SENATE—*Friday, January 22, 1999*

The Senate met at 1:03 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Spirit of the living God, fall afresh on us. We need Your strength. The wells of our own resources run dry. We need Your strength to fill up our diminished reserves—silent strength that flows into us with artesian resourcefulness, quietly filling us with renewed power. You alone can provide strength to think clearly and to decide decisively.

Bless the Senators today as they trust You as Lord in the inner tribunal of their own hearts. You are Sovereign of this land, but You are also Sovereign of the inner person inside each Senator. May these hours of questions bring exposure of truth and resolution of uncertainties. O God of righteousness and grace, guide this Senate at this decisive hour. You are our Lord and Saviour. Amen.

The CHIEF JUSTICE. Senators may be seated. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial are approved to date.

Pursuant to the provisions of Senate Resolution 16, the Senate is provided up to 16 hours during which Senators may submit questions in writing directed to either the managers, on the part of the House of Representatives, or counsel for the President. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. This afternoon, the Senate will begin the question-and-answer period for not to exceed 16 hours, as provided in Senate Resolution 16. I have consulted several times about this procedure with Senator DASCHLE and others, and we have determined that the majority will begin the questioning process with the first question, and we will then alternate back and forth.

As I noted yesterday, this has not been done in quite a while, so we will just have to go forward in a way that we feel is fair and comfortable. We ask that you give the benefit of the doubt to us in how we send the questions up to the Chief Justice. Senator DASCHLE and I will try to make sure that the time stays pretty close to even as we go through the day. Of course, the Chief Justice, I am sure, will make sure the deliberations and the answers are fair. We hope the answers will be succinct and that they will respond to the questions.

One question that has arisen from Senators on both sides is, can we direct a question to both sides, the White House counsel and the House managers, simultaneously, and the answer is no. Under our rules, we will direct the question to one side or the other, and our questions for either side may go to either one of the parties, but only one can answer that question.

Of course, there is the possibility for a followup question that might be directed to one side or the other. We will just deal with that as we go forward.

I expect, for the information of all Senators, that we will go approximately 5 hours today. I don't know how many questions we can get done in an hour, but I suspect by 6 o'clock on Friday we will have exhausted a series of questions that will entitle us to a break at that point. But, again, we will just have to see how we feel about it. We would not stop, obviously, in the middle of a question.

We will resume again on Saturday at 10 a.m., alternating between both sides. The schedule at this point is undecided. We need to see how many questions are left that Senators really feel need to be asked and, again, we will have to see how the day progresses.

I did have Senators come up to me yesterday and talk to me about we need some reasonable limit on that. But I am thinking in general terms of not going beyond 4 o'clock on Saturday. We will converse and make those announcements after consultation as we go forward tomorrow or during the day even tomorrow.

I hope we can complete our questioning period by the close of business tomorrow, but if we go with the times I basically mentioned, we are talking about 10 hours, not 16. So we will have to consult and determine if we ask the basic questions or if we want to continue it later or even over on Monday.

I believe, Mr. Chief Justice, that completed the explanation that I wanted to give at this time.

I do have the first question prepared to send to the Chief Justice, but I thought perhaps he had some further business he might want to address before I did that.

The CHIEF JUSTICE. Yes. I would like to advise counsel on both sides that the Chair will operate on a rebuttable presumption that each question can be fully and fairly answered in 5 minutes or less. (Laughter.)

Mr. LOTT. Mr. Chief Justice, I do send the first question to the desk.

The CHIEF JUSTICE. Senators ALLARD, BUNNING, COVERDELL and CRAIG ask the House managers:

Is it the opinion of the House Managers that the President's defense team, in the presentation, mischaracterized any factual or legal issue in this case? If so, please explain.

Mr. Manager BRYANT. Mr. Chief Justice, distinguished colleagues, and Members of the Senate, there are—first of all, let me thank you for the opportunity to respond to questions. We hope we can do that in a succinct manner today.

There are a number of mischaracterizations in statements that we disagree with that the President's defense team made. I will not attempt to cover all of these. And I would like to highlight just a few of these, and perhaps might, in a short manner, exceed the rebuttal presumption of 5 minutes.

Mr. Craig made the argument on behalf of the President that this is a lot about an oath versus oath perjury case. Article I is the perjury allegation—one word against another person's word, ''he said, she said.'' However, we would submit that there was not discussed in their presentation the fact that there is ample corroboration which is provided for under the law as it being necessary.

But we believe factually there was much corroboration; that is, another person or other evidence to support the fact that the President did commit the perjury, and particularly those aspects of the perjury charge that deal with the personal relationship that Ms. Lewinsky and the President had.

Very clearly, White House records and phone logs, along with Ms. Lewinsky's incredible recollection of particular names and events, and the circumstances surrounding these particular occasions, that have already been highlighted in the past—and we all know about those types of telephone conversations. And she was very

clear in the facts. The people have all corroborated her on her presence in the White House at certain times.

No. 2, the Secret Service testimony that placed her inside the Oval Office, on occasion alone; the fact that there have been contemporaneous statements made by Ms. Lewinsky describing the details of this relationship. And as we all know, the law permits this contemporaneous statement to, in this case, at least eight friends and two professional counselors detailing the particular relationship while it was ongoing.

The blue dress is very clearly corroboration, and the DNA testing that resulted from that. Also, the transfer of Ms. Lewinsky from the White House, and the later surreptitious efforts with Ms. Currie to sneak her back into the White House, again, indication that efforts had been made to move her, to relocate her, away from the President to protect him from those circumstances.

Also, the President's prepared statement in the grand jury is another example that was not mentioned. And in particular, I highlight the statement that he made that would lead you to believe that this relationship evolved over a period of time, and that being that he was sorry that what had started out as a friendship turned into this type of relationship, where, in fact, Ms. Lewinsky's testimony is very clear that that relationship began immediately, the very first day that he actually spoke to her.

Mr. Ruff's statement that the managers' case was misleading is also incorrect, I believe. He used words like ''fudging the facts,'' ''a witches' brew,'' and ''be wary of a prosecutor who feels like he must deceive the court.'' And this comes to somewhat of a surprise to many of us at this table who know that Mr. Ruff is familiar with the facts of this case.

And just last month, when he testified before the Judiciary Committee, he said: I have no doubt that the President walked up to that line that he thought he understood. Reasonable people—reasonable people—and you may have reached that conclusion that he could have crossed over that line and that what for him was truthful but misleading or nonresponsive or misleading and evasive was in fact false.

Now, he didn't tell you in his presentation that just a month ago he took the position that reasonable people can disagree, and yet before this Senate, and the audience that we have watching, he asserts that anyone who would accuse his client of perjury is guilty of ''fudging the facts,'' ''brewing a witches' brew,'' and ''deception.'' And even Mr. Craig, unfortunately, borrowed many of those same words in that characterization. It may be good theater, but it is simply not the case that these managers are engaged in that type of practice before the Senate and the American people.

White House Counsel Cheryl Mills spoke in a similar manner and tone to this House about inconvenient and stubborn facts—oh, those stubborn facts. In her meticulous presentation, she passed over—she completely missed—the second occasion wherein President Clinton attempted to coach Ms. Currie.

Did anyone hear about the second event? As carefully as she tried to make innocent the wrongful effort of the President to tamper with the potential witness, she just as carefully skirted the entire similar episode 2 or 3 days after the first one where he again tampered with her testimony. According—according to Ms. Currie—he spoke with her, just recapitulating. Remember that in our presentation?

Likewise, in her review of witness tampering, she mischaracterized the law—the law—stating that a threat—an actual threat was required. 18 U.S.C. 1503 states that obstruction of justice occurs when a person corruptly endeavors to influence the testimony of another person. And ''corruptly'' has been interpreted by the District Court here in D.C. to mean acting for an improper purpose.

And, clearly, this was an improper purpose when the President was trying to get her to testify falsely, but a threat is not a part of the law and not needed.

And I will just quickly, if I might, just mention two more quick ones.

Mr. Ruff stated the President gave the same denial to his aides that he gave to his country and family. You recall him specifically saying that he just has said nothing different to the American public and his family that he told the aides that we talked about—John Podesta, Sidney Blumenthal.

Well, that's not right. ''He told''—the President told Mr. Podesta—and this is Mr. Podesta talking—''He told me that he never had sex with her and that he never asked—you know, he repeated the denial. But he was extremely explicit in saying he never had sex with her in any way whatsoever, that they had not had oral sex.''

And Blumenthal—Mr. Blumenthal—he told Mr. Blumenthal an entirely different story, that ''Monica Lewinsky came at me and made a sexual demand on me. [And I, the President,] rebuffed her.'' He said that ''I've gone down that road before [and] . . . caused pain for a lot of people and I'm not going to do that again.''

''She threatened him.'' Ms. Lewinsky threatened the President. And ''[s]he said that she would tell [other] people [that she] had an affair, that she was known as a stalker among her peers, and that she hated [that], and if she had an affair . . . [with the President] she wouldn't be . . . anymore.''

That is not the story that he told the American people and that he told his family. These are embellishments that are very important, because he anticipated that they would go into the grand jury and repeat those misstatements.

And finally, the affidavit of Monica Lewinsky. White House defense lawyers spoke so eloquently about the procurement of this affidavit—as he glided through how the President believed that Monica Lewinsky could have filed a truthful affidavit while still skirting their sexual relationship sufficiently to—sufficiently to—avoid testifying in the Paula Jones case.

This is an important issue. As it was specifically raised in the answer before this Senate, the President's lawyers brought this statement into this Senate as part of their answer that he could have advised her that she could have filed an affidavit that would have been truthful while still at the same time denying a sexual relationship sufficiently that she would not be called as a witness.

I know opposing counsel makes light of the hairsplitting and the legal gymnastics that people have talked about here, but that is an incredible statement that you can do the twister enough to go into a deposition where the purpose of being there is to discover this type of information, who you might have had an affair with, and have her tell a truthful affidavit and still not to be able to testify.

Had she told a truthful affidavit, she would have been immediately called. Plus, the President was given an opportunity by Ms. Lewinsky to review the affidavit.

Remember the statement that he didn't need to, he had seen 15 just like it? If he had that ''out'' for her where she could have told the truth and still not been able to testify, don't you think he owed it to her to cause her not to have to commit perjury in that affidavit—which she did—not to have to commit a crime? Wouldn't he have shared that with her if he had that information at that time?

I suggest that he didn't. I have others that I would like to talk to, but in the interest of time and fairness I will stop my presentation at this point.

I thank the Senate.

Mr. DASCHLE. Mr. Chief Justice.

The CHIEF JUSTICE. I recognize the minority leader.

Mr. DASCHLE. Could I inquire as to the length of time that response took.

The CHIEF JUSTICE. Approximately 9 minutes.

Senator SARBANES asks:

Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question from Senators ALLARD, BUNNING, COVERDELL and CRAIG?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice.

It may be that I will need to call on some of my colleagues to be of assistance here, but let me begin, and we will

strive mightily to stay within the rebuttal of 5 minutes.

Mr. Manager BRYANT began by suggesting that there really is corroboration on the key issue that he focussed on, which as you know, is the nature of the specific details of the relationship between the President and Ms. Lewinsky. And he suggested that among the corroborating matters that he would point to were her recollection of events, which is alleged to be detailed; records reflecting that she was, indeed, in the White House on particular days; Secret Service records; DNA testing. None of those have anything to do with the essential issue that Congressman BRYANT raised, because nobody disputes the fact that Ms. Lewinsky was in the White House engaged in inappropriate conduct with the President on a particular day.

The only point that I think the manager raises that is new and needs to be addressed is this notion that contemporary, consistent statements made to third parties about these events are somehow corroborative of Ms. Lewinsky's testimony in this regard. And as all of you who had the pain of suffering through an evidence course will know, or have had the pain of trying lawsuits in which this issue arises, so-called prior consistent statements are not, in fact, viewed as some corroborating evidence that can be introduced by the prosecutors in this Senate; for they know, and I am sure those of you who suffered through these pangs know, as well, that the law rejects the notion that merely because you tell the same story many times it is corroborative of the underlying credibility of the witness' version, and that there are only certain very limited areas in which prior consistent statements are, in fact, admissible.

A couple of others and I will turn this briefly over to Ms. Mills.

Manager BRYANT suggests that I have somehow gone too far in suggesting that the prosecutors here have in my words ''engaged in fudging.'' I have never suggested that the entire presentation is so, and I made very clear in my comments to the Senate the other day the specific examples which I think we documented quite fully. But beyond that, let me go back to his reference to my earlier testimony before the House Judiciary Committee in which I did, indeed, in response to questions, comment that the President may well have walked up to the line believing he didn't cross it, but that reasonable people might conclude otherwise.

The only problem with that example, as broached by Mr. Manager BRYANT, is that I was talking there—and the record is very clear—I was talking about his testimony in the Jones deposition which, as everyone in this room will fully understand, is not before you because the House of Representatives specifically decided that the President's testimony in the Jones deposition was not a basis for impeachment.

With that, without having used, I hope, all of my time, Mr. Chief Justice, I will allow Ms. Mills, if she would, to come forward and respond specifically to the point raised with respect to her presentation.

Ms. Counsel MILLS. Thank you.

I just want to address briefly two issues that the House managers raised. With regard to the statute on obstruction of justice, with respect to witness tampering, the House managers focused on 1512, with respect to Ms. Currie which does require a threat or intimidation and, indeed, specifically addressed that—they wanted to focus on 1512—when they were addressing her and the situation where the President spoke with her.

With regard to 1503, though, to the extent that the House managers suggest that the President's actions and his conversation with Ms. Lewinsky violated 1503, I think probably you all might recall from my presentation that we discussed the Aguilar case in which it is clearly necessary that you have a nexus between the actual conduct and the official proceeding that would be going forward. In that case, we had a judge who lied to an FBI agent who indicated that he was going to—that this might, might come up in a grand jury proceeding, and Mr. Chief Justice, in his opinion, indicated that was insufficient to find the nexus that was necessary to violate 1503.

And if you all have my package, you can look back. I provided you with a specific quotation. So in this instance, we clearly wouldn't have the nexus between the President's conversation with Ms. Currie, who was not yet a witness. There was no suggestion that she was going to be a witness in the Jones case; indeed, no one even mentioned that fact to him, as you actually did have in Aguilar.

In addition, with regard to both statutes, the specific intent is not fulfilled. That is something we spoke about when I gave my presentation before.

With regard to the President's conversation with Ms. Currie, which happened on the 18th and again on a subsequent day, in that instance it also happened prior to all of the media attention and other matters that came out. So in effect, all of the same issues apply because there was no—at that point—no indication that the independent counsel was involved in this matter, and the President still was concerned about the Jones proceeding; indeed, he was concerned that the media attention would be significant, and he was accurate as it began to grow and grow.

Thank you.

Mr. LOTT. Mr. Chief Justice, we send our next question to the desk.

The CHIEF JUSTICE. Senators ENZI and COVERDELL ask the House managers:

> Please elaborate on whether the President's defense team failed to respond to any allegations made by the House managers.

Mr. Manager HUTCHINSON. Mr. Chief Justice, ladies and gentlemen of the Senate, as to the areas that were not covered by the President's defense team, I think that my fellow Manager BRYANT already mentioned one, but I thought it was significant that in the questioning of Ms. Currie, or the statements made to Betty Currie after the President's deposition on January 17 where he brought her into the office and he went through that series of questions—''I was never alone, right,'' and that series of questions everybody is so familiar with, they discussed that primarily in the terms that she was not a witness. But during 3 days of presentation they never discussed the fact that it was 2 days later that the same series of questions or statements or coaching were addressed to Ms. Currie.

So the President's defense that, ''Well, I was just trying to refresh my recollection on the facts so I could respond to media inquiries,'' does not make sense in light of the fact that it was done on one day—the series of questions. But Betty Currie testified that 2 days later she was called into the office, the same series of statements, declarations, coaching was made to her, and the only possible explanation for that is that the President was trying to make a very clear statement to her—''This is what I remember; this is what I want you to do,'' and for 3 days, for 3 days of presentations, the President's defense lawyers never, never mentioned that.

Now, I want to come back to what Ms. Mills just said because this was a big issue in the presentation of Mr. Ruff. In fact, I have the quotes here. I hope that that will be turned over to you. But whenever Betty Currie was questioned, they say, well, she wasn't a witness. There was never any clue she was going to be a witness, that the Jones lawyers never anticipated she was going to be a witness, and that it was never put at all on the witness list. That's very significant.

I just want to drive this point home. This is Mr. Ruff—talk about prosecutorial fudging; how about defense fudging? Mr. Ruff said this:

> Ms. Currie was neither an actual nor prospective witness.
>
> In the entire history of the Jones case, Ms. Currie's name had not appeared on any witness list, nor was there any reason to suspect that Ms. Currie would play a role in the Jones case.
>
> Discovery was down to its final days.

That was Counsel Ruff.

> Yet, in the days and weeks following the deposition, the Jones lawyers never listed her, never contacted her, never added her to any witness list.

That was the presentation of Mr. Ruff, and it was also that of Ms. Mills. Yet, if you look at the facts in the

Jones case, the deposition was concluded on January 17. There was a holiday on the 18th. In fact, on January 22, within 5 days of the deposition, a subpoena was issued for Betty Currie. Within 5 days, a subpoena was issued for Betty Currie, and, in fact, on the 23rd, there was a supplement to the witness list by the Jones lawyers, which included Betty Currie's name as 163. This was served on Mr. Bennett and the other lawyers for the President.

In addition, I have—which I will distribute to you—the actual subpoena that was issued for Betty Currie, as I indicated, which was issued on January 22nd, and the proof of service in which Betty Currie was served as a witness in that case on January 27—the proof of service. So the statements by Mr. Ruff that there was never any indication that the Jones people knew she was going to be a witness is totally not within the record. In fact, it is clear that the subpoena was issued; it was served.

Whenever that deposition was over of the President, both the President left there and the Jones lawyers left there knowing immediately that Betty Currie was going to be a witness. She had to be a witness, with the President asserting, ''ask Betty, ask Betty, ask Betty,'' so many times during that. That is why the President came back and had to deal with Betty Currie being a witness, and the Jones lawyer went out and immediately amended the witness list so as to do that, and then issued a subpoena, which was served on Betty Currie. That is the record. Those are the facts. We will distribute this to you.

The CHIEF JUSTICE. Senator LEVIN asks White House counsel:

Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice. Let me respond very briefly to Manager HUTCHINSON's last remarks, because I owe him indeed an explanation and he is correct in one respect. I did not accurately reflect the fact that after the January 21 story in the Washington Post, the Jones lawyers did, in fact, attempt to track the entire independent counsel investigation. And I think Mr. HUTCHINSON will tell you, they indeed issued a long list of subpoenas. For that misleading statement, I apologize, and I trust we will hear equally candid assessments from the managers. But more importantly, let me return to the substance of that issue because it is important to note, without the chart being up there, that indeed, at the moment, which is the critical moment, when the President was talking about Betty Currie, whether it be on the 18th or on the 20th or 21st—the 21st, you remember, is when the story breaks. The answer is the same. He had no reason to believe at that stage—and that is the critical stage because that's what's in his mind and that is what you have to ask if you are talking about obstruction of justice or witness tampering—at that stage, he had no more reason to know that Ms. Currie was going to be a witness than he did, as we explained it, both I and Ms. Mills, in our earlier presentations.

The fact that the Jones lawyers, once this story became a matter of public knowledge, which it did on the 21st, thereafter dumped a series of subpoenas and deposition notices literally in the closing days of discovery does not bear on the question of what was in the President's mind, which is the critical moment for testing his intent, at the moment when he first had his conversations with Betty Currie.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators THURMOND, GRASSLEY, CHAFEE and CRAIG direct to the House managers:

President Clinton has raised concerns about whether the articles of impeachment are overly vague and whether they charge more than one offense in the same article. How do you respond to this concern?

Mr. Manager CANADY. Mr. Chief Justice and Members of the Senate, I will be pleased to do my best to address this question.

The President has made two claims against the forum in which the articles of impeachment have been drafted. I submit to you that neither of these claims has any merit, and I will be pleased to address both claims as briefly as I can.

First, the President claims that the two articles of impeachment are vague and lack specificity and, therefore, prevent him from knowing what he has been charged with.

Second, the President asserts that the articles are flawed because they charge multiple defenses in a single article. With respect to the first claim, it is clear in the President's trial memorandum and his presentation here that President Clinton and his counsel know exactly what he is being charged with. And I submit to you that if President Clinton had suffered from any lack of specificity in the articles, he could have filed a motion for a bill of particulars. He did not choose to do so.

Moreover, articles of impeachment have never been required to be drafted with the specificity of indictments. After all, this proceeding is not a criminal trial. If it were, then we, as the prosecutors, would not only be entitled to call witnesses, but would be required to call them to prove our case. We would certainly not be put in the position of defending the appropriateness of witnesses.

President Clinton wants all the benefits of a criminal trial without bearing any of its burdens. Impeachment is a political and not a criminal proceeding. That has been clear from the institution of this proceeding in our Constitution. As recognized by Justice Joseph Story, the Constitution's greatest interpreter during the 19th century, ''Impeachment is designed not to punish an offender by threatening deprivation of his life, liberty, or property, but to secure the State by divesting him of his political capacity.'' Justice Story thus found the analogy of articles of impeachment to an indictment to be invalid. I quote what Justice Story had to say, which is directly pertinent to this question:

The articles need not and indeed do not pursue the strict form and accuracy of an indictment. They are sometimes quite general in the form of the allegations, but ought to contain certainty as to enable the party to put himself upon the proper defense, and also in the case of acquittal, to avail himself of it as a bar to another impeachment.

Indeed Alexander Hamilton had commented on the same point in the Federalist. We have heard many references to Federalist number 65, and in this trial today I will refer once again to what Alexander Hamilton said in the Federalist on this particular point. There Alexander Hamilton stated that impeachment proceedings:

. . . can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors, or in the construction of it by the judges, as in common cases served to limit the discretion of courts in favor of personal security.

By that, he means in criminal cases. I think this statement from Alexander Hamilton refutes the argument of the President's counsel directly.

I also point out that unlike the judicial impeachments in the 1980s, President Clinton has not committed a handful of specific misdeeds that can be easily listed in separate articles of impeachment. In order to encompass the whole assortment of misdeeds that caused the House of Representatives to impeach the President, the Judiciary Committee looked to the more analogous case, that of President Nixon. In 1974, in the proceedings with respect to President Nixon, the committee also was faced with drafting articles of impeachment of a reasonable length against a President who had committed a series of improper acts designed to achieve an illicit end.

The first article against President Nixon charged that in order to cover up an unlawful entry into the headquarters of the Democratic National Committee and to delay, impede, and obstruct the consequent investigation and for certain other purposes, he engaged in a series of acts such as ''making or causing to be made false or misleading statements to lawfully authorized investigative officers, endeavoring to misuse the Central Intelligence Agency, and endeavoring to cause prospective defendants and individuals, duly tried and convicted, to expect favored treatment and consideration in return for their silence or false testimony.

The articles did not—I repeat ''did not''—list each false or misleading statement, did not list each misuse of the CIA, and did not list each respective defendant and what they were promised. That is the record. Anyone who is familiar with the Nixon case—President Nixon case—is familiar with those facts.

In like fashion, the articles of impeachment against President Clinton charged him with providing perjurious, false, and misleading testimony concerning four subjects, such as sexual relations with a subordinate government employee, engaging in a course of conduct designed to prevent, obstruct, impede the administration of justice, which of course included four general acts, such as an effort to secure job assistance for that employee.

I would submit to you that an argument can be made that the articles of impeachment against President Clinton were drafted with more specificity than the articles that were drafted against President Nixon.

I will do my best to briefly address the second claim which has been asserted by the President's lawyers against the form of the articles of impeachment; that is, that they are invalid, charging multiple offenses in one article. The articles of impeachment allege that President Clinton made one or more perjurious, false and misleading statements to the grand jury and committed one or more acts in which he obstructed justice.

Once again, these articles are modeled after the articles adopted by the House Committee on the Judiciary against President Nixon and were drafted with the rules of the Senate. Specifically in mind, the Senate rules explicitly contemplate that the House may draft articles of impeachment in this manner and prior rules of the Senate have held that such drafting is not sufficient and will not support a motion to dismiss.

Rule XXIII of the Rules of Procedure and Practice in the Senate When Sitting On Impeachment Trials now states that an article of impeachment ''shall not be divisible for the purpose of voting thereon at any time during trial.'' When the Senate Committee on Rules and Administration amended rule XXIII in 1986, it explained that. And I quote this at length. And this goes right to the heart of the matter. This is what the Rules Committee in its report said. It said:

> The portion of the amendment effectively enjoining the division of an article into separate specifications is proposed to permit the most judicious and efficacious handling of the final question both as a general matter and, in particular, with respect to the form of the articles that proposed the impeachment of President Richard M. Nixon. The latter did not follow the more familiar pattern of embodying an impeachable offense in an individual article but, in respect to the first and second of those articles, set out broadly based charges alleging constitutional improprieties followed by a recital of transactions illustrative or supportive of such charges. The wording of Articles I and II expressly provided that a conviction could be had thereunder if supported by ''one or more of the enumerated specifications. . . . [I]t was agreed to write into the proposed rules language which would allow each Senator to vote to convict under either the first or second articles if he were convinced that the person impeached was 'guilty' of one or more of the enumerated specifications.''

The Senate rules themselves, thus, specifically contemplate that an article of impeachment may include multiple specifications of impeachable conduct as in the case of President Nixon. The Senate itself has recognized the articles against President Nixon as an appropriate model to be followed. The House has, in the articles now before the Senate, simply followed that model.

Moreover, I would point out in conclusion that the Senate has convicted a number of judges on such omnibus articles, including Judges Archibald, Louderback and Claiborne.

I would submit to the Members of the Senate that the articles of impeachment against President Clinton present his offenses and their consequences in an appropriately transparent and understandable manner. They are not constitutionally deficient.

Thank you.

The CHIEF JUSTICE. This question is sent by Senators DODD and LEAHY:

> Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question by Senators Thurmond, Grassley, Chafee, and Craig; particularly what would have stopped or limited the House in specifying precisely the statements on which the articles were based?

Mr. Counsel CRAIG. In our case, we are talking about an allegation of perjury. In the Nixon case—in the 1974 Nixon case—he was not charged with perjury. I think our argument was that perjury is a different kind of thing. You have to be very specific in what you charge, and you have to be very clear as to what the statement is when you are charging perjury. And that is the tradition of our criminal justice system and of our jurisprudence.

The danger here is that if you do not, if you are overly broad, as we contend in article I, that at any given moment you can fill the vessel with what your meaning is.

Let me give you a little history of these allegations of grand jury perjury against the President.

The Starr referral had three allegations. The Starr referral was September 9. Mr. Schippers, when he made his presentation to the Judiciary Committee, had two allegations. One was different. He incorporated one of Starr's. When Starr appeared and testified on November 19 in front of the Judiciary Committee, he almost spent no time on this at all—one or two sentences. But he added a new charge, which was that the President was not truthful when he testified that he had been truthful in the deposition.

Then, we appeared and made our representations and our defense on behalf of the President on the basis of what Mr. Starr had written in his referral and what Mr. Schippers had presented to the Judiciary Committee and in addition to what Mr. Starr had said when he appeared. But then when Mr. Schippers gave his closing argument the following day, we saw the new articles. We had, by my count, 10 allegations from Mr. Schippers. Two had to do with the definition of sexual relations. Three had to do with the prepared statement. Two had to do with things that were never alleged again and never surfaced again in the course of the case. And they had to do with Mr. Bennett and his proffer of the Lewinsky affidavit.

Then, on December 16 we had a whole new additional collection of reports of allegations. And on January 11, the file brief here set forth eight examples.

Just to highlight the danger of not being specific, of not tying yourself to a definition, let me compare, for example, the trial brief that was submitted by the House managers 3 days before Mr. Rogan made his presentation.

The precise statement that the President is accused of testifying falsely in front of a grand jury was that he was lying when he said that the reason that he was seeing Betty Currie was to refresh his recollection. In the trial brief—they make that reference one, two, three, four times—that the statement that is specific here in the trial brief is he lied when he said he was going to refresh his recollection. That is not even mentioned in Mr. ROGAN's presentation. He changes it. And he says he lied when he said he wanted to ascertain what the facts were, trying to ascertain what Betty's perception was—a very different statement requiring a very different defense. And 2 days before, 3 days before we even hear the allegations on the floor of the Senate, we still don't know precisely what they are.

Mr. Counsel RUFF. Mr. Chief Justice, if I may absorb whatever rebuttal time is still available to us, may I for just a moment, sir?

The CHIEF JUSTICE. Sure.

Mr. Counsel RUFF. Thank you.

I want to talk briefly about just two aspects of Manager CANADY's presentation.

First of all, he asks why didn't we seek a bill of particulars. Well, let me all remind the Senators, although I don't think any of you were here at the time of the trial of Judge Louderback who also saw a bill of particulars, and the House of Representatives at the time made it clear that the managers do not have the authority to rewrite the articles, though they certainly

have, I suggest, attempted to do so on the fly, but that it would have required a remand to the House of Representatives in order to have a bill of particulars to judge what they themselves meant when they had passed these articles.

Second, just very briefly, I spoke to the issue of multiplicity, duplicity, the other day, and the question of whether the rule 23 revision makes any difference. As I pointed out—and I won't embarrass him any further—one Member of this body spoke at length about the importance of not loading up multiple offenses into one count well after the revision of rule 23, clearly with no sense that this body had been precluded from dealing with the critical issue of whether a two-thirds vote can sensibly be taken on an article that contains multiple and, particularly as my colleague, Mr. Craig, indicated, multiple nonspecific violations.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators THOMPSON and GRASSLEY, THURMOND, ALLARD, FRIST, BURNS, and INHOFE direct this question to the President's counsel:

If the President were a Federal judge accused of committing the same acts of perjury and obstruction of justice and the Senate found sufficient evidence that the acts alleged were committed, should the Senate vote to convict?

Mr. Counsel RUFF. This will sound half hearted, but it is not. I am glad you asked that question. This really goes right to the heart of the managers' argument here, which is that there is no difference in the consideration of the impeachment process between an allegation against a Federal judge and an allegation against the President of the United States.

I will not repeat the extended discussion of this subject of a few days ago, but let me try to summarize very briefly. It is absolutely crystal clear from the history of the drafting of the impeachment clause that the concern of the framers was, is there such action as to subvert our Government that we can no longer persist in permitting, in their case, the President of the United States to remain in office. That question must be dramatically different when you ask it about the conduct of 1 of 1,000 judges.

Beyond that, it is also clear that there has been extended debate in many forums and at many times in the past 210 years about, indeed, just what the standard is for the impeachment of judges.

I hesitate to do this, and I do it apologetically, Mr. Chief Justice, but the Chief Justice himself in an earlier time and an earlier guise spoke to this issue and made it clear—this during his tenure as assistant attorney general for the Office of Legal Counsel—when the issue was being debated whether there was a nonconstitutional, nonimpeachment device for disposing of judges alleged to have engaged in misconduct that may not fall within the high crimes and misdemeanors provision of the impeachment clause, that, indeed, the good behavior standard for judges was something far broader than the standard to be applied under the high crimes and misdemeanors standard. And, indeed, that debate was resumed many years later in the context of a further effort to establish a nonconstitutional device for removing judges.

That history, and just the core question, do you ask the same questions about the trauma that the Nation suffers when you are removing a judge and you are removing a President, the answer must be no. You must ask, what is the nature of the perjury that has been committed? What is the nature of the offense that has been committed? What is the factual setting in which it occurs? And, ultimately, does it so subvert the accused's ability to perform the duties of his office that you must remove him?

That question for Judge Nixon, convicted and imprisoned, has got to be different from—''different'' is much too mild a word—stunningly different from the question you ask against the backdrop of our history when you ask whether the President of the United States should be removed and the will of the electorate overturned.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators DORGAN and BAUCUS and SCHUMER to the President's counsel:

In Counselor Ruff's presentation, he set forth a time line that undermined the managers' theory that Judge Wright's December 11 discovery letter triggered an intensification of the President's and Jordan's efforts to assist Lewinsky in finding a job. In response to Mr. Ruff's presentation, the managers handed out a press release outside the Senate Chamber asserting that it was the December 5 issuance of the witness list in the Jones case and not the judge's discovery order on the 11th that triggered the intensification of the job search. It does not appear consistent with assertions made by the House managers in their trial brief and oral presentations. Please comment.

Mr. Counsel KENDALL. It was the assertion very clearly voiced in Mr. Manager HUTCHINSON's presentation and very clearly made in the trial brief of the House managers that it was, indeed, the December 11 order that—I used the word ''jump-started'' yesterday—that catalyzed, that pushed forward, the job search.

If you look at page 21 of the House managers' brief, you see them say this sudden interest was inspired by a court order entered on December 11, 1997. Now, their position could not have been clearer until we began our presentations, and then, all of a sudden, it wasn't the December 11 order; it was, instead, the December 5 witness list.

Well, there are a number of things to be said about that. One of them is that they have very clearly said that there was no urgency at all after the witness list arrived to help Ms. Lewinsky. They have said that Mr. Jordan met with the President on December 5 but that meeting had nothing to do with Ms. Lewinsky. This was in the majority report at page 11. They said that very clearly.

So they have now suddenly—because it has been clear that the December 11 order was entered at a time when Mr. Jordan was flying to Europe, he could not have known about it. He had met with Ms. Lewinsky earlier that day. And, indeed, that December 11 meeting had sprung from actions taken by Ms. Lewinsky in a phone call with Mr. Jordan in November. They had set that—they agreed that when Mr. Jordan returned to the country, they would set up a meeting. They did that on December 5, or she tried to get in touch on December 5. They tried to get—they finally succeeded in getting in touch on December 8, and that was not at a time she knew she was on the witness list.

So the point is these were two entirely separate chains of events going forward—the job search and the witness list. And nothing supports the intensification theory presented by the managers, certainly not this new, ''Well, it wasn't the December 11th order; it was the December 5th order.''

The CHIEF JUSTICE. Senators ASHCROFT and HATCH—is there anyone on the floor who can't hear me? This is for the House managers:

The White House makes much of the fact that Vernon Jordan was on a flight to Holland on December 11 before Judge Wright ruled that afternoon that other women who may have had relationships while in President Clinton's employ were relevant to the Jones suit. However, the President was faxed a witness list on December 5 and actually reviewed it no later than the 8th. Thus, isn't the White House argument that the President had no incentive to assist Ms. Lewinsky's job search until December 11 just a red herring?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. And I appreciate the opportunity to respond here.

Just let me say, by way of preface, that we are lawyers. We are trying to do three things at once. Usually you have an opening statement where you outline where you want to go in a case, then you have a presentation of the evidence, then you have a closing argument. And we are trying to do it all at the same time.

It is for that reason, as I said at the very beginning of my presentation, that you need to pay attention to the record and to the facts. That is what you depend upon. And I get carried away in my argument. I am arguing, just as they are arguing their theory of the case. We are both arguing a point of view here, and it is up to you to make the determination.

I have great respect for these counselors. They are admirable. They are

doing a great job for their client, and they are presenting their theory of the case. We are arguing our point of view, and it is the facts that make the determination.

Now, let me go back to—and you have it in front of you—my presentation, exhibit C, which I guess is the third exhibit, which is really the White House exhibit that Mr. Ruff had up here for a number of days, because they were really trying to hammer home this statement that I made in my presentation. I hope you all have that.

Mr. GRAMM. Just tell us.

Mr. Manager HUTCHINSON. I will tell it to you then. Thank you.

Exhibit C—which I hope you have; we asked them to distribute that—is a statement that Mr. Ruff portrayed, from me, which in my presentation I said: ''The judge—the witness list came in, the judge's order came in, that triggered the president into action and the president triggered Vernon Jordan into action.''

Now there are two things that I am pointing to as the trigger mechanisms for the job search intensification. One of them is the witness list that comes in on December 5, the President knows about, at the latest, on December 6. The other thing that intensified that effort was the judge's order on December 11.

They went through this long circumstance of Mr. Jordan being in Holland and the time of the phone call with the judge and all of that, showing that the judge's order of December 11 could not have triggered any action on the 11th. There is no question about that. That is obvious from the facts, as it was obvious when I made my presentation. The meetings on the 11th, with Vernon Jordan and Monica Lewinsky, were triggered by the witness list coming on the 5th, that the President knew about on the 6th, that he discussed with Vernon Jordan as well.

Now, we say that the judge's order of the 11th, which was filed that day—the only thing that was filed on the 12th was their memorandum of that telephone conversation—that triggered additional action down the road. The job search was not over; the activity continued into January. And, so, that all put pressure on the ultimate fact, in January when the job was obtained, the false affidavit was filed.

Now let me just point to a couple of other things along that line. We need to look at this because they basically make the point that there is not any connection between the false affidavit—and that is my characterization—that was filed, and the job search. But if you look at the testimony of Vernon Jordan, and that is exhibit—I think they are giving them out now—F, that I am presenting to you, the sworn testimony of Vernon Jordan which was on March 3 of 1998, he testifies in answer to a question:

> Counselor, the lady comes to me with a subpoena in the Paula Jones case that I know, as I have testified here today was about sexual harassment. . . . you didn't have to be an Einstein to know that that was a question that had to be asked by me at that particular time because heretofore this discussion was about a job.

And then he says, ''The subpoena changed the circumstances.'' And I think this is important, that Mr. Jordan, who is filled with common sense, he says you don't have to be an Einstein. You don't have to be learned, like Mr. Ruff or any of the other White House counsel, to apply common sense. Common sense tells you that whenever he knew about the subpoena, it escalated to a new arena and obviously the witness list would have the same impact.

And, so, Mr. Jordan himself makes the connection, the job search was one thing but whenever she became a witness in the Jones case, that changed everything. That changed the circumstances. And let me tell you, that is a friend of the President who is making that statement.

And, so, we have to take this picture, that they were related as they were going two tracks, they became interconnected and became one track.

The final point—and this was raised on the job search issue—that the call by Mr. Jordan to Mr. Perelman, the CEO of the parent company of Revlon, really had no impact on Monica Lewinsky getting a job because there is a misinterpretation as to how well she did on the interview. But if you look back to the testimony, the grand jury testimony, there was a connection, because Mr. Jordan calls Mr. Perelman and, as he characterized it: Make it happen if it can happen. Mr. Perelman then calls Mr. Durnan, and then Mr. Durnan calls Ms. Seidman, who was actually doing the interview the next day with Monica Lewinsky.

So the person who was going to make the decision whether to hire Monica Lewinsky got the word down through the channel before that interview took place and before the decision was made. And of course the important thing is: What was the intent? Not the result, but the intent. And I think that you can see that there was an intent to make sure that Monica Lewinsky was taken care of. Again she was on board, part of the team, before she actually would have to give testimony or the President would have to give testimony.

The CHIEF JUSTICE. This question from Senator BOXER, and it is to counsel for the President:

> In light of the concession of Manager HUTCHINSON that Judge Wright's order had no bearing on the ''intensity'' of the job search, can you comment on the balance of his claim on the previous question?

Mr. Manager HUTCHINSON. Mr. Chief Justice, could I object to the form of the question? That was not proper characterizing what I just stated.

The CHIEF JUSTICE. I don't think managers—I am not sure whether the managers—can the managers object to a question? (Laughter.)

Mr. Manager HUTCHINSON. I withdraw my objection.

The CHIEF JUSTICE. Very well. I think—the Parliamentarian says they can only object to an answer, not to a question, which is kind of an unusual thing, but——

Mr. Counsel RUFF. Mr. Chief Justice, I was going to remark that they can if they have the courage.

I want to link up my response to Manager HUTCHINSON's most recent comments with the previous discussion about vagueness. If there was ever a moving target, we have just seen it in motion: Well, it really wasn't December 11, because now we know it didn't happen on December 11, so let's go to December 19, or maybe January 8, and somewhere in there we are going to find the right answer.

I suggest to you that that is reflective of both the difficulty we have had in coming to grips with these charges and, candidly, the difficulty that the House might have had figuring out what those charges really were.

Let me just respond briefly to Mr. Manager HUTCHINSON's argument. And let me focus, first, on another portion of his presentation in which he states, and there—and he is referring now to Ms. Lewinsky—she is referring to a December 6 meeting with the President in which, as you will recall, she has testified that there was a brief discussion about her efforts to get a job through Mr. Jordan and the President sort of vaguely said, ''Yes, I'll do something about that.'' And this is Mr. Manager HUTCHINSON's characterization of that moment. December 6, you will recall, is the day after the witness list comes out and the day on which she learns of it:

> So you can see from that that it was not a high priority for the President either. It was, ''Sure, I'll get to that, I will do that.'' But then the President's attitude suddenly changed. What started out as a favor for Betty Currie dramatically changed after Ms. Lewinsky became a witness and the judge's order was issued again on December 11.

But to the extent the managers now seek to drag the intensification process back into the December 5 or 6 period, which is when Ms. Lewinsky went onto the witness list, you must look at what they say.

Page 11, majority brief, Mr. Jordan met President Clinton the next day, December 7, but they didn't discuss the job at all. Now, it is absolutely clear that the President knew that Ms. Lewinsky was on the witness list when he met with Mr. Jordan on December 7, and yet the issue of Monica Lewinsky didn't even surface.

I am getting some help here.

''The first''—''the first,'' their words, page 11, majority brief, majority report—''The first activity calculated to help Ms. Lewinsky actually get a job took place on December 11. There was no urgency.''

It is possible, of course, as their trial brief reflects, to bob and weave and dodge around the facts here, but their trial brief says:

There was obviously—

Referring to the period after she appears on the witness list—

There was obviously still no urgency to help Ms. Lewinsky.

And even they acknowledge that the December 7 meeting with Mr. Jordan was unrelated to Ms. Lewinsky.

But let me point, because I think this really goes to the heart of it, to what the managers ask you to think about in this context in which now, whether we call it a confession or simply an acknowledgment, what they asked you to do when you heard the recitation about the December 11 events. We now know Mr. Jordan is flying over the Atlantic at the critical moment, and here is what Mr. Manager HUTCHINSON asks you to do with Vernon Jordan, distinguished citizen, distinguished lawyer:

Now, if we had Mr. Jordan on the witness stand—which I hope to be able to call Mr. Jordan—you would need to probe where his loyalties lie, listen to the tone of his voice, look into his eyes and determine the truthfulness of his statements. You must decide whether he is telling the truth or withholding information.

There is only one message there: Vernon Jordan must have been lying or at least there is enough question about his credibility and his honesty and his decency to explore whether he was lying. If you predicate that question on the, shall we say, erroneous recitation of events on December 11, you need to know nothing more about what the time line and the chronology and the managers' theory of this case is all about.

Thank you, Mr. Chief Justice.

Mr. CHIEF JUSTICE. This question is from Senators SESSIONS, GRAMM of Texas, SMITH of New Hampshire, INHOFE, ALLARD, and ROBERTS. It is directed to the House managers:

In defense of the President, Ms. Mills has repeatedly stated, and has just reiterated, that the crime of witness tampering requires some element of threat, intimidation or pressure. Isn't it true that section 1512(b) criminalizes anyone who corruptly persuades or engages in misleading conduct with the intent to influence the testimony of any person in an official proceeding? Please explain.

Mr. Manager BARR. Mr. Chief Justice, we appreciate the question from the Senators, since it bears on a number of different questions and a great deal of the evidence that you all have heard in this case.

One can talk around the law, one can talk about the law, one can ignore the law and, as we have seen, one can break the law, but one has to deal with the law in court and in these proceedings. And that is why throughout these proceedings the Senators have heard us, as the House managers on behalf of the House of Representatives, and as the presenters of this case against the President, refer repeatedly and explicitly to the actual language of the statutes which form the basis for the articles of impeachment against President William Jefferson Clinton.

Counsel Mills has, in fact, misrepresented the law of tampering with witnesses as set forth very explicitly in section 1512 of title 18 of the United States Code. In her arguments 2 days ago, Ms. Mills quite expressly stated that one of the elements that a prosecutor must charge and that must be found here, if, indeed, article II, which is obstruction of justice, should lie as the basis for a conviction thereon, one must find that tampering under 1512 requires threats or coercion. Nothing could be further from the truth.

Now, if, in fact, Ms. Mills had stated to this body that one of the bases, one of several bases on which a prosecutor or we, as House managers, could, indeed, show this body that tampering with a witness would lie, includes, as an alternative, as an option, threats or coercion, she would have, instead of being misleading, been absolutely correct. That was not her position.

Section 1512 of the United States Code expressly does not require threats of force, intimidation or coercion. It may be based on the person corruptly persuading another person or engaging in misleading conduct toward another person, both of which are terms, the definitions for which are not found in the ether but are found, yet further reading, in title 18. Neither of them requires threats, intimidation or coercion.

Moreover, in considering whether or not section 1512 or, indeed, its companion section, 1503, also obstruction of justice under the U.S. Criminal Code, which also does not require for a conviction to lie thereon threats of force, intimidation or coercion, but also may be and is based on corruptly influencing, those terms are expressly defined and dealt with not only in the definitional provisions of title 18, and including specifically definitions that apply to these provisions, these sections, but also in the case law.

We would respectfully direct the attention of the Senators in reviewing the law of obstruction of justice and the law of tampering with witnesses to some of the very cases cited by the attorneys for the President in their effort to deflect attention away from these particular provisions of the law as they apply to the conduct of the President.

For example, in her presentation, Presidential Counsel Mills relied on the Supreme Court case of United States versus Aguilar in her statements. In that case, the Court held that a lie told to a criminal investigator was insufficient to prove witness tampering.

What Ms. Mills failed to disclose, however, was that the Court's decision in that case, in that Aguilar case, was based on a specific finding not applicable to the facts of this case that the evidence was insufficient to prove that the defendant could have even thought that the investigator was a potential witness at the time that he lied to him.

The overwhelming body of evidence in this case, as we have heard yet this morning, most recently in response to questions, is that not only could the President, and the President did in fact reasonably presume, indeed almost invite, the lawyers in the Jones case to subpoena Ms. Currie as a witness, but we have found, contrary to the prior misleading statements of Counsel Ruff, she was, in fact, subpoenaed and called as a witness.

Therefore, we believe that on both arguments raised by counsel for the President seeking to deflect attention away from and render inapplicable both obstruction provisions, 1503 and 1512, because they, one, require—as we have shown they do not—but they would argue they require coercion, threats, intimidation or force or, two, they are inapplicable because the President could not have reasonably believed or did not know that Ms. Currie was a witness, could reasonably be expected to be a witness at the time the coercion took place.

I would yield for 1 minute to House Manager GRAHAM.

The CHIEF JUSTICE. I believe the House managers' time has expired.

Mr. Manager BARR. I will not yield to House Manager GRAHAM.

The CHIEF JUSTICE. Senator BYRD, to the President's counsel:

Alexander Hamilton, in Federalist essay No. 65, states that ''The subjects of impeachment are ''those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.'' Putting aside the specific legal questions concerning perjury and obstruction of justice, how does the President defend against the charge that, by giving false and misleading statements under oath, such ''misconduct'' abused or violated ''some public trust''?

Mr. Counsel RUFF. Mr. Chief Justice, this, too, goes to the very heart of the deliberations in which you must engage at the end of these proceedings. As I have tried to make clear in my earlier arguments, it is not enough simply, I think, to ask does a particular generic form of misconduct, however serious it may be, lead inexorably to the conclusion that the President of the United States has committed an impeachable offense?

As the framers made clear, and I think the history that lay behind their deliberations and the history that has followed make clear, when we speak of the kind of political—in caps, which is

what it was in Federalist 65—offenses against the man in his public role, we speak of offenses which this body must ultimately judge as being so violative of his public responsibilities that our system cannot abide his continuing in office.

Let us assume for a moment—and we will disagree with each and every element of the accusation—but let us assume for a moment that this body were to conclude that the President lied in the grand jury about his relationship with Ms. Lewinsky. That in and of itself does not lead to the judgment, and in our view must not lead to the judgment, that he needs to be removed from office. It must give you pause. You must think carefully about it.

But ultimately you must ask, despite our rejection of any such conduct—whether it be a judge or a President or any other civil officer—have the framers instructed us to remove from his office, and overturn the will of the electorate, a President who, admittedly, if you conclude that he did violate the law in this regard, has violated a public trust in the broadest sense, as each of us does who serves the public, if we do anything other than that which are our properly assigned responsibilities, and do them with the utmost of integrity? Each of us violates that trust if we don't meet that standard.

But the one thing we can be certain of is that the framers understood the frailties with which they were dealing. They understood the nature of the offense that had been the background of impeachment proceedings in England. And certainly the framers, in their debate, made it clear that it has to be at the highest level of public trust—the breach of the public trust that is embodied in the words ''treason,'' ''bribery,'' ''selling your office'' and similar other high crimes and misdemeanors.

And so all I ask the Senators in this regard is not to simply leap, as the managers would have you do it, from the definition of the offense or the statute governing their conduct, but to ask the constitutional question, as I know you will, the framers' question. If we have not convinced you on the facts, I hope we will convince you that the framers would have asked: Is our system so endangered that we must not only turn the President over to the same rule of law that any other citizen would be put under, after he leaves office, but must we cut short his term and overturn the will of the Nation? And in our view, in the worst case scenario, you can find the answer to that question must still be no.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senator LOTT asks the House managers:

Do the managers wish to respond to the answer just given by the President's counsel?

Mr. Manager CANADY. Mr. Chief Justice, Members of the Senate, we would briefly respond to the response just given by counsel for the President. We believe that the response and the position taken by the counsel for the President here really involves two great errors. One error is in establishing a standard of conduct for the Presidency that is too low. The other error is in attempting to minimize the significance of the offenses that this President has been charged with and which we submit to you the evidence supports the charges.

Now, we do not submit that any President—this President, whoever it may be—should be impeached and removed from office for trivial or insubstantial offenses. We believe that an essential part of the focus of your inquiry must be on whether there was a serious, corrupt intent involved in the underlying conduct.

A President should not be impeached and removed from office for a mistake of judgment. He should not be impeached and removed for a momentary lapse. Instead, he should be impeached and removed if he engages in a conscious and deliberate and settled choice to do wrong, a conscious and deliberate and settled choice to violate the laws of this land.

We submit that he must be impeached and removed if he does that, because in doing so he has violated his oath of office and in doing so he has turned away from the unique role which he has under our Constitution, as the Chief Executive, charged with ensuring that the laws be faithfully executed. He steps aside from that role and takes on the role of one who attacks the rule of law. And it is for that reason that we believe that this President should be removed. And we would further submit that the attempt to minimize the significance of the conduct of this President does a disservice to the laws of this land.

The attempt to minimize this course of conduct, which started out as an effort to deprive a plaintiff in a civil rights case of her just day in court, is a serious course of conduct, a course of conduct which brings disrespect on the office of the Presidency and, indeed, undermines the integrity of the office of the Presidency, the integrity of the judicial system. And it is for all of those reasons that we would submit to you that the President's counsels' efforts to persuade you that this course of conduct is not impeachable are not persuasive and should not be accepted by the Senate in this case.

The CHIEF JUSTICE. Senators TORRICELLI and ROCKEFELLER ask, to the President's counsel:

The House managers have made the overly broad argument that ''[n]othing in the text, structure, or history of the Constitution suggests officials are subject to impeachment only for official conduct.'' Can this unbending argument be reconciled with the following statement from Justice James Wilson: ''Our President . . . is amenable to [the laws] in his private character as a citizen, and in his public character by impeachment''—and with the standard adopted by a bipartisan majority in the Watergate proceedings?

Mr. Counsel RUFF. Mr. Chief Justice, Senators, I could probably simply say no, given the articulate framing of that question, and I would have said as much as needed to be said.

I think the managers have, in their strawman-building role, tried to suggest that our position somehow is so distant from constitutional realities and the realities of the operations of our Government that we could not conceive of a situation in which private conduct, no matter how egregious, would lead to removal. Of course, that is not the case. None of us could contemplate a setting in which even personal conduct—and I need not go through any examples—was so egregious that the people simply could not contemplate the notion of a President remaining in office.

But other than that, if there is one message that comes out, not only of Judge Wilson but of the entire debate of 1787 and all of the commentary since then, it is that, indeed, the focus of attention must be—and this goes back to, in large measure to Senator BYRD's question—must be on the public character of the man; the political, in a broader sense, character of the man; and of his acts.

And if you look back at the 1974 writings of the House Judiciary Committee, both majority and minority, this is not a partisan view. It makes it absolutely—they make it absolutely clear that the House then believed something which they must either not believe today or have ignored as they engaged in their discussions, which is that the test to be applied is whether the President in this case has so abused the public trust, so abused the powers of his office, that he goes to the very heart of what the framers had in mind in 1787 when they carefully confined and carefully limited the range of activity that could lead to contemplation of removal, and that is not a range of activity that, with all due respect, touches anywhere near the conduct that you have before you today.

The CHIEF JUSTICE. Senator NICKLES asks the House managers:

President's counsel stated the President did not commit perjury. Please respond.

Mr. Manager ROGAN. Mr. Chief Justice, I trust that the presumption of 5 minutes is a rebuttable one, correct? I will do my best not to have to go beyond the time. I thank the Senator for the question.

First, just as a predicate, obviously in 5 minutes I could not do a comprehensive review on the perjury aspects of this case, so let me just start with a preliminary issue and we can move on with different questions and revisit the issue at another time. If anybody wants a lesson in legal schizophrenia, please read the President's

trial brief on this very subject. They skirt the issue by saying nowhere in the President's grand jury deposition did he ever affirm the truth of his civil deposition testimony. But they won't come out and say he lied, they won't come out and say he perjured himself, and they try to ignore the actual fact of when the President was asked questions about his oath that he took during the grand jury.

I read, therefrom:

Question to the President:

You understand the oath required you to give the whole truth that is a complete answer to each question, sir.

Answer: I will answer each question as accurately and fully as I can.

Question to the President:

Now, you took the same oath to tell the truth, the whole truth, and nothing but the truth, on January 17, 1998, in a deposition in the Paula Jones litigation, is that correct, sir?

Answer: I did take an oath there.

Question: Did the oath you took on that occasion mean the same to you then as it does today?

Answer: I believed then that I had to answer the questions truthfully, that's correct.

The colloquy goes on. It is in your materials.

They attempt to say that that somehow inoculates the President from having to admit that he perjured himself during the Paula Jones deposition.

But let's take a quick look at some of the answers he gave during the Paula Jones deposition that he affirmed in his grand jury testimony that we now know is false.

Question to the President:

If she [Monica Lewinsky] told someone she had a sexual affair with you beginning in November 1995, would that be a lie?

Answer: It certainly would not be the truth.

Question: I think I used the term ''sexual affair;'' and so the record is completely clear, have you ever had sexual relations with Monica Lewinsky as that term is defined in deposition exhibit No. 1?

Answer: I have never had sexual relations with Monica Lewinsky. I've never had an affair with her.

Then they go on to ask:

Is it true that when Monica Lewinsky worked at the White House, she met with you several times?

Answer: I don't know about ''several times.'' There was a period when the Republican Congress shut the government down. The whole White House staff was being run by interns. She was assigned to work back in the Chief of Staff's Office. We were all working there. I saw her on two or three occasions then. And then when she worked at the White House I think there were one or two times when she brought some documents down to me.

Question: At any time were you and Monica Lewinsky in the hallway between the oval office and the kitchen area?

Answer: I don't believe so unless we were walking back to the dining room with pizzas. I just don't remember. I don't believe we were in the hallway, no.

This colloquy goes on and on. I invite the Senate to review the President's deposition testimony.

He clearly was giving answers that were false. They were not part of the record. He wasn't doing it to protect himself from embarrassment; he was doing it to defeat Paula Jones' sexual harassment case. When the President testified in August before the grand jury, he never denied the truth of those testimonies. He refused to admit he lied during the deposition. He reiterated the truth of those because he knew he would be subject to perjury.

The question for the President's counsel is this, and it is a simple question: Did the President lie under oath on January 17 when he was asked questions about the nature of his relationship with Monica Lewinsky? Did he lie when the U.S. Supreme Court had said Paula Jones had a right to proceed in a sexual harassment case? Did he lie when Judge Susan Webber Wright ordered him to answer those basic questions under oath? And if the answer to that question is yes, then we have an incredible admission; if the answer is no, I invite them to point to the record where that is demonstrated.

The CHIEF JUSTICE. To the President's counsel from Senators CONRAD and TORRICELLI:

The House of Representatives rejected two proposed articles of impeachment, including an article of alleged perjury in the Jones deposition. Do you believe that the Senate may, consistent with its constitutional role, convict and remove the President based on the allegations under the rejected articles, including the allegations of perjury?

Mr. Counsel CRAIG. Mr. Chief Justice, article II was defeated. But more importantly, article I specifically incorporates by reference, or tries to incorporate by reference, all the elements of article II. And the House of Representatives, when they voted to reject article II, I think, voted also to eliminate these issues that you have just heard about.

Now, we predicted—and our prediction has come true—that the managers would like to argue this case. If you look at—if you look at the majority point that comes out before the vote occurs on all four articles and you go to article I and you try to find out where in article I they define those perjurious statements that compose subpart (2), the civil deposition, you will see in the majority report they say go look at article II—which is the argument about the civil deposition—and the House of Representatives specifically voted to take out all those accusations and allegations of misconduct with respect to the civil deposition.

Now, I have testified, as did Mr. Ruff, before the Judiciary Committee on this issue. I said that the President's responses in the Jones deposition were surely evasive, that they surely were incomplete, that they surely were intended to mislead; and it was wrong for him to do all that. But they were not perjurious.

If you want to try a perjury case about all of the things and the statements that the House of Representatives did not want to accuse him of, that would be inconsistent, I think, with your duty as members of this court. You cannot impeach the President on the issues that are included in article II. He was not impeached; you cannot remove.

Mr. LOTT. Mr. Chief Justice, I believe we have had an equal number of questions, although the timing may not be exactly equal.

I ask unanimous consent that we take a 15 minute recess at this point.

There being no objection, at 2:41 p.m., the Senate recessed until 3:01 p.m.; whereupon the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready to resume the questions, and I believe this will be question No. 16. We send the question to the Chief Justice.

The CHIEF JUSTICE. This is a question from Senators SANTORUM, SMITH of Oregon, and THOMAS to the House managers:

Please respond to the presentation made by counsel to the President, including the argument made by Mr. Craig, to the effect that the rejection of article II had the effect of eliminating that portion of article I. Did the House conclude that lying in a civil deposition is not impeachable, but that lying to the grand jury about whether the witness lied in a civil deposition is impeachable?

Mr. Manager ROGAN. Mr. Chief Justice, I thank the Senators for the question and for the opportunity to rebut the presentation a few minutes ago by counsel for the President, Mr. Craig.

In his response he asks the Senate to do specifically what none of the attorneys can do in their presentations, and that is go beyond the record. Specifically, Mr. Craig is asking the Senate to make assumptions as to why the House of Representatives defeated what was then known as article II, a stand-alone article of impeachment that the President lied during the civil deposition. And he goes so far in his presentation to say because the House of Representatives defeated what was then article II, the Senate should not consider any of the language relating to the President's perjury during the civil deposition.

First, I ask the Senate not to make those assumptions because if there was any reasonable inference to be drawn, it would be that it was cumulative. Why is it cumulative? Why did the House not want this to be a stand-alone article? It is cumulative because, if Mr. Craig would read article I, he would see that one of the allegations of perjury is that the President committed perjury in the grand jury when he referenced his civil deposition answers and reiterated those to the grand jury. And so the House made a decision not to use a separate stand-alone article. But I

would respectfully submit to this body that that is the only inference that can be drawn.

The other thing that I want to mention briefly about Mr. Craig's presentation on that issue is what I found to be a startling admission on his part. Assuming, of course, that the Senate is going to look at article I as it was drafted and passed by the House and is presented to you dealing with civil deposition perjury, Mr. Craig said that the President's testimony in the Jones case was evasive and incomplete.

He goes even further in his testimony, or statement to the Senate a couple days ago, and I am quoting. He said, ''The President's testimony in the Jones case, the President was evasive, misleading, incomplete in his answers.''

That begs the question. What kind of oath did the President take in the civil deposition? Did he take an oath, did he raise his hand and swear to tell the truth, the evasive truth, and nothing but the evasive truth? Did he take an oath to tell the truth, the misleading truth, and nothing but the misleading truth? Did he take an oath to tell the truth, the incomplete truth, and nothing but the incomplete truth? Because, if he did, if that was the language that the President used when he took his oath and testified, then perhaps Mr. Craig's position is well taken. But a brief review of the oath that the President took clearly states that he took an oath and was obliged under the law to tell the truth, the whole truth, and nothing but the truth—not the incomplete or misleading truth, the truth, the whole truth, and nothing but the truth.

And so this body has to make a determination when they review that testimony, both given during the civil deposition and reiterated during the grand jury, whether the President fulfilled his legal obligation in a sexual harassment lawsuit. And if he did, then clearly that should be stricken, and you should not consider that. But if he did not, if you find that in fact he testified, as Mr. Craig says he testified, incompletely, evasively, and misleadingly, then I believe this body has an obligation to cast a vote accordingly.

The CHIEF JUSTICE. Senator REED of Rhode Island asks the White House counsel:

Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question.

Mr. Counsel RUFF. I thank you, Mr. Chief Justice.

You know, Mr. Manager ROGAN asked you not to make assumptions about what the actions of the House mean, and then proceeded to make a series of assumptions about what the House might have meant.

The problem with Mr. Manager ROGAN's analysis is twofold: One, he and his colleagues in the House on the Judiciary Committee drafted these four articles. They believed, at least 20 of the majority believed, that it should be an impeachable offense, as he now puts it: did he fulfill, did the President fulfill his obligation in the Jones deposition? You don't need to make a lot of assumptions to understand merely on the face of the action that was taken that the full House said, no, it is not, even if we were to conclude, as the House Judiciary majority wishes us to conclude, an impeachable offense.

And so the managers have had to find a way to drag back into article I all of the problems that they see in the President's testimony in the Jones deposition. The problem is that—and you can listen to it in the language that Mr. Manager ROGAN has used not only today but earlier and that is used in the brief filed by the House managers—that the President, in his words, referenced and reiterated his testimony in the Jones case. Senators, that is not so.

Now, they try to hook onto a statement, as best we are able to tell in searching their position and their writings on the subject, the managers hook onto a statement in which the President said, I tried to walk through the minefield of the Jones deposition without violating the law and think I did. And, on that frail hook—which is clearly a statement of the President's state of mind about whether he succeeded or didn't succeed in testifying without violating the law in the Jones case—on that hook they hang every single item. They didn't tell us what they were—but they hang every single item that the House rejected out of hand in article II.

Now, wholly apart from the inadequacy of the predicate that they lay, if there was ever an example of a situation that Mr. Craig talked about earlier and that I talked about on Tuesday, in which I challenge anybody in this room to tell me how you would have known coming into this Chamber what it was that the managers were alleging with respect to the Jones deposition, this is it.

If you listened—look at the trial brief. If you look at Manager ROGAN's presentation of the other day, if you listened to his presentation today, where, amongst all that, do we pick and choose to find the statements? Even if you agree with Mr. Manager CANADY that it is all right just to sort of generally charge, as a constitutional proposition—and I firmly disagree with that. I don't care under what level you are operating—the lowest trial court in the country—nobody would ever say: Now, Mr. Defendant, I want you to understand that you are being charged with what you'll find at page, whatever it is, of the majority report where we refer you over to this list of other things that was rejected by—just let us say the grand jury—and somewhere in there you are going to find the charges to which we ask you to respond.

The bottom line is, you can go down that list. Some of them you will never hear mentioned in this Chamber—haven't heard them mentioned yet. I defy anybody in this Chamber, including the managers, to justify asking the President of the United States to defend against a reference from one page of a brief to another in order to tell the charges that he has been accused of.

If you read his grand jury testimony, you see he addressed a number of issues that he addressed in the Jones deposition. He clarified. He elaborated. He told the truth in the grand jury. Not once was he ever asked by the independent counsel and all his lawyers there who had been pursuing this investigation for 7 months when they had him in the grand jury—not once did they ask him this simple question: Is everything you testified to in the Jones deposition true? Or, go down the list and say: Is what you testified to on page 6, or page 8, or page 87 true?

And when they got through with that deposition, 4 hours, professional prosecutors, and they went back and spent from August 18 to September 9, when they sent their referral up, looking back, using a fine-tooth comb on that transcript, and they went back and said—where are the violations? Even they don't say that there is some sort of wholesale importation of the Jones deposition into the grand jury. And, yet, not the House but the Judiciary Committee majority report and the managers, with that big, vacant, empty spot in the middle, the rejection of article II by the House of Representatives, would have you believe that, indeed, what the independent counsel's office didn't believe happened and didn't force to make happen, did happen. And they are asking you to remove the President from office on that kind of logic.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. This is from Senators SHELBY and SNOWE to the House managers.

There has been much debate regarding the nature of the offenses that fit within the definition of ''high crimes and misdemeanors.'' When employing this phrase in the Constitution, the Framers relied on precedents supplied by Colonial and English common law to provide context and meaning. Please explain whether or not the offenses charged in the two Articles fit within the types of impeachable offenses contemplated by the Framers as they interpreted Colonial and English common law precedent.

Mr. Manager CANADY. Mr. Chief Justice and Members of the Senate, I will be happy to respond to this question because it is a question that goes to the heart of the matter that is before us.

On Saturday I made a presentation which focused on the history of the impeachment process in Great Britain

and the way in which that serves as a backdrop for the work of the framers. I would like to refer you, again, to a document to which I made reference during the course of the proceedings on Saturday. This is a document which has also been referred to repeatedly by counsel for the President. It is the report prepared by the staff of the impeachment inquiry in the case of President Nixon entitled ''Constitutional Grounds for Presidential Impeachment.''

I believe that in that report they grapple with the very issue that you have now raised. And in characterizing the background of impeachment and characterizing the things that the framers focused on both in the course of the Constitutional Convention and in the ratification debates and also—it goes a little beyond your question—the course of impeachment proceedings over the last 200 years here in the House of Representatives and in the Senate, they came to this conclusion, and this is what they said. They said:

The emphasis has been on the significant effects of the conduct—undermining the integrity of office, disregard of constitutional duties and oath of office, arrogation of power, abuse of the governmental process, adverse impact on the system of government.

They went on to say: ''Impeachment was evolved by Parliament to cope with both the inadequacy of criminal standards''—and one of the issues that they were concerned with was whether there had to be a criminal violation in order for there to be a high crime or misdemeanor, and they concluded, I believe rightly, that there need not be a criminal offense, but they said, ''Impeachment was evolved by Parliament to cope with both the inadequacy of criminal standards and the impotence of courts to deal with the conduct of great public figures.''

They concluded, then, by saying, ''Because impeachment of a President is a grave step for the nation''—which all of us in this Chamber concede—''it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the Presidential office.''

That is the standard which they set forth, which I believe encapsulates the whole history of the experience of the English Parliament, as well as the discussions in the Constitutional Convention and the ratification debates as well as anything I have seen.

Let me point out that this was a product of the staff of the Rodino committee. This is not something that the House managers here today have come up with to support our case; it is there as part of the record.

Let me refer to another part of the—that particular report, which I think gets to the essence of the matter here. They said, ''Each of the thirteen American impeachments''—of course, there have been more impeachments since the time this was written—''involved charges of misconduct incompatible with the official position of the office-holder. This conduct falls into three broad categories.''

I think that this is a very sensible division of the types of conduct that may fall—the types of conduct that constitute high crimes and misdemeanors.

(1) exceeding the constitutional bounds of the powers of the office in derogation of the powers of another branch of government; (2) behaving in a manner grossly incompatible with the proper function and purpose of the office; and (3) employing the power of the office for an improper purpose or for personal gain.

I would submit to you, in conclusion, that what we have before the Senate in this case is conduct that clearly falls within the scope of category 2, which I just read, which I will repeat—''behaving in a manner grossly incompatible with the proper function and purpose of the office''—for the very reasons I explained a few moments ago. When the President of the United States, who has taken an oath of office to support and defend the Constitution, who has a constitutional duty to take care that the laws be faithfully executed, engages in a calculated course of criminal conduct, he has, in the most direct, immediate, and culpable manner, violated his oath of office, breached his duty under the Constitution, and for that reason has behaved in a way that is grossly incompatible with the proper function and role of the high office to which he has been entrusted—which has been entrusted to him by the people of the United States.

The CHIEF JUSTICE. This question from Senator BINGAMAN to White House counsel:

Would you please comment on any of the legal or factual assertions made by the Managers in their response to the previous question?

Mr. Counsel RUFF. Mr. Chief Justice, Senators, let me make a couple of points, if I might. The question that was put to the managers started by asking what we can learn from looking back into English roots of impeachment and how that might bear on the decisions that you face in the coming days.

I will not, in any sense, hold myself out as a scholar or at least enough of one to be able to answer the question with any specificity, but I do know enough about the parliamentary form of government and its experience with impeachment to know that a couple of lessons can be drawn from it.

First, that impeachment was a developing tool over the course of the 14th, 15th, 16th and 17th centuries as a weapon in the battle between the Parliament and the Crown. It was one of the ways—indeed, one of the very few ways—the Parliament could reach out and remove the King's ministers or the Queen's ministers, and that was really where the battleground was.

Even in that setting, when it was an avowed political tool, history, I think, will tell us that Parliament did ask itself, Was the conduct of the minister at issue—whoever that minister might be—so subversive of the constitutional form of government that removal of the minister, or in some cases even more severe sanctions, was necessary?

If you transport that into the experience of the framers, it does two things, I believe: One, it tells you what the framers knew of the seriousness of the offenses that had to be addressed through impeachment and what the need for impeachment was as the ultimate solution to the ultimate problem.

But it also tells you very clearly that the framers did not want to bring that English experience in wholesale because they recognized it for what it was, which was, indeed, a weapon in the battle between the Parliament and the Crown, and the government that they had created needed balance among the legislature and the executive and the judicial branch. The use of impeachment, as it was reflected over the four or five centuries that had been developed, was not consistent with what these framers were creating. And so they very carefully chose, and the debates reflect that, to limit the scope of impeachment and to use it as they viewed it: only as a matter of constitutional last resort.

In doing so, they foretold, I think, the positions staked out both by the majority and the minority at the time of Watergate. And let me pause here just for a moment to say that I will not go into detail respecting the conduct engaged in by former President Nixon, except to say and suggest to you that it is so far distant from anything that has been charged here that it doesn't belong in the same sentence, paragraph, or certainly article.

But if you look at what came out of the House Judiciary Committee in 1974, I agree entirely with the theme of the majority staff report at the time, as did the minority. Their theme was the theme that I hope I have sounded, probably too often, over the last few days. And I am going to read to you again—I apologize to you—something I read to you earlier, which is the minority view on the meaning of impeachment:

It is our judgment, based upon this constitutional history, that the framers of the United States Constitution intended that the President should be removable but by the legislative branch only for serious misconduct dangerous to the system of Government established by this Constitution. Absent the element of danger to the State, we believe the delegates to the Federal Convention of 1787—

I will skip over a little language here—

struck the balance in favor of stability in the executive branch.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators GRASSLEY, SMITH of New Hampshire, BUNNING and CRAIG ask the House managers:

In your presentation, you made the case that the Senate should call witnesses. In light of the White House's response to this argument, do you still hold this position? Please elaborate.

Mr. Manager MCCOLLUM. Mr. Chief Justice and Senators, the House definitely holds to the position that we should call witnesses. But I think the issue here is what has been related to us in anything we have heard in the past few days by the White House counsel that would say we don't need them, or I think just the contrary, what have we heard that says we are more likely to need them, or you are more likely to need them. First of all, I would like to point out to you that the White House counsel is trying to have it both ways.

They have been arguing to you on a lot of technicalities of the law, the criminal law, for the last few days, and that is understandable.

As I said to you a few days ago, I think this is a two-stage process. We, the managers, do. You have to determine if the President committed crimes, and if he did, should he be removed from office: two separate questions. They have argued to you that you should use the standard, beyond a reasonable doubt, which is a criminal standard, and I might add that standard is only for facts, it is not for whether you remove; it isn't to determine law.

You wear the hat as finders of fact as well as the judges, finders of the law, and so forth. But if you choose to use that standard, you need to know, A, that it doesn't mean it excludes any doubt. You probably need to hear a jury instruction, which we can provide at some reasonable point for you, about how a Federal court would charge a jury about that.

But the point I am making is that they have claimed that, and they claim there is a lack of specificity in the charges. We are not in court in the sense of a real trial here. We don't have to be specific like that. The whole history of the articles of impeachment that have come over here in the past on judges have never gotten down into the technical specificity of a courtroom and been thrown out because they were not exactly right.

My point is they have gone and built up a whole case about we ought to follow these rules and have a criminal proceeding and judge the crimes on that basis, and yet they have said you wouldn't have witnesses or we shouldn't call witnesses.

In any criminal trial, you are going to call witnesses; you need to judge their credibility. I want to walk through what else they have said to you in the last couple of days that makes that point very clear with regard to testimony, with regard to judging who you believe or who you don't believe and how important that is.

First of all, let's just take a few glimpses, but as we do this, remember the big picture is the scheme the President has engaged in. The whole basis for our discussion here today in each of these two articles of impeachment involves the questions of the President trying to thwart the Jones court will, trying to hide evidence from the court and planning not to tell the truth in that deposition in January. Whether that is over here on a perjury count or not is irrelevant. It is critical to this case for both obstruction of justice and perjury that you accept and understand, as I think clearly you do from listening to all of this, that the President lied many times in that deposition in the Jones case because he didn't want them to get the facts, the true facts of his relationship with Monica Lewinsky.

Well, in that process of looking at that, he needed Monica, if you recall, to file a false affidavit. He needed to obscure the fact that there were gifts there. He needed to obscure the trail that led to him in any detailed relationship with her.

So let's take, for example, the gift-exchange discussion counsel had out here a couple of days ago with us. They were pointing out to you—the White House counsel—that on December 28, that Monica Lewinsky, in her grand jury testimony, testified that the President said to her—with respect to what she should do about those gifts, and she raised giving them to maybe Betty Currie—I don't know or let me think about that.

The counsel said, well, let's go back and look at 10 different times where she said about that subject all kinds of different ways. I submit to you that her grand jury testimony, after she got the immunity to testify, is clearly the most credible. We presented that to you, and that is what the President said.

It is significant what he said, because that is part of your chain you have to lead down the road to figure out whether or not he had the requisite intent to go and influence the outcome of what was done with the gifts.

The reality of this is that when you look at it, you have to question her testimony; you have to question her believability. You ought to bring her out here. She should be brought out here, if they are going to challenge her like this, and give an opportunity for us to examine her on both sides and determine what is her best testimony about that, if that is important to you, and apparently it is to White House counsel.

The same thing is true of the questions with regard to Ms. Currie and the phone call dealing with the question of coming over to get the gifts. There White House counsel is saying, in essence, Ms. Lewinsky is not telling the truth; Ms. Currie is. If you don't have them here to listen to, who are you going to believe? I suspect if Ms. Lewinsky came out here, that 1-minute phone conversation, which was not part of the Starr referral—we discovered that subsequent to that—would be something she could comment on and explain, and maybe Ms. Currie could, too. But we do not have that. And they made a big to-do over that in the last couple days.

Last, but not least, what I put up on the chart here is dealing with this affidavit. Now, this affidavit is very important. It is a central part of the obstruction of justice. It is the very first obstruction of justice and the question of truthfulness. And who you believe in this pattern is very, very important.

The White House counsel have been arguing the last few days that, indeed, with regard to the cover stories, that there was no discussion of cover stories in a timely way during the December 17 phone conversation when the President suggested Monica Lewinsky file an affidavit, and that the cover story idea somehow isn't tied into the issue of putting into her head that she should tell a lie.

Well, I call your attention to what I read to you the other day. It is up here on this board. And I refer it back to you on the chart. This is one of the charts where she testified before the grand jury—Monica Lewinsky did:

At some point in the conversation, and I don't know if it was before or after the subject of the affidavit came up—

I don't know if it was before or after, but it was during that conversation on December 17 when the affidavit did come up—

he sort of said, ''You know, you can always say you were coming to see Betty or that you were bringing me letters.'' Which I understood was really a reminder of things that we had discussed before.

And she went on to say the famous quote: ''And I knew exactly what he meant [by this].''

And if you remember—I read that to you the other day—she also said: ''It was the pattern of the relationship, to sort of conceal it.''

I am not going to put the other board up here, but in the same context they have been saying, with respect to this affidavit issue again, ''No one asked me to lie.'' Remember that was repeated over and over and over again. And I, again, point out to you that you need to bring her in here, I think, based on what they are saying and arguing, to find out for yourself if she is going to corroborate this.

She said in the grand jury testimony:

For me, the best way to explain how I feel what happened was, you know, no one asked or encouraged me to lie, but no one discouraged me either.

And she went on to say: ''And by him not calling me and saying that''—that she shouldn't lie; I didn't read the whole paragraph—''I knew what [he] meant.''

''Did you understand all along that he would deny the relationship also?''

She says: ''Mm-hmmm. Yes.''

The question: ''And when you say you understood what it meant when he didn't say, 'Oh, you know, you must tell the truth,' what did you understand that to mean?''

She says: ''That—that—as we had on every other occasion and every other instance of this relationship, we would deny it.''

If you believe her, then the President is not telling the truth. The affidavit clearly is something he was trying to get her to file falsely. It makes sense that he would, because he relied on it in the deposition. He patterned it after the cover stories in the affidavit—what he had to say—the lies he told about the relationship. It makes common sense to me.

The CHIEF JUSTICE. Mr. MCCOLLUM, I think you have answered the question.

Mr. Manager MCCOLLUM. Thank you very much.

My point is, you ought to bring the witnesses.

The CHIEF JUSTICE. The question from Senator BRYAN to the White House counsel:

Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question, focusing on the need for witnesses and the time likely required to prepare for and conduct discovery?

Mr. Counsel KENDALL. Mr. Chief Justice, the first question to ask about the need to call witnesses is, What would the witnesses add? That has not been described. What you have heard are vague expressions of credibility and hope. You have not heard specifically what these witnesses would add. And the answer to that is, they would add nothing to what is not already there.

Yesterday, I held up the five volumes of testimony, thousands and thousands of pages. You have it before you. Now, those five volumes represent 8 or 9 months of activity by the independent counsel. The independent counsel called many, many, many witnesses, many, many, many times. They proceeded with no limitation on their budget, on their resources. They turned things upside down. And they repeatedly—I think abusively—but they repeatedly called witnesses—like Ms. Currie, Mr. Jordan, Ms. Lewinsky—back to the grand jury for repeated interviews. It is all right there. And the managers have really told you nothing that could be added to this record.

Second, they have not made a representation about what the witnesses would really say that is different. And the reason they have not is that they themselves don't know. They themselves have done no investigation. They don't know what these witnesses would say. They are hoping that maybe something will turn up.

Now, what they have done, they have taken those five volumes, and more, from the independent counsel. And I am reminded of the old bureau that many newspapers had called ''Rewrite.'' That was not a bureau which did independent reporting. When an editor read something that was incomprehensible, he or she would say, ''Get me Rewrite.'' So what the House has done is gotten ''Rewrite'' to write up its own report. They cannot tell you—they can tell you what they hope—they cannot make a representation or a proffer to you about what any witnesses would say.

Now, their third, and really their only argument, is the credibility argument—got to see these witnesses. Well, in point of fact, in the real world, when you have witnesses, their stories often differ in some ways. They differ not because anybody is lying; they differ only because people don't always have precisely the same recollection of things. Now, that doesn't mean that looking at them will add anything other than getting for you the 6th, 7th, 8th, 9th, 10th account of what some witnesses said.

For example, in our trial brief, we quote—and Mr. MCCOLLUM referred to this—at pages 66 to 67, 11 accounts that Ms. Lewinsky has given on the gift exchange. Now, I do not think you are going to learn anything from a 12th account. And by the way, with respect to the question of, well, she might have testified differently after she got immunity, 9 out of 11 of these accounts were given, as you will see from the dates and the testimony, after she got immunity. Calling witnesses will add nothing to the record now before you. All the major witnesses have testified, and their testimony is right there.

Now, in response to the question of how long it will take, I must tell you, we have never had a chance to call witnesses ourselves, to examine them, to cross-examine them, to subpoena documentary evidence—at no point in this process. It would be malpractice for any lawyer to try even a small civil case, let alone represent the President of the United States when the issue is his removal from office, without an adequate opportunity for discovery.

And I think if they are going to begin calling witnesses, and going outside the record, which we have right now—I think the record is complete; and we are dealing with it as best we can without having had an ability ourselves to subpoena people and cross-examine them and depose them—but I think you are looking realistically at a process of many months to have a fair discovery process.

The CHIEF JUSTICE. This question is from Senator CHAFEE. It is to the House managers:

The White House defense team makes a lot out of Monica Lewinsky's statement that she delivered the presents to Betty Currie around 2:00 or 2:30 and about the fact that the phone call came from Betty Currie at 3:32. Isn't it reasonable to assume that Ms. Currie meant that she delivered the presents to Ms. Currie in the afternoon? If the President was unconcerned about the presents, as he said in his grand jury testimony, why didn't he simply tell Ms. Lewinsky not to worry about it?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice.

Let me just broadly review the whole gift issue and the discrepancy in the testimony.

First of all, I want to go back to Mr. Ruff's presentation during the last 3 days.

He argued that I unfairly characterized Betty Currie as having a fuzzy memory whenever she was unclear. And she was clear that it was her memory that Monica Lewinsky called to initiate the retrieval of the gifts. And of course that is in conflict with the testimony of Monica Lewinsky.

Further, they argue that Monica Lewinsky's time sequence as to when she went to pick up the gifts, when Betty Currie went to pick up the gifts, destroys her credibility. Her time sequence does not fit. Let's look at her testimony on this particular point. This is what Betty Currie has testified to, and this is exhibit H–A in your folder on my presentation; exhibit A. These are statements of Betty Currie in her deposition testimony about when she picked up the gifts.

Now the first one is her testimony on January 27, 1998. She was asked when she picked up the gifts, and she said, ''Sometime in the last 6 months;''

Now, in May she was asked when she picked up the gifts, and she said, ''A couple of weeks'' [after the December 28 meeting]; in the May 6 testimony, it was after the 28th meeting; and then in her last testimony, July 22, in the ''fall maybe.''

That is Betty Currie's testimony. Contrast that to that of Monica Lewinsky.

This is her recollection as to when Betty Currie came to pick up the gifts. You will see that she has testified in her proffer of February 1, ''Later that afternoon''; July 27, she said Currie called ''several hours after leaving the White House;'' ''about 2 o'clock''; ''Later in the day''; and August 6, called ''several hours'' after Lewinsky left the White House. Her memory is fairly good about this.

The question is, the cell phone call, which really corroborates what Monica Lewinsky said, that it was Betty Currie who called to retrieve the gifts, and said the President said, ''You have something for me,'' or something to that effect. That came about 3:30. The

cell phone record was retrieved after Monica Lewinsky's testimony.

Now, does this destroy her credibility, particularly in contrast to that of Betty Currie? I think it reflects that you are trying to remember—you remember that it was a call specifically from Betty Currie to retrieve the gifts. At the time, she said it was in the afternoon. I think it corroborates her because she has never had an opportunity to look at the cell phone record—neither has Betty Currie—to refresh her recollection and trigger it and see what that produces.

Now, that is on the gift issue.

I think they say, well, what would it add to call witnesses? How are you going to determine the truthfulness of this issue? Juries across the country do it by calling witnesses.

Now in this particular case, it should be noted that all other testimony of Betty Currie—I think her last one was about July 27 before the grand jury—all of it preceded the testimony of William Jefferson Clinton which was in August before the grand jury. The point is, because of the rush, the push, the independent counsel didn't call anybody back to the grand jury to requestion them after the information received from William Jefferson Clinton.

So there are a lot of unanswered questions, perhaps, that were generated by his testimony. The 1-minute call was raised: How in the world could this be expressed in 1 minute—the conversation that Betty Currie called to retrieve the gifts? If you look at Monica Lewinsky's description of that call—excuse me, let me read from her grand jury transcript. She was asked about the call, and her answer was,

> What I was reminded a little bit, jumping back to the July 14th incident where I was supposed to call back Betty the next day, but not getting into the details with her that this was along the same lines.
>
> Question to Monica Lewinsky:
>
> Did you feel any need to explain to her what was going to happen?
>
> Her answer:
>
> No.

In other words, this was a cell phone call. It was a cryptic call. It was about retrieving gifts that were under subpoena. It was a short conversation. It doesn't take a minute to say, ''The President indicated you had something for me''—Monica knows what she is talking about—''Come over,'' and that is the end of the conversation—certainly would not take 1 minute.

So all of the evidence is consistent with Monica's testimony.

But let's look at the big picture on the gifts. The evidence was concealed under the bed. It was evidence that was concealed in a civil rights case; secondly, it was under subpoena; thirdly, the President knew it was under subpoena; and fourthly, Monica Lewinsky's testimony indicates that it was, the call from Betty Currie, at the direction of the President—and I am arguing there, a little; please understand that—which initiated the retrieval of the evidence that was under subpoena.

That is the big picture on this. I believe we have made our case on that, and I believe it is strong, and I think it also justified the hearing of the testimony to resolve the remaining conflict.

The CHIEF JUSTICE. This is to the President's counsel from Senators LEAHY, SCHUMER, and WYDEN:

> Notwithstanding the previous response by the House manager, does not the evidence show:
>
> (a) Ms. Lewinsky's testimony; it was her idea to give the gifts to Betty Currie?
>
> (b) the President's testimony; that he never told Betty Currie to retrieve the gifts from Ms. Lewinsky?
>
> (c) Betty Currie's testimony; that it was Ms. Lewinsky, not the President, who asked her to pick up the gifts? And,
>
> (d) the fact that the President gave Ms. Lewinsky additional gifts on the very morning that he is alleged to have asked for them back?

Mr. Counsel RUFF. Mr. Chief Justice, I am not sure I managed to capture all four subpoints of that question but I will do my best.

It is interesting that the managers now suggest that the great discovery of the 3:32 phone call that was so much the heart and soul of Mr. Schippers' presentation and ultimately of theirs is really just a slight glitch in the timetable.

Yes, it is perfectly possible, I suppose, that Ms. Lewinsky could have just missed by an hour and a half, but she did say, three times, once under oath, and twice to the FBI, which is almost the same, that it was 2 o'clock, not 3:30.

So if you are going to ask, consistency, good memory, as Ms. Lewinsky is supposed to have on this matter, she was consistent, but you have to ask, if it really happened at 2 o'clock as she recalled, what is the meaning of the 3:32 call?

Putting aside that dispute, the question itself reflects the essence of our position on this. First of all, there are only two people present at the moment in which, theoretically, the managers would have that the President urged Betty Currie to go off and pick up the gifts. The President of the United States and Betty Currie, they both testified, flatly, that such a conversation did not occur. Do the managers really anticipate if Ms. Currie were brought into the well of the Senate and looked straight in the eye by one of the prosecutors on this team, she would say, ''You got me, I had it wrong. The President really did tell me to do something but I have testified straightforwardly and honestly''?

He didn't say, as my colleague Mr. Kendall indicated—that is wish and hope, and it has no basis in the allegation.

And of course the managers have thought up a good excuse for why it is that the President is giving Ms. Lewinsky more gifts on the very day when he is conspiring with her to hide them: That somehow it is a gesture, a message being sent, that because of these gifts she is still—she is someone who is being roped into a conspiracy of silence.

Aside from the fact that there is not one single, not one single, iota of evidence to support that wishful thinking, is it really likely, even given the managers' perception of this matter, that by giving Ms. Lewinsky the bear that my brief but important colleague Senator Bumpers referred to yesterday, and a pin of the New York skyline, and a couple of other things, including a Radio City Music Hall scarf—I may have missed some—that some great message was being sent to Ms. Lewinsky, that this collection of ''valuable'' items was a message to keep the faith, stay inside a conspiracy? I don't think so.

Thank you, Mr. Chief Justice.

Mr. LOTT. Mr. Chief Justice, may I inquire about the time that has been used on each side?

The CHIEF JUSTICE. I will ask the Parliamentarian.

The counsel for the White House has consumed 57 minutes. The counsel for the managers have consumed 54 minutes.

Mr. LOTT. I believe we have a question at the desk.

The CHIEF JUSTICE. This question is directed to the House managers, proposed by Senators SNOWE, ASHCROFT, ENZI, BURNS, SMITH of New Hampshire, and CRAIG:

> At the end of the Jones deposition, Judge Wright admonished the parties that, ''This case is subject to a protective order regarding all discovery, and all parties present, including the witness, are not to say anything whatsoever about the questions they were asked, the substance of the deposition . . . any details, and this is extremely important to this court.'' Within hours of Judge Wright's admonition to all parties not to discuss details of the deposition, didn't the President telephone Betty Currie to ask her to make a rare Sunday visit to the Oval Office?

Before answering, the Chair wishes to make a correction in response to the inquiry from the majority leader. The time used by the House managers is 64 minutes, rather than 54 minutes.

Mr. Manager ROGAN. I trust that doesn't mean I have to sit down, Mr. Chief Justice.

The CHIEF JUSTICE. It is not retroactive.

Mr. Manager ROGAN. Maybe I should quit while I am ahead.

I thank the Senators for their question. That is absolutely true, and we know that because Betty Currie testified to that. She said it was very rare

to receive a phone call from the President to ask her to come down to the White House on Sunday. A day after the President testified in a deposition, when he was specifically admonished by the judge that he was not to discuss the deposition, he was not to detail it with anybody, he was not to go into any of those factors, the President called Betty Currie down to the White House and he made some specific statements to her. He said to her:

I was never really alone with Monica, right?

You were always there when Monica was there, right?

Monica came on to me and I never touched her, right?

She wanted to have sex with me, and I cannot do that.

When the President was asked 8 months later:

Why did you call Betty Currie down to the White House and pose not questions, but statements to her?

When he was asked why he called Betty Currie down to the White House and said that to her, this is how the President responded:

I was trying to figure out what the facts were. I was trying to remember.

That is patently false because in August when the President testified, embarrassment was no longer on the table. The President was admitting that he had, as he called it, an improper relationship with Ms. Lewinsky. So why did he call Betty Currie down there? He called her down there that day after the deposition, in violation of the judge's order, because throughout his deposition he kept referring to Betty Currie as the fountain of information. If you read the deposition testimony, you see the President reiterating over and over, ''Monica came to see Betty,'' and, ''You would have to ask Betty.'' He made innumerable references to Betty Currie.

That was his invitation to the Jones lawyers to depose Betty Currie, and we know from Mr. Manager HUTCHINSON's presentation earlier that that is what happened. Betty Currie ended up with a subpoena from the Jones lawyers, and the President could not waste any time; he had to make sure, with discovery closing, that he got to Betty Currie right away, to make sure that the story was straight.

How can one possibly say that he was posing the statements to Betty Currie to remember, when the President knew that in fact he was alone with Monica, that Betty wasn't always there with him when Monica was in the Oval Office with him? She would not be able to tell him that Monica came on to him and not the other way around. This is patently ludicrous. There is no reasonable explanation.

Mr. Chief Justice, if I have a minute left, I would like to yield to Mr. Manager HUTCHINSON.

The CHIEF JUSTICE. Yes.

Mr. Manager HUTCHINSON. Thank you. Just a quick point on that, because there was a question raised that the testimony of Betty Currie in that circumstance was that she, I believe, did not feel pressured. The President's counsel makes a big issue of that, as if this is a fatal defect. It is not a fatal defect.

In fact, it is really irrelevant because the issue is witness tampering, obstruction of justice. The question is the President's intent, not how Betty Currie felt under that circumstance. She can characterize what she wishes. To me, it is an example like, if you as a lawmaker are presented a bribe of $100,000 to cast your vote in a particular way, you might not be tempted in the slightest. You might say, ''Go your own way.'' But it is still attempted bribery, attempted obstruction of justice. So that is a critical question. This is one element of obstruction of justice where each element has been met. The proof is clear, without any question of a doubt, as well as the rest of it.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. This is a question to White House counsel from Senator KENNEDY:

Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice. Let me start by actually responding briefly to the question that was asked, which is whether in fact the President violated the gag order. I think it is important that we be very direct and candid on this so the record is clear.

There is no question that a gag order was issued, that it had been in existence for some 3 months, and it applied to the parties and lawyers. It is important, I think, to understand the purpose for which it was entered.

During the months of litigation in the Jones case, we have seen a veritable flood of leakage out of the deposition, all of which was adverse to the President. The judge made very clear that her concerns were revelations to the press.

I think it is fair to say that even if one might argue that the President talking to his secretary on the day after a deposition was somehow talking to a person that he should not after his deposition, I suggest that any person covered by—certainly a party covered by a gag order, particularly the President of the United States, is free to speak with those from whom he needs assistance in the preparation of his defense. That, of course, is at least in part what the President has said here.

But let me be very clear that, to the extent President overstepped his bounds in terms of this gag order, that is a matter of concern that the judge could take up, or the parties could take up. And as far as I know—probably because their sense of shame would not permit it—the parties on the other side of the Jones case have never suggested that this was a problem. Indeed, it was not a problem until we heard about it recently in this Chamber.

More specifically, with respect to the substance of Mr. Manager ROGAN's response, and Manager HUTCHINSON's response, my colleague, Ms. Mills, told you what the essential human dynamic was that was going on with the President, who had just gone through a deposition in which his worst fears were being realized—his life, in terms of his relations with his family, was beginning to unravel. He could see it coming. He could see the press coming at him. They were already on the Internet. There was no question in his mind that his worst fears of public disclosure were about to be realized.

Put yourselves in a comparably traumatic human situation and ask whether you wouldn't reach out to have this kind of conversation with the one person you knew who was the most familiar with the facts that Monica Lewinsky had, indeed, been in and out of the White House, exchanged gifts, and done all the other things that Betty knew about, even though she didn't know about the primary extent of their relationship. But ask yourself also whether, in fact, under any circumstances, either on the 18th of January when the first conversation occurred, or on the 20th of January when we believe the second conversation occurred, if there is really any reason to believe that the President had somehow invited Jones lawyers to make Betty Currie a witness, because, as my colleague, Ms. Mills, put it most sharply and most clearly, the last thing in the world the President of the United States wanted to do was to invite anybody to depose or have testify the one woman who knew that, indeed, there had been gifts exchanged, and visits, and letters. It simply doesn't make sense.

Lastly, let me, I suppose, just ask as the question has been put to you on a couple of occasions, what is it that would come from calling witnesses in the case? Ms. Currie has testified not just once, but a multiple of occasions about the events, no new facts had come out, and the only thing that you would hear would be a repetition of the bottom-line assessment. I could have said wrong when he said right and I was under no pressure whatsoever.

Thank you.

The CHIEF JUSTICE. This is from Senators GRAMM of Texas and SMITH of New Hampshire to White House counsel:

If you said that our oath to impartial justice required us to allow the President to have a handful of witnesses to defend himself, don't you believe that all 100 Senators would say ''yes''? How can we do impartial

justice by turning around and denying the House that same right?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice.

Senators, the answer to that question, I think, is really very straightforward and easy and the fog of some of the discussion which has been had on the subject over the last days and weeks ought not to get in the way of this.

The House of Representatives, at least as they are described by the managers they sent to you—I don't know how to put this gently—violated their constitutional responsibility in the handling of this matter. They characterized themselves as nothing more than a grand jury, nothing more than a screening device between the allegations transported to them by the independent counsel, and the ultimate vote a month and 3 days ago. They felt, as they have reiterated constantly during that process, that they knew everything they needed to know not to make the judgment; that it was, you know, worth sending on to the Senate for them to think about. But they knew everything they needed to know, as you heard them say so eloquently and so forcefully here, to remove the President of the United States from office. Now they are saying to you, ''Well, maybe not. There really isn't enough here to make that important critical judgment.''

So having abandoned—not to put it too sharply—what I view and I think most would view as their obligation to do the right constitutional thing a month ago, they turn to us and say, ''Well, protect our managers rights to just add a little bit and see if we can make it, and then we will turn to you and see if you want to call witnesses in response.''

Senators, I really think they should have done it right the first time. And they have told you—not back then, but they have told you now—that they have done it right, because otherwise they wouldn't, as a matter of their responsibility, be able to stand in the Well of this Senate and urge you to remove the President of the United States. How could they make that recommendation if they had any uncertainty? If they didn't believe what was in those five volumes was sufficient under the day, they couldn't. They couldn't.

Our rights are these for the President of the United States: He is entitled to ask you whether when the House of Representatives voted to impeach him they had enough evidence to make one of the most serious constitutional judgments that is entrusted to them. And it can't be that because they didn't do it right then, that you and we are now asked to extend this process just so that maybe if they go to the right person and ask the right question, or find the right document something will emerge that translates those five volumes into something that really is a constitutional basis for the removal of the President.

The CHIEF JUSTICE. This is from Senator FEINGOLD to the House managers.

In light of the allegations in the articles of impeachment that the President is guilty of providing ''perjurious'' statements to a grand jury and has ''obstructed . . . the administration of justice,'' is the appropriate burden of proof for these particular articles ''beyond the reasonable doubt,'' as it would be in an ordinary criminal proceeding? Should a Senator vote to convict the President based on his allegedly committing these Federal statutory crimes if each of the elements of the crimes have not been proven beyond a reasonable doubt?

Mr. Manager BUYER. Thank you, Mr. Chief Justice. And I would say to Mr. Ruff I violated no oath nor the Constitution, and I think the House managers, in fact, followed the Constitution when we served the articles of impeachment. And I also note, for historical note as well, Mr. Ruff, you know that in the impeachment trial of Andrew Johnson, the House didn't even hold a single hearing.

So I just want to be very up front and fair here.

With regard to the question that was asked by the gentleman, the Constitution does not discuss the standard of proof for impeachment trials. It simply states that the Senate shall have the power to try all impeachments. Because the Constitution is silent on the matter, it is appropriate to look at past practice of the Senate.

Historically, the Senate has never set a standard of proof for impeachment trials. In the final analysis to the question, one which historically has been answered by individual Senators guided by your individual conscience. Now, you will note that earlier one of the White House counsel stood up—and they like to talk to you about criminal statutes and cite that it requires the proof beyond a reasonable doubt. That is not so. This argument has been rejected by the Senate historically.

For instance, in the impeachment trial of Judge Harry Claiborne, at that time the counsel for Judge Claiborne moved to designate beyond a reasonable doubt as the standard of proof for conviction. The Senate overwhelmingly rejected the motion by a vote of 17 to 75. You rejected that as a standard of proof.

In the floor debate on the motion, the House managers emphasized that the Senate has historically allowed each Member to exercise his personal judgment in these cases. And during the impeachment of Judge HASTINGS, Senator Rudman, in response to a question about the historical practice regarding this standard of proof that there has been no specific standard, ''You are not going to find it. It is what is in the mind of every Senator, and I think it is what everybody decides for themselves.''

The criminal standard of proof again is inappropriate for impeachment trials. The result of conviction in an impeachment trial is removal from office, not punishment. As the House argued in the trial of Judge Claiborne, the reasonable doubt standard was designed to protect criminal defendants who risked forfeitures of life, liberty, and property. This standard is inappropriate here because the Constitution limits the consequences of a Senate impeachment trial to removal from office and disqualification from holding office in the future, explicitly preserving in the Constitution the option for a subsequent trial in the courts.

In addition, the House argued in the Claiborne trial the criminal standard is inappropriate because impeachment is, by its nature, a proceeding where the public interest weighs more heavily than the interest of the individual. Again, the criminal standard of proof, i.e., beyond a reasonable doubt, is inappropriate in an impeachment trial and, Senators, you are to be guided by your own conscience in your decision.

The CHIEF JUSTICE. The President's counsel are asked by Senators THOMPSON, SNOWE, ENZI, FRIST, CRAIG, DEWINE, and HATCH:

Four days after the President's Paula Jones testimony, wherein he testified under oath about Ms. Lewinsky, why would Dick Morris conduct a poll on whether the American people would forgive the President for committing perjury and obstruction of justice?

Mr. Counsel RUFF. I couldn't find any volunteers. (Laughter.)

You know, I think the honest answer has two pieces to it. I don't have a clue, and it ultimately—although I know it rings all sorts of bells and the use of that name conjures up all sorts of images, and that is why I am sure it finds its way into this process from the managers' side. But if you look at the record, other than the value that may come to the managers of making reference to that conversation—and I have no idea whether the conversation ever occurred or not—it seems to me of absolutely no relevance whatsoever because, as far as I am able to represent to you, and if the conversation occurred, there is nothing in this record that suggests that it had any impact on the conduct of the President or any other person. We know that he did wrong. We know that he misled the American people when he said that he had not had relations with Ms. Lewinsky.

I am not sure what a conversation with Mr. Morris, if it occurred, or a poll, if it was asked for, or what the motivation behind that poll means once you come to grips with the fact that the President of the United States was deceiving his family, his child, his wife, his colleagues, and the American people in that period in January.

Beyond that puzzlement about relevance, other than the surmise that there must be some dark linkage between the poll and some legal issue before you—and I haven't seen it—I am really otherwise unable to answer your question.

The CHIEF JUSTICE. Senator LIEBERMAN asks the House managers:

The House managers argue that the President should be removed from office because of the inconsistency between his actions and the President's duty to faithfully execute the laws. Given that any criminal act would arguably be at odds with the President's duty to execute the law, is it your position that the President may be impeached and removed for committing any criminal act, regardless of the type of crime it is? If the President were convicted of driving while intoxicated, would that be grounds for removal? What if he were convicted of assault?

Mr. Manager GRAHAM. Thank you, Mr. Chief Justice. Excellent question.

The answer is no, I would not want my President removed for any criminal wrongdoing. I would want my President removed only when there was a clear case that points to the right decision for the future of the country. Just remember this. Our past is America's future in terms of the law. I would not want my President removed for trivial offenses, and that is the heart of the matter here.

I think I know why he took a poll. I think I know very well what he was up to: That his political and legal interests were so paramount in his mind, the law be damned and anybody who got in his way be damned.

Those are strong statements, but I think they are borne out by the facts in this case, and that is what I would look for. I would look for a violation of the law that is the dark side of politics. I would look for something like Richard Nixon did. Richard Nixon lost faith with the American electoral process. He believed his enemies justified being cheated; that when his people broke into the other side's office, when confronted with that wrongdoing, he legitimized it. He didn't trust the American people to get it right, and he went out in shame.

My belief is that this President did not trust the American legal system to vindicate his interest without cheating. My belief is that when he went back to his secretary, it is not reasonable that he was trying to refresh his memory and get his thoughts together. My belief is that he tried to set up a scenario that was going to make a young lady pay a price if she ever decided to cooperate with the other side. I believe he did not need to refresh his memory whether or not Monica Lewinsky wanted to have sex with him and he couldn't. I don't believe he was refreshing his memory when he asked his secretary: I never touched her, did I?

I believe that you should only remove a President who, in a calculated fashion, puts the legal and political interests of himself over the good of the Nation in a selfish way, that you only should remove a President who, after being begged by everybody in the country, don't go into a grand jury and lie, and he in fact lied. Nothing trivial should remove my President. We need to try this case, ladies and gentlemen, because you need to know who your President is.

Thank you.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. I would like to note that in the response to the previous question, question probably No. 28, that it was not filed by the managers; it was filed by a group of Senators.

RECESS

Mr. LOTT. With that, I would ask unanimous consent that we take another brief recess of 15 minutes.

There being no objection, at 4:18 p.m., the Senate recessed until 4:40 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice. Mr. Chief Justice, I had indicated that we would probably go 5 hours today, which would take us to approximately 6 o'clock. But I think we would certainly go for at least another hour or so, perhaps not quite all the way to 6 o'clock, but we will talk to each other and look for a signal from the Chief Justice about exactly when we would end the day's proceedings.

At this point, Mr. Chief Justice, I believe we are ready for the next question. I believe the previous question came from Senator LIEBERMAN; therefore, I send the next question to the desk.

The CHIEF JUSTICE. This question is from Senators THOMPSON and SNOWE, to the House managers:

Do the managers wish to respond to the answer given by the President's counsel with regard to the poll taken by Dick Morris?

Mr. Manager BRYANT. Thank you, Mr. Chief Justice.

Just before we recessed, there was a question directed to the President's defense attorneys regarding the Dick Morris poll. One of the responses to it was that it was basically irrelevant. I think it is one of the more important things that has occurred in this case, because—and I think it is very important—because we get a look inside that window that is blocked for the most part throughout these proceedings. We really get an eye into the minds that are working here. Not only does it say volumes about a person who has to take a poll and decide whether or not to tell the truth, it also provides a great deal of information toward the actual state of mind, the actual willfulness, the actual intent of the actor in this case who has had the poll taken.

Let me just read briefly from the referral regarding this incident. It talks about how Mr. Morris tells the President that this country has a great capacity for forgiveness and we should consider tapping into it. The President responds, ''Well, what about that legal thing, you know, the legal thing, you know, Starr and the perjury and all?'' And they go on and have a discussion and decide to take a poll that night. Now this is January 21.

And in all fairness to the President, it is not clear from the record that I have that he had had a conversation with Sidney Blumenthal and John Podesta that day, before this effort—the poll was taken, and the results reported that same day, late that evening—or whether the conversation with Mr. Podesta and Mr. Blumenthal occurred afterwards. Those are the ones, in essence, where he questioned what went on, and also with Mr. Blumenthal fairly well attempted to discredit Ms. Lewinsky, too. And you will see how that may or may not tie in, again, depending on the chronology. But certainly all those events happened the same day.

Mr. Morris takes the poll and reports later that day, later that evening, the same evening, the 21st, the results of that, and basically says the voters are willing to forgive the President for adultery but not for the perjury or the obstruction of justice. And then according to Mr. Morris, the President answers, ''Well, we['ll] just have to win, then.'' And later the next day the President has a followup conversation with Mr. Morris, in the evening, and says that he is considering holding a press conference to blast Monica Lewinsky out of the water. But Mr. Morris urges caution. He says, ''Be careful.'' According to Mr. Morris, he warned the President not to be too hard on Ms. Lewinsky because ''there's some slight chance that she may not be cooperating with Starr, and we don't want to alienate her by anything we're going to put out.''

That is chilling. It truly is chilling that our chief law enforcement officer, the person who sends our soldiers off as Commander in Chief, to possibly die, the person who appoints the Federal judges, nominates Supreme Court Justices, appoints U.S. attorneys around the country who try 50,000 cases a year, has that mentality. And it goes to the state of mind here. And the willfulness and the intentions, from that point forward, certainly are reflected in the perjury and the efforts to continue the obstruction, the pattern, the overall pattern—not just one little incident.

And I urge you, Senators, as you consider this, to consider it carefully. And as I said in my opening remarks, do not isolate little facts here and there and take the spins. But in every—every—alleged act, ask yourselves the two questions—whether it is the hiding of

the gifts, the filing of the false affidavit, letting Bob Bennett use that false affidavit while sitting still, talking to Sidney Blumenthal and John Podesta about what did not really happen, the job search—ask them, every one of those, What was the result, what was the result of those actions?

I think in every case you will see that something occurs to block the Paula Jones case, the discovery of evidence, the receipt of truthful testimony. And ask yourselves the second question: Who benefits from that? And I will guarantee you every time, in every one of those instances, it is the President who benefits, who derives the effect of that. And he is either the luckiest man in the world because of this and having people willing to commit crimes for him or he is somewhere in the background orchestrating this.

The CHIEF JUSTICE. This is from Senators LEAHY, HARKIN, DORGAN, and REID of Nevada, to the President's counsel:

In his opening remarks to the Senate, Manager MCCOLLUM stated, ''I don't know what the witnesses will say, but I assume if they are consistent, they'll say the same thing that's in here,'' referring to the 60,000 page record currently before the Senate. I see no reason to call witnesses to provide redundant testimony.

Could you comment on Mr. MCCOLLUM's statement and clarify also the timetable which might have to be considered for discovery if witnesses are called?

Mr. Counsel KENDALL. Mr. Chief Justice, I think, as I said in an earlier question, that the answers the witnesses would provide are already contained in the five volumes of testimony. As I am sure you are aware, when I say five volumes, that is not really five volumes, because on many of the pages the grand jury transcript is shrunk, called a miniscript, so you get 6 pages of testimony per page. Your eyesight may fail you before you get through. The witness testimony is there. I don't think calling the witnesses again will add anything to that.

In terms of a discovery schedule, it is hard to say, because we have had no opportunity to shape the record. We don't know what we will need. We would need documents. We would need testimony. One deposition could lead to another. I think we are talking a matter of a few months to finally get through it.

But I think the real question is, What questions are there that have not been asked? I think if you ask that question, What questions are there that have not been asked, you will find there are no questions. In fact, there are questions that have been asked a number of times.

Now, Mr. Manager HUTCHINSON told you that, Well, the independent counsel didn't have a chance to ask questions after the President's testimony. Indeed he did. You will see that Ms. Lewinsky was examined after the President testified, both in the grand jury and in FBI interviews. I don't think that witness interviews or further evidentiary proceedings will add in any measurable way to the record before you.

The CHIEF JUSTICE. This question is directed to the House managers by Senators HATCH, THOMPSON, DEWINE, and WARNER:

The unanimous consent agreement pending before the Senate permits the filing of a motion to dismiss next week. What legal standard should the Senate apply, and applying that standard to this case, what specific acts of Presidential misconduct would a Senator deem unworthy of impeachment by voting for a motion to dismiss?

Mr. Manager HYDE. Mr. Chief Justice, Members of the Senate, the President wants all of the protections of the criminal trial beyond a reasonable doubt, standard of proof, strict pleadings, but yet deny us the right to call any witnesses.

You know, in the House we did not call witnesses and there is a reason. There are several reasons for that. First of all, we were operating under time constraints which were self-imposed but I promised my colleagues to finish it before the end of the year. I didn't want it to drag out. We had an election intervene, we had Christmas, but we did—because we had 60,000 pages of sworn testimony, transcripts, depositions, grand jury testimony, and we had a lower threshold.

The threshold in the House was for impeachment, which is to seek a trial in the Senate. We could not try the case in the House. The Constitution gives the Senate the exclusive right to try the case. All we could do was present evidence sufficient to convince our colleagues that there ought to be a trial over here in the Senate. And we did that.

But now that we are over here—by the way, we were roundly criticized for not producing any witnesses. And I might add, Mr. Kendall has said repeatedly they did not have a fair discovery process; they didn't have any witnesses and weren't permitted to cross-examine.

I want to tell you, repeatedly—repeatedly—I invited the President's lawyers, the staff of the Democrats on the House Judiciary Committee: Any witnesses you want, call them; give me their name and we will bring them in and you can cross-examine them to your heart's content.

No, they never did. Finally, they brought in some professors and Mr. Ruff testified, Mr. Craig testified. But they didn't want, in fact, any witnesses. That is the last thing they wanted. They had full opportunity to call them, and I really, really, bristle when they say, ''You were unfair.'' We wanted to be fair. We tried to be fair because we understand you need a two-thirds vote to remove the President. We needed Democratic support. So far we had none. That is OK. Let the process play itself out. But we were fair.

And when Mr. Kendall says they had no opportunity, he means they didn't avail themselves of an abundant opportunity to call witnesses.

Now, a motion in lieu of a trial should provide that all inferences, all fact, questions, be resolved in favor of the respondent, the House managers. I don't think that is going to happen. I think by dismissing the articles of impeachment before you have a complete trial, you are sending a terrible message to the people of the country. You are saying, I guess, perjury is OK, if it is about sex; obstruction is OK, even though it is an effort to deny a citizen her right to a fair trial. You are going to say that even when judges have been impeached for perjury—and, by the way, the different standards between judges and the President: This country can survive with a few bad judges, a few corrupt judges; we can make it; but a corrupt President, survival is a little tougher there. So there is a difference, and the standard ought to be better and more sensitive for the President because the President is such an important person.

Look, the consequences of cavalier treatment of our articles of impeachment, your articles of impeachment: You throw out the window the fact that the President's lies and stonewalling have cost millions of dollars that could have been obviated. The damage to sexual harassment laws—you think they are not going to be damaged? They are, seriously, making it more difficult to prosecute people in the military or elsewhere for perjury who lie under oath. Those are serious consequences.

I know, oh, do I know, what an annoyance we are in the bosom of this great body, but we are a constitutional annoyance, and I remind you of that fact.

Thank you.

The CHIEF JUSTICE. This question is from Senator DURBIN to counsel for the President:

Can you comment on Manager HYDE's contention that the President was free to call witnesses before the House, but that the House did not have the time to do so, or to call any witnesses?

Mr. Counsel RUFF. Mr. Chief Justice, I think it is important to understand the reality of what is going on in the House. Most of you know something of it by simply the virtue of press coverage. But let me tell you what it was like from the perspective of the President.

From the very first moment when we began to speak with representatives of the Judiciary Committee—whether senior staff or the chairman, who is always gracious—the one thing we said was, ''Please tell us what we are charged with, please.'' And we went from Mr. Schippers' extensive opening

discussion of 15 possible violations of law to an ever-shifting body.

It wasn't until I was within literally a few minutes of completing my testimony on December 9 that we were ever honored with anything that looked like a description of the violations that the President was charged with, and those came in the form of hard draft articles of impeachment.

I think, indeed, if you will all remember back—if any of you were watching that day—I was actually given a draft copy of those articles just as I was completing my testimony, and then they were snatched back because it was premature for the President's counsel at 4:30 in the afternoon on December 9 to know what the President was charged with.

Now, one thing you generally like to know as a litigator in any forum, before you start thinking about producing exculpatory evidence, as we were asked to do, or thinking about calling witnesses, is to sort of know what you have to defend against. In any forum, whether it is criminal or civil or legislative, the accused generally has that right.

Beyond that, as you all know—indeed, as Mr. Manager HYDE has indicated—we were operating on a very fast track. We asked, for example, when the issue arose as to whether or not the staff of the committee would take depositions, whether we would be entitled to be present, because we knew that none of them was on the calendar to be called in any open hearing, and we were denied that opportunity, theoretically because under the policies of the committee it was not appropriate for the President's counsel to be present at the only opportunity that certain witnesses would ever have to testify under oath.

It seems odd to me, when you come right down to it, that we should be accused of failing in our duty, with the burden on the House Judiciary Committee to make its case and our right to respond, that the House, having determined never to call a witness who knew anything firsthand, we should somehow be charged with having to fit into this discovery process. Discovery is very different, as all of you understand, from calling a witness—whoever it may be—in public, before the full Judiciary Committee, and having the opportunity to examine. We were excluded from whatever true discovery process might have been involved, and left only with this notion that, in the absence of any specific charges, we were to call witnesses to defend ourselves. I suggest to you that in any setting that we are used to, whether those of you who are litigators or those of you who are simple observers of the justice system, that is a very long process, indeed.

The CHIEF JUSTICE. This question is from Senator NICKLES to the House managers:

Which of the President's statements not already discussed today do you believe to be of particular importance to the perjury charge?

Mr. Manager ROGAN. Thank you, Mr. Chief Justice. I thank the Senator for the question. I will keep one eye on the clock and stay within the 5-minute rule, so obviously I won't be able to give a comprehensive list of that which we submit to the Senate is perjurious. Let me try to get through at least one or two.

One example that I invite the Senate's attention to is the answers the President gave in the grand jury about his attorney using Monica Lewinsky's false affidavit. Bear in mind, again, the predicate facts for this. Judge Susan Webber Wright, in the deposition, had ordered the President to answer questions relating to whether he ever had sexual relationships with subordinate female employees in the workplace as Governor or as President, because that is fair game in any sexual harassment suit. Victims of harassment in the workplace are entitled to discover that information.

The President was able to get Monica Lewinsky to file a false affidavit in the Jones deposition. And when that affidavit was in hand and filed, as soon as the attorney for Paula Jones asked the first question about Monica Lewinsky, the President's attorney, Mr. Bennett, put forth that affidavit and objected to the attorneys even asking the question. He said, ''There is no good-faith belief that this question should be asked because of the affidavit.'' And the President did absolutely nothing to correct the record.

When this came up in the grand jury, the President was asked about the affidavit and the statement that Mr. Bennett made to Judge Wright that ''there was no sex of any kind, in any manner, shape or form.'' And the attorney, Mr. Bittman, at the grand jury, referred to that and said to the President, ''That statement is a completely false statement,'' and asked the President to explain. This was the President's answer:

It depends on what the meaning of the word ''is'' is. If the—if he—if ''is'' means is and never has been, that is not—that is one thing. If it means there is none, that was a completely true statement.

Then the President went on to say:

I was not paying a great deal of attention to this exchange. I was focusing on my own testimony.

Now, rather than simply give a truthful and complete answer to the grand jury in their criminal investigation, the President gave a bifurcated answer that essentially invited the grand jury to accept one of two explanations.

Explanation No. 1: I wasn't paying attention to my attorney when he said that. I was busy thinking of other things.

Or, if you don't like that explanation: I was paying such specific attention to what my attorney was saying that I focused on the tense of what the word ''is'' meant—as if to suggest when Mr. Bennett said that there is no sex of any kind, he meant there was no sex that day because he was there being deposed before Judge Wright. Under either scenario, the President absolutely failed in his obligation to provide the grand jury conducting a criminal investigation into possible obstruction in the Paula Jones case—he failed in his obligation to tell the truth, the whole truth, and nothing but the truth.

You have seen the evidence just from the initial presentation. No. 1, when the President said he wasn't paying attention, that was negated by watching the videotape. The President was paying very close attention. Why was he paying such close attention? Because the fate of his Presidency hung on the answer to that question. This is the most important question in the President's political life. Is he going to have to disclose information that he thought would help destroy his Presidency?

You don't even have to accept the representation from the videotape to know the President testified falsely, because Mr. Bennett did us the favor of not asking us simply to rely on watching the President pay attention to the testimony. Mr. Bennett then read the President the portion of Ms. Lewinsky's affidavit in which she denied having a sexual relationship with the President, and he asked the President if Ms. Lewinsky's statement was true and accurate. The President said, ''That is absolutely true.''

Now, on August 6, Monica Lewinsky, incidentally, testified before the grand jury, and she didn't play these games with the grand jury, like ''it all depends what 'is' means,'' or ''I wasn't paying attention.'' She was asked a straightforward question:

Paragraph 8 of the affidavit says, ''I have never had a sexual relationship with the President.'' Is that true?

Answer by Monica Lewinsky:

No.

Mr. Chief Justice, I see my time has expired. I will be happy to invite additional questions relating to additional specific examples.

The CHIEF JUSTICE. This is to the President's counsel from Senator SCHUMER and Senator KERREY of Nebraska:

Isn't it true that the alleged perjurious statements have changed in number and substance since the OIC first delivered its referral to the House, and that the referral, Mr. Schippers' presentation before the House, the majority report, the trial brief, and the managers' statements before this body contain different allegations of what constitutes the alleged perjurious statements?

Mr. Counsel CRAIG. Thank you, Mr. Chief Justice. The answer to that question is, yes. They were changing right up until the time we met, the very first

day of this trial when Mr. Manager ROGAN made his presentation. What he said when he described perjurious statements alleged against the President was different from what was appearing in the trial brief before. And that was the end of a long period of time where every time we heard what the allegations were, at least when it came to the issue of perjury, they changed.

There were allegations added; there were allegations subtracted. Two of the allegations that Mr. Schippers presented when he made his statement to the Judiciary Committee were withdrawn. So it was a process where we never had a chance to sit down, as you should in a very serious and fair and evenhanded exercise, and focus on what precisely it was that the President said in the grand jury that was perjurious.

Now, as to the specifics of the allegation that we have been discussing just now, when I first opened this discussion, I said it is very important to look at the record. Do not allow anyone to misrepresent the record because you are setting up the President's statement and saying that is perjurious, when the President's statement may well be something very different in the record.

Now, when Mr. ROGAN first made his argument on this issue, he misrepresented the record as to what the President said in this case. I tried to correct him about what the President actually said. He never claimed, at the moment these questions were being asked back and forth, that he thought about the current tense. Even as I was speaking, Mr. ROGAN was out talking to the television cameras, saying precisely the same thing. Now we have this same misrepresentation the third time.

I will say it one more time. He answered the question. He wasn't focusing on it. He answered that four times the same way. It was not a bifurcated answer; it was one answer. He was not paying attention at that particular moment. It moved very quickly; the moment was passed and they were into the judge talking and debating with the lawyers. That was his answer. There was no other answer.

Then, at the grand jury some 7 months later, he was read that statement by the special prosecutor. The question was, ''And this statement was false, isn't that true?'' The answer the President gave was that, well, in fact, it depends on the meaning of the word ''is.''

He didn't claim that that was what he was thinking at the time in the Jones deposition. He said very clearly, ''I never even focused on that issue until I read it in this transcript in preparation for this testimony.'' It is on page 512, Mr. ROGAN. ''I never focused on that issue until I read it in this transcript in preparation for this testimony.'' There was not a bifurcated answer. He answered directly. He wasn't focusing on it.

That is a problem we have had throughout this case when it comes to perjury the allegation. It was a problem we had with the earlier one. If you don't have the specific statement quoted, it is impossible to defend it. It is unfair.

Thank you, very much.

The CHIEF JUSTICE. This question from Senator LOTT to the House managers:

Do you wish to respond to the answers just given by the President's counsel?

Mr. Counsel ROGAN. Mr. Chief Justice, I am not sure if I wish to respond or I feel the need to respond. But in either event I will take advantage of the opportunity. I thank the Senator for posing the question.

Try as they might, the facts are clear. The President, in his August deposition, attempted to justify away, attempted to explain away his perjurious conduct on January 17 when he was deposed. And I am not going to stand and quibble with Mr. Craig over this beyond what was already noted.

What I prefer to respond to is the bigger question that the White House attorneys have raised on a number of occasions—the idea that the President has been treated unfairly because he hasn't had sufficient notice as to what the allegations are against him.

Contemplate that for just one moment. Because, were that to be true, the President of the United States would have to be not a human. He would be an ostrich with his neck so far down in the sand—that which every schoolchild now in America knows, that which every person in America with a television or a radio or Internet access knows, and is obvious to everybody which they claim is not obvious to the President.

When the President of the United States testified at the deposition and before the grand jury—that brought us into late August of 1998, about a month after that—the Office of Independent Counsel filed a report. The binder was about 445 pages. The written document was a little more than 200 pages. But within the four corners of that report are all of the allegations, are all of the facts, and all of the circumstances that were forwarded to the House of Representatives for review. The House Judiciary Committee, specifically at the request of the White House and at the request of our Democrat caucus, did not go beyond the four corners of Judge Starr's report. Not only did the President have the benefit of Judge Starr's report, he also has the benefit of the written report from the House Judiciary Committee—same facts, same circumstances, nothing changed.

And, by the time we came here to the Senate to try this case, the President had the benefit of the resolution passed by this body that said at the initial presentations ''we will not go beyond the record already established''—the record that was established in the Office of Independent Counsel report, in the committee's report, and in our hearings. And for a party to be aggrieved, as the White House counsel suggests, to have been given no notice, it is amazing to me how within minutes of Judge Starr's report being filed they had already filed a response. And I believe there were two supplemental responses within 48 or 72 hours. They have always beaten us to the punch on the response. They have an army of lawyers here able to stand up on a moment's notice and respond. And I just do not understand how they can make the case fairly that this is all now a product of a surprise; that they have not been given a proper opportunity to review the facts. They have seen these facts since Judge Starr submitted his report to Congress some 5 months ago. The facts haven't changed. The circumstances haven't changed. The quotations haven't changed. The transcripts haven't changed. Nothing has changed except their attempt to wiggle out from under the truth.

The CHIEF JUSTICE. This question is from Senators BOXER, SCHUMER and KOHL to the President's counsel:

To the best of your knowledge, has the United States Department of Justice ever brought a perjury prosecution where the alleged perjury was inferred from the direction in which the defendant was looking?

Mr. Counsel RUFF. Mr. Chief Justice, the answer is, not to my knowledge. I will not go further than that because somebody in the army of people on the other side might dodge one up, but I doubt it very much.

I think, if I may impose on the kindness of the authors of that last question, I will take just a moment to comment briefly on Mr. Manager ROGAN's rejoinder to our response to whatever—particularly because Mr. Manager ROGAN has been a judge, prosecutor, and others have as well, it does seem mildly odd to me that the answer to the question your charges aren't known or are vague is, look at that pile. You will find them right in there. You fellows, you guys did a good job responding to what you could. So you must be perfectly well prepared to defend against whatever charges we bring. I don't think there is a judge anywhere in the United States, from the highest court or the lowest court, who would accept either explanation from a prosecutor.

The CHIEF JUSTICE. This question is directed to the House managers by Senators HATCH and BURNS:

The President's lawyers cite in their brief Professor Michael Gerhardt for the proposition that for an act to be impeachable there must be a nexus between the misconduct of an impeachable official and the latter's official duties. But isn't it true that

Professor Gerhardt also stated that impeachment may lie for conduct unrelated to official duties if such conduct is outrageous and harms the reputation of the office?

And this citation is to the testimony of Mr. Gerhardt.

Would the House managers care to respond to this?

Mr. Manager CANADY. Mr. Chief Justice, Members of the Senate, I do appreciate the opportunity to respond to this point. I think this is a very important point.

I have a great deal of respect for Professor Gerhardt. He has said a number of different things on this subject. But the point in the question is directly on point.

I would also like to quote something else that Professor Gerhardt has said that I made reference to without specifically naming him as the source in this statement which I gave to the Senate on Saturday.

He said in a Law Review article, which he wrote a few years back:

There are certain statutory crimes that if committed by public officials reflect such lapses of judgments with such disregard for the welfare of the state, and such lack of respect for the law and the office held that the occupants may be impeached and removed for lacking the minimal level of integrity and judgment sufficient to discharge the responsibilities of office.

I believe that what Professor Gerhardt makes reference to there is exactly what we have before the Senate in this case. What we have before the Senate in this case is a case where the President of the United States has engaged in a course of conduct involving violations of the criminal law. By doing so, he has evidenced a lack of respect for the law, that demonstrates a lack of the minimal level of integrity that we are entitled to expect of the Chief Executive of the United States, of the person who, under our system, is given the preeminent responsibility to take care that the laws will be faithfully executed.

The CHIEF JUSTICE. This question is from Senator DODD to the counsel for the President:

Given the election of a President of the United States is the most important and solemn political act in which we as citizens engage, how much weight should the Senate give to the fact that conviction and removal by the Senate of the President would undo that decision?

Mr. Counsel RUFF. That question, of course, goes right to the heart of what the framers were thinking, and the standards that I suggest every sensible analyst of this problem has arrived at, whether they might be called supporters or opponents of the President. There is one critical issue that everyone has to address, which is that removal and undoing the will of the people.

Mr. Manager GRAHAM acknowledged that that's what we were all about here, whether we should undo an election. But if you go back to the very basic debates of the framers in 1787, and you recall both Mr. Manager CANADY and I talked about the moment in time in which it was suggested by Mr. Mason that perhaps the scope of the standard for impeachment could be broadened, and the response made then and clearly the principle underlying everything that the framers spoke about in 1787 was: We cure almost all our problems with an elected official through the electoral process.

And even if you look at what President Ford had to say 29 years ago on the subject, which I also cited to you as he spoke about the difference between judges and Presidents, he said for the Senate to remove—the House to impeach and the Senate to remove the President or Vice President as opposed to a judge in midterm would require proof of the most serious offenses, and we know that those most serious offenses, the only ones the framers contemplated as a basis for overturning the will of the people, were those that, as the minority said in 1974 in its report on the subject, were a danger to the state—a danger to the state. That is all that can justify overturning the voice of the people.

The CHIEF JUSTICE. This question is from Senator LOTT. It is addressed to the House managers:

Didn't the framers of the Constitution understand in 1787 that the conviction and removal from office of a President would, under the system they devised, reverse the result of a national election by elevating, not a President's Vice Presidential running mate, as we would do today, but the person who had received the second highest number of electoral votes?

Mr. Manager HYDE. Mr. Chief Justice, the statement has been made with some fervor that if the President were removed upon a finding of conviction of the articles or an article of impeachment, it would reverse a national election. I just respectfully say that is not true. The election is provided for in the Constitution and so is impeachment. They are processes of equal constitutional validity. And should the Senate remove the President, Bob Dole will not become President, Jack Kemp will not become Vice President, but Mr. GORE will move up to be President, and the same party, the same programs, I dare say, will continue. It will not reverse an election; it will fulfill a constitutional process that our Founding Fathers were wise enough to provide for.

The CHIEF JUSTICE. Senator EDWARDS asks the House managers:

Are there any statements contained in the exhibits used during the managers' presentations or omissions from those exhibits that you believe, in the interest of fairness or justice, should be corrected at this time? If so, please do so now.

Mr. Manager BUYER. Mr. Chief Justice, with regard to our own exhibits?

The CHIEF JUSTICE. Perhaps I should ask Senator EDWARDS.

Mr. EDWARDS. Yes, Mr. Chief Justice, with regard to their exhibits.

Mr. Manager HUTCHINSON. Mr. Chief Justice, I would be happy to take advantage of the 5 minutes, but I have talked to the other managers and we are not aware of any corrections that need to be made on any of our exhibits we have offered to the Senate.

Mr. KERRY addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Massachusetts.

Mr. KERRY. I would simply ask whether or not that answer was in fact fully responsive to the question. I believe the question also asked whether or not there were any omissions.

The CHIEF JUSTICE. The Parliamentarian advises me this is a nondebatable period and the inquiry is out of order, and I so rule.

This is from Senator ROBERTS. It is directed to the House managers.

Given the fact that the White House characterizes the assistance that Monica Lewinsky received as ''routine,'' does the record reflect that any other White House interns other than Monica Lewinsky received the same level of job assistance from Vernon Jordan, John Podesta, Betty Currie, and then-Ambassador Richardson?

Mr. Manager MCCOLLUM. Mr. Chief Justice, if I might, as far as we know as House managers, in the record the only comments about assisting anybody else other than Monica Lewinsky, of any nature, were made in testimony by Vernon Jordan. He did assist other people. But I don't believe there is anything, to the best of our knowledge and recollection—of course, we have a lot of paperwork here—that he referred to assisting another intern or anyone in a like position. And certainly there was no indication that the kind of intensity of that assistance occurred in the kind of manner in which the proceedings did with developing her job opportunities, that is, somebody in this direct involvement with the President, or certainly nobody with a close relationship and interest on the part of the President. There certainly was nothing in the record to show that, and that is, of course, central to this entire case as far as the job search part of this obstruction of justice is concerned.

Thank you.

Mr. ROBERTS addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Kansas.

Mr. ROBERTS. I had directed that question, sir, to the White House counsel. It was my intent to direct it to White House counsel. I do not know what the proper procedure would be at this time.

The CHIEF JUSTICE. Is there any objection to the White House counsel answering the question at this time?

Without objection, the White House counsel may answer.

Mr. Counsel RUFF. Thank you, Mr. Chief Justice. This may be a moment worth noting in the proceedings because in essence I think we are in

agreement with Mr. Manager MCCOLLUM.

I would perhaps only do this, and that is, to note with some greater emphasis Mr. Jordan's testimony, which we will be glad to highlight if we have another opportunity here, that indeed he has regularly and frequently assisted young people, and not-so-young people, in finding jobs.

Again, I couldn't tell you whether any of them had been an intern at any time. I would only note that, of course, Ms. Lewinsky was not an intern at the time Mr. Jordan was helping her, but rather was an employee of the Pentagon.

But beyond that, and perhaps with somewhat greater emphasis on Mr. Jordan's emphasis on behalf of young people in the city, I am in essential agreement with Manager MCCOLLUM.

The CHIEF JUSTICE. This is a question from Senators DODD and LEVIN to the House managers:

On page 11 of House committee report accompanying H. Res. 611, the report states that Judge Susan Webber Wright issued her order ''on the morning of December 11th.'' Will the managers now acknowledge that the report was factually incorrect? Yes or no?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. If I look back at the facts of this—of course, I have explained earlier today that the action on the 11th was initiated or triggered by the witness list that came in on December 5, that the President knew about it at the latest on December 6.

On the 11th, Judge Wright entered an order in that case which allowed the Jones lawyers an opportunity to ask questions about the prior relationships with other Federal employees or State employees.

Mr. DODD addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Connecticut.

Mr. DODD. Mr. Chief Justice, as one of the authors of the question, a yes or no answer was requested and I object to the answer.

The CHIEF JUSTICE. The Chair has not tried to police the responsiveness of the answers to the questions so I am going to overrule that objection.

Mr. Manager HUTCHINSON. I am not trying to be evasive at all to the Senator, but I did want to lay the groundwork for this and also to get my thoughts so that I would be as accurate as possible.

The order that Judge Wright entered was on December 11. I do not know the precise time. I believe it was in the afternoon that it was entered, and it was followed by the telephone call with the participants. So I believe that it was entered in the afternoon of the 11th, and not in the morning of the 11th.

And, of course, that was not in my presentation. My presentation referred to the order being entered on December 11, and that the action on the 11th, of course, was triggered by the witness list on December 5.

I think that completely answers that question. If there is some other—I would be happy to respond to anything more specific on that issue.

The CHIEF JUSTICE. This question is directed to the House managers from Senators DOMENICI, FRIST, MCCAIN and WARNER.

What is the historical significance and legal import of taking an oath for performance in public office? What is the historical significance and legal import of taking an oath to tell the truth in a legal proceeding? Please discuss whether oath-taking in such circumstances is a public matter.

Mr. Manager HYDE. Mr. Chief Justice, Members of the Senate, the taking of an oath is a formalization, a solemnization of truth. You call upon God to witness to the truth of what you are saying. In the long march of civilization, the oath has taken the place of trial by fire, trial by combat, trial by ordeal. It says, in the most sober way: You can trust me. You can believe in me. It is verbal honesty. Our legal system depends on it and our justice system depends on it. The oath underscores our humanity. The oath is an aspect of our sacred honor.

The CHIEF JUSTICE. This is from Senator KERRY of Massachusetts to the counsel for the President:

Is it fair to say that the articles and manager presentations stress the Jones perjury allegations rejected by the House, because they cannot credibly, on the law, satisfy the elements and argue perjury in the grand jury investigation?

Mr. Manager RUFF. Mr. Chief Justice, I am a little bit troubled at answering that question, not because I don't feel strongly about what the answer is but I do not want to suggest in any way that the motivation of the managers is less than professional and appropriate. But I do think that, indeed, they know, as they think through the proof that they have or that they even might ever contemplate, that the President of the United States, when he began his grand jury testimony by making the most painful admission a human being could ever make, and thereafter did his best—albeit in the face of tough and probing and repetitive questioning for 4 hours—did his best to tell the truth.

That they had a very difficult, indeed virtually impossible, task to persuade any dispassionate trier of fact and law that he had intentionally given false testimony, and you can see that evidenced, I think most clearly, if you look at some of the first allegations made as to what constitutes perjury—things like the use of the words ''on certain occasions'' or ''occasionally'' to describe a battle over whether 11 or 20 or 17 fit within that description. It does seem fair to say that they would not be fighting those battles in this Chamber if they had any real confidence in their cause on article I, and thus they do seek, for whatever tactical or other purpose, to try to bring in those things which so many of their colleagues rejected out of hand in the House of Representatives.

The CHIEF JUSTICE. This question is directed to the House managers from Senators HATCH, THOMPSON and DEWINE:

In her presentation to the Senate, Ms. Mills emphasized that Ms. Lewinsky testified on ten different times about the subject of gifts. Did she ever testify that the President told her that she must turn over the gifts because that is what the law requires?

Mr. Manager MCCOLLUM. Mr. Chief Justice, in response to that question the answer is no, she did not. As a matter of fact, that was and is the central point on the part of the gift question. At no time, she says, did the President instruct her to turn those gifts over. I think that is a telling point. In fact, it is a telling point throughout the entire process of the scheme and all the things that happened and why you have to follow, in my judgment, Senators, the issue of this whole process through the scheme that was devised at the beginning, all the way to the end.

The President was going to ultimately lie to conceal from that case, that court in the Jones case, the truth of his relationship with Monica Lewinsky and, therefore, he had to set it up for the affidavit, the gifts, et cetera. At no point in time, she says in her testimony, did he ever ask her to come clean. Until the time the affidavit was discussed, on the night of December 17, he never suggested she tell the truth there. If you remember we put that up here several times to you. Even though he may not have directly told her to lie, he certainly gave her every indication, she said, from the standpoint of the background that they had had before and what he said that night about the cover stories.

And with regard to the gifts, the same thing is true. She gave him an opportunity on the day of December 28. Whether there are 10 statements or however many there might be—and they say there are 10; I trust the judgment of the White House counsel—there were 10 different statements, the most significant of which, of course, is the grand jury testimony she gave on the subject of what happened that day when she discussed the gifts with the President because that is when her recollection had been best refreshed. She had been over it a lot of times. She had had much preparation for that, and I submit to you that barring bringing her in, which we of course would suggest you do, and let us ask her to confirm all of this again, you must assume the logical thing to do is to assume the grand jury testimony, the most perfected testimony you have, is the most accurate and most reliable, and on that occasion particularly she emphasizes the fact that with regard to the gifts

there certainly was no request by the President that she reveal those gifts.

Now, of course he says he did. He says he did later. But that is absolutely contradicted by her testimony.

The CHIEF JUSTICE. Senator REID of Nevada sends this question for White House counsel:

Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question?

Ms. Counsel MILLS. There is, obviously, a conflict in the testimony between the President, who said he directed Ms. Lewinsky to turn over whatever she had, and Ms. Lewinsky's statements. I would just like to read to you, given the House managers' reference that we must credit her grand jury testimony, the version of her grand jury testimony, which you all will no doubt remember it as one of the ones I read to you that was never presented by the House managers, and that is on August 20, 1998, after the President had testified:

It was December 28th. I was there to get my Christmas gifts from him, and we spent about 5 minutes or so, not very long, talking about the case. And I said, ''Well, do you think''—and at one point I said, ''Well, do you think I should?'' And I don't think I said, ''Get rid of, but do you think I should put away, give to Betty or someone the gifts''—and he—I don't remember his response. I think it was something like ''I don't know'' or hmm or there was really no response.

On that same day when she was asked that same question, if it is her grand jury testimony that is to be addressed, she also said:

A JUROR. Now, did you bring up Betty's name or did the President bring up Betty's name?

The WITNESS. I think I brought it up. The President wouldn't have brought up Betty's name because he didn't—he didn't really discuss it.

All of those are in her grand jury testimony. So her grand jury testimony is the testimony that states he might not have given any response. So, to the extent the House managers' theory is that ''Let me think about it'' leads to obstruction of justice, her grand jury testimony does not state that.

The CHIEF JUSTICE. Senators SPECTER, HELMS, ABRAHAM, ASHCROFT, and STEVENS direct this question to the President's counsel:

President Clinton testified before the grand jury that he was merely trying to ''refresh'' his memory when he made these statements to Betty Currie. How can someone ''refresh'' their recollection by making statements they know are false?

Ms. Counsel MILLS. I think one of the things I tried to address in addressing what the President's testimony was with respect to his conversation with Ms. Currie was obviously he was understandably concerned about the media attention that he knew was impending. And in particular, as he walked through the questions, he was thinking about his own thoughts and seeking, as I think I talked about, concurrence or input or some type of reaction from Ms. Currie.

I think in making those statements, he was asking questions to see what her understanding was based on some of the questions that had been posed to him by the Jones lawyers, because some of them were so off base. And so he was asking from Ms. Currie essentially what her perception was, what her thoughts were.

I think as you walk through each one of those questions, he was expressing what his own thoughts and feelings were with regard to this and was seeking some concurrence or affirmation from her. I think he was agitated. I think he was concerned. He knew what was going to happen, and I think that is why he posed the question in the way that he did.

The CHIEF JUSTICE. A question from Senator BAYH to counsel for the President:

Can you comment on the importance of ''proportionality'' to the rule of law?

Mr. Counsel RUFF. How much time do we have? Thank you, Senator.

I think proportionality, in all its many guises, is an issue that has given us some pause, going well back into the investigative phase of this matter, and I think many who have watched and who have made their lives and careers as professional prosecutors, indeed many who have been criminal defense lawyers or just plain sensible citizens watching, have asked whether the resources and the energy and the time devoted to this matter and the manner in which it has been treated at every stage before it ever got to the House of Representatives does, in fact, reflect an appropriate assessment of the conduct being investigated and the seriousness of the conduct, which is not ever to suggest that we condone perjury or obstruction of justice.

We all recognize, if those offenses have been committed, they are worth pursuing. But one only need look at the testimony and the professional prosecutors who testified before the Judiciary Committee to get a sense of what the world of professional prosecutors would do faced with these kinds of allegations in this kind of setting, and that really is the key: How many prosecutors would ever reach into the middle of an ongoing civil litigation and bring these kinds of charges?

The proportionality, obviously, has other implications and certainly goes right to the heart of the role played by this body. That is, what is the proportional response to whatever you think of the President as a man, whatever you think of his conduct. Even if you should conclude—although we do not believe you should—that he violated the law in some respect, what is the constitutionally proportional response to your judgment. And there you go right back to the essence of what the framers were talking about, which is responding with the ultimate sanction only when the ultimate problem is posed to you.

I suggest, as I have on too many occasions, I fear, that if that is the proportionality question you are asking—and all must at some point ask that question—the answer has to be clear, that no one ever thought in 1787 and, I suggest to you, in the intervening 212 years that it would be a proportional response to the conduct alleged here to remove a President.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, I believe we have reached a point where we can take a break. I think we have had responses to approximately 50 questions today. Now we will have a chance to assess, on all sides, what additional questions might be needed to be asked tomorrow. I remind my colleagues that we are scheduled to resume at 10 a.m. on Saturday.

NOTICE OF INTENT TO SUSPEND THE RULES OF THE SENATE BY SENATOR HUTCHISON, SENATOR SPECTER, SENATOR LIEBERMAN, SENATOR HAGEL, SENATOR COLLINS, AND SENATOR SNOWE

In accordance with Rule V of the Standing Rules of the Senate, I (for myself and for Mr. SPECTER, Mr. LIEBERMAN, Mr. HAGEL, Ms. COLLINS, and Ms. SNOWE) hereby give notice in writing that it is my intention to move to suspend the following portions of the *Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials* for the final deliberation on the articles of impeachment of the trial of President William Jefferson Clinton:

(1) The following portion of Rule XX: '', unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the Record''; and

(2) In Rule XXIV, the phrases ''without debate'', ''except when the doors shall be closed for deliberation, and in that case'' and '', to be had without debate''.

ADJOURNMENT

Mr. LOTT. If there is nothing further, I move we adjourn, Mr. Chief Justice.

The motion was agreed to; and at 5:49 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Saturday, January 23, 1999, at 10 a.m.

LEGISLATIVE SESSION

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the majority leader.

MEASURES PLACED ON THE CALENDAR—S. 254, S. 269, S. 270, AND S. 271

Mr. LOTT. Mr. President, there are four bills at the desk that are due for

their second reading. Therefore, I ask unanimous consent that the bills be considered read a second time and placed on the Calendar, and that the reading be shown separately in the RECORD.

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

The bills placed on the Calendar are as follows:

S. 254, a bill to reduce violent juvenile crime, promote accountability by rehabilitation of juvenile criminals, punish and deter violent gang crime, and for other purposes.

S. 269, a bill to state the policy of the United States regarding the deployment of a missile defense system capable of defending the territory of the United States against limited ballistic missile attack.

S. 270, a bill to improve pay and retirement equity for members of the Armed Forces, and for other purposes.

S. 271, a bill to provide for education flexibility partnerships.

UNANIMOUS-CONSENT AGREEMENT—NOMINATIONS OF INSPECTORS GENERAL

Mr. LOTT. Mr. President, I ask unanimous consent that the nominations to the Office of Inspector General, excepting the Office of Inspector of the Central Intelligence Agency, be referred in each case to the committee having substantive jurisdiction over the Department, Agency, or entity, and if and when reported in each case, then to the Committee on Governmental Affairs for not to exceed 20 days. I finally ask unanimous consent that if not reported after that 20-day period, the nomination be automatically discharged and placed on the Executive Calendar.

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

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time and placed on the calendar:

S. 254. A bill to reduce violent juvenile crime, promote accountability by rehabilitation of juvenile criminals, punish and deter violent gang crime, and for other purposes.

S. 269. A bill to state the policy of the United States regarding the deployment of a missile defense system capable of defending the territory of the United States against limited ballistic missile attack.

S. 270. A bill to improve pay and retirement equity for members of the Armed Forces, and for other purposes.

S. 271. A bill to provide for education flexibility partnerships.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–857. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Increase In Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1) for Qualified Retirement Plans'' (RIN1545–AW58) received on December 18, 1998; to the Committee on Finance.

EC–858. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Exemption of Returns and Claims for Refund, Credit or Abatement; Determination of Correct Tax Liability'' (Rev. Proc. 98–62) received on December 18, 1998; to the Committee on Finance.

EC–859. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Examination of Returns and Claims for Refund, Credit or Abatement; Determination of Correct Tax Liability'' (Rev. Proc. 98–64) received on December 18, 1998; to the Committee on Finance.

EC–860. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Rulings and Determination Letters'' (Rev. Proc. 99–3) received on December 21, 1998; to the Committee on Finance.

EC–861. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Modification of Rev. Proc. 65–17, 1965–1 C.B. 833'' (Announcement 99–1) received on December 21, 1998; to the Committee on Finance.

EC–862. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property'' (Rev. Rul. 99–2) received on December 21, 1998; to the Committee on Finance.

EC–863. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Optional Standard Mileage Rates for Employees, Self-employed Individuals, and Other Taxpayers Used in Computing Deductible Costs'' (Announcement 99–7) received on December 29, 1998; to the Committee on Finance.

EC–864. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Examination of Returns and Claims for Refund, Credit, or Abatement; Determination of Correct Tax Liability'' (Rev. Proc. 99–7) received on December 29, 1998; to the Committee on Finance.

EC–865. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Eligible Rollover Distributions'' (Notice 99–5) received on December 28, 1998; to the Committee on Finance.

EC–866. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Alternative Methods for Reporting 1998 and 1999 IRA Recharacterizations and Reconversions'' (Announcement 99–5) received on December 28, 1998; to the Committee on Finance.

EC–867. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Reduction in Certain Deductions of Mutual Life Insurance Companies'' (Rev. Rul. 99–3) received on December 22, 1998; to the Committee on Finance.

EC–868. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Penalty and Interest Study'' (Notice 99–4) received on December 22, 1998; to the Committee on Finance.

EC–869. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plan; Louisiana; Nonattainment Major Stationary Source Revision'' (FRL6207–8) received on December 29, 1998; to the Committee on Environment and Public Works.

EC–870. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District'' (FRL6214–1) received on December 29, 1998; to the Committee on Environment and Public Works.

EC–871. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to Basic Motor Vehicle Inspection and Maintenance Program'' (FRL6199–1) received on December 29, 1998; to the Committee on Environment and Public Works.

EC–872. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''1998 Reporting Notice and Amendment; Partial Updating of TSCA Inventory Data Base, Production and Site Reports'' (FRL6052–7) received on December 29, 1998; to the Committee on Environment and Public Works.

EC–873. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District'' (FRL6211–2) received on December 29, 1998; to the Committee on Environment and Public Works.

EC–874. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District'' (FRL6211–1) received on December 29, 1998; to the Committee on Environment and Public Works.

EC–875. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''California State

Implementation Plan Revision; Interim Final Determination That State Has Corrected Deficiencies'' (FRL6211–9) received on December 29, 1998; to the Committee on Environment and Public Work.

EC–876. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Dicamba; Pesticide Tolerance'' (FRL6049–2) received on December 29, 1998; to the Committee on Environment and Public Works.

EC–877. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Copper-ethylenediamine complex; Exemption from the Requirement of a Tolerance'' (FRL6052–5) received on December 29, 1998; to the Committee on Environment and Public Works.

EC–878. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Announcement of Competition for EPA's Brownfields Job Training and Development Demonstration Pilots'' (FRL6208–1) received on December 22, 1998; to the Committee on Environment and Public Works.

EC–879. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Nashville/Davidson County Portion of the Tennessee SIP'' (FRL6208–5) received on December 22, 1998; to the Committee on Environment and Public Works.

EC–880. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Monterey Bay Unified Air Pollution Control District'' (FRL6203–7) received on December 22, 1998; to the Committee on Environment an Public Works.

EC–881. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''OMB Approval Numbers Under the Paperwork Reduction Act and Technical Correction to Consumer Confidence Report Rule'' (FRL6210–7) received on December 22, 1998; to the Committee on Environment and Public Works.

EC–882. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; State of North Carolina: Approval of Miscellaneous Revisions to the Forsyth County Air Quality Control Ordinance and Technical Code'' (FRL6207–3) received on December 22, 1998; to the Committee on Environment and Public Works.

EC–883. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting pursuant to law, the report of a rule entitled ''Correction and Clarification to the Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone'' (FRL6198–1) received on December 21, 1998; to the Committee on Environment and Public Works.

EC–884. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Pulp and Paper Production'' (FRL6210–5) received on December 21, 1998; to the Committee on Environment and Public Works.

EC–885. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants: Wood Furniture Manufacturing Operations'' (FRL6210–3) received on December 21, 1998; to the Committee on Environment and Public Works.

EC–886. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting pursuant to law, the report of a rule entitled ''Universal Waste Rule (Hazardous Waste Management Systems; Modification of the Hazardous Waste Recycling Regulatory Program)'' (FRL6207–7) received on December 18, 1998; to the Committee on Environment and Public Works.

EC–887. A communication from the Director of the Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting pursuant to law, the report of a rule entitled ''Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geographic Repository'' (RIN3150–AF88) received on December 29, 1998; to the Committee on Environment and Public Works.

EC–888. A communication from the Director of the Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting pursuant to law, the report of a rule entitled ''Policy and Procedure for Enforcement Actions; Fuel Cycle Facilities Civil Penalties and Notices of Enforcement Discretion'' (NUREG 1600) received on December 29, 1998; to the Committee on Environment and Public Works.

EC–889. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Random Drug and Alcohol Testing: Determination of 1999 Minimum Testing Rate'' (RIN21230–AB31) received on December 29, 1998; to the Committee on Commerce, Science, and Transportation.

EC–890. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled '' 'Maintenance' Under Definition of Safety-Sensitive Functions in Drug and Alcohol Rules'' (RIN2132–AB61) received on December 29, 1998; to the Committee on Commerce, Science, and Transportation.

EC–891. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Annual Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents'' (RIN2130–AB30) received on December 29, 1998; to the Committee on Commerce, Science, and Transportation.

EC–892. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Truck Size and Weight; Technical Corrections'' (RIN2125–AE47) received on December 21, 1998; to the Committee on Commerce, Science, and Transportation.

EC–893. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments'' (Docket 29417) received on December 21, 1998; to the Committee on Commerce, Science, and Transportation.

EC–894. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments'' (Docket 29416) received on December 21, 1998; to the Committee on Commerce, Science, and Transportation.

EC–895. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments'' (Docket 29404) received on December 21, 1998; to the Committee on Commerce, Science, and Transportation.

EC–896. A communication from the Director of the Office of Legislative and International Affairs, Federal Communications Commission, transmitting, pursuant to law, the Commission's report entitled ''Status of Competition in the Markets for the Delivery of Video Programming''; to the Committee on Commerce, Science, and Transportation.

EC–897. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Guides for the Decorative Wall Paneling Industry'' received on December 21, 1998; to the Committee on Commerce, Science, and Transportation.

EC–898. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''Guides Against Deceptive Labeling and Advertising of Adhesive Compositions'' received on December 21, 1998; to the Committee on Commerce, Science, and Transportation.

EC–899. A communication from the Associate Managing Director for Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities'' (Docket 94–149) received on December 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC–900. A communication from the Associate Managing Director for Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Restrictions on Over-the-Air Reception Devices; Television Broadcast Multichannel Multipoint Distribution and Direct Broadcast Satellite Services'' (Docket 96–83) received on December 16, 1998; to the Committee on Commerce, Science, and Transportation.

EC–901. A communication from the Under Secretary for Export Administration, Department of Commerce, transmitting, pursuant to law, notice of foreign policy-based export controls relative to certain terrorist organizations; to the Committee on Banking, Housing, and Urban Affairs.

EC–902. A communication from the Assistant Secretary for Export Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled

''Expansion of License Exception CIV Eligibility for 'Microprocessors' Controlled by Eccn 3A001'' (RIN0694–AB83) received on December 22, 1998; to the Committee on Banking, Housing, and Urban Affairs.

EC–903. A communication from the Acting Director of the Office of Federal Housing Enterprise Oversight, transmitting, pursuant to law, the report of a rule entitled ''Releasing Information'' (RIN2550–AA01) received on December 18, 1998; to the Committee on Banking, Housing, and Urban Affairs.

EC–904. A communication from the General Counsel of the Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Rent Control Preemption for Supportive Housing for the Elderly and Persons with Disabilities'' received on December 15, 1998; to the Committee on Banking, Housing, and Urban Affairs.

EC–905. A communication from the General Counsel of the National Credit Union Administration, transmitting, pursuant to law, the report of a rule entitled ''Organization and Operations of Federal Credit Unions'' received on December 28, 1998; to the Committee on Banking, Housing, and Urban Affairs.

EC–906. A communication from the Regulatory Policy Official, National Archives and Records Administration, transmitting, pursuant to law, the report of a rule entitled ''Privacy Act Regulations'' (3095–AA66) received on December 22, 1998; to the Committee on Banking, Housing, and Urban Affairs.

EC–907. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the Department's report entitled ''Equity Sharing Under the Multifamily Assisted Housing Reform and Affordability Act of 1997''; to the Committee on Banking, Housing, and Urban Affairs.

EC–908. A communication from the Director of the Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Indirect Food Additives: Paper and Paperboard Components'' (Docket 95F–0255) received on December 30, 1998; to the Committee on Health, Education, Labor, and Pensions.

EC–909. A communication from the Deputy Executive Director of the Commodity Futures Trading Commission, transmitting, pursuant to law, the report of a rule entitled ''Trading Hours'' received on January 4, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC–910. A communication from the Administrator of the Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Walnuts Grown in California; Increased Assessment Rate'' (Docket FV99–984–1 FR) received on January 4, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC–911. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Change in Disease Status of Liechtenstein Because of BSE'' (Docket 98–119–1) received on December 30, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–912. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the Agency's report entitled ''The Superfund Innovative Technology Evaluation Program: Annual Report to Congress FY 1997'' received on January 4, 1998; to the Committee on Environment and Public Works.

EC–913. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Bag Limit Reduction'' (I.D. 122298A) received on January 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–914. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Special Management Zones'' (I.D. 061298A) received on January 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–915. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries'' (I.D. 101498B) received on January 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–916. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Final 1999 Fishing Quotas for Atlantic Surf Clams, Ocean Quahogs, and Maine Mahogany Quahogs'' (I.D. 100898A) received on January 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–917. A communication from the Director of the National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the Service's Southeastern United States Shrimp Trawl Bycatch Program Report; to the Committee on Commerce, Science, and Transportation.

EC–918. A communication from the Acting Associate Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Administrative Revisions to the NASA FAR Supplement, Mid-Range Procurement Procedures'' received on January 4, 1999; to the Committee on Commerce, Science, and Transportation.

EC–919. A communication from the Chairman of the Postal Rate Commission, transmitting, pursuant to law, the Commission's annual report under the Federal Managers' Financial Integrity Act for fiscal year 1998; to the Committee on Governmental Affairs.

EC–920. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the Commission's annual report under the Federal Managers' Financial Integrity Act for fiscal year 1998; to the Committee on Governmental Affairs.

EC–921. A communication from the President of the United States Institute of Peace, transmitting, pursuant to law, the Institute's consolidated annual report under the Inspector General Act and the Federal Managers' Financial Integrity Act for fiscal year 1998; to the Committee on Governmental Affairs.

EC–922. A communication from the Secretary of Energy, transmitting, pursuant to law, the Department's report under the Inspector General Act for the period from April 1, 1998 through September 30, 1998; to the Committee on Governmental Affairs.

EC–923. A communication from the Secretary of Commerce, transmitting, pursuant to law, the Department's report under the Inspector General Act for the period from April 1, 1998 through September 30, 1998; to the Committee on Governmental Affairs.

EC–924. A communication from the Interim District of Columbia Auditor, transmitting, pursuant to law, a report entitled ''Statutory Audit of Advisory Neighborhood Commission 2C for the Period October 1, 1995 through December 31, 1997''; to the Committee on Governmental Affairs.

EC–925. A communication from the Executive Director of the Committee for Purchase From People who are Blind or Severely Disabled, transmitting, pursuant to law, a list of additions to and deletions from the Committee's Procurement List dated December 22, 1998; to the Committee on Governmental Affairs.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committees were submitted:

By Mr. ROTH, from the Committee on Finance:

Susan G. Esserman, of Maryland, to be Deputy United States Trade Representative, with the rank of Ambassador.

Timothy F. Geithner, of New York, to be an Under Secretary of the Treasury.

Gary Gensler, of Maryland, to be an Under Secretary of the Treasury.

Edwin M. Truman, of Maryland, to be a Deputy Under Secretary of the Treasury.

David C. Williams, of Maryland, to be Inspector General for Tax Administration, Department of the Treasury. (New Position)

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. WYDEN (for himself and Mr. SMITH of Oregon):

S. 294. A bill to direct the Secretary of the Army to develop and implement a comprehensive program for fish screens and passage devices; to the Committee on Environment and Public Works.

By Mr. LUGAR:

S. 295. A bill to amend part S of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to permit the use of certain amounts for assistance to jail-based substance treatment programs, and for other purposes; to the Committee on the Judiciary.

By Mr. FRIST (for himself, Mr. ROCKEFELLER, Mr. DOMENICI, Mr. LIEBERMAN, Mr. GRAMM, Mr. BINGAMAN, Mr. BURNS, Mr. BREAUX, Mrs.

HUTCHISON, Mr. CLELAND, Mr. THOMPSON, Mr. KERRY, Mr. DEWINE, Mr. KERREY, Mr. ABRAHAM, Mr. AKAKA, Mr. ALLARD, Mrs. BOXER, Mr. ROBERTS, and Mr. ROBB):

S. 296. A bill to provide for continuation of the Federal research investment in a fiscally sustainable way, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SHELBY:

S. 297. A bill to amend title 37, United States Code, to authorize members of the uniformed services to participate in the Thrift Savings Plan, and for other purposes; to the Committee on Governmental Affairs.

S. 298. A bill to amend the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) to clarify that donations of hard and soft money by foreign nationals are prohibited; to the Committee on Rules and Administration.

By Mr. MCCAIN (for himself, Mr. INOUYE, and Mr. CONRAD):

S. 299. A bill to elevate the position of Director of the Indian Health Service within the Department of Health and Human Services to Assistant Secretary for Indian Health, and for other purposes; to the Committee on Indian Affairs.

By Mr. LOTT (for himself, Mr. NICKLES, Ms. COLLINS, Mr. FRIST, Mr. GRAMM, Mr. HAGEL, Mr. JEFFORDS, Mr. ROTH, Mr. SANTORUM, Mr. MACK, Mr. CRAIG, Mr. COVERDELL, Mr. MCCONNELL, Mr. ABRAHAM, Mr. ALLARD, Mr. ASHCROFT, Mr. BENNETT, Mr. BOND, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. CAMPBELL, Mr. COCHRAN, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mr. GORTON, Mr. GRAMS, Mr. GRASSLEY, Mr. GREGG, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mrs. HUTCHISON, Mr. INHOFE, Mr. LUGAR, Mr. MCCAIN, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH of New Hampshire, Mr. SMITH of Oregon, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. THURMOND, Mr. VOINOVICH, and Mr. WARNER):

S. 300. A bill to improve access and choice of patients to quality, affordable health care; to the Committee on Finance.

By Mr. CAMPBELL:

S. 301. A bill to amend title 39, United States Code, relating to mailability, false representations, civil penalties, and for other purposes; to the Committee on Governmental Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ROBB (for himself and Mr. CAMPBELL):

S. Res. 29. A resolution to designate the week of May 2, 1999, as ''National Correctional Officers and Employees Week''; to the Committee on the Judiciary.

By Mr. DEWINE (for himself, Mr. GRAHAM, Mr. HELMS, and Mr. COVERDELL):

S. Con. Res. 3. A concurrent resolution condemning the irregular interruption of the democratic political institutional process in Haiti; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WYDEN (for himself and Mr. SMITH of Oregon):

S. 294. A bill to direct the Secretary of the Army to develop and implement a comprehensive program for fish screens and passage devices; to the Committee on Environment and Public Works.

WATER DIVERSION PROTECTION AND FISHERIES ENHANCEMENT PROGRAM

• Mr. WYDEN. Mr. President, the legislation I introduce today will help the people of the Pacific Northwest address one of the most important natural resource issues in the region: the restoration of our majestic salmon runs. This bill will lend a much-needed hand to Oregonians and other Northwesterners who have been working together to find common sense solutions to preserve this precious natural resource.

As many people know, any effort to recover these salmon runs must be both creative and comprehensive, due to the complex nature of the salmon life cycle. Salmon are hatched in fresh water, migrate down streams and rivers to the sea to grow and mature, and then return to the streams of their birth to spawn. This complex life cycle exposes the fish to many hazards which threaten their survival. If we are to achieve our goal of restoring salmon runs to healthy levels, we must identify and address the various causes of salmon mortality.

One of the hazards facing salmon and other fish is the diversion of water from streams and rivers to irrigate agricultural crops. Migrating juvenile fish, including endangered salmon and bull trout, are killed when they are diverted from rivers and streams along with water used for irrigation.

The common-sense solution to this pervasive problem is to safely screen the points of water diversion: to allow water through while keeping fish out. Despite existing State and Federal programs to assist with the installation of fish screens, unscreened diversions continue to be a significant problem for endangered fish in the Pacific Northwest.

My home state of Oregon has identified fish mortality caused by water diversions as a priority problem. One of Oregon's primary goals relating to salmon restoration is to encourage the installation of fish screens and passage devices for water diversions on streams and rivers. Oregon has developed a cooperative program to assist in screening smaller diversions used on family farms. However, the State cannot afford to provide similar assistance for larger sized diversions. That's where the Federal government can help.

This bill gives the U.S. Army Corps of Engineers new authority to help irrigators make their water systems safer for fish. Participation by irrigators in the program will be voluntary and will require a sharing of the cost.

I believe this legislation will be very effective because irrigators from Oregon and the other Northwest states have told me they want to make their water systems more fish-friendly, but they need help to do so. This bill will give them the help they need and will greatly benefit the current efforts of local irrigation districts and watershed councils to conserve and protect our fish runs.

I am pleased that this legislation is cosponsored by Senator GORDON SMITH and has support from all the Northwest irrigation groups and literally dozens of Northwest and national conservation and sport fishing groups, including National Audubon Society, Natural Resources Defense Council, Oregon Trout, Trout Unlimited, American Rivers, Pacific Coast Federation of Fishermen's Associations, and Northwest Sportfishing Industries Association.

Despite our best efforts to restore these salmon runs, they continue to decline year after year. We need a fresh approach to this problem—one that involves the participation of the local folks who are affected by conservation efforts. This bill takes that approach.

Of course, a fish screen program alone is not the missing clue to solve our salmon problem. But this program, along with others like the Clean Water bill I introduced last session with Senator BURNS are pieces of the complete puzzle.

Ultimately, it will take the integrated efforts of all interests in our region to recover our salmon successfully. State, Tribal and local governments, local watershed councils, private landowners and the Federal government will all need to work together. Initiatives like this fish screen bill will help forge the partnerships upon which successful salmon recovery will be based. I urge your support for this legislation, so that the people of the Pacific Northwest can continue their important work to restore this precious natural resource.•

By Mr. LUGAR:

S. 295. A bill to amend part S of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to permit the use of certain amounts for assistance to jail-based substance treatment programs, and for other purposes; to the Committee on the Judiciary.

JAIL-BASED SUBSTANCE ABUSE TREATMENT PROGRAM

• Mr. LUGAR. Mr. President, I rise today to offer legislation amending the Residential Substance Abuse Treatment program, known as R–SAT, to enable jurisdictions below the state level to realize greater benefits from the program. The R–SAT program allows the Attorney General to make grants for the establishment of treatment programs within local correctional facilities, but only a few jurisdictions have

been able to take advantage of these grants.

The legislation I am offering today will solve this problem by establishing a separate Jail-Based Substance Abuse Treatment Program, or J-SAT. Under this new program, states will be explicitly authorized to devote up to ten percent of the funds they receive under R-SAT to qualifying J-SAT programs.

This legislation will provide matching funds to jail-based treatment programs that meet several criteria. First, the program must be at least three months in length. This is the minimum amount of time for a treatment program to have the desired effect. To qualify for funding, a program must also have been in existence for at least two years. This criterion is intended to ensure that jurisdictions which have already demonstrated a commitment to treatment programs at the local level receive first priority for funding. It also ensures that scarce treatment resources are allocated to programs with a demonstrable track record of success. The third criterion for programs seeking J–SAT funding is that the treatment regimen must include regular drug testing. This is necessary to ensure that some objective measure of the program's success is available. Grant recipients are also encouraged to provide the widest range of aftercare services possible, including job training, education and self-help programs. These steps are necessary to leverage the resources devoted to solving the problem of substance abuse, and to give individuals involved in treatment the best possible chance for successful rehabilitation.

I am offering this legislation because substance abuse and problems arising from it are putting a severe strain on the resources of local jurisdictions throughout the nation. This is not a minor problem. The Office of National Drug Control Policy indicates that approximately three-fourths of prison inmates—and over half of those in jails or on probation—are substance abusers, yet only a small percentage of inmates participate in treatment programs while they are incarcerated. The time during which drug-using offenders are in custody or under post-release correctional supervision presents a unique opportunity to reduce drug use and crime through effective drug testing and treatment programs.

Research indicates that programs like J–SAT can help to reduce the strain on our communities by cutting drug use in half; by reducing other criminal activity like shoplifting, assault, and drug sales by up to 80 percent; and by reducing arrests for all crimes by up to 64 percent.

I would also note that jail-based treatment programs are cost effective. In 1994, the American Correctional Association estimated the annual cost of incarceration at $18,330. The Office of National Drug Control Policy states that treatment while in prison and under post-incarceration supervision can reduce recidivism by roughly 50 percent. Thus, for every $1,800 the government invests in treatment, it saves more than $9,000. Former Assistant Health Secretary Philip Lee has estimated that every dollar invested in treatment can save $7 in societal and medical costs.

For these reasons, I ask my colleagues to support the Jail-Based Substance Abuse Treatment legislation I am introducing today. I also 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. 295

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

SECTION 1. JAIL-BASED SUBSTANCE ABUSE TREATMENT PROGRAMS.

(a) IN GENERAL.—Part S of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff et seq.) is amended by adding at the end the following:

"SEC. 1906. JAIL-BASED SUBSTANCE ABUSE TREATMENT.

''(a) DEFINITIONS.—In this section—

''(1) the term 'jail-based substance abuse treatment program' means a course of individual and group activities, lasting for a period of not less than 3 months, in an area of a correctional facility set apart from the general population of the correctional facility, if those activities are—

''(A) directed at the substance abuse problems of prisoners; and

''(B) intended to develop the cognitive, behavioral, social, vocational, and other skills of prisoners in order to address the substance abuse and related problems of prisoners; and

''(2) the term 'local correctional facility' means any correctional facility operated by a unit of local government.

''(b) AUTHORIZATION.—

''(1) IN GENERAL.—Not less than 10 percent of the total amount made available to a State under section 1904(a) for any fiscal year may be used by the State to make grants to local correctional facilities in the State for the purpose of assisting jail-based substance abuse treatment programs established by those local correctional facilities.

''(2) FEDERAL SHARE.—The Federal share of a grant made by a State under this section to a local correctional facility may not exceed 75 percent of the total cost of the jail-based substance abuse treatment program described in the application submitted under subsection (c) for the fiscal year for which the program receives assistance under this section.

''(c) APPLICATIONS.—

''(1) IN GENERAL.—To be eligible to receive a grant from a State under this section for a jail-based substance abuse treatment program, the chief executive of a local correctional facility shall submit to the State, in such form and containing such information as the State may reasonably require, an application that meets the requirements of paragraph (2).

''(2) APPLICATION REQUIREMENTS.—Each application submitted under paragraph (1) shall include—

''(A) with respect to the jail-based substance abuse treatment program for which assistance is sought, a description of the program and a written certification that—

''(i) the program has been in effect for not less than 2 consecutive years before the date on which the application is submitted; and

''(ii) the local correctional facility will—

''(I) coordinate the design and implementation of the program between local correctional facility representatives and the appropriate State and local alcohol and substance abuse agencies;

''(II) implement (or continue to require) urinalysis or other proven reliable forms of substance abuse testing of individuals participating in the program, including the testing of individuals released from the jail-based substance abuse treatment program who remain in the custody of the local correctional facility; and

''(III) carry out the program in accordance with guidelines, which shall be established by the State, in order to guarantee each participant in the program access to consistent, continual care if transferred to a different local correctional facility within the State;

''(B) written assurances that Federal funds received by the local correctional facility from the State under this section will be used to supplement, and not to supplant, non-Federal funds that would otherwise be available for jail-based substance abuse treatment programs assisted with amounts made available to the local correctional facility under this section; and

''(C) a description of the manner in which amounts received by the local correctional facility from the State under this section will be coordinated with Federal assistance for substance abuse treatment and aftercare services provided to the local correctional facility by the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services.

''(d) REVIEW OF APPLICATIONS.—

''(1) IN GENERAL.—Upon receipt of an application under subsection (c), the State shall—

''(A) review the application to ensure that the application, and the jail-based residential substance abuse treatment program for which a grant under this section is sought, meet the requirements of this section; and

''(B) if so, make an affirmative finding in writing that the jail-based substance abuse treatment program for which assistance is sought meets the requirements of this section.

''(2) APPROVAL.—Based on the review conducted under paragraph (1), not later than 90 days after the date on which an application is submitted under subsection (c), the State shall—

''(A) approve the application, disapprove the application, or request a continued evaluation of the application for an additional period of 90 days; and

''(B) notify the applicant of the action taken under subparagraph (A) and, with respect to any denial of an application under subparagraph (A), afford the applicant an opportunity for reconsideration.

''(3) ELIGIBILITY FOR PREFERENCE WITH AFTERCARE COMPONENT.—

''(A) IN GENERAL.—In making grants under this section, a State shall give preference to applications from local correctional facilities that ensure that each participant in the jail-based substance abuse treatment program for which a grant under this section is sought, is required to participate in an aftercare services program that meets the requirements of subparagraph (B), for a period of not less than 1 year following the earlier of—

''(i) the date on which the participant completes the jail-based substance abuse treatment program; or

''(ii) the date on which the participant is released from the correctional facility at the end of the participant's sentence or is released on parole.

''(B) AFTERCARE SERVICES PROGRAM REQUIREMENTS.—For purposes of subparagraph (A), an aftercare services program meets the requirements of this paragraph if the program—

''(i) in selecting individuals for participation in the program, gives priority to individuals who have completed a jail-based substance abuse treatment program;

''(ii) requires each participant in the program to submit to periodic substance abuse testing; and

''(iii) involves the coordination between the jail-based substance abuse treatment program and other human service and rehabilitation programs that may assist in the rehabilitation of program participants, such as—

''(I) educational and job training programs;

''(II) parole supervision programs;

''(III) half-way house programs; and

''(IV) participation in self-help and peer group programs; and

''(iv) assists in placing jail-based substance abuse treatment program participants with appropriate community substance abuse treatment facilities upon release from the correctional facility at the end of a sentence or on parole.

''(e) COORDINATION AND CONSULTATION.—

''(1) COORDINATION.—Each State that makes 1 or more grants under this section in any fiscal year shall, to the maximum extent practicable, implement a statewide communications network with the capacity to track the participants in jail-based substance abuse treatment programs established by local correctional facilities in the State as those participants move between local correctional facilities within the State.

''(2) CONSULTATION.—Each State described in paragraph (1) shall consult with the Attorney General and the Secretary of Health and Human Services to ensure that each jail-based substance abuse treatment program assisted with a grant made by the State under this section incorporates applicable components of comprehensive approaches, including relapse prevention and aftercare services.

''(f) USE OF GRANT AMOUNTS.—

''(1) IN GENERAL.—Each local correctional facility that receives a grant under this section shall use the grant amount solely for the purpose of carrying out the jail-based substance abuse treatment program described in the application submitted under subsection (c).

''(2) ADMINISTRATION.—Each local correctional facility that receives a grant under this section shall carry out all activities relating to the administration of the grant amount, including reviewing the manner in which the amount is expended, processing, monitoring the progress of the program assisted, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

''(3) RESTRICTION.—A local correctional facility may not use any amount of a grant under this section for land acquisition or a construction project.

''(g) REPORTING REQUIREMENT; PERFORMANCE REVIEW.—

''(1) REPORTING REQUIREMENT.—Not later than March 1 of each year, each local correctional facility that receives a grant under this section shall submit to the Attorney General, through the State, a description and evaluation of the jail-based substance abuse treatment program carried out by the local correctional facility with the grant amount, in such form and containing such information as the Attorney General may reasonably require.

''(2) PERFORMANCE REVIEW.—The Attorney General shall conduct an annual review of each jail-based substance abuse treatment program assisted under this section, in order to verify the compliance of local correctional facilities with the requirements of this section.

''(h) NO EFFECT ON STATE ALLOCATION.—Nothing in this section shall be construed to affect the allocation of amounts to States under section 1904(a).''.

(b) TECHNICAL AMENDMENT.—The table of contents for title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended, in the matter relating to part S, by adding at the end the following:

''1906. Jail-based substance abuse treatment.''.●

By Mr. FRIST (for himself, Mr. ROCKEFELLER, Mr. DOMENICI, Mr. LIEBERMAN, Mr. GRAMM, Mr. BINGAMAN, Mr. BURNS, Mr. BREAUX, Mrs. HUTCHISON, Mr. CLELAND, Mr. THOMPSON, Mr. KERRY, Mr. DEWINE, Mr. KERREY, Mr. ABRAHAM, Mr. AKAKA, Mr. ALLARD, Mrs. BOXER, Mr. ROBERTS, and Mr. ROBB):

S. 296. A bill to provide for continuation of the Federal research investment in a fiscally sustainable way, and for other purposes; to the Committee on Commerce, Science, and Transportation.

FEDERAL RESEARCH INVESTMENT ACT OF 1999

● Mr. FRIST. Mr. President, I rise today to introduce legislation that would elevate Congress' commitment to technological innovation and long-term economic growth. The Federal Research Investment Act specifically targets federally-funded, civilian research and development (R&D), while establishing greater accountability mechanisms for both Congress and the White House. The bill would bolster the aggregate amount of federal funding for R&D over an 11-year period. Although this legislation passed the Senate by unanimous consent last year, the rush to finish the 1999 federal budget kept it from reaching the floor of the House of Representatives and the President's desk.

Senator ROCKEFELLER, my partner in this endeavor, and I are not discouraged. We believe that we laid a solid foundation to build on by getting this legislation through the Senate last year. Now, we intend to persistently advocate for increased funding levels for basic R&D until they are realized. This legislation is the product of numerous hearings, caucus events, forums, and meetings with scientists and scholars from across the country. We have been working closely together on this legislation and feel that now, more than ever, Congress must advocate for greater R&D funding to preserve the future economic prosperity of our nation.

Innovation is a key element of economic growth in the United States. Economists widely agree that more than 50 percent of our economic growth is directly linked to technological innovation. It is the principle driving force behind our long-term growth and our rising standard of living. Technology contributes to economic growth through the creation of new jobs, new goods and services, new capital and even new industries.

The Federal Government plays a critical role in driving the innovation process in the United States. The majority of the Federal Government's basic R&D is directed toward critical missions to serve the public interest in areas including health, environmental pollution control, space exploration, and national defense. Federal funds support nearly 60 percent of the nation's basic research, with a similar share performed in colleges and universities. Congressional support reflects a consensus that although basic research is the foundation for many innovations, the rate of return to society generated by investments in R&D is significantly larger than the benefits that can be captured by the performing institution.

The National Institutes of Health (NIH) received the largest dollar increase in history in the fiscal year (FY) 1999 federal budget. The agency received a record 14.1 percent increase in its R&D budget, nearly $2 billion. Due to steady increases every year, the NIH R&D budget is now 28 percent larger in inflationary-adjusted terms than it was in FY 1994.

NIH's overwhelming support by Congress reflects a growing popular movement both in the Senate and House to double funding for NIH over the next five years. Many of my colleagues, eager to fund the biotechnology that enables our citizens to live longer, more healthy lives, are embracing this crusade. I believe, however, many of them are missing the critical link that exists between the breakthrough advances we are experiencing today and what has enabled them to occur. The funding surge of R&D in the sciences in the 1960's created a wealth of research opportunities for scientists throughout the nation. Since that time though, funding has declined steadily with no hint of a reversal of that downward trend. If we are to dedicate ourselves to advancement of biotechnology and all the benefits that it will afford, we must support it with solid funding for the basic sciences. One truly depends upon the other. And that critical link, I believe, has been lost in the revolution of health care policy.

Fiscal constraints due to recent efforts to balance the federal budget

threaten the U.S. R&D infrastructure. This is due to both a long-term problem of the ever-increasing level of mandatory spending of discretionary funding that must be allocated across an increasing range of programs. Now, for the first time in nearly three decades, the Federal Government has attained a budget surplus of $70 billion in 1998. Additionally, the Congressional Budget Office estimates a budget surplus of approximately $1.5 trillion over the next ten years. As Congress debates how to allocate surplus funds, serious consideration must be given to federal research and development investment.

As a result of the current monetary environment in Congress and the desire to utilize the surplus prudently, I am confident that investing in basic R&D, and in turn the technological innovation of the future, is a proper use of the federal taxpayers dollars. Furthermore, the increased funding called for in this legislation is coupled with a judicious strategy for federal investment and strong accountability mechanisms to help guide the Administration and Congress. Nothing less is acceptable.

Mr. President, despite its modest share of total U.S. R&D funding, the Federal Government continues to play a vital role in the nation's R&D enterprise. With dramatic decreases in U.S. defense R&D spending in the post Cold-War era, devoting attention to civilian basic research is more critical now than ever before. This pivotal need for a resurgence in basic R&D investments is evident when we further consider our nation's increased dependency on technology and the global competition that threatens our sustained leadership position. R&D drives the innovation process, which in turn drives the U.S. economy. Now is not the time to turn our backs on the nation's future prosperity.●

● Mr. ROCKEFELLER. Mr. President, I would like to join Senator FRIST and other distinguished colleagues in introducing the Federal Research Investment Act. This legislation will set a long-term vision for federal funding of research and development programs so that the United States can continue to be the world leader in high-tech industries.

One only needs to look as far as the front page of the newspaper to see the effect of high-technology on our country. New drugs are becoming available for fighting cancer; new communication hardware is allowing more people to connect to the internet; and advances in fuel-cell technology are leading to low-emission, high-efficiency alternative fuel vehicles. In fact, seventy percent of all patent applications cite non-profit or federally-funded research as a core component to the innovation being patented. People are living longer, with a higher quality of life, in a better economy due to processes, procedures, and equipment which are based on federally-funded research.

What I am afraid of is that many people are not aware that these products do not simply appear out of nowhere. They are the result of a basis of knowledge which has been built up by researchers supported by federal funding. American companies pull from this knowledge base in order to develop the latest high-tech products which you and I read about in the paper and see on our store shelves every day.

I view this knowledge base as a bank. The U.S. government puts in modest amounts of funding in the form of support for scientific research. The payback comes from the economic growth which is produced as this knowledge is turned into actual products by American companies.

In fact, a large part of the current rosy economic situation is due to our dominant high-tech industries. High-tech companies are currently responsible for one-third of our economic output and half of our economic growth. However, if we are to continue at this pace, we need to support the fundamental, pre-competitive research critical to these industries, at the necessary levels, and in a stable manner from year to year, and we need to do so now.

In the last session of the 105th Congress Senators FRIST, BINGAMAN, DOMENICI, GRAMM, BREAUX, BURNS, and I introduced S. 2217, the Federal Research Investment Act, and previous to that Senators DOMENICI and BINGAMAN, introduced S. 1305, the National Research Investment Act. Both S. 1305 and S. 2217 have been extremely successful in galvanizing members of the scientific and engineering community to pull together and work constructively towards a common ideal. In addition, it has brought together the cosponsors of these bills and moved them forward as a group with their original idea. S. 2217 passed without dissent in the Senate at the end of last session, and gained 36 co-sponsors—18 Democrats and 18 Republicans. Our aim, in re-introducing the Federal Research Investment Act, is to now take the next step in this process, bringing to fruition the goals of our bill.

The Federal Research Investment Act is a long-term vision for federal R&D funding. It creates legislative language which stresses the importance of R&D funding to the strength of our nation's innovation infrastructure. It also sets out guidelines for Congress to use in prioritizing funding decisions.

Just three years ago, federal science funding was in a serious decline and fewer than half a dozen members of Congress gave it any attention, but now as a significant consequence of both S. 1305 and S. 2217 the trend, at least in the last two years, seems to have reversed and a universal spirit of cooperation for strong R&D funding is developing on all fronts. In the last two years the science budget has increased above inflation. In particular, for Fiscal Year 1999, an unprecedented 10% increase in civilian R&D funding was appropriated. Yet, we appear to be in a crisis situation once again due to unexpected budgetary constraints resulting from last year's appropriations. Thus, we need to continue our fight to implement the R&D budgetary guidelines in our bill. This uncertainty in the level of R&D funding from year to year can be as detrimental to the health of the scientific enterprise as a lack of adequate funding levels. It will be a sad day for our nation, and its future economic prosperity, if we manage to lose what progress we have made to date.

Based on a careful review and analysis of our past history, our bill authorizes an annual funding increase of 5.5%, starting in the year 2000 and going through 2010, for federally-funded, civilian, R&D programs. This would increase federal R&D spending to 2.6% of total, overall budget by 2010, a near doubling in R&D funding from 1998 levels. In order to make sure that these increases are fully incorporated into budgetary process we request that the President include these increases in his annual budget request to Congress.

We are currently in an economic upturn. This continues to be a perfect time to increase funding for R&D so that we can continue this growth. I have faith that, as long as the economic situation allows it, my thoughtful and wise colleagues will support increasing R&D funding to the levels that we have laid out in this bill. However, I am also a realist. I realize that the economy may not always remain as strong as it is right now. That is why we have introduced a funding firewall. Without this firewall I am seriously concerned that history will repeat itself. In the past, R&D funding is one of the first things that has been cut during times of crisis. This is the wrong approach. I believe that cutting R&D funding levels below a bare minimum level causes serious, long-term harm to the R&D infrastructure in the United States. Our firewall would not allow this to happen. It is not meant as a goal, it is meant as a bare minimum which should only be implemented in the leanest of years.

Many, if not most, recent 'quantum leaps' in knowledge have occurred at the interface between traditional disciplines of research. Therefore, we legislatively mandate that this funding increase must be macroscopically balanced, so that there is not preferential growth of one agency, program or field of study at the expense of other, equally qualified and deserving agencies. One of the original reasons that I started to get involved with technology issues such as EPSCoR and EPSCoT, was because I believe that technology should be shared by everyone, not just those in Silicon Valley or the Route 128 corridor in Boston. Therefore, this bill

should not be seen as a means of promoting elitist science but as a mechanism for allowing for diversity in our national innovation infrastructure.

Finally, so that we are able to assure other Members of Congress and the general public that this money authorized by this Act would be well spent, we have included accountability measures which will assure that there is no waste of federal money on out-dated, or ill-conceived projects. This bill puts into place a system of accountability for each affected agency. Our bill institutes a study by the National Academy of Sciences to determine how to effectively measure the progress of R&D based agencies and then have them institute performance measures based on these metrics. This will allow increases in funding without concerns over wasteful spending being generated.

In conclusion, with the help of Senators GRAMM, LIEBERMAN, DOMENICI, and BINGAMAN, Senator FRIST and I have put together a long-term vision for federal R&D funding which we hope will instigate real increases in federal funding for research and development. Federally-funded research has been, and will continue to be, a driving power behind our economic success. If we are to maintain and enhance our current economic prosperity we must make sure that research programs are funded at adequate levels in a consistent long-term manner. I urge my colleagues to support this bill.●

● Mr. DOMENICI. Mr. President, I'm pleased to see the Federal Research Investment Act introduced in the 106th Congress. This bill is one that I've supported throughout its history, because it addresses the health of our nation's science and technology base.

Our science and technology base is vital to the nation's future. Any number of studies have confirmed its importance. As one excellent example, the National Innovation Summit, organized by MIT last March with the Council on Competitiveness, confirmed that the integrity of that base is one of the cornerstones to our future economic prosperity. At that Summit, many of the nation's top CEOs emphasized that the nation's climate for innovation is a major determinant of our ability to maintain and advance our high standard of living and strong economy.

Advanced technologies are responsible for driving half of our economic growth since World War II, and that growth has developed our economy into the envy of the world. We need to continually refresh our stock of new products and processes that enable good jobs for our citizens in the face of increasing global challenges to all our principal industries.

This bill emphasizes a broad range of research targets, from fundamental and frontier exploration, through precompetitive engineering research. This emphasis on a spectrum of research maturity is absolutely critical. The nation is not well served by a focus on so-called ''basic'' research that can open new fields, but then leave those fields without resources to develop new ideas to a pre-competitive stage applicable to future commercial products and processes.

The new bill addresses a spectrum of research fields with its emphasis on expanding S&T funding in many agencies. We need technical advances in many fields simultaneously. In more and more cases, the best new ideas are not flowing from explorations in a single narrow field, but instead are coming from inter-disciplinary studies that bring experts from diverse fields together for fruitful collaboration. This is especially evident in medical and health fields, where combinations of medical science with many other specialities are critical to the latest health care advances.

This new bill has additional features that were critical components of last year's S. 2217. It proposes to utilize the National Academy of Science in developing approaches to evaluation of program and project performance. This should lead to better understanding of how Government Performance Results Act goals and scientific programs can be best coordinated. The new role for the National Academy can help define criteria to guide decisions on continued and future funding. The bill also sets up procedures to use these evaluations to terminate federal programs that are not performing at acceptable levels.

The new bill incorporates a set of well-developed principles for federal funding of science and technology. These principles were developed by our Senate Science and Technology Caucus. Those principles, when carefully applied, can lead to better choices among the many opportunities for federal S&T funding. The new bill also incorporates recommendations for independent merit-based review of federal S&T programs, which should further strengthen them.

Many aspects of the Federal Research Investment Act support and compliment key points in the study released by Representative VERN EHLERS last year. His study, ''Unlocking our Future,'' will serve as an important focal point for continuing discussions on the critical goal of strengthening our nation's science and technology base.

This Federal Research Investment Act continues the goals expressed in S. 1305 last year. That was followed by S. 2217 that proposed a more realistic time scale for achieving this expanded support, added GPRA performance goals, and included language that recognized the importance of the budgets caps. This new bill is very similar to S. 2217.

The new Federal Research Investment Act builds and improves on the goals of the previous bills. With this act, we will build stronger federal Science and Technology programs that will underpin our nation's ability to compete effectively in the global marketplace of the 21st century.●

By Mr. SHELBY:

S. 297. A bill to amend title 37, United States Code, to authorize members of the uniformed services to participate in the Thrift Savings Plan, and for other purposes; to the Committee on Governmental Affairs.

THRIFT SAVINGS PLAN (TSP) LEGISLATION

● Mr. SHELBY. Mr. President, I rise today to introduce legislation to increase the retirement benefits for military personnel by allowing them to participate in the Thrift Savings Plan (TSP).

Many of us are concerned about the current state of readiness in our military forces, and rightly so. In the last decade, the number of Americans wearing their nation's uniform has decreased precipitously along with the funding that pays for their weapons, aircraft, ships, wages, housing, and benefits. Tragically, as the defense budget withers, our military's operational tempo soars. Overseas deployments have steadily increased in number, scope, and duration. Our troops are working harder than ever and yet, we have failed to support them. In addition to inadequately funding much needed weapons modernization, we have kept their wages low and slowly eroded their benefits. As we make it less and less attractive to serve, we will not be able to recruit high quality people and those that now serve will continue to leave. Recruiting and retention are the backbone of our military services. Without either there is no readiness. Our service men and women are being stretched to the breaking point, and they are voting with their feet. We must act now.

Senior Pentagon officials have determined that retirement benefits are a key consideration in the decision to pursue a military career and therefore are critical to the retention of our best people. Because of reduced retirement benefits—commonly referred to as ''Redux''—an increasing number of mid-career personnel are deciding to leave the military. In recent testimony to the Senate, General Henry Shelton, the Chairman of the Joint Chiefs of Staff, stated that ''that is why, among a number of pressing needs, reforming military retirement and military pay remains the Joint Chiefs' highest priority.''

The bill I am introducing today is simple and straightforward. It shores up the military retirement system by allowing military personnel to supplement direct benefits through participation in the Thrift Saving Plan (TSP). This legislation will provide ALL military personnel a retirement benefit

that is available to federal employees and all of us in the Senate and our staffs. Furthermore, the inherent flexibility of TSP will give military personnel and their families greater control over their retirement benefits. For these reasons, this legislation is a priority for the leadership in the Senate.

Specifically, my bill will allow members of the armed services to contribute up to 5 percent of basic pay in a tax-deferred individual account where the funds are held in trust and invested and can later be withdrawn at retirement. As an additional incentive for a military career, personnel will be qualified to contribute up to 10 percent of their basic pay after 10 years of service. As is the case with the Federal Employee Retirement System (FERS), the government would provide up to 5 percent to match the individual's contribution.

So often we marvel over our high-tech weapons systems and we forget that they are useless without highly skilled and professional Americans to operate them. If the services continue to hemorrhage qualified people at current rates, there will be a reckoning the magnitude of which we are not prepared to endure. We must take action now to slow the exodus of qualified personnel from the military. I believe that this bill will be a powerful tool to assist the services in retaining personnel, and I urge my colleagues to cosponsor this legislation.

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. 297

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

SECTION 1. PARTICIPATION OF MEMBERS OF THE UNIFORMED SERVICES IN THE THRIFT SAVINGS PLAN.

(b) AUTHORITY.—(1) Chapter 3 of title 37, United States Code, is amended by adding at the end the following:

''§ 211. Participation in Thrift Savings Plan

''(a) PARTICIPATION AUTHORIZED.—(1) A member of the uniformed services may contribute to the Thrift Savings Fund out of basic pay.

''(2) An election to contribute to the Thrift Savings Fund under paragraph (1) may be made only during a period provided under section 8432(b) of title 5 for individuals subject to chapter 84 of such title.

''(b) APPLICABILITY OF THRIFT SAVINGS PLAN PROVISIONS.—Except as otherwise provided in this section, the provisions of subchapters III and VII of chapter 84 of title 5 shall apply with respect to members of the uniformed services making contributions to the Thrift Savings Fund as if such members were employees within the meaning of section 8401(11) of such title.

''(c) MAXIMUM CONTRIBUTION FROM BASIC PAY.—(1) The amount contributed by a member of the uniformed services for any pay period out of basic pay may not exceed the amount equal to the maximum allowable percent of such member's basic pay for such pay period.

''(2) For the purposes of paragraph (1), the maximum allowable percent of basic pay applicable to a member with respect to a pay period is as follows:

''(A) If the member has less than 5 years of service computed under section 205 of title 37 on or before the last day of the pay period, 5 percent.

''(B) If the member has at least 5 years of service computed under section 205 of title 37 on or before the last day of the pay period, 10 percent.

''(d) AGENCY CONTRIBUTIONS.—Contributions shall be made under paragraph (2), but not any other paragraph, of section 8432(c) of title 5 for the benefit of a member of the uniformed services making contributions to the Thrift Savings Fund under subsection (a). For the purposes of this subsection, the reference in paragraph (2) of such section to contributions under paragraph (1) of such section does not apply.

''(e) RULES OF CONSTRUCTION.—The following rules of construction apply for the purposes of this section:

''(1) In applying section 8433 of title 5 to a member of the uniformed services who has an account balance in the Thrift Savings Fund, any reference in such section to separation from Government employment shall be construed to refer to the following actions:

''(A) Release of the member from active-duty service (not followed by a resumption of active-duty service within 30 days after the effective date of the release).

''(B) Transfer of the member to an inactive status.

''(C) Transfer of the member by the Secretary concerned to a retired list maintained by the Secretary.

''(2) The reference in section 8433(g)(1) of title 5 to contributions made under section 8432(a) of such title shall be treated as being a reference to contributions made to the Fund by the member, whether made under this section or section 8351 or 8432(a) of title 5.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following:

''211. Participation in Thrift Savings Plan.''.

(b) RELATIONSHIP TO PARTICIPATION UNDER OTHER AUTHORITY.—Section 8432b(b)(2)(B) of title 5, United States Code, is amended by inserting after ''section 8432(a)'' the following ''of this title or section 211 of title 37''.●

By Mr. SHELBY:

S. 298. A bill to amend the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) to clarify that donations of hard and soft money by foreign nationals are prohibited; to the Committee on Rules and Administration.

PROHIBITION OF DONATIONS BY FOREIGN NATIONALS

● Mr. SHELBY. Mr. President, I rise today to speak in support of legislation that I am introducing which is intended to prevent foreign nationals from making financial contributions to federal elections.

Last October, in the trial of Charlie Trie, Judge Paul L. Friedman ruled that the Federal Election Campaign Act (FECA) does not prohibit foreigners from making campaign donations to political parties or Congressional Campaign Committees. The holding of this case is based on an extremely narrow reading of the language of the FECA. Judge Friedman ruled that because the FECA specifically prohibits foreign nationals from making direct contributions to the campaigns of candidates for federal office but does not specifically prohibit donations, or ''soft money'' expenditures to the parties, such donations are not prohibited by the FECA. While we can argue the merits of this decision and question whether it merely tracks the letter rather than the entire spirit of the FECA, it is quite clear that this ruling opens up our system of federal elections to the possibility of foreign influence.

My bill clarifies the law by amending the FECA to prohibit donations by foreign nationals to ''a national committee of a political party or a Senatorial or Congressional Campaign Committee of a national political party for any purpose.'' This new provision along with the existing prohibition of direct contributions by foreign nationals, will provide the Federal Election Commission with the ability to prosecute those who illegally attempt to influence federal elections. Ultimately, my bill will get us closer to achieving the desired effect originally contemplated by the FECA—ensuring that federal campaigns are free of foreign money.

Mr. President, regardless of any member's views concerning the direction that campaign finance reform should take, I believe that amending the FECA to prohibit foreign influence in federal campaigns requires swift action.●

By Mr. MCCAIN (for himself, Mr. INOUYE, and Mr. CONRAD):

S. 299. A bill to elevate the position of Director of the Indian Health Service within the Department of Health and Human Services to Assistant Secretary for Indian Health, and for other purposes; to the Committee on Indian Affairs.

ASSISTANT SECRETARY FOR INDIAN HEALTH ACT OF 1999

● Mr. MCCAIN. Mr. President, I rise to introduce legislation that will establish the Director of the Indian Health Service within the Department of Health and Human Services as an Assistant Secretary for Indian Health. My colleagues, Senators INOUYE and CONRAD, are joining me in this effort as original co-sponsors. I am pleased to note that Congressman NETHERCUTT from Washington introduced companion legislation on the House side.

Last year, we came very close to successful passage of this same bill, but the legislative clock expired. It is our hope that we can move this legislation forward expeditiously this year as this bill enjoys widespread support from Indian tribes nationwide and the Administration.

The history of this legislation spans back several years. Every year, the Congress deliberates on how best to raise the standard of health care for all Americans. Yet, in nearly every debate, the health care needs of Indian people are either marginalized or ignored. The need for this legislation arose out of the continuing frustration expressed by the tribes that their health concerns were not adequately addressed under the existing administrative policy and budgetary processes.

As the primary health care delivery system, the Indian Health Service is the principal advocate for Indian health care needs, both on the reservation level and for urban populations. More than 1.3 million Indian people are served every year by the IHS. At its current capacity, the IHS estimates that it can only meet 62 percent of tribal health care needs. The IHS will continue to be challenged by a growing Indian population as well as an increasing disparity between the health status of Indian people as compared to other Americans. Thousands of Indian people continue to suffer from the worst imaginable health care conditions in Indian country—from diabetes to cancer to infant mortality. In nearly every category, the health status of Native Americans falls far below the national standard.

The purpose of this bill can be simplified to three primary needs. Indian people desire a stronger leadership and policy role within the primary health care agency, the Department of Health and Human Services. The Assistant Secretary for Indian Health will ensure that critical policy and budgetary decisions will be made with the full involvement and consultation of not only the Indian Health Service, but also the direct involvement of the Tribal governments.

Second, the enactment of this legislation is consistent with the unique government-to-government relationship between federally recognized Indian tribes and the federal government. This legislation is long overdue in bringing focus and national attention to the health care status of Indian people and fulfilling the federal trust responsibility toward Indian tribes.

Finally, passage of this legislation is critical as the Congress is set to deliberate several pieces of Indian health policy. Reauthorization of the Indian Health Care Improvement Act and development of legislation to permanently extend tribal self-governance authority to tribes will be vital components of Indian health care in the future. Implementation of this bill is intended to support the long-standing policies of Indian self-determination and tribal self-governance and assist Indian tribes who are making positive strides in providing direct health care to their own communities.

At this critical time, the IHS is in dire need of a senior policy official who is knowledgeable about the programs administered by the IHS and who can provide the leadership for the health care needs of American Indians and Alaska Natives. We continue to pursue passage of this legislation as many believe that the priority of Indian health issues within the Department should be raised to the highest levels within our federal government.

I look forward to working with my colleagues on both sides of the aisle to ensure prompt passage of this legislation. I ask unanimous consent that the full text and section-by-section analysis of this bill be included in the RECORD.

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

S. 299

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

SECTION 1. OFFICE OF ASSISTANT SECRETARY FOR INDIAN HEALTH.

(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services the Office of the Assistant Secretary for Indian Health in order to, in a manner consistent with the government-to-government relationship between the United States and Indian tribes—

(1) facilitate advocacy for the development of appropriate Indian health policy; and

(2) promote consultation on matters related to Indian health.

(b) ASSISTANT SECRETARY FOR INDIAN HEALTH.—In addition to the functions performed on the date of enactment of this Act by the Director of the Indian Health Service, the Assistant Secretary for Indian Health shall perform such functions as the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') may designate. The Assistant Secretary for Indian Health shall—

(1) report directly to the Secretary concerning all policy- and budget-related matters affecting Indian health;

(2) collaborate with the Assistant Secretary for Health concerning appropriate matters of Indian health that affect the agencies of the Public Health Service;

(3) advise each Assistant Secretary of the Department of Health and Human Services concerning matters of Indian health with respect to which that Assistant Secretary has authority and responsibility;

(4) advise the heads of other agencies and programs of the Department of Health and Human Services concerning matters of Indian health with respect to which those heads have authority and responsibility; and

(5) coordinate the activities of the Department of Health and Human Services concerning matters of Indian health.

(c) REFERENCES.—Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to the Director of the Indian Health Service shall be deemed to refer to the Assistant Secretary for Indian Health.

(d) RATE OF PAY.—

(1) POSITIONS AT LEVEL IV.—Section 5315 of title 5, United States Code, is amended—

(A) by striking the following:

''Assistant Secretaries of Health and Human Services (6).''; and

(B) by inserting the following:

''Assistant Secretaries of Health and Human Services (7).''.

(2) POSITIONS AT LEVEL V.—Section 5316 of title 5, United States Code, is amended by striking the following:

''Director, Indian Health Service, Department of Health and Human Services.''.

(e) DUTIES OF ASSISTANT SECRETARY FOR INDIAN HEALTH.—Section 601(a) of the Indian Health Care Improvement Act (25 U.S.C. 1661(a)) is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) in the second sentence of paragraph (1), as so designated, by striking ''a Director,'' and inserting ''the Assistant Secretary for Indian Health,''; and

(3) by striking the third sentence of paragraph (1) and all that follows through the end of the subsection and inserting the following: ''The Assistant Secretary for Indian Health shall carry out the duties specified in paragraph (2).

''(2) The Assistant Secretary for Indian Health shall—

''(A) report directly to the Secretary concerning all policy- and budget-related matters affecting Indian health;

''(B) collaborate with the Assistant Secretary for Health concerning appropriate matters of Indian health that affect the agencies of the Public Health Service;

''(C) advise each Assistant Secretary of the Department of Health and Human Services concerning matters of Indian health with respect to which that Assistant Secretary has authority and responsibility;

''(D) advise the heads of other agencies and programs of the Department of Health and Human Services concerning matters of Indian health with respect to which those heads have authority and responsibility; and

''(E) coordinate the activities of the Department of Health and Human Services concerning matters of Indian health.''.

(f) CONTINUED SERVICE BY INCUMBENT.—The individual serving in the position of Director of the Indian Health Service on the date preceding the date of enactment of this Act may serve as Assistant Secretary for Indian Health, at the pleasure of the President after the date of enactment of this Act.

(g) CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO INDIAN HEALTH CARE IMPROVEMENT ACT.—The Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) is amended—

(A) in section 601—

(i) in subsection (c), by striking ''Director of the Indian Health Service'' both places it appears and inserting ''Assistant Secretary for Indian Health''; and

(ii) in subsection (d), by striking ''Director of the Indian Health Service'' and inserting ''Assistant Secretary for Indian Health''; and

(B) in section 816(c)(1), by striking ''Director of the Indian Health Service'' and inserting ''Assistant Secretary for Indian Health''.

(2) AMENDMENTS TO OTHER PROVISIONS OF LAW.—The following provisions are each amended by striking ''Director of the Indian Health Service'' each place it appears and inserting ''Assistant Secretary for Indian Health'':

(A) Section 203(a)(1) of the Rehabilitation Act of 1973.

(B) Subsections (b) and (e) of section 518 of the Federal Water Pollution Control Act (33 U.S.C. 1377 (b) and (e)).

(C) Section 803B(d)(1) of the Native American Programs Act of 1974 (42 U.S.C. 2991b–2(d)(1)).

SECTION-BY-SECTION ANALYSIS

Subsection (a) provides that the Office of Assistant Secretary for Indian Health is established within the Department of Health and Human Services.

Subsection (b) requires that the Assistant Secretary for Indian Health shall perform functions designated by the Secretary of Health and Human Services in addition to the functions of the Director of Indian Health. The Assistant Secretary for Indian Health shall report directly to the Secretary of HHS and shall also consult with the Assistant Secretary of Health and other Assistant Secretaries on all matters pertaining to Indian health policy.

Subsection (c) provides that any references to the Director of Indian Health Service in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document shall be deemed to refer to the Assistant Secretary for Indian Health.

Subsection (d)(1) amends Title 5 section 5315 of the U.S.C. by striking ''Assistant Secretaries of Health and Human Services (6)'' and inserting ''Assistant Secretaries of Health and Human Services (7).'' Subsection (d)(1) further amends section 5316 of title 5 by striking ''Director, Indian Health Service, Department of Health and Human Services.''

Subsection (d)(2) abolishes the position of the Director of Indian Health Service.

Subsection (e) amends section 601 of the Indian Health Care Improvement Act, 25 U.S.C. 1661, and other Acts by deleting all provisions referring to the ''Director'' or ''Director of Indian Health Service'' and inserting in lieu thereof ''the Assistant Secretary for Indian Health.''

Subsection 601 of 25 U.S.C. 1661(a), as amended by subsection (b), is further amended by striking the term limits for the Assistant Secretary for Indian Health.●

By Mr. LOTT (for himself, Mr. NICKLES, Ms. COLLINS, Mr. FRIST, Mr. GRAMM, Mr. HAGEL, Mr. JEFFORDS, Mr. ROTH, Mr. SANTORUM, Mr. MACK, Mr. CRAIG, Mr. COVERDELL, Mr. MCCONNELL, Mr. ABRAHAM, Mr. ALLARD, Mr. ASHCROFT, Mr. BENNETT, Mr. BOND, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. CAMPBELL, Mr. COCHRAN, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mr. GORTON, Mr. GRAMS, Mr. GRASSLEY, Mr. GREGG, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mrs. HUTCHISON, Mr. INHOFE, Mr. LUGAR, Mr. MCCAIN, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH of New Hampshire, Mr. SMITH of Oregon, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. THURMOND, Mr. VOINOVICH, and Mr. WARNER):

S. 300. A bill to improve access and choice of patients to quality, affordable health care; to the Committee on Finance.

PATIENTS' BILL OF RIGHTS PLUS ACT

● Mr. NICKLES. Mr. President, today I am introducing the Senate Republican Patients' Bill of Rights Plus. Joining me in this effort are 49 of my colleagues who recognize the importance of ensuring that all Americans are able to not only receive the care they have been promised, but also the highest quality of care available. The foundation of this proposal is to address some of the very real concerns that patients have about their health care needs and to provide significant opportunities for all consumers in choosing their doctors and health plans.

We know that many Americans have believed they were denied coverage that their plans were supposed to cover. We recognize that some individuals fear that their health care plans will not give them access to specialists when they need them. We know that some Americans think their health care plans care more about cost than they do about quality.

Last January, the Majority Leader asked me to put together a group of colleagues to address the issue of health care quality. For over eight months, Senators FRIST, COLLINS, HAGEL, ROTH, JEFFORDS, COATS, SANTORUM, and GRAMM worked tirelessly to put together a responsible, credible package that would preserve what is best about our nation's health care while at the same time determine ways to improve upon—without stifling—the quality of care our nation delivers. We set out to rationally examine the issues and develop reasonable solutions without injuring patient access to affordable, high quality care.

This was no easy task. We spent month after month talking to experts who understand the difficulty and complexity of our system. We met with representatives from all aspects of the industry including the Mayo Clinic, the Henry Ford Health Systems, the American Medical Association, the American Hospital Association, the National Committee for Quality Assurance, the Joint Commission on the Accreditation of Healthcare Organizations, Corporate Medical Directors, Commissioners from the President's Quality Commission, Purchasers, Families USA, the Employee Benefit Research Institute, and many others.

After many, many months of dissecting serious questions about our system, we determined that there were indeed some areas in which we could improve patient access and quality.

Together, we have written an innovative plan that will answer the problems that exist in the industry, while at the same time preserving affordability, which is of utmost importance. After all, Mr. President, I think you agree that if someone loses their health insurance because a politician playing doctor drives prices to an unaffordable level, you have hardly given them more rights or better quality health care.

We are proud of what we have been able to accomplish. For the first time, patients can choose to be unencumbered in their relationship with their doctor. They will be able to choose their own doctor and get the middle man out of the way. There will be no corporate bureaucrat, no government bureaucrat and no lawyer standing between a patient and their doctor. In addition our legislation does what no other bill has done. It provides the patient with more choice in their health plans.

Mr. President the bill we introduce today:

Protects consumers in employer-sponsored plans that are exempt from state regulation. People enrolled in such plans will have the right to:

Choose their doctors. Our bill contains both ''point-of-service'' and ''continuity of care'' requirements that will enhance consumer choice.

See their ob-gyns and pediatricians without referral. Guarantees parents and families peace of mind by giving patients direct access to pediatricians and ob-gyns without prior referral from a ''gatekeeper.''

Have a ''prudent layperson'' standard applied to their claims for emergency care. Our bill will require health plans to cover—without prior authorization—emergency care that a ''prudent layperson'' would consider medically necessary.

Communicate openly with their doctors without ''gag'' clauses.

Holds health plans accountable for their decisions.

Extends to enrollees in ERISA health plans and their doctors the right to appeal adverse coverage decisions to a physician who was not involved in the initial coverage determination.

Allows enrollees to appeal adverse coverage determinations to independent medical experts who have no affiliation with the health plan. Determinations by these experts will be binding on the health plan.

Requires health plans to disclose to enrollees consumer information, including what's covered, what's not, how much they'll have to pay in deductibles and coinsurance, and how to appeal adverse coverage decisions to independent medical experts.

Guarantees consumers access to their medical records.

Requires health care providers, health plans, employers, health and life insurers, and schools and universities to permit an individual to inspect, copy and amend his or her own medical information.

Requires health care providers, health plans, health oversight agencies, public health authorities, employers, health and life insurers, health researchers, law enforcement officials, and schools and universities to establish appropriate safeguards to protect the confidentiality, security, accuracy and integrity of protected health information and notify enrollees of these safeguards.

Protects patients from genetic discrimination in health insurance. Prohibits health plans from collecting or using predictive genetic information about a patient to deny health insurance coverage or set premium rates.

Promotes quality improvement by supporting research to give patients

and physicians better information regarding quality.

Establishes the Agency for Healthcare Quality Research (AHQR), whose purpose is to foster overall improvement in healthcare quality and bridge the gap between what we know and what we do in healthcare today. The Agency is built on the platform of the current Agency for Health Care Policy and Research, but is refocused and enhanced to become the hub and driving force of federal efforts to improve the quality of healthcare in all practice environments—not just managed care.

The role of the Agency is not to mandate a national definition of quality, but to support the science necessary to provide information to patients regarding the quality of the care they receive, to allow physicians to compare their quality outcomes with their peers, and to enable employers and individuals to be prudent purchasers based on quality.

Makes health insurance more accessible and affordable by:

Allowing self-employed people to deduct the full amount of their health care premiums.

Making medical savings accounts available to everyone.

Reforming flexibility spending accounts to let consumers save for future health care costs.

Mr. President, this bill is a comprehensive bill of rights that will benefit all Americans, and I am proud to join with so many of my colleagues in introducing it. This legislation is built around several basic principles which distinguishes it from other proposals.

First and foremost, it recognizes that regulation adds costs and not value. The legislation places a priority on ensuring that we will not increase the number of uninsured or make health care unaffordable through excessive regulation.

Second, our legislation rightly places patients ahead of trial lawyers. The inclusion of a strong, internal and external appeals provision holds HMOs accountable, while guaranteeing that patients get the care they need when they need it.

Third, our legislation protects the historic and traditional role of states to regulate private health insurance. States are best equipped to determine the needs of their citizens. Our legislation ensures that the Federal Government and HCFA will not be empowered to expand their reach into the private market. The creation of new federal bureaucracies will only serve to stagnate and destroy what is best about our health care system.

Finally, our legislation places a high priority on choice. Unlike every other proposal our bill will give every American the right to fire their HMO. Every patient will have their choice of doctor and health plan.

Our bill empowers an independent medical expert to order an insurance company to pay for medically necessary care so that patients suffer no harm. Theirs allows professional trial lawyers to sue health plans after harm is done.

Mr. President, when my insurance company tells me that they won't cover a service for my family, I want the ability to appeal that decision to a doctor who doesn't work for my insurance company. And I want that appeal handled promptly, so that my family receives the benefit. That is what our bill requires.

Other bills create new ways for trial lawyers to make money. According to a June 1998 study by Multinational Business Services, the Democrats' bill would create 56 new Federal causes of action—56 new reasons to sue people in Federal court.

That's fine for trial lawyers, but it doesn't do much for patients. Patients want their claim disputes handled promptly and fairly. According to a study by the General Accounting Office, it takes an average 25 months—more than two years—to resolve a malpractice suit. One case that the GAO studied took 11 years to resolve! I'm sure the lawyers who handled that case did quite well for themselves. But what about the patient?

Under our bill, patients can appeal directly to an outside medical expert for a prompt review of their claim—without having to incur any legal expenses. In medical malpractice litigation, patients receive an average of only 43 cents of every dollar awarded. The rest goes to lawyers and court fees.

Our bill assures that health care dollars are used to serve patients. It does not divert dollars away from patients and into the pockets of trial lawyers.

Mr. President, another big difference between our bill and others proposed is that their bill takes a ''big government'' approach to health reform.

Our bill relies on State Insurance Commissioners to protect those Americans who are enrolled in state-regulated plans. We protect the unprotected by providing new federal safeguards to the 48 million Americans who are enrolled in plans that the states are not permitted to regulate.

Another problem: Some bills impose a risky and complicated scheme that relies on federal bureaucrats at the Health Care Financing Administration (HCFA) to enforce patients' rights in states that do not conform to the federal mandates in their bill.

HCFA is the agency that oversees the federal Medicare and Medicaid programs. Last year, in the Balanced Budget Act, Congress created new consumer protections for Medicare beneficiaries—a ''Patients' Bill of Rights'' for the 38.5 million senior citizens and disabled Americans who rely on Medicare for their health care.

We asked HCFA to protect those rights. How have they done? I regret to say, Mr. President, that they have not done very well at all.

On July 16, 1998, a GAO witness testified before the Ways and Means Committee on how well HCFA was doing in implementing the Balanced Budget Act and enforcing the Medicare patients' bill of rights. According to GAO, HCFA has ''missed 25 percent of the implementation deadlines, including the quality-of-care medical review process for skilled nursing facilities. It is clear that HCFA will continue to miss implementation deadlines as it attempts to balance the resource demands generated by the Balanced Budget Act with other competing objectives.''

Mr. President, I won't detail all of the ways that HCFA has failed—the fact that it is delaying implementation of a prostate screening program to which Medicare beneficiaries are entitled, the fact that it has failed to establish a quality-of-care medical review process for skilled nursing facilities, the fact that it is far behind schedule in developing a new payment system for home health services. The list goes on and on.

But let me focus on one failure that is especially relevant. All of us agree that people have the right to information about their health plans. When they have the choice of more than one plan, accurate information that compares the plans is critical.

Last year, Congress allocated $95 million to HCFA to develop an information and education program for Medicare beneficiaries. This money was to be used for publishing and mailing handbooks containing comparative plan information to seniors, establishing a toll-free number and Internet website, and sponsoring health information fairs.

Well, there haven't been any information fairs and the toll-free number isn't operational. They do have a website, but they've decided to mail comparative information handbooks only to seniors in 5 states: Washington, Oregon, Ohio, Florida and Arizona. So for the pricey sum of $95 million, only about 5.5 million seniors will receive important information about their health plans, leaving 32.5 million seniors without these handbooks. At that rate, HCFA would need more than $1 billion each year just for handbooks.

Mr. President, if this agency is struggling to protect the rights of 38.5 million Medicare beneficiaries, how can we ask it to protect the rights of up to as many as 100 million people enrolled in private health plans?

We believe that consumer protections are too important to entrust to a cumbersome and inefficient federal government. State governments have long been in the business of insurance regulation and the federal government should not usurp their role.

One just has to look at HCFAs record on the Health Insurance and Portability and Accountability Act

(HIPAA). This Act gave HCFA enforcement authority in states that do not meet federal health standards. But how has HCFA done in the enforcement of HIPAA? A GAO report analyzing HCFA's success states that HCFA has done very little in this area. HCFA's activities, to date, have been ''limited primarily to responding to consumer queries and complaints and providing guidance'' to carriers in 4 of the 5 states that are not in compliance.

The GAO report goes on to say that even HCFA admits ''the agency has thus far pursued a ''Band Aid'' or minimalist approach to regulating HIPAA. The failure to fully address this regulatory responsibility is due to the fact that HCFA lacks the ''appropriate experience'' in the regulating of the private health insurance market.

The federal government should protect those who are enrolled in plans that are exempt from state regulation and those enrolled in the programs it runs, like Medicare and Medicaid. The federal government should start protecting the rights of senior citizens under Medicare, instead of meddling in areas where it doesn't belong.

Mr. President, our bill is a truly comprehensive bill of rights for patients, providing new consumer protections for the 48 million Americans who are unprotected by state law, giving the 124 million Americans enrolled in employer-sponsored plans new rights to appeal adverse coverage decisions, protecting the civil rights of consumers to gain access to their medical records, protecting consumers against discrimination based on genetic tests, promoting quality improvement, establishing a new women's health initiative, and giving millions of Americans access to affordable health insurance through medical savings accounts.

The doctor-patient relationship is one of the most important in people's lives. Our legislation preserves and protects that relationship, while taking many common-sense steps forward to affirm and expand quality and access.

I look forward to a deliberative, thoughtful process this year on examining the complex issues addressed in our Patients Bill of Rights PLUS. Last year, the debate surrounding this legislation was extremely politicized and resulted in a partisan standoff. That was unfortunate.

I am hopeful that the Committees will work this year to examine these issues completely and substantively. Health care costs are rising everyday, Mr. President. We must balance the need to protect patients with the need to make health care accessible. The Committees will need to examine the current trends in the market place and evaluate any legislation on all fronts, not just political rhetoric. Health care is just too important to politicize.

Mr. President, I ask unanimous consent that the text of the bill and a summary be printed in the RECORD.

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

S. 300

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 ''Patients' Bill of Rights Plus Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—PATIENTS' BILL OF RIGHTS

Subtitle A—Right to Advice and Care

SEC. 101. PATIENT RIGHT TO MEDICAL ADVICE AND CARE.

(a) IN GENERAL.—Part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended—

(1) by redesignating subpart C as subpart D; and

(2) by inserting after subpart B the following:

''Subpart C—Patient Right to Medical Advice and Care

''SEC. 721. PATIENT ACCESS TO EMERGENCY MEDICAL CARE.

''(a) IN GENERAL.—To the extent that the group health plan (other than a fully insured group health plan) provides coverage for benefits consisting of emergency medical care (as defined in subsection (c)), except for items or services specifically excluded—

''(1) the plan shall provide coverage for benefits, without requiring preauthorization, for appropriate emergency medical screening examinations (within the capability of the emergency facility, including ancillary services routinely available to the emergency facility) to the extent that a prudent

layperson, who possesses an average knowledge of health and medicine, would determine such examinations to be necessary to determine whether emergency medical care (as so defined) is necessary, and

''(2) the plan shall provide coverage for benefits for additional emergency medical care to stabilize an emergency medical condition following an emergency medical screening examination (if determined necessary under paragraph (1)), pursuant to the definition of stabilize under section 1867(e)(3) of the Social Security Act (42 U.S.C. 1395dd(e)(3)).

''(b) UNIFORM COST-SHARING REQUIRED.—Nothing in this section shall be construed as preventing a group health plan (other than a fully insured group health plan) from imposing any form of cost-sharing applicable to any participant or beneficiary (including coinsurance, copayments, deductibles, and any other charges) in relation to coverage for benefits described in subsection (a), if such form of cost-sharing is uniformly applied under such plan, with respect to similarly situated participants and beneficiaries, to all benefits consisting of emergency medical care (as defined in subsection (c)) provided to such similarly situated participants and beneficiaries under the plan.

''(c) DEFINITION OF EMERGENCY MEDICAL CARE.—In this section:

''(1) IN GENERAL.—The term ''emergency medical care'' means, with respect to a participant or beneficiary under a group health plan (other than a fully insured group health plan), covered inpatient and outpatient services that—

''(A) are furnished by any provider, including a nonparticipating provider, that is qualified to furnish such services; and

''(B) are needed to evaluate or stabilize (as such term is defined in section 1867(e)(3) of the Social Security Act (42 U.S.C. 1395dd)) an emergency medical condition (as defined in paragraph (2)).

''(2) EMERGENCY MEDICAL CONDITION.—The term ''emergency medical condition'' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

''(A) placing the health of the participant or beneficiary (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

''(B) serious impairment to bodily functions, or

''(C) serious dysfunction of any bodily organ or part.

''SEC. 722. OFFERING OF CHOICE OF COVERAGE OPTIONS.

''(a) REQUIREMENT.—

''(1) OFFERING OF POINT-OF-SERVICE COVERAGE OPTION.—Except as provided in paragraph (2), if a group health plan (other than a fully insured group health plan) provides coverage for benefits only through a defined set of participating health care professionals, the plan shall offer the participant the option to purchase point-of-service coverage (as defined in subsection (b)) for all such benefits for which coverage is otherwise so limited. Such option shall be made available to the participant at the time of enrollment under the plan and at such other times as the plan offers the participant a choice of coverage options.

''(2) EXCEPTION IN THE CASE OF MULTIPLE ISSUER OR COVERAGE OPTIONS.—Paragraph (1) shall not apply with respect to a participant in a group health plan (other than a fully insured group health plan) if the plan offers the participant—

''(A) a choice of health insurance coverage through more than one health insurance issuer; or

''(B) two or more coverage options that differ significantly with respect to the use of participating health care professionals or the networks of such professionals that are used.

''(b) POINT-OF-SERVICE COVERAGE DEFINED.—In this section, the term 'point-of-service coverage' means, with respect to benefits covered under a group health plan (other than a fully insured group health plan), coverage of such benefits when provided by a nonparticipating health care professional.

''(c) SMALL EMPLOYER EXEMPTION.—

''(1) IN GENERAL.—This section shall not apply to any group health plan (other than a fully insured group health plan) of a small employer.

''(2) SMALL EMPLOYER.—For purposes of paragraph (1), the term 'small employer' means, in connection with a group health plan (other than a fully insured group health plan) with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year. For purposes of this paragraph, the provisions of subparagraph (C) of section 712(c)(1) shall apply in determining employer size.

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as requiring coverage for benefits for a particular type of health care professional;

''(2) as requiring an employer to pay any costs as a result of this section or to make equal contributions with respect to different health coverage options;

''(3) as preventing a group health plan (other than a fully insured group health plan) from imposing higher premiums or cost-sharing on a participant for the exercise of a point-of-service coverage option; or

''(4) to require that a group health plan (other than a fully insured group health plan) include coverage of health care professionals that the plan excludes because of fraud, quality of care, or other similar reasons with respect to such professionals.

''SEC. 723. PATIENT ACCESS TO OBSTETRIC AND GYNECOLOGICAL CARE.

''(a) IN GENERAL.—In any case in which a group health plan (other than a fully insured group health plan)—

''(1) provides coverage for benefits consisting of—

''(A) gynecological care (such as preventive women's health examinations); or

''(B) obstetric care (such as pregnancy-related services);

provided by a participating physician who specializes in such care; and

''(2) requires or provides for designation by a participant or beneficiary of a participating primary care provider;

if the primary care provider designated by such a participant or beneficiary is not such a physician as described in paragraph (1), then the plan shall meet the requirements of subsection (b).

''(b) REQUIREMENTS.—A group health plan (other than a fully insured group health plan) meets the requirements of this subsection, in connection with the coverage of benefits described in subsection (a) consisting of care described in subparagraph (A) or (B) of subsection (a)(1), if the plan—

''(1) does not require authorization or a referral by the primary care provider in order to obtain coverage for such benefits, and

''(2) treats the ordering of other routine care related to the care described in subparagraph (A) or (B) of subsection (a)(1), by the participating physician providing the care described in either such subparagraph, as the authorization of the primary care provider with respect to such care.

''(c) RULE OF CONSTRUCTION.—Nothing in subsection (b)(2) shall waive any requirements of coverage relating to medical necessity or appropriateness with respect to coverage of gynecological or obstetric care so ordered. Nothing in subsection (b) shall be construed to preclude the health plan from requiring that the obstetrician or gynecologist notify the primary care provider or the plan of treatment decisions.

''SEC. 724. PATIENT ACCESS TO PEDIATRIC CARE.

''(a) IN GENERAL.—In any case in which a group health plan (other than a fully insured group health plan)—

''(1) provides coverage for benefits consisting of pediatric care by a participating pediatrician; and

''(2) requires or provides for designation by a participant or beneficiary of a participating primary care provider;

if the primary care provider designated by such a participant or beneficiary is not a physician as described in paragraph (1), then the plan shall meet the requirements of subsection (b).

''(b) REQUIREMENTS.—A group health plan (other than a fully insured group health plan) meets the requirements of this subsection, in connection with the coverage of benefits described in subsection (a) consisting of care described in subsection (a)(1), if the plan—

''(1) does not require authorization or a referral by the primary care provider in order to obtain coverage for such benefits, and

''(2) treats the ordering of other routine care of the same type, by the participating physician providing the care described in subsection (a)(1), as the authorization of the primary care provider with respect to such care.

''(c) CONSTRUCTION.—Nothing in subsection (b)(2) shall waive any requirements of coverage relating to medical necessity or appropriateness with respect to coverage of pediatric care so ordered.

''SEC. 725. CONTINUITY OF CARE.

''(a) IN GENERAL.—

''(1) TERMINATION OF PROVIDER.—If a contract between a group health plan (other than a fully insured group health plan) and a health care provider is terminated (as defined in paragraph (2)), or benefits or coverage provided by a health care provider are terminated because of a change in the terms of provider participation in such group health plan, and an individual who is a participant or beneficiary in the plan is undergoing a course of treatment from the provider at the time of such termination, the plan shall—

''(A) notify the individual on a timely basis of such termination;

''(B) provide the individual with an opportunity to notify the plan of a need for transitional care; and

''(C) in the case of termination described in paragraph (2), (3), or (4) of subsection (b), and subject to subsection (c), permit the individual to continue or be covered with respect to the course of treatment with the provider's consent during a transitional period (as provided under subsection (b)).

''(2) TERMINATED.—In this section, the term 'terminated' includes, with respect to a

contract, the expiration or nonrenewal of the contract by the group health plan, but does not include a termination of the contract by the plan for failure to meet applicable quality standards or for fraud.

''(3) CONTRACTS.—For purposes of this section, the term 'contract between a group health plan (other than a fully insured group health plan) and a health care provider' shall include a contract between such a plan and an organized network of providers.

''(b) TRANSITIONAL PERIOD.—

''(1) GENERAL RULE.—Except as provided in paragraph (3), the transitional period under this subsection shall extend for up to 90 days from the date of the notice described in subsection (a)(1)(A) of the provider's termination.

''(2) INSTITUTIONAL CARE.—Subject to paragraph (1), the transitional period under this subsection for institutional or inpatient care from a provider shall extend until the discharge or termination of the period of institutionalization and also shall include institutional care provided within a reasonable time of the date of termination of the provider status if the care was scheduled before the date of the announcement of the termination of the provider status under subsection (a)(1)(A) or if the individual on such date was on an established waiting list or otherwise scheduled to have such care.

''(3) PREGNANCY.—Notwithstanding paragraph (1), if—

''(A) a participant or beneficiary has entered the second trimester of pregnancy at the time of a provider's termination of participation; and

''(B) the provider was treating the pregnancy before the date of the termination;

the transitional period under this subsection with respect to provider's treatment of the pregnancy shall extend through the provision of post-partum care directly related to the delivery.

''(4) TERMINAL ILLNESS.—Subject to paragraph (1), if—

''(A) a participant or beneficiary was determined to be terminally ill (as determined under section 1861(dd)(3)(A) of the Social Security Act) prior to a provider's termination of participation; and

''(B) the provider was treating the terminal illness before the date of termination;

the transitional period under this subsection shall be for care directly related to the treatment of the terminal illness.

''(c) PERMISSIBLE TERMS AND CONDITIONS.—A group health plan (other than a fully insured group health plan) may condition coverage of continued treatment by a provider under subsection (a)(1)(B) upon the provider agreeing to the following terms and conditions:

''(1) The provider agrees to accept reimbursement from the plan and individual involved (with respect to cost-sharing) at the rates applicable prior to the start of the transitional period as payment in full (or, in the case described in subsection (b)(2), at the rates applicable under the replacement plan after the date of the termination of the contract with the group health plan) and not to impose cost-sharing with respect to the individual in an amount that would exceed the cost-sharing that could have been imposed if the contract referred to in subsection (a)(1) had not been terminated.

''(2) The provider agrees to adhere to the quality assurance standards of the plan responsible for payment under paragraph (1) and to provide to such plan necessary medical information related to the care provided.

''(3) The provider agrees otherwise to adhere to such plan's policies and procedures, including procedures regarding referrals and obtaining prior authorization and providing services pursuant to a treatment plan (if any) approved by the plan.

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the coverage of benefits which would not have been covered if the provider involved remained a participating provider.

''(e) DEFINITION.—In this section, the term 'health care provider' or 'provider' means—

''(1) any individual who is engaged in the delivery of health care services in a State and who is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State; and

''(2) any entity that is engaged in the delivery of health care services in a State and that, if it is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, is so licensed.

''SEC. 726. PROTECTION OF PATIENT-PROVIDER COMMUNICATIONS.

''(a) IN GENERAL.—Subject to subsection (b), a group health plan (other than a fully insured group health plan and in relation to a participant or beneficiary) shall not prohibit or otherwise restrict a health care professional from advising such a participant or beneficiary who is a patient of the professional about the health status of the participant or beneficiary or medical care or treatment for the condition or disease of the participant or beneficiary, regardless of whether coverage for such care or treatment are provided under the contract, if the professional is acting within the lawful scope of practice.

''(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as requiring a group health plan (other than a fully insured group health plan) to provide specific benefits under the terms of such plan.

''SEC. 727. GENERALLY APPLICABLE PROVISION.

''In the case of a group health plan that provides benefits under 2 or more coverage options, the requirements of sections 721, 723, 724, 725 and 726 shall apply separately with respect to each coverage option.''.

(b) RULE WITH RESPECT TO CERTAIN PLANS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, health insurance issuers may offer, and eligible individuals may purchase, high deductible health plans described in section 220(c)(2)(A) of the Internal Revenue Code of 1986. Effective for the 4-year period beginning on the date of the enactment of this Act, such health plans shall not be required to provide payment for any health care items or services that are exempt from the plan's deductible.

(2) EXISTING STATE LAWS.—A State law relating to payment for health care items and services in effect on the date of enactment of this Act that is preempted under paragraph (1), shall not apply to high deductible health plans after the expiration of the 4-year period described in such paragraph unless the State reenacts such law after such period.

(c) DEFINITION.—Section 733(a) of the Employee Retirement Income Security Act of 1974 (42 U.S.C. 1186(a)) is amended by adding at the end the following:

''(3) FULLY INSURED GROUP HEALTH PLAN.—The term 'fully insured group health plan' means a group health plan where benefits are provided pursuant to the terms of an arrangement between a group health plan and a health insurance issuer and are guaranteed by the health insurance issuer under a contract or policy of insurance.''.

(d) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended—

(1) in the item relating to subpart C, by striking ''Subpart C'' and inserting ''Subpart D''; and

(2) by adding at the end of the items relating to subpart B of part 7 of subtitle B of title I of such Act the following new items:

''SUBPART C—PATIENT RIGHT TO MEDICAL ADVICE AND CARE

''Sec. 721. Patient access to emergency medical care.
''Sec. 722. Offering of choice of coverage options.
''Sec. 723. Patient access to obstetric and gynecological care.
''Sec. 724. Patient access to pediatric care.
''Sec. 725. Continuity of care.
''Sec. 726. Protection of patient-provider communications.
''Sec. 727. Generally applicable provisions.''.

SEC. 102. EFFECTIVE DATE AND RELATED RULES.

(a) IN GENERAL.—The amendments made by this subtitle shall apply with respect to plan years beginning on or after January 1 of the second calendar year following the date of the enactment of this Act. The Secretary shall issue all regulations necessary to carry out the amendments made by this section before the effective date thereof.

(b) LIMITATION ON ENFORCEMENT ACTIONS.—No enforcement action shall be taken, pursuant to the amendments made by this subtitle, against a group health plan with respect to a violation of a requirement imposed by such amendments before the date of issuance of regulations issued in connection with such requirement, if the plan has sought to comply in good faith with such requirement.

Subtitle B—Right to Information About Plans and Providers

SEC. 111. INFORMATION ABOUT PLANS.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277), is amended by adding at the end the following:

''SEC. 714. HEALTH PLAN COMPARATIVE INFORMATION.

''(a) REQUIREMENT.—A group health plan, or health insurance issuer in connection with group health insurance coverage, shall, not later than 12 months after the date of enactment of this section, provide for the disclosure, in a clear and accurate form to each enrollee, or upon request to a potential enrollee eligible to receive benefits under the plan, or plan sponsor with which the plan or issuer has contracted, of the information described in subsection (b).

''(b) REQUIRED INFORMATION.—The informational materials to be distributed under this section shall include for each health benefit plan the following:

''(1) A description of the covered items and services under each such plan and any in- and out-of-network features of each such plan.

''(2) A description of any cost-sharing, including premiums, deductibles, coinsurance, and copayment amounts, for which the enrollee will be responsible, including any annual or lifetime limits on benefits, for each such plan.

''(3) A description of any optional supplemental benefits offered by each such plan and the terms and conditions (including premiums or cost-sharing) for such supplemental coverage.

''(4) A description of any restrictions on payments for services furnished to an enrollee by a health care professional that is not a participating professional and the liability of the enrollee for additional payments for these services.

''(5) A description of the service area of each such plan, including the provision of any out-of-area coverage.

''(6) A description of the extent to which enrollees may select the primary care provider of their choice, including providers both within the network and outside the network of each such plan (if the plan permits out-of-network services).

''(7) A description of the procedures for advance directives and organ donation decisions if the plan maintains such procedures.

''(8) A description of the requirements and procedures to be used to obtain preauthorization for health services (including telephone numbers and mailing addresses), including referrals for specialty care.

''(9) A summary of the rules and methods for appealing coverage decisions and filing grievances (including telephone numbers and mailing addresses), as well as other available remedies.

''(10) A summary of the rules for access to emergency room care. Also, any available educational material regarding proper use of emergency services.

''(11) A description of whether or not coverage is provided for experimental treatments, investigational treatments, or clinical trials and the circumstances under which access to such treatments or trials is made available.

''(12) A description of the specific preventative services covered under the plan if such services are covered.

''(13) A statement regarding—

''(A) the manner in which an enrollee may access an obstetrician, gynecologist, or pediatrician in accordance with section 723 or 724;

''(B) the manner in which an enrollee obtains continuity of care as provided for in section 725; and

''(C) the manner in which an enrollee has access to the medical records of the enrollee in accordance with subtitle A of title II of the Patients' Bill of Rights Plus Act.

''(14) A statement that the following information, and instructions on obtaining such information (including telephone numbers and, if available, Internet websites), shall be made available upon request:

''(A) The names, addresses, telephone numbers, and State licensure status of the plan's participating health care professionals and participating health care facilities, and, if available, the education, training, speciality qualifications or certifications of such professionals.

''(B) A summary description of the methods used for compensating participating health care professionals, such as capitation, fee-for-service, salary, or a combination thereof. The requirement of this subparagraph shall not be construed as requiring plans to provide information concerning proprietary payment methodology.

''(C) A summary description of the methods used for compensating health care facilities, including per diem, fee-for-service, capitation, bundled payments, or a combination thereof. The requirement of this subparagraph shall not be construed as requiring plans to provide information concerning proprietary payment methodology.

''(D) A summary description of the procedures used for utilization review.

''(E) The list of the specific prescription medications included in the formulary of the plan, if the plan uses a defined formulary, and any provision for obtaining off-formulary medications.

''(F) A description of the specific exclusions from coverage under the plan.

''(G) Any available information related to the availability of translation or interpretation services for non-English speakers and people with communication disabilities, including the availability of audio tapes or information in Braille.

''(H) Any information that is made public by accrediting organizations in the process of accreditation if the plan is accredited, or any additional quality indicators that the plan makes available.

''(c) MANNER OF DISTRIBUTION.—

''(1) IN GENERAL.—The information described in this section shall be distributed in an accessible format that is understandable to an average plan enrollee.

''(2) RULE OF CONSTRUCTION.—For purposes of this section, a group health plan, or health insurance issuer in connection with group health insurance coverage, in reliance on records maintained by the plan or issuer, shall be deemed to have met the requirements of this section if the plan or issuer provides the information requested under this section—

''(A) in the case of the plan, to participants and beneficiaries at the address contained in such records with respect to such participants and beneficiaries; or

''(B) in the case of the issuer, to the employer of a participant if the employer provides for the coverage of such participant under the plan involved or to participants and beneficiaries at the address contained in such records with respect to such participants and beneficiaries.

''(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to prohibit a group health plan, or health insurance issuer in connection with group health insurance coverage, from distributing any other additional information determined by the plan or issuer to be important or necessary in assisting participants and beneficiaries enrollees or upon request potential participants in the selection of a health plan or from providing information under subsection (b)(13) as part of the required information.

''(e) HEALTH CARE PROFESSIONAL.—In this section, the term 'health care professional' means a physician (as defined in section 1861(r) of the Social Security Act) or other health care professional if coverage for the professional's services is provided under the health plan involved for the services of the professional. Such term includes a podiatrist, optometrist, chiropractor, psychologist, dentist, physician assistant, physical or occupational therapist and therapy assistant, speech-language pathologist, audiologist, registered or licensed practical nurse (including nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, and certified nurse-midwife), licensed certified social worker, registered respiratory therapist, and certified respiratory therapy technician.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185(a)) is amended by striking ''section 711, and inserting ''sections 711 and 714''.

(2) The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001) is amended by inserting after the item relating to section 713, the following:

''Sec. 714. Health plan comparative information.''.

SEC. 112. INFORMATION ABOUT PROVIDERS.

(a) STUDY.—The Secretary of Health and Human Services shall enter into a contract with the Institute of Medicine for the conduct of a study, and the submission to the Secretary of a report, that includes—

(1) an analysis of information concerning health care professionals that is currently available to patients, consumers, States, and professional societies, nationally and on a State-by-State basis, including patient preferences with respect to information about such professionals and their competencies;

(2) an evaluation of the legal and other barriers to the sharing of information concerning health care professionals; and

(3) recommendations for the disclosure of information on health care professionals, including the competencies and professional qualifications of such practitioners, to better facilitate patient choice, quality improvement, and market competition.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall forward to the appropriate committees of Congress a copy of the report and study conducted under subsection (a).

Subtitle C—Right to Hold Health Plans Accountable

SEC. 121. AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Section 503 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1133) is amended to read as follows:

''SEC. 503. CLAIMS PROCEDURE, COVERAGE DETERMINATION, GRIEVANCES AND APPEALS.

''(a) CLAIMS PROCEDURE.—In accordance with regulations of the Secretary, every employee benefit plan shall—

''(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

''(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

''(b) COVERAGE DETERMINATIONS UNDER GROUP HEALTH PLANS.—

''(1) PROCEDURES.—

''(A) IN GENERAL.—A group health plan or health insurance issuer conducting utilization review shall ensure that procedures are in place for—

''(i) making determinations regarding whether an enrollee is eligible to receive a payment or coverage for health services under the plan or coverage involved and any cost-sharing amount that the enrollee is required to pay with respect to such service;

''(ii) notifying covered enrollees (or the legal representative of such enrollees) and the treating health care professionals involved regarding determinations made under the plan or issuer and any additional payments that the enrollee may be required to make with respect to such service; and

''(iii) responding to requests, either written or oral, for coverage determinations or for internal appeals from an enrollee (or the legal representative of such enrollee) or the treating health care professional.

''(B) ORAL REQUESTS.—With respect to an oral request described in subparagraph (A)(iii), a group health plan or health insurance issuer may require that the requesting individual provide written evidence of such request.

''(2) TIMELINE FOR MAKING DETERMINATIONS.—

''(A) ROUTINE DETERMINATION.—A group health plan or a health insurance issuer shall maintain procedures to ensure that prior authorization determinations concerning the provision of non-emergency items or services are made within 30 days from the date on which the request for a determination is submitted, except that such period may be extended where certain circumstances exist that are determined by the Secretary to be beyond control of the plan or issuer.

''(B) EXPEDITED DETERMINATION.—

''(i) IN GENERAL.—A prior authorization determination under this subsection shall be made within 72 hours after a request is received by the plan or issuer under clause (ii) or (iii).

''(ii) REQUEST BY ENROLLEE.—A plan or issuer shall maintain procedures for expediting a prior authorization determination under this subsection upon the request of an enrollee if, based on such a request, the plan or issuer determines that the normal time for making such a determination could seriously jeopardize the life or health of the enrollee.

''(iii) DOCUMENTATION BY HEALTH CARE PROFESSIONAL.—A plan or issuer shall maintain procedures for expediting a prior authorization determination under this subsection if the request involved indicates that the treating health care professional has documented, based on the medical exigencies, that a determination under the procedures described in subparagraph (A) could seriously jeopardize the life or health of the enrollee.

''(C) CONCURRENT DETERMINATIONS.—A plan or issuer shall maintain procedures to certify or deny coverage of an extended stay or additional services.

''(D) RETROSPECTIVE DETERMINATION.—A plan or issuer shall maintain procedures to ensure that, with respect to the retrospective review of a determination made under paragraph (1), the determination shall be made within 30 working days of the date on which the plan or issuer receives all necessary information.

''(3) NOTICE OF DETERMINATIONS.—

''(A) ROUTINE DETERMINATION.—With respect to a coverage determination of a plan or issuer under paragraph (2)(A), the plan or issuer shall issue notice of such determination to the enrollee (or the legal representative of the enrollee), and consistent with the medical exigencies of the case, to the treating health care professional involved not later than 2 working days after the date on which the determination is made.

''(B) EXPEDITED DETERMINATION.—With respect to a coverage determination of a plan or issuer under paragraph (2)(B), the plan or issuer shall issue notice of such determination to the enrollee (or the legal representative of the enrollee), and consistent with the medical exigencies of the case, to the treating health care professional involved within the 72 hour period described in paragraph (2)(B).

''(C) CONCURRENT REVIEWS.—With respect to the determination under a plan or issuer under paragraph (1) to certify or deny coverage of an extended stay or additional services, the plan or issuer shall issue notice of such determination to the treating health care professional and to the enrollee involved (or the legal representative of the enrollee) within 1 working day of the date on which the initial notice was issued.

''(D) RETROSPECTIVE REVIEWS.—With respect to the retrospective review under a plan or issuer of a determination made under paragraph (1), a determination shall be made within 30 working days of the date on which the plan or issuer receives all necessary information. The plan or issuer shall issue written notice of an approval or disapproval of a determination under this subparagraph to the enrollee (or the legal representative of the enrollee) and health care provider involved within 5 working days of the date on which such determination is made.

''(E) REQUIREMENTS OF NOTICE OF ADVERSE COVERAGE DETERMINATIONS.—A written or electronic notice of an adverse coverage determination under this subsection, or of an expedited adverse coverage determination under paragraph (2)(B), shall be provided to the enrollee (or the legal representative of the enrollee) and treating health care professional (if any) involved and shall include—

''(i) the reasons for the determination (including the clinical or scientific-evidence based rationale used in making the determination) written in a manner to be understandable to the average enrollee;

''(ii) the procedures for obtaining additional information concerning the determination; and

''(iii) notification of the right to appeal the determination and instructions on how to initiate an appeal in accordance with subsection (d).

''(c) GRIEVANCES.—A group health plan or a health insurance issuer shall have written procedures for addressing grievances between the plan and enrollees. Determinations under such procedures shall be non-appealable.

''(d) INTERNAL APPEAL OF COVERAGE DETERMINATIONS.—

''(1) IN GENERAL.—An enrollee (or the legal representative of the enrollee) and the treating health care professional with the consent of the enrollee (or the legal representative of the enrollee), may appeal any adverse coverage determination under subsection (b) under the procedures described in this subsection.

''(2) RECORDS.—A group health plan and a health insurance issuer shall maintain written records, for at least 6 years, with respect to any appeal under this subsection for purposes of internal quality assurance and improvement.

''(3) ROUTINE DETERMINATIONS.—A group health plan or a health insurance issuer shall provide for the consideration of an appeal of an adverse routine determination under this subsection not later than 30 working days after the date on which a request for such appeal is received.

''(4) EXPEDITED DETERMINATION.—

''(A) IN GENERAL.—An expedited determination with respect to an appeal under this subsection shall be made in accordance with the medical exigencies of the case, but in no case more than 72 hours after the request for such appeal is received by the plan or issuer under subparagraph (B) or (C).

''(B) REQUEST BY ENROLLEE.—A plan or issuer shall maintain procedures for expediting a prior authorization determination under this subsection upon the request of an enrollee if, based on such a request, the plan or issuer determines that the normal time for making such a determination could seriously jeopardize the life or health of the enrollee.

''(C) DOCUMENTATION BY HEALTH CARE PROFESSIONAL.—A plan or issuer shall maintain procedures for expediting a prior authorization determination under this subsection if the request involved indicates that the treating health care professional has documented, based on the medical exigencies that a determination under the procedures described in paragraph (2) could seriously jeopardize the life or health of the enrollee.

''(5) CONDUCT OF REVIEW.—A review of an adverse coverage determination under this subsection shall be conducted by an individual with appropriate expertise who was not involved in the initial determination.

''(6) LACK OF MEDICAL NECESSITY.—A review of an appeal under this subsection relating to a determination to deny coverage based on a lack of medical necessity or appropriateness, or based on an experimental or investigational treatment, shall be made only by a physician with appropriate expertise in the field of medicine involved who was not involved in the initial determination.

''(7) NOTICE.—

''(A) IN GENERAL.—Written notice of a determination made under an internal review process shall be issued to the enrollee (or the legal representative of the enrollee) and the treating health care professional not later than 2 working days after the completion of the review (or within the 72-hour period referred to in paragraph (4) if applicable).

''(B) ADVERSE COVERAGE DETERMINATIONS.—With respect to an adverse coverage determination made under this subsection, the notice described in subparagraph (A) shall include—

''(i) the reasons for the determination (including the clinical or scientific-evidence based rationale used in making the determination) written in a manner to be understandable to the average enrollee;

''(ii) the procedures for obtaining additional information concerning the determination; and

''(iii) notification of the right to an external review under subsection (e) and instructions on how to initiate such a review.

''(e) EXTERNAL REVIEW.—

''(1) IN GENERAL.—A group health plan or a health insurance issuer shall have written procedures to permit an enrollee (or the legal representative of the enrollee) access to an external review with respect to a coverage determination concerning a particular item or service where—

''(A) the particular item or service involved, when medically appropriate and necessary, is a covered benefit under the terms and conditions of the contract between the plan or issuer and the enrollee;

''(B) the coverage determination involved denied coverage for such item or service because the provision of such item or service—

''(i) does not meet the plan's or issuer's requirements for medical appropriateness or necessity and the amount involved exceeds a significant financial threshold; or

''(ii) would constitute experimental or investigational treatment and there is a significant risk of placing the life or health of the enrollee in jeopardy; and

''(C) the enrollee has completed the internal appeals process with respect to such determination.

''(2) INITIATION OF THE EXTERNAL REVIEW PROCESS.—

''(A) FILING OF REQUEST.—An enrollee (or the legal representative of the enrollee) who desires to have an external review conducted under this subsection shall file a written request for such a review with the plan or issuer involved not later than 30 working days after the receipt of a final denial of a claim under subsection (d). Any such request shall include the consent of the enrollee (or the legal representative of the enrollee) for the release of medical information and records to external reviewers regarding the

enrollee if such information is necessary for the proper conduct of the external review.

''(B) INFORMATION AND NOTICE.—Not later than 5 working days after the receipt of a request under subparagraph (A), or earlier in accordance with the medical exigencies of the case, the plan or issuer involved shall select an external appeals entity under paragraph (3)(A) that shall be responsible for designating an external reviewer under paragraph (3)(B).

''(C) PROVISION OF INFORMATION.—The plan or issuer involved shall forward all necessary information (including medical records, any relevant review criteria, the clinical rationale consistent with the terms and conditions of the contract between the plan or issuer and the enrollee for the coverage denial, and evidence of the enrollee's coverage) to the external reviewer selected under paragraph (3)(B).

''(D) NOTIFICATION.—The plan or issuer involved shall send a written notification to the enrollee (or the legal representative of the enrollee) and the plan administrator, indicating that an external review has been initiated.

''(3) CONDUCT OF EXTERNAL REVIEW.—

''(A) DESIGNATION OF EXTERNAL APPEALS ENTITY BY PLAN OR ISSUER.—A plan or issuer that receives a request for an external review under paragraph (2)(A) shall designate one of the following entities to serve as the external appeals entity:

''(i) An external review entity licensed or credentialed by a State.

''(ii) A State agency established for the purpose of conducting independent external reviews.

''(iii) Any entity under contract with the Federal Government to provide external review services.

''(iv) Any entity accredited as an external review entity by an accrediting body recognized by the Secretary for such purpose.

''(v) Any fully accredited teaching hospital.

''(vi) Any other entity meeting criteria established by the Secretary for purposes of this subparagraph.

''(B) DESIGNATION OF EXTERNAL REVIEWER BY EXTERNAL APPEALS ENTITY.—The external appeals entity designated under subparagraph (A) shall, not later than 30 days after the date on which such entity is designated under subparagraph (A), or earlier in accordance with the medical exigencies of the case, designate one or more individuals to serve as external reviewers with respect to a request received under paragraph (2)(A). Such reviewers shall be independent medical experts who shall—

''(i) be appropriately credentialed or licensed in any State to deliver health care services;

''(ii) not have any material, professional, familial, or financial affiliation with the case under review, the enrollee involved, the treating health care professional, the institution where the treatment would take place, or the manufacturer of any drug, device, procedure, or other therapy proposed for the enrollee whose treatment is under review;

''(iii) be experts in the diagnosis or treatment under review and, when reasonably available, be of the same speciality of the physician prescribing the treatment in question;

''(iv) receive only reasonable and customary compensation from the group health plan or health insurance issuer in connection with the external review that is not contingent on the decision rendered by the reviewer; and

''(v) not be held liable for decisions regarding medical determinations (but may be held liable for actions that are arbitrary and capricious).

''(4) STANDARD OF REVIEW.—

''(A) IN GENERAL.—An external reviewer shall—

''(i) make a determination based on the medical necessity, appropriateness, experimental or investigational nature of the coverage denial;

''(ii) take into consideration any evidence-based decision making or clinical practice guidelines used by the group health plan or health insurance issuer in conducting utilization review; and

''(iii) submit a report on the final determinations of the review involved to—

''(I) the plan or issuer involved;

''(II) the enrollee involved (or the legal representative of the enrollee); and

''(III) the health care professional involved.

''(B) NOTICE.—The plan or issuer involved shall ensure that the enrollee receives notice, within 30 days after the determination of the independent medical expert, regarding the actions of the plan or issuer with respect to the determination of such expert under the external review.

''(5) TIMEFRAME FOR REVIEW.—

''(A) IN GENERAL.—An external reviewer shall complete a review of an adverse coverage determination in accordance with the medical exigencies of the case.

''(B) LIMITATION.—Notwithstanding subparagraph (A), a review described in such subparagraph shall be completed not later than 30 working days after the later of—

''(i) the date on which such reviewer is designated; or

''(ii) the date on which all information necessary to completing such review is received.

''(6) BINDING DETERMINATION.—The determination of an external reviewer under this subsection shall be binding upon the plan or issuer if the provisions of this subsection or the procedures implemented under such provisions were complied with by the external reviewer.

''(7) STUDY.—Not later than 2 years after the date of enactment of this section, the General Accounting Office shall conduct a study of a statistically appropriate sample of completed external reviews. Such study shall include an assessment of the process involved during an external review and the basis of decisionmaking by the external reviewer. The results of such study shall be submitted to the appropriate committees of Congress.

''(8) EFFECT ON CERTAIN PROVISIONS.—Nothing in this section shall be construed as affecting or modifying section 514 of this Act with respect to a group health plan.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a plan administrator or plan fiduciary or health plan medical director from requesting an external review by an external reviewer without first completing the internal review process.

''(g) DEFINITIONS.—In this section:

''(1) ADVERSE COVERAGE DETERMINATION.—The term 'adverse coverage determination' means a coverage determination under the plan which results in a denial of coverage or reimbursement.

''(2) COVERAGE DETERMINATION.—The term 'coverage determination' means with respect to items and services for which coverage may be provided under a health plan, a determination of whether or not such items and services are covered or reimbursable under the coverage and terms of the contract.

''(3) ENROLLEE.—The term enrollee means a participant or beneficiary.

''(4) GRIEVANCE.—The term 'grievance' means any enrollee complaint that does not involve a coverage determination.

''(5) GROUP HEALTH PLAN.—The term 'group health plan' shall have the meaning given such term in section 733(a). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

''(6) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning given such term in section 733(b)(1). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

''(7) HEALTH INSURER.—The term 'health insurer' means an insurance company, insurance service, or an insurance organization that meets the requirements of section 733(b)(2) and that offers health insurance coverage in connection with a group health plan.

''(8) PRIOR AUTHORIZATION DETERMINATION.—The term 'prior authorization determination' means a coverage determination prior to the provision of the items and services as a condition of coverage of the items and services under the coverage.

''(9) TREATING HEALTH CARE PROFESSIONAL.—The term 'treating health care professional' with respect to a group health plan, health insurance issuer or provider sponsored organization means a practitioner who is acting within the scope of their State licensure or certification for the delivery of health care services and who is primarily responsible for delivering those services to the enrollee.

''(10) UTILIZATION REVIEW.—The term 'utilization review' with respect to a group health plan or health insurance coverage means a set of formal techniques designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning or retrospective review.''

(b) ENFORCEMENT.—Section 502(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(1)) is amended by inserting after ''or section 101(e)(1)'' the following: '', or fails to comply with a coverage determination as required under section 503(e)(6),''.

(c) CONFORMING AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by striking the item relating to section 503 and inserting the following new item:

''Sec. 503. Claims procedures, coverage determination, grievances and appeals.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning on or after 1 year after the date of enactment of this Act. The Secretary shall issue all regulations necessary to carry out the amendments made by this section before the effective date thereof.

Subtitle D—Miscellaneous Provisions

SEC. 131. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

Subchapter B of chapter 100 of the Internal Revenue Code of 1986 (as amended by section 1531(a) of the Taxpayer Relief Act of 1997) is amended—

(1) in the table of sections, by inserting after the item relating to section 9812 the following new item:

''Sec. 9813. Standard relating to Patients' bill of rights.''; and

(2) by inserting after section 9812 the following:

''SEC. 9813. STANDARD RELATING TO PATIENTS' BILL OF RIGHTS.

''A group health plan shall comply with the requirements of section 714 and subpart C of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as in effect as of the date of the enactment of the Patients' Bill of Rights Plus Act), and such requirements shall be deemed to be incorporated into this section.''.

TITLE II—INDIVIDUAL RIGHTS WITH RESPECT TO PERSONAL MEDICAL INFORMATION

SEC. 201. SHORT TITLE.

This title may be cited as the ''Personal Medical Information Access Act''.

Subtitle A—Access to Medical Records

SEC. 211. INSPECTION AND COPYING OF PROTECTED HEALTH INFORMATION.

(a) IN GENERAL.—At the request of an individual and except as provided in subsection (b), a health care provider, health plan, employer, health or life insurer, school, or university shall permit an individual who is the subject of protected health information or the individual's designee, to inspect and copy protected health information concerning the individual, including records created under section 212 that such entity maintains. Such entity may set forth appropriate procedures to be followed for such inspection or copying and may require an individual to pay reasonable costs associated with such inspection or copying.

(b) EXCEPTIONS.—Unless ordered by a court of competent jurisdiction, an entity described in subsection (a) is not required to permit the inspection or copying of protected health information if any of the following conditions are met:

(1) ENDANGERMENT TO LIFE OR SAFETY.—The entity determines that the disclosure of the information could reasonably be expected to endanger the life or physical safety of an individual.

(2) CONFIDENTIAL SOURCE.—The information identifies, or could reasonably lead to the identification of, a person who provided information under a promise of confidentiality concerning the individual who is the subject of the information.

(3) INFORMATION COMPILED IN ANTICIPATION OF LITIGATION.—The information is compiled principally—

(A) in the reasonable anticipation of a civil, criminal, or administrative action or proceeding; or

(B) for use in such an action or proceeding.

(4) RESEARCH PURPOSES.—The information was collected for a research project monitored by an institutional review board, such project is not complete, and the researcher involved reasonably believes that access to such information would harm the conduct of the research or invalidate or undermine the validity of the research.

(c) DENIAL OF A REQUEST FOR INSPECTION OR COPYING.—If an entity described in subsection (a) denies a request for inspection or copying pursuant to subsection (b), the entity shall inform the individual in writing of—

(1) the reasons for the denial of the request for inspection or copying;

(2) any procedures for further review of the denial; and

(3) the individual's right to file with the entity a concise statement setting forth the request for inspection or copying.

(d) STATEMENT REGARDING REQUEST.—If an individual has filed a statement under subsection (c)(3), the entity in any subsequent disclosure of the portion of the information requested under subsection (a) shall include—

(1) a copy of the individual's statement; and

(2) a concise statement of the reasons for denying the request for inspection or copying.

(e) INSPECTION AND COPYING OF SEGREGABLE PORTION.—An entity described in subsection (a) shall permit the inspection and copying under subsection (a) of any reasonably segregable portion of protected health information after deletion of any portion that is exempt under subsection (b).

(f) DEADLINE.—An entity described in subsection (a) shall comply with or deny, in accordance with subsection (c), a request for inspection or copying of protected health information under this section not later than 45 days after the date on which the entity receives the request.

(g) RULES GOVERNING AGENTS.—An agent of an entity described in subsection (a) shall not be required to provide for the inspection and copying of protected health information, except where—

(1) the protected health information is retained by the agent; and

(2) the agent has received in writing a request from the entity involved to fulfill the requirements of this section;

at which time such information shall be provided to the requesting entity. Such requesting entity shall comply with subsection (f) with respect to any such information.

(h) RULE OF CONSTRUCTION.—This section shall not be construed to require an entity described in subsection (a) to conduct a formal, informal, or other hearing or proceeding concerning a request for inspection or copying of protected health information.

SEC. 212. AMENDMENT OF PROTECTED HEALTH INFORMATION.

(a) REQUIREMENT.—

(1) IN GENERAL.—Except as provided in subsection (b) and subject to paragraph (2), a health care provider, health plan, employer, health or life insurer, school, or university that receives from an individual a request in writing to amend protected health information shall—

(A) amend such information as requested;

(B) inform the individual of the amendment that has been made; and

(C) make reasonable efforts to inform any person to whom the unamended portion of the information was previously disclosed, of any nontechnical amendment that has been made.

(2) COMPLIANCE.—An entity described in paragraph (1) shall comply with the requirements of such paragraph within 45 days of the date on which the request involved is received if the entity—

(A) created the protected health information involved; and

(B) determines that such information is in fact inaccurate.

(b) REFUSAL TO AMEND.—If an entity described in subsection (a) refuses to make the amendment requested under such subsection, the entity shall inform the individual in writing of—

(1) the reasons for the refusal to make the amendment;

(2) any procedures for further review of the refusal; and

(3) the individual's right to file with the entity a concise statement setting forth the requested amendment and the individual's reasons for disagreeing with the refusal.

(c) STATEMENT OF DISAGREEMENT.—If an individual has filed a statement of disagreement under subsection (b)(3), the entity involved, in any subsequent disclosure of the disputed portion of the information—

(1) shall include a copy of the individual's statement; and

(2) may include a concise statement of the reasons for not making the requested amendment.

(d) RULES GOVERNING AGENTS.—The agent of an entity described in subsection (a) shall not be required to make amendments to protected health information, except where—

(1) the protected health information is retained by the agent; and

(2) the agent has been asked by such entity to fulfill the requirements of this section.

If the agent is required to comply with this section as provided for in paragraph (2), such agent shall be subject to the 45-day deadline described in subsection (a).

(e) REPEATED REQUESTS FOR AMENDMENTS.—If an entity described in subsection (a) receives a request for an amendment of information as provided for in such subsection and a statement of disagreement has been filed pursuant to subsection (c), the entity shall inform the individual of such filing and shall not be required to carry out the procedures required under this section.

(f) RULES OF CONSTRUCTION.—This section shall not be construed to—

(1) require that an entity described in subsection (a) conduct a formal, informal, or other hearing or proceeding concerning a request for an amendment to protected health information;

(2) require a provider to amend an individual's protected health information as to the type, duration, or quality of treatment the individual believes he or she should have been provided; or

(3) permit any deletions or alterations of the original information.

SEC. 213. NOTICE OF CONFIDENTIALITY PRACTICES.

(a) PREPARATION OF WRITTEN NOTICE.—A health care provider, health plan, health oversight agency, public health authority, employer, health or life insurer, health researcher, school or university shall post or provide, in writing and in a clear and conspicuous manner, notice of the entity's confidentiality practices, that shall include—

(1) a description of an individual's rights with respect to protected health information;

(2) the procedures established by the entity for the exercise of the individual's rights; and

(3) the right to obtain a copy of the notice of the confidentiality practices required under this subtitle.

(b) MODEL NOTICE.—The Secretary, in consultation with the National Committee on Vital and Health Statistics and the National Association of Insurance Commissioners, and after notice and opportunity for public comment, shall develop and disseminate model notices of confidentiality practices. Use of the model notice shall serve as a defense against claims of receiving inappropriate notice.

Subtitle B—Establishment of Safeguards

SEC. 221. ESTABLISHMENT OF SAFEGUARDS.

A health care provider, health plan, health oversight agency, public health authority, employer, health or life insurer, health researcher, law enforcement official, school or

university shall establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality, security, accuracy, and integrity of protected health information created, received, obtained, maintained, used, transmitted, or disposed of by such entity.

Subtitle C—Enforcement; Definitions

SEC. 231. CIVIL PENALTY.

(a) VIOLATION.—A health care provider, health researcher, health plan, health oversight agency, public health agency, law enforcement agency, employer, health or life insurer, school, or university, or the agent of any such individual or entity, who the Secretary, in consultation with the Attorney General, determines has substantially and materially failed to comply with this Act shall, for a violation of this title, be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not more than $500 for each such violation, but not to exceed $5,000 in the aggregate for multiple violations.

(b) PROCEDURES FOR IMPOSITION OF PENALTIES.—Section 1128A of the Social Security Act, other than subsections (a) and (b) and the second sentence of subsection (f) of that section, shall apply to the imposition of a civil, monetary, or exclusionary penalty under this section in the same manner as such provisions apply with respect to the imposition of a penalty under section 1128A of such Act.

SEC. 232. DEFINITIONS.

In this title:

(1) AGENT.—The term ''agent'' means a person who represents and acts for another under the contract or relation of agency, or whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between the principal and a third person, including a contractor.

(2) DISCLOSE.—The term ''disclose'' means to release, transfer, provide access to, or otherwise divulge protected health information to any person other than the individual who is the subject of such information. Such term includes the initial disclosure and any subsequent redisclosures of protected health information.

(3) EMPLOYER.—The term ''employer'' has the meaning given such term under section 3(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(5)), except that such term shall include only employers of 2 or more employees.

(4) HEALTH CARE PROVIDER.—The term ''health care provider'' means a person who, with respect to a specific item of protected health information, receives, creates, uses, maintains, or discloses the information while acting in whole or in part in the capacity of—

(A) a person who is licensed, certified, registered, or otherwise authorized by Federal or State law to provide an item or service that constitutes health care in the ordinary course of business, or practice of a profession;

(B) a Federal, State, or employer-sponsored program that directly provides items or services that constitute health care to beneficiaries; or

(C) an officer, employee, or agent of a person described in subparagraph (A) or (B).

(5) HEALTH OR LIFE INSURER.—The term ''health or life insurer'' means a health insurance issuer as defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91) or a life insurance company as defined in section 816 of the Internal Revenue Code of 1986.

(6) HEALTH PLAN.—The term ''health plan'' means any health insurance plan, including any hospital or medical service plan, dental or other health service plan or health maintenance organization plan, provider sponsored organization, or other program providing or arranging for the provision of health benefits, whether or not funded through the purchase of insurance.

(7) PERSON.—The term ''person'' means a government, governmental subdivision, agency or authority; corporation; company; association; firm; partnership; society; estate; trust; joint venture; individual; individual representative; tribal government; and any other legal entity.

(8) PROTECTED HEALTH INFORMATION.—The term ''protected health information'' means any information (including demographic information) whether or not recorded in any form or medium—

(A) that relates to the past, present or future—

(i) physical or mental health or condition of an individual (including the condition or other attributes of individual cells or their components);

(ii) provision of health care to an individual; or

(iii) payment for the provision of health care to an individual;

(B) that is created by a health care provider, health plan, health researcher, health oversight agency, public health authority, employer, law enforcement official, health or life insurer, school or university; and

(C) that is not nonidentifiable health information.

(9) SCHOOL OR UNIVERSITY.—The term ''school or university'' means an institution or place for instruction or education, including an elementary school, secondary school, or institution of higher learning, a college, or an assemblage of colleges united under one corporate organization or government.

(10) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(11) WRITING.—The term ''writing'' means writing in either a paper-based or computer-based form, including electronic signatures.

SEC. 233. EFFECTIVE DATE.

The provisions of this title shall become effective beginning on the date that is 1 year after the date of enactment of this Act. The Secretary shall issue regulations necessary to carry out this title before the effective date thereof.

TITLE III—GENETIC INFORMATION AND SERVICES

SEC. 301. SHORT TITLE.

This title may be cited as the ''Genetic Information Nondiscrimination in Health Insurance Act of 1999''.

SEC. 302. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services)''.

(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON PREDICTIVE GENETIC INFORMATION.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) (as amended by section 111) is further amended by adding at the end the following:

''SEC. 714. PROHIBITING PREMIUM DISCRIMINATION AGAINST GROUPS ON THE BASIS OF PREDICTIVE GENETIC INFORMATION.

''A group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of predictive genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services).''.

(3) CONFORMING AMENDMENT.—Section 702(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b)) is amended by adding at the end the following:

''(3) REFERENCE TO RELATED PROVISION.—For a provision prohibiting the adjustment of premium or contribution amounts for a group under a group health plan on the basis of predictive genetic information (including information about a request for or receipt of genetic services), see section 714.''.

(b) LIMITATION ON COLLECTION OF PREDICTIVE GENETIC INFORMATION.—Section 702 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182) is amended by adding at the end the following:

''(c) COLLECTION OF PREDICTIVE GENETIC INFORMATION.—

''(1) LIMITATION ON REQUESTING OR REQUIRING PREDICTIVE GENETIC INFORMATION.—Except as provided in paragraph (2), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require predictive genetic information concerning an individual or a family member of the individual (including information about a request for or receipt of genetic services).

''(2) INFORMATION NEEDED FOR DIAGNOSIS, TREATMENT, OR PAYMENT.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), a group health plan or health insurance issuer that provides health care items and services to an individual or dependent may request (but may not require) that such individual or dependent disclose, or authorize the collection or disclosure of, predictive genetic information for purposes of diagnosis, treatment, or payment relating to the provision of health care items and services to such individual or dependent.

''(B) NOTICE OF CONFIDENTIALITY PRACTICES AND DESCRIPTION OF SAFEGUARDS.—As a part of a request under subparagraph (A), the group health plan or health insurance issuer shall provide to the individual or dependent a description of the procedures in place to safeguard the confidentiality, as described in sections 213 and 221 of the Patients' Bill of Rights Plus Act, of such individually identifiable information.''.

(c) DEFINITIONS.—Section 733(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(d)) is amended by adding at the end the following:

''(5) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(6) GENETIC INFORMATION.—The term 'genetic information' means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member (including information

about a request for or receipt of genetic services).

''(7) GENETIC SERVICES.—The term 'genetic services' means health services provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counseling.

''(8) PREDICTIVE GENETIC INFORMATION.—

''(A) IN GENERAL.—The term 'predictive genetic information' means—

''(i) information about an individual's genetic tests which are associated with a statistically significant increased risk of developing a disease or disorder;

''(ii) information about genetic tests of family members of the individual; or

''(iii) information about the occurrence of a disease or disorder in family members that predicts a statistically significant increased risk of a disease or disorder in the individual.

''(B) EXCEPTIONS.—The term 'predictive genetic information' shall not include—

''(i) information about the sex or age of the individual;

''(ii) information derived from routine physical tests, such as the chemical, blood, or urine analyses of the individual, unless such analyses are genetic tests; and

''(iii) information about physical exams of the individual and other information relevant to determining the current health status of the individual so long as such information does not include information described in clauses (i), (ii), or (iii) of subparagraph (A).

''(9) GENETIC TEST.—The term 'genetic test' means the analysis of human DNA, RNA, chromosomes, proteins, and certain metabolites, in order to detect disease-related genotypes, mutations, phenotypes, or karyotypes.''.

(d) EFFECTIVE DATE.—Except as provided in this section, this section and the amendments made by this section shall apply with respect to group health plans for plan years beginning 1 year after the date of the enactment of this Act.

SEC. 303. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

(a) AMENDMENTS RELATING TO THE GROUP MARKET.—

(1) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION IN THE GROUP MARKET.—

(A) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277), is amended by adding at the end the following new section:

''SEC. 2707. PROHIBITING PREMIUM DISCRIMINATION AGAINST GROUPS ON THE BASIS OF PREDICTIVE GENETIC INFORMATION IN THE GROUP MARKET.

''A group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan shall not adjust premium or contribution amounts for a group on the basis of predictive genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services).''.

(B) CONFORMING AMENDMENT.—Section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg–1(b)) is amended by adding at the end the following:

''(3) REFERENCE TO RELATED PROVISION.—For a provision prohibiting the adjustment of premium or contribution amounts for a group under a group health plan on the basis of predictive genetic information (including information about a request for or receipt of genetic services), see section 2707.''.

(C) LIMITATION ON COLLECTION AND DISCLOSURE OF PREDICTIVE GENETIC INFORMATION.—Section 2702 of the Public Health Service Act (42 U.S.C. 300gg–1) is amended by adding at the end the following:

''(c) COLLECTION OF PREDICTIVE GENETIC INFORMATION.—

''(1) LIMITATION ON REQUESTING OR REQUIRING PREDICTIVE GENETIC INFORMATION.—Except as provided in paragraph (2), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require predictive genetic information concerning an individual or a family member of the individual (including information about a request for or receipt of genetic services).

''(2) INFORMATION NEEDED FOR DIAGNOSIS, TREATMENT, OR PAYMENT.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), a group health plan or health insurance issuer that provides health care items and services to an individual or dependent may request (but may not require) that such individual or dependent disclose, or authorize the collection or disclosure of, predictive genetic information for purposes of diagnosis, treatment, or payment relating to the provision of health care items and services to such individual or dependent.

''(B) NOTICE OF CONFIDENTIALITY PRACTICES AND DESCRIPTION OF SAFEGUARDS.—As a part of a request under subparagraph (A), the group health plan or health insurance issuer shall provide to the individual or dependent a description of the procedures in place to safeguard the confidentiality, as described in sections 213 and 221 of the Patients' Bill of Rights Plus Act, of such individually identifiable information.''.

(2) DEFINITIONS.—Section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg–91(d)) is amended by adding at the end the following:

''(15) FAMILY MEMBER.—The term 'family member' means, with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(16) GENETIC INFORMATION.—The term 'genetic information' means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member.

''(17) GENETIC SERVICES.—The term 'genetic services' means health services provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counseling.

''(18) PREDICTIVE GENETIC INFORMATION.—

''(A) IN GENERAL.—The term 'predictive genetic information' means—

''(i) information about an individual's genetic tests which is associated with a statistically significant increased risk of developing a disease or disorder;

''(ii) information about genetic tests of family members of the individual; or

''(iii) information about the occurrence of a disease or disorder in family members that predicts a statistically significant increased risk of a disease or disorder in the individual.

''(B) EXCEPTIONS.—The term 'predictive genetic information' shall not include—

''(i) information about the sex or age of the individual;

''(ii) information derived from routine physical tests, such as the chemical, blood, or urine analyses of the individual, unless such analyses are genetic tests; and

''(iii) information about physical exams of the individual and other information relevant to determining the current health status of the individual so long as such information does not include information described in clauses (i), (ii), or (iii) of subparagraph (A).

''(19) GENETIC TEST.—The term 'genetic test' means the analysis of human DNA, RNA, chromosomes, proteins, and certain metabolites, in order to detect disease-related genotypes, mutations, phenotypes, or karyotypes.''.

(b) AMENDMENT RELATING TO THE INDIVIDUAL MARKET.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–11 et seq.) (relating to other requirements), as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277) is amended—

(1) by redesignating such subpart as subpart 2; and

(2) by adding at the end the following:

''SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF PREDICTIVE GENETIC INFORMATION.

''(a) PROHIBITION ON PREDICTIVE GENETIC INFORMATION AS A CONDITION OF ELIGIBILITY.—A health insurance issuer offering health insurance coverage in the individual market may not use predictive genetic information as a condition of eligibility of an individual to enroll in individual health insurance coverage (including information about a request for or receipt of genetic services).

''(b) PROHIBITION ON PREDICTIVE GENETIC INFORMATION IN SETTING PREMIUM RATES.—A health insurance issuer offering health insurance coverage in the individual market shall not adjust premium rates for individuals on the basis of predictive genetic information concerning such an enrollee or a family member of the enrollee (including information about a request for or receipt of genetic services).

''(c) COLLECTION OF PREDICTIVE GENETIC INFORMATION.—

''(1) LIMITATION ON REQUESTING OR REQUIRING PREDICTIVE GENETIC INFORMATION.—Except as provided in paragraph (2), a health insurance issuer offering health insurance coverage in the individual market shall not request or require predictive genetic information concerning an individual or a family member of the individual (including information about a request for or receipt of genetic services).

''(2) INFORMATION NEEDED FOR DIAGNOSIS, TREATMENT, OR PAYMENT.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), a health insurance issuer that provides health care items and services to an individual or dependent may request (but may not require) that such individual or dependent disclose, or authorize the collection or disclosure of, predictive genetic information for purposes of diagnosis, treatment, or payment relating to the provision of health care items and services to such individual or dependent.

''(B) NOTICE OF CONFIDENTIALITY PRACTICES AND DESCRIPTION OF SAFEGUARDS.—As a part of a request under subparagraph (A), the health insurance issuer shall provide to the individual or dependent a description of the procedures in place to safeguard the confidentiality, as described in sections 213 and

221 of the Patients' Bill of Rights Plus Act, of such individually identifiable information.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after 1 year after the date of enactment of this Act; and

(2) health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after 1 year after the date of enactment of this Act.

SEC. 304. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF PREDICTIVE GENETIC INFORMATION.—

(1) IN GENERAL.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 (as amended by section 131) is further amended by adding at the end the following:

''SEC. 9814. PROHIBITING HEALTH DISCRIMINATION AGAINST GROUPS ON THE BASIS OF PREDICTIVE GENETIC INFORMATION.

''A group health plan shall not adjust premium or contribution amounts for a group on the basis of predictive genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services).''.

(2) CONFORMING AMENDMENT.—Section 9802(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(3) REFERENCE TO RELATED PROVISION.—For a provision prohibiting the adjustment of premium or contribution amounts for a group under a group health plan on the basis of predictive genetic information (including information about a request for or the receipt of genetic services), see section 9814.''.

(3) AMENDMENT TO TABLE OF SECTIONS.—The table of sections for subchapter B of chapter 100 of the Internal Revenue Code of 1986 (as amended by section 131) is further amended by adding at the end the following:

''Sec. 9814. Prohibiting premium discrimination against groups on the basis of predictive genetic information.''.

(b) LIMITATION ON COLLECTION OF PREDICTIVE GENETIC INFORMATION.—Section 9802 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(c) COLLECTION OF PREDICTIVE GENETIC INFORMATION.—

''(1) LIMITATION ON REQUESTING OR REQUIRING PREDICTIVE GENETIC INFORMATION.—Except as provided in paragraph (2), a group health plan shall not request or require predictive genetic information concerning an individual or a family member of the individual (including information about a request for or receipt of genetic services).

''(2) INFORMATION NEEDED FOR DIAGNOSIS, TREATMENT, OR PAYMENT.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), a group health plan that provides health care items and services to an individual or dependent may request (but may not require) that such individual or dependent disclose, or authorize the collection or disclosure of, predictive genetic information for purposes of diagnosis, treatment, or payment relating to the provision of health care items and services to such individual or dependent.

''(B) NOTICE OF CONFIDENTIALITY PRACTICES; DESCRIPTION OF SAFEGUARDS.—As a part of a request under subparagraph (A), the group health plan shall provide to the individual or dependent a description of the procedures in place to safeguard the confidentiality, as described in sections 213 and 221 of the Patients' Bill of Rights Plus Act, of such individually identifiable information.''.

(c) DEFINITIONS.—Section 9832(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(6) FAMILY MEMBER.—The term 'family member' means, with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(7) GENETIC INFORMATION.—The term 'genetic information' means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member.

''(8) GENETIC SERVICES.—The term 'genetic services' means health services provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counseling.

''(9) PREDICTIVE GENETIC INFORMATION.—

''(A) IN GENERAL.—The term 'predictive genetic information' means—

''(i) information about an individual's genetic tests which is associated with a statistically significant increased risk of developing a disease or disorder;

''(ii) information about genetic tests of family members of the individual; or

''(iii) information about the occurrence of a disease or disorder in family members that predicts a statistically significant increased risk of a disease or disorder in the individual.

''(B) EXCEPTIONS.—The term 'predictive genetic information' shall not include—

''(i) information about the sex or age of the individual;

''(ii) information derived from routine physical tests, such as the chemical, blood, or urine analyses of the individual, unless such analyses are genetic tests; and

''(iii) information about physical exams of the individual and other information relevant to determining the current health status of the individual so long as such information does not include information described in clauses (i), (ii), or (iii) of subparagraph (A).

''(10) GENETIC TEST.—The term 'genetic test' means the analysis of human DNA, RNA, chromosomes, proteins, and certain metabolites, in order to detect disease-related genotypes, mutations, phenotypes, or karyotypes.''.

(d) EFFECTIVE DATE.—Except as provided in this section, this section and the amendments made by this section shall apply with respect to group health plans for plan years beginning after 1 year after the date of the enactment of this Act.

TITLE IV—HEALTHCARE RESEARCH AND QUALITY

SEC. 401. SHORT TITLE.

This title may be cited as the ''Healthcare Research and Quality Act of 1999''.

SEC. 402. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

Title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) is amended to read as follows:

''TITLE IX—AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

''PART A—ESTABLISHMENT AND GENERAL DUTIES

''SEC. 901. MISSION AND DUTIES.

''(a) IN GENERAL.—There is established within the Public Health Service an agency to be known as the Agency for Healthcare Research and Quality. In carrying out this subsection, the Secretary shall redesignate the Agency for Health Care Policy and Research as the Agency for Healthcare Research and Quality.

''(b) MISSION.—The purpose of the Agency is to enhance the quality, appropriateness, and effectiveness of healthcare services, and access to such services, through the establishment of a broad base of scientific research and through the promotion of improvements in clinical and health system practice, including the prevention of diseases and other health conditions. The Agency shall promote healthcare quality improvement by—

''(1) conducting and supporting research that develops and presents scientific evidence regarding all aspects of healthcare, including—

''(A) the development and assessment of methods for enhancing patient participation in their own care and for facilitating shared patient-physician decision-making;

''(B) the outcomes, effectiveness, and cost-effectiveness of healthcare practices, including preventive measures and primary, acute and long-term care;

''(C) existing and innovative technologies;

''(D) the costs and utilization of, and access to healthcare;

''(E) the ways in which healthcare services are organized, delivered, and financed and the interaction and impact of these factors on the quality of patient care;

''(F) methods for measuring quality and strategies for improving quality; and

''(G) ways in which patients, consumers, purchasers, and practitioners acquire new information about best practices and health benefits, the determinants and impact of their use of this information;

''(2) synthesizing and disseminating available scientific evidence for use by patients, consumers, practitioners, providers, purchasers, policy makers, and educators; and

''(3) advancing private and public efforts to improve healthcare quality.

''(c) REQUIREMENTS WITH RESPECT TO RURAL AREAS AND PRIORITY POPULATIONS.—In carrying out subsection (b), the Director shall undertake and support research, demonstration projects, and evaluations with respect to—

''(1) the delivery of health services in rural areas (including frontier areas);

''(2) health services for low-income groups, and minority groups;

''(3) the health of children;

''(4) the elderly; and

''(5) people with special healthcare needs, including disabilities, chronic care and end-of-life healthcare.

''(d) APPOINTMENT OF DIRECTOR.—There shall be at the head of the Agency an official to be known as the Director for Healthcare Research and Quality. The Director shall be appointed by the Secretary. The Secretary, acting through the Director, shall carry out the authorities and duties established in this title.

''SEC. 902. GENERAL AUTHORITIES.

''(a) IN GENERAL.—In carrying out section 901(b), the Director shall support demonstration projects, conduct and support research, evaluations, training, research networks,

multi-disciplinary centers, technical assistance, and the dissemination of information, on healthcare, and on systems for the delivery of such care, including activities with respect to—

''(1) the quality, effectiveness, efficiency, appropriateness and value of healthcare services;

''(2) quality measurement and improvement;

''(3) the outcomes, cost, cost-effectiveness, and use of healthcare services and access to such services;

''(4) clinical practice, including primary care and practice-oriented research;

''(5) healthcare technologies, facilities, and equipment;

''(6) healthcare costs, productivity, organization, and market forces;

''(7) health promotion and disease prevention, including clinical preventive services;

''(8) health statistics, surveys, database development, and epidemiology; and

''(9) medical liability.

''(b) HEALTH SERVICES TRAINING GRANTS.—

''(1) IN GENERAL.—The Director may provide training grants in the field of health services research related to activities authorized under subsection (a), to include pre- and post-doctoral fellowships and training programs, young investigator awards, and other programs and activities as appropriate. In carrying out this subsection, the Director shall make use of funds made available under section 487.

''(2) REQUIREMENTS.—In developing priorities for the allocation of training funds under this subsection, the Director shall take into consideration shortages in the number of trained researchers addressing the priority populations.

''(c) MULTIDISCIPLINARY CENTERS.—The Director may provide financial assistance to assist in meeting the costs of planning and establishing new centers, and operating existing and new centers, for multidisciplinary health services research, demonstration projects, evaluations, training, and policy analysis with respect to the matters referred to in subsection (a).

''(d) RELATION TO CERTAIN AUTHORITIES REGARDING SOCIAL SECURITY.—Activities authorized in this section may include, and shall be appropriately coordinated with experiments, demonstration projects, and other related activities authorized by the Social Security Act and the Social Security Amendments of 1967. Activities under subsection (a)(2) of this section that affect the programs under titles XVIII, XIX and XXI of the Social Security Act shall be carried out consistent with section 1142 of such Act.

''(e) DISCLAIMER.—The Agency shall not mandate national standards of clinical practice or quality healthcare standards. Recommendations resulting from projects funded and published by the Agency shall include a corresponding disclaimer.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to imply that the Agency's role is to mandate a national standard or specific approach to quality measurement and reporting. In research and quality improvement activities, the Agency shall consider a wide range of choices, providers, healthcare delivery systems, and individual preferences.

''PART B—HEALTHCARE IMPROVEMENT RESEARCH

''SEC. 911. HEALTHCARE OUTCOME IMPROVEMENT RESEARCH.

''(a) EVIDENCE RATING SYSTEMS.—In collaboration with experts from the public and private sector, the Agency shall identify and disseminate methods or systems used to assess healthcare research results, particularly to rate the strength of the scientific evidence behind healthcare practice, recommendations in the research literature, and technology assessments. The Agency shall make methods or systems for evidence rating widely available. Agency publications containing healthcare recommendations shall indicate the level of substantiating evidence using such methods or systems.

''(b) HEALTHCARE IMPROVEMENT RESEARCH CENTERS AND PROVIDER-BASED RESEARCH NETWORKS.—

''(1) IN GENERAL.—In order to address the full continuum of care and outcomes research, to link research to practice improvement, and to speed the dissemination of research findings to community practice settings, the Agency shall employ research strategies and mechanisms that will link research directly with clinical practice in geographically diverse locations throughout the United States, including—

''(A) Healthcare Improvement Research Centers that combine demonstrated multidisciplinary expertise in outcomes or quality improvement research with linkages to relevant sites of care;

''(B) Provider-based Research Networks, including plan, facility, or delivery system sites of care (especially primary care), that can evaluate and promote quality improvement; and

''(C) other innovative mechanisms or strategies to link research with clinical practice.

''(2) REQUIREMENTS.—The Director is authorized to establish the requirements for entities applying for grants under this subsection.

''SEC. 912. PRIVATE-PUBLIC PARTNERSHIPS TO IMPROVE ORGANIZATION AND DELIVERY.

''(a) SUPPORT FOR EFFORTS TO DEVELOP INFORMATION ON QUALITY.—

''(1) SCIENTIFIC AND TECHNICAL SUPPORT.—In its role as the principal agency for healthcare research and quality, the Agency may provide scientific and technical support for private and public efforts to improve healthcare quality, including the activities of accrediting organizations.

''(2) ROLE OF THE AGENCY.—With respect to paragraph (1), the role of the Agency shall include—

''(A) the identification and assessment of—

''(i) methods for the evaluation of the health of enrollees in health plans by type of plan, provider, and provider arrangements; and

''(ii) other populations, including those receiving long-term care services;

''(B) the ongoing development, testing, and dissemination of quality measures, including measures of health and functional outcomes;

''(C) the compilation and dissemination of healthcare quality measures developed in the private and public sector;

''(D) assistance in the development of improved healthcare information systems;

''(E) the development of survey tools for the purpose of measuring participant and beneficiary assessments of their healthcare; and

''(F) identifying and disseminating information on mechanisms for the integration of information on quality into purchaser and consumer decision-making processes.

''(b) CENTERS FOR EDUCATION AND RESEARCH ON THERAPEUTICS.—

''(1) IN GENERAL.—The Secretary, acting through the Director and in consultation with the Commissioner of Food and Drugs, shall establish a program for the purpose of making one or more grants for the establishment and operation of one or more centers to carry out the activities specified in paragraph (2).

''(2) REQUIRED ACTIVITIES.—The activities referred to in this paragraph are the following:

''(A) The conduct of state-of-the-art clinical research for the following purposes:

''(i) To increase awareness of—

''(I) new uses of drugs, biological products, and devices;

''(II) ways to improve the effective use of drugs, biological products, and devices; and

''(III) risks of new uses and risks of combinations of drugs and biological products.

''(ii) To provide objective clinical information to the following individuals and entities:

''(I) Healthcare practitioners and other providers of healthcare goods or services.

''(II) Pharmacists, pharmacy benefit managers and purchasers.

''(III) Health maintenance organizations and other managed healthcare organizations.

''(IV) Healthcare insurers and governmental agencies.

''(V) Patients and consumers.

''(iii) To improve the quality of healthcare while reducing the cost of healthcare through—

''(I) an increase in the appropriate use of drugs, biological products, or devices; and

''(II) the prevention of adverse effects of drugs, biological products, and devices and the consequences of such effects, such as unnecessary hospitalizations.

''(B) The conduct of research on the comparative effectiveness, cost-effectiveness, and safety of drugs, biological products, and devices.

''(C) Such other activities as the Secretary determines to be appropriate, except that a grant may not be expended to assist the Secretary in the review of new drugs.

''(c) REDUCING ERRORS IN MEDICINE.—The Director shall conduct and support research and build private-public partnerships to—

''(1) identify the causes of preventable healthcare errors and patient injury in healthcare delivery;

''(2) develop, demonstrate, and evaluate strategies for reducing errors and improving patient safety; and

''(3) promote the implementation of effective strategies throughout the healthcare industry.

''SEC. 913. INFORMATION ON QUALITY AND COST OF CARE.

''(a) IN GENERAL.—In carrying out 902(a), the Director shall—

''(1) collect data on a nationally representative sample of the population on the cost, use and, for fiscal year 2000 and subsequent fiscal years, quality of healthcare, including the types of healthcare services Americans use, their access to healthcare services, frequency of use, how much is paid for the services used, the source of those payments, the types and costs of private health insurance, access, satisfaction, and quality of care for the general population and also for children, uninsured persons, poor and near-poor individuals, and persons with special healthcare needs;

''(2) develop databases and tools that enable States to track the quality, access, and use of healthcare services provided to their residents; and

''(3) enter into agreements with public or private entities to use, link, or acquire databases for research authorized under this title.

''(b) QUALITY AND OUTCOMES INFORMATION.—

''(1) IN GENERAL.—To enhance the understanding of the quality of care, the determinants of health outcomes and functional status, the needs of special populations as well as an understanding of these changes over time, their relationship to healthcare access and use, and to monitor the overall national impact of Federal and State policy changes on healthcare, the Director, beginning in fiscal year 2000, shall ensure that the survey conducted under subsection (a)(1) will—

''(A) provide information on the quality of care and patient outcomes for frequently occurring clinical conditions for a nationally representative sample of the population; and

''(B) provide reliable national estimates for children and persons with special healthcare needs through the use of supplements or periodic expansions of the survey. In expanding the Medical Expenditure Panel Survey, as in existence on the date of enactment of this title) in fiscal year 2000 to collect information on the quality of care, the Director shall take into account any outcomes measurements generally collected by private sector accreditation organizations.

''(2) ANNUAL REPORT.—Beginning in fiscal year 2002, the Secretary, acting through the Director, shall submit to Congress an annual report on national trends in the quality of healthcare provided to the American people.

''SEC. 914. INFORMATION SYSTEMS FOR HEALTHCARE IMPROVEMENT.

''In order to foster a range of innovative approaches to the management and communication of health information, the Agency shall support research, evaluations and initiatives to advance—

''(1) the use of information systems for the study of healthcare quality, including the generation of both individual provider and plan-level comparative performance data;

''(2) training for healthcare practitioners and researchers in the use of information systems;

''(3) the creation of effective linkages between various sources of health information, including the development of information networks;

''(4) the delivery and coordination of evidence-based healthcare services, including the use of real-time healthcare decision-support programs;

''(5) the structure, content, definition, and coding of health information data and medical vocabularies in consultation with appropriate Federal and private entities;

''(6) the use of computer-based health records in outpatient and inpatient settings as a personal health record for individual health assessment and maintenance, and for monitoring public health and outcomes of care within populations; and

''(7) the protection of individually identifiable information in health services research and healthcare quality improvement.

''SEC. 915. RESEARCH SUPPORTING PRIMARY CARE AND ACCESS IN UNDERSERVED AREAS.

''(a) PREVENTIVE SERVICES TASK FORCE.—

''(1) PURPOSE.—The Agency shall provide ongoing administrative, research, and technical support for the operation of the Preventive Services Task Force. The Agency shall coordinate and support the dissemination of the Preventive Services Task Force recommendations.

''(2) OPERATION.—The Preventive Services Task Force shall review the scientific evidence related to the effectiveness, appropriateness, and cost-effectiveness of clinical preventive services for the purpose of developing recommendations, and updating previous recommendations, regarding their usefulness in daily clinical practice. In carrying out its responsibilities under paragraph (1), the Task Force shall not be subject to the provisions of Appendix 2 of title 5, United States Code.

''(b) PRIMARY CARE RESEARCH.—

''(1) IN GENERAL.—There is established within the Agency a Center for Primary Care Research (referred to in this subsection as the 'Center') that shall serve as the principal source of funding for primary care research in the Department of Health and Human Services. For purposes of this paragraph, primary care research focuses on the first contact when illness or health concerns arise, the diagnosis, treatment or referral to specialty care, preventive care, and the relationship between the clinician and the patient in the context of the family and community.

''(2) RESEARCH.—In carrying out this section, the Center shall conduct and support research on—

''(A) the nature and characteristics of primary care practice;

''(B) the management of commonly occurring clinical problems;

''(C) the management of undifferentiated clinical problems; and

''(D) the continuity and coordination of health services.

''(3) DEMONSTRATION.—The Agency shall support demonstrations into the use of new information tools aimed at improving shared decision-making between patients and their care-givers.

''SEC. 916. CLINICAL PRACTICE AND TECHNOLOGY INNOVATION.

''(a) IN GENERAL.—The Director shall promote innovation in evidence-based clinical practice and healthcare technologies by—

''(1) conducting and supporting research on the development, diffusion, and use of healthcare technology;

''(2) developing, evaluating, and disseminating methodologies for assessments of healthcare practices and healthcare technologies;

''(3) conducting intramural and supporting extramural assessments of existing and new healthcare practices and technologies;

''(4) promoting education, training, and providing technical assistance in the use of healthcare practice and healthcare technology assessment methodologies and results; and

''(5) working with the National Library of Medicine and the public and private sector to develop an electronic clearinghouse of currently available assessments and those in progress.

''(b) SPECIFICATION OF PROCESS.—

''(1) IN GENERAL.—Not later than December 31, 2000, the Director shall develop and publish a description of the methods used by the Agency and its contractors for practice and technology assessment.

''(2) CONSULTATIONS.—In carrying out this subsection, the Director shall cooperate and consult with the Assistance Secretary for Health, the Administrator of the Health Care Financing Administration, the Director of the National Institutes of Health, the Commissioner of Food and Drugs, and the heads of any other interested Federal department or agency, professional societies, and other private and public entities.

''(3) METHODOLOGY.—The methods employed in practice and technology assessments under paragraph (1) shall consider—

''(A) safety, efficacy, and effectiveness;

''(B) legal, social, and ethical implications;

''(C) costs, benefits, and cost-effectiveness;

''(D) comparisons to alternative technologies and practices; and

''(E) requirements of Food and Drug Administration approval to avoid duplication.

''(c) SPECIFIC ASSESSMENTS.—

''(1) IN GENERAL.—The Director shall conduct or support specific assessments of healthcare technologies and practices.

''(2) REQUESTS FOR ASSESSMENTS.—The Director is authorized to conduct or support assessments, on a reimbursable basis, for the Health Care Financing Administration, the Department of Defense, the Department of Veterans Affairs, the Office of Personnel Management, and other public or private entities.

''(3) GRANTS AND CONTRACTS.—In addition to conducting assessments, the Director may make grants to, or enter into cooperative agreements or contracts with, entities described in paragraph (4) for the purpose of conducting assessments of experimental, emerging, existing, or potentially outmoded healthcare technologies, and for related activities.

''(4) ELIGIBLE ENTITIES.—An entity described in this paragraph is an entity that is determined to be appropriate by the Director, including academic medical centers, research institutions, professional organizations, third party payers, other governmental agencies, and consortia of appropriate research entities established for the purpose of conducting technology assessments.

''SEC. 917. COORDINATION OF FEDERAL GOVERNMENT QUALITY IMPROVEMENT EFFORTS.

''(a) REQUIREMENT.—

''(1) IN GENERAL.—To avoid duplication and ensure that Federal resources are used efficiently and effectively, the Secretary, acting through the Director, shall coordinate all research, evaluations, and demonstrations related to health services research and quality measurement and improvement activities undertaken and supported by the Federal Government.

''(2) SPECIFIC ACTIVITIES.—The Director, in collaboration with the appropriate Federal officials representing all concerned executive agencies and departments, shall develop and manage a process to—

''(A) improve interagency coordination, priority setting, and the use and sharing of research findings and data pertaining to Federal quality improvement programs and health services research;

''(B) strengthen the research information infrastructure, including databases, pertaining to Federal health services research and healthcare quality improvement initiatives;

''(C) set specific goals for participating agencies and departments to further health services research and healthcare quality improvement; and

''(D) strengthen the management of Federal healthcare quality improvement programs.

''(b) STUDY BY THE INSTITUTE OF MEDICINE.—

''(1) IN GENERAL.—To provide the Department of Health and Human Services with an independent, external review of its quality oversight, and quality research programs, the Secretary shall enter into a contract with the Institute of Medicine—

''(A) to describe and evaluate current quality improvement research and monitoring processes through—

''(i) an overview of pertinent health services research activities and quality improvement efforts including those currently performed by the peer review organizations and

the exploration of additional activities that could be undertaken by the peer review organizations to improve quality;

''(ii) an analysis of the various partnership activities that the Department of Health and Human Services has pursued with private sector accreditation and other quality measurement organizations;

''(iii) the exploration of programmatic areas where partnership activities between the Federal Government and the private sector or within the Federal Government could be pursued to improve quality oversight of the medicare, medicaid and child health insurance programs under titles XVIII, XIX and XXI of the Social Security Act; and

''(iv) an identification of opportunities for enhancing health system efficiency through simplification and reduction in redundancy of Federal agency quality improvement efforts, including areas in which Federal efforts unnecessarily duplicate existing private sector efforts; and

''(B) to identify options and make recommendations to improve the efficiency and effectiveness of such quality improvement programs through—

''(i) the improved coordination of activities across the medicare, medicaid and child health insurance programs under titles XVIII, XIX and XXI of the Social Security Act and various health services research programs;

''(ii) the strengthening of patient choice and participation by incorporating state-of-the-art quality monitoring tools and making information on quality available; and

''(iii) the enhancement of the most effective programs, consolidation as appropriate, and elimination of duplicative activities within various federal agencies.

''(2) REQUIREMENTS.—

''(A) IN GENERAL.—The Secretary shall enter into a contract with the Institute of Medicine for the preparation—

''(i) not later than 12 months after the date of enactment of this title, of a report providing an overview of the quality improvement programs of the Department of Health and Human Services for the medicare, medicaid, and CHIP programs under titles XVIII, XIX, and XXI of the Social Security Act; and

''(ii) not later than 24 months after the date of enactment of this title, of a final report containing recommendations.

''(B) REPORTS.—The Secretary shall submit the reports described in subparagraph (A) to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Commerce of the House of Representatives.

''PART C—GENERAL PROVISIONS

''SEC. 921. ADVISORY COUNCIL FOR HEALTHCARE RESEARCH AND QUALITY.

''(a) ESTABLISHMENT.—There is established an advisory council to be known as the Advisory Council for Healthcare Research and Quality.

''(b) DUTIES.—

''(1) IN GENERAL.—The Advisory Council shall advise the Secretary and the Director with respect to activities proposed or undertaken to carry out the purpose of the Agency under section 901(b).

''(2) CERTAIN RECOMMENDATIONS.—Activities of the Advisory Council under paragraph (1) shall include making recommendations to the Director regarding—

''(A) priorities regarding healthcare research, especially studies related to quality, outcomes, cost and the utilization of, and access to, healthcare services;

''(B) the field of healthcare research and related disciplines, especially issues related to training needs, and dissemination of information pertaining to healthcare quality; and

''(C) the appropriate role of the Agency in each of these areas in light of private sector activity and identification of opportunities for public-private sector partnerships.

''(c) MEMBERSHIP.—

''(1) IN GENERAL.—The Advisory Council shall, in accordance with this subsection, be composed of appointed members and ex officio members. All members of the Advisory Council shall be voting members other than the individuals designated under paragraph (3)(B) as ex officio members.

''(2) APPOINTED MEMBERS.—The Secretary shall appoint to the Advisory Council 21 appropriately qualified individuals. At least 17 members of the Advisory Council shall be representatives of the public who are not officers or employees of the United States. The Secretary shall ensure that the appointed members of the Council, as a group, are representative of professions and entities concerned with, or affected by, activities under this title and under section 1142 of the Social Security Act. Of such members—

''(A) 4 shall be individuals distinguished in the conduct of research, demonstration projects, and evaluations with respect to healthcare;

''(B) 4 shall be individuals distinguished in the practice of medicine of which at least 1 shall be a primary care practitioner;

''(C) 3 shall be individuals distinguished in the other health professions;

''(D) 4 shall be individuals either representing the private healthcare sector, including health plans, providers, and purchasers or individuals distinguished as administrators of healthcare delivery systems;

''(E) 4 shall be individuals distinguished in the fields of healthcare quality improvement, economics, information systems, law, ethics, business, or public policy; and

''(F) 2 shall be individuals representing the interests of patients and consumers of healthcare.

''(3) EX OFFICIO MEMBERS.—The Secretary shall designate as ex officio members of the Advisory Council—

''(A) the Assistant Secretary for Health, the Director of the National Institutes of Health, the Director of the Centers for Disease Control and Prevention, the Administrator of the Health Care Financing Administration, the Assistant Secretary of Defense (Health Affairs), and the Chief Medical Officer of the Department of Veterans Affairs; and

''(B) such other Federal officials as the Secretary may consider appropriate.

''(d) TERMS.—Members of the Advisory Council appointed under subsection (c)(2) shall serve for a term of 3 years. A member of the Council appointed under such subsection may continue to serve after the expiration of the term of the members until a successor is appointed.

''(e) VACANCIES.—If a member of the Advisory Council appointed under subsection (c)(2) does not serve the full term applicable under subsection (d), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

''(f) CHAIR.—The Director shall, from among the members of the Advisory Council appointed under subsection (c)(2), designate an individual to serve as the chair of the Advisory Council.

''(g) MEETINGS.—The Advisory Council shall meet not less than once during each discrete 4-month period and shall otherwise meet at the call of the Director or the chair.

''(h) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—

''(1) APPOINTED MEMBERS.—Members of the Advisory Council appointed under subsection (c)(2) shall receive compensation for each day (including travel time) engaged in carrying out the duties of the Advisory Council unless declined by the member. Such compensation may not be in an amount in excess of the maximum rate of basic pay payable for GS–18 of the General Schedule.

''(2) EX OFFICIO MEMBERS.—Officials designated under subsection (c)(3) as ex officio members of the Advisory Council may not receive compensation for service on the Advisory Council in addition to the compensation otherwise received for duties carried out as officers of the United States.

''(i) STAFF.—The Director shall provide to the Advisory Council such staff, information, and other assistance as may be necessary to carry out the duties of the Council.

''SEC. 922. PEER REVIEW WITH RESPECT TO GRANTS AND CONTRACTS.

''(a) REQUIREMENT OF REVIEW.—

''(1) IN GENERAL.—Appropriate technical and scientific peer review shall be conducted with respect to each application for a grant, cooperative agreement, or contract under this title.

''(2) REPORTS TO DIRECTOR.—Each peer review group to which an application is submitted pursuant to paragraph (1) shall report its finding and recommendations respecting the application to the Director in such form and in such manner as the Director shall require.

''(b) APPROVAL AS PRECONDITION OF AWARDS.—The Director may not approve an application described in subsection (a)(1) unless the application is recommended for approval by a peer review group established under subsection (c).

''(c) ESTABLISHMENT OF PEER REVIEW GROUPS.—

''(1) IN GENERAL.—The Director shall establish such technical and scientific peer review groups as may be necessary to carry out this section. Such groups shall be established without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and without regard to the provisions of chapter 51, and subchapter III of chapter 53, of such title that relate to classification and pay rates under the General Schedule.

''(2) MEMBERSHIP.—The members of any peer review group established under this section shall be appointed from among individuals who by virtue of their training or experience are eminently qualified to carry out the duties of such peer review group. Officers and employees of the United States may not constitute more than 25 percent of the membership of any such group. Such officers and employees may not receive compensation for service on such groups in addition to the compensation otherwise received for these duties carried out as such officers and employees.

''(3) DURATION.—Notwithstanding section 14(a) of the Federal Advisory Committee Act, peer review groups established under this section may continue in existence until otherwise provided by law.

''(4) QUALIFICATIONS.—Members of any peer-review group shall, at a minimum, meet the following requirements:

''(A) Such members shall agree in writing to treat information received, pursuant to their work for the group, as confidential information, except that this subparagraph

shall not apply to public records and public information.

''(B) Such members shall agree in writing to recuse themselves from participation in the peer-review of specific applications which present a potential personal conflict of interest or appearance of such conflict, including employment in a directly affected organization, stock ownership, or any financial or other arrangement that might introduce bias in the process of peer-review.

''(d) AUTHORITY FOR PROCEDURAL ADJUSTMENTS IN CERTAIN CASES.—In the case of applications for financial assistance whose direct costs will not exceed $100,000, the Director may make appropriate adjustments in the procedures otherwise established by the Director for the conduct of peer review under this section. Such adjustments may be made for the purpose of encouraging the entry of individuals into the field of research, for the purpose of encouraging clinical practice-oriented or provider-based research, and for such other purposes as the Director may determine to be appropriate.

''(e) REGULATIONS.—The Director may shall issue regulations for the conduct of peer review under this section.

''SEC. 923. CERTAIN PROVISIONS WITH RESPECT TO DEVELOPMENT, COLLECTION, AND DISSEMINATION OF DATA.

''(a) STANDARDS WITH RESPECT TO UTILITY OF DATA.—

''(1) IN GENERAL.—To ensure the utility, accuracy, and sufficiency of data collected by or for the Agency for the purpose described in section 901(b), the Director shall establish standards and methods for developing and collecting such data, taking into consideration—

''(A) other Federal health data collection standards; and

''(B) the differences between types of healthcare plans, delivery systems, healthcare providers, and provider arrangements.

''(2) RELATIONSHIP WITH OTHER DEPARTMENT PROGRAMS.—In any case where standards under paragraph (1) may affect the administration of other programs carried out by the Department of Health and Human Services, including the programs under titles XVIII, XIX and XXI of the Social Security Act, they shall be in the form of recommendations to the Secretary for such program.

''(b) STATISTICS AND ANALYSES.—The Director shall—

''(1) take appropriate action to ensure that statistics and analyses developed under this title are of high quality, timely, and duly comprehensive, and that the statistics are specific, standardized, and adequately analyzed and indexed; and

''(2) publish, make available, and disseminate such statistics and analyses on as wide a basis as is practicable.

''(c) AUTHORITY REGARDING CERTAIN REQUESTS.—Upon request of a public or private entity, the Director may conduct or support research or analyses otherwise authorized by this title pursuant to arrangements under which such entity will pay the cost of the services provided. Amounts received by the Director under such arrangements shall be available to the Director for obligation until expended.

''SEC. 924. DISSEMINATION OF INFORMATION.

''(a) IN GENERAL.—The Director shall—

''(1) without regard to section 501 of title 44, United States Code, promptly publish, make available, and otherwise disseminate, in a form understandable and on as broad a basis as practicable so as to maximize its use, the results of research, demonstration projects, and evaluations conducted or supported under this title;

''(2) ensure that information disseminated by the Agency is science-based and objective and undertakes consultation as necessary to assess the appropriateness and usefulness of the presentation of information that is targeted to specific audiences;

''(3) promptly make available to the public data developed in such research, demonstration projects, and evaluations;

''(4) provide, in collaboration with the National Library of Medicine where appropriate, indexing, abstracting, translating, publishing, and other services leading to a more effective and timely dissemination of information on research, demonstration projects, and evaluations with respect to healthcare to public and private entities and individuals engaged in the improvement of healthcare delivery and the general public, and undertake programs to develop new or improved methods for making such information available; and

''(5) as appropriate, provide technical assistance to State and local government and health agencies and conduct liaison activities to such agencies to foster dissemination.

''(b) PROHIBITION AGAINST RESTRICTIONS.—Except as provided in subsection (c), the Director may not restrict the publication or dissemination of data from, or the results of, projects conducted or supported under this title.

''(c) LIMITATION ON USE OF CERTAIN INFORMATION.—No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under this title may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose. Such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Secretary) to its publication or release in other form.

''(d) PENALTY.—Any person who violates subsection (c) shall be subject to a civil monetary penalty of not more than $10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A of the Social Security Act are imposed and collected.

''SEC. 925. ADDITIONAL PROVISIONS WITH RESPECT TO GRANTS AND CONTRACTS.

''(a) FINANCIAL CONFLICTS OF INTEREST.—With respect to projects for which awards of grants, cooperative agreements, or contracts are authorized to be made under this title, the Director shall by regulation define—

''(1) the specific circumstances that constitute financial interests in such projects that will, or may be reasonably expected to, create a bias in favor of obtaining results in the projects that are consistent with such interests; and

''(2) the actions that will be taken by the Director in response to any such interests identified by the Director.

''(b) REQUIREMENT OF APPLICATION.—The Director may not, with respect to any program under this title authorizing the provision of grants, cooperative agreements, or contracts, provide any such financial assistance unless an application for the assistance is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out the program in involved.

''(c) PROVISION OF SUPPLIES AND SERVICES IN LIEU OF FUNDS.—

''(1) IN GENERAL.—Upon the request of an entity receiving a grant, cooperative agreement, or contract under this title, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the entity in carrying out the project involved and, for such purpose, may detail to the entity any officer or employee of the Department of Health and Human Services.

''(2) CORRESPONDING REDUCTION IN FUNDS.—With respect to a request described in paragraph (1), the Secretary shall reduce the amount of the financial assistance involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Director. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

''(d) APPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO CONTRACTS.—Contracts may be entered into under this part without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

''SEC. 926. CERTAIN ADMINISTRATIVE AUTHORITIES.

''(a) DEPUTY DIRECTOR AND OTHER OFFICERS AND EMPLOYEES.—

''(1) DEPUTY DIRECTOR.—The Director may appoint a deputy director for the Agency.

''(2) OTHER OFFICERS AND EMPLOYEES.—The Director may appoint and fix the compensation of such officers and employees as may be necessary to carry out this title. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

''(b) FACILITIES.—The Secretary, in carrying out this title—

''(1) may acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise through the Director of General Services, buildings or portions of buildings in the District of Columbia or communities located adjacent to the District of Columbia for use for a period not to exceed 10 years; and

''(2) may acquire, construct, improve, repair, operate, and maintain laboratory, research, and other necessary facilities and equipment, and such other real or personal property (including patents) as the Secretary deems necessary.

''(c) PROVISION OF FINANCIAL ASSISTANCE.—The Director, in carrying out this title, may make grants to public and nonprofit entities and individuals, and may enter into cooperative agreements or contracts with public and private entities and individuals.

''(d) UTILIZATION OF CERTAIN PERSONNEL AND RESOURCES.—

''(1) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The Director, in carrying out this title, may utilize personnel and equipment, facilities, and other physical resources of the Department of Health and Human Services, permit appropriate (as determined by the Secretary) entities and individuals to utilize the physical resources of such Department, and provide technical assistance and advice.

''(2) OTHER AGENCIES.—The Director, in carrying out this title, may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal,

State, or local public agencies, or of any foreign government, with or without reimbursement of such agencies.

''(e) CONSULTANTS.—The Secretary, in carrying out this title, may secure, from time to time and for such periods as the Director deems advisable but in accordance with section 3109 of title 5, United States Code, the assistance and advice of consultants from the United States or abroad.

''(f) EXPERTS.—

''(1) IN GENERAL.—The Secretary may, in carrying out this title, obtain the services of not more than 50 experts or consultants who have appropriate scientific or professional qualifications. Such experts or consultants shall be obtained in accordance with section 3109 of title 5, United States Code, except that the limitation in such section on the duration of service shall not apply.

''(2) TRAVEL EXPENSES.—

''(A) IN GENERAL.—Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a), 5724a(c), and 5726(C) of title 5, United States Code.

''(B) LIMITATION.—Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless and until the expert agrees in writing to complete the entire period of assignment, or 1 year, whichever is shorter, unless separated or reassigned for reasons that are beyond the control of the expert or consultant and that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a statutory obligation owed to the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

''(g) VOLUNTARY AND UNCOMPENSATED SERVICES.—The Director, in carrying out this title, may accept voluntary and uncompensated services.

''SEC. 927. FUNDING.

''(a) INTENT.—To ensure that the United States's investment in biomedical research is rapidly translated into improvements in the quality of patient care, there must be a corresponding investment in research on the most effective clinical and organizational strategies for use of these findings in daily practice. The authorization levels in subsections (b) and (c) provide for a proportionate increase in healthcare research as the United State's investment in biomedical research increases.

''(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this title, there are authorized to be appropriated $185,000,000 for fiscal year 2000, and such sums as may be necessary for each of the fiscal years 2001 through 2006.

''(c) EVALUATIONS.—In addition to amounts available pursuant to subsection (b) for carrying out this title, there shall be made available for such purpose, from the amounts made available pursuant to section 241 (relating to evaluations), an amount equal to 40 percent of the maximum amount authorized in such section 241 to be made available for a fiscal year.

''SEC. 929. DEFINITIONS.

''In this title:

''(1) ADVISORY COUNCIL.—The term 'Advisory Council' means the Advisory Council on Healthcare Research and Quality established under section 921.

''(2) AGENCY.—The term 'Agency' means the Agency for Healthcare Research and Quality.

''(3) DIRECTOR.—The term 'Director' means the Director for the Agency for Healthcare Research and Quality.''.

SEC. 403. REFERENCES.

Effective upon the date of enactment of this Act, any reference in law to the ''Agency for Health Care Policy and Research'' shall be deemed to be a reference to the ''Agency for Healthcare Research and Quality''.

SEC. 404. STUDY.

(a) STUDY.—Not later than 30 days after the date of enactment of any Act providing for a qualifying health care benefit (as defined in subsection (b), the Secretary of Health and Human Services, in consultation with the Agency for Healthcare Research and Quality, the National Institutes of Health, and the Institute of Medicine, shall conduct a study concerning such benefit that scientifically evaluates—

(1) the safety and efficacy of the benefit, particularly the effect of the benefit on outcomes of care;

(2) the cost, benefits and value of such benefit;

(3) the benefit in comparison to alternative approaches in improving care; and

(4) the overall impact that such benefit will have on health care as measured through research.

(b) QUALIFYING HEALTH CARE BENEFIT.—In this section, the term ''qualifying health care benefit'' means a health care benefit that—

(1) is disease- or health condition-specific;

(2) requires the provision of or coverage for health care items or services;

(3) applies to group health plan, individual health plans, or health insurance issuers under part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181 et seq.) or under title XXVII of the Public Health Service Act (42 U.S.C. 300gg et seq.); and

(4) was provided under an Act (or amendment) enacted on or after January 1, 1999.

(c) REPORTS.—Not later than 3 years after the date of enactment of any Act described in subsection (a), the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress a report based on the study conducted under such subsection with respect to the qualifying health care benefit involved.

TITLE V—ENHANCED ACCESS TO HEALTH INSURANCE COVERAGE

SEC. 501. FULL DEDUCTION OF HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Section 162(l)(1) of the Internal Revenue Code of 1986 (relating to allowance of deductions) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and his dependents.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 502. FULL AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) AVAILABILITY NOT LIMITED TO ACCOUNTS FOR EMPLOYEES OF SMALL EMPLOYERS AND SELF-EMPLOYED INDIVIDUALS.—

(1) IN GENERAL.—Section 220(c)(1)(A) of the Internal Revenue Code of 1986 (relating to eligible individual) is amended to read as follows:

''(A) IN GENERAL.—The term 'eligible individual' means, with respect to any month, any individual if—

''(i) such individual is covered under a high deductible health plan as of the 1st day of such month, and

''(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

''(I) which is not a high deductible health plan, and

''(II) which provides coverage for any benefit which is covered under the high deductible health plan.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 220(c)(1) of such Code is amended by striking subparagraphs (C) and (D).

(B) Section 220(c) of such Code is amended by striking paragraph (4) (defining small employer) and by redesignating paragraph (5) as paragraph (4).

(C) Section 220(b) of such Code is amended by striking paragraph (4) (relating to deduction limited by compensation) and by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively.

(b) REMOVAL OF LIMITATION ON NUMBER OF TAXPAYERS HAVING MEDICAL SAVINGS ACCOUNTS.—

(1) IN GENERAL.—Section 220 of the Internal Revenue Code of 1986 (relating to medical savings accounts) is amended by striking subsections (i) and (j).

(2) MEDICARE+CHOICE.—Section 138 of such Code (relating to Medicare+Choice MSA) is amended by striking subsection (f).

(c) REDUCTION IN HIGH DEDUCTIBLE PLAN MINIMUM ANNUAL DEDUCTIBLE.—Section 220(c)(2)(A) of the Internal Revenue Code of 1986 (relating to high deductible health plan) is amended—

(1) by striking ''$1,500'' in clause (i) and inserting ''$1,000'', and

(2) by striking ''$3,000'' in clause (ii) and inserting ''$2,000''.

(d) INCREASE IN CONTRIBUTION LIMIT TO 100 PERCENT OF ANNUAL DEDUCTIBLE.—

(1) IN GENERAL.—Section 220(b)(2) of the Internal Revenue Code of 1986 (relating to monthly limitation) is amended to read as follows:

''(2) MONTHLY LIMITATION.—The monthly limitation for any month is the amount equal to 1/12 of the annual deductible of the high deductible health plan of the individual.''

(2) CONFORMING AMENDMENT.—Section 220(d)(1)(A) of such Code is amended by striking ''75 percent of''.

(e) LIMITATION ON ADDITIONAL TAX ON DISTRIBUTIONS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—Section 220(f)(4) of the Internal Revenue Code of 1986 (relating to additional tax on distributions not used for qualified medical expenses) is amended by adding at the end the following:

''(D) EXCEPTION IN CASE OF SUFFICIENT ACCOUNT BALANCE.—Subparagraph (A) shall not apply to any payment or distribution in any taxable year, but only to the extent such payment or distribution does not reduce the fair market value of the assets of the medical savings account to an amount less than the annual deductible for the high deductible health plan of the account holder (determined as of January 1 of the calendar year in which the taxable year begins).''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 503. CARRYOVER OF UNUSED BENEFITS FROM CAFETERIA PLANS, FLEXIBLE SPENDING ARRANGEMENTS, AND HEALTH FLEXIBLE SPENDING ACCOUNTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j) and by inserting after subsection (g) the following new subsection:

''(h) ALLOWANCE OF CARRYOVERS OF UNUSED BENEFITS TO LATER TAXABLE YEARS.—

''(1) IN GENERAL.—For purposes of this title—

''(A) notwithstanding subsection (d)(2), a plan or other arrangement shall not fail to be treated as a cafeteria plan or flexible spending or similar arrangement, and

''(B) no amount shall be required to be included in gross income by reason of this section or any other provision of this chapter,

solely because under such plan or other arrangement any nontaxable benefit which is unused as of the close of a taxable year may be carried forward to 1 or more succeeding taxable years.

''(2) LIMITATION.—Paragraph (1) shall not apply to amounts carried from a plan to the extent such amounts exceed $500 (applied on an annual basis). For purposes of this paragraph, all plans and arrangements maintained by an employer or any related person shall be treated as 1 plan.

''(3) ALLOWANCE OF ROLLOVER.—

''(A) IN GENERAL.—In the case of any unused benefit described in paragraph (1) which consists of amounts in a health flexible spending account or dependent care flexible spending account, the plan or arrangement shall provide that a participant may elect, in lieu of such carryover, to have such amounts distributed to the participant.

''(B) AMOUNTS NOT INCLUDED IN INCOME.—Any distribution under subparagraph (A) shall not be included in gross income to the extent that such amount is transferred in a trustee-to-trustee transfer, or is contributed within 60 days of the date of the distribution, to—

''(i) a qualified cash or deferred arrangement described in section 401(k),

''(ii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

''(iii) an eligible deferred compensation plan described in section 457, or

''(iv) a medical savings account (within the meaning of section 220).

Any amount rolled over under this subparagraph shall be treated as a rollover contribution for the taxable year from which the unused amount would otherwise be carried.

''(C) TREATMENT OF ROLLOVER.—Any amount rolled over under subparagraph (B) shall be treated as an eligible rollover under section 220, 401(k), 403(b), or 457, whichever is applicable, and shall be taken into account in applying any limitation (or participation requirement) on employer or employee contributions under such section or any other provision of this chapter for the taxable year of the rollover.

''(4) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1999, the $500 amount under paragraph (2) shall be adjusted at the same time and in the same manner as under section 415(d)(2), except that the base period taken into account shall be the calendar quarter beginning October 1, 1998, and any increase which is not a multiple of $50 shall be rounded to the next lowest multiple of $50.''

''(5) APPLICABILITY.—This subsection shall apply to taxable years beginning after December 31, 1999.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 504. PERMITTING CONTRIBUTION TOWARDS MEDICAL SAVINGS ACCOUNT THROUGH FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (FEHBP).

(a) GOVERNMENT CONTRIBUTION TO MEDICAL SAVINGS ACCOUNT.—

(1) IN GENERAL.—Section 8906 of title 5, United States Code, is amended by adding at the end the following:

''(j)(1) In the case of an employee or annuitant who is enrolled in a catastrophic plan described by section 8903(5), there shall be a Government contribution under this subsection to a medical savings account established or maintained for the benefit of the individual. The contribution under this subsection shall be in addition to the Government contribution under subsection (b).

''(2) The amount of the Government contribution under this subsection with respect to an individual is equal to the amount by which—

''(A) the maximum contribution allowed under subsection (b)(1) with respect to any employee or annuitant, exceeds

''(B) the amount of the Government contribution actually made with respect to the individual under subsection (b) for coverage under the catastrophic plan.

''(3) The Government contributions under this subsection shall be paid into a medical savings account (designated by the individual involved) in a manner that is specified by the Office and consistent with the timing of contributions under subsection (b).

''(4) Subsections (f) and (g) shall apply to contributions under this section in the same manner as they apply to contributions under subsection (b).

''(5) For the purpose of this subsection, the term 'medical savings account' has the meaning given such term by section 220(d) of the Internal Revenue Code of 1986.''.

(2) ALLOWING PAYMENT OF FULL AMOUNT OF CHARGE FOR CATASTROPHIC PLAN.—Section 8906(b)(2) of such title is amended by inserting ''(or 100 percent of the subscription charge in the case of a catastrophic plan)'' after ''75 percent of the subscription charge''.

(b) OFFERING OF CATASTROPHIC PLANS.—

(1) IN GENERAL.—Section 8903 of title 5, United States Code, is amended by adding at the end the following:

''(5) CATASTROPHIC PLANS.—One or more plans described in paragraph (1), (2), or (3), but which provide benefits of the types referred to by paragraph (5) of section 8904(a), instead of the types referred to in paragraphs (1), (2), and (3) of such section.''.

(2) TYPES OF BENEFITS.—Section 8904(a) of such title is amended by inserting after paragraph (4) the following new paragraph:

''(5) CATASTROPHIC PLANS.—Benefits of the types named under paragraph (1) or (2) of this subsection or both, to the extent expenses covered by the plan exceed $500.''.

(3) DETERMINING LEVEL OF GOVERNMENT CONTRIBUTIONS.—Section 8906(b) of such title is amended by adding at the end the following: ''Subscription charges for medical savings accounts shall be deemed to be the amount of Government contributions made under subsection (j)(2).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contract terms beginning on or after January 1, 2000.

SUMMARY OF SENATE REPUBLICAN PATIENTS' BILL OF RIGHTS

The Senate Republican bill has six major components that will provide consumer protections, enhance health care quality and increase access. These are:

1. Consumer protection standards for self-funded plans.

2. Appeals standards for all group health plans.

3. Access to and confidentiality of medical information.

4. Ban on the use of genetic information for all plans.

5. New quality focus and expended research activities for the Agency for Health Care Policy and Research.

6. Improved access to health insurance coverage by allowing full deduction of health insurance for the self-employed and expansion of MSAs.

The following summarizes the key aspects of the bill:

1. Consumer protection standards for self-funded plans: Since States are responsible for regulating insured health plans, the bill provides that the following standards would apply only to self-funded plans governed by ERISA.

Emergency Care: Plans would be required to use the ''prudent layperson'' standard for providing initial emergency screening exams and ''additional emergency services'' determined necessary by a ''prudent emergency medical professional.''

Mandatory Point of Service: Plans that offer network-only plans would be required to offer enrollees the option to purchase point-of-service coverage. Small employers with 50 or fewer workers would be exempt. Also exempt would be group plans that offer a choice of two or more health insurance options or two or more options with significantly different providers. Plans could charge higher premiums and cost sharing for the POS option.

OB–GYN/Pediatricians: Health plans would be required to allow direct access to obstetricians/gynecologist and pediatricians without referrals.

Continuity of Care: Plans who terminate or non renew providers from their networks would be required to notify enrollees and allow continued use of the provider (at the same payment and cost-sharing rates) for up to 90 days if: the enrollee is receiving institutional care, is in the second (or late) trimester of pregnancy, or is terminally ill.

Gag Rules: Plans would be prohibited from including ''gag rules'' in providers' contracts.

Comparative Information: Plans would be required to provide a wide range of information about health insurance options, such as descriptions of the networks, premium and cost-sharing information. Quality outcomes data and information is not mandated.

Effective Dates: The new rules would become effective for group plan years beginning on or after January 1 of the second calendar year following the date of enactment. In other words, the effective date would be January, 2001, assuming enactment in 1999.

2. Grievance and Appeals: Plans would be required to have written grievance procedures and have both an internal and external appeals procedure. Grievances would not be appealable.

Prior Authorization: Routine requests would need to be completed within 30 days, and expedited requests for care that could jeopardize enrollee's health would have to be handled within 72 hours.

Qualification of Doctors for Internal Appeals: Appeals for coverage determinations

based on lack of medical necessity or experimental treatment must be by a doctor ''with appropriate expertise in field of medicine involved'' who was not involved in the initial decision.

External Appeals: Enrollees and providers could appeal to independent medical reviewers for amounts above a significant financial threshold for issues based on medical necessity or for services that involve an experimental treatment where the enrollees' life is in jeopardy. External reviews could include those licensed by the State or under Federal contract for this purpose, a teaching hospital, or entities meeting specific criteria. External review is binding on plans and issuers.

3. Patient medical records: Plans, providers, schools, and others would be required to:

Permit enrollees to inspect and copy their own medical records, except when such information could endanger a person's physical safety.

Disclose their confidentiality practices and to establish appropriate safeguards for patient information.

Civil money penalties would be imposed for violations.

4. Genetic Information: All plans—self-funded and insured group plans, as well as individual plans—would be prohibited from denying coverage, or adjusting premiums or contribution amounts based on ''predictive genetic information.'' The term ''predictive genetic information'' includes individual's genetic tests, genetic tests of family members, or information about family medical history.

5. Refocusing AHCPR on Quality Improvement: The bill would refocus AHCPR (and rename it the Agency for Healthcare Quality Research) to encourage overall improvement of quality in the nation's health care systems. The new agency would facilitate support of state-of-the-art information systems, support of primary care research, technology assessment and coordination of the Federal Government's own quality improvement efforts.

6. Improved Access to Health Insurance: The bill includes three provisions to improve access:

Allows full deduction of health insurance for self-employed individuals.

Gives individuals the ability to carry forward up to $500 in their flexible spending accounts from one year to the next or to be deposited into an IRA, and MSA, or a 401(k) plan.

Lifts the caps for MSAs and would allow all individuals, including Federal employees, the option to purchase these plans.●

● Ms. COLLINS. Mr. President, I am pleased to be joining my colleagues in introducing this Patients' Bill of Rights, which is the product of more than a year's worth of intensive work and negotiations by the Senate Republican Health Care Task Force on which I serve.

This comprehensive legislation has three major purposes. First, it will protect patients' rights and hold HMOs accountable for providing the care they have promised. Second, it will expand consumer choice and access to affordable care. And third, it will improve health care quality and outcomes.

Mr. President, there is a growing unease across our country about changes in how we receive our health care. People worry that if they or their loved ones become seriously ill, their HMO will deny them coverage and force them to accept either inadequate care or financial ruin—or perhaps both.

They feel that vital decisions affecting their lives will be made, not by a supportive family doctor, but by an unfeeling bureaucracy. The American people, known for taking charge of their destiny, feel increasingly powerless about their health care. Our bill will ensure that medical decisions remain in the hands of patients and physicians, not HMO accountants and trial lawyers.

All of us agree that medically-necessary patient care should not be sacrificed to the bottom line. However, according to a 1997 study by Lewin, every one percent increase in health care premiums results in as many as 400,000 uninsured Americans. I have therefore been alarmed by reports that American businesses everywhere—from large multinational corporations to the corner store—are facing huge hikes in health insurance premiums in 1999, ranging from about 8 percent on average, to 20 percent or more. This is a remarkable contrast to the last few years, when premiums rose less than 2 or 3 percent, if at all.

We are engaged in an extremely delicate balancing act as we attempt to respond to concerns about quality, without resorting to unduly burdensome federal controls and mandates that will further drive up costs, causing thousands of Americans to lose their coverage and pushing health insurance further out of reach for many uninsured Americans.

Our Patients' Bill of Rights does not pre-empt, but rather builds upon the good work that states have done in the area of patients' rights and protections. Congress agreed that states should have primary responsibility for the regulation of health insurance when it passed the McCarran-Ferguson Act in 1945. And, as someone who has overseen a Bureau of Insurance in state government, I think state regulators have done a good job of responding to the needs and concerns of their citizens. For instance, at my last count, 44 states had passed laws prohibiting ''gag clauses'' that restrict communications between patients and their doctors, and the remaining six had bills pending in their legislatures. States acted without any mandate or prod from Washington to protect consumers.

Moreover, one size does not fit all, and what may be appropriate for one state may not be necessary in another. Florida, for instance, provides for direct access to a dermatologist, which is understandable, given the high rate of skin cancer in that state. But in a state like Maine this may not be so important.

So why does Congress need to act? The answer is that federal law prohibits states from regulating the self-funded, employer-sponsored health plans that cover 48 million Americans.

Our bill extends many of the same rights and protections to these individuals and their families that Americans in state-regulated plans already enjoy. For the first time, they will be guaranteed the right to talk freely and openly with their doctors about their treatment options without being subject to ''gag clauses'' that limit communications. They will be guaranteed coverage for emergency room care that a ''prudent layperson'' would consider medically necessary without prior authorization from their health plan. They will be able to see their OB-GYN or pediatrician without a referral from their plan's ''gatekeeper,'' and they will have the option of seeing a doctor who is not a part of their HMO's network. They will also have some assurance of continuity of care if their health plan terminates its contract with their doctor or hospital.

Moreover, all patients will be given the right to review their medical records and will have added protections to ensure that this information will be kept confidential. Finally, insurers will be prohibited from collecting or using predictive genetic information about a patient to deny coverage or set premium rates.

Mr. President, the states are way ahead of the federal government in the area of insurance reform, and the State of Maine has already enacted many of these same consumer rights and protections—a ban on gag clauses, a prudent layperson definition for emergency care, and direct access to OB/GYNs. Our bill would extend these and other rights to the nearly 220,000 Maine citizens in health plans that are not subject to state regulation and who currently do not enjoy these protections.

A key provision of our bill would give all 125 million Americans in employer-sponsored plans assurance that they will get the care that they need, when they need it. This includes 535,735 people in Maine who are in fully-insured ERISA plans. For the first time, these individuals will be entitled to clear and complete information about their health plan—about what it does and does not cover, about any cost-sharing requirements, and about the plan's providers. Helping patients understand their coverage before they need to use it will help to avoid coverage disputes later.

The goal of any patient protection legislation should be to solve disputes about coverage up from, when the care is needed. Not months, or even years later, in a court room.

Our bill would accomplish this goal by creating both an internal and external review process. First, patients or doctors who are unhappy with an HMO's decision could appeal it internally through a review conducted by

individuals with ''appropriate expertise'' who were not involved in the initial decision. Moreover, this review would have to be conducted by a physician if the coverage denial is based on a determination that the service is not medically necessary or is an experimental treatment. Patients could expect results from this review within 30 days, or 72 hours in cases when delay poses a serious risk to the patient's life or health.

Patients turned down by this internal review would then have the right to a free, external review by medical experts who are completely independent of their health plan. This review must be completed within thirty days—and even faster in a medical emergency or when delay would be detrimental to the patient's health. Moreover, the decision of these outside reviewers is binding on the health plan, but not on the patient. If the patient is not satisfied, they retain the right to sue in federal or state court for attorneys' fees, court costs, the value of the benefit and injunctive relief.

Our bill differs from the Democrats' bill in a fundamental respect: it places treatment decisions in the hands of doctors, not lawyers. If your HMO denies you treatment that your doctor believes is medically necessary, you should not have to resort to a costly and lengthy court battle to get the care you need. After all, doesn't it make more sense to put medical care in the hands of doctors, not lawyers? You should not have to resort to hiring a lawyer and filing an expensive lawsuit to get the treatment. You just can't sue your way to quality health care.

The purpose of our bill is to solve problems up-front when the care is needed, not months or even years later after the harm has occurred. According to the GAO, it takes an average of 33 months to resolve malpractice cases. One case in the study took 11 years. This does absolutely nothing to ensure a patient's right to timely and appropriate care. Moreover, patients only receive 43 cents out of every dollar awarded in malpractice cases. The rest winds up in the pockets of the trial lawyers and administrators of the court and insurance systems.

Finally, more lawsuits are certain to mean higher health care costs. According to the Barents Group of KPMG Peat Marwick, increased lawsuits could drive up premiums as much as 8.6 percent, forcing businesses to pay $94.1 billion ($1,284 per worker) in extra premiums over five years. Close to two million Americans could lose their health insurance next year as increased costs force many employers to eliminate coverage altogether, or to pass on higher premiums and out-of-pocket costs to employees who can't afford them.

Last fall I met with a group of Maine employers who expressed their serious concerns about the Democrats' proposal to expand liability for health plans and employers. The Assistant Director for Human Resources at Bowdoin College talked about how moving to a self-funded, ERISA plan enabled them to continue to offer affordable coverage to Bowdoin employees when premiums for their fully-insured plan skyrocketed in the late 1980s. Since they self-funded, they have actually been able to lower premiums for their employees, while at the same time, enhance their benefit designs with such features as well-baby care, free annual physicals, and prescription drug cards with low copayments. They told me that the Democrats' proposal to expand liability seriously jeopardizes their ability to offer affordable coverage for their employees. Similar concerns were expressed by the Maine Municipal Association, L.L. Bean, Bath Iron Works, and others.

Mr. President, our bill also contains important provisions to improve health care quality and outcomes for all Americans.

For example, I am particularly pleased that our bill contains the proposal introduced by my colleague from Maine, Senator SNOWE, that prohibits insurers from discriminating on the basis of predictive genetic information.

Genetic testing holds tremendous promise for individuals who have a genetic predisposition to beat cancer and other diseases and conditions with a genetic link. However, this promise is significantly threatened when insurance companies use the results of such testing to deny or limit coverage to consumers on the basis of genetic information. In addition to the potentially devastating consequences of being denied health insurance on the basis of genetic information, the fear of discrimination may discourage individuals who might benefit from having this information from ever getting tested.

And finally, our bill will make health insurance more affordable by allowing self-employed individuals to deduct the full amount of their health care premiums beginning not in 2003, as in current law, but next year.

Establishing parity in the tax treatment of health insurance costs between the self-employed and those working for large businesses is a matter of basic equity, and it will also help to reduce the number of uninsured, but working, Americans. It will make health insurance more affordable for the 82,000 people in Maine who are self-employed. They include our lobstermen, our hairdressers, our electricians, our plumbers, and the many owners of mom-and-pop stores that dot communities throughout the state.

Mr. President, I believe that our plan strikes the right balance as we effectively address concerns about quality and choice without resorting to unduly burdensome federal controls and mandates that would further drive up costs and cause some Americans to lose their health insurance altogether. I urge all of my colleagues to join us in cosponsoring this proposal.●

● Mr. FRIST. Mr. President, I rise to voice my support for the bill we are introducing today and to urge my colleagues to pass a strong Patients' Bill of Rights this year. Our Patients' Bill of Rights is a good bill that will improve the quality of health care for patients in this country.

We have the benefit of starting off in a new Congress. The partisan rhetoric of elections is behind us. Today, we are here to convey our genuine interest to pass managed care reform this year as well as to provide the necessary building blocks to improve health care quality.

Not much attention was given in last year's debate to the many areas of agreement between the Republican and Democratic proposals. It is my hope that we can work together this year in a deliberative, thoughtful manner to pass bipartisan legislation. For example, there is bipartisan support to enact strong patient protection standards including coverage for emergency screening exams and services; allowing continuity of care so that patients may keep their physician, even if he or she is dropped from the plan, during a terminal illness, institutional care or pregnancy; and to prohibit plans from including gag clauses in their contracts. There is also strong consensus that we must require health plans to provide comparative information about their plans and to hold plans accountable for their decisions by allowing patients to appeal coverage denials to an independent medical expert, including expedited reviews, and receive a timely response.

In addition, I am pleased that many provisions that are in the Senate Republican bill also have received bipartisan support. Our bill last year included the ''Women's Health Research and Prevention Amendments,'' which I also introduced as S. 1722, that passed the Senate unanimously at the end of last year. These programs provide a broad spectrum of activities to improve the quality of women's health; including research, prevention, treatment, education and data collection.

We must remember that the central focus of this debate—the genesis for the entire debate—is to embark on a national discussion of how we can truly improve real quality of care for patients. Our bill this year will again contain two measures which have broad bipartisan support and will greatly improve the quality of health care in this country.

Title III of our bill prohibits genetic discrimination against individuals in health insurance. Prohibiting genetic discrimination translates into a patient's right to quality care. Genuine

quality care means that patients and practitioners have the very best information available to them when they make health care decisions. Patients should not be afraid to benefit from new genetic technologies, or share personal information that has immense potential to improve care and save lives. This is not a political or partisan issue. Our 49 Republican cosponsors last year, several of our Democratic colleagues, and President Clinton all support enacting legislation to prohibit genetic discrimination.

Title IV of our bill refocuses the Agency for Health Care Policy and Research to support our federal efforts to improve health care quality through a vigorous research agenda. I also introduced this proposal as a stand alone bill (S. 2208) last year which had broad bipartisan support. Our goal is to enhance the agency to become the driving force of our federal efforts to support the science necessary to provide patients with information about the quality of care they receive and to provide physicians with research data to improve health care outcomes for their patients.

There is no question Congress will need to revisit some issues in the managed care debate. However, we will work deliberatively and in a bipartisan manner through our committee work this year to pass comprehensive legislation because we all share the ultimate goal of improving health care quality for patients.●

● Mr. JEFFORDS. Mr. President, I want to begin by commending Senator NICKLES and all of the members who participated in putting the legislation together. I think it is solid legislation that will result in a greatly improved health care system for Americans, and I am proud to be a co-sponsor of the ''Patients' Bill of Rights Plus.''

As Chairman of the Committee on Health, Education, Labor, and Pensions, with its jurisdiction of private health insurance and public health programs, I anticipate that the Committee will have an active health care agenda during the 106th Congress. In fact, on January 20th, the Committee held a hearing on health plan information requirements and internal and external appeals rights. And, this hearing builds on the foundation of fourteen related hearings that my Committee held during the 105th Congress.

People need to know what their plan will cover and how they will get their health care. The ''Patients' Bill of Rights Plus'' requires full information disclosure by an employer about the health plans he or she offers to employees. Patients also need to know how adverse decisions by the plan can be appealed, both internally and externally, to an independent medical reviewer.

The limited set of standards under the Employee Retirement and Income Security Act (ERISA) may have worked well for the simple payment of health insurance claims under the fee-for-service system in 1974. Today, however, our system is much more complex, and there are many types of decisions being made—from routine reimbursements to pre-authorizations for hospital stays. And it is in the context of these changes, particularly the evolution of managed care, that ERISA needs to be amended in order to give participants and beneficiaries the right to appeal adverse coverage or medical necessity decisions to an independent medical expert.

The provision of our bill giving consumers a new right of an external grievance and appeals process is one of which I am particularly proud, since it is the cornerstone of S. 1712, the Health Care QUEST Act, which I introduced with Senator LIEBERMAN during the last Congress. Under the ''Patients' Bill of Rights Plus,'' enrollees will get timely decisions about what will be covered. Furthermore, if an individual disagrees with the plan's decision, that individual may appeal the decision to an independent, external reviewer. The reviewer's decision will be binding on the health plan. However, the patient maintains his or her current rights to go to court.

As the Health and Education Committee works on health care quality legislation, I will keep in mind three goals. First, to give families the protections they want and need. Second, to ensure that medical decisions are made by physicians in consultation with their patients. And, finally, to keep the cost of this legislation low so that it displaces no one from getting health care coverage.

Our goal is to give Americans the protections they want and need in a package that they can afford and that we can enact. This is why I hope the ''Patients' Bill of Rights Plus'' we have introduced today will be enacted and signed into law by the President.●

● Mr. CRAIG. Mr. President, today, Senate Republicans are responding to America's number one health care concern: the high cost of health insurance and medical care. By granting all Americans access to tax-free medical savings accounts; by allowing self-employed Americans to deduct 100 percent of the cost of their health insurance premiums; and by allowing workers with flexible savings accounts to keep some of the money in those accounts, our ''Patients' Bill of Rights—Plus'' will tear down the barriers that government has put in the way of affordable health coverage and care.

Our proposal stands in stark contrast to those offered by others in Congress. With millions of Americans unable to afford insurance because of the unfairness of the federal tax code, some members of Congress want to force consumers to buy government-prescribed benefits—including many that are giveaways to special interests—even if it causes millions more to lose their health coverage.

While other so-called ''patients' rights'' bills contain nothing but expensive mandates, hidden taxes and costly lawsuits, our bill will deliver quality health insurance to millions of Americans. Our bill will make a down payment on serious health care reform that puts patients first—not doctors, not lawyers, not insurance companies, and certainly not government bureaucrats.

Rather than support a patients' bill of rights minus access, I urge my colleagues to take a step forward by making health insurance accessible instead of taking a step backward by making it more expensive.●

● Mr. BURNS. Mr. President, I am pleased to support and co-sponsor patient protection legislation. There is nothing more important than protecting the patient-doctor relationship and guaranteeing our citizens the right to choose their own doctor. It is important to make sure patients have the information they need to make decisions about their health care and make sure doctors, not accountants or lawyers, decide which medical services are needed.

Under Senator NICKLES' Patients' Bill of Rights Act, no health plan will be beyond the scope of federal or state patient safeguards. The bill will expand access to doctors, incuding guaranteed access to obstetrical and gynecological care and pediatric care, and require managed care plans to offer patients the option to receive care outside a plan's network of doctors.

In addition, health plans would have to provide patients with information on covered services, cost-sharing requirements, payment restrictions for services from out-of-network providers, rules for out-of-area coverage, preauthorization requirements and procedures, and rules for grievence and appeals filings. Health plans would be required to have both an internal appeal and external third-party review of coverage for any service that is denied. Plans would also be required to safeguard patients' medical information or face civil penalties.

The Patients' Bill of Rights Act will also make it easier for many Americans to afford health care. Over 3 million self-employed individuals and their families will benefit from increasing the tax deductibility of health insurance to 100 percent, the same deduction most companies take for their employees. This bill also gives every American the right to have medical savings accounts (MSA's) and puts MSA's on an equal tax treatment footing with standard health care insurance. These flexible savings plans allow you to save money for health expenses tax-free as long as you have a high-deductible health insurance plan. MSA's

are currently only available for employees in companies with 50 or fewer employees.

In this era of managed care, patients need a Bill of Rights to make sure they get quality health care and not a plan that will lead to higher costs and greater numbers of uninsured. I am happy to cosponsor this important legislation.●

● Mr. DOMENICI. Mr. President, I rise today in support of the recently introduced Republican Patients' Bill of Rights.

I would like to begin by making an observation about the impact of any potential changes to the managed care system.

I would submit that whether a decision relating to health care is made by business or the government, the results will always have consequences on the those actually utilizing the system. Let me put that another way, we must always proceed with what the impact of any changes will mean to families and beneficiaries.

Thus, when decisions are made, they must be thought out and done so in a responsible manner. And I believe the Republican Patients' Bill of Rights does just that by: holding HMO's accountable, increasing access, improving quality and, expanding choice.

At the same time we must work to ensure that: costs are not unnecessarily increased, more Americans are not forced into the ranks of the uninsured and, additional layers of bureaucracy are not placed between patients and their doctors.

Let me take just a moment to talk about the state of health care in New Mexico.

Health care is close to a $5 billion a year industry in New Mexico. Almost 3,000 physicians practice in the state and overall the industry employs close to 52,000 New Mexicans. Over 600,000 New Mexicans are enrolled in managed care plans.

With this in mind, I would like to make several points about New Mexico as a whole, that are relevant to any debate relating to managed care: 78% of New Mexico businesses have 10 or fewer employees and 96% of all businesses have 50 or fewer employees. New Mexico ranks 40th in the nation in terms of the number of people uninsured, a full 25% of the population.

The preceding merely emphasizes a point that we must take into consideration and that is the potential impact upon a state and its people.

I think everyone would agree that the managed care system is not perfect and we have all heard one or another of those so called HMO horror stories. As a result, there is now a debate going on here and around the country about the need for HMO/Managed Care reform.

I also want to take a moment to point out that New Mexico is already at the forefront of HMO/Managed Care Reform.

New Mexico has already implemented many of the so called ''patient protections'' like: no gag clauses; a prudent layperson standard for emergency care; direct access to an OB/GYN; choice of providers; access to prescription drugs; confidentiality of medical records and; a grievance and appeals procedure.

I think it is important to stop and make a point that I believe is extremely important in light of the large number of small employers and high rate of uninsured not only in New Mexico, but the rest of the country. For every 1% increase in premium costs, 400,000 individuals will lose their health insurance coverage.

That is an extremely sobering thought when one realizes that small employers often have the most difficult time providing insurance for their employees because of the already high cost.

The Republican bill simply addresses Americans' concerns that their rights be assured in health care coverage, in addition to increasing access to care, improving quality of care, and expanding choice.

However, there is one thing the Bill will not do, create a new right to go into the courts and sue managed care companies for unlimited damages. I believe that we on this side of the aisle have adopted a sense about health care and it says: lawyers and lawsuits do not deliver health care. Rather, lawyers and lawsuits generally make health care cost more.

I also think that it is very important to note that under the Employee Retirement Income Security Act (ERISA) a participant or beneficiary can already sue a managed care company. Let me repeat that, the right to sue a HMO is already available.

Now why would we want to create even more lawsuits, when for years we have been attempting to enact tort reform.

I know many New Mexicans share in the fears expressed by many Americans about the availability and quality of their health care. That is why I support the Republican Patients' Bill of Rights because it will ensure that patients receive: more affordable care and more choices; greater access to more and better information about health plans, benefits and the doctors that provide their care; and the advantages of a system that holds health plans accountable for medical decisions through a strong internal and external appeals process.

The Bill reforms the Agency for Health Care Policy and Research, renaming it the Agency for Healthcare Quality Research (AHQR). It will make annual reports on the state of quality and cost of America's health care, support primary care research in underserved rural and urban areas, provide technology assessment, and coordinate federal quality improvement efforts.

Furthermore, the Bill includes a provision that will prohibit insurance plans from using predictive genetic information to deny coverage or to set premium rates.

Finally, the Bill would provide relief to those New Mexicans and Americans who are self-employed by allowing them to deduct 100% of their health insurance costs. More than 25 million people live in families headed by a self-employed individual (5.1 million of whom are currently uninsured).

In closing, I believe that the key to improving our health care system and to improving our HMO/Managed Care System is to work together.

As I have said, we must find a solution that would most benefit not only New Mexicans, but everyone across our country. However, at the same time we must remember that our decisions cannot affect these same people in an adverse manner.●

By Mr. CAMPBELL:

S. 301. A bill to amend title 39, United States Code, relating to mailability, false representations, civil penalties, and for other purposes; to the Committee on Governmental Affairs.

HONESTY IN SWEEPSTAKES ACT OF 1999

● Mr. CAMPBELL. Mr. President, today I introduce the Honesty in Sweepstakes Act of 1999. This bill addresses one of the most troubling and persistent consumer abuse issues we face today: highly deceptive, and all too often financially damaging, sweepstakes and other mass mail promotions.

Our nation's seniors and other vulnerable consumers are clearly being taken advantage of, and in some cases seriously financially harmed, by intentionally misleading sweepstakes promotions. Thousands of nationwide victims are being deliberately misled into believing that they have just won or are likely to win a sweepstakes when in fact they have neither won nor are in fact likely to win such a prize.

Each year American consumers also receive hundreds of millions of cashier's check look-alikes that deceptively masquerade as real cashier's checks while actually being worthless. These ploys unfairly prey upon some people's hopes and dreams.

Over the years sweepstakes have become increasingly sophisticated and deceptive. While these promotional tactics may be technically legal they are designed to skirt the intentions and outer limits of the law. These deceptive tactics run counter to core American values of honesty and forthrightness. There is abundant evidence, including the deceptive sweepstakes and other promotions each of us receives in our mailboxes on a regular basis, that current laws aimed at stopping these deceptive promotions simply are not working. Something needs to be done.

This bill addresses these deceptive sweepstakes and cashier's checks look-alikes by requiring up-front, clear and easy to read Honesty in Sweepstakes disclosures that will help protect consumers by counterbalancing false promises and deception. While honest and straight-forward sweepstakes promoters have nothing to fear from this bill, those promotions that revert to false and deceptive tactics will feel the heat.

The Honesty in Sweepstakes Act of 1999 is a refined version of my original legislation, S. 2141, that I introduced during the 105th Congress. The bill I am introducing today incorporates valuable input I received during a Senate hearing on S. 2141 and from productive discussions and negotiations involving key interested parties. Included among those who have made valuable contributions are: my Senate colleagues; the U.S. Postal Service; the General Accounting Office; Attorneys General from several states including Colorado, Florida, Michigan and New York; the American Association of Retired Persons; the Consumer Federation of America; the National Consumers League; the Direct Marketing Association; the Magazine Publishers of America and other industry representatives and experts. I want to thank them for their contributions to the Honesty in Sweepstakes Act of 1999.

The AARP has informed me that ''Research has shown that older Americans may be particularly vulnerable to techniques used by sweepstakes companies. At times they end up purchasing products that they do not want in the hopes of improving their chances of winning. Additionally, it has been shown that participation in these sweepstakes can lead to a rise in the number of telemarketing calls a person receives as well as an increase in mailed solicitations.''

The Honesty in Sweepstakes Act of 1999 will go a long way toward protecting our nation's seniors and other vulnerable consumers from misleading and deceptive sweepstakes promotions. The most vulnerable consumers among us deserve this protection. I urge my colleagues to support this legislation.

I ask unanimous consent that this bill and a letter from the AARP be printed in the RECORD.

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

S. 301

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

SECTION 1. HONESTY IN SWEEPSTAKES ACT OF 1999.

(a) SHORT TITLE.—This Act may be cited as the ''Honesty in Sweepstakes Act of 1999''.

(b) UNMAILABLE MATTER.—Section 3001 of title 39, United States Code, is amended by—

(1) redesignating subsections (j) and (k) as subsections (l) and (m), respectively; and

(2) inserting after subsection (i) the following:

''(j)(1) Matter otherwise legally acceptable in the mails that—

''(A) constitutes a solicitation or offer in connection with the sales promotion for a product or service (including any sweepstakes) that includes the chance or opportunity to win anything of value; and

''(B) contains words or symbols that suggest that—

''(i) the recipient has or will receive anything of value if that recipient has in fact not won that thing of value; or

''(ii) the recipient is likely to receive anything of value if statistically the recipient is not likely to receive anything of value,

shall not be carried or delivered by mail, and may be disposed of as the Postal Service directs, unless such matter bears the notice described in paragraph (2).

''(2)(A) The notice referred to in paragraph (1) is the following notice:

''(i) 'This is a game of chance (or sweepstakes, if applicable). You have not automatically won. Your chances of winning are (inserting corresponding mathematical probability for each prize shown). No purchase is required either to win a prize or enhance your chances of winning a prize.', or a notice to the same effect in words which the Postal Service may prescribe; or

''(ii) a standardized Postal Service designed warning label to the same effect as the Postal Service may prescribe.

''(B) The notice described in subparagraph (A) shall be in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations that the Postal Service shall prescribe and be prominently displayed on the first page of the enclosed printed material and on any other pages enclosed.

''(C) If the matter described in paragraph (1) is an envelope, the face of the envelope shall bear the notice described in subparagraph (A).

''(D) If the matter described in paragraph (1) is an order entry device, the face of the order entry device shall bear the following notice:

'' 'This is a game of chance (or sweepstakes, if applicable). No purchase is required either to win a prize or enhance your chances of winning a prize.', or a notice to the same effect in words which the Postal Service may prescribe.

''(k) Matter otherwise legally acceptable in the mails that constitutes a solicitation or offer in connection with the sales promotion for a product or service that uses any matter resembling a negotiable instrument shall not be carried or delivered by mail, and may be disposed of as the Postal Service directs, unless such matter bears on the face of the negotiable instrument in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe the following notice: 'This is not a check (or negotiable instrument). This has no cash value.', or a notice to the same effect in words which the Postal Service may prescribe.''.

(c) TECHNICAL AMENDMENT.—Section 3005(a) of title 39, United States Code, is amended by—

(1) striking ''or'' after ''(h),'' both places it appears; and

(2) inserting '', (j), or (k)'' after ''(i)''.

(d) PENALTIES.—

(1) IN GENERAL.—Section 3012 of title 39, United States Code, is amended—

(A) by redesignating subsections (b), (c), and (d), as subsections (c), (d), and (e), respectively;

(B) by inserting after subsection (a) the following:

''(b) Any person who, through use of the mail, sends any matter which is nonmailable under sections 3001 (a) through (k), 3014, or 3015 of this title, shall be liable to the United States for a civil penalty in accordance with regulations the Postal Service shall prescribe. The civil penalty shall not exceed $50,000 for each mailing of less than 50,000 pieces; $100,000 for each mailing of 50,000 to 100,000 pieces; with an additional $10,000 for each additional 10,000 pieces above 100,000, not to exceed $2,000,000.'';

(C) in subsection (c)(1) and (2), as redesignated, by inserting after ''of subsection (a)'' the following: ''or subsection (b),''; and

(D) in subsection (d), as redesignated, by striking ''Treasury of the United States'' and inserting ''Postal Service Fund established by section 2003 of this title''.

(2) ALLOCATION OF FUNDS.—It is the sense of Congress that civil penalties collected through the enforcement of the amendment made by paragraph (1) should be allocated by the Postal Service to increase consumer awareness of misleading solicitations received through the mail, including releasing an annual listing of the top 10 offenders of the Honesty in Sweepstakes Act of 1999.

(e) NO PREEMPTION.—Nothing in this Act shall preempt any State law that regulates advertising or sales promotions or goods and services that includes the chance or opportunity to win anything of value.

AARP,
Washington, DC, January 22, 1999.

Hon. BEN NIGHTHORSE CAMPBELL,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR CAMPBELL: AARP thanks you for drawing attention to the problem of deceptive and misleading sweepstakes solicitations by introducing the ''Honesty in Sweepstakes Act of 1999.'' Research has shown that older Americans may be particularly vulnerable to techniques used by sweepstakes companies. At times they end up purchasing products that they do not want in the hopes of improving their chances of winning. Additionally, it has been shown that participation in these sweepstakes can lead to a rise in the number of telemarketing calls a person receives as well as an increase in mailed solicitations.

AARP appreciates your efforts on behalf of consumers to eradicate the practice of fraudulent sweepstakes mailings through the introduction of the ''Honesty in Sweepstakes Act of 1999.'' We look forward to working with you and other Members on a bi-partisan basis to address this issue in the 106th Congress.

Sincerely,

HORACE B. DEETS.●

ADDITIONAL COSPONSORS

S. 6

At the request of Mr. DASCHLE, the names of the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 6, a bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to protect consumers in managed care plans and other health coverage.

S. 10

At the request of Mr. DASCHLE, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 10, a bill to provide health protection and needed assistance for older Americans, including access to health insurance for 55 to 65 year olds, assistance for individuals with long-term care needs, and social services for older Americans.

S. 16

At the request of Mr. DASCHLE, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 16, a bill to reform the Federal election campaign laws applicable to Congress.

S. 17

At the request of Mr. DODD, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 17, a bill to increase the availability, affordability, and quality of child care.

S. 18

At the request of Mr. HARKIN, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 18, a bill to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to provide for improved public health and food safety through enhanced enforcement.

S. 49

At the request of Mr. MURKOWSKI, his name was added as a cosponsor of S. 49, a bill to amend the wetlands program under the Federal Water Pollution Control Act to provide credit for the low wetlands loss rate in Alaska and recognize the significant extent of wetlands conservation in Alaska property owners, and to ease the burden on overly regulated Alaskan cities, boroughs, municipalities, and villages.

S. 56

At the request of Mr. KYL, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 56, a bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers.

S. 75

At the request of Mr. LUGAR, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 75, a bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers.

S. 76

At the request of Mr. LUGAR, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 76, a bill to phase-out and repeal the Federal estate and gift taxes and the tax on generational-skipping transfers.

S. 77

At the request of Mr. LUGAR, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 77, a bill to increase the unified estate and gift tax credit to exempt small businesses and farmers from estate taxes.

S. 78

At the request of Mr. LUGAR, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 78, a bill to amend the Internal Revenue Code of 1986 to increase the gift tax exclusion to $25,000.

S. 241

At the request of Mr. JOHNSON, the names of the Senator from Montana (Mr. BAUCUS) and the Senator from Wyoming (Mr. THOMAS) were added as cosponsors of S. 241, a bill to amend the Federal Meat Inspection Act to provide that a quality grade label issued by the Secretary of Agriculture for beef and lamb may not be used for imported beef or imported lamb.

S. 242

At the request of Mr. JOHNSON, the names of the Senator from Montana (Mr. BAUCUS) and the Senator from Wyoming (Mr. THOMAS) were added as cosponsors of S. 242, a bill to amend the Federal Meat Inspection Act to require the labeling of imported meat and meat food products.

S. 254

At the request of Mr. HATCH, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 254, a bill to reduce violent juvenile crime, promote accountability by rehabilitation of juvenile criminals, punish and deter violent gang crime, and for other purposes.

S. 258

At the request of Mr. MCCAIN, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 258, a bill to authorize additional rounds of base closures and realignments under the Defense Base Closure and Realignment Act of 1990 in 2001 and 2003, and for other purposes.

S. 271

At the request of Mr. FRIST, the names of the Senator from Oklahoma (Mr. NICKLES), the Senator from Alabama (Mr. SESSIONS), the Senator from Arkansas (Mr. HUTCHINSON), the Senator from Wyoming (Mr. THOMAS), the Senator from Arkansas (Mrs. LINCOLN), and the Senator from Louisiana (Mr. BREAUX) were added as cosponsors of S. 271, a bill to provide for education flexibility partnerships.

S. 277

At the request of Mr. COVERDELL, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 277, a bill to improve elementary and secondary education.

S. 280

At the request of Mr. FRIST, the names of the Senator from Oklahoma (Mr. NICKLES) and the Senator from Alabama (Mr. SESSIONS) were added as a cosponsor of S. 280, a bill to provide for education flexibility partnerships.

SENATE JOINT RESOLUTION 2

At the request of Mr. KYL, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of Senate Joint Resolution 2, a joint resolution proposing an amendment to the Constitution of the United States to require two-thirds majorities for increasing taxes.

SENATE JOINT RESOLUTION 3

At the request of Mr. KYL, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of Senate Joint Resolution 3, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

SENATE RESOLUTION 22

At the request of Mr. CAMPBELL, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of Senate Resolution 22, a resolution commemorating and acknowledging the dedication and sacrifice made by the men and women who have lost their lives serving as law enforcement officers.

SENATE CONCURRENT RESOLUTION 3—CONDEMNING THE IRREGULAR INTERRUPTION OF THE DEMOCRATIC POLITICAL INSTITUTIONAL PROCESS IN HAITI

Mr. DEWINE (for himself, Mr. GRAHAM, Mr. HELMS, and Mr. COVERDELL) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 3

Whereas, in 1991 at Santiago, Chile, the Organization of American States (OAS) approved Resolution 1080 to deter irregular interruptions of the democratic political institutional process within countries having democratically elected governments;

Whereas the OAS invoked Resolution 1080 (1991) and called for a meeting of the foreign ministers in 1991 to determine appropriate actions in response to the coup d'etat against Haiti's elected President Jean-Bertrand Aristide;

Whereas the legacy of fiat and abuse of the Duvalier dictatorship led the framers of the 1987 Haitian constitution to provide for clear separation of powers;

Whereas the 1987 Haitian constitution permanently vests all legislative authority in the National Assembly and does not provide for rule by decree by the president;

Whereas on January 11, 1999, President Preval seized dictatorial powers by effectively dissolving Haiti's parliament and announcing he will rule by decree; and

Whereas this irregular interruption of the democratic political institutional process requires immediate international attention and action to bring about a return to democracy in that country: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Senate—

(1) condemns the irregular interruption of the democratic political institutional process and considers that interruption to be a serious blow to democracy in Haiti and a serious threat to democracy in the Caribbean region and the Hemisphere;

(2) calls on the Government of Haiti forthwith to fully restore the legitimate exercise

of power by a democratically elected National Assembly and to ensure full respect for internationally recognized human rights;

(3) urges the Organization of American States (OAS) to send a fact-finding mission headed by the Secretary General to Haiti and, under Resolution 1080, to call a meeting of the foreign ministers of the OAS member countries in order to consider joint actions to bring about a return to democracy in that country.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President of the United States with the request that he further transmit such copy to the Secretary General of the Organization of American States.

● Mr. DEWINE. Mr. President, today, it is with distress that I rise to submit and seek the Senate's approval on a concurrent resolution to express the deep concern of Congress over the deteriorating situation in Haiti. My colleagues from Florida, Senator GRAHAM; North Carolina, Senator HELMS; and Georgia, Senator COVERDELL have joined me in cosponsoring this important and timely resolution. The Chairman of the House International Relations Committee, BENJAMIN GILMAN and Chairman of the House Select Intelligence Committee, PORTER GOSS intend to introduce this same resolution in the House very soon.

Mr. President, twelve days ago, Haiti's drawn out crisis took a very troubling turn when Haitian President Rene Preval announced that the Haitian National Assembly's term had expired and he would proceed to install a government by ''executive order.'' What he means, of course, is to ignore Haiti's parliament and rule by decree.

To understand the present situation, one must first comprehend the series of events in the past year and a half which have led to this unfortunate circumstance. The seriously flawed April 6, 1997 elections, which attracted less than 5 percent of the Haitian electorate, provoked the resignation in June 1997 of Prime Minister Rosney Smarth. For twenty months, a political deadlock has existed between President Preval and the majority party in parliament over the contested April elections and recently over President Preval's nominee for Prime Minister, Jacques Edouard Alexis. The political crisis has virtually paralyzed the government and delayed millions of dollars in international aid to Haiti.

During this period, the President dispatched a series of high-level emissaries, including the Secretary of State and the First Lady, to help defuse the crisis. Former National Security Advisor Anthony Lake has undertaken many missions to help mediate among the parties; most recently in the days leading up to the January 11 announcement.

Only on December 16 did the Haitian Senate ratify Mr. Alexis' credentials. On December 18, the Chamber of Deputies followed suit. Negotiations for the final approval of Mr. Alexis as Prime Minister, however, proved fruitless. President Preval and Mr. Alexis either failed or refused to secure agreement on a cabinet that would allow the prime minister to present his program to parliament for a vote of confidence.

This much is clear: Despite the extraordinary efforts of the Administration's emissaries, President Preval refused to accept any solution to this crisis that left Haiti's parliament in place. The present moment in Haiti is fraught with danger. Micha Gaillard, a Haitian social democrat who was closely associated with the internal efforts to restore then President Aristide to power in the early 1990's following the coup attempt against him wrote on January 16 that:

> What is going on today, according to those who were there, is the same as happened in the years 1963–64 when Francios Duvalier was maneuvering to be proclaimed president-for-life. [This] . . . formula has been reviewed and updated. Here it is important that we . . . disavow and condemn far and wide the means employed—usurpations of power, intimidation, violence, and corruption—to subvert the functioning of all the democratic institutions, which are the sole guarantee against dictatorship.

The resolution I submit today puts the United States Congress on record that the irregular interruption of the democratic political institutional process in Haiti must, without further delay, be addressed through Organization of American States Resolution 1080.

In 1991 at Santiago, Chile, the Organization of American States approved Resolution 1080 specifically to deter irregular interruptions of the democratic political institutional process within countries having democratically elected governments. When invoked, a meeting of the Permanent Council of the OAS and the foreign ministers of the OAS member countries is in order to consider joint actions to bring about a return to democracy in that country.

Resolution 1080 has been invoked several times in the past decade. The OAS invoked the resolution in 1991 to determine appropriate actions in response to the coup d'etat against Haiti's elected President Aristide. It was also invoked in Guatemala in 1993 when Guatemala President Jorge Serrano dissolved the Parliament and the courts; in Paraguay in 1996 when a Paraguayan general attempted a coup d'etat against Paraguayan President Wasmosy; and in 1992 in Peru after President Alberto Fujimori announced the dissolution of the Congress and the courts.

Mr. President, I have visited Haiti seven times in the past three years. I am extremely concerned about the current situation there. Mr. President, I urge my colleagues to support and pass this important resolution.●

SENATE RESOLUTION 29—DESIGNATING NATIONAL CORRECTIONAL OFFICERS AND EMPLOYEES WEEK

Mr. ROBB (for himself and Mr. CAMPBELL) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 29

Whereas the operation of correctional facilities represents a crucial component of our criminal justice system;

Whereas correctional personnel play a vital role in protecting the rights of the public to be safeguarded from criminal activity;

Whereas correctional personnel are responsible for the care, custody, and dignity of the human beings charged to their care; and

Whereas correctional personnel work under demanding circumstances and face danger in their daily work lives: Now, therefore, be it

Resolved, That the Senate designates the week of May 2, 1999, as ''National Correctional Officers and Employees Week''. The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LUGAR. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will meet on Tuesday, January 26, 1999 in SR–328A at 9:00 a.m. The purpose of this meeting will be to review economic concentration in agribusiness.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on Improving Education Opportunities: Senators' Perspective during the session of the Senate on Tuesday, January 26, 1999, at 9:30 a.m.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate on Wednesday, January 27, 1999, at 9:30 a.m.

ADDITIONAL STATEMENTS

PROTECTING OUR UNDERGROUND INFRASTRUCTURE

● Mr. LOTT. Mr. President, the last Congress enacted legislation which protects our nation's vital underground infrastructure. Power cables, telephone lines, water mains and pipelines affect our daily lives, and it is essential that they are given the best protection possible. This legislation, based on S. 1115,

the Comprehensive One-Call Notification Act, does just that. It provides incentives for states to improve their notification systems—systems which provide for accurate marking of underground facilities, and systems which prevent damage during excavation. This bill became law as part of the Transportation Equity Act for the 21st Century, TEA 21.

I am pleased to report that the response to the one-call legislation has been extremely positive. The truely bipartisan spirit that characterized Congress' approach to the legislation has been carried over into the cooperative spirit of the participants in implementing the bill.

The bill's first mandate convened a study on the best practices in one-call notification. This study will be submitted to Congress in June of this year, and is being carried out by the Office of Pipeline Safety (OPS) of the Department of Transportation. I have received reports that OPS has fully involved those affected by the law in all phases of the design and implementation of the best practices. This has proven to be an excellent model for conducting a cooperative effort between the public and private sectors. Mr. President, I am particularly pleased by the leadership the excavation community has shown in working with one-call center representatives, underground facility operators and others interested in underground infrastructure protection by moving this study process forward.

This study is a bottom-up effort with emphasis on letting those with hands-on experience play leading roles. After a public meeting last August to bring together interested parties, the participants formed nine teams covering various aspects of underground infrastructure protection: one-call center practices, excavation, mapping, locating and marketing, compliance, planning and design, reporting and evaluation, public education, and emerging technologies. The teams are currently gathering information, receiving and discussing any and all comments, and will produce the first drafts of the chapters for the final report. Team meetings are completely open to interested members of the public. Infact, schedules and minutes are being published on the OPS web page, http://ops.dot.gov, under ''damage prevention.''

Mr. President, the affected parties have checked their differences at the door, have worked together with openness and goodwill, have solved a very important infrastructure problem, and, because there was real world input, it will improve practices in the real world.

Looking ahead, the second phase of the bill calls for the Secretary of Transportation to offer grants to states which encourage improvements in their states' one-call notification systems. I expect the best practices study to significantly help devise criteria for awarding these grants. I hope the President's budget proposal funds these grant activities from general revenues in full recognition of the broad public benefit that accrues from effective underground infrastructure protection.

Mr. President, the process moving forward within the Department of Transportation has enlightened federalism through a government-industry partnership. I congratulate the monitoring the additional steps in the inclusive process to implement the protection of our vital underground infrastructure.●

TRIBUTE TO FAIRCHILD AFB KC–135 CREW

● Mrs. MURRAY. Mr. President, on January 13th, a Fairchild based KC–135 crashed near Geilenkirchen Air Base in Germany. Today, Team Fairchild and its many supporters gathered at the Spokane Opera House to grieve and to honor the memories of four members of the Washington Air National Guard who perished aboard the KC–135 in the service to our country.

I have had the pleasure of traveling to Fairchild Air Force Base on numerous occasions and meeting with the fine men and women there. They provide an indispensable part of our nation's defense and serve with pride and professionalism. I know that this tragedy hits especially hard on that close-knit community, and so it is with a heavy heart that I join them in their grief.

The four who died in the crash were members of the Washington Air National Guard 141st Air Refueling Wing, based at Fairchild Air Force Base near Spokane, Washington. Members of the 141st Air Refueling Wing were in Germany for training purposes and were participating in a routine NATO flight to refuel surveillance planes. The fallen men were all from Washington state, all family men, and all heroes.

Major David W. Fite, the pilot of the KC–135, was a resident of Bellevue, Washington. He began his service in the Washington Air National Guard in 1991. He is survived by his wife, a brother and his parents.

Captain Kenneth F. Thiele, co-pilot, was a resident of Spokane, Washington and served in the Washington Air National Guard since September 1998. He is survived by his wife.

Major Matthew F. Laiho, navigator, was a resident of Spokane, Washington and served in the Washington Air National Guard since 1989. He is survived by his wife, two children and his parents.

Technical Sergeant Richard D. Visintainer, boom operator, was also a resident of Spokane, Washington. His service in the Washington Air National Guard began in 1972. He is survived by his former wife and children.

Colonel James Wynne, the Wing Commander, was quoted, ''The guard is such a close-knit extended family that this will certainly send a wave of grief throughout the unit. This is a tragic loss.'' Colonel Wynne is right. Fairchild grieves today, its spirit challenged by tragedy. I know Team Fairchild will serve as a comfort to grieving families and fellow Air Force personnel.

My thoughts and prayers are with the families of Major Fite, Captain Thiele, Major Laiho and Sergeant Visintainer. Each will be missed. Each will be remembered.●

EDUCATION OPPORTUNITIES AND EXCELLENCE ACT OF 1999

● Mr. COVERDELL. Mr. President, yesterday, I introduced the Educational Opportunities and Excellence Act of 1999. This legislation represents the Republican vision how we can improve educational opportunities for every American child.

Last year, Congressional Republicans passed an educational agenda to provide every child in America with first-class learning opportunities in safe, secure schools, to give parents new choices and more decision-making power over their children's education, and to bring common-sense reforms to a myriad of redundant and antiquated federal education programs. Unfortunately, the special interests in Washington were resistant to change and fought desperately against our reform efforts. This is what happened:

WHAT WE PROPOSED AND WHAT HAPPENED

(1) A+ Accounts—President vetoed.

(2) Block Grants—Passed Senate, dropped in conference.

(3) Charter Schools—Signed into law.

(4) School Choice Pilot Program—President vetoed.

(5) Teacher Testing/Merit Pay—President vetoed.

(6) Reading Excellence—Signed into law.

(7) Teacher and Student Safety—President vetoed.

(8) Full Funding of IDEA—Increased Funding by over $500 million.

Despite the fierce opposition of our opponents, we will continue our fight to bring the best education possible within the reach of every American child. Our mission is to ensure that our children are among the best educated in the world, and we will not be dissuaded from accomplishing that goal by any amount of opposition.

Today, we are introducing the Educational Opportunities and Excellence Act of 1999 to build on the Successes of the 105th Congress, and to jump start the much needed debate on increasing the ability of our nation's children to obtain a quality education.

The Educational Opportunities and Excellence Act of 1999 is a broad effort

to offer new reforms to K–12 education, and provide incentives for families to save for higher education. It is made up of several titles:

Title 1—The Education savings Account Act of 1999—Under this title, parents will have more control over their children's education through IRA-style savings accounts that allow parents to save money tax-free for elementary and secondary education expenses. This legislation allows parents, grandparents, or scholarship sponsors to contribute up to $2,000 (post-tax dollars) a year per child for educational expenses while at public, private, religious or home schools—from kindergarten through high school. Last year, this proposal passed both the House and the Senate, but was vetoed by President Clinton.

Title II—Dollars to the Classroom Act—consolidates over 30 separate education programs and sends the money directly to state and local officials to be used to improve educational achievement and learning. The bill requires that 95% of federal education dollars are spent on classroom activities, rather than Washington based bureaucracies.

Title III—Merit Act—provides for an incentive grant program for States to establish and administer periodic teacher testing and merit pay programs for elementary and secondary school teachers.

Title IV—Additional Funding for the Individuals with Disabilities Education—provides additional funding to states to meet the federal mandate under the Individuals with Disabilities Education Act.

Title V—K–12 Community Participation Act—amends the IRS code to allow for a tax credit for elementary and secondary school expenses and for charitable contributions to organizations which provide scholarship to attend private schools. The maximum credit allow is up to $200 per person in 1999; $150 in 2000; $200 in 2001; and $250 thereafter.

Title VI—Collegiate Learning and Student Savings—extends tax-free treatment to all accumulations of interests and withdrawals from pre-paid college tuition plans.

With the Educational Opportunities and Excellence Act of 1999, we want to lead the Congress in taking the first steps necessary to improve educational opportunities dramatically for every American child. Our agenda—parental control and involvement, dollars to the classroom, state and local authority, and a return to basic academics—will be fully embraced by parents, teachers and administrators, governors and mayors across the country.●

THE AIR TRANSPORTATION IMPROVEMENT ACT

● Mr. DORGAN. Mr. President, earlier this week, I joined the Chairman and Ranking Democrat on the Senate Committee on Commerce, Science, and Transportation in introducing the Air Transportation Improvement Act. While I am pleased to be a cosponsor of this legislation, I am sorry that we are in the position of introducing a bill that should have been passed last year. Due to a number of unfortunate circumstances, including the unqualified mess at the end of the 105th Congress where 8 out of the 13 appropriations bills had to be lumped into a single massive bill, the Congress failed to complete its duty to reauthorize the Federal Aviation Administration (FAA) and related programs in the regular order of doing business. As a result, the FAA and important infrastructure programs such as the Airport Improvement Programs, were only extended until the end of March 1999. Thus, we are forced to begin the new Congress by taking up last year's business.

The FAA bill introduced yesterday needs to be one of the first priorities of this Congress. This is the case not only because of the pressing deadline of the short term extension, but also because this legislation contains some very important policy initiatives that will inject more airline competition and improve air service to small communities. While I support the general thrust of this legislation, I still believe that we need to consider some adjustments to this legislation. In particular, I believe that the Small Community Air Service Development Program established under this legislation is too modest in size to have much of an impact. Since the deregulation of the airline industry two decades ago, hundreds of small communities have experienced service degradation and many have lost service altogether. Vast geographic regions of our country have suffered unacceptable geographic isolation as the airlines have withdrawn service in smaller communities. This trend needs the serious attention of the Congress and the Department of Transportation.

Thanks to the bipartisan cooperation on this legislation among the leadership of the Senate Commerce Committee, we have developed the Small Community Air Service Development Program which could go a long way to address the small community air service problems. However, the authorization level proposed in the legislation introduced yesterday does not provide adequate enough resources for this demonstration program to make much of a difference. I hope that as the Commerce Committee works on this bill that we will be able to increase the authorization levels for this important new program.

I also realize that there is some serious controversy surrounding some provisions in this bill. It is my hope that we will be able to reach some fair compromises over the contentious provisions and that this bill will pass the Congress in very short order.

I want to commend Chairman MCCAIN and Senator HOLLINGS for their leadership on this legislation. I know that there is a strong desire on both sides of the aisle to work on this legislation and pass it as soon as possible.●

TRIBUTE TO DAVID W. DENNIS

● Mr. LUGAR. Mr. President, I rise to pay tribute to a much-loved and respected Hoosier statesman, David Worth Dennis, who passed away on January 6, 1999, at the age of 86. David Dennis represented the eastern section of the State of Indiana in the United States House of Representatives from 1969 to 1975. He served with great courage and distinction on the House Judiciary Committee during the difficult Watergate period.

David Dennis' commitment to public service began before and extended beyond his three terms in the House of Representatives. After his graduation from Earlham College and Harvard Law School, he began his career practicing law in Richmond, Indiana. He then served as the prosecuting attorney for Wayne County, Indiana, and then as a First Lieutenant in the JAG Corps of the U.S. Army. He served in the Pacific theater at the end of World War II. Shortly after he came home to Indiana in 1946, he won a seat in the Indiana General Assembly, where he served a total of four terms.

I first met Dave during his service in the Indiana House of Representatives, and I frequently corresponded with him during his United States Congressional service. I was pushing the extension of the ''New Federlism,'' in which states and cities obtained and exercised more responsibility. I also was advocating general revenue sharing in which the federal government would send money to states and cities without strings attached in order that the discharge of these additional responsibilities could be paid for. Dave was enthusiastic about diminishing federal prerogatives, but somewhat less enthusiastic about a distribution of federal revenues.

Our coming together on the campaign trail in 1974 led to enormous mutual respect. The Judiciary Committee was a battleground for efforts to impeach President Richard Nixon. Dave was a very loyal Republican but, even more importantly, he was a scholarly and thoughtful legislator who believed that insufficient evidence had been produced to vote for articles of impeachment in the Committee. As additional evidence withheld by President Nixon became known, Dave became outspoken in his condemnation of the cover-up and in his demand that President Nixon should resign.

I was privileged to watch at close range a courageous public servant at

work who, even in the midst of a partisan election campaign, was never in doubt that he should speak the truth as he saw it and let the chips fall where they may.

Neither Dave nor I were successful in the 1974 campaign, but I looked forward throughout subsequent years to our meetings. We not only reminisced about battles of the past, we discussed the future with expectations that great things could occur in our country through constructive leadership.

David Dennis remained a leader after returning in 1975 to practice law in Richmond, Indiana. Still active in Republican politics, he continued his career as an attorney, where he was loved and respected by the Richmond community. He was known for his fairness and his dedication to the practice of law. Describing Dave's legal calling, a friend quoted in the Richmond Palladium-Item summed up his dedication: ''He understood it as a service to the community. In the same way, David Dennis saw politics as a profession, not a way to get ahead.'' Dave was truly an advocate who loved the roles he played in both the legislative and the judicial systems of our country.

I last saw David Dennis at a Republican dinner in Richmond during the 1994 campaign. He was introduced and received a wonderful ovation from Wayne County Republicans, who revered his service and were so grateful for his continuing citizenship in the community he loved. I was able to keep in touch with news of Dave through his son, William C. Dennis II, who served as a remarkably energetic professor at my alma mater, Denison University.

In addition to his extensive public service, David Dennis is remembered by friends and family as an engaging storyteller and a skilled tennis player. Most of all, he is remembered as a loyal friend and loving husband and father.

My sympathy is with his children, Bill and Ellen, as well as with his four grandchildren as they remember and celebrate the life of an exemplary Hoosier statesman. This standard bearer of a great Quaker tradition at Earlham College added something very special to Indiana Political life. We will miss his wisdom and grace.●

AMERICAN WORKER LONG TERM CARE AFFORDABILITY ACT OF 1999

● Mr. GRAHAM. Mr. President, on Tuesday of this week, Senator GRASSLEY and I introduced S. 36, The American Worker Long Term Care Affordability Act of 1999, a bill creating a model long-term care insurance program for federal employees. Today, I would like to comment on a related long term care bill also introduced on Tuesday by Senator GRASSLEY and myself. S. 35, The Long Term Care Affordability and Availability Act of 1999, would give all Americans a tax deduction for the premiums they pay for long term care insurance.

The cost of long term care has risen to astonishing levels in recent years. In 1995, it averaged $37,000 per year. What this means is that a chronic illness requiring long term care can represent a financial catastrophe for retired Americans and their families. A retired couple might have a pension and basic health care, but the couple is not secure in retirement so long as their financial resources can be depleted by long term care bills.

Many Americans think Medicare covers the cost of long term care. In fact, it covers only the first 100 days of care following a hospital stay. Yet the average nursing home stay is 2.5 years.

Medicaid, unlike Medicare, does cover long term care—but only for beneficiaries who use up their life savings and income first. Medicaid, after all, is a program for the poor, and long term care beneficiaries must become impoverished to qualify. Furthermore, beneficiaries who rely on Medicaid must use providers that are chosen for them—not providers of their own choice. Even with these restrictions, Medicaid currently pays more than $30 billion per year for nursing home care.

The budgetary challenges provided by Medicare and Medicaid are on course to become ever more acute in coming years, as the baby boom generation ages. By 2030, as the number of people over 65 doubles, fully 32 states will have the demographics that Florida has today. The fastest growing segment of the population will be those over 85 with an expected 143% increase by 2030. People over 85 are at least 5 times more likely to reside in a nursing home than people who are 65. In real terms, nursing home expenditures are expected to quadruple in the next three decades.

Mr. President, given the accelerating cost of long term care and the demographic pressures on Medicare and Medicaid and other entitlement programs, Congress started several years ago to provide incentives for people to plan ahead for their own needs. The way most Americans plan ahead for long term care is by purchasing long term care insurance. With insurance, people can be confident that they won't have to impoverish themselves to deal with a chronic illness. They won't have to fall back on the Medicaid program or family members.

In the Kennedy-Kassenbaum health reform legislation in 1996, Congress permitted the deduction of premiums on long term care insurance in the same manner as health expenses. The trouble is that few people—other than the self-employed—can deduct health expenses since the tax code allows only the portion of health expenses over 7.5% of income to be deducted, and then only as an itemized deduction. Thus, a typical employee planning ahead for retirement cannot purchase long term care insurance on a tax deductible basis.

The bill we are introducing today would improve on Kennedy-Kassebaum by allowing Americans to deduct long term care insurance premiums regardless of whether or not they are self-employed or whether they itemize deductions or have any other health expense. Effectively, the bill would put long term care insurance on a par with pensions. Just as everyone can save for a pension on a tax deductible basis, everyone should be able to purchase long term care insurance in the same fashion.

A better deduction for long term care insurance premiums could also help us by encouraging younger Americans to purchase insurance now, when the coverage is readily affordable. For example, a quality long term care insurance policy purchased at age forty, can cost less than $50 per month.

Mr. President, every person who is covered by long term care insurance is one fewer potential Medicaid claimant. A recent study by the American Council for Life Insurance indicates that long term care insurance has the potential to reduce future out of pocket expenditures on long term care by 40 percent and future Medicaid long term care expenditures by more than 20%. In other words, long term care insurance has the capacity both to protect seniors from financial catastrophe, and to help protect entitlement programs from long term insolvency.

Mr. President, I also want to applaud the President's long term care initiative, which he announced two weeks ago. In proposing a tax credit for individuals who provide long term care to dependents, President Clinton also pledged to increase efforts to educate Americans about the importance of long term care. Both of these proposals are consistent with the legislative effort that Senator GRASSLEY and I are undertaking, and I look forward to working with the White House on this important issue.●

BMC ANTHONY LAWRENCE PETIT AND THE SCOTCH CAP LIGHTHOUSE

● Mr. MURKOWSKI. Mr. President, I rise today to honor the five heros who perished in the Scotch Cap Lighthouse disaster of April 1, 1946—five Coast Guardsmen who gave their lives so that others would survive. The lighthouse keeper was Chief Boatswain's Mate Anthony Lawrence Petit. His crew included Fireman 1st Class Jack Colvin, Seaman 1st Class Dewey Dykstra, Motor Machinist's Mate 2nd Class Leonard Pickering, and Seaman 1st Class Paul James Ness.

Lighthouses will always have a place in our history. They have warned mariners of danger, their crews have rescued survivors in the worst conditions imaginable, and their brilliant lamps have comforted and reassured those who are bound homeward at last.

In 1903, Scotch Cap Light Station was the first light put in place on the outside coast of Alaska. Located at the western end of Unimak Island, approximately 425 miles southwest of Anchorage, the light marks the entrance to Unimak Pass. Its only contact with the outside world was—every three months or so—a visit from a buoytender bringing supplies.

It was, and is, one of the most isolated places imaginable, especially in the winter, and its hardships were legendary—one lighthouse keeper froze both his hands just trying to go from the lighthouse tower to his quarters during a blizzard. It was so hazardous that no families were allowed, and in the early days, lighthouse keepers were allowed a full year off for every three years they spent on the island.

In 1940, the original building was replaced by a brand-new, reinforced-concrete structure built on a bluff near the shore, raising the light to 90 feet over the ocean, and protected by a concrete sea wall. But it wasn't enough.

The disaster began early, on April l, 1946. At 1:30 a.m., the crew woke to an earthquake lasting about 30 seconds, strong enough to knock things off shelves. After the quake, the watchstander at a radio-direction-finding (RDF) installation—built a little farther up the hill during World War II—radioed the lighthouse crew and was told there was no major damage.

Then, just before two o'clock in the morning, a second quake hit. The second tremor was expected, but not the million-ton wall of water—a tsunami—that quickly followed it.

The RDF station logbook reported: ''Terrific roaring from ocean heard, followed immediately by terrific sea, top of which rose above cliff and struck station, causing considerable damages.''

The watchstander again used his radio to contact the lighthouse. This time, there was no reply. This time, he wrote in the logbook: ''Light extinguished and horn silent.''

The wave from the second earthquake is now estimated to have been over 100 feet high. It completely erased the concrete lighthouse, killing the five crewmen instantly, and leaving only wreckage. The bodies of Chief Anthony Petit and his crew were gone. They washed ashore again a few days later, identifiable only by their bridgework and jewelry.

Chief Anthony Lawrence Petit was just a man—an ordinary man—but his life and death offer a glimpse at the thousands of ordinary men and women who join the Coast Guard and serve their fellow citizens in extraordinary ways. He was born and raised on Michigan's Upper Peninsula, in the town of Hancock, on a ship canal crossing the Keweenaw Peninsula. As a boy, he would have known the ships well, along with the Coast Guard buoy tenders and lighthouses that kept them safe. Petit enlisted in the Coast Guard as a young man in 1926. He never married, and served faithfully in the Coast Guard for the next 20 years. And we know that just before his final transfer to Scotch Cap, he was quoted saying, ''I hope to serve at as many Coast Guard ships and stations as I can before I retire in ten years.'' We know that in the end, he died doing the job he loved; keeping the light burning for those in peril on the sea. And we know his life was not wasted, nor forgotten—and we celebrate the christening of the USCGC Anthony Petit this 30th day of January, in the year of our Lord 1999.●

TRIBUTE TO RON AND BEVERLY GENDRON OF MANCHESTER ON THEIR RETIREMENT

● Mr. SMITH of New Hampshire. Mr. President, I rise today to honor Ronald and Beverly Gendron, two remarkable people who have been dedicated to making a difference in the lives of the less fortunate for over ten years in the city of Manchester, New Hampshire.

Ronald and Beverly founded the Helping Hands Outreach Center over ten years ago and have been committed to helping New Hampshire's needy ever since. Ronald and Beverly have now retired from the Helping Hands Outreach Center and are continuing their dedication to helping others by organizing a new outreach center in Laconia, New Hampshire.

Ronald and Beverly Gendron founded the Helping Hands Outreach Center of Manchester in 1986. The Center is dedicated to assisting in the problems of homelessness, hunger, and drug and alcohol addictions.

Ronald and Beverly have retired from Helping Hands of Manchester to embark on a new endeavor. They are organizing a new social service organization in Laconia, New Hampshire. With the Gendrons' help, the Open Arms Outreach Center of Laconia will be a ministry dedicated to providing assistance to troubled families. Ronald and Beverly will work closely with Laconia and State officials to offer housing and shelter in the Greater Laconia area.

Mr. President, the Gendrons have devoted their time and their hearts for over ten years to serve the homeless and suffering in the Greater Manchester Area. Ronald and Beverly served southern New Hampshire's needy well.

I would like to extend my best wishes to them as they embark on their new endeavor to assist in the lives of the needy in the Lakes Region of New Hampshire. It is people like the Gendrons that help make New Hampshire a special place to live. It is an honor to represent them in the United States Senate.●

WRECKED CARS, ON THE ROAD AGAIN

● Mr. LOTT. Mr. President, I rise today to call our colleagues attention to an article that appeared in the January 8, 1999, edition of the Washington Post. It is important because it touched on a serious and growing problem plaguing our nation's consumers and motorists everywhere. Under the title, ''Wrecked Cars, On the Road Again,'' the Post writer detailed how easy it is for a person to unwittingly purchase a rebuilt salvage vehicle completely unaware of the car's previous damage history.

At this time Mr. President, I ask unanimous consent to have printed in the RECORD the January 8, 1999, article from the Washington Post.

The article follows:

[From the Washington Post, Jan. 9, 1999]

WRECKED CARS, ON THE ROAD AGAIN—REPAIRED U.S. TEST VEHICLES POSE SAFETY PROBLEMS FOR UNSUSPECTING OWNERS

(By Cindy Skrzycki)

The huge concrete barrier rolled down a track at 20 miles an hour and smashed into the 1996 Mustang GT convertible. The Mustang fishtailed, the windshield shattered and the side of the car was heavily damaged.

This Mustang was essentially cannon fodder in a regular series of safety tests conducted by the government—in this case, to determine whether the fuel system would stay intact in an accident. The car passed the National Highway Traffic Safety Administration test and, as usual, the Government Services Administration sold it at an auction on July 2, 1997. Stamped at the bottom of the GSA's sales receipt: ''Salvage Only—Not to be Titled for Highway Use (wrecked/inoperable).''

So why did David Staber end up tooling around Cadott, Wis., in the Mustang after paying $9,500 for it? And why did Daniel Mencheski of Green Bay, Wis., sink $22,000 into a 1995 Chevrolet Tahoe that had been rear-ended by a moving barrier in another government test?

You have to go back to Arkansas, where investigators believe a car salesman figured out how to doctor the bills of sale from the GSA and pass the cars off as any other damaged used car. In other words, cars sacrificed to the altar of safety by the government are illegally finding their way back to the street—where they constitute a safety hazard.

''All of these cars have gone through some form of destructive testing and have extensive to severe damage. There's no assurance they could be repaired or meet safety standards,'' said Philip Recht, deputy administrator of the NHTSA, who called it ''the ultimate contradiction of our mission and whole compliance program.''

It's a problem that happens all too often in the used car business, in which unsuspecting buyers purchase cars with ''washed'' titles that remove any warnings that the cars may have been in accidents and sustained damages that would make them junk in some states.

Bernard Brown, a Kansas City, Mo., lawyer who specializes in car fraud, said there may be as many as a million vehicles totaled, rebuilt and resold to unsuspecting consumers every year.

The NHTSA case also highlights the patchwork of state laws and requirements for obtaining a vehicle title that allow it to be driven and considered safe.

''We have handled cases of persons suffering severe injuries in accidents caused by improperly rebuilt wrecks. We have had experts examining large numbers of unsafe, rebuilt wrecks. We have seen documentation on tens of thousands of rebuilt, totaled wrecks retitled by states with 'clean titles' that show nothing of the cars' salvage histories,'' Brown said.

Overall, since the inception of the crash-test program in the 1970s, NHTSA has damaged 7,120 vehicles at four test sites. No one has traced the history of all of those cars, but there may be many more back in commerce, posing unknown safety problems for their owners.

The agency alerted the Department of Transportation's inspector general's office, which is handling the case.

Carfax Inc., a computerized vehicle-history service in Fairfax, has been working with NHTSA to identify how many cars and trucks are likely to have been fraudulently titled. It reviewed the histories of 494 cars that NHTSA crashed from 1995 to 1998, coming up with the 25 that were repaired, retitled, and sold to unsuspecting owners.

Carfax found another 67 that were retitled, but some of those may be ''branded'' as salvage. That means they may be driven in some states and, in others, they could be used only for parts. Scott Fredericks, Carfax director of consumer marketing, said it's likely that ''a goodly number [of the 67] are back on the road, which is a hazard to consumers.''

Legislation stipulates that funds from the GSA auction sales be returned to NHTSA to help pay for more vehicles for its crash-test programs, which cost $2.7 million in 1997. The auctions raised about $290,000 in 1996 and nearly $570,000 in 1997.

In the case of the Mustang, the GSA sold it to Ben Still of Century Auto Sales in Benton, Ark., who paid $5,037 by check. Century Auto, in turn, sold the vehicle to a used car and salvage dealer in Hortonville, Wis., with what appeared to be a ''clean'' Arkansas title, according to documents acquired by the Post. Still's name is on the GSA official receipt, according to a copy obtained by the Post.

Investigators said the Wisconsin dealer then sold the car for $9,500 to Staber, who took ownership on Nov. 6, 1997. The Mustang had only 720 miles on the odometer.

Staber, who owns Cadott Auto Recyclers and buys as many as 500 damaged vehicles a year, said he spent another $8,000 to repair and repaint the car, which retailed for about $28,500.

''I know what I'm doing, but this one got me,'' said Staber, who is suing the Wisconsin dealer from whom he bought the car. ''I saw the title and I never suspected the fraud. I don't like losing $18,000. I work too hard for my money.''

Mencheski's Tahoe also was bought from a GSA auction by the same Arkansas dealer for $6,678, according to the receipt from the auction sale. It then took a circuitous route through northern Michigan before reaching Green Bay, Wis., where Mencheski bought it.

The vehicle now sits in Mencheski's driveway without a title and is undrivable. Mencheski said it will cost him $400 a month in loan payments for the next six years; he borrowed against his 401(k) retirement account to buy a used minivan to replace the useless sport-utility vehicle.

He, too, is suing the dealers who handled the Tahoe before he bought it.

''I wanted one with a clean title,'' said Mencheski, who is a lineman for Wisconsin Electric Power Co. ''It had less than 100 miles on it.''

Here's how the process worked: Over time, investigators said, Century Auto made 13 purchases at GSA auctions. Century Auto then sold three of those cars—Staber's Mustang, another Mustang and Mencheski's Tahoe—to Michael Schmidt, president of Schmidt's New London Auto Salvage Inc. in Hortonville. Those transactions are documented in the official paper trail that followed the cars from the auctions to titling in Wisconsin.

''Our investigation indicates Century Sales fraudulently obtained an Arkansas clean title, number 9720521491, on July 24, 1997, by submitting a fictitious GSA purchaser's receipt and authority to release property. The document submitted did not have the language that was on the original document,'' said a letter that the Wisconsin Department of Transportation sent to Staber. Mencheski got a similar letter.

The warning on the bottom of the receipt saying the car was for salvage only had been erased.

Investigators believe Century Auto made up ''new'' GSA bills of sale, excluding the warning. At the bottom of those, the company allegedly stated the make, model year, the vehicle identification number and odometer reading. A few signatures and dates also were altered, the receipts show.

Still did not return phone calls. His lawyer in Little Rock had no comment.

What apparently happened next was that Still or his associates took the ''clean'' sales receipts to get Arkansas titles for the cars—and got them with no problem.

Roger Duren, of the Arkansas Office of Motor Vehicles, said either the GSA bill of sale or another government form known as ''Certificate to Obtain Title to Vehicle,'' which transfers a vehicle from government ownership to the auction buyer, is acceptable.

The title certificate is supposed to be stamped by GSA ''Not to be Titled for Highway Use'' and would have been a flag to state examiners. In the case of the Mustang, at least, the form mistakenly did not carry that warning, GSA officials said, and Still or his associates did not present that form.

Still—in Arkansas—then told Schmidt he had three cars with collision damage that were drivable, Schmidt said. Still advised that they would go fast. He wanted the money in advance, sight unseen. He promised clean Arkansas titles, according to Schmidt.

''As soon as we saw them, we knew they were crash-test stuff,'' said Schmidt. But the titles didn't arrive until Schmidt agreed to sign ''as is'' forms and accept the cars, Schmidt said that when Still wouldn't take them back, he decided to sell the Mustang and the Tahoe.

Schmidt sent the Mustang convertible to a salvage auction in Appleton, Wis., and Staber was the high bidder. Schmidt said he told Staber everything he knew about the Mustang. ''At the time, I didn't know you couldn't drive a crash-test car,'' he said.

The Tahoe was sold at a private salvage auction to a dealer in Michigan, who took it to a repair shop in Green Bay owned by Mencheski's brother-in-law. The brother-in-law thought the Tahoe would be just the four-wheel-drive his sister and her husband were looking for.

The other vehicle bought by Schmidt was a Mustang coupe, which he sold for parts.

''So, who should be at fault? I'm just the guy in the middle,'' said Schmidt, who believes the blame lies with ''the people who issue the titles.''

As for Still, investigators are looking at whether he forged the signature of a federal official, altered a federal document and gave false information to the Arkansas Office of Motor Vehicles.

Staber and NHTSA learned about the Mustang's unlawful title when Staber had transmission problems and took the Mustang to Jim Carter Ford in Eau Claire, Wis. Ford Motor Co. checked the vehicle identification number and found it was a NHTSA test vehicle, which voided the warranty coverage, according to documents from the investigation.

A month later, the Wisconsin Department of Transportation told Staber he was driving a fraudulently titled government test vehicle.

In the wake of the discovery, NHTSA has alerted consumers on its World Wide Web site to vehicles that have been in the crash-test program for the years 1996 through 1998.

Mr. LOTT. In this case, the vehicle had been totaled as part of a government crash test. After being demolished by the National Highway Traffic Safety Administration (NHTSA), the vehicle, which the Post called ''cannon fodder,'' was sold at an auto auction. It was then rebuilt and sold to a used car buyer in Wisconsin who had no way of knowing that he purchased a crash test car. Apparently, as the article suggests, he is not alone. There may be thousands of government crashed vehicles that have been returned to the road for normal highway driving. Think about that. Thousands of NHTSA crash-tested cars back on America's roads and highways.

This consumer, like millions of other used-car purchasers across the country, fell victim to the fraudulent practice known as ''title washing.'' In the Wisconsin case, a clean title was easily obtained bearing no indication of the vehicle's previous damage history. Since the vehicle's checkered past was concealed, the buyer ended-up paying thousands of dollars for a structurally unsafe car that posed a threat not only to his well-being, but to the safety of everyone with whom he shares the road.

Mr. President, during the last Congress, Senator Wendell Ford (D-Ky.), and I co-authored The National Salvage Motor Vehicle Protection Act to begin closing the dangerous loopholes that allow unscrupulous rebuilders to take advantage of used car consumers. The Act would have dramatically improved public disclosure by requiring that totaled vehicles be designated ''salvage vehicles.'' It also required that rebuilt salvage vehicles be inspected to ensure that stolen parts were not used in the repair. Additionally, ''rebuilt salvage vehicles'' would

have a decal permanently affixed to the driver's side door jamb. The bill also contained a provision requiring all previous brands on a vehicle to be carried forward to each state retitling the vehicle.

As my colleagues are aware, the practice of selling rebuilt salvage vehicles as undamaged used cars costs consumers and the auto industry nearly $4 billion annually. It is estimated that every year, as many as one million vehicles are ''totaled,'' rebuilt, and placed back into used car commerce. In some states, as many as 70 percent of all ''totaled'' vehicles may return to the roads after being purchased by unsuspecting citizens. While most states require some type of disclosure on a vehicle's title to indicate its history, the requirements vary from state to state, and it is the resulting hodgepodge of conflicting state laws that allows dishonest rebuilders to obtain ''clean'' titles.

When a title has been laundered, all future purchasers are deprived of important information alerting them to potential problems with the vehicle. These later buyers may include private purchasers or automobile dealers. Dealers typically purchase used vehicles from auctions and from their customers as trade-ins, and then sell them to used car consumers. In such cases, both parties are victims.

Congress acted on this problem by adopting legislation in 1992 directing the creation of a task force to examine the problems associated with salvage vehicles. The task force included a diverse group of stakeholders who concluded that the lack of uniformity in state laws allows unscrupulous rebuilders to easily wash titles and to subsequently sell rebuilt vehicles as undamaged. It also noted that rebuilt vehicles could be a risk to the driving public. Among the task force's recommendations was the development of federal legislation to create uniform definitions and procedures for titling salvage vehicles.

The National Salvage Motor Vehicle Protection Act was based largely on the task force's recommendations. I do not want the recommendations of a federal task force to collect dust. All too often, Congress does not follow through with the recommendations of commissions it creates. Here is one of those instances where Congress wants to implement them—a majority of both chambers want to enact them. A widely diverse bipartisan group.

This much needed legislation received the formal support of 57 Senators, including the distinguished Minority Leader, TOM DASCHLE, Senator MCCAIN, Chairman of the Commerce Committee, HARRY REID, and other colleagues from both sides of the aisle. It also garnered broad bipartisan support in the House of Representatives which approved similar title branding legislation by a vote of 333 to 72. Even though this non-partisan consumer-friendly legislation was widely supported by both chambers of Congress, it fell victim to a steady stream of misrepresentation. Throughout the legislative process in both chambers, a number of significant changes were made to address the concerns of state attorneys general and consumer groups. Unfortunately, even after these changes were adopted, the National Highway Traffic Safety Administration, a direct contributor to this national problem, opposed this modest but important bill as a bargaining chip for its own agenda.

Mr. President, it is my intention to reintroduce auto salvage legislation during this session. I have given NHTSA the opportunity to review and comment on the proposed bill. I welcome NHTSA's input and I am hopeful that the Administration will join with us, and the American Association of Motor Vehicle Administrators, the experts on titling matters, to foster national uniform titling requirements.

It is time to put politics aside to protect the public from the practice of title washing and the greed of dishonest rebuilders.●

ORDERS FOR SATURDAY, JANUARY 23, 1999

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10 a.m. on Saturday, January 23, and that the Senate then immediately resume consideration of the articles of impeachment. I further ask unanimous consent that following Saturday's proceedings, the Senate stand in adjournment until 1 p.m. on Monday to then resume consideration of the articles of impeachment.

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

PROGRAM

Mr. LOTT. Mr. President, I remind my colleagues that we will continue the questions on Saturday beginning at 10. We don't know exactly how long it will go. It depends on the feeling in the Senate and whether or not we asked the questions we need to have answers to. I hope, though, it will not exceed 4 p.m. on Saturday. I thank my colleagues for their attention and participation today.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 5:53 p.m., adjourned until Saturday, January 23, 1999, at 10 a.m.