The companion legislation, section 201 of H.R. 7, has passed the House National Security Committee and will soon be voted on by the full House.

I am submitting this legislation in an effort to get the Pentagon's current ballistic missile defense program back on track. Currently, and in the forseeable future, the United States continues to be woefully unprepared to cope with the threat of ballistic missile attack. This must end; and the bill I have introduced today will help end our vulnerability.

Twelve years ago during his State of the Union Address, former President Ronald Reagan posed a simple challenge to America's scientific community: Find a way to make ballistic missiles impotent and obsolete. Because, he asked, "Is it not better to save lives than to avenge them?" With those words, President Reagan chartered one of the most important and controversial defense programs of the modern age—the strategic defense initiative.

Through the years the SDI program was pushed and pulled in many different directions by both the Congress and administration. No push, however, equalled the shove the Clinton administration gave the program in 1993. With the elimination of key ballistic missile defense programs, the United States is now almost exclusively focused on theater ballistic missile defenses which, hopefully, will be able to defend our troops deployed overseas. But, this limited protection comes at the expense of the development and deployment of national missile defenses.

Focusing only on theater defenses and the threat that is here and now, the administration completely ignores analysis from our Nation's best intelligence experts about the potential future threat to the continental United States.

Intelligence experts have repeatedly warned that terrorism is on the rise, that the quest for nuclear weapons in the Third World has not subsided, and that Russian nuclear materials have shown up on the black market. But, the administration has failed to heed those warnings.

Even the headlines lay bare the future vulnerability faced by the American people.

The Washington Times recently carried the headline "Yeltsin Can't Curtail Arms Spread."

A Clinton administration official recently stated, "The out-of-control weapons of mass destruction industries in Russia are the No. 1 national security issue facing the United States."

China has sold to Saudi Arabia the CSS–2, a medium-range missile capable of reaching any place in Europe.

Iran is desperately shopping the blackmarket for the technology to develop nuclear weapons, and Russia wants to sell to Iran.

The threat is real. As former Director of the CIA, Bob Gates, said, "History is not over. It was merely frozen and is now thawing with a vengeance."

The CIA claims that 25 nations could acquire chemical, biological, and nuclear weapons by the end of the decade. That's 20 more than we have today. And, potentially, 20 nations that are led by despots who see it as their duty to annihilate the United States. One of those leaders could be Abul Abbas, head of the Palestinian Liberation Front, who promised revenge on the United States for attacking Iraq. He said, "Revenge takes 40 years. If not my son then the son of my son will kill you. Someday we will have missiles that can reach New York."

In day-to-day terms, the proliferation of weapons of mass destruction among the Third World and the lack of defenses against those weapons could radically alter the manner in which the United States carries out its foreign policy. Would we have deployed 15,000 troops in Haiti if General Cedras had a weapon of mass destruction and a missile that could reach Florida? Probably not. Would America stand up for human rights and democracy in a starving nation if warlords had stolen nuclear weapons from Russia? Probably not. Would the Persian Gulf war have been fought if Hussein had succeeded in his quest, and acquired a deliverable nuclear weapon? Probably not.

The world will be dramatically different in the 21st century. We cannot predict the future. We don't know who will do it or when it will happen. But, it will happen. Some day, someone, somewhere will launch a ballistic missile at the United States.

When the warning comes, most Americans will believe that we will be able to defend ourselves. We can't. When the codes to launch a nuclear ballistic missile are entered and the keys are turned, there is no way to prevent the missile from reaching its target.

We cannot intercept it. We cannot interfere with its guidance system. We cannot make it self-destruct. There is nothing we can do to stop even one single missile from reaching the United States of America. Nothing.

The Clinton administration won't change the situation either. In fact, it's getting worse. The Clinton administration and congressional opponents have destroyed any future strategic capability to defend the United States and are on their way to destroying potential theater defenses as well.

This is being done by their decision to clarify the ABM Treaty to define our next theater defense missile as an illegal missile. The ABM Treaty, recall, was signed in 1972 by Leonid Brezhnev and Richard Nixon. It shouldn't have been endorsed in 1972, and it shouldn't be reendorsed in 1995, 23 years later. It most certainly should not be redefined.

The threat has changed. Technology has improved. And the Soviet Union doesn't even exist. But, the Clinton team insists on deliberately drawing a distinction between strategic and theater ballistic missiles, something that was left undefined in 1972.

What the administration's negotiators have accomplished is not only to negotiate away strategic systems—which came as no surprise—but, also to negotiate away the only advanced theater systems in research and development in the United States. The Clinton administration has done this by arbitrarily placing speed limits on interceptors. If an interceptor breaks 3km/sec, it is defined as a strategic ABM interceptor and would not be deployable as a theater missile under the new terms of the ABM Treaty. Key theater defense systems, including THAAD and Navy Upper Tier, have capabilities beyond 3km/sec. and, thus, could not be further developed as designed.

Over the last 2 years, the opponents have won significant budget cuts in ballistic missile defenses and have succeeded in canceling all space-based options. This is especially disturbing because space-based sensors and interceptors are critical to the success of any global strategic defense system. They provide worldwide, instantaneous detection of and protection against missiles launched from anywhere in the world, and are both cheaper and more effective than their ground-based counterparts.

During Operation Desert Shield, it took the United States 6 months and 400 airlifts to put in place the Patriot interceptors that were used to shoot down some of the Iraqi Scuds. With space-based interceptors, coverage would be instantaneous. Yet, all systems capable of accomplishing that mission have been zeroed. Zeroed, because using space for military purposes is politically unpopular.

This narrowmindedness and refusal to view space for what it is—the high frontier, boundless in opportunity—

will have serious consequences for our future military successes. Like earlier forays into the air and the sea, the use of space will change the course of warfare. It's already happening. The United States should not deny itself that capability.

The Ballistic Missile Defense Revitalization Act restores the focus of the BMD program to development and deployment of defenses capable of protecting a theater as well as the continental United States. This is an important step in establishing a firm basis for a national response to the growing threat from Third World ballistic missiles.

In closing, I will note that 12 years of ballistic missile defense research has produced a series of successes. There is no longer any doubt that defense against ballistic missiles is feasible. It is my hope that the next few years of ballistic missile defense research will achieve President Reagan's original goal—to make nuclear weapons impotent and obsolete. The moral imperative is, as President Reagan said, that it is better to save lives than to avenge them.

By Mr. MCCONNELL:

S. 386. A bill to amend the Internal Revenue Code of 1986 to provide for the tax-free treatment of education savings accounts established through certain State programs, and for other purposes; to the Committee on Finance.

THE TRUST FUND SAVINGS ACT

• Mr. MCCONNELL. Mr. President, I introduce a bill that will help Americans defray the costs of a college education. For many, the dream of a college education can never be fulfilled simply because they cannot meet the skyrocketing costs. I am sure all of my colleagues will agree that this Nation's future success is dependent on the education of our children today.

Mr. President, the facts are clear. Education costs are outpacing average wages and this has created a barrier to attending college. Throughout the 1980's education costs have risen 8 percent per year. At this pace, an average tuition bill of $5,000 will be $11,700 in the year 2000. In 1994, the average tuition in America rose by 6 percent. It was also the smallest since 1989 according to the College Board.

In Kentucky last year tuition rocketed 11.2 percent at the University of Kentucky and the University of Louisville. For other regional schools, students and parents only saw their costs rise by 5.3 percent. The largest increase, however, was felt by the students attending community colleges where costs rose 14.3 percent.

As tuition continues to increase, so does the need for assistance. In 1990, over 56 percent of all students accepted some form of financial assistance. The statistic was even higher for minority students. Also on the rise are need-based scholarships and grants. In Kentucky, between 1984 and 1992, need-based scholarships rose by 160 percent.

It is increasingly common for students to study now and pay later. In fact, more students than ever are forced to bear the additional loan costs in order to receive an education. Between 1993 and 1994 Federal loan volume rose by 57 percent from the previous year. On top of that, students have increased the size of their loan burden by an average of 28 percent. So, not only are more students taking out loans, but they are taking out bigger loans as well. Next May at graduation time, nearly half the graduates will hit the pavement with their diplomas and stack of loan repayment books.

I believe that we need to reverse this trend by boosting savings and to help parents meet the education needs of their children. The bill I am introducing today will make changes to the Tax Code maximizing the scope and the investment in State-sponsored education savings plans.

This legislation will permit parents to contribute up to $3,000 annually in after-tax dollars to a State-sponsored plan. Also this amount will be indexed to match the annual growth in education costs. The real benefit of this program will allow earnings to accumulate tax-free when used to meet education costs. Any earnings not used for educational purposes will be taxed at the student's individual rate. I believe this will provide a significant benefit to families and correct, at least in this instance, the unfair tax discrimination toward savings.

For those States that have established programs, whether they are prepaid, savings or bond programs this legislation will provide tax-exempt status to those organizations that administer these programs. In November 1994, the U.S. Appeals Court in Cincinnati ruled that the Michigan Education Trust is not subject to Federal income tax. This language would also remove any misunderstanding regarding the taxation of these investments.

This tax designation will serve two purposes. One, it will send a clear message regarding each organization's mission to help families finance a child's education. Second, it will reduce the administrative expenses, thus increasing the investment in education.

Mr. President, this is not another unfunded mandate. This legislation merely provides States with an option to invest in their most important resource, their children. I am confident that following the passage of this legislation more and more States will seek to establish similar programs to stimulate both education savings and reduce the need for State assistance in the future.

Lastly, this bill would make corporate and individual endowments to the trust fund exempt from Federal taxation when distributed among participants. This will allow corporations to help finance the education of our Nation's future leaders.

This legislation is not a funding cure but is a serious effort to encourage long-term savings. Participants don't have to be rich to participate. In fact, the average monthly contribution in Kentucky is just $47.22. This program will reward an individual's long-term investment in education.

The alternative funding option is to continue in our futile attempt to outpace the rising cost of education through subsidies and aid. More than likely this would exacerbate the dollar chase, driving costs even higher. I am confident that my legislation will take the burden off the Federal and State government to subsidize students.

I hope my colleagues will join me in creating this viable and affordable means of helping families provide for their children's higher education. 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. 386

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

SECTION 1. TAX TREATMENT OF STATE EDUCATION SAVINGS ACCOUNTS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 137 as section 138 and by adding after section 136 the following new section:

"SEC. 137. EDUCATION SAVINGS ACCOUNTS.

"(a) GENERAL RULE.—Gross income shall not include any qualified education savings account distribution.

"(b) QUALIFIED EDUCATION SAVINGS ACCOUNT DISTRIBUTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified education savings account distribution' means any amount paid or distributed out of an education savings account which would otherwise be includible in gross income to the extent such payment or distribution is used exclusively to pay qualified higher education expenses incurred by the designated beneficiary of the account.

"(2) ROLLOVERS.—The term 'qualified education savings account distribution' includes any transfer from an education savings account of one designated beneficiary to another such account of such beneficiary or to such an account of another designated beneficiary.

"(3) SPECIAL RULES.—The determination under paragraph (1) as to whether an amount is otherwise includible in gross income shall be made in the manner described in section 72, except that—

"(A) all education savings accounts shall be treated as one contract,

"(B) all distributions during any taxable year shall be treated as one distribution,

"(C) contributions to an account described in subsection (c)(4)(B)(i) shall not be included in the investment in the contract with respect to the account, and

"(D) the value of the contract, income on the contract, and investment in the contract

shall be computed as of the close of the calendar year in which the taxable year begins.

"(c) EDUCATION SAVINGS ACCOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'education savings account' means a trust created or organized in the United States—

"(A) pursuant to a qualified State educational savings plan, and

"(B) exclusively for the purpose of paying the qualified higher education expenses of the designated beneficiary of the account.

"(2) QUALIFIED STATE EDUCATIONAL SAVINGS PLAN.—The term 'qualified State educational savings plan' means a plan established and maintained by a State or instrumentality thereof under which—

"(A) participants may save to meet qualified higher education expenses of designated beneficiaries,

"(B) planning and financial information is provided to participants about current and projected qualified higher education expenses,

"(C) education savings account statements are provided to participants at least quarterly, and

"(D) an audited financial statement is provided to participants at least annually.

"(3) QUALIFIED HIGHER EDUCATION EXPENSES.—The term 'qualified higher education expenses' means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965).

"(4) LIMITATIONS.—A trust shall not be treated as an education savings account unless the following requirements are met:

"(A) No contribution will be accepted unless it is in cash, stocks, bonds, or other securities which are readily tradable on an established securities market.

"(B) Contributions will not be accepted for any taxable year in excess of the applicable limit. The preceding sentence shall not apply to—

"(i) contributions to the qualified State educational savings plan which are allocated to all education savings accounts within the class for which the contribution was made, or

"(ii) rollover contributions described in subsection (b)(2).

"(C) The trust may not be established for the benefit of more than one individual.

"(D) The trustee is the qualified State educational savings plan or person designated by it.

"(E) The assets of the trust may be invested only in accordance with the qualified State educational savings plan.

"(5) APPLICABLE LIMIT.—For purposes of paragraph (4)(B)—

"(A) IN GENERAL.—The applicable limit is $3,000.

"(B) INDEXING.—In the case of taxable years beginning after December 31, 1995, the $3,000 amount under subparagraph (A) shall be increased by the education cost-of-living adjustment for the calendar year in which the taxable year begins.

"(C) EDUCATION COST-OF-LIVING ADJUSTMENT.—For purposes of subparagraph (B), the education cost-of-living adjustment for any calendar year is the percentage (if any) by which—

"(i) the higher education cost index for the preceding calendar year, exceeds

"(ii) such index for 1994.

"(D) HIGHER EDUCATION COST INDEX.—For purposes of subparagraph (C), the higher education cost index for any calendar year is the average qualified higher education expenses for undergraduate students at both private and public institutions of higher education for the 12-month period ending on August 31 of the calendar year. The Secretary of Education shall provide for the computation and publication of the higher education cost index.

"(d) TAX TREATMENT OF ACCOUNTS AND STATE PLANS.—

"(1) EXEMPTION FROM TAX.—An education savings account shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, any such account or plan shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

"(2) LOSS OF EXEMPTION OF ACCOUNT WHERE INDIVIDUAL ENGAGES IN PROHIBITED TRANSACTION.—

"(A) IN GENERAL.—If the designated beneficiary of an education savings account is established or any individual who contributes to such account engages in any transaction prohibited by section 4975 with respect to the account, the account shall cease to be an education savings account as of the first day of the taxable year (of the individual so engaging in such transaction) during which such transaction occurs.

"(B) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—In any case in which any account ceases to be an education savings account by reason of subparagraph (A) as of the first day of any taxable year, an amount equal to the fair market value of all assets in the account shall be treated as having been distributed on such first day.

"(3) EFFECT OF PLEDGING ACCOUNT AS SECURITY.—If, during any taxable year, the individual for whose benefit an education savings account is established, or any individual who contributes to such account, uses the account or any portion thereof as security for a loan, the portion so used shall be treated as distributed to the individual so using such portion.

"(e) REPORTS.—The Secretary may require the trustee of an education savings account to make reports regarding such account to the Secretary, to the individual who has established the account, and to the designated beneficiary of the account with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations."

(b) TAX TREATMENT OF QUALIFIED STATE EDUCATIONAL SAVINGS PLAN.—

(1) TREATMENT AS SECTION 501(C)(3) ORGANIZATION.—Section 501(c)(3) of such Code is amended by inserting "or which is a qualified State educational savings plan (as defined in section 137(c)(2)),'' after "animals,".

(2) CHARITABLE CONTRIBUTIONS.—

(A) Subparagraph (B) of section 170(c)(2) of such Code is amended by inserting ", or which is a qualified State educational savings plan (as defined in section 137(c)(2)),'' after "animals".

(B) Section 170(b)(1)(A) of such Code is amended by striking "or" at the end of clause (vii), by inserting "or" at the end of clause (viii) and by inserting after clause (viii) the following new clause:

"(ix) a qualified State educational savings plan (as defined in section 137(c)(2)).''

(c) CONTRIBUTION NOT SUBJECT TO GIFT TAX.—Section 2503 of such Code (relating to taxable gifts) is amended by adding at the end the following new subsection:

"(h) EDUCATION SAVINGS ACCOUNTS.—Any contribution made by an individual to an education savings account described in section 137 shall not be treated as a transfer of property by gift for purposes of this chapter.''

(d) TAX ON PROHIBITED TRANSACTIONS.—Section 4975 of such Code (relating to prohibited transactions) is amended—

(1) by adding at the end of subsection (c) the following new paragraph:

"(4) SPECIAL RULE FOR EDUCATION SAVINGS ACCOUNTS.—An individual for whose benefit an education savings account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an education savings account by reason of the application of section 137(d)(2)(A) to such account.", and

(2) by inserting ", an education savings account described in section 137(c),'' in subsection (e)(1) after "described in section 408(a)".

(e) FAILURE TO PROVIDE REPORTS ON EDUCATION SAVINGS ACCOUNTS.—Section 6693 of such Code (relating to failure to provide reports on individual retirement accounts or annuities) is amended—

(1) by inserting "or on education savings accounts'' after "annuities'' in the heading of such section, and

(2) by adding at the end of subsection (a) the following new sentence: "Any person required by section 137(e) to file a report regarding an education savings account who fails to file the report at the time or in the manner required by such section shall pay a penalty of $50 for each failure, unless it is shown that such failure is due to reasonable cause.''

(f) SPECIAL RULE FOR DETERMINING AMOUNTS OF SUPPORT FOR DEPENDENT.—Subsection (b) of section 152 of such Code (relating to definition of dependent) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) A distribution from an education savings account described in section 137(c) to the individual for whose benefit such account has been established shall not be taken into account in determining support for purposes of this section to the extent such distribution is excluded from gross income of such individual under section 137.''

(g) CLERICAL AMENDMENTS.—

(1) The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking out the item relating to section 137 and inserting the following new items:

"Sec. 137. Education savings accounts.

"Sec. 138. Cross references to other Acts.''

(2) The table of sections for subchapter B of chapter 68 of such Code is amended by striking out the item relating to section 6693 and inserting the following new item:

"Sec. 6693. Failure to provide reports on individual retirement accounts or annuities or on education savings accounts.''

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 1994.●

By Mr. EXON:

S. 387. A bill to encourage enhanced State and Federal efforts to reduce traffic deaths and injuries and improve

traffic safety among young, old, and high-risk drivers; to the Committee on Commerce, Science, and Transportation.

THE HIGH-RISK DRIVERS ACT OF 1995

Mr. EXON. Mr. President, I rise to introduce the High-Risk Drivers Act. Senator Danforth and I worked very hard on this legislation in the last Congress and I hope it can be passed quickly this year.

This is indeed a most appropriate time for introduction and swift passage.

While we have made significant progress in reducing death and injury on America's highways, it is time to build on that success and focus Federal resources on those areas which will produce the highest return on safety for each dollar invested. At this time of scrutiny for all Federal spending, the high-risk drivers bill gives taxpayers a great value.

Three groups of drivers need special attention in our continuing efforts to make the Nation's highways safer. They are young drivers, high-risk drivers or repeat offenders and older drivers.

This legislation encourages the States and the Federal Government to focus attention on all three groups. Even with the great need to reduce the Federal budget deficit, this is one area where we must recognize and take action on the fact that a small investment will yield significant returns. When I chaired a hearing on this important legislation last year, one expert testified that if this legislation were enacted, there would be at least a tenfold return on investment due to reduced costs of death, injury, and loss of productivity.

Of course, no economist can measure the cost of the sorrow, pain, and suffering incurred by parents, friends, and families of those killed and injured in traffic accidents. No economist can measure the value of relief parents feel each and every time their young sons and daughters return home safely.

Even with the long-term decline in traffic fatality rates, too many lose their lives in traffic accidents. In 1993, according to the National Safety Council, over 42,000 Americans died in auto crashes. That's like losing a city the size of Grand Island, NE and its surrounding area.

This legislation focuses attention where it is most needed to reduce the carnage on America's highways.

Motor vehicle crashes are the leading cause of death among teenagers. Teen drivers comprise 7.4 percent of the U.S. population but are involved in 15.4 percent of the fatal motor vehicle crashes. The simple problem is that it takes a great deal of experience, judgment, and maturity to master the operation of a vehicle. Unfortunately, many young drivers are not getting the training they need to master the safe operation of automobiles. In addition, the temptations and pressures faced by today's teenagers sometimes run counter to the skills and the values needed to safely operate a motor vehicle. The high-risk drivers bill attempts to temper those temptations and impulses by putting at risk what many teens value the most, their driver's license, or, in the vernacular, their "wheels."

The High-Risk Drivers Act encourages States through incentive grants to conduct youth-oriented traffic-safety enforcement, education, and training programs, and to adopt a graduated license system where a full unrestricted license is not obtained until a young driver has had a clean driving record for at least 1 year.

The bill focuses heavy attention on drinking and driving. States are encouraged to adopt a zero tolerance policy for underage drinking and driving by adopting, as the State of Nebraska has, a blood alcohol threshold level of .02 percent for drivers under the age of 21. In addition, the bill encourages States to adopt a minimum $500 fine for anyone who sells alcohol to minors, a 6-month suspension for drivers under the age of 21 caught drinking and driving and a prohibition against open containers of alcohol inside automobiles.

The high-risk drivers bill also attempts to get parents involved by providing them with information about the effect that at-fault accidents and traffic violations have on young drivers insurance rates before any tragic and expensive accidents occur.

The second focus area of this legislation is on repeat offenders and high-risk drivers. This section of the bill uses incentive grants to encourage States to maintain better records of serious drivers offenses, to improve the sharing of driver information, and to establish remedial programs for young high-risk drivers.

Perhaps most innovative and effective is an effort to encourage States to adopt vehicle confiscation schemes for repeat drunk drivers. This provision, with appropriate protection for family members, will help crack down on that hard core group of repeat offenders drunk drivers who so endanger every citizen, including themselves.

This legislation also establishes an aggressive research agenda for older drivers. Our Nation's transportation policies must anticipate the mobility needs of the Nation's senior population. This include strategies which use technology and licensing plans which help older drivers keep their independence. I am pleased to report that the American Association of Retired Persons supports the older driver provisions of this act.

Finally, this important legislation boosts the authorization level for the important Anti-Drunk Driving Enforcement Program known as the 410 Program.

This bill embraces the bipartisan compromise Senator Danforth and I crafted last year. Both the House and Senate voted for this legislation but the House-passed vehicle for this bill was blocked in the Senate during the closing hours of the last Congress for reasons unrelated to this important safety program.

To put it another way, Mr. President, this measure has already passed both Houses of Congress and has agreed to, but, because of a technicality at the last minute, it failed to get passage.

Mr. President, I am pleased that my own home State of Nebraska is seriously looking at a number of the proposals included in this and the original high risk-drivers bill Senator Danforth and I introduced in the last Congress.

Mr. President, I ask my colleagues to support swift passage of this important piece of legislation.

I ask unanimous consent that the articles outlining some of Nebraska's efforts and the text of the High-Risk Drivers Act of 1995 be printed in the RECORD at the conclusion of my remarks.

I would simply specify, Mr. President, if I might, the articles that I would like to have printed: "Nebraska Leads in Drunken Driving Control," "Panel Seeks Tougher DWI Law," and "MADD Founder Faults Drunk-Driving Bill."

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

S. 387

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 "High-risk Drivers Act of 1995".

TITLE I—HIGH-RISK AND ALCOHOL-IMPAIRED DRIVERS

SEC. 101. FINDINGS.

The Congress makes the following findings:

(1) The Nation's traffic fatality rate has declined from 5.5 deaths per 100 million vehicle miles traveled in 1966 to an historic low of an estimated 1.8 deaths per 100 million vehicle miles traveled during 1992. In order to further this desired trend, the safety programs and policies implemented by the Department of Transportation must be continued, and at the same time, the focus of these efforts as they pertain to high risk drivers of all ages must be strengthened.

(2) Motor vehicle crashes are the leading cause of death among teenagers, and teenage drivers tend to be at fault for their fatal crashes more often than older drivers. Drivers who are 16 to 20 years old comprised 7.4 percent of the United States population in 1991 but were involved in 15.4 percent of fatal motor vehicle crashes. Also, on the basis of crashes per 100,000 licensed drivers, young drivers are the highest risk group of drivers.

(3) During 1991, 6,630 teenagers from age 15 through 20 died in motor vehicle crashes. This tragic loss demands that the Federal Government intensify its efforts to promote highway safety among members of this high risk group.

(4) The consumption of alcohol, speeding over allowable limits or too fast for road

conditions, inadequate use of occupant restraints, and other high risk behaviors are several of the key causes for this tragic loss of young drivers and passengers. The Department of Transportation, working cooperatively with the States, student groups, and other organizations, must reinvigorate its current programs and policies to address more effectively these pressing problems of teenage drivers.

(5) In 1991 individuals aged 70 years and older, who are particularly susceptible to injury, were involved in 12 percent of all motor vehicle traffic crash fatalities. These deaths accounted for 4,828 fatalities out of 41,462 total traffic fatalities.

(6) The number of older Americans who drive is expected to increase dramatically during the next 30 years. Unfortunately, during the last 15 years, the Department of Transportation has supported an extremely limited program concerning older drivers. Research on older driver behavior and licensing has suffered from intermittent funding at amounts that were insufficient to address the scope and nature of the challenges ahead.

(7) A major objective of United States transportation policy must be to promote the mobility of older Americans while at the same time ensuring public safety on our Nation's highways. In order to accomplish these two objectives simultaneously, the Department of Transportation must support a vigorous and sustained program of research, technical assistance, evaluation, and other appropriate activities that are designed to reduce the fatality and crash rate of older drivers who have identifiable risk characteristics.

SEC. 102. DEFINITIONS.

For purposes of this title—

(1) The term "high risk driver" means a motor vehicle driver who belongs to a class of drivers that, based on vehicle crash rates, fatality rates, traffic safety violation rates, and other factors specified by the Secretary, presents a risk of injury to the driver and other individuals that is higher than the risk presented by the average driver.

(2) The term "Secretary" means the Secretary of Transportation.

SEC. 103. POLICY AND PROGRAM DIRECTION.

(a) GENERAL RESPONSIBILITY OF SECRETARY.—The Secretary shall develop and implement effective and comprehensive policies and programs to promote safe driving behavior by young drivers, older drivers, and repeat violators of traffic safety regulations and laws.

(b) SAFETY PROMOTION ACTIVITIES.—The Secretary shall promote or engage in activities that seek to ensure that—

(1) cost effective and scientifically-based guidelines and technologies for the nondiscriminatory evaluation and licensing of high risk drivers are advanced;

(2) model driver training, screening, licensing, control, and evaluation programs are improved;

(3) uniform or compatible State driver point systems and other licensing and driver record information systems are advanced as a means of identifying and initially evaluating high risk drivers; and

(4) driver training programs and the delivery of such programs are advanced.

(c) DRIVER TRAINING RESEARCH.—The Secretary shall explore the feasibility and advisability of using cost efficient simulation and other technologies as a means of enhancing driver training; shall advance knowledge regarding the perceptual, cognitive, and decision making skills needed for safe driving and to improve driver training; and shall investigate the most effective means of integrating licensing, training, and other techniques for preparing novice drivers for the safe use of highway systems.

TITLE II—YOUNG DRIVER PROGRAMS

SEC. 201. STATE GRANTS FOR YOUNG DRIVER PROGRAMS.

(a) ESTABLISHMENT OF GRANT PROGRAM.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§ 411. Programs for young drivers

"(a) GENERAL AUTHORITY.—Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement programs for young drivers which include measures, described in this section, to reduce traffic safety problems resulting from the driving performance of young drivers. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate estimated expenditures from all other sources for programs for young drivers at or above the average level of such expenditures in its 2 fiscal years preceding the fiscal year in which the High Risk Drivers Act of 1994 is enacted.

"(c) FEDERAL SHARE.—No State may receive grants under this section in more than 5 fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the young driver program adopted by the State pursuant to subsection (a);

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third, fourth, and fifth fiscal years the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d) MAXIMUM AMOUNT OF BASIC GRANTS.—Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) shall equal 30 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title. A grant to a State under this section shall be in addition to the State's apportionment under section 402, and basic grants during any fiscal year may be proportionately reduced to accommodate an applicable statutory obligation limitation for that fiscal year.

"(e) ELIGIBILITY FOR BASIC GRANTS.—

"(1) IN GENERAL.—For purposes of this section, a State is eligible for a basic grant if such State—

"(A) establishes and maintains a graduated licensing program for drivers under 18 years of age that meets the requirements of paragraph (2); and

"(B)(i) in the first year of receiving grants under this section, meets 3 of the 7 criteria specified in paragraph (3);

"(ii) in the second year of receiving such grants, meets 4 of such criteria;

"(iii) in the third year of receiving such grants, meets 5 of such criteria;

"(iv) in the fourth year of receiving such grants, meets 6 of such criteria; and

"(v) in the fifth year of receiving such grants, meets 6 of such criteria.

For purposes of subparagraph (B), a State shall be treated as having met one of the requirements of paragraph (3) for any year if the State demonstrates to the satisfaction of the Secretary that, for the 3 preceding years, the alcohol fatal crash involvement rate for individuals under the age of 21 has declined in that State and the alcohol fatal crash involvement rate for such individuals has been lower in that State than the average such rate for all States.

"(2) GRADUATED LICENSING PROGRAM.—

"(A) A State receiving a grant under this section shall establish and maintain a graduated licensing program consisting of the following licensing stages for any driver under 18 years of age:

"(i) An instructional license, valid for a minimum period determined by the Secretary, under which the licensee shall not operate a motor vehicle unless accompanied in the front passenger seat by the holder of a full driver's license.

"(ii) A provisional driver's license which shall not be issued unless the driver has passed a written examination on traffic safety and has passed a roadtest administered by the driver licensing agency of the State.

"(iii) A full driver's license which shall not be issued until the driver has held a provisional license for at least 1 year with a clean driving record.

"(B) For purposes of subparagraph (A)(iii), subsection (f)(1), and subsection (f)(6)(B), a provisional licensee has a clean driving record if the licensee—

"(i) has not been found, by civil or criminal process, to have committed a moving traffic violation during the applicable period;

"(ii) has not been assessed points against the license because of safety violations during such period; and

"(iii) has satisfied such other requirements as the Secretary may prescribe by regulation.

"(C) The Secretary shall determine the conditions under which a State shall suspend provisional driver's licenses in order to be eligible for a basic grant. At a minimum, the holder of a provisional license shall be subject to driver control actions that are stricter than those applicable to the holder of a full driver's license, including warning letters and suspension at a lower point threshold.

"(D) For a State's first 2 years of receiving a grant under this section, the Secretary may waive the clean driving record requirement of subparagraph (A)(iii) if the State submits satisfactory evidence of its efforts to establish such a requirement.

"(3) CRITERIA FOR BASIC GRANT.—The 7 criteria referred to in paragraph (1)(B) are as follows:

"(A) The State requires that any driver under 21 years of age with a blood alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated for the purpose of (i) administrative or judicial sanctions or (ii) a law or regulation that prohibits any individual under 21 years of age with a blood alcohol concentration of 0.02 percent or greater from driving a motor vehicle.

"(B) The State has a law or regulation that provides a mandatory minimum penalty of at least $500 for anyone who in violation of State law or regulation knowingly, or without checking for proper identification, provides or sells alcohol to any individual under 21 years of age.

"(C) The State requires that the license of a driver under 21 years of age be suspended for a period specified by the State if such driver is convicted of the unlawful purchase or public possession of alcohol. The period of suspension shall be at least 6 months for a first conviction and at least 12 months for subsequent conviction; except that specific license restrictions may be imposed as an alternative to such minimum periods of suspension where necessary to avoid undue hardship on any individual.

"(D) The State conducts youth-oriented traffic safety enforcement activities, and education and training programs—

"(i) with the participation of judges and prosecutors, that are designed to ensure enforcement of traffic safety laws and regulations, including those that prohibit drivers under 21 years of age from driving while intoxicated, restrict the unauthorized use of a motor vehicle, and establish other moving violations; and

"(ii) with the participation of student and youth groups, that are designed to ensure compliance with such traffic safety laws and regulations.

"(E) The State prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway; except as allowed in the passenger area, by persons (other than the driver), of a motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers.

"(F) The State provides, to a parent or legal guardian of any provisional licensee, general information prepared with the assistance of the insurance industry on the effect of traffic safety convictions and at-fault accidents on insurance rates for young drivers.

"(G) The State requires that a provisional driver's license may be issued only to a driver who has satisfactorily completed a State-accepted driver education and training program that meets Department of Transportation guidelines and includes information on the interaction of alcohol and controlled substances and the effect of such interaction on driver performance, and information on the importance of motorcycle helmet use and safety belt use.

"(f) SUPPLEMENTAL GRANT PROGRAM.—

"(1) EXTENDED APPLICATION OF PROVISIONAL LICENSE REQUIREMENT.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State requires that a driver under 21 years of age shall not be issued a full driver's license until the driver has held a provisional license for at least 1 year with a clean driving record as described in subsection (e)(2)(B).

"(2) REMEDIAL DRIVER EDUCATION.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State requires, at a lower point threshold than for other drivers, remedial driver improvement instruction for drivers under 21 years of age and requires such remedial instruction for any driver under 21 years of age who is convicted of reckless driving, excessive speeding, driving under the influence of alcohol, or driving while intoxicated.

"(3) RECORD OF SERIOUS CONVICTIONS; HABITUAL OR REPEAT OFFENDER SANCTIONS.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State—

"(A) requires that a notation of any serious traffic safety conviction of a driver be maintained on the driver's permanent traffic record for at least 10 years after the date of the conviction; and

"(B) provides additional sanctions for any driver who, following conviction of a serious traffic safety violation, is convicted during the next 10 years of one or more subsequent serious traffic safety violations.

"(4) INTERSTATE DRIVER LICENSE COMPACT.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is a member of and substantially complies with the interstate agreement known as the Driver License Compact, promptly and reliably transmits and receives through electronic means interstate driver record information (including information on commercial drivers) in cooperation with the Secretary and other States, and develops and achieves demonstrable annual progress in implementing a plan to ensure that (i) each court of the State report expeditiously to the State driver licensing agency all traffic safety convictions, license suspensions, license revocations, or other license restrictions, and driver improvement efforts sanctioned or ordered by the court, and that (ii) such records be available electronically to appropriate government officials (including enforcement, officers, judges, and prosecutors) upon request at all times.

"(5) For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State has a law or regulation that provides a minimum penalty of at least $100 for anyone who in violation of State law or regulation drives any vehicle through, around, or under any crossing, gate, or barrier at a railroad crossing while such gate or barrier is closed or being opened or closed.

"(6) VEHICLE SEIZURE PROGRAM.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State has a law or regulation that—

"(A) mandates seizure by the State or any political subdivision thereof of any vehicle driven by an individual in violation of an alcohol-related traffic safety law, if such violator has been convicted on more than one occasion of an alcohol-related traffic offense within any 5-year period beginning after the date of enactment of this section, or has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for such an offense;

"(B) mandates that the vehicle be forfeited to the State or a political subdivision thereof if the vehicle was solely owned by such violator at the time of the violation;

"(C) requires that the vehicle be returned to the owner if the vehicle was a stolen vehicle at the time of the violation; and

"(D) authorizes the vehicle to be released to a member of such violator's family, the co-owner, or the owner, if the vehicle was not a stolen vehicle and was not solely owned by such violator at the time of the violation, and if the family member, co-owner, or owner, prior to such release, executes a binding agreement that the family member, co-owner, or owner will not permit such violator to drive the vehicle and that the vehicle shall be forfeited to the State or a political subdivision thereof in the event such violator drives the vehicle with the permission of the family member, co-owner, or owner.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $9,000,000 for the fiscal year ending September 30, 1996, $12,000,000 for the fiscal year ending September 30, 1997, $14,000,000 for the fiscal year ending September 30, 1998, $16,000,000 for the fiscal year ending September 30, 1999, and $18,000,000 for the fiscal year ending September 30, 2000.".

(b) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by inserting immediately after the item relating to section 410 the following new item:

"411. Programs for young drivers.".

(c) DEADLINES FOR ISSUANCE OF REGULATIONS.—The Secretary shall issue and publish in the Federal Register proposed regulations to implement section 411 of title 23, United States Code (as added by this section), not later than 6 months after the date of enactment of this Act. The final regulations for such implementation shall be issued, published in the Federal Register, and transmitted to Congress not later than 12 months after such date of enactment.

SEC. 202. PROGRAM EVALUATION.

(a) EVALUATION BY SECRETARY.—The Secretary shall, under section 403 of title 23, United States Code, conduct an evaluation of the effectiveness of State provisional driver's licensing programs and the grant program authorized by section 411 of title 23, United States Code (as added by section 101 of this Act).

(b) REPORT TO CONGRESS.—By January 1, 1997, the Secretary shall transmit a report on the results of the evaluation conducted under subsection (a) and any related research to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives. The report shall include any related recommendations by the Secretary for legislative changes.

TITLE III—OLDER DRIVER PROGRAMS

SEC. 301. OLDER DRIVER SAFETY RESEARCH.

(a) RESEARCH ON PREDICTABILITY OF HIGH RISK DRIVING.—

(1) The Secretary shall conduct a program that funds, within budgetary limitations, the research challenges presented in the Transportation Research Board's report entitled "Research and Development Needs for Maintaining the Safety and Mobility of Older Drivers" and the research challenges pertaining to older drivers presented in a report to Congress by the National Highway Traffic Safety Administration entitled "Addressing the Safety Issues Related to Younger and Older Drivers".

(2) To the extent technically feasible, the Secretary shall consider the feasibility and

further the development of cost efficient, reliable tests capable of predicting increased risk of accident involvement or hazardous driving by older high risk drivers.

(b) SPECIALIZED TRAINING FOR LICENSE EXAMINERS.—The Secretary shall encourage and conduct research and demonstration activities to support the specialized training of license examiners or other certified examiners to increase their knowledge and sensitivity to the transportation needs and physical limitations of older drivers, including knowledge of functional disabilities related to driving, and to be cognizant of possible countermeasures to deal with the challenges to safe driving that may be associated with increasing age.

(c) COUNSELING PROCEDURES AND CONSULTATION METHODS.—The Secretary shall encourage and conduct research and disseminate information to support and encourage the development of appropriate counseling procedures and consultation methods with relatives, physicians, the traffic safety enforcement and the motor vehicle licensing communities, and other concerned parties. Such procedures and methods shall include the promotion of voluntary action by older high risk drivers to restrict or limit their driving when medical or other conditions indicate such action is advisable. The Secretary shall consult extensively with the American Association of Retired Persons, the American Association of Motor Vehicle Administrators, the American Occupational Therapy Association, the American Automobile Association, the Department of Health and Human Services, the American Public Health Association, and other interested parties in developing educational materials on the interrelationship of the aging process, driver safety, and the driver licensing process.

(d) ALTERNATIVE TRANSPORTATION MEANS.—The Secretary shall ensure that the agencies of the Department of Transportation overseeing the various modes of surface transportation coordinate their policies and programs to ensure that funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 1914) and implementing Department of Transportation and Related Agencies Appropriation Acts take into account the transportation needs of older Americans by promoting alternative transportation means whenever practical and feasible.

(e) STATE LICENSING PRACTICES.—The Secretary shall encourage State licensing agencies to use restricted licenses instead of canceling a license whenever such action is appropriate and if the interests of public safety would be served, and to closely monitor the driving performance of older drivers with such licenses. The Secretary shall encourage States to provide educational materials of benefit to older drivers and concerned family members and physicians. The Secretary shall promote licensing and relicensing programs in which the applicant appears in person and shall promote the development and use of cost effective screening processes and testing of physiological, cognitive, and perception factors as appropriate and necessary. Not less than one model State program shall be evaluated in light of this subsection during each of the fiscal years 1996 through 1998. Of the sums authorized under subsection (i), $250,000 is authorized for each such fiscal year for such evaluation.

(f) IMPROVEMENT OF MEDICAL SCREENING.—The Secretary shall conduct research and other activities designed to support and encourage the States to establish and maintain medical review or advisory groups to work with State licensing agencies to improve and provide current information on the screening and licensing of older drivers. The Secretary shall encourage the participation of the public in these groups to ensure fairness and concern for the safety and mobility needs of older drivers.

(g) INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.—In implementing the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note), the Secretary shall ensure that the National Intelligent Vehicle-Highway Systems Program devotes sufficient attention to the use of intelligent vehicle-highway systems to aid older drivers in safely performing driver functions. Federally sponsored research, development, and operational testing shall ensure the advancement of night vision improvement systems, technology to reduce the involvement of older drivers in accidents occurring at intersections, and other technologies of particular benefit to older drivers.

(h) TECHNICAL EVALUATIONS UNDER INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT.—In conducting the technical evaluations required under section 6055 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 2192), the Secretary shall ensure that the safety impacts of older drivers are considered, with special attention being devoted to ensuring adequate and effective exchange of information between the Department of Transportation and older drivers or their representatives.

(i) AUTHORIZATION OF APPROPRIATIONS.—Of the funds authorized under section 403 of title 23, United States Code, $1,250,000 is authorized for each of the fiscal years 1995 through 1997 to support older driver programs described in subsections (a), (b), (c), (e), and (f).

TITLE IV—HIGH RISK DRIVERS

SEC. 401. STUDY ON WAYS TO IMPROVE TRAFFIC RECORDS OF ALL HIGH RISK DRIVERS.

(a) IN GENERAL.—Within 1 year after the date of enactment of this Act, the Secretary shall complete a study to determine whether additional or strengthened Federal activities, authority, or regulatory actions are desirable or necessary to improve or strengthen the driver record and control systems of the States to identify high risk drivers more rapidly and ensure prompt intervention in the licensing of high risk drivers. The study, which shall be based in part on analysis obtained from a request for information published in the Federal Register, shall consider steps necessary to ensure that State traffic record systems are unambiguous, accurate, current, accessible, complete, and (to the extend useful) uniform among the States.

(b) SPECIFIC MATTERS FOR CONSIDERATION.—Such study shall at a minimum consider—

(1) whether specific legislative action is necessary to improve State traffic record systems;

(2) the feasibility and practicality of further encouraging and establishing a uniform traffic ticket citation and control system;

(3) the need for a uniform driver violation point system to be adopted by the States;

(4) the need for all the States to participate in the Driver License Reciprocity Program conducted by the American Association of Motor Vehicle Administrators;

(5) ways to encourage the States to cross-reference driver license files and motor vehicle files to facilitate the identification of individuals who may not be in compliance with driver licensing laws; and

(6) the feasibility of establishing a national program that would limit each driver to one driver's license from only one State at any time.

(c) EVALUATION OF NATIONAL INFORMATION SYSTEMS.—As part of the study required by this section, the Secretary shall consider and evaluate the future of the national information systems that support driver licensing. In particular, the Secretary shall examine whether the Commercial Driver's License Information System, the National Driver Register, and the Driver License Reciprocity program should be more closely linked or continue to exist as separate information systems and which entities are best suited to operate such systems effectively at the least cost. The Secretary shall cooperate with the American Association of Motor Vehicle Administrators in carrying out this evaluation.

SEC. 402. STATE PROGRAMS FOR HIGH RISK DRIVERS.

The Secretary shall encourage and promote State driver evaluation, assistance, or control programs for high risk drivers. These programs may include in-person license reexaminations, driver education or training courses, license restrictions or suspensions, and other actions designed to improve the operating performance of high risk drivers.

TITLE V—ENHANCED AUTHORIZATION FOR 410 PROGRAM

SEC. 501. FUNDING FOR 23 USC 410 PROGRAM.

In addition to any amount otherwise appropriated or available for such use, there are authorized to be appropriated $15,000,000 for each of the fiscal years 1995, 1996, and 1997 for the purpose of carrying out section 410 of title 23, United States Code.

[From the Omaha World-Herald, Dec. 3, 1994]

NEBRASKA LEADS IN DRUNKEN DRIVING CONTROL

Statistics sometimes are deceiving. Such was the case with a recent federal report on drunken driving fatalities. From 1982 to 1993, the report indicated, some neighboring states reduced alcohol-related traffic deaths much faster than did Nebraska.

Does that mean Nebraska has fallen behind? Officials in the State Office of Highway Safety say the answer is no. They say Nebraska was ahead and other states are catching up.

Fred Zwonechek, the state's traffic safety administrator, said that in 1980, Nebraska had 159 alcohol-related traffic fatalities. In 1981, the number rose to 189. At about that time, groups such as Mothers Against Drunk Driving were demanding better enforcement. Attitudes about drinking and driving began to change. In 1982, drunken driving fatalities in Nebraska dropped to 102—a one-year plunge of 46 percent. Since then, the number has remained at around the same level.

Moreover, the percentage of accidents in which alcohol was involved has hovered in the mid-30s in Nebraska, Zwonechek said. Nationwide, the comparable figure was 57 percent in 1982 and 43 percent in 1993.

Zwonechek said all the indicators point to further progress in reducing such deaths.

Even Nebraska's lower drunken driving fatality rate, of course, is still much too high. But it's good to know that progress has been made. It's especially reassuring that the state's top traffic safety official sees further progress ahead.

[From the Omaha World-Herald, Dec. 20, 1994]

PANEL SEEKS TOUGHER DWI LAW

(By Paul Hammel and Bill Hord)

LINCOLN.—A task force of state legislators and law enforcement officials Monday joined

Gov. Nelson in calling for tougher laws on drunken driving.

The task force, however, went beyond ideas endorsed by Nelson last week and proposed a stricter standard for legal intoxication and repeal of a law that wipes out drunken-driving convictions after eight years.

"There are some people who are ticking time bombs out there. We want to be more certain that we'll get them off the road," said State Sen. LaVon Crosby of Lincoln, who organized the task force.

Two key proposals adopted by the 26-member Task Force on Driving While Intoxicated were lowering the minimum blood-alcohol standard for legal intoxication from .10 percent to .08 percent and eliminating the eight-year rule on use of prior drunken-driving convictions.

Neither was among the proposals endorsed last week by Nelson.

"There ought to be some point where someone who hasn't had a problem for a period of time doesn't have it hanging over his or her head," Nelson said Monday.

"I don't want to see us overreach what is necessary to address the problem," he told reporters during his weekly teleconference call.

The Legislature will get a chance to debate drunken-driving laws after it convenes Jan. 4 for a 90-day session.

Drunken-driving convictions that occurred eight years ago or longer cannot be considered when bringing new charges. Thus, a person who had multiple convictions would still be charged with first-offense drunken driving if the other offenses were at least 8 years old.

A 33-year-old Lincoln man, Michael Fogarty, was recently convicted of second-offense drunken driving even though it was his eighth conviction.

Lancaster County Attorney Gary Lacey said the eight-year rule was frustrating.

"It limits a prosecutor's ability to enhance penalties without any logical reason," he said.

"We don't make an exception for habitual criminals, so why should we make an exception for habitual drunk-driving criminals?"

Dropping the minimum blood-alcohol level to .08 percent—the standard in 11 states, including Kansas—has been defeated in Nebraska during the past several legislative sessions.

Sen. Crosby and Sen. Carol Hudkins of Malcolm said the public was beginning to realize that people become impaired by alcohol at levels well below the current .10 percent.

Sen. Crosby said social drinkers would be unaffected by dropping the minimum standard to .08.

"It takes a lot (of drinking) to get to .08," she said. "The average social drinker isn't at .08."

Nelson said there was much disagreement on where to set the threshold. Some people want it at zero, he said.

"Before we move downward to .08, there must be hard and convincing evidence that our streets will, in fact, be safer." Nelson said, "Why don't we go to .05?"

Nelson said last week that he would not push for a .08 level but would sign such legislation if senators passed it.

Sen. Crosby said her task force's work would probably result in proposals to increase treatment of drunken drivers, reinstitute mandatory driver-education courses in high school and levy higher alcohol taxes, among other possible bills.

Some task force members suggested that taxes should rise 5 cents per drink to help fund enforcement and treatment efforts.

"The people who are causing the problems . . . need to be responsible to pay some of the costs," said Sen. Hudkins, who headed the task force's legal committee.

Other recommendations include tougher penalties for procuring alcohol for minors and for third-, fourth- and fifth-offense drunken-driving convictions, as well as making alcohol-dependency treatment mandatory for offenders.

Task force member Diane Riibe of Hooper, past state director of Mothers Against Drunken Driving, said the group's study was the most comprehensive look at drunken-driving laws in recent years.

Ms. Riibe questioned the recommendation of Sen. Don Wesely of Lincoln that drunken drivers undergo and finance mandatory alcohol-counseling programs.

While treatment can be helpful, she said, the primary concern should be getting these drivers off the streets.

"We want to make sure that the policy discussion focuses on the safety of the public," Ms. Riibe said.

Nelson has called for, among other provisions, tougher penalties for minors in possession of alcohol and for first-time drunken-driving offenders.

[From the Omaha World-Herald, Feb. 8, 1995]

MADD FOUNDER FAULTS DRUNK-DRIVING BILL

(By Paul Hammel)

LINCOLN.—The national founder of Mothers Against Drunk Driving told Nebraska lawmakers Tuesday that dropping the legal blood-alcohol level for intoxication does not reduce drunken driving.

Candace Lightner of Alexandria, Va., told the Legislature's Transportation Committee that dropping the legal level of intoxication targets casual drinkers while ignoring the real problem: alcoholics and repeat drunken drivers.

"If I ruled the world, I would make sure that punishment is much swifter and much more sure," she said. "That will be more effective than passing a politically correct bill that is nothing more than a feel-good, do-nothing law."

Ms. Lightner founded MADD in 1980 while living in California after her 13-year-old daughter was killed in an accident caused by a drunken driver. She was one of a handful of opponents during a public hearing on a package of bills designed to toughen Nebraska's drunken-driving laws.

The bills were introduced following a summerlong study headed by State Sen. LaVon Crosby of Lincoln.

Sen. Crosby has fought unsuccessfully to lower the state's legal blood-alcohol level for intoxication from .10 to .08, a level now recognized in 11 states, including Kansas.

Legislative Bill 150, introduced this year, is Sen. Crosby's fourth attempt at reducing the level. Previous bills have failed to advance from the transportation committee.

A parade of speakers disagreed with Ms. Lightner's stand Tuesday, instead urging Nebraska to add the .08 standard to its arsenal of weapons to combat drunken driving.

James Fell of Washington, D.C., chief of the science and technology office for the National Highway Traffic Safety Administration, said the .08 standard is one of three legislative steps that have proved effective in cutting down on drunken-driving accidents.

Nebraska, he said, has already adopted the others: a "zero-tolerance" law on drinking by teen-age drivers and an administrative license revocation act, which takes drivers' licenses immediately from suspected drunken drivers.

"Why don't you go for the hat trick and go for all three," Fell said, "because it will make a difference."

Fell and other LB 150 supporters said that although alcohol consumption and accidents involving drunken drivers have fallen nationally, it is clear that drivers are impaired well before reaching the .10 level for alcohol in the blood.

A typical 170-pound man would require four drinks in an hour to reach the .08 level, he said. A 130-pound woman would need three drinks, Fell said.

"At the .08 level, there's no doubt you're impaired," said Omaha Police Officer Chuck Matson, who also testified in support of the bill.

However, opponents of the bill, which included the state's liquor and restaurant industries, said that no one wants drunken drivers on the state's roads but that dropping the level to .08 was unreasonable and would be ineffective.

"This is fixing the basement when the roof is leaking," said Mike Kelley, an Omaha bar owner and lobbyist for the United Retailers Liquor Association of Nebraska. "This isn't traffic safety, it's temperance."

Brent Lambi, an Omaha businessman, told committee members that he was an alcoholic who would not have been deterred from driving by LB 150.

"I think you need to take away their cars," said Lambi.

Ms. Lightner said better enforcement of existing laws was the answer.

The committee took testimony on several other drunken-driving bills, including a measure that would prohibit drivers on suspension from obtaining provisional licenses to drive to work.

Members took no action on the bills following the hearing.

Sen. Doug Kristensen of Minden, the committee's chairman, said he was unsure whether the .08 proposal would be advanced this year. Kelley gave it a 50-50 chance.

Kristensen said he expected the committee to advance some anti-drunken-driving bills. He said he must be convinced they would be effective before he would support them.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I was not present to hear the entire presentation by Senator EXON from Nebraska but I heard enough to spark my interest. I came here today to speak about the constitutional amendment to balance the budget, especially the Reid amendment on Social Security.

To the Senator from Nebraska, if he is working on issues dealing with drunk driving, I applaud him for it, and I am very interested in working with him on it. I will reintroduce legislation in the Senate that I have introduced previously on the subject of drunk driving.

Two members of my family have been killed by drunk drivers. I expect there is not anyone in this Chamber who has not received a call to tell them a loved one, a neighbor, a relative, or a close acquaintance has been in a tragic accident and has been killed because of a drunk driver.

It is unforgivable in this country that today, in February 1995, there are still nearly 10 States in which a person

can get behind a wheel of a car, grab the neck of a fifth of whiskey, put the key in the ignition, drive off and drink, and it is perfectly legal. There ought not to be one instance, anywhere in America, where it should be legal to drink and drive at the same time.

I have tried for 5 years and will try until I get it done to prescribe all across this country one simple proposal: Alcohol and automobiles do not mix. Alcohol turns automobiles into instruments of murder.

We should not tolerate the fact that there are nearly 10 States where a person can drink and drive, and it is legal in another 20 States that, if the driver cannot drink, the rest of the folks in the car can be having a party with beer or whiskey. The fact is we ought not accept that in this country. No family should receive another call at midnight saying their mother, their brother, their father, or their sister is dead because of another drunk-driving accident.

I say to the Senator from Nebraska, I do not know the details of his legislation, but I do know this: As long as I serve in the Congress, I will continue, year after year after year, until all across this country no matter where an American drives, on whichever street or road or highway, that person will have some assurance that it is not legal in that jurisdiction to be drinking while driving and it is not legal in that jurisdiction to have an open container of alcohol in the vehicle. That ought to be the minimum we would expect in this country for the state of all Americans.

Mr. EXON. Mr. President, would the Senator yield for a moment so I might thank him?

Mr. DORGAN. Mr. President I am happy to yield.

Mr. EXON. Mr. President, I listened with keen interest to the remarks of my friend and colleague from North Dakota. I know he has been very much involved in this thing, and I want to thank him now for the support he gave to the Exon-Danforth bill last year. The Senator voted for it.

I think it is the same, as I outlined in my remarks, since it passed the House and the Senate. I see no reason why we cannot expedite passage of this matter. I have delayed introducing it only because there were many other things going on, but I think, even as important as those matters are, that we should get going on this.

Certainly, I was not aware of the sad fact that two members of his family have been killed by a drunk driver. Hardly a week goes by but that something very similar happens in the State of Nebraska, where the population compared with other States is smaller and we hear more about it.

There are some things that we can do, rather than just sit back and wring our hands. There are some things, and I think the Federal Government can legitimately be of assistance to the States.

I must tell the Senator that this piece of legislation was sparked primarily by a typically tragic teenage accident that happened in my State not too many months ago where young people, 16 and 17 years of age, went out for a good time at night. The problem was that the driver had one too many half-cans of beer. It is tragic. I am not saying that this bill will solve all of the problem, but I appreciate the pledge of support from my colleague from North Dakota.

I think that the feelings of this Senator, the Senator from North Dakota, and others are shared broadly on both sides of the aisle on this matter, on this measure. It is not a cure-all, but a significant step in the right direction. I thank my friend from North Dakota for his remarks.

Mr. DORGAN. I thank the Senator. I hope we can go further. I certainly support these efforts. As I said, we will be finished when we have prescribed all across this country an understanding that a person cannot drink and drive in this country.

Again, to me it does not make sense that in England, in European countries, for example, people understand that the consequences of drunk driving are so substantial that a person better not get caught because they will get hit with an enormous penalty. There is a completely different attitude about it in the European countries. Here it has been treated kind of like, Well, old Joe, or old Helen just went out and had too much to drink. That was not a problem.

It was not, unless they murdered with a vehicle. That is what happens in this country. Every 28 minutes, around the clock, somebody gets another call that says your relative died because of a drunk driver. This is not some mysterious illness for which we do not have a cure. This is not beyond the comprehension of humans to deal with. We deal with it by saying to people, Do not even think about driving if you drink. Don't even think about it. The consequences are too great.

The very first step is for governments, every government, to decide that there ought to be a prohibition against open containers of alcohol in vehicles.

By Ms. SNOWE (for herself, Mr. COHEN, Mr. CAMPBELL, Mr. GRASSLEY, Mr. INHOFE, Mr. ROTH, Mr. GREGG, Ms. MOSELEY-BRAUN, Mr. MURKOWSKI, Mr. KOHL, Mr. BENNETT, Mr. LUGAR, Mr. GRAMS, Mr. THOMAS, Mr. HATCH, and Mr. COATS):

S. 388. A bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes; to the Committee on Environment and Public Works.

MOTORCYCLE HELMET LEGISLATION

• Ms. SNOWE. Mr. President, today I am introducing legislation restoring the rights of States to decide for themselves whether to require the use of motorcycle helmets.

My bill is quite simple: it repeals the penalties specified in section 153 of title 23 of the Intermodal Surface Transportation Efficiency Act [ISTEA], passed in 1991. Section 153 imposed a penalty on those States that had not complied by September 30, 1994. These Federal sanctions forced States without helmet laws to divert 1.5 percent of their fiscal 1995 highway funds from three programs—the National Highway Safety Program, the Surface Transportation Program, and the Congestion Mitigation and Air Quality Improvement Program—and spend those funds instead on section 402 safety programs. For fiscal year 1996, the penalty doubled, taking a 3-percent chunk from the State highway construction account.

This compulsory mechanism has the ironic effect of actually decreasing the safety of some highways, as funds available for needed repairs are diverted for safety education and awareness programs.

Once again, the Federal Government is trying to micromanage State transportation budgets, imposing a heavy-handed Federal mandate upon more than half of our States. And make no mistake, Mr. President: this is no carrot and stick. It is a mandate, and despite the broad reach of Federal law, section 153 has failed in its explicit intent.

Fewer than half of the States are in compliance with this Federal law. Two years into these intrusive Federal sanctions, 28 States remain without helmet laws and are subject to financial penalties. These States disagree with the Federal Government's intrusion into what has traditionally been within the jurisdiction of individual States. And although Federal penalties doubled last year, none of these States have passed laws requiring motorcyclists to wear helmets.

The estimated penalties facing States under section 153 total $106.6 million—$106.6 million that is no longer available to upgrade roads in the National Highway System Program—$106.6 million that is unavailable to construct and maintain highways—$106.6 million that is no longer available to promote mass transit—$106.6 million that is unavailable to make sure that this crucial transportation infrastructure is not only modern but safe.

Instead, these valuable Federal dollars will be spent on highway safety programs, which most States already

fund quite generously. States—and motorcyclists in the States—have been at the forefront of highway safety programs. Forty-two States have funded State motorcycle safety programs, most of which are paid for by the motorcyclists themselves, through motorcycle registration and license fees. Motorcyclists understand that their safety is at risk on highways—and they want to make sure that their fellow riders and drivers of passenger cars and trucks have good awareness of motorcycle safety.

Nevertheless, the Federal Government—through section 153—insists of forcing States to redirect their precious Federal resources to programs that are already well-funded. Frankly, I don't believe that we should compel States to direct desperately needed highway construction funds into highway safety programs that are already well funded.

The most recent data shows that States have already been doing an excellent job promoting highway safety. since 1983, the number of accidents has decreased from 3,070 per 10,000 registered motorcyclists to 206. Fatalities have similarly declined from 8 per 10,000 registered motorcyclists to 6 per 10,000 registered motorcyclists. Even without a motorcyle helmet law, the number of motorcycle occupant fatalities declined 58.9 percent, from 5,097 in 1980 to 2,398 in 1992 when no mandatory Federal helmet law existed. Accidents declined by 53.4 percent in this same period. This substantial decline in motorcyle fatalities demonstrates that States are capable of addressing safety issues without intervention by the Federal Government.

It is also interesting to note that of the 10 States with the lowest motorcycle accident rate, 8 had motorcycle rider education programs. In fact, the 10 States with the lowest motorcycle accident rates spent 64.4 percent more on motorcycle rider education programs than States with the 10 highest motorcycle accident rates. Clearly, safety programs do work, and we should allow them to continue to work.

The penalty provisions of section 153 affect States in dire need of their highway construction funds. For my State of Maine, the estimated penalty was $853,194 in fiscal year 1995, increasing to $1,706,387 in fiscal year 1996. I believe that section 153 runs contrary to the principles of federalism, as the Federal Government tries to thwart the efforts of States to rebuild their transportation infrastructure in order to coerce States to pass helmet laws. And it is poor public policy, because poorly-maintained roads are often quite hazardous to the motoring public.

I have always strived to protect the interests of our communities by allowing them and the individual States to make the important decisions on how their affairs should be run. I believe that each State and each community should, to the extent of their ability, be allowed to make their own policy decisions. This is consistent with the ideas of the Founding Fathers.

State governments are closer to their citizens than the Federal Government. Surely, these democratic institutions understand the best interests of their citizens on this important issue, and the Federal Government should respect their decision. Yet section 153 erodes the very freedoms and liberties of our democracy, and on which our Nation was founded. Through provisions such as section 153, we are gradually stripping away the limited autonomy of the States.

Where will we draw the line? How far will Congress go in the debate over State freedoms? The National Conference of State Legislators expressed a clear and solid view during testimony before Congress in 1993: the mandatory helmet and seat belt law provision, it said, is one of the most infringing provisions on the right of individual States included in ISTEA.

Clearly, we must continue to do everything we can to make our roads safer, and to reduce the number of fatalities and severe injuries that occur on our Nation's highways. But I believe there are better ways for us to achieve these goals, without resorting to penalties on our financially burdened States.

At a time when Congress has already acted to eliminate future unfunded mandates on the States, we understand the burden that our actions can impose on the States. Surely, we can remove this unnecessary and intrusive mandate and restore authority to State Governments where they belong.

I will continue to work with my colleagues, however, to support the grant incentive provisions of section 153 and, and to explore additional options for enhancing highway safety. In the meantime, we should give the States some credit for keeping their roads and highways safe and repeal the insulting penalties contained in section 153.

I urge my colleagues to join me in supporting this legislation.●

By Mr. JOHNSTON (for himself, Mr. BENNETT, Mr. HATFIELD, Mr. NICKLES, Mr. SHELBY, and Mr. SPECTER):

S. 389. A bill for the relief of Nguyen Quy An and his daughter, Nguyen Ngoc Kim Quy; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

● Mr. JOHNSTON. Mr. President, I am proud to introduce a bill for the relief of Maj. Nguyen Quy An and his daughter, Nguyen Ngoc Kim Quy.

Major An, a former South Vietnamese helicopter pilot, was awarded the Distinguished Flying Cross for risking his own life to save four American servicemen in Vietnam in 1969. Two years later, his helicopter was hit by enemy fire and went down in flames while he was on a mission in Vietnam's central highlands. Major An managed to land the aircraft safely, saving himself and his crew; however, his arms were severely burned and had to be amputated by American doctors. He was imprisoned in a Vietnamese reeducation camp for 9 weeks, but was released because he was considered worthless without his two hands. Major An attempted to escape Vietnam by boat three times, but each time he was captured, and he spent 17 months in jail for the escape attempts.

Mr. President, last January, Senators SIMPSON, Mathews, HATFIELD, SPECTER, NICKLES, BENNETT, and myself gave Major An and his daughter refuge on an Air Force plane from Ho Chi Minh City to Bangkok. One of the most touching moments I have ever experienced was the thrill of announcing to Major An that our plane had cleared Vietnam's airspace and hearing everyone in our delegation and the military escorts clap and cheer. Major An and his daughter are currently in this country on humanitarian parole.

In the 103d Congress, I introduced legislation cosponsored by Senators Mathews, HATFIELD, SPECTER, NICKLES, and BENNETT for the relief of Major An and his daughter. Unfortunately, this bill was not acted on last year, so I rise today to submit new legislation for their relief. I hope my colleagues will join with me in recognizing the heroic actions of Major An and will reward him for his bravery by giving him and his daughter the opportunity to reside permanently in the United States.●

By Mr. BIDEN (for himself, Mr. SPECTER, Mr. KOHL, Mr. KERREY, and Mr. D'AMATO) (by request):

S. 390. A bill to improve the ability of the United States to respond to the international terrorist threat; to the Committee on the Judiciary.

THE OMNIBUS COUNTERTERRORISM ACT OF 1995

● Mr. BIDEN. Mr. President, at the request of President Clinton, I am introducing today legislation to combat international terrorism. The very grave threat to the United States posed by violent terrorist acts is documented by the events of this week, as well as of the past 2 years.

Two days ago, Ahmed Ramzi Yousef, the alleged mastermind of New York's World Trade Center bombing 2 years ago, was arrested and extradited from Pakistan. Explosives and United and Delta Airlines timetables were recovered from his hotel room in Pakistan.

Even as legal proceedings now begin against him, 11 other men are on trial in Federal court in New York City for conspiracy to commit several heinous acts of terrorism in and around Manhattan—including the World Trade Center bombing.

These incidents demonstrate that the United States and its citizens continue to be the focus of extremists who are willing and able to use violence to advance their cause. The damage this terrorism causes extends beyond the tragic loss of life and damage of the World Trade Center bombing.

Indeed, the revelation that terror networks are operating in our midst undeniably has its intended effect on our national psyche—it undermines the sense of security of all Americans both at home and abroad.

Equally important, the continued operation of numerous terrorist organizations around the globe undermines the stability of key U.S. allies and important foreign policy objectives.

In the Middle East, terrorism perpetrated by groups supported by Iran and Syria pose a grave threat to the already fragile Middle East peace process.

The recent bombing in central Tel Aviv, which killed 19 Israelis—many of them soldiers on leave—was only the latest in a series of attacks carried out by Palestinian extremists since the signing of the Israeli-PLO Declaration of Principles in September 1993.

In South America, terrorists in Colombia and Peru—often in league with narcotics traffickers—attack the very institutions of State, weakening the ability of those governments to confront the drug trade—a trade that continues to plague our own society.

A short time ago, international terrorism seemed to be in decline. But in 1993, the last year for which data are available, the State Department's Office of Counterterrorism reports that there were 427 terrorist incidents, an increase from 364 incidents in 1992.

The main reason for the increase was an acceleration of the campaign conducted by the Kurdistan workers party—known as the PKK—against Turkish interests in Western Europe.

But the raw numbers—and the dry statistics of which group perpetrated what attack—do not even begin to portray the harm caused by the heinous acts of terrorist violence.

Wherever it occurs, the lost lives, broken hearts, and destroyed dreams of the thousands touched by terrorism is tangible, while the fear that grips the citizenry—the fear of the indiscriminate attack that can occur at any time—cannot be quantified. But its effect is all too real.

In the 1980's, Congress and the Reagan administration worked together to empower law enforcement with many tools to counter the men of terror. Last year, President Clinton urged a refocus on terrorism—and sought recommendations from the executive branch agencies on new tools that might be needed in the fight against terrorism.

Now, this bill includes a number of provisions to help in that fight. The bill expands the circumstances in which we can prosecute crimes committed overseas which affect our interests. It also prohibits persons in the United States from conspiring to commit terrorism overseas—and from raising funds for foreign terrorist organizations.

In addition, the bill implements the convention on the marking of plastic explosives for the purposes of detection. That convention was an international response to earlier terrorist bombings of aircraft, requiring manufacturers of plastic explosives to make them easier to detect.

The bill also expands the coverage of the existing statute involving transactions in nuclear materials, to cover materials from the dismantling of nuclear weapons in the former Soviet Union.

It also allows prosecutors to use the Federal RICO and money laundering statutes to attack terrorism, and fills gaps in current law by authorizing wiretaps for investigations of all terrorism offenses. Other more technical changes will also enhance the law enforcement response to terrorism.

Finally, the bill includes a new Federal terrorism offense, with stiff penalties—including a new death penalty for terrorist murders. This is an important, an appropriate, new Federal offense.

The expansion of Federal jurisdiction has been a contested issue in recent years. I have long opposed broad assertions of Federal jurisdiction over offenses which are more appropriately prosecuted in State courts. But, in my view, international terrorism requires a Federal response.

As expressed in its letter transmitting the legislation to the Congress, the administration stated that it intends that section 101 confer Federal jurisdiction only over acts of violence that are, indeed, international terrorism offenses.

I strongly support that intent, but I believe the language of section 101 could be improved to better reflect that intent. The administration has agreed to work with the Congress to make modifications to the legislative language to further that goal.

I must also point out that the bill includes one provision which I strongly oppose in its current form. That is the provision which allows secret evidence to be used in a deportation proceeding against an immigrant—even a legal permanent resident—who is alleged to be a terrorist.

Under current law, any person who is not a citizen—including legal immigrants—is deportable if the person is engaged in terrorist activities, even without a criminal conviction.

This bill would create a new and, in my view, troubling court procedure which would allow the Government to deport an immigrant based on secret evidence, on evidence unknown to the immigrant or his counsel.

The right to see and confront the evidence against oneself is a fundamental premise of the due process clause of the Constitution.

The Supreme Court has held that the due process clause applies to aliens in the United States, and that it applies to deportation proceedings.

Deportation can be a dramatic step. This procedure could be used, for instance, against a legal permanent resident who has lived in the United States with all of his family for 40 or more years.

Deportation could mean separation from family, and could mean removal to a country in which the person has never before lived, since a person is not always deported to the person's country of citizenship.

The use of secret information is unprecedented. Even in other cases where sensitive information is involved, the Government is required to give a defendant a summary of the evidence to be used against him.

The use of secret evidence raises fundamental questions about the accuracy of any determinations made using that procedure. Our system of justice is an adversarial one. It assumes that by allowing defendants to see and challenge the evidence against them, the reliability and truthfulness of that information can be evaluated.

That is what cross-examination is all about—to test the reliability and biases of the witness. That is why the defense is allowed to put on witnesses to rebut evidence presented by the prosecution. If a person does not know what evidence is being used against him, it is simply impossible to subject that evidence to the scrutiny our system requires.

I agree with the administration that we must have the ability to deport aliens involved in terrorist activities. I also agree that we must be able to safeguard classified information. But I am not convinced that nothing short of secret evidence can protect our security. Why, for example, can we not consider applying the Classified Information Procedures Act—a tried and tested process—to deportation proceedings, before we sanction in this country Kafkaesque procedures requiring people to defend against unknown and unseen evidence.

I have introduced this bill at the President's request. I support most of its provisions, as I am sure most Senators will. But as I have said, I will work to modify certain portions of the bill even as we move expeditiously to see it enacted into law.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 390

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

SECTION 1. SHORT TITLE.

This Act may be cited as "The Omnibus Counterterrorism Act of 1995."

SEC. 2. TABLE OF CONTENTS.

The following is the table of contents for this Act:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Findings and purposes.

TITLE I—SUBSTANTIVE CRIMINAL LAW ENHANCEMENTS

Sec. 101. Acts of terrorism transcending national boundaries.
Sec. 102. Conspiracy to harm people or property overseas.
Sec. 103. Clarification and extension of criminal jurisdiction over certain terrorism offense overseas.

TITLE II—IMMIGRATION LAW IMPROVEMENTS

Sec. 201. Alien terrorist removal procedures.
Sec. 202. Changes to the Immigration and Nationality Act to facilitate removal of alien terrorists.
Sec. 203. Access to certain confidential INS files through court order.

TITLE III—CONTROLS OVER TERRORIST FUND-RAISING

Sec. 301. Terrorist fund-raising prohibited.

TITLE IV—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

Sec. 401. Short title.
Sec. 402. Findings and purposes.
Sec. 403. Definitions.
Sec. 404. Requirement of detection agents for plastic explosives.
Sec. 405. Criminal sanctions.
Sec. 406. Exceptions.
Sec. 407. Investigative authority.
Sec. 408. Effective date.

TITLE V—NUCLEAR MATERIALS

Sec. 501. Expansion of nuclear materials prohibitions.

TITLE VI—PROCEDURAL AND TECHNICAL CORRECTIONS AND IMPROVEMENTS

Sec. 601. Correction to material support provision.
Sec. 602. Expansion of weapons of mass destruction statute.
Sec. 603. Addition of terrorist offenses to the RICO statute.
Sec. 604. Addition of terrorist offenses to the money laundering statute.
Sec. 605. Authorization for interception of communications in certain terrorism related offenses.
Sec. 606. Clarification of maritime violence jurisdiction.
Sec. 607. Expansion of federal jurisdiction over bomb threats.
Sec. 608. Increased penalty for explosives conspiracies.
Sec. 609. Amendment to include assaults, murder, and threats against former federal officials on account of the performance of their official duties.
Sec. 610. Addition of conspiracy to terrorism offenses.

TITLE VII—ANTITERRORISM ASSISTANCE

Sec. 701. Findings.
Sec. 702. Antiterrorism assistance amendments.

SEC. 3. FINDINGS AND PURPOSES.

(a) The Congress finds and declares—

(1) International terrorism remains a serious and deadly problem which threatens the interests of the United States both overseas and within its territory. States or organizations that practice terrorism or actively support it should not be allowed to do so without serious consequence;

(2) International terrorism directed against United States interests must be confronted by the appropriate use of the full array of tools available to the President, including diplomatic, military, economic and prosecutive actions;

(3) The Nation's security interests are seriously impacted by terrorist attacks carried out overseas against United States Government facilities, officials and other American citizens present in foreign countries;

(4) United States foreign policy interests are profoundly affected by terrorist acts overseas especially those directed against friendly foreign governments and their people and those intended to undermine the peaceful resolution of disputes in the Middle East and other troubled regions;

(5) Since the Iranian Revolution of 1979, the defeat of the Soviet Union in Afghanistan, the peace initiative in the Middle East, and the fall of communism throughout Eastern Europe and the former Soviet Union, international terrorism has become a more complex problem, with new alliances emerging among terrorist organizations;

(6) Violent crime is a pervasive international problem and is exacerbated by the free international movement of drugs, firearms, explosives and individuals dedicated to performing acts of international terrorism who travel using false or fraudulent documentation;

(7) While international terrorists move freely from country to country, ordinary citizens and foreign visitors often fear to travel to or through certain parts of the world due to concern about terrorist violence;

(8) In addition to the destruction of property and devastation to human life, the occurrence of an international terrorist event results in a decline of tourism and affects the marketplace, thereby having an adverse impact on interstate and foreign commerce and economies of friendly nations;

(9) International terrorists, violating the sovereignty of foreign countries, attack dissidents and former colleagues living in foreign countries, including the United States;

(10) International terrorists, both inside and outside the United States, carefully plan attacks and carry them out in foreign countries against innocent victims;

(11) There are increasing intelligence indications of networking between different international terrorist organizations leading to their increased cooperation and sharing of information and resources in areas of common interest;

(12) In response, increased international coordination of legal and enforcement issues is required, pursuant, for example, to the numerous multilateral conventions in force providing universal prosecutive jurisdiction over persons involved in a variety of terrorist acts, including hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage;

(13) Until recently, United States asylum processing procedures have been complicated and often duplicative, providing a powerful incentive for individuals, including terrorists, without a genuine claim, to apply for asylum and remain in the United States;

(14) The United States Constitution grants Congress the power to establish a uniform rule of naturalization and to make all laws necessary and proper thereto;

(15) Part of that power authorizes the Congress to establish laws directly applicable to alien conduct within the United States that harms the foreign relations, domestic tranquility or national security of the United States;

(16) While the vast majority of aliens justify the trust placed in them by United States immigration policies, a dangerous few utilized access to the United States to carry out their terrorist activity to the detriment of this nation's national security and foreign policy interests. Accordingly, international terrorist organizations have been able to create significant infrastructures and cells in the United States among aliens who are in this country either temporarily or as permanent resident aliens;

(17) International terrorist organizations, acting through affiliated groups and/or individuals, have been raising significant funds within the United States, often through misrepresentation of their purposes or subtle forms of extortion, or using the United States as a conduit for transferring funds among countries;

(18) The provision of funds to organizations that engage in terrorism serves to facilitate their terrorist activities regardless of whether the funds, in whole or in part, are intended or claimed to be used for non-violent purposes;

(19) Certain foreign governments and international terrorist organizations have directed their members or sympathizers residing in the United States to take measures in support of terrorist acts, either within or outside the United States;

(20) Present federal law does not adequately reach all terrorist activity likely to be engaged in by aliens within the United States;

(21) Law enforcement officials have been hindered in using current immigration law to deport alien terrorists because the law fails to provide procedures to protect classified intelligence sources and information. Moreover, a few high ranking members of terrorist organizations have been naturalized as United States citizens because denial of such naturalizations would have necessitated public disclosure of highly classified sources and methods. Furthermore, deportation hearings frequently extend over several years, thus hampering the expeditious removal of aliens engaging in terrorist activity;

(22) Present immigration law is inadequate to protect the United States from terrorist attacks by certain aliens. New procedures are needed to permit expeditious removal of alien terrorists from the United States, thereby reducing the threat that such aliens pose to the national security and other vital interests of the United States;

(23) International terrorist organizations that have infrastructure support within the United States are believed to have been responsible for—

(A) conspiring in 1982 to bomb the Turkish Honorary Consulate in Philadelphia, Pennsylvania;

(B) bombing the Marine barracks in Lebanon in 1983;

(C) holding Americans hostage in Lebanon from 1984–1991;

(D) hijacking in 1984 Kuwait Airlines Flight 221 during which two American employees of the Agency for International Development were murdered;

(E) hijacking in 1985 TWA Flight 847 during which a United States Navy diver was murdered;

(F) murdering in 1985 an American tourist aboard the Achille Lauro cruise liner;

(G) hijacking in 1985 Egypt Air Flight 648 during which one American and one Israeli were killed;

(H) murdering in 1985 four members of the United States Marine Corps in El Salvador;

(I) attacking in December 1985 the Rome and Vienna airports resulting in the death of a young American girl;

(J) hijacking in 1986 Pan Am Flight 73 in Karachi, Pakistan, in which 44 Americans were held hostage and two were killed;

(K) conspiring in 1986 in New York City to bomb an Air India aircraft;

(L) bombing in April 1988 the USO club in Naples, Italy, killing one American servicewoman and injuring four American servicemen;

(M) attacking in 1988 the Greek cruise ship "City of Poros";

(N) bombing in 1988 Pan Am Flight 103 resulting in 270 deaths;

(O) bombing in 1989 UTA Flight 772 resulting in 171 deaths, including seven Americans;

(P) murdering in 1989 a United States Marine Corps officer assigned to the United Nations Truce Supervisory Organization in Lebanon;

(Q) downing in January 1991 a United States military helicopter in El Salvador causing the death of a United States military crewman as a result of the crash and subsequently murdering its two surviving United States military crewmen;

(R) bombing in February 1992 the United States Ambassador's residence in Lima, Peru;

(S) bombing in February 1993 a cafe in Cairo, Egypt, which wounded two United States citizens;

(T) bombing in February 1993 the World Trade Center in New York City, resulting in six deaths;

(U) conspiring in the New York City area in 1993 to destroy several government buildings and tunnels;

(V) wounding in October 1994 two United States citizens on a crowded street in Jerusalem, Israel;

(W) kidnapping and subsequently murdering in October 1994 a dual citizen of the United States and Israel; and

(X) numerous bombings and murders in Northern Ireland over the past decade;

(24) Nuclear materials, including byproduct materials, can be used to create radioactive dispersal devices which are capable of causing serious bodily injury as well as substantial damage to property and the environment;

(25) The potential use of nuclear materials, including byproduct materials, enhances the threat posed by terrorist activities and thereby has a greater effect on the security interests of the United States;

(26) Due to the widespread hazards presented by the threat of nuclear contamination, as well as nuclear bombs, the United States has strong interest in assuring that persons who are engaged in the illegal acquisition and use of nuclear materials, including byproduct materials, are prosecuted for their offenses;

(27) The threat that nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially due to international developments in the years since the enactment in 1982 of the legislation which implemented the Convention on the Physicial Protection of Nuclear Material, codified at 18 U.S.C. 831;

(28) The successful effort to obtain agreements from other countries to dismantle and destroy nuclear weapons has resulted in increased packaging and transportation of nuclear materials, thereby creating more opportunities for their unlawful diversion or theft;

(29) The illicit trafficking in the relatively more common, commercially available and usable nuclear and byproduct materials poses a potential to cause significant loss of life and/or environmental damage;

(30) Reported trafficking incidents in the early 1990's suggest that the individuals involved in trafficking these materials from Eurasia and Eastern Europe frequently conducted their black market sales within the Federal Republic of Germany, the Baltic States, and to a lesser extent in the Middle European countries;

(31) The international community has become increasingly concerned over the illegal possession of nuclear and nuclear byproducts materials;

(32) The potentially disastrous ramifications of increased access by terrorists to nuclear and nuclear byproduct materials pose such a significant future threat that the United States must use all lawful methods available to combat the illegal use of such materials;

(33) The United States has an interest in encouraging United States corporations to do business in the countries which comprised the former Soviet Union, as well as in other developing democracies; protection of such corporations from threats created by the unlawful use of nuclear materials is important to encourage such business ventures, and to further the foreign relations and commerce of the United States;

(34) The nature of nuclear contamination is such that it may affect the health, environment, and property of United States nationals even if the acts which constitute the illegal activity occur outside the territory of the United States, and are primarily directed toward non-nationals of the United States;

(35) Plastic explosives were used by terrorists in the bombings of Pan Am flight 103 in December 1988 and UTA flight 772 in September 1989;

(36) Plastic explosives currently can be used with little likelihood of detection for acts of unlawful interference with civil aviation, maritime navigation, and other modes of transportation;

(37) The marking of plastic explosives for the purpose of detection would contribute significantly to the prevention and punishment of such unlawful acts; and

(38) In order to deter and detect the unlawful use of plastic explosives, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991, requires each contracting State to adopt appropriate measures to ensure that plastic explosives are duly marked and controlled.

The Congress further finds:

(39) Such international terrorist offenses place innocent lives in jeopardy, endanger national security, affect domestic tranquility, and gravely impact on interstate and foreign commerce;

(40) Such international terrorist offenses involve international associations, communication, and mobility which can often be addressed effectively only at the federal law enforcement level;

(41) There previously has been no federal criminal statute which provides a comprehensive basis for addressing acts of international terrorism carried out within the United States;

(42) There previously has been no federal provision that specifically prohibits fund raising within the United States on behalf of international terrorist organizations;

(43) There previously has been no adequate procedure under the immigration law that permits the expeditious removal of resident and non-resident alien terrorists;

(44) There previously has been no federal criminal statute which provides adequate protection to United States interests from non-weapons grade, yet hazardous radioactive material, and from the illegal diversion of nuclear materials which are held for other than peaceful purposes;

(45) There previously has been no federal law that requires the marking of plastic explosives to improve their detectability; and

(46) Congress has the power under the interstate and foreign commerce clause, and other provisions of the Constitution, to enact the following measures against international terrorism in order to help ensure the integrity and safety of the Nation.

(b) The purposes of this Act are to provide:

(1) federal law enforcement the necessary tools and fullest possible basis allowed under the Constitution of the United States to address, pursuant to the rule of law, acts of international terrorism occurring within the United States, or directed against the United States or its nationals anywhere in the world;

(2) the Federal Government the fullest possible basis, consistent with the Constitution of the United States, to prevent persons and organizations within the jurisdiction of the United States from providing funds, directly or indirectly, to organizations, including subordinate or affiliated persons, designated by the President as engaging in terrorism, unless authorized under this Act;

(3) procedures which, consistent with principles of fundamental fairness, will allow the government to deport resident and non-resident alien terrorists promptly without compromising intelligence sources and methods;

(4) provide federal law enforcement the necessary tools and fullest possible basis allowed under the Constitution of the United States to combat the threat of nuclear contamination and proliferation which may result from illegal possession and use of radioactive materials; and

(5) fully implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991.

TITLE I—SUBSTANTIVE CRIMINAL LAW ENHANCEMENTS

SEC. 101. ACTS OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.

(a) OFFENSE.—Chapter 113B of title 18, United States Code, is amended by inserting after section 2332a this new section:

"2332b. Acts of terrorism transcending national boundaries

"(a) FINDINGS AND PURPOSE.—

"(1) The Congress hereby finds that—

"(A) international terrorism is a serious and deadly problem which threatens the interests of this nation not only overseas but also within our territory;

"(B) international terrorists have demonstrated their intention and capability of carrying out attacks within the United States by, for example, bombing the World Trade Center in New York and undertaking attacks, including assassinations, against former colleagues and opponents who have taken up residence in this country;

"(C) United States foreign policy interests are seriously affected by terrorist acts within the United States directed against foreign governments and their people;

"(D) such offenses place innocent lives in jeopardy, endanger national security, affect

domestic tranquility, and gravely impact on interstate and foreign commerce;

"(E) such offenses involve international associations, communication, and mobility which often can be addressed effectively only at the federal law enforcement level; and

"(F) there previously has been no federal criminal statute which provides a comprehensive basis for addressing acts of international terrorism carried out within the United States.

"(2) The purpose of this section is to provide federal law enforcement the fullest possible basis allowed under the Constitution to address acts of international terrorism occurring within the United States.

"(b) PROHIBITED ACTS.—

"(1) Whoever, in a circumstance described in subsection (c),

"(A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any individual within the United States; or

"(B) destroys or damages any structure, conveyance or other real or personal property within the United States,

in violation of the laws of any State or the United States shall be punished as prescribed in subsection (d).

"(2) Whoever threatens to commit an offense under subsection (b)(1), or attempts or conspires so to do, shall be punished as prescribed in subsection (d).

"(c) JURISDICTIONAL BASES.—The circumstances referred to in subsection (b) are:

"(1) any of the offenders travels in commerce with the intent to commit the offense or to escape apprehension after the commission of such offense;

"(2) the mail, or any facility utilized in any manner in commerce, is used in furtherance of the commission of the offense or to effect the escape of any offender after the commission of such offense;

"(3) the offense obstructs, delays or affects commerce in any way or degree or would have so obstructed, delayed or affected commerce if the offense had been consummated;

"(4) the victim, or intended victim, is the United States Government or any official, officer, employee or agent of the legislative, executive or judicial branches, or of any department or agency, of the United States;

"(5) the structure, conveyance or other real or personal property (A) was used in commerce or in any activity affecting commerce, or (B) was in whole or in part owned, possessed, or used by, or leased to (I) the United States, or any department or agency thereof, or (II) any institution or organization receiving federal financial assistance or insured by any department or agency of the United States;

"(6) any victim, or intended victim, of the offense is, at the time of the offense, traveling in commerce;

"(7) any victim, intended victim or offender is not a national of the United States;

"(8) the offense is committed in the territorial sea (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) of the United States; or

"(9) the offense is committed in those places within the United States that are in the special maritime and territorial jurisdiction of the United States.

Jurisdiction shall exist over all principals and coconspirators of an offense under subsection (b), and accessories after the fact to any offense based upon subsection (b), if at least one of the above circumstances is applicable to at least one offender.

"(d) PENALTIES.—Whoever violates this section shall, in addition to the punishment provided for any other crime charged in the indictment, be punished—

"(1) for a killing or if death results to any person from any other conduct prohibited by this section, by death or by imprisonment for any term of years or for life;

"(2) for kidnapping, by imprisonment for any term of years or for life;

"(3) for maiming, by imprisonment for not more than thirty-five years;

"(4) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than thirty years;

"(5) for destroying or damaging any structure, conveyance or other real or personal property, by imprisonment for not more than twenty-five years;

"(6) for attempting or conspiring to commit an offense, for any term of years up to the maximum punishment that would have applied had the offense been completed; and

"(7) for threatening to commit an offense under this section, by imprisonment for not more than ten years.

Notwithstanding any other provision of law, the court shall not place on probation any person convicted of a violation of this section; nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment.

"(e) LIMITATION ON PROSECUTION.—No indictment for any offense described in this section shall be sought by the United States except after the Attorney General, or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions, has made a written certification that, in the judgment of the certifying official, such offense, or any activity preparatory to its commission, transcended national boundaries and that the offense appears to have been intended to coerce, intimidate, or retaliate against a government or a civilian population, including any segment thereof.

"(f) INVESTIGATIVE RESPONSIBILITY.—Violations of this section shall be investigated by the Attorney General. Assistance may be requested from any Federal, State or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

"(g) EVIDENCE.—

"(1) The prosecution is not required to prove knowledge by any defendant of a jurisdictional base alleged in the indictment.

"(2) In a prosecution under this section that is based upon the adoption of State law, only the elements of the offense under State law, and not any provisions pertaining to criminal procedure or evidence, are adopted.

"(h) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial federal jurisdiction (1) over any offense under subsection (b), including any threat, attempt, or conspiracy to commit such offense, and (2) over conduct which, under section 3 of this title, renders any person an accessory after the fact to an offense under subsection (b).

"(i) DEFINITIONS.—As used in this section, the term—

"(1) 'commerce' has the meaning given such term in section 1951(b)(3) of this title;

"(2) 'facility utilized in any manner in commerce' includes means of transportation, communication, and transmission;

"(3) 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(4) 'serious bodily injury' has the meaning prescribed in section 1365(g)(3) of this title;

"(5) 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory or possession of the United States; and

"(6) 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for Chapter 113B of title 18, United States Code, is amended by inserting after "2332a. Use of Weapons of Mass Destruction." the following:

"2332b. Acts of terrorism transcending national boundaries."

(c) STATUTE OF LIMITATIONS AMENDMENT.—Section 3286 of title 18, United States Code, is amended by—

(1) striking "any offense" and inserting "any non-capital offense";

(2) striking "36" and inserting "37";

(3) striking "2331" and inserting "2332";

(4) striking "2339" and inserting "2332a"; and

(5) inserting "2332b (acts of terrorism transcending national boundaries)," after "(use of weapons of mass destruction),".

(d) PRESUMPTIVE DETENTION.—Section 3142(e) of title 18, United States Code, is amended by inserting "or section 2332b" after "section 924(c)".

(e) WIRETAP AMENDMENT.—Section 2518(11)(b)(ii) of title 18, United States Code, is amended by—

(1) inserting "(A)" before "thwart" and

(2) inserting "or (B) commit a violation of section 2332b of this title" after "facilities".

SEC. 102. CONSPIRACY TO HARM PEOPLE AND PROPERTY OVERSEAS.

(a) Section 956 of chapter 45 of title 18, United States Code, is amended to read as follows:

"956. Conspiracy to kill, kidnap, maim, or injure certain property in a foreign country

"(a)(1) Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnaping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if he or any such other person commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).

"(2) The punishment for an offense under subsection (a)(1) of this section is—

"(A) imprisonment for any term of years of for life if the offense is conspiracy to murder or kidnap; and

"(B) imprisonment for not more than thirty-five years if the offense is conspiracy to maim.

"(b) Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons are located, to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield or other public utility, public conveyance or public structure, or any religious, educational or cultural property so situated, shall, if he or any such other person commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than twenty-five years.".

(b) The chapter analysis for chapter 45 of title 18, United States Code, is amended by

striking "956. Conspiracy to injure property of foreign government." and inserting in lieu thereof "956. Conspiracy to kill, kidnap, maim, or injure certain property in a foreign country.".

(c) Section 2339A of title 18, United States Code, is amended by—

(1) striking "36" and inserting in lieu thereof "37";

(2) striking "2331" and inserting in lieu thereof "2332";

(3) striking "2339" and inserting in lieu thereof "2332a";

(4) striking "of an escape" and inserting in lieu thereof "or an escape"; and

(5) inserting "956," before "1114."

SEC. 103. CLARIFICATION AND EXTENSION OF CRIMINAL JURISDICTION OVER CERTAIN TERRORISM OFFENSES OVERSEAS.

(a) Section 46502(b) of title 49, United States Code, is amended by—

(1) in paragraph (1), striking "and later found in the United States";

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

"(2) There is jurisdiction over the offense in paragraph (1) if—

"(A) a national of the United States was aboard the aircraft;

"(B) an offender is a national of the United States; or

"(C) an offender is afterwards found in the United States."; and

(3) inserting a new paragraph (3) as follows:

"(3) For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(b) Section 32(b) of title 18, United States Code, is amended by—

(1) striking ", if the offender is later found in the United States,"; and

(2) adding at the end the following two new paragraphs:

"(5) There is jurisdiction over an offense in this subsection if—

"(A) a national of the United States was on board, or would have been on board, the aircraft;

"(B) an offender is a national of the United States; or

"(C) an offender is afterwards found in the United States.

"(6) For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(c) Section 1116 of title 18, United States Code, is amended by—

(1) in subsection (b), adding at the end a new paragraph (7) as follows:

"(7) 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).'"; and

(2) in subsection (c), striking the first sentence and inserting the following:

"If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

(d) Section 112 of title 18, United States Code, is amended by—

(1) in subsection (c), inserting "national of the United States," before "and"; and

(2) in subsection (e), striking the first sentence and inserting the following:

"If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

(e) Section 878 of title 18, United States Code, is amended by—

(1) in subsection (c), inserting "national of the United States," before "and"; and

(2) in subsection (d) striking the first sentence and inserting the following:

"If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

(f) Section 1201(e) of title 18, United States Code, is amended by—

(1) striking the first sentence and inserting the following:

"If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States."; and

(2) adding at the end thereof the following:

"For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(g) Section 37(b)(2) of title 18, United States Code, is amended—

(1) by inserting "(A)" before "the offender is later found in the United States"; and

(2) by inserting "; or (B) an offender or a victim is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)))" after "the offender is later found in the United States".

(h) Section 178 of title 18, United States Code, is amended by—

(1) striking the "and" at the end of paragraph (3);

(2) striking the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) adding the following at the end thereof:

"(5) the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

TITLE II—IMMIGRATION LAW IMPROVEMENTS

SEC. 201. ALIEN TERRORIST REMOVAL PROCEDURES.

(a) FINDINGS AND PURPOSE.—

(1) The Congress hereby finds that—

(A) international terrorism is a serious and deadly problem which threatens the interests of this nation overseas and within our territory;

(B) until recently, United States asylum processing procedures have been complicated and often duplicative, providing a powerful incentive for individuals, including terrorists, without a genuine claim, to apply for asylum and remain in the United States;

(C) while most aliens justify the trust placed in them by our immigration policies, a dangerous few utilized access to the United States to create significant infrastructures and cells in the United States in order to carry out their terrorist activity to the detriment of the nation's national security and foreign policy interests;

(D) the bombing of the World Trade Center exemplifies the danger posed to the United States and its citizens by alien terrorists;

(E) similarly, some foreign terrorist organizations utilize associated aliens within the United States to raise funds to facilitate their overseas terrorist acts against U.S. nationals as well as against foreign governments and their citizens; and

(F) current immigration laws and procedures are not effective in addressing the alien terrorist problem, as they require the government to place sensitive intelligence sources and methods at risk and allow the alien to remain within the United States for the prolonged period necessary to pursue a deportation action. Moreover, under the current statutory framework a few high ranking members of terrorist organizations have been naturalized as United States citizens because denial of such naturalizations would have necessitated public disclosure of highly classified sources and methods.

(2) The purpose of this section is to provide procedures which, consistent with principles of fundamental fairness, will allow the government to deport alien terrorists promptly without compromising intelligence sources and methods.

(b) ALIEN REMOVAL PROCEDURES.—The Immigration and Nationality Act is amended—

(1) by adding at the end of the table of contents the following:

"TITLE V—ALIEN TERRORIST REMOVAL PROCEDURES.

"Sec. 501. Applicability

"Sec. 502. Special removal hearing

"Sec. 503. Designation of judges

"Sec. 504. Miscellaneous provisions"; and

(2) by adding at the end the following new title:

"TITLE V—ALIEN TERRORIST REMOVAL PROCEDURES

"APPLICABILITY

"Sec. 501. (a) The provisions of this title may be followed in the discretion of the Department of Justice whenever the Department of Justice has classified information that an alien described in paragraph 4(B) of section 241(a), as amended, is subject to deportation because of such section. For purposes of this title, the terms 'classified information' and 'national security' shall have the meaning prescribed in section 1 of the Classified Information Procedures Act, 18 U.S.C. App. III 1.

"(b) Whenever an official of the Department of Justice files, under section 502, an application with the court established under section 503 for authorization to seek removal pursuant to the provisions of this title, the alien's rights regarding removal and expulsion shall be governed solely by the provisions of this title. Except as they are specifically referenced, no other provisions of the Immigration and Nationality Act shall be applicable. An alien subject to removal under these provisions shall have no right of discovery of information derived from electronic surveillance authorized under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et. seq.) or otherwise for national security purposes. Nor shall such alien have the right to seek suppression of evidence. Further, the government is authorized to use, in the removal proceedings, the fruits of electronic surveillance and/or unconsented physical searches authorized under the Foreign

Intelligence Surveillance Act without regard to subsections 106(c), (e), (f), (g), and (h) of that Act. The provisions and requirements of section 3504 of title 18, United States Code, shall not apply to procedures under this title.

"(c) This title is enacted in response to findings of Congress that aliens described in paragraph 4(B) of section 241(a), as amended, represent a unique threat to the security of the United States. It is the intention of Congress that such aliens be promptly removed from the United States following—

"(1) a judicial determination of probable cause to believe that such person is such an alien; and

"(2) a judicial determination pursuant to the provisions of this title that an alien is removable on the grounds that he or she is an alien described in paragraph 4(B) of section 241(a), as amended.

The Congress furthers intends that, other than as provided by this title, such aliens shall not be given a deportation hearing and are ineligible for any discretionary relief from deportation or for relief under section 243(h).

"SPECIAL REMOVAL HEARING

"Sec. 502. (a) Whenever removal of an alien is sought pursuant to the provisions of this title, a written application upon oath or affirmation shall be submitted in camera and ex parte to the court established under section 503 for an order authorizing such a procedure. Each application shall require the approval of the Attorney General or the Deputy Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this title. Each application shall include—

"(1) the identity of the Department of Justice attorney making the application;

"(2) the approval of the Attorney General or the Deputy Attorney General for the making of the application;

"(3) the identity of the alien for whom authorization for the special removal procedure is sought; and

"(4) a statement of the facts and circumstances relied on by the Department of Justice to establish that—

"(A) the alien is an alien as described in paragraph 4(B) of section 241(a), as amended, and is physically present in the United States; and

"(B) with respect to such alien, adherence to the provisions of title II regarding the deportation of aliens would pose a risk to the national security of the United States.

"(b)(1) The application shall be filed under seal with the court established under section 503. The Attorney General may take into custody any alien with respect to whom such an application has been filed and, notwithstanding any other provision of law, may retain such an alien in custody in accordance with the procedures authorized by this title.

"(2) An alien lawfully admitted for permanent residence (hereafter referred to as resident alien) shall be entitled to a release hearing before the judge assigned to the special removal case pursuant to section 503(a). The resident alien shall be granted release pending the special removal hearing, upon such terms and conditions prescribed by the court (including the posting of any monetary amount), if the alien demonstrates to the court that the alien, if released, is not likely to flee and that the alien's release will not endanger national security or the safety of any person or the community. The judge may consider classified information submitted in camera and ex parte in making his determination.

"(C) In accordance with the rules of the court established under section 503, the judge shall consider the application and may consider other information, including classified information, presented under oath or affirmation at an in camera and ex parte hearing on the application. A verbatim record shall be maintained of such a hearing. The application and any other evidence shall be considered by a single judge of that court who shall enter an ex parte order as requested if he finds, on the basis of the facts submitted in the application and any other information provided by the Department of Justice at the in camera and ex parte hearing, there is probable cause to believe that—

"(1) the alien who is the subject of the application has been correctly identified and is an alien as described in paragraph 4(B) of section 241(a), as amended; and

"(2) adherence to the provisions of title II regarding the deportation of the identified alien would pose a risk to the national security of the United States.

"(d) (1) In any case in which the application for the order is denied, the judge shall prepare a written statement of his reasons for the denial and the Department of Justice may seek a review of the denial by the United States Court of Appeals for the District of Columbia Circuit by notice of appeal which must be filed within 20 days. In such a case the entire record of the proceeding shall be transmitted to the Court of Appeals under seal and the Court of Appeals shall hear the matter ex parte.

"(2) If the Department of Justice does not seek review, the alien shall be released from custody, unless such alien may be arrested and taken into custody pursuant to title II as an alien subject to deportation, in which case such alien shall be treated in accordance with the provisions of this Act concerning the deportation of aliens.

"(3) If the application for the order is denied because the judge has not found probable cause to believe that the alien who is the subject of the application has been correctly identified or is an alien as described in paragraph 4(B) of section 241(a), as amended, and the Department of Justice seeks review, the alien shall be released from custody unless such alien may be arrested and taken into custody pursuant to title II as an alien subject to deportation, in which case such alien shall be treated in accordance with the provisions of this Act concerning the deportation of aliens simultaneously with the application of this title.

"(4) If the application for the order is denied because, although the judge found probable cause to believe that the alien who is the subject of the application has been correctly identified and is an alien as described in paragraph 4(B) of section 241(a), as amended, the judge has found that there is not probable cause to believe that adherence to the provisions of title II regarding the deportation of the identified alien would pose a risk to the national security of the United States, the judge shall release the alien from custody subject to the least restrictive condition or combination of conditions of release described in section 3142(b) and (c)(1)(B)(i) through (xiv) of title 18, United States Code, that will reasonably assure the appearance of the alien at any future proceeding pursuant to this title and will not endanger the safety of any other person or the community; but if the judge finds no such condition or combination of conditions the alien shall remain in custody until the completion of any appeal authorized by this title. The provisions of sections 3145 through 3148 of title 18, United States Code, pertaining to review and appeal of a release or detention order, penalties for failure to appear, penalties for an offense committed while on release, and sanctions for violation of a release condition shall apply to an alien to whom the previous sentence applies and—

"(A) for purposes of section 3145 of such title an appeal shall be taken to the United States Court of Appeals for the District of Columbia Circuit; and

"(B) for purposes of section 3146 of such title the alien shall be considered released in connection with a charge of an offense punishable by life imprisonment.

"(e)(1) In any case in which the application for the order authorizing the special procedures of this title is approved, the judge who granted the order shall consider each item of classified information the Department of Justice proposes to introduce in camera and ex parte at the special removal hearing and shall order the introduction of such information pursuant to subsection (j) if he determines the information to be relevant. The Department of Justice shall prepare a written summary of such classified information which does not pose a risk to national security and the judge shall approve the summary if he finds the summary is sufficient to inform the alien of the general nature of the evidence that he is an alien as described in paragraph 4(B) of section 241(a), as amended, and to permit the alien to prepare a defense. The Department of Justice shall cause to be delivered to the alien a copy of the summary.

"(2) If the written summary is not approved by the court, the Department shall be afforded reasonable opportunity to correct the deficiencies identified by the court and submit a revised summary. Thereafter, if the written summary is not approved by the court, the special removal hearing shall be terminated unless the court issues a finding that—

"(A) the continued presence of the alien in the United States, or

"(B) the provision of the required summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person. If such finding is issued, the special removal hearing shall continue, the Department of Justice shall cause to be delivered to the alien a statement that no summary is possible, and the classified information submitted in camera and ex parte may be used pursuant to subsection (j).

"(3) The Department of Justice may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of—

"(A) any determination by the judge pursuant to paragraph (1)—

"(I) concerning whether an item of evidence may be introduced in camera and ex parte; or

"(II) concerning the contents of any summary of evidence to be introduced in camera and ex parte prepared pursuant to paragraph (1); or

"(B) the refusal of the court to make the finding permitted by paragraph (2);

In any interlocutory appeal taken pursuant to this paragraph, the entire record, including any proposed order of the judge or summary of evidence, shall be transmitted to the Court of Appeals under seal and the matter shall be heard ex parte. The Court of Appeals shall consider the appeal as expeditiously as possible.

"(f) In any case in which the application for the order is approved, the special removal

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hearing authorized by this section shall be conducted for the purpose of determining if the alien to whom the order pertains should be removed from the United States on the grounds that he is an alien as described in paragraph 4(b) of section 241(a), as amended. In accordance with subsection (e), the alien shall be given reasonable notice of the nature of the charges against him and a general account of the basis for the charges. The alien shall be given notice, reasonable under all the circumstances, of the time and place at which the hearing will be held. The hearing shall be held as expeditiously as possible.

"(g) The special removal hearing shall be held before the same judge who granted the order pursuant to subsection (e) unless that judge is deemed unavailable due to illness or disability by the chief judge of the court established pursuant to section 503, or has died, in which case the chief judge shall assign another judge to conduct the special removal hearing. A decision by the chief judge pursuant to the preceding sentence shall not be subject to review by either the alien or the Department of Justice.

"(h) The special removal hearing shall be open to the public. The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent him. Such counsel shall be appointed by the judge pursuant to the plan for furnishing representation for any person financially unable to obtain adequate representation for the district in which the hearing is conducted, as provided for in section 3006A of title 18, United States Code. All provisions of that section shall apply and, for purposes of determining the maximum amount of compensation, the matter shall be treated as if a felony was charged. The alien may be called as a witness by the Department of Justice. The alien shall have a right to introduce evidence on his own behalf. Except as provided in subsection (j), the alien shall have a reasonable opportunity to examine the evidence against him and to cross-examine any witness. A verbatim record of the proceedings and of all testimony and evidence offered or produced at such a hearing shall be kept. The decision of the judge shall be based only on the evidence introduced at the hearing, including evidence introduced under subsection (j).

"(i) At any time prior to the conclusion of the special removal hearing, either the alien or the Department of Justice may request the judge to issue a subpoena for the presence of a named witness (which subpoena may also command the person to whom it is directed to produce books, papers, documents, or other objects designated therein) upon a satisfactory showing that the presence of the witness is necessary for the determination of any material matter. Such a request may be made ex parte except that the judge shall inform the Department of Justice of any request for a subpoena by the alien for a witness or material if compliance with such a subpoena would reveal evidence or the source of evidence which has been introduced, or which the Department of Justice has received permission to introduce, in camera and ex parte pursuant to subsection (j), and the Department of Justice shall be given a reasonable opportunity to oppose the issuance of such a subpoena. If an application for a subpoena by the alien also makes a showing that the alien is financially unable to pay for the attendance of a witness so requested, the court may order the costs incurred by the process and the fees of the witness so subpoenaed to be paid for from funds appropriated for the enforcement of title II. A subpoena under this subsection may be served anywhere in the United States. A witness subpoenaed under this subsection shall receive the same fees and expenses as a witness subpoenaed in connection with a civil proceeding in a court of the United States. Nothing in this subsection is intended to allow an alien to have access to classified information.

"(j) When classified information has been summarized pursuant to subsection (e)(1) or where a finding has been made under subsection (e)(2) that no summary is possible, classified information shall be introduced (either in writing or through testimony) in camera and ex parte and neither the alien nor the public shall be informed of such evidence or its sources other than through reference to the summary provided pursuant to subsection (e)(1). Notwithstanding the previous sentence, the Department of Justice may, in its discretion and, in the case of classified information, after coordination with the originating agency, elect to introduce such evidence in open session.

"(k) Evidence introduced at the special removal hearing, either in open session or in camera and ex parte, may, in the discretion of the Department of Justice, include all or part of the information presented under subsections (a) through (c) used to obtain the order for the hearing under this section.

"(l) Following the receipt of evidence, the attorneys for the Department of Justice and for the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien. The attorney for the Department of Justice shall open the argument. The attorney for the alien shall be permitted to reply. The attorney for the Department of Justice shall then be permitted to reply in rebuttal. The judge may allow any part of the argument that refers to evidence received in camera and ex parte to be heard in camera and ex parte.

"(m) The Department of Justice has the burden of showing by clear and convincing evidence that the alien is subject to removal because he is an alien as described in paragraph 4(B) of subsection 241(a) of this Act (8 U.S.C. 1251(a)(4)(B)), as amended. If the judge finds that the Department of Justice has met this burden, the judge shall order the alien removed and, if the alien is a resident alien who was released pending the special removal hearing, order the Attorney General to take the alien into custody.

"(n)(1) At the time of rendering a decision as to whether the alien shall be removed, the judge shall prepare a written order containing a statement of facts found and conclusions of law. Any portion of the order that would reveal the substance or source of information received in camera and ex parte pursuant to subsection (j) shall not be made available to the alien or the public.

"(2) The decision of the judge may be appealed by either the alien or the Department of Justice to the United States Court of Appeals for the District of Columbia Circuit by notice of appeal which must be filed within 20 days, during which time such order shall not be executed. In any case appealed pursuant to this subsection, the entire record shall be transmitted to the Court of Appeals and information received pursuant to subsection (j), and any portion of the judge's order that would reveal the substance or source of such information shall be transmitted under seal. The Court of Appeals shall consider the case as expeditiously as possible.

"(3) In an appeal to the Court of Appeals pursuant to either subsection (d) or (e) of this section, the Court of Appeals shall review questions of law de novo, but a prior finding on any question of fact shall not be set aside unless such finding was clearly erroneous.

"(o) If the judge decides pursuant to subsection (n) that the alien should not be removed, the alien shall be released from custody unless such alien may be arrested and taken into custody pursuant to title II of this Act as an alien subject to deportation, in which case, for purposes of detention, such alien may be treated in accordance with the provisions of this Act concerning the deportation of aliens.

"(p) Following a decision by the Court of Appeals pursuant to either subsection (d) or (n), either the alien or the Department of Justice may petition the Supreme Court for a writ of certiorari. In any such case, any information transmitted to the Court of Appeals under seal shall, if such information is also submitted to the Supreme Court, be transmitted under seal. Any order of removal shall not be stayed pending disposition of a writ of certiorari except as provided by the Court of Appeals or a Justice of the Supreme Court.

"(q) The Department of Justice retains the right to dismiss a removal action at any stage of the proceeding.

"(r) Nothing in this section shall prevent the United States from seeking protective orders and/or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and state secrets privileges.

"DESIGNATION OF JUDGES

"SEC. 503. (a) The Chief Justice of the United States shall publicly designate five district court judges from five of the United States judicial circuits who shall constitute a court which shall have jurisdiction to conduct all matters and proceedings authorized by section 502. The Chief Justice shall publicly designate one of the judges so appointed as the chief judge. The chief judge shall promulgate rules to facilitate the functioning of the court and shall be responsible for assigning the consideration of cases to the various judges.

"(b) Proceedings under section 502 shall be conducted as expeditiously as possible. The Chief Justice, in consultation with the Attorney General, the Director of Central Intelligence and other appropriate federal officials, shall, consistent with the objectives of this title, provide for the maintenance of appropriate security measures for applications for ex parte orders to conduct the special removal hearings authorized by section 502, the orders themselves, and evidence received in camera and ex parte, and for such other actions as are necessary to protect information concerning matters before the court from harming the national security of the United States.

"(c) Each judge designated under this section shall serve for a term of five years and shall be eligible for redesignation, except that the four associate judges first designated under subsection (a) shall be designated for terms of from one to four years so that the term of one judge shall expire each year.

"MISCELLANEOUS PROVISIONS

"SEC. 504. (a)(1) Following a determination pursuant to this title that an alien shall be removed, and after the conclusion of any judicial review thereof, the Attorney General

may retain the alien in custody or, if the alien was released pursuant to subsection 502(o), may return the alien to custody, and shall cause the alien to be transported to any country which the alien shall designate provided such designation does not, in the judgment of the Attorney General, in consultation with the Secretary of State, impair the obligation of the United States under any treaty (including a treaty pertaining to extradition) or otherwise adversely affect the foreign policy of the United States.

"(2) If the alien refuses to choose a country to which he wishes to be transported, or if the Attorney General, in consultation with the Secretary of State, determines that removal of the alien to the country so selected would impair a treaty obligation or adversely affect United States foreign policy, the Attorney General shall cause the alien to be transported to any country willing to receive such alien.

"(3) Before an alien is transported out of the United States pursuant to paragraph (1) or (2) or pursuant to an order of exclusion because such alien is excludable under paragraph 212(a)(3)(B) of this Act (8 U.S.C. 1182(a)(3)(B), as amended, he shall be photographed and fingerprinted, and shall be advised of the provisions of subsection 276(b) of this Act (8 U.S.C. 1326(b)).

"(4) If no country is willing to receive such an alien, the Attorney General may, notwithstanding any other provision of law, retain the alien in custody. The Attorney General, in coordination with the Secretary of State, shall make periodic efforts to reach agreement with other countries to accept such an alien and at least every six months shall provide to the alien a written report on his efforts. Any alien in custody pursuant to this subsection shall be released from custody solely at the discretion of the Attorney General and subject to such conditions as the Attorney General shall deem appropriate. The determinations and actions of the Attorney General pursuant to this subsection shall not be subject to judicial review, including application for a writ of habeas corpus, except for a claim by the alien that continued detention violates his rights under the Constitution. Jurisdiction over any such challenge shall lie exclusively in the United States Court of Appeals for the District of Columbia Circuit.

"(b)(1) Notwithstanding the provisions of subsection (a), the Attorney General may hold in abeyance the removal of an alien who has been ordered removed pursuant to this title to allow the trial of such alien on any federal or State criminal charge and the service of any sentence of confinement resulting from such a trial.

"(2) Pending the commencement of any service of a sentence of confinement by an alien described in paragraph (1), such an alien shall remain in the custody of the Attorney General, unless the Attorney General determines that temporary release of the alien to the custody of State authorities for confinement in a State facility is appropriate and would not endanger national security or public safety.

"(3) Following the completion of a sentence of confinement by an alien described in paragraph (1) or following the completion of State criminal proceedings which do not result in a sentence of confinement of an alien released to the custody of State authorities pursuant to paragraph (2), such an alien shall be returned to the custody of the Attorney General who shall proceed to carry out the provisions of subsection (a) concerning removal of the alien.

"(c) For purposes of section 751 and 752 of title 18, United States Code, an alien in the custody of the Attorney General pursuant to this title shall be subject to the penalties provided by those sections in relation to a person committed to the custody of the Attorney General by virtue of an arrest on a charge of felony.

"(d)(1) An alien in the custody of the Attorney General pursuant to this title shall be given reasonable opportunity to communicate with and receive visits from members of his family, and to contact, retain, and communicate with an attorney.

"(2) An alien in the custody of the Attorney General pursuant to this title shall have the right to contact an appropriate diplomatic or consular official of the alien's country of citizenship or nationality or of any country providing representation services therefore. The Attorney General shall notify the appropriate embassy, mission, or consular office of the alien's detention.".

(c) ADDITIONAL AMENDMENTS TO INA.—(1) Subsection 106(b) of the Immigration and Nationality Act (8 U.S.C. 1105a(b)) is amended by adding at the end thereof the following sentence: "Jurisdiction to review an order entered pursuant to the provisions of section 235(c) of this Act concerning an alien excludable under paragraph 3(B) of subsection 212(a) (8 U.S.C. 1182(a)), as amended, shall rest exclusively in the United States Court of Appeals for the District of Columbia Circuit.".

(2) Section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) is amended by deleting the word "or" at the end of subparagraph (b)(1), by replacing the period at the end of subparagraph (b)(2) with a semicolon followed by the word "or", and by adding at the end of paragraph (b) the following subparagraph: "(3) who has been excluded from the United States pursuant to subsection 235(c) of this Act (8 U.S.C. 1225(c)) because such alien was excludable under paragraph 3(B) of subsection 212(a) thereof (8 U.S.C. 1182(a)(3)(B)), as amended, or who has been removed from the United States pursuant to the provisions of title V of the Immigration and Nationality Act, and who thereafter, without the permission of the Attorney General, enters the United States or attempts to do so shall be fined under title 18, United States Code, and imprisoned for a period of ten years which sentence shall not run concurrently with any other sentence."

(3) Section 106(a) of the Immigration and Nationality Act (8 U.S.C. 1105a(a)) is amended by striking from the end of subparagraph 9 the semicolon and the word "and" and inserting a period in lieu thereof, and by striking subparagraph 10.

(d) EFFECTIVE DATE.—The provisions of this Act shall be effective upon enactment, and shall apply to all aliens without regard to the date of entry or attempted entry into the United States.

SEC. 202. CHANGES TO THE IMMIGRATION AND NATIONALITY ACT TO FACILITATE REMOVAL OF ALIEN TERRORISTS.

(a) Section 212(a)3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended to read as follows:

"(B) TERRORISM ACTIVITIES

"(i) IN GENERAL

Any alien who

"(I) has engaged in a terrorism activity, or

"(II) a consular officer or the Attorney General knows, or has reason to believe, is likely to engage after entry in any terrorism activity (as defined in clause (iii)),

is excludable. An alien who is a representative of the Palestine Liberation Organization, or any terrorist organization designated by proclamation by the President after he has found such organization to be detrimental to the interests of the Untied States, is considered, for purposes of this Act, to be engaged in a terrorism activity. As used in clause (B)(i), the term "representative" includes an officer, official or spokesman of the organization and any person who directs, counsels, commands or induces such organization or its members to engage in terrorism activity. For purposes of subparagraph (3)(B)(i), the determination by the Secretary of State or the Attorney General that an alien is a representative of the organization shall be controlling and shall not be subject to review by any court.

"(ii) TERRORISM ACTIVITY DEFINED.—As used in this Act, the term 'terrorism activity' means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State), and which involves any of the following:

"(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

"(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

"(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

"(IV) An assassination.

"(V) The use of any—

"(a) biological agent, chemical agent, or nuclear weapon or device, or

"(b) explosive, firearm, or other weapon (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

"(VI) A threat, attempt, or conspiracy to do any of the foregoing.

"(iii) ENGAGE IN TERRORISM ACTIVITY DEFINED.—As used in this Act, the term 'engage in terrorism activity' means to commit, in an individual capacity or as a member of an organization, an act of terrorism activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government which the actor knows or reasonably should know has committed or plans to commit terrorism activity, including any of the following acts:

"(I) The preparation or planning of terrorism activity.

"(II) The gathering of information on potential targets for terrorism activity.

"(III) The providing of any type of material support, including a safe house, transportation, communications, funds, false documentation or identification, weapons, explosives, or training.

"(IV) The soliciting of funds or other things of value for terrorism activity or for any terrorist organization.

"(V) The solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in a terrorism activity.

"(iv) TERRORIST ORGANIZATION DEFINED.—As used in this Act, the term 'terrorist organization' means any organization engaged, or which has a significant subgroup which engages, in terrorism activity, regardless of

any legitimate activities conducted by the organization or its subgroups.

"(v) TERRORISM DEFINED.—As used in this Act, the term 'terrorism' means premeditated, politically motivated violence perpetrated against noncombatant targets.".

(b) Section 241(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. §1251(a)(4)(B)) is amended to read as follows:

"(B) TERRORISM ACTIVITIES.—Any alien who has engaged, is engaged, or at any time after entry engages in any terrorism activity (as defined in section 212(a)(3)(B)).".

(c) Section 291 of the Immigration and Nationality Act (8 U.S.C. 1361) is amended by adding after "custody of the Service." this new sentence:

"The limited production authorized by this provision shall not extend to the records of any other agency or department of the Government or to any documents that do not pertain to the respondent's entry.".

(d) Section 242(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)) is amended by inserting after "Government" the following:

". In the case of an alien who is not lawfully admitted for permanent residence and notwithstanding the provisions of any other law, reasonable opportunity shall not comprehend access to classified information, whether or not introduced in evidence against him. The provisions and requirements of 18 U.S.C. §3504 and 50 U.S.C. §1801 et seq. shall not apply in such cases"."

SEC. 203. ACCESS TO CERTAIN CONFIDENTIAL INS FILES THROUGH COURT ORDER.

(a) Section 245A(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1255a(c)(5) is amended by—

(1) inserting "(i)" after "except the Attorney General"; and

(2) inserting after "Title 13" the following:

"and (ii) may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used:

"(I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

"(II) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the legalization application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant".

(b)(1) Section 210(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1160(b)(5)) is amended by inserting ", except as allowed by a court order issued pursuant to paragraph (6) of this subsection" after "consent of the alien".

(2) Section 210(b)(6) of the Immigration and Nationality Act (8 U.S.C. 1160(b)(6)) is amended by inserting the following sentence before "Anyone who uses";

"Except the Attorney General may authorize an application to a Federal Court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used:

"(E) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

"(F) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the special agricultural worker application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant.".

TITLE III—CONTROLS OVER TERRORIST FUND-RAISING

SEC. 301. TERRORIST FUND-RAISING PROHIBITED.

(a) Chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following new section:

"2339B. Fund-raising for terrorist organizations

"(a) FINDINGS AND PURPOSE.—

"(1) The Congress hereby finds that—

"(A) terrorism is a serious and deadly problem which threatens the interests of the United States both overseas and within our territory;

"(B) the nation's security interests are gravely impacted by terrorist attacks carried out overseas against United States Government facilities and officials, as well as against other American citizens present in foreign countries;

"(C) United States foreign policy interests are profoundly affected by terrorist acts overseas directed against foreign governments and their people;

"(D) United States economic interests are significantly impacted by terrorist attacks carried out in foreign countries against United States citizens and businesses;

"(E) international cooperation is required for an effective response to terrorism, as demonstrated by the numerous multilateral conventions in force providing universal prosecutive jurisdiction over persons involved in a variety of terrorist acts, e.g., hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage;

"(F) some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds within the United States or use the United States as a conduit for their receipt of funds raised in other nations; and

"(G) the provision of funds to organizations that engage in terrorism serves to facilitate their terrorist endeavors, regardless of whether the funds, in whole or in part, are intended or claimed to be used for non-violent purposes.

"(2) The purpose of this section is to provide the Federal Government the fullest possible basis, consistent with the Constitution, to prevent persons within the United States or subject to the jurisdiction of the United States from providing funds, directly or indirectly, to foreign organizations, including subordinate or affiliated persons, designated by the President as engaging in terrorism, unless authorized under this section.

"(b) AUTHORITY.—Notwithstanding any other provision of law, the President is authorized, under such regulations as he may prescribe, to regulate or prohibit:

"(1) fund-raising or the provision of funds for use by or for the benefit of any foreign organization, including persons assisting such organization in fund-raising, that the President has designated pursuant to subsection (c) as being engaged in terrorism activities; or

"(2) financial transactions with any such foreign organization,

within the United States or by any person subject to the jurisdiction of the United States anywhere.

"(c) DESIGNATION.—

"(1) Pursuant to the authority granted in subsection (b), the President is authorized to designate any foreign organization based on finding that—

"(A) the organization engages in terrorism activity as defined in section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. §1182(a)(3)(B)); and

"(B) the organization's terrorism activities threaten the national security, foreign policy, or economy of the United States.

"(2) Pursuant to the authority granted in subsection (b), the President is also authorized to designate persons which are raising funds for, or acting for or on behalf of, any organization designated pursuant to subsection (c)(1) above.

"(3) If the President finds that the conditions which were the basis for any designation issued under this subsection have changed in such a manner as to warrant revocation of such designation, or that the national security, foreign relations, or economic interests of the United States so warrant, he may revoke such designation in whole or in part.

"(4) Any designation, or revocation thereof, issued pursuant to this subsection shall be published in the Federal Register and shall become effective immediately on publication.

"(5) Any revocation of a designation shall not affect any action or proceeding based on any conduct committed prior to the effective date of such revocation.

"(6) Any finding made in my designation issued pursuant to paragraph (1) of this subsection that a foreign organization engages in terrorism activity shall be conclusive. No question concerning the validity of the issuance of such designation may be raised by a defendant in a criminal prosecution as a defense in or as an objection to any trial or hearing if such designation was issued and published in the Federal Register in accordance with this subsection.

"(d) PROHIBITED ACTIVITIES.—

"(1) Except as authorized pursuant to the procedures in subsection (e), it shall be unlawful for any person within United States, or any persons subject to the jurisdiction of the United States anywhere, to directly or indirectly, raise, receive or collect on behalf of, or furnish, give, transmit, transfer or provide funds to or for an organization or person designated by the President under subsection (c), or to attempt to do any of the foregoing.

"(2) It shall be unlawful for any person within the United States or any person subject to the jurisdiction of the United States anywhere, acting for or on behalf of any organization or person designated under subsection (c), (A) to transmit, transfer, or receive any funds raised in violation of subsection (d)(1) or (B) to transmit, transfer, or dispose of any funds in which any organization or person designated pursuant to subsection (c) has an interest.

"(e) AUTHORIZED TRANSACTIONS.—

"(1) The Secretary shall publish regulations, consistent with the provisions of this subsection, setting forth the procedures to be followed by persons seeking to raise or provide funds for an organization designated under subsection (c)(1).

"(2) Any person within the United States, or any person subject to the jurisdiction of United States anywhere, who seeks to solicit funds for or to transfer funds to any organization or person designated under subsection (c) shall, regardless of whether it has an agency relationship with the designated organization or person, first obtain a license

from the Secretary and may thereafter solicit funds or transfer funds to a designated organization or person only as permitted under the terms of a license issued by the Secretary.

"(3) The Secretary shall grant a license only after the person establishes to the satisfaction of the Secretary that—

"(A) the funds are intended to be used exclusively for religious, charitable, literary, or educational purposes; and

"(B) all recipient organizations in any fund-raising chain have effective procedures in place to ensure that the funds (i) will be used exclusively for religious, charitable, literary, or educational purposes and (ii) will not be used to offset a transfer of funds to be used in terrorist activity.

"(4) Any person granted a license shall maintain books and records, as required by the Secretary, that establish the source of all funds it receives, expenses it incurs, and disbursements it makes. Such books and records shall be made available for inspection within two business days of a request by the Secretary. Any person granted a license shall also have an agreement with any recipient organization or person that such organization's or person's books and records, wherever located, must be made available for inspection of the Secretary upon a request of the Secretary at a place and time agreeable to that organization or person and the Secretary.

"(5) The Secretary may also provide by regulation procedures for the licensing of transactions otherwise prohibited by this section in cases found by the Secretary to be consistent with the statement of purpose in subsection (a)(2).

"(f) SPECIAL REQUIREMENTS FOR FINANCIAL INSTITUTIONS.—

"(1) Except as authorized by the Secretary by means of directives, regulations, or licenses, any financial institution which becomes aware that it has possession of or control over any funds in which an organization or person designated under subsection (c) has an interest, shall—

"(A) retain possession of or maintain control over such funds; and

"(B) report to the Secretary the existence of such funds in accordance with the regulations prescribed by the Secretary.

"(2) Any financial institution that fails to report to the Secretary the existence of such funds shall be subject to a civil penalty of $250 per day for each day that it fails to report to the Secretary—

"(A) in the case of funds being possessed or control at the time of the designation of the organization or person, within ten days after the designation; and

"(B) in the case of funds whose possession of or control over arose after the designation of the organization or person, within ten days after the financial institution obtained possession of or control over the funds.

"(g) INVESTIGATIONS.—

"Any investigation emanating from a possible violation of this section, or of any license, order, or regulation issued pursuant to this section, shall be conducted by the Attorney General, except that investigations relating to (1) a licensee's compliance with the terms of a license issued by the Secretary pursuant to subsection (e) of this section, (2) a financial institution's compliance with the requirements of subsection (f) of this section, and (3) civil penalty proceedings authorized pursuant to subsection (i) of this section, shall be conducted in coordination with the Attorney General by the office within the Department of the Treasury responsible for licensing and civil penalty proceedings authorized by this section. Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action.

"(h) RECORDKEEPING AND REPORTING; CIVIL PROCEDURES.—

"(1) Notwithstanding any other provision of law, in exercising the authorities granted by this section, the Secretary and the Attorney General may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this section either before, during, or after the completion thereof, or relative to any funds referred to in this section, or as may be necessary to enforce the terms of this section. In any case in which a report by a person could be required under this subsection, the Secretary or the Attorney General may require the production of any books of account, records, contracts, letters, memoranda, or other papers or documents, whether maintained in hard copy or electronically, in the control or custody of such person.

"(2) Compliance with any regulation, instruction, or direction issued under this section shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this section, or any regulation, instruction, or direction issued under this section.

"(3) In carrying out their function under this section, the Secretary and the Attorney General may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence.

"(4) In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which the subpoenaed person carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the agency issuing the subpoena, or other order or direction, to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

"(i) PENALTIES.—

"(1) Any person who knowingly violates subsection (d) shall be fined under this title, or imprisoned for up to 10 years, or both.

"(2)(A) Any person who fails to maintain or to make available to the Secretary upon his request or demand the books or records required by subsection (e), or by regulations promulgated thereunder, shall be subject to a civil penalty of $50,000 or twice the amount of money which would have been documented had the books and records been properly maintained, whichever is greater.

"(B) Any person who fails to take the actions required of financial institutions pursuant to subsection (f)(1), or by regulations promulgated thereunder, shall be subject to a civil penalty of $50,000 per violation, or twice the amount of money of which the financial institution was required to retain possession or control, whichever is greater.

"(C) except as otherwise specified in this section, any person who violates any license, order, direction, or regulation issued pursuant to this section shall be subject to a civil penalty of $50,000 per violation, or twice the value of the violation, whichever is greater.

"(3) Any person who intentionally fails to maintain or to make available to the Secretary the books or records required by subsection (e), or by regulations promulgated thereunder, shall be fined under this title, or imprisoned for up to five years, or both.

"(4) Any organization convicted of an offense under (h) (1) or (3) of this section shall, upon conviction, forfeit any charitable designation it might have received under the Internal Revenue Code.

"(j) INJUNCTION.—

"(1) Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act which constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

"(2) A proceeding under this subsection is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

"(k) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

"(l) CLASSIFIED INFORMATION IN CIVIL PROCEEDINGS BROUGHT BY THE UNITED STATES.—

"(1) DISCOVERY OF CLASSIFIED INFORMATION BY DEFENDANTS.—A court, upon a sufficient showing, may authorize the United States to delete specified items of classified information from documents to be introduced into evidence and/or made available to the defendant through discovery under the Federal Rules of Civil Procedure, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The court shall permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an *ex parte* showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal. If the court enters an order denying relief to the United States under this provision, the United States may take an immediate, interlocutory appeal in accordance with the provisions of paragraph (3) of this subsection. In the event of such an appeal, the entire text of the underlying written statement of the United States, together with any transcripts of arguments made *ex parte* to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

"(2) Introduction of classified information; precautions by court

"(A) EXHIBITS.—The United States, in order to prevent unnecessary or inadvertent disclosure of classified information in a civil trial or other proceeding brought by the United States under this section, may petition the court *ex parte* to admit, in lieu of

classified writings, recordings or photographs, one or more of the following: (i) copies of those items from which classified information has been deleted, (ii) stipulations admitting relevant facts that specific classified information would tend to prove, or (iii) a summary of the specific classified information. The court shall grant such a motion of the United States if it finds that the redacted item, stipulation or summary will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information.

"(B) TAKING OF TRIAL TESTIMONY.—During the examination of a witness in any civil proceeding brought by the United States under this section, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible. Following such an objection, the court shall take suitable action to determine whether the response is admissible and, in doing so, shall take precautions to guard against the compromise of any classified information. Such action may include permitting the United States to provide the court, *ex parte*, with a proffer of the witness's response to the question or line of inquiry, and requiring the defendant to provide the court with a proffer of the nature of the information he seeks to elicit.

"(C) APPEAL.—If the court enters an order denying relief to the United States under this subsection, the United States may take an immediate interlocutory appeal in accordance with paragraph (3) of this subsection.

"(3) Interlocutory appeal

"(A) An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of a district court authorizing the disclosure of classified information, imposing sanctions for nondisclosure of classified information, or refusing a protective order sought by the United States to prevent the disclosure of classified information.

"(B) An appeal taken pursuant to this section either before or during trial shall be expedited by the court of appeals. Prior to trial, an appeal shall be taken within ten days after the decision or order appealed from and the trial shall not commence until the appeal is resolved. If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved and the court of appeals (1) shall hear argument on such appeal within four days of the adjournment of the trial, (2) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (3) shall render its decision within four days of argument on appeal, and (4) may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

"(4) Nothing in this subsection shall prevent the United States from seeking protective orders and/or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and state secrets privilege.

"(m) DEFINITIONS.—As used in this section, the term—

"(1) 'classified information' means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y));

"(2) 'financial institution' has the meaning prescribed in section 5312(a)(2) of title 31, United States Code, including any regulations promulgated thereunder;

"(3) 'funds' includes coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;

"(4) 'national security' means the national defense and foreign relations of the United States;

"(5) 'person' includes an individual, partnership, association, group, corporation or other organization;

"(6) 'Secretary' means the Secretary of the Treasury; and

"(7) 'United States', when used in a geographical sense, includes all commonwealths, territories and possessions of the United States.".

(b) TECHNICAL AMENDMENT.—The analysis for chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following:

"2339B. Fund-raising for terrorists organizations".

(c) Section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)), as amended by section 202(a) of this Act, is further amended by inserting after the phrase "Palestine Liberation Organization" the following: ", an organization designated by the President under section 2339B of title 18, United States Code".

(d) The provisions of section 2339B(k) of title 18, United States Code, (relating to classified information in civil proceedings brought by the United States) shall also be applicable to civil proceedings brought by the United States under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

TITLE IV—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

SEC. 401. SHORT TITLE.

This title may be cited as the "Marking of Plastic Explosives for Detection Act.".

(a) FINDINGS.—The Congress finds that—

(1) plastic explosives were used by terrorists in the bombings of Pan Am flight 103 in December 1988 and UTA flight 772 in September 1989;

(2) plastic explosives can be used with little likelihood of detection for acts of unlawful interference with civil aviation, maritime navigation and other modes of transportation;

(3) the criminal use of plastic explosives places innocent lives in jeopardy, endangers national security, affects domestic tranquility, and gravely affects interstate and foreign commerce;

(4) the marking of plastic explosives for the purpose of detection would contribute significantly to the prevention and punishment of such unlawful acts; and

(5) for the purpose of deterring and detecting such unlawful acts, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991, requires each contracting State to adopt appropriate measures to ensure that plastic explosives are duly marked and controlled.

(b) PURPOSE.—The purpose of this Act is to fully implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

SEC. 403. DEFINITIONS.

Section 841 of title 18, United States Code, is amended by adding at the end the following new subsections:

"(o) 'Convention on the Marking of Plastic Explosives' means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

"(p) 'Detection agent' means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

"(1) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

"(2) 2, 3-Dimethyl-2, 3-dinitrobutane (DMNB), $_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

"(3) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

"(4) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

"(5) any other substance in the concentration specified by the Secretary, after consultation with the Secretary of State and the Secretary of Defense, which has been added to the table in Part 2 of the Technical Annex to the Convention on the Marketing of Plastic Explosives.

"(q) 'Plastic explosive' means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form have a vapor pressure less than 10^{-4} Pa at a temperature of 25°C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.".

SEC. 404. REQUIREMENT OF DETECTION AGENTS FOR PLASTIC EXPLOSIVES.

Section 842 of title 18, United States Code, is amended by adding after subsection (k) the following new subsections:

"(l) It shall be unlawful for any person to manufacture any plastic explosive which does not contain a detection agent.

"(m)(1) It shall be unlawful for any person to import or bring into the United States, or export from the United States, any plastic explosive which does not contain a detection agent.

"(2) This subsection does not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive which was imported, brought into, or manufactured in the United States prior to the effective date of the Marketing of Plastic Explosives for Detection Act by or on behalf of any agency of the United States performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

"(n)(1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive which does not contain a detection agent.

"(2) This subsection does not apply to—

"(A) the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States prior to the effective date of this Act by any person during a period not exceeding three years after the effective date of this Act; or

"(B) the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States prior to the effective date of this Act by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

"(o) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the effective date of this Act, to fail to report to the Secretary within 120 days from the effective date of this Act the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may by regulations prescribe.".

SEC. 405. CRIMINAL SANCTIONS.

Section 844(a) of title 18, United States Code, is amended to read as follows:

"(a) Any person who violates subsections (a) through (i) or (l) through (o) of section 842 of this chapter shall be fined under this title or imprisoned not more than 10 years, or both.".

SEC. 406. EXCEPTIONS.

Section 845 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "(l), (m), (n), or (o) of section 842 and subsections" after "subsections";

(2) by adding at the end of subsection (a)(1) "and which pertains to safety"; and

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

"(c) It is an affirmative defense against any proceeding involving sections 842 (l) through (o) if the proponent proves by a preponderance of the evidence that the plastic explosive—

"(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

"(A) research, development, or testing of new or modified explosive materials;

"(B) training in explosives detection or development or testing of explosives detection equipment; or

"(C) forensic science purposes; or

"(2) was plastic explosive which, within three years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located. For purposes of this subsection, the term 'military device' includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.".

SEC. 407. INVESTIGATIVE AUTHORITY.

Section 846 of title 18, United States Code, is amended—

(1) by inserting in the last sentence before the "subsection" the phrase "subsection (m) or (n) of section 842 or;", and

(2) by adding at the end the following:

"The Attorney General shall exercise authority over violations of subsections (m) or (n) of section 842 only when they are committed by a member of a terrorist or revolutionary group. In any matter involving a terrorist or revolutionary group or individual, as determined by the Attorney General, the Attorney General shall have primary investigative responsibility and the Secretary shall assist the Attorney General as requested.".

SEC. 408. EFFECTIVE DATE.

The amendments made by this title shall take effect one year after the date of the enactment of this Act.

TITLE V—NUCLEAR MATERIALS

SEC. 501. EXPANSION OF NUCLEAR MATERIALS PROHIBITIONS.

(a)(1) FINDINGS.—The Congress finds and declares—

(A) Nuclear materials, including byproduct materials, can be used to create radioactive dispersal devices which are capable of causing serious bodily injury as well as substantial damage to property and the environment;

(B) The potential use of nuclear materials, including byproduct materials, enhances the threat posed by terrorist activities and thereby has a greater effect on the security interests of the United States;

(C) Due to the widespread hazards presented by the threat of nuclear contamination, as well as nuclear bombs, the United States has a strong interest in assuring that persons who are engaged in the illegal acquisition and use of nuclear materials, including byproduct materials, are prosecuted for their offenses;

(D) The threat that nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially since the enactment in 1982 of the legislation which implemented the Convention on the Physical Protection of Nuclear Material, codified at 18 U.S.C. 831;

(E) The successful efforts to obtain agreements from other countries to dismantle nuclear weapons have resulted in increased packaging and transportation of nuclear materials, thereby decreasing the security of such materials by increasing the opportunity for unlawful diversion and theft;

(F) The illicit trafficking in the relatively more common, commercially available and useable nuclear and byproduct materials poses a potential to cause significant loss of life and/or environmental damage;

(G) Reported trafficking incidents in the early 1990's suggest that the individuals involved in trafficking these materials from Eurasia and Eastern Europe frequently conducted their black market sales of these materials within the Federal Republic of Germany, the Baltic States, and to a lesser extent in the Middle European countries;

(H) The international community has become increasingly concerned over the illegal possession of nuclear and nuclear byproduct materials;

(I) The potentially disastrous ramifications of increased access to nuclear and nuclear byproduct materials pose such a significant future threat that the United States must use all lawful methods available to combat the illegal use of such materials;

(J) The United States has an interest in encouraging United States corporations to do business in the countries which comprised the former Soviet Union, as well as in other developing democracies; protection of such U.S. corporations from threats created by the unlawful use of nuclear materials is important to the success of the effort to encourage such business ventures, and to further the foreign relations and commerce of the United States;

(K) The nature of nuclear contamination is such that it may affect the health, environment, and property of U.S. nationals even if the acts which constitute the illegal activity occur outside the territory of the United States, and are primarily directed toward non-U.S. nationals; and

(L) There is presently no federal criminal statute which provides adequate protection to United States interests from non-weapons grade, yet hazardous radioactive material, and from the illegal diversion of nuclear materials which are held for other than peaceful purposes.

(2) PURPOSE.—The purpose of the Act is to provide federal law enforcement the necessary tools and fullest possible basis allowed under the Constitution of the United States to combat the threat of nuclear contamination and proliferation which may result from illegal possession and use of radioactive materials.

(b) EXPANSION OF SCOPE AND JURISDICTIONAL BASES.—Section 831 of title 18, United States Code, is amended by—

(1) in subsection (a), striking "nuclear material" each time it appears and inserting each time "nuclear material or nuclear byproduct material";

(2) in subsection (a)(1)(A), inserting "or the environment" after "property";

(3) amending subsection (a)(1)(B) to read as follows:

"(B)(i) circumstances exist which are likely to cause the death of or serious bodily injury to any person or substantial damage to property or the environment; or (ii) such circumstances are represented to the defendant to exist;";

(4) in subsection (a)(6), inserting "or the environment" after "property";

(5) amending subsection (c)(2) to read as follows:

"(2) an offender or a victim is a national of the United States or a United States corporation or other legal entity;";

(6) in subsection (c)(3), striking "at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and";

(7) striking "or" at the end of subsection (c)(3);

(8) in subsection (c)(4), striking "nuclear material for peaceful purposes" and inserting "nuclear material or nuclear byproduct material";

(9) striking the period at the end of subsection (c)(4) and inserting "; or";

(10) adding at the end of subsection (c) a new paragraph as follows:

"(5) the governmental entity under subsection (a)(5) is the United States or the threat under subsection (a)(6) is directed at the United States.";

(11) in subsection (f)(1)(A), striking "with an isotopic concentration not in excess of 90 percent plutonium 238";

(12) inserting at the beginning of subsection (f)(1)(C) "enriched uranium, defined as";

(13) redesignating subsections (f)(2)–(4) as (f)(3)–(5);

(14) inserting after subsection (f)(1) the following new paragraph:

"(2) the term 'nuclear byproduct material' means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;";

(15) striking "and" at the end of subsection (f)(4), as redesignated;

(16) striking the period at the end of subsection (f)(5), as redesignated, and inserting a semicolon; and

(17) adding at the end of subsection (f) the following new paragraphs:

"(6) the term 'national of the United States' has the meaning prescribed in section 101(a) (22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

"(7) the term 'United States corporation or other legal entity' means any corporation or other entity organized under the laws of the United States or any State, district, commonwealth, territory or possession of the United States.".

TITLE VI—PROCEDURAL AND TECHNICAL CORRECTIONS AND IMPROVEMENTS

SEC. 601. CORRECTION TO MATERIAL SUPPORT PROVISION

Section 120005 of Pub. Law 103–322, September 13, 1994, is amended to read at the time of its enactment on September 13, 1994, as follows:

"(a) OFFENSE.—Chapter 113A of title 18, United States Code, is amended by adding the following new section:

"§ 2339A. PROVIDING MATERIAL SUPPORT TO TERRORISTS

"(a) DEFINITION.—In this section, 'material support or resources' means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, but does not include humanitarian assistance to persons not directly involved in such violations.

"(b) OFFENSE.—A person who, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, in carrying out, a violation of section 32, 37, 351, 844(f) or (i), 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, or 2332a of this title or section 46502 of title 49, or in preparation for or carrying out the concealment or an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than ten years, or both.".

SEC. 602. EXPANSION OF WEAPONS OF MASS DESTRUCTION STATUTE.

Section 2332a of title 18, United States Code, is amended by—

(1) in subsection(a), inserting "threatens," before "attempts or conspires to use, a weapon of mass destruction";

(2) by redesignating subsection (b) as subsection (c); and

(3) by adding the following new subsection:

"(b) Any national of the United States who outside of the United States uses, or threatens, attempts or conspires to use, a weapons of mass destruction shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisonment for any term of years or for life.".

SEC. 603. ADDITION OF TERRORIST OFFENSES TO THE RICO STATUTE.

(a) Section 1961(1)(B) of title 18 of the United States Code is amended by—

(1) inserting after "Section" the following: "32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a federal official by threatening or injuring a family member), section ";

(2) inserting after "section 224 (relating to sports bribery," the following: "section 351 (relating to Congressional or Cabinet officer assassination),";

(3) inserting after "section 664 (relating to embezzlement from pension and welfare funds)," the following: "section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce),";

(4) inserting after "sections 891–894 relating to extortionate credit transactions)," the following: "section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),";

(5) inserting after "section 1084 (relating to the transmission of gambling information)," the following: "section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1203 (relating to hostage taking),";

(6) inserting after "section 1344 (relating to financial institution fraud)," the following: "section 1361 (relating to willful injury of government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),";

(7) inserting after "section 1513 (relating to retaliating against a witness, victim, or an informant)," the following: "section 1751 (relating to Presidential assassination),";

(8) inserting after "section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire)," the following: "section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),"; and

(9) inserting after "2321 (relating to trafficking in certain motor vehicles or motor vehicle parts)," the following: "section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to acts of terrorism transcending national boundaries), section 2339A (relating to providing material support to terrorists),".

(b) Section 1961(1) of title 18 of the United States Code is amended by striking "or" before "(E)", and inserting at the end thereof the following: "or (F) section 46502 of title 49, United States Code;".

SEC. 604. ADDITION OF TERRORISM OFFENSES TO THE MONEY LAUNDERING STATUTE.

(a) Section 1956(c)(7)(B)(ii) of title 18, United States Code, is amended by striking "or extortion;" and inserting "extortion, murder, or destruction of property by means of explosive or fire;".

(b) Section 1956(c)(7)(D) of title 18, United States Code, is amended by—

(1) inserting after "an offense under" the following: "section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding or retaliating against a federal official by threatening or injuring a family member),";

(2) inserting after "section 215 (relating to commissions or gifts for procuring loans)," the following: "section 351 (relating to Congressional or Cabinet officer assassination),";

(3) inserting after "section 798 (relating to espionage)," the following: "section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce),";

(4) inserting after "section 875 (relating to interstate communications)," the following: "section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),";

(5) inserting after "section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution)," the following: "section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons),";

(6) inserting after "section 1203 (relating to hostage taking)" the following: ", section 1361 (relating to willful injury of government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),";

(7) inserting after "section 1708 (relating to theft from the mail" the following: "), section 1751 (relating to Presidential assassination),";

(8) inserting after "2114 (relating to bank and postal robbery and theft)," the following: "section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),"; and

(9) striking "of this title" and inserting the following: "section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code,".

SEC. 605. AUTHORIZATION FOR INTERCEPTIONS OF COMMUNICATIONS IN CERTAIN TERRORISM RELATED OFFENSES.

(a) Section 2516(1) of title 18, United States Code, is amended by—

(1) striking "and" at the end of subparagraph (n);

(2) redesignating subparagraph (o) as subparagraph (q); and

(3) inserting these two new paragraphs after paragraph (n):

"(o) any violation of section 956 or section 960 of title 18, United States Code (relating to certain actions against foreign nations);

"(p) any violation of section 46502 of title 49, United States Code; and".

(b) Section 2516(1)(C) of title 18, United States Code, is amended by inserting before "or section 1992 (relating to wrecking trains)" the following: "section 2332 (relating to terrorist acts abroad), section 2332a (relating to weapons of mass destruction, section 2332b (relating to acts of terrorism transcending national boundaries), section 2339A (relating to providing material support to terrorists), section 37 (relating to violence at international airports),".

SEC. 606. CLARIFICATION OF MARITIME VIOLENCE JURISDICTION.

Section 2280(B)(1)(A) of title 18, United States Code, is amended by—

(1) in clause (ii), striking "and the activity is not prohibited as a crime by the State in which the activity takes place"; and

(2) in clause (iii), striking "the activity takes place on a ship flying the flag of a foreign country or outside of the United States,".

SEC. 607. EXPANSION OF FEDERAL JURISDICTION OVER BOMB THREATS.

Section 844(e) of title 18, United States Code, is amended by—

(1) inserting "(1)" before "Whoever"; and

(2) adding at the end thereof this new paragraph:

"(2) Whoever willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made to violate subsections (f) or (i) of this section or section 81 of this title shall be fined under this title or imprisoned for not more than five years, or both.

SEC. 608. INCREASED PENALTY FOR EXPLOSIVE CONSPIRACIES.

Section 844 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as those prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. 609. AMENDMENT TO INCLUDE ASSAULTS, MURDERS, AND THREATS AGAINST FORMER FEDERAL OFFICIALS ON ACCOUNT OF THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

Section 115(a)(2) of title 18, United States Code, is amended by inserting ", or threatens to assault, kidnap, or murder, any person who formerly served as a person designed in paragraph (1), or" after "assaults, kidnaps, or murders, or attempts to kidnap or murder".

SEC. 610. ADDITION OF CONSPIRACY TO TERRORISM OFFENSES

(a)(1) Section 32(a)(7) of title 18, United States Code, is amended by inserting "or conspires" after "attempts".

(2) Section 32(b)(4) of title 18, United States Code, is amended by inserting "or conspires" after "attempts".

(b) Section 37(a) title 18, United States Code, is amended by inserting "or conspires" after "attempts".

(c)(1) Section 115(a)(1)(A) of title 18, United States Code is amended by inserting "or conspires" after "attempts".

(2) Section 115(a)(2) of title 18, United States Code, as amended by section 609, is further amended by inserting "or conspires" after "attempts".

(3) Section 115(b)(2) of title 18, United States Code, is amended by striking both times it appears "or attempted kidnapping" and inserting both times, "attempted kidnapping or conspiracy to kidnap".

(4) (A) Section 115(b)(3) of title 18, United States Code, is amended by striking "or attempted murder" and inserting, "attempted murder or conspiracy to murder".

(B) Section 115(b)(3) of title 18, United States Code, is further amended by striking "and 1113" and inserting, "1113 and 1117".

(d) Section 175(a) of title 18, United States Code, is amended by inserting, "or conspires to do so," after "any organization to do so,".

(e) Section 1203(a) of title 18, United States Code, is amended by inserting "or conspires" after "attempts".

(f) Section 2280(a)(1)(H) of title 18, United States Code, is amended by inserting "or conspires" after "attempts".

(g) Section 2281(a)(1)(F) of title 18, United States Code, is amended by inserting "or conspires" after "attempts".

(h)(1) Section 46502(a)(2) of title 49, United States Code, is amended by inserting "or conspires" after "attempting".

(2) Section 46502(b)(1) of title 49, United States Code, is amended by inserting "or conspiring to commit" after "committing".

TITLE VII—ANTITERRORISM ASSISTANCE

SEC. 701. FINDINGS.

Congress finds that in order to improve the effectiveness and cost efficiency of the Antiterrorism Training Assistance Program, which is administered and coordinated by the Department of State to increase the antiterrorism capabilities of friendly countries, more flexibility is needed in providing trainers and courses overseas and to provide personnel needed to enhance the administration and evaluation of the courses.

SEC. 702. ANTITERRORISM ASSISTANCE AMENDMENTS.

Section 573 of chapter 8 (relating to antiterrorism assistance), of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa2) is amended by:

(1) striking "30 days" in subsection (d)(1)(A) and inserting in lieu thereof "180 days";

(2) striking the "add" after subsection (d)(1)(B);

(3) striking subsection (d)(1)(B);

(4) inserting "and" after subsection (d)(1)(A);

(5) redesignating subsection (d)(1)(C) as subsection (d)(1)(B);

(6) amending subsection (d)(2) to read as follows:

"(2) Personnel of the United States Government authorized to advise foreign countries on antiterrorism matters shall carry out their responsibilities within the United States when determined most effective or outside the United States for periods not to exceed 180 consecutive calendar days."; and

(7) striking subsection (f).

SECTION-BY-SECTION ANALYSIS

SECTION 1.

Section 1 states that the short title for the Act is "The Omnibus Counterterrorism Act of 1995."

SECTION 2.

Section 2 provides a Table of Contents for the Act.

SECTION 3.

Section 3 sets forth the congressional findings and purposes for the Act.

SECTION 101.

The purpose of section 101 is to provide a more certain and comprehensive basis for the Federal Government to respond to future acts of international terrorism carried out within the United States. The section creates an overarching statute (proposed 18 U.S.C. 2332b) which would allow the government to incorporate for purposes of a federal prosecution any applicable federal or state criminal statute violated by the terrorist act, so long as the government can establish any one of a variety of jurisdictional bases delineated in proposed subsection 2332b(c).

Subsection 101(a) creates a new offense, 18 U.S.C. 2332b, entitled "Acts of Terrorism Transcending National Boundaries." This statute is aimed at those terrorist acts that take place within the United States but which are in some fashion or degree instigated, commanded, or facilitated from outside the United States. It does not encompass acts of street crime or domestic terrorism which are in no way connected to overseas sources.

Subsection 2332b(a) sets forth the particular findings and purposes for the provision.

Subsection 2332b(b) sets forth the prohibited acts which relate to the killing, kidnapping, maiming, assault causing serious bodily injury, or assault with a dangerous weapon of any individual (U.S. national or alien) within the United States. It also covers destruction or damage to any structure, conveyance of other real or personal property within the United States. These are the types of violent actions that terrorist most often undertake. The provision encompasses any such activity which is in violation of the laws of the United States or any States, provided a federal jurisdictional nexus is present.

Subsection 2332b(c) sets forth the jurisdictional bases. Except for subsections (c) (6) and (7), these bases are a compilation of jurisdictional elements which are presently utilized in federal statutes and which have been approved by the courts.

Paragraph (1) covers the situation where the offender travels in commerce. Cf. 18 U.S.C. 1952.

Paragraph (2) covers the situation where the mails or a facility utilized in any manner in commerce is used to further the commission of the offense or to effectuate an escape therefrom. Cf. 18 U.S.C. 1951.

Paragraph (3) covers the situation where the results of illegal conduct affect commerce. Cf. 18 U.S.C. 1365(c).

Paragraph (4) covers the situation where the victim is a federal official. Cf. 18 U.S.C. 115, 1114, 351, 1751. The language includes both civilians and military personnel. Moreover, it also covers any "agent" of a federal agency. Cf. 18 U.S.C. 1114 (*i.e.*, assisting agent of customs or internal revenue) and 1121. It covers all ranches of government, including members of the military services, as well as all independent agencies of the United States.

Paragraph (5) covers property used in commerce (cf. 18 U.S.C. 844(i)), owned by the United States (cf. 18 U.S.C. 1361), owned by an institution receiving federal financial assistance (cf. 18 U.S.C. 844(f)) or insured by the federal government (cf. 18 U.S.C. 2113).

Paragraph (6) provides a jurisdictional base which has not been tested. It should, however, fall with the federal government's commerce power. It is included to avoid the construction, given to many federal interstate commerce statutes, that a "commercial" aspect is required. Paragraph (6) would cover both business and personal travel.

Paragraph (7) covers situations where the victim or perpetrator is not a national of the United States. The victimization of an alien in a terrorist attack has the potential of affecting the relations of the United States with the country of criminal jurisdiction on the involvement of an alien as the perpetrator or victim. *E.g.*, see 18 U.S.C. 1203 and 1116. In addition, aliens are a special responsibility of the federal government, as it is involved in admitting aliens, establishing the conditions for their presence, adjusting them to resident alien status, deporting aliens for violating the immigration laws, and eventually naturalizing aliens as citizens.

Paragraphs (8) and (9) cover the territorial seas of the United States and other places within the special maritime and territorial jurisdiction of the United States that are located within the United States (cf. 18 U.S.C. 7).

Jurisdiction exists over the prohibited activity if at least one of the jurisdictional elements is applicable to one perpetrator. When jurisdiction exists for one perpetrator, it exists over all perpetrators even those who were never within the United States.

Subsection (d) sets forth stringent penalties. These penalties are mandatorily consecutive to any other term of imprisonment which the defendant might receive. Consecutive sentences for "identical" offenses brought in the same prosecution are constitutionally permissible. See *Missouri* v. *Hunter*, 459 U.S. 359, 367 (1983). However, there is no statutory mandatory minimum. The court is given the discretion to decide the penalty for this offense under the sentencing guidelines.

Subsection (e) limits the prosecutorial discretion of the Attorney General. Before an indictment is sought under section 2332b, the Attorney General, or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions, must certify that in his or her judgment the violation of section 2332b, or the activity preparatory to its commission, transcended national boundaries. This means that the Attorney General must conclude that some connection exists between the activities and some person or entity outside the United States.

Moreover, the certification must find that the offense appears to have been intended to coerce, intimidate, or retaliate against a government or civilian population. This is similar to the certification requirement for "terrorism" found in 18 U.S.C. 2332(d). The term "civilian population" includes any segment thereof and, accordingly, is consistent with the Congressionally intended scope of section 2332(d). The certification requirement ensures that the statute will only be used against terrorists with overseas connections. Section 2332b is not aimed at purely domestic terrorism or against normal street crime as current law, both federal and state, appears to adequately address these areas. The certification of the Attorney General is not an element of the offense and, except for verification that the determination was made by an authorized official, is not subject to judicial review.

Subsection (f) states that the Attorney General shall investigate this offense and may request assistance from any other federal, state, or local agency including the military services. This latter provision, also found in several other statutes, see *e.g.*, 18 U.S.C. 351(g) and 1751(i), is intended to overcome the restrictions of the posse comitatus statute, 18 U.S.C. 1385. It is not intended to give intelligence agencies, such as the Central Intelligence Agency, any mission that is prohibited by their charters.

Pursuant to 28 C.F.R. 0.85(a), the Attorney General automatically delegates investigative responsibility over this offense to the Director of the Federal Bureau of Investigation (FBI). Moreover, under 28 C.F.R. 0.85(l) the FBI has been designated as the lead federal law enforcement agency responsible for criminal investigation of terrorism within the United States. While local and state authorities retain their investigative authority under their respective laws, it is expected that in the event of major terrorist crimes such agencies will cooperate, consult, coordinate and work closely with the FBI, as occurred in the investigation of the World Trade Center bombing in New York City.

Subsection (g) makes express two points which are normally inferred by courts under similar statutes, namely, that no defendant has to have knowledge of any jurisdictional base and that only the elements of the state offense and not any of its provisions pertaining to procedures or evidence are adopted. Federal rules of evidence and procedure control any case brought under section 2332b.

Subsection (h) makes it clear that there is extraterritorial jurisdiction to reach defendants who were involved in crimes but who never entered the United States.

Subsection (i) sets forth definitions, many of which specifically incorporate definitions from elsewhere in the federal code, *e.g.*, the definition of "territorial sea" in 18 U.S.C. 2280(e).

Subsection 101(b) makes a technical amendment to the chapter analysis for Chapter 113B of title 18, United States Code.

Subsection 101(c) amends 18 U.S.C. 3286, which was created by section 120001 of Pub. Law 103-322. Section 3286 is designed to extend the period of limitation for a series of enumerated terrorism offenses from five to eight years. The wording of the section, however, gives rise to a potential interpretation that, with respect to violations of the enumerated offenses that are capital crimes, the same eight-year period applies rather than the unlimited period that previously applied and continues to apply to capital offenses under 18 U.S.C. 3281. Section 3286's introductory language is as follows:

"Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for *any* offense involving a violation of" the enumerated provisions of law (emphasis supplied).

It seems clear that Congress did not intend to reduce the limitations period for offenses under the enumerated statutes that are capital due to the killing of one or more victims. Rather, the intent was (as the title of the section 120001 provision indicates) to enlarge the applicable limitation period for non-capital violations of the listed offenses. Accordingly, the proposed amendment would insert "non-capital" after "any" in the above-quoted phrase. Notably, the drafters were careful to include the word "non-capital" when effecting a similar period of limitations extension applicable to arson offenses under 18 U.S.C. 844(i) in section 320917 of the Pub. L. 103-322.

Subsection 101(c) also corrects certain erroneous statutory references in section 3286 (*i.e.*, changes "36" to "37", "2331" to "2332" and "2339" to "2332a"). Finally, the subsection adds to section 3286 the new 18 U.S.C. 2332b.

Subsection 101(d) amends section 3142(e) of title 18, United States Code, to insure that a defendant arrested for a violation of the new 18 U.S.C. 2332b is presumed to be unreleasable pending trial. The factors, most likely to be present i.e., an alien perpetrator who is likely to flee and who is working on behalf of or in concert with a foreign organization, makes such an individual unsuitable for release pending trial. This presumption, which is subject to rebuttal, will limit the degree of sensitive evidence that the Government must disclose to sustain its burden to deny release.

Subsection 101(e) amends the "roving" provision in the wiretap statute (18 U.S.C. 2518(11)(b)(ii)) so that it can be applied to violations of new 18 U.S.C. 2332b even in the absence of a showing of intent to thwart detection. The development of evidence of such intent could cause a delay which, in the content of a section 2332b violation, could have catastrophic consequences. Further, the secrecy and clandestine movement of terrorists make it extremely difficult to develop advance knowledge of which precise telephones they will use.

SECTION 102

Section 102 is designed to complement section 101 of this bill concerning terrorist acts within the United States transcending national boundaries. Just as a better basis for addressing crimes carried out within the United States by international terrorists is needed, it also is appropriate that there should be an effective federal basis to reach conspiracies undertaken in part within the United States for the purpose of carrying out terrorist acts in foreign countries.

Section 102 covers two areas of activity involving international terrorists. The first is conspiracy in the United States to murder, kidnap, or maim a person outside of the United States. The second is conspiracy in the United States to destroy certain critical types of property, such as public buildings and conveyances, in foreign countries. The term conveyance would include cars, buses, trucks, airplanes, trains, and vessels.

Subsection 102(a) amends current 18 U.S.C. 956 in several ways. It creates a new subsection 956(a) which proscribes a conspiracy in the United States to murder, maim, or kidnap a person outside of the United States. The new section fills a void in the law that exists. Currently, subsection 956(a) only prohibits a conspiracy in the United States to commit certain types of property crimes in a foreign country with which the United States is at peace. It does not cover conspiracy to commit crimes against the person.

Subsection 102(a) thus expands on the current section 956 so that new subsection 956(a) covers conspiracy to commit one of the three listed serious crimes against any person in a foreign country or in any place outside of the jurisdiction of the United States, such as on the high seas. This type of offense is committed by terrorists and the new subsection 956(a) is intended to ensure that the government is able to punish those persons who use the United States as a base in which to plot such a crime to be carried out outside the jurisdiction of the United States.

New subsection 956(a) would apply to conspiracies to commit one of the enumerated offenses where at least one of the conspirators is inside the United States. The other member or members of the conspiracy would not have to be in the United States but at least one overt act in furtherance of the conspiracy would have to be committed in the United States. The subsection would apply, for example, to two individuals who consummated an agreement to kill a person in a foreign country where only one of the conspirators was in the United States and the agreement was reached by telephone conversations or letters, provided at least one of the overt acts were undertaken by one co-conspirator while in the United States. In such a case, the agreement would be reached at least in part in the United States. The overt act may be that of only one of the conspirators and need not itself be a crime.

Subsection 102(a) also re-enacts current section 956(a) of title 18 (dealing with a conspiracy in the United States to destroy property in a foreign country) as subsection 956(b), and expands its coverage to other forms of property. The revision adds the terms "airport" and "airfield" to the list of "public utilities" presently set out in section 956(a), since they are particularly attractive targets for terrorists. New subsection 956(b) also adds public conveyances (e.g., buses), public structures, and any religious, educational or cultural property to the list of targets. This makes it clear that the statute covers a conspiracy to destroy any conveyance on which people travel and any structure where people assemble, such as a store, factory or office building. It also covers property used for purposes of tourism, education, religion or entertainment. Accordingly, the words "public utility" do not

limit the statute's application to a conspiracy to destroy only such public utility property as transportation lines or power generating facilities.

Consequently, as amended, 18 U.S.C 956 reaches those individuals who have conspired within the United States to commit the violent offenses overseas and who solicit money in the United States to facilitate their commission. Moreover, monetary contributors who have knowledge of the conspiracy's purpose are coconspirators subject to prosecution.

Subsection 102(a) also increases the penalties in current 18 U.S.C. 956(a). The new penalties are comparable to those proposed in section 101 of the bill for the new 18 U.S.C. 2332b. Finally, subsection 102(a) eliminates the requirement that is currently found in 18 U.S.C. 956(b) of naming in the indictment the "specific property" which is being targeted, as this requirement may be difficult to establish in the context of a terrorism conspiracy which does not result in a completed offense. Additionally, even in a completed conspiracy, the parties may, after agreeing that a category of property or person will be targeted, leave the actual selection of the particular target to their conspirators on the ground overseas. Hence, while an indictment must always describe its purposes with specificity, it need not allege all specific facts, especially those that were formulated at a subsequent time or which may not be completely known to some of the participants.

Section 956 is contained in chapter 45 of title 18, United States Code, relating to interference with the foreign relations of the United States. It is not intended to apply to duly authorized actions undertaken on behalf of the United States Government. Chapter 45 covers those individuals who, without appropriate governmental authorization, engage in prohibited conduct that is harmful to the foreign relations of the United States.

SECTION 103

This section would correct a failure to execute fully our treaty obligations and would, in addition, clarify and expand federal jurisdiction over certain overseas acts of terrorism affecting United States interests.

Subsection 103(a) would amend 49 U.S.C. 46502(b) (former section 902(n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472(n)). Section 46502(b) currently covers those aircraft piracies that occur outside the "special aircraft jurisdiction of the United States," as defined in 49 U.S.C. 46501(2). It, therefore, applies to hijackings of foreign civil aircraft which never enter United States airspace. As a State Party to the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the United States has a treaty obligation to prosecute or extradite such offenders when they are found in the United States. This measure is based on the universal jurisdiction theory. See *United States* v. *Yunis*, 924 F.2d 1086 (D.C. Cir. 1991). However, the present statute fails to make clear when federal criminal jurisdiction commences with respect to such air piracies, absent the actual presence within the United States of one of the perpetrators.

Paragraph (a)(1) would establish clear federal criminal jurisdiction over those foreign aircraft hijackings where United States nationals are victims or perpetrators. While the Hague Convention does not mandate that State Parties criminalize those situations involving their nationals as victims or perpetrators, it does allow State Parties to assert extraterritorial jurisdiction on the basis of the passive personality principle. *See* Paragraph 3 of Article 4. In addition, other recent international conventions dealing with terrorism, such as the United Nations Convention Against the Taking of Hostages and the International Maritime Organization Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, mandate criminal jurisdiction by a State Party when its national is a perpetrator and permit the assertion of jurisdiction when its national is a victim of an offense prohibited by those conventions. Further, experience has shown that it is often the country whose nationals were victims of the hijacking which is willing to commit the necessary resources to locate, prosecute, and incarcerate the perpetrators for a period of time commensurate with their criminal acts. For those foreign civil aircraft hijackings involving no United States nationals as victims or perpetrators, section 46502 would continue to carry out the U.S. obligation under the Convention to prosecute or extradite an alien perpetrator who was subsequently found in the United States.

Under the clarified statute, subject matter jurisdiction over the offense would vest whenever a United States national was on a hijacked flight or was the perpetrator of the hijacking. Where a United States national is the perpetrator, all perpetrators, including non-U.S. nationals, would be subject to indictment for the offense, since these non-national defendants would be either principals or aiders and abettors within the meaning of 18 U.S.C. 2.

Paragraph (a)(2) amends 49 U.S.C. 46502(b)(2) to set forth the three different subject matter jurisdictional bases. It has the effect of repealing the current provision which failed to fully execute our treaty obligation. Presently, paragraph 46502(b)(2) reads: "This subsection applies only if the place of takeoff or landing of the aircraft on which the individual commits the offense is located outside the territory of the country of registration of the aircraft." Paragraph (b)(2) was intended to reflect paragraph 3 of Article 3 of the Hague Convention, which states that the convention normally applies "only if the place of take-off or the place of actual landing of the aircraft on which the offense is committed is situated outside the territory of the State of registration of that aircraft." However, the authors of the original legislation apparently overlooked the obligation imposed by paragraph 5 of Article 3 of the Convention which applies when the alleged aircraft hijacker is found in the territory of a State Party other than the State of registration of the hijacked aircraft. Paragraph 5 states: "Notwithstanding paragraphs 3 and 4 of this Article, Article 6, 7, 8 and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft."

For example, under the Hague Convention, the hijacking of an Air India flight that never left India is not initially covered by the Convention. (Article 3, paragraph 3.) However, the subsequent travel of the offender from India to the jurisdiction of another State Party triggers treaty obligations. Paragraph 5 makes the obligation of Article 7, to either prosecute or extradite an alleged offender found in a party's territory, applicable to a hijacker of a purely domestic air flight who flees to another State.

Paragraph (a)(3) creates a new section 46502(b)(3) which provides a definition of "national of the United States" that has been used in other terrorism provisions, see, e.g., 18 U.S.C. 2331(2) and 3077(2)(A).

Subsection 103(b) amends section 32(b) of title 18, United States Code. Presently, section 32(b) carries out the treaty obligation of the United States, as a State Party to the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, to prosecute or extradite offenders found in the United States who have engaged in certain acts of violence directed against foreign civil aircraft located outside the United States. The proposed amendment would fully retain current jurisdiction and would establish additional jurisdiction where a United States national was the perpetrator or a United States national was on board such aircraft when the offense was committed. Because subsection 32(b)(3) of title 18, United States Code, covers the placement of destructive devices upon such aircraft and a "victim" does not necessarily have to be on board the aircraft at the time of such placement, the phrase "or would have been on board" has been used. In such instances, the prosecution would have to establish that a United States national would have been on board a flight that such aircraft would have undertaken if the destructive device had not been placed thereon.

Subsection 103(b) is drafted in the same manner as paragraph (a)(2), above, so that once subject matter jurisdiction over the offense vests, all the perpetrators of the offense are subject to indictment for the offense.

Subsections 103(c), (d), (e) and (f) would amend 18 U.S.C. 1116 (murder), 112 (assault), 878 (threats), and 1201 (kidnapping), respectively. The primary purpose of these proposed amendments is to extend federal jurisdiction to reach United States nationals, or those acting in concert with such a national, who commit one of the specified offenses against an internationally protected person located outside of the United States. The invocation of such jurisdiction under U.S. law is required by the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including diplomatic agents. It was apparently omitted as an oversight when the implementing federal legislation was enacted in 1976 (P.L. 94-467).

Additionally, the provisions would also clarify existing jurisdiction. The language used in the first sentence of sections 1116(e), 112(e), 878(d), and 1201(e) is ambiguous as pertains to instances in which the victim is a United States diplomat. The first sentence in each of these provisions now reads: "If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender."

This sentence could be read to require the presence of the offender in the United States even when the internationally protected person injured overseas was a United States diplomat. This would be anomalous and was likely not intended. Accordingly, subsections (c)–(f) rewrite the first sentence to read as follows:

"If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States."

The provision is drafted, in the same manner as the aircraft piracy and aircraft destruction measures, so that once subject matter jurisdiction over the offense is vested, all the perpetrators of the offense would be subject to indictment for the offense.

Subsections 103(c)–(f) also would incorporate in an appropriate manner the definition of "national of the United States" in sections 1116, 112, 878, and 1201 of title 18.

Subsection 103(g) contains an amendment similar in nature to those in the preceding subsections. It expands federal jurisdiction over extraterritorial offenses involving violence at international airports under 18 U.S.C. 37. That provision, enacted as section 60021 of Public law 103–322, presently reaches such crimes committed outside the United States only when the offender is later found in the United States. There is, however, good reasons to provide for federal jurisdiction over such terrorist crimes when an offender or a victim is a United States national. In such circumstances the interests of the United States are equal to, if not greater than, the circumstance where neither the victim nor the offender is necessarily a United States national but the offender is subsequently found in this country.

Subsection 103(h) adds the standard definition of the term "national of the United States" to 18 U.S.C. 178. This term is used earlier in the chapter (in 18 U.S.C. 175(a), which provides for extraterritorial jurisdiction over crimes involving biological weapons "committed by or against a national of the United States") but no definition is provided.

SECTION 201

In recent years, the Department of Justice has obtained considerable evidence of involvement in terrorism by aliens in the United States. Both legal aliens, such as lawful permanent residents and aliens here on student visas, and illegal aliens are known to have aided and to have received instructions regarding terrorist acts from various international terrorist groups. While many of these aliens would be subject to deportation proceedings under the Immigration and Nationality Act (INA), these proceedings present serious difficulties in cases involving classified information. Specifically, these procedures do not prevent disclosure of classified information where such disclosure would pose a risk to national security. Consequently, section 201 sets out a new title in the INA devoted exclusively to the removal of aliens involved in terrorist activity where classified information is used to sustain the grounds for deportation.

The new title would create a special court, patterned after the special court created under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.). When the Department of Justice believes that it has identified an alien in the United States who has engaged in terrorist activity, and that to afford such an alien a deportation hearing would reveal classified national security information, it could seek an ex parte order from the court. The order would authorize a formal hearing, called a special removal hearing, before the same court, at which the Department of Justice would seek to prove by clear and convincing evidence that the alien had in fact engaged in terrorist activity. At the hearing, classified evidence could be presented *in camera* and not revealed to the alien or the public, although its general nature would normally be summarized.

Enactment of section 201 would provide a valuable new tool with which to combat aliens who use the United States as a base from which to launch or fund terrorist attacks either on U.S. citizens or on persons in other countries. It is a carefully measured response to the menace posed by alien terrorists and fully comports with and exceeds all constitutional requirements applicable to aliens.

Subsection 201(a) sets out findings that aliens are committing terrorist acts in the United States and against United States citizens and interests and that the existing provisions of the INA providing for the deportation of criminal aliens are inadequate to deal with this threat. These findings are in addition to the general findings contained in section 3 of the bill. The findings explain that these inadequacies arise primarily because the INA, particularly in its requirements pertaining to deportation hearings, may require disclosure of classified information.

The findings are important in explaining Congressional intent and purpose. As noted above, section 201 creates an entirely new type of hearing to determine whether aliens believed to be terrorists should be removed from the United States. At such a "special removal hearing," the government would be permitted to introduce *in camera* and *ex parte* classified evidence that the alien has engaged in terrorist activity. Such hearings would be held before Article III judges. The *in camera* and *ex parte* portion of the hearing would relate to classified information which, if provided to the alien or otherwise made public, would pose a risk to national security. Such an extraordinary type of hearing would be invoked only in a very small percentage of deportation cases, and would be applicable only in those cases in which an Article III judge has found probable cause to believe that the aliens in question are involved in terrorist activity. Although the bill provides the alien many rights equal to—and in some respects greater than—those enjoyed by aliens in ordinary deportation proceedings, the rights specified for aliens subject to a special removal hearing are deemed exclusive of any rights otherwise afforded under the INA.

It is within the power of Congress to provide for a special adjudicatory proceeding and to specify the procedural rights of aliens involved in terrorist acts. The Supreme Court has noted that "control over matters of immigration is a sovereign prerogative, largely within the control of the Executive and the Legislature. . . . The role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy." *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982). Moreover, Congress can specify what type of process is due different classes of aliens. "(A) host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other; and the class of aliens itself is a heterogeneous multitude of persons with a wide-ranging variety of ties to this country." *Matthews v. Diaz*, 426 U.S. 67, 78–79 (1976). Because the Due Process Clause does not require "that all aliens must be placed in a single homogeneous legal classification," *id.*, Congress can provide separate processes and procedures for determining whether to remove resident and nonresident alien terrorists.

Subsection 201(b) adds a new title V to the INA to provide a special process for removing alien terrorists when compliance with normal deportation procedures might adversely affect national security interests of the United States. However, the new title V is not the only way of expelling alien terrorists from the United States. In addition to proceedings under the new special removal provisions, aliens falling within 8 U.S.C. 1251(a)(4)(B) alternatively could be deported following a regular deportation hearing. Moreover, like all other aliens, alien terrorists remain subject to possible expulsion for any of the remaining deportation grounds specified in section 241 of the Act (8 U.S.C. 1251). For example, alien terrorists who violate the criminal laws of the United States remain subject to "ordinary" deportation proceedings on charges under INA section 241(a)(2). The special removal provisions augment, without in anyway narrowing, the prosecutorial options in cases of alien terrorists.

The new title V consists of four new sections of the INA, sections 501–504 (8 U.S.C. 1601–1604). Briefly, the title provides for creation of a special court comprised of Article III judges, patterned after the special court created under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.*). When the Department of Justice believes it has identified an alien terrorist, that is, an alien who falls within 8 U.S.C. 1251(a)(4)(B), and determines that to disclose the evidence of that fact to the alien or the public would compromise national security, the Department may seek an order from the special court. The order would authorize the Department to present the classified portion of its evidence that the alien is a terrorist *in camera* and *ex parte* at a special removal hearing. The classified portion of the evidence would be received in chambers with only the court reporter, the counsel for the government, and the witness or document present. The general nature of such evidence, without identifying classified or sensitive particulars, would then normally be revealed to the alien, his counsel, and the public in summarized form. The summary would have to be found by the court to be sufficient to permit the alien to prepare a defense.

Where an adequate summary, as determined by the court, would pose a risk to national security, and, hence, unavailable to the alien, the special hearing would be terminated unless the court found that (1) the continued presence of the alien in the United States or (2) the preparation of the adequate summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person. If such a situation exits, the special removal hearing would continue, the alien would not receive a summary, and the relevant classified information could be introduced against the alien pursuant to subsection (j).

If, at the conclusion of the hearing, the judge finds that the government has established by clear and convincing evidence that the alien has engaged in terrorist activity, the judge would order the alien removed from the United States. The alien could appeal the decision to the United States Court of Appeals for the District of Columbia Circuit, and ultimately could petition for a writ of certiorari to the Supreme Court.

Use of information that is not made available to the alien for reasons of national security is a well-established concept in the existing provisions of the INA and immigration regulations. For example, section 235(c) provides for an expedited exclusion process for aliens excludable under 8 U.S.C. 1182(a)(3) (providing for the exclusion, *inter alia*, of alien spies, saboteurs, and terrorists), and states in relevant part:

"If the Attorney General is satisfied that the alien is excludable under [paragraph 212(a)(3)] on the basis of information of a confidential nature, the disclosure of which the Attorney General, in his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security, he may in his discretion order such alien to be excluded and deported without any inquiry or further inquiry by [an immigration judge]."

Thus, where it is necessary to protect sensitive information, existing law authorizes the Attorney General to conduct exclusion proceedings outside the ordinary immigration court procedures and to rely on classified information in ordering the exclusion of alien terrorists.

In the deportation context, 8 C.F.R. 242.17 (1990) provides that in determining whether to grant discretionary relief to an otherwise deportable alien, the immigration judge—

"May consider and base his decision on information not contained in the record and not made available for inspection by the [alien], provided the Commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security."

The constitutionality of this provision has been upheld. *Suciu* v. *INS*, 755 F.2d 127 (8th Cir. 1985). The alien in that case had been in the United States for 16 years and had become deportable for overstaying his student visa, a deportation ground ordinarily susceptible to discretionary relief. Nevertheless, the court held that it was proper to deny the alien discretionary relief without disclosing to him the reasons for the denial. *Sucia* followed the Supreme Court's holding sustaining the constitutionality of a similar predecessor regulation in *Jay* v. *Boyd*, 351 U.S. 345 (1956).

Section 501 (Applicability)

Section 501 sets forth the applicability of the new title. Section 501(a) states that the title may, but need not, be employed by the Department of Justice whenever it has information that an alien is subject to deportation because he is an alien described in 8 U.S.C. 1251(a)(4)(B), that is, because he has engaged in terrorist activity.

Section 501(b) provides that whenever an official of the Department of Justice determines to seek the expulsion of an alien terrorist under the special removal provisions, only the provisions of the new title need be followed. This ensures that such an alien will not be deemed to have any additional rights under the other provisions of the INA. Except when specifically referenced in the special removal provisions, the remainder of the INA would be inapplicable. For example, under the special removal provisions an alien who has entered the United States (and thus is not susceptible to exclusion proceedings) need not be given a deportation hearing under section 242 of the Act, 8 U.S.C. 1252, and will not have available the rights generally afforded aliens in deportation proceedings (*e.g.*, the opportunity for an alien out of status to correct his status).

Section 501(c) states that Congress has enacted the title upon finding that alien terrorists represent a unique threat to the security interests of the United States. Consequently, the subsection states Congress' specific intent that the Attorney General be authorized to remove such aliens without resort to a traditional deportation hearing, following an ex parte judicial determination of probable cause to believe they have engaged in terrorist activity and a further judicial determination, following a modified adversarial hearing, that the Department of Justice has established by clear and convincing evidence that the aliens in fact have engaged in terrorist activity.

Section 501(c) is designed to make clear that singling out alien terrorists for a special type of hearing rather than according them ordinary deportation hearings is a careful and deliberate policy choice by a political branch of government. This policy choice is grounded upon the legislative determination that alien terrorists seriously threaten the security interests of the United States and that the existing process for adjudicating and effecting alien removal is inadequate to meet this threat. In accordance with settled Supreme Court precedent, such a choice is well within the authority of the political branches of government to control our relationship with and response to aliens.

For example, in *Mathews* v. *Diaz*, *supra*, the Court held that Congress could constitutionally provide that only some aliens were entitled to Medicare benefits. The Court held that it was "unquestionably reasonable for Congress to make an alien's eligibility depend on both the character and duration of his residence," and noted that the Court was "especially reluctant to question the exercise of congressional judgment" in matters of alien regulation. 426 U.S. at 83, 84; *see Fiallo* v. *Bell*, 430 U.S. 787, 792 (1977) (describing the regulation of aliens as a political matter "largely immune from judicial control"). The specific findings and reference to the intent in adopting the new provisions of title V make clear the policy judgment that alien terrorists should be treated as a separate class of aliens and that this choice should not be disturbed by the courts.

Section 502 (Special Removal Hearing)

Section 502 sets out the procedure for the special removal hearing. Section 502(a) provides that whenever the Department of Justice determines to use the special removal process it must submit a written application to the special court (established pursuant to section 503) for an order authorizing such procedure. Each application must indicate that the Attorney General or Deputy Attorney General has approved its submission and must include the identity of the Department attorney making the application, the identity of the alien against whom removal proceedings are sought, and a statement of the facts and circumstances relied upon by the Department of Justice as justifying the belief that the subject is an alien terrorist and that following normal deportation procedures would pose a risk to the national security of the United States.

Section 502(b) provides that applications for special removal proceedings shall be filed under seal with the special court established pursuant to section 503. At or after the time the application is filed, the Attorney General may take the subject alien into custody. The Attorney General's authority to retain the alien in custody is governed by the provisions of new title V which, as explained below, provide in certain circumstances for the release of the alien.

Although title V does not require the Attorney General to take the alien subject to special removal applications into custody, it is expected that most such aliens will be apprehended and confined. The Attorney General's decision whether to take a non-resident alien into custody will not be subject to judicial review. However, a resident alien is entitled to a release hearing before the judge assigned by the special court. The resident alien may be released upon such terms and conditions prescribed by the court (including the posting of any monetary amount), if the alien demonstrates to the court that the alien, if released, is not likely to flee and that the alien's release will not endanger national security or the safety of any person or the community. Subsequent provisions (section 504(a)) authorize the Attorney General to retain custody of alien terrorists who have been ordered removed until such aliens can be physically delivered outside our borders.

Section 502(c) provides that special removal applications shall be considered by a single Article III judge in accordance with section 503. In each case, the judge shall hold an ex parte hearing to receive and consider the written information provided with the application and such other evidence, whether documentary or testimonial in form, as the Department of Justice may proffer. The judge shall grant an ex parte order authorizing the special removal hearing as provided under title V if the judge finds that, on the basis of the information and evidence presented, there is probable cause to believe that the subject of the application is an alien who falls within the definition of alien terrorist and that adherence to the ordinary deportation procedures would pose a risk to national security.

Section 502(d)(1) provides that in any case in which a special removal application is denied, the Department of Justice within 20 days may appeal the denial to the United States Court of Appeals for the District of Columbia Circuit. In the event of a timely appeal, a confined alien may be retained in custody. When the Department of Justice appeals from the denial of a special removal application, the record of proceedings will be transmitted to the Court of Appeals under seal and the court will hear the appeal ex parte. Subsequent provisions (section 502(p)) authorize the Department of Justice to petition the Supreme Court for a writ of certiorari from an adverse appellate judgment.

Section 502(d)(2) provides that if the Department of Justice does not seek appellate review of the denial of a special removal application, the subject alien must be released from custody unless, as a deportable alien, the alien may be arrested and taken into custody pursuant to title II of the INA. Thus, for example, when the judge finds that the special procedures of title V are unwarranted but the alien is subject to deportation as an overstay or for violation of status, the alien might be retained in custody but such detention would be pursuant to and governed by the provisions of title II.

Subsection 502(d)(3) provides that if a special removal application is denied because the judge finds no probable cause that the alien has engaged in terrorist activities, the alien must be released from custody during the pendency of an appeal by the government. However, section 502(d)(3) is similar to section 502(d)(2) in that it provides for the possibility of continued detention in the case of aliens who otherwise are subject to deportation under title II of the Act.

Section 502(d)(4) applies to cases in which the judge finds probable cause that the subject of a special removal application has been correctly identified as an alien terrorist, but fails to find probable cause that use of the special procedures are necessary for reasons of national security, and the Department of Justice determines to appeal. A finding that the alien has engaged in terrorist activity—a ground for deportation that

would support confinement under title II of the Act—justifies retaining the alien in custody. Nevertheless, section 502(d)(4) provides that the judge must determine the question of custody based upon an assessment of the risk of flight and the danger to the community or individuals should the alien be released. The judge shall release the alien subject to the least restrictive condition(s) that will reasonably assure the alien's appearance at future proceedings, should the government prevail on its appeal, and will not endanger the community or individual members thereof. The possible release conditions are those authorized under the Bail Reform Act of 1984, 18 U.S.C. 3142(b) and (c), and range from release on personal recognizance to release on execution of a bail bond or release limited to certain places or periods of time. As with the referenced provsions of the Bail Reform Act, the judge may deny release altogether upon determining that no condition(s) of release would assure the alien's future appearance and community safety.

Section 502(e)(1) provides that in cases in which the special removal application is approved, the judge must then consider each piece of classified evidence that the Department of Justice proposes to introduce in camera and ex parte at the special removal hearing. The judge shall authorize the in camera and ex parte introduction of any item of classified evidence if such evidence is relevant to the deportation charge.

Section 502(e)(1) also provides that with respect to any evidence authorized to be introduced in camera and ex parte, the judge must consider how the alien subject to the proceedings is to be advised regarding such evidence. The Department of Justice must prepare a summary of the classified informaiton. The court must find the summary to be sufficient to inform the alien of the general nature of the evidence that he has engaged in terrorist activity, and to permit the alien to prepare a defense. A summary, however, "shall not pose a risk to the national security." In considering the summary to be provided to the alien of the government's proffered evidence, it is intended that the judge balance the alien's interest in having an opportunity to hear and respond to the case against him against the government's extraordinarily strong interest in protecting the national security. The Department of Justice shall provide the alien a copy of the court approved summary.

In situations where the court does not approve the proposed summary, the Department of Justice can amend the summary to meet specific concerns raised by the court. Subsection (e)(2) provides that if such submission is still found unacceptable, the special removal proceeding is to be terminated unless the court finds that the continued presence of the alien in the United States or the preparation of an adequate summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person. If such a situation exists, the special removal hearing would continue, the alien would be notified that no summary is possible, and relevant classified information could be introduced against the alien pursuant to subsection (j).

Section 502(e)(3) provides that, in certain situations, the Department of Justice may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit from the judge's rulings regarding the in camera and ex parte admission and summarization of particular items of evidence. Interlocutory appeal is authorized if the judge rules that a piece of classified information may not be introduced in camera and ex parte because it is not relevant; or if the Department disagrees with the judge regarding the wording of a summary (that is, if the Department believes that the scope of summary required by the court will compromise national security). Interlocutory appeal is also authorized when the court refuses to make the finding permitted by subsection (e)(2). Because the alien is to remain in custody during such an appeal, the Court of Appeals must hear the matter as expeditiously as possible. When the Department appeals, the entire record must be transmitted to the Court of Appeals under seal and the court shall hear the matter ex parte.

Section 502(f) provides that in any case in which the Department's application is approved, the court shall order a special removal hearing for the purpose of determining whether the alien in question has engaged in terrorist activity. Subsection (f) provides that "[i]n accordance with subsection (e), the alien shall be given reasonable notice of the nature of the charges against him and a general account of the basis for the charges." This cross-reference is intended to make clear that subsection (f) is not to be construed as requiring that information be given to the alien about the nature of the charges if such information would reveal the matters that are to be introduced in camera. The special removal hearing must be held as expeditiously as possible.

Section 502(g) provides that the special removal hearing shall be held before the same judge who approved the Department of Justice's application unless the judge becomes unavailable due to illness or disability.

Section 502(h) sets out the rights to be afforded to the alien at the special removal hearing. The hearing shall be open to the public, the alien shall have the right to be represented by counsel (at government expense if he cannot afford representation), and to introduce evidence in his own behalf. Except as provided in section 502(j) regarding presentation of evidence in camera and ex parte, the alien also shall have a reasonable opportunity to examine the evidence against him and to cross-examine adverse witnesses. As in the case of administrative proceedings under the INA and civil proceedings generally, the alien may be called as a witness by the Department of Justice. A verbatim record of the proceedings and of all evidence and testimony shall be kept.

Section 502(i) provides that either the alien or the government may request the issuance of a subpoena for witnesses and documents. A subpoena request may be made ex parte, except that the judge must inform the Department of Justice where the subpoena sought by the alien threatens disclosure of evidence of the source or evidence which the Department of Justice has introduced or proffered for introduction in camera and ex parte. In such cases, the Department of Justice shall be given a reasonable opportunity to oppose the issuance of a subpoena and, if necessary to protect the confidentiality of the evidence or its source, the judge may, in his discretion, hear such opposition in camera. A subpoena under section 502(i) may be served anywhere in the United States. Where the alien shows an inability to pay for the appearance of a necessary witness, the court may order the costs of the subpoena and witness fee to be paid by the government from funds appropriated for the enforcement of title II of the INA. Section 502(i) states that it is not intended to allow the alien access to classified information.

Section 502(j) provides that any evidence which has been summarized pursuant to section 502(e)(1) may be introduced into the record, in documentary or testimonial form, in camera and ex parte. The section also permits the introduction of relevant classified information if the court has made the finding permitted by subsection (e)(2). While the alien and members of the public would be aware that evidence was being submitted in camera and ex parte, neither the alien nor the public would be informed of the nature of the evidence except as set out in section 502(e)(1). For example, if the Department of Justice sought to present in camera and ex parte evidence through live testimony, the courtroom could be cleared of the alien, his counsel, and the public while the testimony is presented. Alternatively, the court might hear the testimony in chambers attended by only the reporter, the government's counsel, and the witness. In the case of documentary evidence, sealed documents could be presented to the court without examination by the alien or his counsel (or access by the public).

While the Department of Justice does not have to present evidence in camera and ex parte, even if it previously has received authorization to do so, it is contemplated that ordinarily much of the government's evidence (or at least the crucial portions thereof) will be presented in this fashion rather than in open court. The right to present evidence in camera and ex parte will have been determined in the ex parte proceedings before the court pursuant to subsections (a) through (c) of section 502.

Section 502(k) provides that evidence introduced in open session or in camera and ex parte may include all or part of the information that was presented at the earlier ex parte proceedings. If the evidence is to be introduced in camera and ex parte, the attorney for the Department of Justice could refer the judge to such evidence in the transcript of the ex parte hearing and ask that it be considered as evidence at the removal hearing itself. The Department might present evidence in open court rather than in camera and ex parte as a result of changed circumstances, for example, where the source whose life was at risk had died before the hearing or if the Department believes that a public presentation of the evidence might have a deterrent effect on other terrorists. In any event, once the Department of Justice has received authorization to present evidence in camera and ex parte, its decision whether to do so is purely discretionary and is not subject to review at the time of the special removal hearing. Of course, the disclosure of any classified information requires appropriate consultation with the originating agency.

Section 502(l) provides that following the introduction of evidence, the attorney for the Department of Justice and the attorney for the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the alien's removal. At the judge's discretion, in camera and ex parte argument by the Department of Justice attorney may be heard regarding evidence received in camera and ex parte.

Section 502(m) provides that the Department of Justice has the burden of showing that the evidence is sufficient. This burden is not satisfied unless the Department establishes by clear and convincing evidence—the standard of proof applicable in a deportation hearing—that the alien has engaged in terrorist activity. If the judge finds that the Department has met that burden, the judge

must order the alien removed. In cases in which the alien has been shown to have engaged in terrorist activity, the judge has no authority to decide that removal would be unwarranted. If the alien was a resident alien granted release, the court is to order the Attorney General to take the alien into custody.

Section 502(n)(1) provides that the judge must render his decision as to the alien's removal in the form of a written order. The order must state the facts found and the conclusions of law reached, but shall not reveal the substance of any evidence received in camera or ex parte.

Section 502(n)(2) provides that either the alien or the Department of Justice may appeal the judge's decision to the United States Court of Appeals for the District of Columbia Circuit. Any such appeal must be filed within 20 days, and during this period the order shall not be executed. Information received in camera and ex parte at the special removal hearing shall be transmitted to the Court of Appeals under seal. The Court of Appeals must hear the appeal as expeditiously as possible.

Section 502(n)(3) sets out the standard of review for proceedings in the Court of Appeals. Questions of law are to be reviewed de novo, but findings of fact may not be overturned unless clearly erroneous. This is the usual standard in civil cases.

Section 502(o) provides that in cases in which the judge decides that the alien should not be removed, the alien must be released from custody. There is an exception for aliens who may be arrested and taken into custody pursuant to title II of the INA as aliens subject to deportation. For such aliens, the issues of release and/or circumstances of continued detention would be governed by the pertinent provisions of the INA.

Section 502(p) provides that following a decision by the Court of Appeals, either the alien or the government may seek a writ of certiorari in the Supreme Court. In such cases, information submitted to the Court of Appeals under seal shall, if transmitted to the Supreme Court, remain under seal.

Section 502(q) sets forth the normal right the Government has to dismiss a removal action at any stage of the proceeding.

Section 502(r) acknowledges that the United States retains it common law privileges.

Section 503 (Designation of Judges)

Section 503 establishes the special court to consider terrorist removal cases under section 502, patterned on the special court created under the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801 et seq. Section 503(a) provides that the court will consist of five federal district court judges chosen by the Chief Justice of the United States from five different judicial circuits. One of these judges shall be designated as the chief or presiding judge. Should the Chief Justice determine it appropriate, he could designate as judges under this section some of those that he has designated pursuant to section 1803(a) of title 50, United States Code for the Foreign Intelligence Surveillance Court. The presiding judge shall promulgate rules for the functioning of the special court. The presiding judge also shall be responsible for assigning cases to the various judges. Section 503(c) provides that judges shall be appointed to the special court for terms of five years, except for the initial appointments the terms of which shall vary from one to five years so that one new judge will be appointed each year. Judges may be reappointed to the special court.

Section 503(b) provides that all proceedings under section 502 are to be held as expeditiously as possible. Section 503(b) also provides that the Chief Justice, in consultation with the Attorney General, the Director of Central Intelligence and other appropriate officials, shall provide for the maintenance of appropriate security measures to protect the ex parte special removal applications, the orders entered in response to such applications, and the evidence received in camera and ex parte sufficient to prevent disclosures which could compromise national security.

Section 504 (Miscellaneous Provisions)

Section 504 contains the title's miscellaneous provisions. Section 504(a) provides that following a final determination that the alien terrorist should be removed (that is, after the special removal hearing and completion of any appellate review), the Attorney General may retain the alien in custody (or if the alien was released, apprehend and place the alien in custody) until he can be removed from the United States. The alien is provided the right to choose the country to which he will be removed, subject to the Attorney General's authority, in consultation with the Secretary of State, to designate another country if the alien's choice would impair a United States treaty obligation (such as an obligation under an extradition treaty) or would adversely affect the foreign policy of the United States. If the alien does not choose a country or if he chooses a country deemed unacceptable, the Attorney General, in coordination with the Secretary of State, must make efforts to find a country that will take the alien. The alien may, at the attorney General's discretion, be kept in custody until an appropriate country can be found, and the Attorney General shall provide the alien with a written report regarding such efforts at least once every six months. The Attorney General's determinations and actions regarding execution of the removal order are not subject to direct or collateral judicial review, except for a claim that continued detention violates the alien's constitutional rights. The alien terrorist shall be photographed and fingerprinted and advised of the special penalty provisions for unlawful return before he is removed from the United States.

Section 504(b) provides that, notwithstanding section 504(a), the Attorney General may defer the actual removal of the alien terrorist to allow the alien to face trial on any State or federal criminal charge (whether or not related to his terrorist activity) and, if convicted, to serve a sentence of confinement. Section 504(b)(2) provides that pending the service of a State or federal sentence of confinement, the alien terrorist is to remain in the Attorney General's custody unless the Attorney General determines that the alien can be released to the custody of State authorities for pretrial confinement in a State facility without endangering national security or public safety. It is intended that where the alien terrorist could possibly secure pretrial release, the Attorney General shall not release the alien to a State for pretrial confinement. Section 503(b)(3) provides that if an alien terrorist released to State authorities is subsequently to be released from state custody because of an acquittal in the collateral trial, completion of the alien's sentence of confinement, or otherwise, the alien shall immediately be returned to the custody of the Attorney General who shall then proceed to effect the alien's removal from the United States.

Section 504(c) provides that for purposes of sections 751 and 752 of title 18 (punishing escape from confinement and aiding such an escape), an alien in the Attorney General's custody pursuant to this new title—whether awaiting or after completion of a special removal hearing—shall be treated as if in custody by virtue of a felony arrest. Accordingly, escape by or aiding the escape of an alien terrorist will be punishable by imprisonment for up to five years.

Section 504(d) provides that an alien in the Attorney General's custody pursuant to this new title—whether awaiting or after completion of a special removal hearing—shall be given reasonable opportunity to receive visits from relatives and friends and to consult with his attorney. Determination of what is "reasonable" usually will follow the ordinary rules of the facility in which the alien is confined.

Section 504(d) also provides that when an alien is confined pursuant to this new title, he shall have the right to contact appropriate diplomatic or consular officers of his country of citizenship or nationality. Moreover, even if the alien makes no such request, subsection (d) directs the Attorney General to notify the appropriate embassy of the alien's detention.

Subsection 201(c) sets out three conforming amendments to the INA. First, section 106 of the INA, 8 U.S.C. §1105a, is amended to provide that appeals from orders entered pursuant to section 235(c) of the Act (pertaining to summary exclusion proceedings for alien spies, saboteurs, and terrorists) shall be to the United States Court of Appeals for the District of Columbia Circuit. Thus, in cases involving alien terrorists, the same court of appeals shall hear both exclusion and deportation appeals and will develop unique expertise concerning such cases.

Second, section 276 of the INA, 8 U.S.C. §1326, is amended to add increased penalties for an alien entering or attempting to enter the United States without permission after removal under the new title or exclusion under section 235(c) for terrorist activity. For aliens unlawfully reentering or attempting to reenter the United States, the section presently provides for a fine pursuant to title 18 and/or imprisonment for up to two years (five years when the alien has been convicted of a felony in the United States, or 15 years when convicted of an "aggravated felony"); the bill increases to a mandatory ten years the term of imprisonment for reentering alien terrorists.

Finally, section 106 of the INA, 8 U.S.C. §1105a, is amended to strike subsection (a)(10) regarding habeas corpus review of deportation orders. Originally enacted in 1961 to make clear that the exclusive provision for review of final deportation orders through petition to the courts of appeals was not intended to extinguish traditional writs of habeas corpus in cases of wrongful detention, the subsection has been the source of confusion and duplicative litigation in the courts. Congress never intended that habeas corpus proceedings be an alternative to the process of petitioning the courts of appeals for review of deportation orders. Elimination of subsection (a)(10) will make clear that any review of the merits of a deportation order or the denial of relief from deportation is available only through petition for review in the courts of appeals, while leaving unchanged the traditional writ of habeas corpus to examine challenges to detention arising from asserted errors of constitutional proportions.

Subsection 201(d) provides that the new provisions are effective upon enactment and "apply to all aliens without regard to the

date of entry or attempted entry into the United States." Aliens may not avoid the special removal process on the grounds that either their involvement in terrorist activity or their entry into the United States occurred before enactment of the new title. Upon enactment, the new title will be available to the Attorney General for removal of any and all alien terrorists when classified information is involved.

SECTION 202

This section makes additional changes to the Immigration and Naturalization Act (INA) besides those contained in section 201. It improves the government's ability to deny visas to alien terrorist leaders and to deport non-resident alien terrorists under the INA.

Subsection 202(a) amends the excludability provisions of the INA relating to terrorism activities (section 212(a)(3)(B) of the INA (8 U.S.C. 1182(a)(3)(B)). Most of the changes are clarifying in nature, but a few are substantive. The changes are:

(1) "Terrorist" is changed to "terrorism" in most instances in order to direct focus on the nature of the activity itself and not the character of the particular individual perpetrator.

(2) Definitions of "terrorist organization" and "terrorism" are added. The definition of "terrorist organization" includes subgroups. Although a terrorist organization may perform certain charitable activities, *e.g.*, run a hospital, this does not remove its characterization of being a terrorist organization if it, or any of its subgroups, engages in terrorism activity. The definition of "terrorism" describes terrorism as the "premeditated politically motivated violence perpetrated against noncombat targets." This is consistent with existing law found elsewhere in the federal code. See, *e.g.*, 22 U.S.C. 2656f(d).

(3) In order to make "representatives" of certain specified terrorist organizations excludable, the term has been expanded to cover any person who directs, counsels, commands or induces the organization or its members to engage in terrorism activity. The terms "counsels, commands, or induces" are used in 18 U.S.C. 2. Presently, only the officers, officials, representatives and spokesman are deemed to be excludable. This change expands coverage to encompass those leaders of the group who may not hold formal titles and those who are closely associated with the group and exert leadership over the group but may not technically be a member. This is not a mere membership provision.

(4) In order to make the "leaders" of more terrorist organizations excludable without having to establish that they personally have engaged in terrorist activity, the revision gives the President authority to designate terrorist organizations based on a finding that they are detrimental to the interests of the United States. (Presently, only the PLO is expressly cited in the existing statute.) Implicit with the right to designate is the authority to remove an organization that the President has previously designated. By giving the President this authority, which is similar to subsection (f) of section 212 (8 U.S.C. 212(f)), the President can impose stricter travel limitations on the leaders of terrorist organizations who desire to visit the United States. For a leader of a designated terrorist organization to obtain a visa, he would have to solicit a waiver from the Attorney General under subsection 212(d)(3) (8 U.S.C. 1182(d)(3)) to obtain temporary admission. In deciding whether or not to grant to waiver, the Attorney General could, should he/she decide to grant a waiver, impose whatever restrictions are warranted on the alien's presence in the United States.

(5) The words "it has been" are inserted in the first sentence of the definition of "terrorism activity" in order to make clear that it is United States law (federal or state) which is used to determine whether overseas violent activity is considered criminal.

(6) The term "weapons" is added to clause (V)(b) in the definition of "terrorist activity" in order to cover those murders carried out by deadly and dangerous devices other than firearms or explosives (e.g., a knife).

(7) The knowledge requirement in clause (III) of the definition of "engage in terrorism activity" was deleted as unnecessary, as similar language has been added in the beginning of the definition.

(8) The term "documentation or" has been added to "false identification" in clause (III) of the definition of "engage in terrorism activity" to encompass other forms of false documentation that might be provided to facilitate terrorism activity. The term "false identification" would include stolen, counterfeit, forged and falsely made identification documents.

Subsection 202(b) amends section 241(a)(4)(B) of the INA (8 U.S.C. 1251(a)(4)(B)) to reflect the change in section 212(a)(3)(B) (8 U.S.C. 1182(a)(3)(B)) from "terrorist" to "terrorism."

Subsection 202(c) adds a sentence to section 291 of the INA (8 U.S.C. 1361) to clarify that discovery by the alien in a deportation proceeding is limited only to those documents in the INS file relating to the alien's entry. Section 291 was never intended to authorized discovery beyond this limited category of documents.

Subsection 202(d) makes an important change to section 242(b)(3) of the INA (8 U.S.C. 1252(b)(3)). First, in the case of nonresident aliens it precludes the alien's access to any classified information that is being used to deport them. Secondly, it denies nonresident aliens any rights under 18 U.S.C. 3504 (relating to access concerning sources of evidence) and 50 U.S.C. 1801 et seq. (relating to the Foreign Intelligence Surveillance Act) during their deportation.

SECTION 203

Section 203 amends the confidentiality provisions contained in the Immigration and Nationality Act (INA) for an alien's application relating to legalization (section 245A(c)(5) of the INA (8 U.S.C. 1255(a)(c)(5)) or special agricultural worker status (section 210(b)(5) and (6) of the INA (8 U.S.C. 1160(b)(5) and (6)). At present, it is very difficult to obtain crucial information contained in these files, such as fingerprints, photographs, addresses, etc., when the alien becomes a subject of a criminal investigation. In both the World Trade Center bombing and the killing of CIA personnel on their way to work at CIA Headquarters, the existing confidentiality provisions hindered law enforcement efforts.

Subsection 203(a) amends the confidential provisions for legalization files. It permits access to the file if a federal court finds that the file relates to an alien who has been killed or severely incapacitated or is the suspect of an aggravated felony. Subsection 203(b) makes comparable amendments to the confidentiality requirements relating to special agricultural worker status.

SECTION 301

Section 301 authorizes the government to regulate or prohibit any person or organization within the United States and any person subject to the jurisdiction of the United States anywhere from raising or providing funds for use by any foreign organization which the President has designated to be engaged in terrorism activities. Such designation would be based on a Presidential finding that the organization (1) engages in terrorism activity as defined in the Immigration and Nationality Act and (2) its terrorism activities threaten the national security, foreign policy, or economy of the United States.

The fund-raising provision provides a licensing mechanism under which funds may be provided to a designated organization based on a showing that the money will be used exclusively for religious, charitable, literary, or educational purposes. It includes both administrative and judicial enforcement procedures, as well as a special classified information procedures applicable to certain types of civil litigation. The term "person" is defined to include individuals, partnerships, associations, groups, corporations or other organizations.

Subsection 301(a) creates a new section 2339B in title 18, United States Code, entitled "Fund-raising for terrorist organizations."

Subsection 2339B(a) sets forth the congressional findings and purposes for the fund-raising statute.

Subsection 2339B(b) gives the President the authority to issue regulations to regulate or prohibit any person within the United States or any person subject to the jurisdiction of the United States anywhere from raising or providing funds for use by, or from engaging in financial transactions with, any foreign organization which the President, pursuant to subsection 2339B(c), has designated to be engaged in terrorism activities.

Subsection 2339B(c)(1) grants the President the authority to designate any foreign organization, if he finds that (1) the organization engages in terrorism activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) and (2) the organization's terrorism activities threaten the national security, foreign policy or economy of the United States. Subsection 2339B(c)(2) grants the President the authority to designate persons who are raising funds for or are acting for or on behalf of a foreign organization designated pursuant to subsection (c)(1).

Such designations must be published in the Federal Register. The President is authorized to revoke any designation. A designation under subsection (c)(1) is conclusive and is not reviewable by a court in a criminal prosecution.

Subsection 2339B(d) sets forth the prohibited activities. Paragraph (1) makes it unlawful for any person within the United States, or any person subject to the jurisdiction of the United States anywhere in the world, to raise, receive, or collect funds on behalf of or to furnish, give, transmit, transfer, or provide funds to or for an organization designated by the President unless such activity is done is accordance with a license granted under subsection 2339B(e). Paragraph (2) makes it unlawful for any person within the United States or any person subject to the jurisdiction of the United States anywhere in the world, acting for or or behalf of a designated organization, (1) to transit, transfer, or receive any funds raised in violation of subsection 2339B(d)(1); (2) to transmit, transfer or dispose of any funds in which any designated organization has an interest; or (3) to attempt to do any of the foregoing. The latter provision serves to make it a crime for any person within the United States, or any person subject to the jurisdiction of the United States anywhere, to transfer, transfer or dispose of on behalf of a designated organization any funds in which

such organization has an interest until after a license has been issued.

Subsection 2339B(e) requires that any person who desires to solicit funds or transfer funds to any designated organization must obtain a license from the Secretary of the Treasury. Any license issued by the Secretary shall be granted only when the Secretary is satisfied that the funds are intended exclusively for religious, charitable, literacy, or educational purposes and that any recipient in any fund-raising chain has effective procedures in place to insure that the funds will be used exclusively for religious, charitable, literary, or educational purposes and will not be used to affect a transfer of funds to be used in terrorism activity. The burden is on the license applicant to convince the Secretary that such procedures do in fact exist. A licensee is required to keep books and records and make such books available for inspection upon the Secretary's request. A licensee is also required to have an agreement with any recipient which permits the Secretary to inspect the recipient's records.

Subsection 2339B(f) requires that a financial institution which becomes aware that it is in possession of or that it has control over funds in which a designated organization has an interest must "freeze" such funds and notify the Secretary of the Treasury. A civil penalty is provided for failure to freeze such funds or report the required information to the Secretary. The term "financial institution" has the meaning prescribed in 31 U.S. C. 5312(a)(2) and regulations promulgated thereunder. It is the same definition as utilized in the money laundering statute, see 18 U.S.C. 1956(c)(6).

Subsection 2339B(g) divides investigative responsibility for the section between the Secretary of the Treasury and the Attorney General. This provision thus permits the combination of the administrative and financial expertise of Treasury's Office of Foreign Assets Control (OFAC) and the intelligence capabilities and criminal investigative techniques of the Federal Bureau of Investigation (FBI) to be combined together in a highly coordinated manner in order to effectively enforce the requirements of this section while protecting the equities of the nation's national security intelligence gathering community. The provision reflects, as does section 407 of the bill, the FBI's role as the lead federal agency for the investigation and prosecution of terrorist activity as well as the prime federal intelligence agency for gathering national security information within the United States.

Section 2339B(h) gives authority to the Secretary of the Treasury and the Attorney General to require recordkeeping, hold hearings, issue subpoenas, administer oaths and receive evidence.

Subsection 2339B(i) sets forth the penalties for section 2339B. Any person who knowingly violates subsection 2339B(d) can be fined under title 18, United States Code, or imprisoned for up to ten years, or both. A person who fails to keep records or make records available to the Secretary of the Treasury upon his/her request is subject to a civil penalty of the greater of $50,000 or twice the amount of money which would have been documented had the books and records been properly maintained. A financial institution which fails to take the actions required pursuant to subsection (f)(1) is subject to civil penalty of the greater of $50,000 or twice the amount of money of which the financial institution was required to retain possession or control. Any person who violates any license, order, direction, or regulation issued pursuant to the section is subject to a civil penalty of the greater of $50,000 per violation or twice the value of the violation. A person who intentionally fails to maintain or make available the required books or records also commits a crime subject to a fine under title 18, United States Code, or imprisonment for up to five years, or both. Any organization convicted of an offense under subsections 2339B(i)(1) or (3) shall forfeit any charitable designation it might have received under the Internal Revenue Code.

Subsection 2339B(j)(1) gives the Attorney General the right to seek an injunction to block any violation of section 2339B. An injunctive proceeding is normally governed by the Federal Rules of Civil Procedure, but if the respondent is under indictment, discovery is to be governed by the Federal Rules of Criminal Procedure.

Subsection 2339B(k) states that there is extra territorial jurisdiction over activity prohibited by section 2339B which is conducted outside the United States. This insures that foreign persons outside the United States are covered by this statute if they aid, assist, counsel, command, induce or procure, or conspire with, persons within the United States or persons subject to the jurisdiction of the United States anywhere in the world to violate the fund-raising prohibition (18 U.S.C. 2339B, 2, and 371).

Subsection 2339B(l) sets forth a special process to protect classified information when the government is the plaintiff in civil proceedings to enforce section 2339B.

Subsection 2339B(m) sets forth the definitions of "classified information," "financial institution," "funds," "national security," "person," and "United States." Funds are defined to include all currency, coin, and any negotiable or registered security that can be used as a method of transferring money.

Subsection 301(c) further amends section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)) to include leaders of any terrorist organization designated under the fund-raising statute (18 U.S.C. 2339B) as aliens deemed to be excludable under the immigration laws.

Subsection 301(d) makes the special classified information provisions of 18 U.S.C. 2339B(k) applicable to similar civil proceedings under the International Emergency Economic Powers Act (50 U.S.C. 1701 et. seq.).

SECTION 401

This section states that title IV may be cited as the "Marking of Plastic Explosives for Detection Act."

SECTION 402

This section sets forth the congressional findings concerning the criminal use of plastic explosives and the prevention of such use through the marking of plastic explosives for the purpose of detection. This section also states that the purpose of the legislation is to implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991 (the Convention).

SECTION 403

This section sets forth three new definitions for 18 U.S.C. 841. It amends 18 U.S.C. 841 by adding a new subsection (o) which defines the term "Convention on the Marking of Plastic Explosives." The definition provides the full title of the Convention, "Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991." The definition eliminates the need to repeat the full title of the Convention each time it is used in the bill.

Section 403 also amends section 841 by adding a new subsection (p) which defines the term "detection agent." The term has been defined to include four specified chemical substances and any other substance specified by the Secretary of the Treasury by regulation. The four specified chemical substances, ethylene glycol dinitrate (EDGN), 2, 3-dimethyl-2-3-dinitrobutane (DMNB), paramononitrotoluene (p-MNT), and orthomononitrotoluene (o-MNT), are in Part 2 of the Technical Annex to the Convention. The required minimum concentration of the four substances in the finished plastic explosives was also taken from the Technical Annex. The definition of "detection agent" has been drafted to require that the particular substance be introduced into a plastic explosive in such a manner as to achieve homogeneous distribution in the finished explosive. The purpose of homogeneous distribution is to assure that the detection agent can be detected by vapor detection equipment.

New section 841(p)(5) would permit the Secretary of the Treasury to add other substances to the list of approved detection agents by regulation, in consultation with the Secretaries of State and Defense. Permitting the Secretary to designate detection agents other than the four listed in the statute would facilitate the use of other substances without the need for legislation. Only those substances which have been added to the table in Part 2 of the Technical Annex, pursuant to Articles VI and VII of the Convention, may be designated as approved detection agents under section 841(p)(5). Since the Department of Defense (DOD) is the largest domestic consumer of plastic explosives (over 95 percent of domestic production), it is appropriate that DOD provide guidance to the Treasury Department in approving additional substances as detection agents.

Finally, section 403 adds a new subsection (q) to section 841 which defines the term "plastic explosive." The definition is based on the definition of "explosives" in Article I of the Convention and Part I of the Technical Annex.

SECTION 404

This section adds subsections (l)–(o) to 18 U.S.C. §842 proscribing certain conduct relating to unmarked plastic explosives.

Section 842(l) would make it unlawful for any person to manufacture within the United States any plastic explosive which does not contain a detection agent.

Section 842(m) would make it unlawful for any person to import into the United States or export from the United States any plastic explosive which does not contain a detection agent. However, importations and exportations of plastic explosives imported into or manufactured in the United States prior to the effective date of the Act by Federal law enforcement agencies or the National Guard of any State, or by any person acting on behalf of such entities, would be exempted from this prohibition for a period of 15 years after the Convention is entered into force with respect to the United States. This provision implements Article IV, paragraph 3, of the Convention. Section 842(m) is drafted to specifically include the National Guard of any State and military reserve units within the 15-year exemption.

The purpose of the 15-year exemption is to give the military and Federal law enforcement agencies a period of 15 years to use up the considerable stock of unmarked plastic explosives they now have on hand. This exception would also permit DOD to export its unmarked plastic explosives to United

States forces in other countries during the 15-year period.

Section 842(n)(1) would make it unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive which does not contain a detection agent. Section 842(n)(2)(A) would provide an exception to the prohibition of section 842(n)(1) for any plastic explosive which was imported, brought into, or manufactured in the United States prior to the effective date of the Act by any person during a period not exceeding three years after the effective date of the Act. This provision implements Article IV, paragraph 2, of the Convention, and provides an exemption from the prohibitions of section 842(n)(1) for any person, including State and local governmental entities and other Federal agencies, for a period of three years after the effective date of the Act.

Section 842(n)(2)(B) would provide an exception to the prohibition of section 842(n)(1) for any plastic explosive which was imported, brought into, or manufactured in the United States prior to the effective date of the Act by any Federal law enforcement agency or the United States military or by any Federal law enforcement agency or the United States military or by any person acting on behalf of such entities for a period of 15 years after the date of entry into force of the Convention with respect to the United States. This provision implements Article IV, paragraph 3, of the Convention. The provision was drafted to specifically include the National Guard of any State and military reserve units within the 15-year exemption.

Section 842(o) would make it unlawful for any person, other than a Federal agency possessing any plastic explosive on the effective date of the Act, to fail to report to the Secretary of the Treasury within 120 days from the effective date of the Act the quantity of plastic explosive possessed, the manufacturer or importer of the explosive, any identifying markings on the explosive, and any other information as required by regulation. This provision implements Article IV, paragraph 1, of the Convention, which requires each State Party to take all necessary measures to exercise control over the possession and transfer of possession of unmarked explosives which have been manufactured in or imported into its territory prior to the entry into force of the Convention with respect to that State. This provision was drafted to specifically include the National Guard of any State and military reserve units as agencies which are exempt from the reporting requirement.

SECTION 405

This section amends 18 U.S.C. 844(a), which provides penalties for violating certain provisions of 18 U.S.C. 842. The amended section would add sections 842(l)-(o) to the list of offenses punishable by a fine under 18 U.S.C. 3571 of not more than $250,000 in the case of an individual, and $500,000 in the case of an organization, or by imprisonment for not more than 10 years, or both.

SECTION 406

This section amends 18 U.S.C. 845(a)(1), which excepts from the provisions of 18 U.S.C. Chapter 40 any aspect of the transportation of explosive materials regulated by the United States Department of Transportation. The purpose of the amendment is to make it clear that the exception in section 845(a)(1) applies only to those aspects of such transportation relating to safety. This amendment would overcome the effect of the adverse decisions in *United States v. Petrykievicz*, 809 F. Supp. 794 (W.D. Wash. 1992), and *United States v. Illingworth*, 489 F.2d 264 (10th Cir.) 1973). In those cases, the court held that the language of section 845(a)(1) resulted in the defendant's exemption from all the provisions of the chapter, including the requirement of a license or permit to ship, transport, or receive explosives in interstate or foreign commerce.

The list of offenses which are not subject to the exceptions of section 845(a) has also been amended to include the new plastic explosives offenses in sections 842(l)-(m).

Section 406 also adds a new subsection (c) to 18 U.S.C. 845 to provide certain affirmative defenses to the new plastic explosives offenses in sections 842(l)-(o). This provision implements Part 1, paragraph II, of the Technical Annex to the Convention, which relates to exceptions for limited quantities of explosives. The affirmative defenses of 18 U.S.C. 845(c) could be asserted by defendants in criminal prosecutions, persons having an interest in explosive materials seized and forfeited pursuant to 18 U.S.C. 844(c), and persons challenging the revocation or denial of their explosives licenses or permits pursuant to 18 U.S.C. 845(c).

The three affirmative defenses specified in section 845(c)(1) all relate to research, training, and testing, and require that the proponent provide evidence that there was a "small amount" of plastic explosive intended for and utilized solely in the specified activities. The respresentatives to the Conference which resulted in the Convention agreed that the amount of unmarked explosive permitted to be used for these purposes should be "limited," but were unable to agree on a specific quantity. The Secretary of the Treasury may issue regulations defining what quantity of plastic explosives is a "small amount" or may leave it up to the proponent of the affirmative defense to prove that a "small amount" of explosives was imported, manufactured, possessed, etc. The statute is drafted to require that the proponent establish the affirmative defense by a preponderance of the evidence.

Section 845(c)(2) would create another affirmative defense to the plastic explosives offenses, which implements Article IV of the Convention, and Part I, Paragraph II(d), of the Technical Annex. This provision would require that proponent to prove, by a preponderance of the evidence, that the plastic explosive was, within three years after the date of entry into force of the Convention with respect to the United States, incorporated in a military device that is intended to become or has become the property of any Federal military or law enforcement agency. Furthermore, the proponent must prove that the plastic explosive has remained an integral part of the military device for the exemption to apply. This requirement would discourage the removal of unmarked plastic explosives from bombs, mines, and other military devices manufactured for the United States military during the three year period. The provision was drafted to specifically include the National Guard of any State and military reserve units within the exemption. The term "military device" has been defined in accordance with the definition of that term in Article I of the Convention.

Requiring that the exceptions of section 845(c) be established as an affirmative defense would facilitate the prosecution of violations of the new plastic explosive provisions by terrorists and other dangerous criminals in that the Government would not have to bear the difficult, if not impossible, burden of proving that the explosives were not used in one of the research, training, testing, or military device exceptions specified in the statute. The proponent of the affirmative defense would be in the best position to establish the existence of one of the exceptions.

The approach taken in section 845(c) is patterned after the affirmative defense provision in 18 U.S.C. 176 and 177, relating to the use of biological weapons.

SECTION 407

This section provides the Attorney General investigative authority over new subsections (m) and (n) of section 842, relating to the importation, exportation, shipping, transferring, receipt or possession of unmarked plastic explosives, when such provisions are violated by terrorist/revolutionary groups or individuals. This authority is consistent with the existing March 1, 1973, memorandum of understanding on the investigation of explosives violations between the Departments of Justice and the Treasury and the United States Postal Service. The section also makes it clear that, consistent with current national policy, the Federal Bureau of Investigation (FBI) is the lead Federal agency for investigating all violations of Federal law involving terrorism when the FBI has been given by statute or regulation investigative authority over the relevant offense. See 28 U.S.C. 523 and 28 C.F.R. 0.85(1).

SECTION 408

This section provides that the amendments made by title IV shall take effect one year after the date of enactment. The one year delay should be adequate for manufacturers to obtain sources of one of the specified detection agents and to reformulate the plastic explosives they manufacture to include a detection agent.

SECTION 501

Section 501 expands the scope and jurisdictional bases under 18 U.S.C. 831 (prohibited transactions involving nuclear materials). It is an effort to modify current law to deal with the increased risk stemming from the destruction of certain nuclear weapons that were once in the arsenal of the former Soviet Union and the lessening of security controls over peaceful nuclear materials in the former Soviet Union. Among other things, the bill expands the definition of nuclear materials to include those materials which are less than weapons grade but are dangerous to human life and/or the environment. It also expands the jurisdictional bases to reach all situations where a U.S. national or corporation is the victim or perpetrator of an offense. The bill expressly covers those situations where a threat to do some form of prohibited activity is directed at the United States Government.

Subsection 501(a)(1) sets forth a series of findings. Subsection 501(a)(2) sets forth the purpose.

Subsection 501(b) makes many technical changes to section 831 of title 18, United States Code. The ones of substance are:

(1) Paragraph (1) adds "nuclear byproduct material" to the scope of subsection 831(a).

(2) Paragraph (2) ensures coverage of situations under subsection 831(a)(1)(A) where there is substantial damage to the environment.

(3) Paragraph (3) rewrites subsection 831(a)(1)(B) in the following ways:

(A) drops the requirement that the defendant "know" that circumstances exist which are dangerous to life or property. If such circumstances are created through the intentional actions of the defendant, criminal sanctions are appropriate due to the inherently dangerous nature of nuclear material and the extraordinary risk of harm created.

(B) adds substantial damage to the environment; and

(C) adds language (i.e., "such circumstances are represented to the defendant to exist") to cover the situation of sales by undercover law enforcement to prospective buyers of materials purported to be nuclear materials. This is comparable to the new 18 U.S.C. 21 created by section 320910 of Pub. L. 103-322 for undercover operations.

(4) Paragraph (4) expands the threat provision of subsection 831(a)(6) to cover threats to do substantial damage to the environment.

(5) Paragraph (5) expands the jurisdiction in subsection 831(c)(2) beyond those situations where the offender is a United States national. As revised, it includes all situations, anywhere in the world where a United States national is the victim of an offense or where the perpetrator or victim of the offense is a "United States corporation or other legal entity."

(6) Paragraph (6) drops the requirement in subsection 831(c)(3) that the nuclear material be for "peaceful purposes", i.e., non-military, and that it be in use, storage, or transport. Hence, the provision now reaches any alien who commits an offense under subsection 831(a) overseas and is subsequently found in the United States. Of course, if the target of the offense was a U.S. national or corporation or the U.S. Government there would be jurisdiction of the offense under another provision cf subsection 831(c), even when the perpetrator is still overseas. The activities prohibited by subsection 831(a) are so serious that all civilized nations have recognized their obligations to confront this growing problem because of its inherent dangerousness.

(7) Paragraph (8) deletes the requirement for subsection 831(c)(4) that the nuclear materials being shipped to or from the United States be for peaceful purposes. Hence, military nuclear materials are now encompassed under subsection 831(c)(4). It also adds nuclear byproduct material to the provision.

(8) Paragraph (10) adds a new paragraph (5) to subsection 831(c) to ensure that there is federal jurisdiction when the governmental entity being threatened under subsection 831(a)(5) is the United States and when the threat under subsection 831(a)(6) is directed at the United States.

(9) Paragraph (11) deletes an outmoded requirement, so that all plutonium is now covered.

(10) Paragraph (14) adds "nuclear byproduct material" to the definitions as a new subsection 831(f)(2). Nuclear byproduct material means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator. This will extend the prohibitions of this statute to materials that are not capable of creating a nuclear explosion, but which, nevertheless, could be used to create a radioactive dispersal device capable of spreading highly dangerous radioactive material throughout an area.

(11) Paragraph (17) adds to subsection 831(f) the definitions for the terms "national of the United States" and "United States corporation or other legal entity."

SECTION 601

This section deletes subsection (c) of the material support statute (18 U.S.C. 2339A(c)) enacted as part of the 1994 crime bill (Pub. L. 103-322). It would also correct erroneous statutory references and typographical errors (i.e., changes "36" to "37," "2331" to "2332," "2339" to "2332a," and "of an escape" to "or an escape").

Subsection 2339A(c) of title 18, United States Code, imposes an unprecedented and impractical burden on law enforcement concerning the initiation and continuation of criminal investigations under 18 U.S.C. 2339A. Specifically, subsection (c) provides that the government may not initiate or continue an investigation under this statute unless the existing facts reasonably indicate that the target knowingly and intentionally has engaged, is engaged, or will engage in a violation of federal criminal law. In other words, the government must have facts that reasonably indicate each element of the offense before it even initiates (or continues) an investigation. The normal investigative practice is that the government obtains evidence which indicates that a violation may exist if certain other elements of the offense, particularly the knowledge or intent elements, are also present. The government then seeks to obtain evidence which establishes or negates the existence of the other elements. If such evidence is found to exist, the investigation continues to obtain the necessary evidence to prove its case beyond a reasonable doubt on every element.

As drafted, however, subsection (c) reverses the natural flow of a criminal investigation. It is an impediment to the effective use of section 2339A. Moreover, the provision would generate unproductive litigation which would only serve to delay the prosecution of any offender, drain limited investigative and prosecutive resources, and hinder efforts to thwart terrorism. It is the position of the Department of Justice that the investigative guidelines issued by the Attorney General adequately protect individual rights while providing for effective law enforcement.

Section 601 deletes subsection (c) retroactive to September 13, 1994, the date that the 1994 crime bill was signed into law. Since subsection (c) is procedural in nature, the retroactive nature of the proposed deletion does not pose a constitutional problem. It should suffice, however, to preclude a defendant from availing himself of subsection (c) in the event that the conduct charged in a subsequent indictment arose between September 13, 1994, and the enactment of section 601.

Section 102(c) of this Act also proposes to broaden the scope of the material support statute by incorporating, as one of the predicate offenses, the proposed statute relating to conspiracies within the United States to commit terrorist acts abroad.

SECTION 602

This section would add coverage for threats to the weapons of mass destruction statute (18 U.S.C. 2332a). The offense of using a weapon of mass destruction (or attempting or conspiring to use such a weapon) was created by section 60023 of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322). However, no threat offense was included. A threat to use such a weapon is a foreseeable tactic to be employed by a terrorist group. Further, it could necessitate a serious and costly government response, e.g. efforts to eliminate the threat, evacuation of a city or facility, etc. Accordingly, it seems clearly appropriate to make threatening to use a weapon of mass destruction a federal offense.

This section amends subsection (a) to include threats among the proscribed offenders. Further, it redesignates subsection (b) of section 2332a as subsection (c) and provides a new subsection (b). The new subsection (b) ensures jurisdiction when a national of the United States outside the United States is the perpetrator of the threat offense.

SECTION 603

Section 603 adds to the Racketeer Influenced and Corrupt Organizations (RICO) statute certain federal violent crimes relating to murder and destruction of property. These are the offenses most often committed by terrorists. Many violent crimes committed within the United States are encompassed as predicate acts for the RICO statute. However, RICO does not presently reach most terrorist acts directed against United States interests overseas. Hence, this section adds to RICO extraterritorial terrorism violations. When an organization commits a series of terrorist acts, a RICO theory of prosecution may be the optimal means of proceeding.

The offenses being added to as predicate acts to RICO are: 18 U.S.C. 32 (relating to the destruction of aircraft), 37 (relating to violence at international airports), 115 (relating to influencing, impeding or retaliating against a federal official by threatening or injuring a family member) 351 (relating to Congressional or Cabinet officer assassination), 831 (relating to prohibited transactions involving nuclear materials as amended by section 501 of this bill), 844 (f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce), 956 (relating to conspiracy to kill, kidnap, maim or injure property certain property in a foreign country as amended by section 102 of this bill), 1111 (relating to murder), 1114 (relating to murder of United States law enforcement officials), 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to willful injury of government property), 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), 1751 (relating to Presidential assassination), 2280 (relating to violence against maritime navigation as amended by section 606 of this bill), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to terrorist acts abroad against United States (nationals), 2332a (relating to use of weapons of mass destruction as amended by section 602 of this bill), 2332b (relating to acts of terrorism transcending national boundaries created by section 101 of this bill), and 2339A (relating to providing material support to terrorists as amended by sections 102(c) and 601 of this bill), and 49 U.S.C. 46502 (relating to aircraft piracy).

SECTION 604

18 U.S.C. 1956(a)(2)(A) makes it a felony to transfer funds from the United States to a place outside the United States if the transfer is done with the intent to promote the carrying on of "specified unlawful activity." The term "specified unlawful activity" is defined in section 1956(c)(7)(B) to include an offense against a foreign nation involving kidnapping, robbery, or extortion as well as certain offenses involving controlled substances and fraud by or against a foreign bank. It does not, however, include murder or the destruction of property by means of explosive or fire.

In recent investigations of international terrorist organizations, it has been discovered that certain of these organizations collect money in the United States and then transfer the money outside the United States for use in connection with acts of terrorism which may involve murder or destruction of property in foreign nations.

In order to prevent terrorist organizations from collecting money inside the United States which is used to finance murders and

destruction of property, subsection (a) would add "murder and destruction of property by explosive or fire" to the list of specified unlawful activity in section 1956(c)(7)(B)(ii). This amendment would also apply to cases where the proceeds of any such murder or property destruction would be laundered in the United States.

Subsection (b) would add to the definitions of "specified unlawful activity" in section 1956(c)(7)(D) of title 18, United States Code, those violent federal offenses most likely to be violated by terrorists overseas. Hence, if during the course of perpetrating these violent offenses the terrorists transferred funds in interstate or foreign commerce to promote the carrying on of any of these offenses, they would also violate the money laundering statute. The offenses added are the same as those added to the RICO statute by section 603 of this bill, except for 18 U.S.C. 1203 (relating to hostage taking) which is already contained as a money laundering predicate. It should be noted that if section 603 of this bill is enacted, subsection 604(b) need not be enacted because any offense which is included as a RICO predicate is automatically a predicate also under the money laundering statute.

SECTION 605

This section would add a number of terrorism-related offenses to 18 U.S.C. 2516, thereby permitting court-authorized interception of wire, oral, and electronic communications when the rigorous requirements of chapter 119 (including section 2516) are met. Presently, section 2516 contains a long list of felony offenses for which electronic surveillance is authorized. The list has grown periodically since the initial enactment of the section in 1968. As a result, coverage of terrorism-related offenses is not comprehensive. Section 2516 already includes such offenses as hostage taking under 18 U.S.C. 1203, train wrecking under 18 U.S.C. 1992, and sabotage of nuclear facilities or fuel under 42 U.S.C. 2284.

The instant proposal would add 18 U.S.C. 956, as amended by section 103 of this bill, and 960 (proscribing conspiracies to harm people or damage certain property of a foreign nation with which the United States is not at war and organizing or participating in from within the United States an expedition against a friendly nation), 49 U.S.C. 46502 (relating to aircraft piracy), and 18 U.S.C. 2332 (relating to killing United States nationals abroad with intent to coerce the government or a civilian population). It would also add 18 U.S.C. 2332a (relating to offenses involving weapons of mass destruction), 18 U.S.C. 2332b (relating to acts of terrorism transcending national boundaries, which offense is created by section 101 of this bill), 18 U.S.C. 2339A (relating to providing material support to terrorists), and 18 U.S.C. 37 (relating to violence at airports).

Terrorism offenses frequently require the use of court-authorized electronic surveillance techniques because of the clandestine and violent nature of the groups that commit such crimes. Adding the proposed predicate offenses to 18 U.S.C. 2516 would therefore facilitate the ability of law enforcement successfully to investigate, and sometimes prevent, such offenses in the future.

SECTION 606

In considering legislative proposals which were incorporated into the 1994 crime bill (Pub. L. 103-322), Congress altered the Department's proposed formulation of the jurisdictional provisions of the Maritime Violence legislation, the Violence Against Maritime Fixed Platforms legislation, and Violence at International Airports legislation, because of a concern over possible federal coverage of violence stemming from labor disputes. The altered language created uncertainties which were brought to the attention of Congress. Subsequently, the labor violence concern was addressed by adoption of the bar to prosecution contained in 18 U.S.C. 37(c), 2280(c) and 2281(c). With the adoption of this bar, the sections were to revert to their original wording, as submitted by the Department of Justice. While sections 37 and 2281 were properly corrected, the disturbing altered language was inadvertently left in section 2280.

Consequently, as clauses (ii) and (iii) of subsection 2280(b)(1)(A) of title 18, United States Code, are presently written, there would be no federal jurisdiction over a prohibited act within the United States by anyone (alien of citizen) if there was a state crime, regardless of whether the state crime is a felony. Moreover, the Maritime Convention mandated that the United States assert jurisdiction when a United States national does a prohibited act anywhere against any covered ship. Limiting jurisdiction over prohibited acts committed by United States nationals to those directed against only foreign ships and ships outside the United States does not fulfill our treaty responsibilities to guard against all wrongful conduct by our own nationals.

Moreover, as presently drafted, there is no federal jurisdiction over alien attacks against foreign vessels within the United States, except in the unlikely situation that no state crime is involved. This is a potentially serious gap. Finally, until the federal criminal jurisdiction over the expanded portion of the territorial sea of the United States is clarified, there remains some doubt about federal criminal jurisdiction over aliens committing prohibited acts against foreign vessels in the expanded portion of the territorial sea of the United States (*i.e.*, from 3 to 12 nautical miles out). Consequently, striking the limiting phrases in clauses (ii) and (iii) ensures federal jurisdiction, unless the bar to prosecution under subsection 2280(c) relating to labor disputes is applicable, in all situations that are required by the Maritime Convention.

SECTION 607

This section expands federal jurisdiction over certain bomb threats or hoaxes. Presently, 18 U.S.C. 844(e), covers threats to damage by fire or explosive property protected by 18 U.S.C. 844(f) or (i), if the United States mails, the telephone or some other instrument of commerce is used to convey the threat or the false information. Section 607 removes any jurisdictional nexus for the means used to convey the threat or false information. A sufficient jurisdictional nexus is contained in the targeted property itself, *i.e.*, the property (1) belongs to the United States Government, (2) is owned by an organization receiving federal funds, or (3) is used in or affects interstate or foreign commerce. The threat provision has also been drafted to cover a threat to commit an arson in violation of 18 U.S.C. 81 against property located in the special maritime and territorial jurisdiction of the United States.

SECTION 608

This section would amend the explosives chapter of title 18 to provide generally that a conspiracy to commit an offense under that chapter is punishable by the same maximum term as that applicable to the substantive offense that was the object of the conspiracy. In contrast, the general conspiracy statute, 18 U.S.C. 371, provides for a maximum of five years imprisonment. This provision accords with several recent Congressional enactments, including 21 U.S.C. 846 (applicable to drug conspiracies) and 18 U.S.C. 1956(h) (applicable to money laundering conspiracies). See also section 320105 of Pub. Law 103-322, which raised the penalty for the offense of conspiracy to travel interstate with intent to commit murder for hire (18 U.S.C. 1958). This trend in federal law, which is emulated in the penal codes of many States, recognizes that, as the Supreme Court has observed, "collective criminal agreement—partnership in crime—presents a greater potential threat to the public than individual delicts." *Callanan* v. *United States, 364 U.S. 587, 593 (1961);* accord *United States* v. *Feola*, 420 U.S. 671, 693-4 (1975).

Section 608 includes the introductory phrase "[e]xcept as provided in this section" in order to take account of one area where a different maximum penalty will apply. Section 110518(b) of Pub. Law 103-322 enacted a special twenty-year maximum prison penalty (18 U.S.C. 844(m)) for conspiracies to violate 18 U.S.C. 844(h), which prohibits using an explosive to commit certain crimes and which carries a mandatory five-year prison term for the completed crime. Like section 844(m), the proposed amendment exempts the penalty of death for a conspiracy offense.

SECTION 609

Section 609 would cure an anomaly in 18 U.S.C. 115. The statute presently punishes violent crimes against the immediate families of certain former federal officials and law enforcement officers (including prosecutors) in retaliation for acts undertaken while the former official was in office. However, the former official is not protected against such crimes. Federal investigators, prosecutors, and judges who are involved in terrorism cases are often the subject of death threats. The danger posed to the safety of such officers does not necessarily abate when they leave government service. Former United States officials should be protected by federal law against retaliation directed at the past performance of their official duties. Section 609 would provide such protection.

SECTION 610

The changes made by this section are similar to that made by section 608 for explosives conspiracies.

This section adds "conspiracy" to several offenses likely to be committed by terrorists. Conspiracy is added to the offense itself to ensure that coconspirators are subject to the same penalty applicable to those perpetrators who attempt or complete the offense. Presently, the maximum possible imprisonment provided under the general conspiracy statute, 18 U.S.C. 371, is only five years. The offenses for which conspiracy is being added are: 18 U.S.C. 32 (destruction of aircraft), 37 (violence at airports serving international civil aviation), 115 (certain violent crimes against former federal officials, added by section 609, and family members of current or former federal officials), 175 (prohibitions with respect to biological weapons), 1203 (hostage taking), 2280 (violence against maritime navigation), and 2281 (violence against maritime fixed platforms), and 49 U.S.C. 46502 (relating to aircraft piracy).

SECTION 701

This section sets forth the congressional findings for title VII

SECTION 702

Amending subsection 573(d) of chapter 8 of the Foreign Assistance Act of 1961 (22 U.S.C.

2349aa2) would allow more flexibility and efficiency in the Department of State's Antiterrorism Training Assistance (ATA) program by permitting more courses to be taught overseas and allowing for instructors to teach overseas for up to 180 days. Current law allows training overseas for only certain specified types of courses and only for up to 30 days. Deleting subsection (f) of section 573 would allow for some personnel expenses for administering the ATA program to be met through the foreign aid appropriation. Currently, all such costs are paid from the Department of State's Salaries and Expenses account.•

• Mr. SPECTER. Mr. President, as chairman of the Intelligence Committee and the Judiciary Committee's Subcommittee on Terrorism, Technology and Government Information, I am pleased to join with the distinguished ranking member of the Judiciary Committee, Senator BIDEN, the ranking member of the Terrorism Subcommittee, Senator KOHL, the chairman of the Banking Committee, who has a long history of involvement on counter-terrorism activities, Senator D'AMATO, and the ranking member of the Intelligence Committee, Senator KERREY, in introducing the Omnibus Counter-Terrorism Act of 1995. I note that this bipartisan measure was drafted by the Justice and State Departments, and I appreciate their input and actions in support of this bill.

I have been actively involved in the fight against international terrorism for many years. In 1986, I introduced the law that made it a crime to commit an act of terrorism against a U.S. citizen in a foreign country. I also introduced a bill to provide the death penalty for terrorism murderers of U.S. citizens. A terrorist death penalty was finally enacted in 1994 as part of the crime bill.

This bill provides a next, but overdue step. It would, for the first time, make an act of international terrorism committed in this country a violation of Federal law and provide severe punishment, including the death penalty in the case of terrorist murders, against those who would commit acts of violence against people in the United States for political purposes. The legislation will also strengthen the hand of U.S. authorities to attack international terrorists by making illegal conspiracies to plan overseas terrorist acts in this country.

A second vital component of the legislation will make it easier to deport suspected terrorists from the United States. The current procedures of the Immigration and Nationality Act are cumbersome. The procedures outlined in this bill will expedite such deportations. Although I believe we need to study this issue, I am concerned about the due process implications of some of the special procedures that permit secret proceedings. I think the subcommittee will need to hold hearings on this issue and review it very carefully in order to ensure we strike the right balance between our national security needs and the requirements of the Constitution.

The third component of this comprehensive bill will be a restriction on fundraising for international terrorist groups in the United States. While international organizations will still be able to raise funds in the United States for charitable purposes, any fundraising in this country for an organization determined by the President to be engaged in conducting or supporting international terrorism will be barred. Again, we will need to take a very close look at this provision to ensure that it comports with the requirements of the first amendment.

Another important element of this bill is the implementation of the Montreal convention on the marking of plastic explosives to improve detectability. This important international agreement will make it easier to detect plastic explosives to avert tragedies like the bombing of Pan Am flight 103 over Lockerbie.

This legislation will provide additional weapons in our Nation's battle against international terrorism and on behalf of democracy throughout the world. I again wish to thank the administration for its work on the bill and the cosponsors. I urge all Members of the Senate to join with us in supporting this bill and to see to it that this bill is enacted promptly.•

• Mr. KOHL. Mr. President, one need only read the cruel and tragic litany of terrorist incidents detailed in the first few pages of the bill we introduce today, to appreciate the need for—and importance of—this measure.

Though Americans are less at risk of terrorist attack than citizens of other countries, we are not immune, and we never will be, so long as we are a democracy with open borders. The concrete barriers now gracing the entrances to the World Trade Center—and to this very building—are a stark reminder of this reality.

And as a matter of both national security and morality, we cannot ignore the fact that terrorists who strike outside our borders, seek—and receive—aid and comfort within them.

This is simply intolerable. Free and open societies should not be free and open to movements and organizations that facilitate terror and wanton violence—whether in our communities, or across the world.

In the past, the Federal Government has vigorously joined the battle against terrorism. But there is clearly more to be done if we are to unite with civilized countries throughout the world to protect each other and our citizens from those who obey no law.

The legislation we introduce today, crafted by President Clinton, is a crucial next step in bolstering our commitment to fight international terror and politically-motivated violence.

The Omnibus Counter-Terrorism Act contains a number of important provisions. It creates a comprehensive Federal antiterrorism statute with stiff penalties. It clarifies that U.S. antiterrorism laws apply to each and every attack against U.S. nationals, regardless of where in the world an attack occurs.

This bill also solidifies the President's authority to shut down the fundraising activities of terrorist organizations on U.S. soil. And it creates a new mechanism that will facilitate the expulsion of aliens currently in the United States who are, or have, engaged in terrorist activities.

Let me close by noting that the sponsors of this bill are aware that any effort to crack down on terrorism must be sensitive to civil liberties concerns. And we must also be mindful of ethnic communities that may be affected if this legislation were implemented without due care and consideration.

I know that the Department of Justice has tried to keep these concerns in mind in drafting the bill we introduce today. And we stand ready to continue a discussion on this subject to ensure that our fight against terrorism is prosecuted fairly and judiciously.•

Mr. D'AMATO. Mr. President, I rise today to comment on the introduction of the Omnibus Counter-Terrorism Act of 1995. I am pleased to be an original cosponsor of this legislation along with Senators BIDEN, KOHL, SPECTER, and KERREY.

Mr. President, what we are seeing today is an exponential increase in violence across the globe. Acts that were once thought to be implausible are becoming commonplace. We witnessed the bombing of the World Trade Center 2 years ago. What we saw there was something that no sane person could imagine. Unfortunately, six people were killed and over 1,000 were injured. Thankfully, more were not killed and due to quick police work the perpetrators of this horrible act were quickly apprehended. Additionally, special recognition must go out to those responsible for the arrest of Ramzi Yousef, the alleged mastermind of the operation, in Pakistan just this week.

We must prevent another World Trade Center-like operation from taking place. We can no longer rely on luck. The bill we are introducing today will close loopholes and shore up jurisdiction problems and allow us to get our hands on these murdering terrorists before they get a chance to act and if need be, to grab them overseas. It offers us essential legal tools such as the RICO statute and wiretapping capabilities to stop terrorism in its tracks.

If we wish to fight terrorism, we must have the right tools. This bill is a great beginning and will help us to gain the upper hand.

I am pleased to be joining my colleagues in introducing this legislation

and I urge my other colleagues in the Senate to join us in supporting this important legislation.

By Mr. GLENN (for himself and Mr. DEWINE):

S. 392. A bill to amend the Dayton Aviation Heritage Preservation Act of 1992 with regard to appointment of members of the Dayton Aviation Heritage Commission, and for other purposes; to the Committee on Energy and Natural Resources.

THE DAYTON AVIATION HERITAGE PRESERVATION ACT

• Mr. GLENN. Mr. President, on behalf of myself and Senator DEWINE, I would like to introduce legislation to correct a concern that was raised after the passage of the Dayton Aviation Heritage Preservation Act, establishing a national park to preserve historic sites in Dayton, OH, that are associated with the Wright brothers and the early development of aviation.

Public Law 102-419 required that members of a commission established by the act to assist in preserving and managing the park would be appointed by the Secretary of the Interior from recommendations made by certain local and State officials. Concerns were raised that the language of the act may not be in accordance with the appointments clause of the Constitution.

The legislation that I am introducing today addresses that concern and provides that the Secretary will appoint the Commission after consideration of recommendations made by those public officials. I hope that the Senate committee will consider this legislation expeditiously so that the Commission can undertake its full responsibilities.•

By Mrs. BOXER:

S. 393. A bill to prohibit the Secretary of Agriculture from transferring any National Forest System lands in the Angeles National Forest in California out of Federal ownership for use as a solid waste landfill; to the Committee on Energy and Natural Resources.

TRANSFERS OF NATIONAL FOREST LAND FOR LANDFILL CONSTRUCTION

• Mrs. BOXER. Mr. President, I am pleased today to introduce a bill to prohibit the Forest Service from transferring land in the Angeles National Forest for the purposes of constructing a landfill.

Three times in the past 25 years the Forest Service has studied the possibility of transferring land in Elsmere Canyon to a private company that wants to build a 190-million-ton landfill on the site. The landfill would destroy the canyon, 1,600 acres of resource rich, publicly owned land held in trust by the National Forest Service.

The proposed landfill would sit atop the aquifer that serves the entire Santa Clarita Valley, posing a considerable risk of contamination to this critical water supply.

Elsmere Canyon is a major wildlife corridor connecting the San Gabriel and Santa Monica Mountains. This corridor serves the needs of deer, bear, and cougars. If the connection were destroyed, many of these animals would end up in residential areas threatening both the animals and local residents.

It is clear that this national forest property is far too valuable to be transferred for the purpose of constructing a landfill. We must also be concerned about establishing a precedent of using national forest lands for this purpose when realistic alternatives exist. It is particularly difficult to justify the loss of this resource in a region with limited open space and recreational facilities.

To its credit, the Forest Service has denied each of the requests that have been made for the transfer of Elsmere Canyon. But the economic and political pressure remains. This bill, introduced in the House by Congress BUCK MCKEON with the support of many of his Republican and Democratic colleagues, takes the landfill option off the table. It takes a strong position in favor of Forest Service management that places the public good before private profit.

I hope my colleagues in the Senate will give this bill their early and favorable consideration.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 393

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

SECTION 1. PROHIBITION OF CERTAIN TRANSFERS OF NATIONAL FOREST LANDS.

(a) PROHIBITION.—The Secretary of Agriculture shall not transfer (by exchange or otherwise) any land owned by the United States and managed by the Secretary as part of the Angeles National Forest to any person unless the instrument of conveyance contains a restriction, enforceable by the Secretary, on the future use of the land prohibiting the use of any portion of the land as a solid waste landfill.

(b) ENFORCEMENT.—The Secretary shall act to enforce a restriction described in subsection (a) as soon as possible when and if violation of the restriction occurs.•

By Mr. D'AMATO;

S. 394. A bill to clarify the liability of banking and lending agencies, lenders, and fiduciaries, and for other purposes; to the Committee on Environment and Public Works.

ASSET CONSERVATION, LENDER LIABILITY, AND DEPOSIT INSURANCE PROTECTION ACT

• Mr. D'AMATO. Mr. President, I am today introducing the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1995. This bill addresses an urgent issue facing America's banks and lenders today—the imposition of massive liability for the cleanup of property they hold as security interest on a loan, or as the technical owner under a leveraged lease, that is later discovered to be contaminated.

Mr. President, court decisions have eviscerated the "secured creditor exception" currently contained in CERCLA, or as it is more commonly known, the Superfund law. Some courts have scrutinized the oversight activities of creditors, and deemed them responsible for cleanup costs. For instance, the Eleventh Circuit Court of Appeals deemed a secured creditor liable because it exercised authority over the contaminated property "sufficiently broad to support the inference that it could affect hazardous waste disposal decisions if it chose." As a result, lenders risk being targeted as convenient deep pockets, and being forced to foot the cleanup bill for contamination, not because they caused it or did not take precautions, but simply because they hold a security interest or have some other technical indicia of ownership.

Mr. President, this bill will not permit lenders to evade responsibility if they cause environmental contamination. But lenders should not be held liable merely because of their deep pockets. The imposition of culpability based on legal dictates of commercial or fiduciary law is wrong. And, the implications of this legal doctrine extend beyond the finance industry. Why? Because the so-called deep pockets in the banking and finance industries are not bottomless pits. And the ultimate losers in this scheme are not the lenders, but potential borrowers, especially small businesses, who may face liability. Lenders are reluctant to extend credit and face potential liability. Many small businesses and potential homeowners do not receive financing because of potential claims. Without access to credit small businesses can not get off the ground or grow. So, in the final analysis, the victims are economic growth and job creation.

Mr. President, the refinements embodied in this bill are not new. The Senate passed similar legislation in 1991 as part of S. 543, the Federal Deposit Insurance Corporation Improvement Act. The Senate approved a lender liability amendment to the Federal Housing Enterprises Regulatory Reform Act of 1992. Last year, the Banking and Environment Committees worked together and crafted language for inclusion in the Superfund reauthorization bill. This bill is modeled on final language form that bill, with several adjustments. Most significantly, this bill would clarify lender liability rules not only with respect to Superfund, but also with respect to the underground tank provisions of the Solid Waste Disposal Act.

This bill will make clear the potential liability that lenders, acting in

their capacity as secured creditors, lessors, or fiduciaries, face for contamination. Lender liability will be limited to the net gain that the lender realizes from the sale of property. Fiduciary liability may not exceed the assets held in that fiduciary capacity. This bill also addresses the liability problems that the FDIC, RTC, and other banking agencies face when they close a financial institution and take over the assets of the failed institution. If these assets include contaminated property acquired through foreclosure, the agency may assume liability for contamination for which it is not responsible. Finally, the bill provides clarity as to when creditors will be deemed to be owners or operators of contaminated property, and excludes federally appointed receivers and conservators, including Federal agencies acting in this capacity, from the definition of owner or operator.

Mr. President, the time has come to make it clear that innocent banks and lenders should not face liability for environmental contamination because they make a loan or protect their security interest. In light of the Supreme Court's denial of certiorari in Kelly versus Environmental Protection Agency, the EPA's ability to effectively address this problem is limited. Congressional action is needed. The Senate has an ambitious agenda set out for this Congress; an agenda that includes regulatory relief and litigation reforms. This bill is consistent with this initiative for economic growth. I offer this bill in the hopes of furthering the process of reform.●

ADDITIONAL COSPONSORS

S. 228

At the request of Mr. BRYAN, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 228, a bill to amend certain provisions of title 5, United States Code, relating to the treatment of Members of Congress and congressional employees for retirement purposes.

S. 248

At the request of Mr. GREGG, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 248, a bill to delay the required implementation date for enhanced vehicle inspection and maintenance programs under the Clean Air Act and to require the Administrator of the Environmental Protection Agency to reissue the regulations relating to the programs, and for other purposes.

S. 252

At the request of Mr. LOTT, the names of the Senator from South Carolina [Mr. THURMOND], and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 252, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 254

At the request of Mr. LOTT, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 254, a bill to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 256

At the request of Mr. DOLE, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 257

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 257, a bill to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea.

S. 258

At the request of Mr. PRYOR, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 258, a bill to amend the Internal Revenue Code of 1986 to provide additional safeguards to protect taxpayer rights.

S. 381

At the request of Mr. HELMS, the names of the Senator from Arizona [Mr. KYL], the Senator from Wyoming [Mr. THOMAS], and the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of S. 381, a bill to strengthen international sanctions against the Castro government in Cuba, to develop a plan to support a transition government leading to a democratically elected government in Cuba, and for other purposes.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate of Friday February 10, 1995, at 9 a.m. to hold a hearing on "A Review of the National Drug Control Strategy."

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

COMMITTEE ON SMALL BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet for a hearing on the future of the Small Business Administration, during the session of the Senate on Friday, February 10, 1995, at 10 a.m.

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

ADDITIONAL STATEMENTS

CANCER RESEARCH

● Mr. GORTON. Mr. President, I have always been a strong proponent of Federal funding for cancer research. As a member of the Labor, Health, and Human Services and Education Appropriations Subcommittee since 1991, I have continually made cancer research one of my highest priorities.

One form of this disease, breast cancer, will affect one in eight women and will kill 46,000 Americans this year alone. Whether you have had a sister, a mother, a spouse, or a friend who has been directly affected by breast cancer, the fear of this disease is instilled in all women.

Conventional treatment for this type of cancer includes surgery, chemotherapy, radiation, and bone-marrow transplants.

With this in mind, I am delighted to share with my colleagues the great strides researchers are making at the University of Washington. The scientists in Seattle have been working on a whole new approach to stopping breast cancer—the use of a vaccine.

The vaccine, which has been under development for more than 3 years, is designed to stop the disease from recurring in many patients who have already been diagnosed and treated.

The research is being financed by a $765,000 grant from the National Institutes of Health and $145,000 from the Boeing Co. The vaccine is now being refined in laboratory animals and the researchers hope to conduct human tests this year.

I am proud of the wonderful work that is being done in Seattle, and throughout the whole country, where research is being conducted daily. With the great technological and research advances our society is experiencing, I am excited to see what innovative therapies tomorrow will bring.●

GREEK INDEPENDENCE DAY

● Mr. SIMON. Mr. President, it is with great pleasure that I am an original cosponsor of a resolution introduced today by the senior Senator from Pennsylvania designating March 25, 1995, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy." More than a gesture of friendship and good will, this resolution recognizes the enormous influence Greece and its traditions have had on our Nation.

It is fitting that we honor Greek independence in this Chamber, since the ancient Greeks first created the Athenian Assembly and direct democracy. The Greek word "demokratia" is a compound of "demos," meaning the people and "kratos," meaning power. To the Greeks we owe our most basic concept of democratic government,

which our 16th President from Illinois so eloquently referred to in his Gettysburg Address as, "* * * government of the people, by the people, and for the people * * *"

Without Greece, its history, and its democratic traditions, we as a Nation would be lacking a strong foundation. For this inspiration, the people of the United States owe Greece deep gratitude.

This resolution not only honors Greece on its 174th anniversary of the beginning of the revolution that freed the Greek people from the Ottoman Empire, but also celebrates the historic and close ties between the citizens of Greece and the citizens of the United States. From the Greek philosophical influences on our Founding Fathers, to the neoclassical architecture of our Capitol and many of our State capitols, to Greek support of international struggles against fascism and communism, Greeks through many generations have helped foster and nourish the mutually beneficial ties between Greece and the United States.

I urge other colleagues from the Senate to join in cosponsorship of this worthwhile resolution.●

RULES OF THE COMMITTEE ON VETERANS' AFFAIRS

● Mr. SIMPSON. Mr. President, pursuant to paragraph 2 of rule XXVI, Standing Rules of the Senate, I submit for printing in the CONGRESSIONAL RECORD the Rules of the Committee on Veterans' Affairs for the 104th Congress, as adopted by the committee on February 1, 1995.

The rules follow:

RULES OF PROCEDURE OF THE COMMITTEE ON VETERANS' AFFAIRS

I. MEETINGS

(a) Unless otherwise ordered, the Committee shall meet on the first Wednesday of each month. The Chairman may, upon proper notice, call such additional meetings as he deems necessary.

(b) Except as provided in subparagraphs (b) and (d) of paragraph 5 of rule XXVI of the Standing Rules of the Senate, meetings of the Committee or a Subcommittee shall be open to the public.

(c) The Chairman of the Committee or of a Subcommittee, or the Vice Chairman in the absence of the Chairman, or the Ranking Majority Member present in the absence of the Vice Chairman, shall preside at all meetings.

(d) No meeting of the Committee or any Subcommittee shall be scheduled except by majority vote of the Committee or by authorization of the Chairman of the Committee.

(e) The Committee shall notify the office designated by the Committee on Rules and Administration of the time, place, and purpose of each meeting. In the event such meeting is canceled, the Committee shall immediately notify such designated office.

(f) Written notice of a Committee meeting, accompanied by an agenda enumerating the items of business to be considered, shall be sent to all Committee members at least 72 hours (not counting Saturdays, Sundays, and Federal holidays) in advance of each meeting. In the event that the giving of such 72-hour notice is prevented by unforeseen requirements or Committee business, the Committee staff shall communicate notice by the quickest appropriate means to members or appropriate staff assistants of members and an agenda shall be furnished prior to the meeting.

(g) Subject to the second sentence of this paragraph, it shall not be in order for the Committee to consider any amendment in the first degree proposed to any measure under consideration by the Committee unless a written copy of such amendment has been delivered to each member of the Committee at least 24 hours before the meeting at which the amendment is to be proposed. This paragraph may be waived by a majority vote of the members and shall apply only when 72-hour written notice has been provided in accordance with paragraph (f).

II. QUORUMS

(a) Subject to the provisions of paragraph (b), seven members of the Committee and four members of a Subcommittee shall constitute a quorum for the reporting or approving of any measure or matter or recommendation. Four members of the Committee or Subcommittee shall constitute a quorum for purposes of transacting any other business.

(b) In order to transact any business at a Committee or Subcommittee meeting, at least one member of the minority shall be present. If, at any meeting, business cannot be transacted because of the absence of such a member, the matter shall lay over for a calendar day. If the presence of a minority member is not then obtained, business may be transacted by the appropriate quorum.

(c) One member shall constitute a quorum for the purpose of receiving testimony.

III. VOTING

(a) Votes may be cast by proxy. A proxy may be written or oral, and may be conditioned by personal instructions. A proxy shall be valid only for the day given except that a written proxy may be valid for the period specified therein.

(b) There shall be a complete record kept of all Committee action. Such record shall contain the vote cast by each member of the Committee on any question on which a roll-call vote is requested.

IV. SUBCOMMITTEES

(a) No member of the Committee may serve on more than two Subcommittees. No member of the Committee shall receive assignment to a second Subcommittee until all members of the Committee, in order of seniority, have chosen assignments to one Subcommittee.

(b) The Committee Chairman and the Ranking Minority Member shall be ex officio nonvoting members of each Subcommittee of the Committee.

(c) Subcommittees shall be considered de novo whenever there is a change in Committee Chairmanship and, in such event, Subcommittee seniority shall not necessarily apply.

(d) Should a Subcommittee fail to report back to the Committee on any measure within a reasonable time, the Chairman may withdraw the measure from such Subcommittee and so notify the Committee for its disposition.

V. HEARINGS AND HEARING PROCEDURES

(a) Except as specifically otherwise provided, the rules governing meetings shall govern hearings.

(b) At least 1 week in advance of the date of any hearing, the Committee or a Subcommittee shall undertake, consistent with the provisons of paragraph 4 of rule XXVI of the Standing Rules of the Senate, to make public announcement of the date, place, time, and subject matter of such hearing.

(c) The Committee or a Subcommittee shall require each witness who is scheduled to testify at any hearing to file 40 copies of such witness' testimony with the Committee not later than 48 hours prior to the witness' scheduled appearance unless the Chairman and Ranking Minority member determine there is good cause for failure to do so.

(d) The presiding officer at any hearing is authorized to limit the time allotted to each witness appearing before the Committee or Subcommittee.

(e) The Chairman, with the concurrence of the Ranking Minority Member of the Committee, is authorized to subpoena the attendance of witnesses and the production of memoranda, documents, records, and any other materials. If the Chairman or a Committee staff member designated by the Chairman has not received from the Ranking Minority member or a Committee staff member designated by the Ranking Minority member notice of the Ranking Minority Member's nonconcurrence in the subpoena within 48 hours (excluding Saturdays, Sundays, and Federal holidays) of being notified of the Chairman's intention to subpoena attendance or production, the Chairman is authorized following the end of the 48-hour period involved to subpoena the same without the Ranking Minority Member's concurrence. Regardless of whether a subpoena has been concurred in by the Ranking Minority member, such subpoena may be authorized by vote of the members of the Committee. When the Committee or Chairman authorizes a subpoena, the subpoena may be issued upon the signature of the Chairman or of any other member of the Committee designated by the Chairman.

(f) Witnesses at hearings will be required to give testimony under oath whenever the Chairman or Ranking Minority Member deems such to be advisable. At any hearing to confirm a Presidential nomination, the testimony of the nominee and, at the request of any member, any other witness shall be under oath.

VI. MEDIA COVERAGE

Any Committee or Subcommittee meeting or hearing which is open to the public may be covered by television, radio, and print media. Photographers, reporters, and crew members using mechanical recording, filming, or broadcasting devices shall position and use their equipment so as not to interfere with the seating, vision, or hearing of the Committee members or staff or with the orderly conduct of the meeting or hearing. The presiding member of the meeting or hearing may for good cause terminate, in whole or in part, the use of such mechanical devices or take such other action as the circumstances and the orderly conduct of the meeting or hearing may warrant.

VII. GENERAL

All applicable requirements of the Standing Rules of the Senate shall govern the Committee and its Subcommittees.

VIII. PRESIDENTIAL NOMINATIONS

Each Presidential nominee whose nomination is subject to Senate confirmation and referred to this Committee shall submit a statement of his or her background and financial interests, including the financial interests of his or her spouse and of children

living in the nominee's household, on a form approved by the Committee which shall be sworn to as to its completeness and accuracy. The Committee form shall be in two parts—

(A) information concerning employment, education, and background of the nominee which generally relates to the position to which the individual is nominated, and which is to be made public; and

(B) information concerning the financial and other background of the nominee, to be made public when the Committee determines that such information bears directly on the nominee's qualifications to hold the position to which the individual is nominated.

Committee action on a nomination, including hearings or a meeting to consider a motion to recommend confirmation, shall not be initiated until at least five days after the nominee submits the form required by this rule unless the Chairman, with the concurrence of the Ranking Minority Member, waives this waiting period.

IX. NAMING OF DEPARTMENT OF VETERANS AFFAIRS FACILITIES

It is the policy of the Committee that no Department of Veterans Affairs facility shall be named after any individual unless—

(A) such individual is deceased and was—

(1) a veteran who (i) was instrumental in the construction or the operation of the facility to be named, or (ii) was a recipient of the Medal of Honor or, as determined by the Chairman and Ranking Minority Member, otherwise performed military service of an extraordinarily distinguished character;

(2) a member of the United States House of Representatives or Senate who had a direct association with such facility;

(3) an Administrator of Veterans' Affairs, a Secretary of Veterans Affairs, a Secretary of Defense or of a service branch, or a military or other Federal civilian official of comparable or higher rank; or

(4) an individual who, as determined by the Chairman and Ranking Minority Member, performed outstanding service for veterans;

(B) each member of the Congressional delegation representing the State in which the designated facility is located has indicated in writing such member's support of the proposal to name such facility after such individual; and

(C) the pertinent State department or chapter of each Congressionally chartered veterans' organization having a national membership of at least 500,000 has indicated in writing its support of such proposal.

X. AMENDMENTS TO THE RULES

The rules of the Committee may be changed, modified, amended, or suspended at any time, provided, however, that no less than a majority of the entire membership so determine at a regular meeting with due notice, or at a meeting specifically called for that purpose. The rules governing quorums for reporting legislative matters shall govern rules changes, modification, amendments, or suspension.●

UNANIMOUS-CONSENT AGREEMENT—SENATE RESOLUTION 73

Mr. HATCH. I ask unanimous consent that the vote ordered on adoption of Senate Resolution 73, the committee funding resolution, occur at 5 p.m. on Monday, February 13.

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

MEASURE REFERRED TO COMMITTEE—S. 391

Mr. HATCH. Mr. President, I ask unanimous consent that a bill introduced by Senator CRAIG, S. 391, the Federal Lands Forest Health Protection and Restoration Act of 1995 be referred to the Committee on Energy and Natural Resources and that when and if the bill is reported by that committee, it be referred jointly to the Committee on Agriculture and the Committee on Environment and Public Works for not to exceed 20 days of session, and if on the 20th day either committee has not reported the bill, the committee's be discharged from further consideration of the bill and the bill be placed on the Senate calendar.

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

AMENDING THE CHARTER OF THE VETERANS OF FOREIGN WARS

Mr. HATCH. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 257, a bill to amend the charter of the Veterans of Foreign Wars, that the Senate proceed to its immediate consideration; that the bill be deemed read a third time; passed, and the motion to reconsider be laid upon the table.

There being no objection, the bill (S. 257) was considered, deemed read the third time, and passed, as follows:

S. 257

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act of May 28, 1936 (36 U.S.C. 115), is amended to read as follows:

"SEC. 5. A person may not be a member of the corporation created by this Act unless that person—

"(1) served honorably as a member of the Armed Forces of the United States in a foreign war, insurrection, or expedition, which service has been recognized as campaign-medal service and is governed by the authorization of the award of a campaign badge by the Government of the United States; or

"(2) while a member of the Armed Forces of the United States, served honorably on the Korean peninsula or in its territorial waters for not less than 30 consecutive days, or a total of 60 days, after June 30, 1949."

ORDERS FOR MONDAY, FEBRUARY 13, 1995

Mr. HATCH. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 12 noon on Monday, February 13, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, and that following the time for the two leaders that there then be a period for the transaction of routine morning business, not to extend beyond the hour of 1 p.m., with Senators permitted to speak for not to exceed 10 minutes each.

I further ask unanimous consent that at the hour of 1 p.m., the Senate resume consideration of House Joint Resolution 1, the constitutional balanced budget amendment.

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

ORDER OF PROCEDURE

Mr. HATCH. For the information of all of my colleagues, under the previous order there will be a rollcall vote at 5 p.m. on Monday on adoption of Senate Resolution 73, the committee funding resolution. Senators should also be aware that there is a pending amendment to the constitutional balanced budget amendment, so further rollcall votes are possible on Monday.

RECESS UNTIL MONDAY, FEBRUARY 13, 1995

Mr. HATCH. Mr. President, if there is no further business to come before the Senate, and no other Senator is seeking recognition, I now ask unanimous consent the Senate stand in recess under the previous order.

There being no objection, the Senate, at 3:57 p.m., recessed until Monday, February 13, 1995, at 12 noon.

EXTENSIONS OF REMARKS

S.T.O.P.

HON. RANDY "DUKE" CUNNINGHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 10, 1995

Mr. CUNNINGHAM. Mr. Speaker, on February 2, 1995, I was pleased to be included in a critically important briefing. I was proud to help cosponsor a Safe Tables Our Priority [S.T.O.P.]—Safe Food Coalition briefing on foodborne illness.

Last Thursday's briefing marked the second anniversary of the 1993 west coast E. coli outbreak. Fortunately, a forum was created to allow the individuals and families who have suffered from the E. coli illnesses to visit Washington, DC, to examine the ongoing epidemic and discuss plans for preventing future outbreaks of foodborne illness.

The tragic events of 2 years ago are still fresh in my mind. While the incident still upsets me, I can only imagine the constant pain endured by the families who lost a child or who experienced the serious illness due to the contamination of ground beef with E. coli 0157:H7 bacteria. That is why I will always be grateful for the organizations, such as S.T.O.P., that seek to change the system in order to right a wrong. When it comes to a life and death situation, every endeavor to correct the system is welcome.

Until the tragedies were highlighted a few years ago, I do not believe that people were aware of the inherent dangers associated with the consumption of raw meat products. It is unfortunate that a number of deaths occurred before significant changes were made to the current food handling processes. Therefore, we must ensure systematic, science-based prevention of harmful contamination into the operation of every meat and poultry plant. Industries must be held accountable for meeting its food safety obligations. I believe that positive steps can be taken by animal producers to processors to retailers to consumers in order to reduce the risk of illness.

The only benefit of this issue is that significant policy changes are being made and will continue to be made as additional information and technology become available. Serious attempts have been made of late to preserve the quality of meat consumption in both our homes and restaurants. I am encouraged that the Department of Agriculture has established the principle that any contamination of raw ground beef with E. coli 0157:H7 is unacceptable. The Department has strictly enforced zero tolerance for visible signs of contamination of beef and poultry carcasses. It is now mandatory to apply safe handling and cooking labels on every package of raw meat and poultry. Antimicrobial rinses and hot water treatments will also be allowed without prior approval of the Food Safety and Inspection Services. After carcasses have passed inspection and prior to their reaching the coolers, last minute rinses and water treatments will further reduce the chance of reducing levels of E. coli 0157:H7.

I urge my colleagues to support organizations such as S.T.O.P., dedicated to the prevention of foodborne illness. We cannot rest until everything is being done to protect the safety of our food, and ultimately provide for the well-being of our loved ones.

TRIBUTE TO JUANITA LOCHNER

HON. MICHAEL R. McNULTY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, February 10, 1995

Mr. McNULTY. Mr. Speaker, Mrs. Juanita Lochner is a resident of East Greenbush, Rensselaer County, NY. She is currently serving as president of the American Legion Auxiliary, Department of New York, and as a member of the Gerald O'Neil Unit No. 1683.

As a member of the largest women's patriotic organization in the world, assisting veterans has always been her priority. Her project this year is called Special Touches.

Because of budgetary cutbacks, the hospitalized veterans at VA Hospitals are unable to receive those extra comfort items that were previously provided. Her request to the Auxiliary members throughout the State is that we give veterans our help. "They were there when we needed them, and now it's our turn to help them," she says.

Through her efforts, funds are being collected to benefit each VA Hospital in New York State.

Travelling throughout the 62 counties in the State, Mrs. Lochner also emphasizes strongly the support needed for passage of a constitutional amendment to protect our flag from desecration.

The American flag has long exemplified the spirit of those who lost their lives, as well as those who fought and survived. Our flag is a symbol that unites us, and I am proud to be a cosponsor of House Joint Resolution 14.

I am also honored to represent Juanita Lochner—a dedicated and patriotic American.

TRIBUTE TO JOHN T. McDONOUGH

HON. WILLIAM P. LUTHER

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 10, 1995

Mr. LUTHER. Mr. Speaker, on Monday, January 23, the State of Minnesota and the city of Stillwater lost one of our great public servants. The Honorable John T. McDonough passed away at the age of 72 after a full life of dedication to his community. Judge McDonough was born in Stillwater and lived the rest of his life there as a citizen, patriot, legal scholar, and philanthropist.

The Judge was a veteran of World War II and the Korean War. His commitment to our country later led him into public service.

At the age of 26, Judge McDonough was the endorsed candidate for Lieutenant Governor in the State of Minnesota on the 1948 DFL ticket headed by Hubert H. Humphrey. Later, he was appointed Probate-Justice Judge for Washington County by Gov. Orville Freeman in 1956 and served as a judge in Washington County until 1974. He served on the Minnesota Parole Board with distinction for 7 years and was appointed to the Minnesota State Social Services Committee. Judge McDonough was appointed Special Adviser to President John F. Kennedy's Commission on Crime and Delinquency by the late Attorney General of the United States, Robert F. Kennedy.

The Judge was a true philanthropist. He founded the Father Francis J. Miller Memorial Foundation to build a nondenominational chapel at the Minnesota State Prison. He was also a forerunner in the 1960's in recognizing alcohol/drug abuse as a prime contributing factor to crime delinquency, family violence, and divorce.

Since 1980, McDonough served as chief legal counsel to Hubbard Broadcasting, Inc.

The Honorable John T. McDonough was more than an author, veteran, judge, philanthropist, and legal counsel. His neighbors and coworkers will remember him best as a great character. The Judge's combination of enthusiasm and commitment will be greatly missed by the country, State, city, and people he served.

CONCRETE SUPPORT FOR THE WAR CRIMES TRIBUNAL

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, February 10, 1995

Mr. SMITH of New Jersey. Mr. Speaker, next week the United Nations begins another review of the budget needs for the International Criminal Tribunal for the Former Yugoslavia. This tribunal has already faced numerous obstacles to its establishment and considerable bureaucratic and political barriers to its staffing; worse still, it continues to face opposition from those who would rather negotiate with war criminals than see them in jail. In spite of numerous political and procedural roadblocks, the tribunal issued its first indictment in early November, is proceeding with investigations, and is expected to bring cases to trial later this year.

This progress by no means guarantees long-term success, Mr. Speaker. In fact, in an

article published in the Washington Post, Tom Warrick, an attorney who assisted the head of the United Nations War Crimes Commission, points out that the results of a relatively obscure U.N. committee may determine "whether those ultimately responsible for ethnic cleansing are ever to be brought to justice." And, as those who oppose this tribunal have learned, what they can't defeat openly through the political process, they may be able to gut in the United Nations closed-door budget negotiations.

Nongovernmental experts have already suggested that the $28 million sought by tribunal officials may be too low, given the costs of gathering testimony from the thousands of victims of the extensive list of deplorable war crimes and in light of the on-site investigations that the effective prosecution of war criminals will require. Nevertheless, it appears that securing even these funds may be an uphill battle with the U.N. bureaucracy.

Accordingly, I have written to the President, along with the Cochairman of the Helsinki Commission, Senator D'AMATO, and Representative STENY HOYER, the former chairman of and now ranking House minority member on the Commission, urging the President to instruct the U.S. delegation to the United Nations to press vigorously at these upcoming budget meetings to ensure adequate funding for the tribunal. The establishment of this body, against so many odds, is a credit to strong U.S. leadership. But, without proper funding, Mr. Speaker, the tribunal will never be able to execute the historic tasks that have been set for it. We have also indicated our support for an additional voluntary contribution to the tribunal by the United States of an amount not less than the $3 million cash contribution provided last year.

Mr. Speaker, as the Bosnian Prime Minister, Haris Silajdzic, stated at the Helsinki Commission's hearing just 2 weeks ago, war crimes and genocide continue in Bosnia even now, during the 50th anniversary of the liberation of Auschwitz. I cannot overstate my conviction that holding war criminals accountable for the heinous crimes they have committed in this conflict will be an essential element for any long-term resolution of this tragedy. If the United States, at this juncture, inexplicably reduces the level of financial support it has provided to the tribunal, it might send a regrettable signal of weakening U.S. resolve to see war criminals held truly accountable. We must not let that happen.

TRIBUTE TO NAOMI FISHER

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 10, 1995

Mr. CLINGER. Mr. Speaker, I rise today to congratulate Ms. Naomi Fisher of Mill Hall, PA, who has been selected as Blind Worker of the Year. I am pleased to have this opportunity to recognize this great accomplishment.

Ms. Fisher was nominated for this award by her coworkers at North Central Sight Services, Inc. I am sure this is quite an honor for Naomi to be recognized by her fellow employees. Her coworkers, however, are not just ordinary colleagues. These individuals have experienced, and will continue to experience, many of the same trials and tribulations that Naomi does. Although every employee in this workplace deserves credit for rising above their physical challenges, Naomi is being recognized for her certitude in accepting diversity. Her ability to inspire and help those who are in a similar situation is a true testimony to her character.

This award, sponsored by the Javits-Wagner-O'Day Program, appropriately reflects the goals of this organization. The JWOD Program is designed to provide employment opportunities and services for thousands of blind Americans throughout the United States. Each year the National Industries for the Blind, the central nonprofit agency for industries participating in the program, selects one outstanding worker for this well-deserved award. The significance of this award is only realized when you consider how many people are worthy of consideration.

Ms. Fisher was selected as the Blind Worker of the Year not only for her outstanding job performance, but also for her activities off the job. She stays very busy at her family farm and also at the local church. As we all can see, she deserves this award for her many accomplishments. I applaud the hard work she has performed both in the work place and in our community. Her determination and dedication is an inspiration to us all.

Mr. Speaker, it is my distinct pleasure to recognize Naomi Fisher for receiving this prestigious award. Once again, I congratulate her and offer my best wishes for continued success.

TRIBUTE TO JOHN A. FLINN

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 10, 1995

Mr. MURTHA. Mr. Speaker, I rise today to pay tribute to a dedicated member of the federal financial management community upon his retirement as Director of Operations for the Department of Defense Comptroller after more than 30 years of service to his country. Mr. John A. Flinn is most deserving of our tribute. He has consistently demonstrated the qualities expected of our finest public servants. His efforts have been a primary factor in the effective formulation and presentation of the Department of Defense Operation and Maintenance budget for more than 20 years, and the fact that our military today is the finest it has ever been is in no small part due to his efforts.

Mr. Flinn's Federal career commenced in 1961 with the Department of the Navy. He served in many responsible positions with the Navy before being selected to work in the Office of the Secretary of Defense in 1974. Since 1986, Mr. Flinn has served as Director of Operations, the primary DOD Comptroller interface with Congress and the Military Departments for the Military Personnel and Operation and Maintenance appropriations. His knowledge and expertise in operating budgets is unequaled in the Defense Department. During his 8 years as Director for Operations, he has gone beyond his regular duties to play a major role in the Department's transition to operations in a post-cold-war environment. The high esteem accorded Mr. Flinn by myself and my colleagues is reflected in the many times he was requested by name to testify before the Defense Appropriations Subcommittee. He always provided candid and accurate testimony.

Mr. Flinn was the primary focal point within the Comptroller for developing budgets to support Desert Shield/Desert Storm. The unprecedented funding mechanism in which many nations provided both financial and in-kind resources, required the establishment of new and innovative approaches to meeting the service's funding requirements. Mr. Flinn was able to develop and implement this innovative funding mechanism because he had the respect and confidence of the Military Departments and our staff. Mr. Flinn's most enduring contribution, however, will always be his steadfast advocacy in support of our soldiers, sailors, airmen and marines, and their families.

Mr. Speaker, it is a great honor for me to present the credentials of Mr. Flinn before the Congress today. It is clear that Mr. Flinn has played a key role in ensuring effective financial management for the Defense Department and for the taxpayers of the United States. We wish him success in his coming endeavors. He will be missed.

SALUTING BILL AND ELLEN CARTER OF HOUSTON, TX

HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, February 10, 1995

Mr. FIELDS of Texas. Mr. Speaker, they were not born in Houston, or even Texas, but Bill and Ellen Carter personify the "can do" spirit that has made Houston a great city and Texas a great state. In the 36 years since they moved to Houston—and as a result of their own hard work and sacrifice—Bill and Ellen Carter have enjoyed tremendous success as business owners. Their success demonstrates that even today, Texas remains a place in which a person can advance as far as his talent, dedication and hard work can carry him.

Bill and Ellen Carter were recently profiled in a feature story in the Houston Post that detailed their love of Houston, as well as their amazing business acumen in the 35 years since they scraped together $15,000 to purchase a gun club in north Harris County. Today, the Carters own four retail gun stores, a public shooting range, as well as three commercial game ranches. Carter's Country's sales have increased from $32,000 in the first year of operations to approximately $25 million last year.

Mr. Speaker, as a longtime and loyal Carter's Country customer, I want to add my voice to those paying tribute to this remarkable couple.

Raised in a small farming community in central North Carolina, Bill Carter joined the National Guard when he was just 14 years old—adding a few years to his age in order to enlist. Following his discharge from the National Guard, he enlisted in the U.S. Marine

Corps. In the National Guard and the Marine Corps, his lifelong interest in firearms deepened.

Bill was sent to Korea and briefly considered a military career but ended up leaving the Corps with the intention of getting a college degree. Instead, he became a merchant seaman and, in the course of his travels, visited Houston often. He met his future wife in New Jersey and, eventually, Bill convinced his bride to move with him to Houston.

He worked as an iron worker while Ellen worked as an emergency room nurse at Hermann Hospital. Soon, Bill was making firearms for his coworkers out of a makeshift shop in his garage. Many weekends, in order to test his firearms, Bill would arrive at a local shooting range at sunup. He spent so much time there, in fact, that the owner eventually offered to sell him the shooting range for $15,000. And so was founded the Carter's Country empire.

As a result of their hard work and dedication, Bill and Ellen Carter's business expanded rapidly in the 1970's and 1980's. Today, despite this expansion, Carter's Country remains a family business serving the needs of hunters and sportsmen throughout the greater Houston area. Carter's Country employs 100 associates, who Bill Carter calls "the heart and soul of Carter's Country."

Mr. Speaker, Bill and Ellen Carter's story is the quintessential Texas story of humble beginnings; of hard work and initiative and dedication; and of well-deserved success. I hope you will join with me in saluting Bill and Ellen Carter and wishing them and their family continued success and happiness in the years ahead.

Thank you, Mr. Speaker.

TRIBUTE TO RICHARD L. ROUDEBUSH

HON. ANDREW JACOBS, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 10, 1995

Mr. JACOBS. Mr. Speaker, Dick Roudebush was the veteran's veteran.

His military record was one of selfless sacrifice and defying danger. He was an extraordinary patriot. And he was a member of the U.S. House of Representatives for 10 years beginning in 1961.

As can be seen by the following, he was also head of the Veterans' Administration. Any veteran who got his disability check on time during the seventies owes some gratitude to the fine administration provided by Dick Roudebush.

More important, he was a nice man, pleasant and friendly.

All Americans are diminished by the passing of the Honorable Richard L. Roudebush. He was my friend.

[From the Indianapolis News, Jan. 30, 1995]

RICHARD L. ROUDEBUSH, CONGRESSMAN, VA CHIEF

NOBLESVILLE, IN.—Richard L. Roudebush, 77, former five-term congressman who became director of the Veterans Administration, died Saturday.

Mr. Roudebush died of complications from pneumonia at Doctors Hospital in Sarasota, Fla., where he also kept a home.

Services will be at 10 a.m. Friday in Randall & Roberts Logan Street Chapel, with calling from 2 to 8 p.m. Wednesday and Thursday.

Burial will be in Arlington National Cemetery.

In 1974, President Gerald R. Ford nominated his former Republican congressional colleague as administrator of veterans affairs. Mr. Roudebush's nomination was confirmed by the Senate Oct. 1, 1974.

The agency served more than 29 million veterans, had 200,000 employees and an annual budget of about $14 billion.

Mr. Roudebush returned to his Noblesville farm in January 1977 after the election of Democratic President Jimmy Carter.

In May 1982, President Reagan signed a law renaming the Veterans Administration Medical Center in Indianapolis as the Richard L. Roudebush Veterans Affairs Medical Center.

Mr. Roudebush graduated from Butler University in 1941 with a degree in business administration. He was a member of Sigma Chi Fraternity. In 1969, he received an honorary doctorate from Butler.

He enlisted in the Army about a month before the attack on Pearl Harbor and was shipped out in September 1942 to Egypt, where he was assigned to the Suez Canal Command and served with British forces during five major battles in North Africa.

In the invasion of Italy, his landing craft was sunk. Mr. Roudebush joined the newly formed 15th Air Force and helped clear explosives from captured enemy airfields.

After his discharge at Camp Atterbury in October 1944, he became a service officer with the Department of Indiana Veterans of Foreign Wars and was stationed at the Indianapolis VA Regional office seven years.

He also served eight years on the Indiana Veterans Commission and chaired that body six years.

He became state commander of the Indiana VFW Department in 1953. In 1954 he became chief of staff in the National VFW and was elected national commander in chief at the VFW convention at Miami Beach in 1957.

Mr. Roudebush first was elected to Congress in 1960.

In November 1970, Mr. Roudebush, the GOP nominee for the U.S. Senate, lost to former Sen. Vance Hartke by 4,000 votes out of nearly 2 million cast.

In the House of Representatives, he was on the House District Committee and the House Un-American Activities Committee. Mr. Roudebush was best known as a ranking member of the House Committee on Science and Astronautics and for his work on countless bills benefiting veterans.

A personal friend of all the early astronauts, Mr. Roudebush was instrumental in pushing through America's early space program from Alan Shephard's pioneering liftoff on through Mercury, Gemini and Apollo efforts. He was awarded the VFW National Space Award in 1971.

He was seriously injured in a private plane crash Aug. 19, 1968, while returning to Indiana from the Republican National Convention at Miami. Campaigning from his hospital bed, he won the November 1968 congressional election by his widest margin ever and led the entire Republican slate in Indiana.

In January 1971, he became a consultant to the administrator of veterans affairs, and on June 7, 1971, he was named to the No. 4 position in the VA as assistant deputy administrator. On Jan. 18, 1974, he was promoted to deputy administrator of the VA.

In September 1979, he was elected chairman of the advisory board for Veterans Insurance Services, a subsidiary of the National Liberty Group of companies in Valley Forge, Pa.

Mr. Roudebush was awarded life memberships in the American Legion, the Disabled American Veterans and AMVETS.

He was a member of Refuge Christian Church, Noblesville.

Memorial contributions may be made to the donor's favorite charity.

Survivors: wife Marjorie Elliott Roudebush; son Roy "Chip" L. Roudebush; daughter Karen Roudebush; brother William Roudebush; a granddaughter.

THE CLINTON ADMINISTRATION'S FAILED BOSNIA POLICY

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, February 10, 1995

Mr. SMITH of New Jersey. Mr. Speaker, 2 years ago today, Secretary of State Christopher unveiled the Clinton administration's Bosnia policy while lamenting the fact that the West had repeatedly missed earlier opportunities to effectively address the conflict and prevent it from deepening.

During his presentation, Christopher outlined United States interests and strategic concerns at stake in Bosnia. "Our conscience revolts at the idea of passively accepting such brutality," he said, and "it tests our commitment to the nurturing of democracy * * *" Recognizing the implications of the Bosnian crisis he warned, "The world's response to the violence in the former Yugoslavia is an early and crucial test of how it will address the concerns of ethnic and religious minorities in the post-cold war world."

One year ago, in the aftermath of the marketplace massacre in Sarajevo, President Clinton echoed this view when he said, "This century teaches us that America cannot afford to ignore conflicts in Europe. And in this case, our Nation has distinct interests." He concluded, "While the cold war may be over, the world is still full of dangers and the world still looks to America for leadership."

President Clinton had it right when he vowed in his inaugural address that, "When our vital interests are challenged or the will and conscience of the international community is defied, we will act, with peaceful diplomacy whenever possible, with force when necessary."

Mr. Speaker, our interests have been challenged.

The will and conscience of the international community have been defied.

Peaceful diplomacy has failed.

And the world still looks to America for leadership * * *.

TRIBUTE TO ANNANDALE ATOMS

HON. THOMAS M. DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 10, 1995

Mr. DAVIS. Mr. Speaker, I am very proud to rise today to pay tribute to the Annandale

Atoms, a high school football team in the eleventh district of Virginia. The team won its second consecutive State football championship in the AAA division, the most competitive in the State. This is the first time in the school's history and one of the only times in State history that this has happened. The Atoms entered the season with a 12-game winning streak and extended that streak to 26, by winning all 14 games this year.

Over the years Annandale High School has fielded many teams, and has won 2 previous State championships. Annandale also continues to produce outstanding graduates with 80 percent going on to college or post secondary education. The players on this championship team also have additional honors in addition to being State football champions. The honors are as follows:

Patriot District: All District Offense—First Team: Ryan Brooks, TE; Mike Herlands, OT; Maurice Daniels, OG; Jasmin Glenn, RB; and Derrick Crittenden, WR, K.

All District Offense—Second Team: Britton Clarke, OG; Tom Venetsanos, C; Glovannin Santa Ana, RB.

All District Defense—First Team: Sean Mignona, DB; Britton Clarke, DL; Maurice Daniels, LB; Corey Peterson, LB; Donovan Yarbough, DE.

Patriot District Offensive Player of the Year: Jasmin Glenn.

Patriot District Defensive Player of the Year: Maurice Daniels.

Northern Region: All Region Defense—First Team: Ryan Brooks, Maurice Daniels, Jasmin Glenn.

All Region Defense—First Team: Derrick Crittenden, Maurice Daniels, Donovan Yarbough.

All Region Defense—Second Team: Britton Clarke, Sean Mignona, Corey Peterson.

All State—First Team: Maurice Daniels, Donovan Yarbough, Jasmin Glenn, and Derrick Crittenden.

All State—Second Team: Ryan Brooks, Derrick Crittenden.

All-Washington Metropolitan Team—First Team: Maurice Daniels, Derrick Crittendon, Donovan Yarbough.

NBC Channel 4 George Michael's "Golden Eleven" Team: Maurice Daniels, Derrick Crittendon, Sean Mignona.

Gatorade's Circle of Champions Virginia High School Football Player of the Year: Maurice Daniels.

Mr. Speaker, the team as a whole has honors that I would also like to mention as well:

No. 1 ranking in Virginia.

No. 1 ranking in Washington Post.

No. 5 ranking in ESPN.

No. 12 ranking U.S.A. Today.

Twenty-six consecutive game winning streak.

Mr. Speaker, I know that my colleagues join me in congratulating Annandale High School, their coach Richard Adams, their assistant coaches Bob Birmingham, Jamie Carayiannis, Billy Edwards, Marshall Jefferson, Konrad Molter, Bill Curran, Scott Sadowski, Chuck Hoskins, Steve Quesenberry, Bill Maglisceau, Mark Lenert, Rick Baucom, and Dave Kish, their principle Donald Clause, and their remarkable achievement.

10TH NATIONAL HOLIDAY HONORING DR. MARTIN LUTHER KING, JR., CITY OF ANDERSON, IN

HON. DAVID M. McINTOSH

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 10, 1995

Mr. McINTOSH. Mr. Speaker, I commend to your attention a speech given by Mr. Rudy Porter, assistant to the mayor of Anderson for community affairs, on the occasion of the 10th national holiday honoring Dr. Martin Luther King, Jr. at the city of Anderson, IN, community-wide celebration. In the following speech delivered on January 16, 1995, Mr. Porter eloquently and plainly shows how the legacy of the late Dr. King empowers and encourages us all to serve our fellow man. Mr. Porter's words remembering Dr. King should be a guide for us throughout the year. Mr. Porter:

I would like to acknowledge The Honorable Mayor J. Mark Lawler, mayor of the great city of Anderson; Dr. Robert Jackson, Pastor First United Methodist Church, Officers and Members; Dick Vannatta, President of UAW Local 662 and Lennon Brown, Principle of Highland Senior High School, co-chairs of this city-wide celebration; Russell B. Johnson, President Paramount Heritage Foundation; and the entire board of directors; Mr. Tom Snyder, President Delco-Remy America; Kim Blagg who works very hard behind the scene to make this service possible; members of the Martin Luther King Memorial Commission; Rev. J.T. Menifee, President; students who participated in the essay contest, and poster contest from our schools parochial, private, and the Anderson community school system.

It is indeed an honor and a privileged pleasure for me to be here to share perspective and participate. I am truly honored. I am a firm believer that the "I will" is greater than the "I.Q." By that statement I mean, I would rather have a person who did not have as much talent, but was willing, than to have a person who possessed enormous talent, but was not willing. As a keynote speaker, I do not possess enormous talent, but I am more than willing.

The city of Anderson, Indiana through our mayor J. Mark Lawler allowed me to attend a national planning retreat September 28–30, 1994 in Orlando, Florida hosted by "The Martin Luther King, Jr. Federal Holiday Commission." This Commission provides guidance to local and State holiday commissions, committees, and organizations. The purpose of this planning retreat was to develop a five-year strategy plan for the Martin Luther King, Jr. Federal Holiday Commission. Mrs. Coretta Scott King and her son Dexter King were present. Also present were representatives from cities all across the country. The general focus was "Help Somebody!" through community service.

Many of the planning sessions centered on how individuals and cities can make a difference. Mrs. Coretta Scott King stated that service, interracial cooperation, nonviolence, is what the King holiday is all about. I learned that Anderson, Indiana was ahead of most cities in the area of total community involvement in the celebration of the national holiday. I was happy to share with the nation's representatives that Anderson, Indiana has a city-wide observance of the King Day celebration; that Anderson, Indiana has a full size bronze statute of Dr. King paid for by total community; that Anderson, Indiana provides scholarships to both needy students and students who have demonstrated academic achievement, service to community; that we have a Martin Luther King Memorial Commission that takes the lead in our city-wide clean-up; scholarship drive; and stop the violence efforts; that in all of our efforts, service, interracial cooperation, nonviolence are priorities. The president of the Indiana Federal Holiday Commission, Z. Mae Jemison, was at this planning retreat and she wanted to learn more about our cooperative efforts in Anderson, Indiana and I was more than happy to share our many accomplishments.

LOOKING AT THIS YEARS THEME: "KINGIAN NONVIOLENCE IN ACTION: EMPOWERING FUTURE GENERATIONS TO SERVE."

I would like to quote a scripture found in the Book of Nehemiah chapter 4 verse 6 reads: So built we the wall, and all the wall was joined together to half of its height; for the people had a mind to work.

For a few minutes, I'd like to talk briefly on the topic "What Are You Doing to Empower Future Generations to Serve?" If you want to be remembered in history loved and admired by your fellow man you have to "do something." You have to "do something" meaningful and worthwhile and what ever you do should be of benefit to others. Not just for yourself, but for others.

The late Dr. Benjamin E. Mays, president emeritus of Morehouse College in Atlanta, Georgia, who was president when Dr. King was an undergraduate student there wrote and I quote: "To be able to stand the troubles of life, one must have a sense of mission and the belief that God sent him or her into the world for a purpose, to do something unique and distinctive and that if he or she does not do it life will be worse off because it was not done." When Nehemia learned that the walls of Jerusalem were broken down and its gates burned with fire he did something. First he prayed to God, used his influence with the king to receive the necessary materials to rebuild the wall, and he used his God-given talents to unite the people to rebuild the wall. Dr. King was not a dreamer, he was a doer. Dr. King did something. Dr. King was a great student, having skipped both the ninth and twelfth grades. Dr. King entered Morehouse College at the age of fifteen. That's doing something. Dr. King was quoted as saying "Education without social action is a one-sided value because it has no true power potential. Social action without education is a weak expression of pure energy.

Dr. King was committed to the improvement of his community, the "beloved community" for he said, "I can never be what I ought to be, until you are what you ought to be; and you can never be what you ought to be, until I am what I ought to be." This is the interrelated structure of reality. What are you doing to empower future generations to serve? I sincerely believe that "Service to humanity, not self service is the price we pay for the space we occupy." It would not be fair for me to ask such a question without offering a few suggestions.

No. 1. You can work as a committee of one to cultivate "Unity in the community. . ." And by community I am referring to the entire city, where you live, work, play, socialize, worship, everybody matters. Unity has no boundaries, unity excludes no one; is all inclusive; unity in the community is key.

To truly have unity in the community we must strengthen our hands to rebuild walls in Anderson, Indiana torn down by envy . . .

Envy will tear down unity; jealousy . . . jealously will tear down unity; hate . . . hate will tear down unity; lies . . . lies will tear down unity; illegal drugs . . . illegal drugs will tear down unity; apathy . . . apathy will tear down unity; racism . . . racism will tear down unity.

No. 2. Bigotry . . . bigotry will tear down unity. You can work as a committee of one to do those preventative things to help "stop the violence" in our community. . .

A couple of months ago I telephoned the Herald-Bulletin newspaper sound-off number and left this message . . . I feel it is appropriate for this occasion and I will admit publicly that I made the call. End violence now! was the title. It read: There are three words in the English language I would like to use to describe what I would like to see take place in Anderson, Indiana . . . our community.

The first word is all. I would like to see all violence end.

The second word is here. I would like to see all violence end here in Anderson, Indiana, our community.

The third word is now. I would like to see all violence end in our community now. I would like to see all violence end. I want to see it end in Anderson, Indiana, our community, and I want to see it end now.

You can use your influence, energy, talent, resources, in the prevention mode to help "Stop the violence in our community." Young people . . . you have influence—use it to help stop the violence in our community. Adults you can use your wisdom; energy; to help "Stop the violence" in our community. Business community—you have resources and talented employees . . . allow them to help "Stop the violence" in our community. Our city, county, State, national law enforcement agencies have the skills and training but they need our help in the area of community policing . . . give it!

Third, be tolerant of individual differences, recognizing that sociologically speaking different things, have different meaning, to different people, in different places at different times . . . deal with it!

First, unity in the community; second, help stop the violence in our community; third, tolerance of individual differences. Issues may differ, whether we're talking about more recreational activities for youth . . . better paying jobs for parents . . . better education for all students . . . but both the task and the challenge remains ever before each and everyone of us—do something!

Dr. King warned us of "The triple evils . . . the triple evils of poverty, racism, and violence. The triple evils are interrelated and all inclusive. They are barriers that stand in the way of our living in the beloved community. Dr. King taught that if the work to remedy on evil, we effect all evils. The issues change in accordance with the political and social climate of our nation and world, but the model of the interconnected triplets remain true throughout time." What are you doing to empower future generations to serve.

We must take every possible opportunity to remind ourselves and share with young people the words of Dr. King's college president Dr. Benjamin E. Mays "You are what you aspire to be and not what you now are; you are what you do with your mind, and you are what you do with your youth."

We can't all do the same things, nor should we want to but we can all do something to empower future generations to serve. And if we do there is compensation . . . you see millionaires have lived and died and no one ever remembered their names, but just carve you name on human hearts for they alone are immortal. Do something; and remember whatever you do should be of benefit to others, not just for yourself, but for others . . .

COMPENSATION

I'd like to think when life is done
That I had filled a needed post.
That here and there I'd paid my fare
With more than idle talk and boast;
That I had taken gifts divine,
The breath of life and manhood fine,
And tried to use them now and then
In service for my fellow men.

I'd hate to think when life is through
That I had lived by round of years
A useless kind, that leaves behind
No record in this vale of tears;
That I had wasted all my days
By threading only selfish ways,
And that this world would be the same
If it had never known my name.

I'd like to think that here and there,
When I am gone, there shall remain
A happier spot that might have not
Existed had I toiled for gain;
That some one's cheery voice and smile
Shall prove that I had been worthwhile;
That I had paid with something fine;
My debt to God for life divine.

Thank you very, very, much and may God bless each and every one of you.