

## SENATE—Tuesday, September 25, 1990

(Legislative day of Monday, September 10, 1990)

The Senate met at 8:45 a.m., on the expiration of the recess, and was called to order by the Honorable HERBERT KOHL, a Senator from the State of Wisconsin.

## PRAYER

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

Let us pray:

*Commit thy works unto the Lord, and thy thoughts shall be established.—Proverbs 16:3.*

Almighty God, perfect in justice and truth, help the Senators to hear the wisdom of Proverbs this week. The budget resolution, standing alone, would be enough to preempt all their time and energy and effort in these closing days, so quickly approaching adjournment and election. Added to this, the rapidly changing and unpredictable Middle East situation imposes inordinate pressure.

Gracious Father, we ask Thee to remove from head and heart and circumstances every obstacle that thwarts legislation. Help the Senators, despite their deep and justifiable convictions, to become neutral enough to allow Thee to guide their discussion, debate, and decisions. If ever we needed divine intervention, Lord, we need it now. Awaken us to this transcendent reality.

We ask this in Jesus' name. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, September 25, 1990.

To the Senate:

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

ROBERT C. BYRD,  
President pro tempore.

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

The ACTING PRESIDENT pro tempore. In my capacity as a Senator from Wisconsin, I suggest the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## FAMILY PLANNING AMENDMENTS OF 1989

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 110, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 110) to revise and extend the programs of assistance under title X of the Public Health Service Act.

The Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

## SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Family Planning Amendments of 1989".

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

## SEC. 2. FINDINGS.

Congress finds that—

(1) comprehensive voluntary family planning services still are not readily available to all individuals in the United States desiring such services;

(2) new and improved contraceptive devices, drugs, and methods are needed in order to ensure optimum safety and choice for each individual desiring to use such devices, drugs, and methods;

(3) the high incidence of teenage pregnancies and sexually transmitted diseases has made it essential that the public receive information to prevent such pregnancies and diseases, as recommended by the Surgeon General of the United States; and

(4) sound medical practices require that all individuals be fully informed of their options in making decisions about their health care, and such practices should be promoted in the Nation's family planning program.

## SEC. 3. PROJECT GRANTS AND CONTRACTS.

Section 1001 (42 U.S.C. 300) is amended—

(1) in subsection (a), by adding at the end thereof the following new sentence: "Such projects shall also offer adoption referral services, except that any adoption referral service provided under this subsection shall be nondiscriminatory as to race, color, religion, and national origin."; and

(2) by striking out subsections (c) and (d) and inserting in lieu thereof the following new subsection:

"(c) For the purpose of making grants and contracts under this section, there are authorized to be appropriated \$163,000,000 for fiscal year 1990, \$171,000,000 for fiscal year 1991, and \$179,500,000 for fiscal year 1992."

## SEC. 4. REPEAL OF FORMULA GRANTS.

(a) REPEAL.—Section 1002 (42 U.S.C. 300a) is repealed.

(b) CONFORMING AMENDMENT.—Section 1006(c) (42 U.S.C. 300a-4(c)) is amended by striking out "or 1002".

## SEC. 5. TRAINING AND TECHNICAL ASSISTANCE GRANTS AND CONTRACTS.

Section 1003 (24 U.S.C. 300a-1) is amended to read as follows:

## "SEC. 1003. TRAINING GRANTS AND CONTRACTS.

"(a) AUTHORIZATION.—The Secretary may make grants to public or nonprofit private entities and may enter into contracts with public or private entities and individuals to provide technical assistance, clinical training for personnel (including obstetric-gynecologic nurse practitioners), training for educators and counselors, and training of other personnel, to carry out the family planning service programs described in section 1001 and the information and education programs described in section 1005.

"(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants and contracts under this section, there are authorized to be appropriated \$4,515,000 for fiscal year 1990, \$4,741,000 for fiscal year 1991, and \$4,978,000 for fiscal year 1992."

## SEC. 6. CONDUCT OF RESEARCH ACTIVITIES.

Section 1004 (42 U.S.C. 300a-2) is amended—

(1) by inserting "(a)" before "The";

(2) in paragraph (2)—

(A) by inserting "and evaluation" after "development"; and

(B) by inserting before the period the following: "and research to improve the clinical management and direct delivery of family planning services"; and

(3) by adding at the end thereof the following new subsections:

"(b) To enhance the ongoing work of the National Institutes of Health under section 301 and under subsection (a) in applied contraceptive research and evaluation, and specifically to promote the development, evaluation, and bringing to the marketplace, of new and improved contraceptive devices, drugs, and methods, the Secretary may conduct, and make grants to public and nonprofit private entities and enter into contracts with public and private entities and individuals for the conduct of—

"(1) applied research into the development of new or improved contraceptive devices, drugs, and methods; and

"(2) evaluations of the acceptance, convenience, safety, efficacy, and cost of contraceptive devices, drugs, and methods.

"(c) For the purpose of making grants and entering into contracts under subsection (b), there are authorized to be appropriated \$10,000,000 for fiscal year 1990, and such sums as may be necessary for each of the fiscal years 1991 and 1992. Amounts appropriated under this subsection shall be in addition to amounts allocated under section

301(a) for the National Institute of Child Health and Human Development.”.

SEC. 7. INFORMATION AND EDUCATION.

Section 1005 (42 U.S.C. 300a-3) is amended to read as follows:

“SEC. 1005. COMMUNITY-BASED INFORMATIONAL AND EDUCATIONAL PROGRAMS.

“(a) AUTHORIZATION.—The Secretary may make grants to or enter into contracts with public and nonprofit private entities to establish community-based information and education programs to assist individuals in making responsible choices concerning human sexuality, pregnancy, and parenthood, and to enable individuals to prevent unintended pregnancies and sexually transmitted disease. Programs supported under this section shall place special emphasis on the provision of information and education to parents and adolescents, and shall include information about the availability of a broad range of acceptable and effective family planning methods and services.

“(b) AWARDED OF GRANTS, CONTRACTS, ETC.—The Secretary shall—

“(1) conduct, or make grants to public and nonprofit private entities and enter into contracts with public and private entities and individuals for the conduct of, training and technical assistance activities to assist in carrying out subsection (a); and

“(2) make grants to public and nonprofit private entities and individuals for the development, evaluation, and dissemination of educational and informational materials that are consistent with the objectives specified in subsection (a) for information and education programs.

“(c) AUTHORIZATION OF APPROPRIATIONS.—For grants and contracts under this section, there are authorized to be appropriated \$10,000,000 for fiscal year 1990, and such sums as may be necessary for each of the fiscal years 1991 and 1992. Not more than 10 percent of the amounts appropriated under this preceding sentence for a fiscal year shall be available to carry out subsection (b).”.

SEC. 8. DATA COLLECTION.

(a) IN GENERAL.—Title X (42 U.S.C. 300 et seq.) is amended by adding at the end thereof the following new section:

“SEC. 1010. DATA COLLECTION.

“(a) COLLECTION OF DATA.—The Secretary shall collect on an annual basis data concerning—

“(1) the number of low-income and marginal-income individuals, and the number of adolescents, at risk of unintended pregnancies;

“(2) the sources of funding available for family planning services in the United States;

“(3) the number of individuals who receive family planning services from entities that receive grants and contracts under section 1001 and the age, gender, race, and family income of such individuals; and

“(4) the types of family planning services chosen by individuals who receive services from entities which receive grants and contracts under section 1001.

“(b) GRANTS AND CONTRACTS.—The Secretary may make grants to public and nonprofit private entities and enter into contracts with public and private entities and individuals for the collection of data under this section. The Secretary shall make available to the public data and information collected under this section.”.

(b) TECHNICAL AMENDMENT.—Section 1009 (42 U.S.C. 300a-6a) is amended by adding at the end thereof the following new subsection:

“(d) Each plan prepared under this section shall be based upon data collected under section 1010.”.

SEC. 9. BREAST EXAMINATIONS.

Title X (as amended by section 8(a) of this Act) is further amended by adding at the end thereof the following new section:

“SEC. 1011. BREAST EXAMINATIONS.

“All grantees who receive assistance under this title shall provide education to patients concerning self breast examinations.”.

SEC. 10. STUDY OF PARENTAL CONSENT FOR FAMILY PLANNING.

Section 301 (42 U.S.C. 241) is amended by adding at the end thereof the following new subsection:

“(e)(1) The Secretary shall make available \$1,800,000 during the fiscal years 1990 through 1992 for the selection of a single State in which to establish a research project meeting the requirements of paragraph (2), to determine the impact of family planning services in a State that has in effect a law prohibiting the use of public funds for the provision of family planning services to an unmarried minor without the prior written consent of the parent or guardian of the minor.

“(2)(A) Notwithstanding any other provision of this Act, the Secretary may, for any fiscal year, make grants to or enter into contracts with public agencies in a State described in paragraph (1) for the provision of family planning services. Activities conducted by public agencies in the State under such grants and contracts shall be carried out in accordance with the State law described in paragraph (1).

“(B) A public agency in a State described in paragraph (4) that desires to receive a grant or contract under this subsection shall submit an application to the Secretary in accordance with such requirements as the Secretary may prescribe.

“(C) An application submitted under subparagraph (B) shall contain assurances satisfactory to the Secretary that—

“(i) prior to April 1, 1981, there was enacted in the State a law described in paragraph (1);

“(ii) for the fiscal year for which the application is submitted, such law will not be applied to family planning services provided by private agencies;

“(iii) if a public agency of the State makes a grant to, or enters into a contract with, a private agency for the provision of family planning services, and such grant or contract is funded in whole or in part from amounts received by that agency under this subsection, the State shall ensure that such private agency meets the same requirements for eligibility for assistance under title X as the Secretary may prescribe for all private agencies assisted under title X;

“(iv) Federal funds made available under this subsection to public agencies in the State will be used to supplement and increase the level of public funds expended for family planning services within the State, and will in no case be used to supplant such public funds; and

“(v) the State shall submit to the Secretary annual reports in such form as the Secretary shall require in order to assess the effectiveness of the financial assistance provided under this subsection within the State.

“(3) This subsection shall not be construed to authorize the Secretary to make grants to, or enter into contracts with, a private entity in which the research project under this subsection is conducted unless that private entity complies with the re-

quirements established under title X for a private entity outside of the State that applies for grants and contracts under this subsection.

“(4)(A) Not later than 3 years after the date of enactment of this subsection, the Comptroller General of the United States shall prepare and submit to Congress a report that—

“(i) evaluates the effect of requiring the parent or guardian of an unmarried minor to give written consent prior to the provision of family planning service to such minor on the reduction of the rate of unintended adolescent pregnancies in the State in which the research project is conducted under this subsection; and

“(ii) compares the rate of unintended adolescent pregnancies in that State with rates of such pregnancies in other States.

“(B) The Secretary, in consultation with the Comptroller General of the United States shall provide for the collection of data to assist the Comptroller General in preparing the report required under this paragraph.”.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS FOR ADOLESCENT FAMILY LIFE PROGRAM.

Subsection (a) of section 2010 (42 U.S.C. 3002-9) is amended to read as follows:

“(a) For the purpose of carrying out this title, there are authorized to be appropriated \$9,529,000 for each of the fiscal years 1990 through 1992.”.

SEC. 12. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the date of enactment of this Act.

Mr. KENNEDY. Mr. President, the title X Family Planning Program has a proud record of 20 years of service to the American people. Through programs funded over title X, millions of disadvantaged women and men have gained access to essential family planning and primary care health services.

Today, I am pleased to offer the committee a substitute for S. 110, the family planning amendments. This vitally important legislation was reported by the Committee on Labor and Human Resources, and it is cosponsored by 48 Members of the Senate.

Title X is the indispensable foundation of family planning efforts across the Nation. It provides high quality reproductive health care services to over 5 million low-income women and men each year.

In addition to comprehensive family planning services, title X funded clinics also provide essential primary and preventive care such as screening for breast cancer, cervical cancer, and sexually transmitted diseases.

Family planning programs also serve as the entry point into the health care system for many patients in need of other important services, ranging from prenatal care to AIDS counseling and testing.

Over the past 10 years however, our ability to provide these services to families in need has been unconscionably cut back. Funding has been slashed 42 percent in real terms. One thousand clinics have been forced to close. Outreach and followup services

have been squeezed out. Today more than 31 million women are at risk of unintended pregnancy in the United States. Yet title X is serving fewer people than it was serving in 1981—and I regard that as unacceptable.

In human terms, the result is a shameful and unfair burden on millions of American families who can least afford it. The ultimate consequence of decreased funding and support for title X, despite all the hypocrisy and ideological posturing of its opponents, is that more women are choosing to have abortions because they are faced with unintended pregnancies.

The purposes of title X is to provide services and information to reduce the incidence of unintended pregnancy, to improve maternal health, and to reduce the need for abortion. As a recent editorial in the *American Journal of Public Health* states:

We hope that President Bush will move rapidly to promote a "Kinder and gentler" nation by ensuring that the family planning program is allowed to finally achieve its potential. Both common humanity and an attractive cost-benefit ratio are forceful arguments for immediate responsive action.

In the absence of Government support for family planning services, an average of 1 million additional unintended pregnancies will occur each year among the 5 million women who could utilize family planning clinics. At least 4 in 10 of these pregnancies will end in abortion, assuming the continuation of current trends.

Every dollar used to provide family planning services saves an average of \$4.40 in funds that otherwise would have to be spent to provide medical care, welfare, and other social services to women who, by law, will be eligible for such services if they became pregnant. In fact, teen pregnancy costs the United States an estimated \$22 billion a year in welfare and associated costs alone.

Family planning and prevention of unintended pregnancy is also the most effective means of reducing the spread of the AIDS virus to newborn infants. It is an essential component of our overall strategy to reduce the incidence of low birth weight, and bring down the shocking rate of infant mortality that is a continuing indictment of our health care system.

Finally, title X is a key part of our effort to prevent adolescent pregnancy. Almost 1 million teenagers become pregnant every year, and their pregnancies pose significant health risks for these mothers and their infants. If we are serious about addressing this problem, then it is time for us to get serious about title X.

The legislation we will consider today reauthorizes the Family Planning Program, which has been unauthorized since 1985, so that we can begin to restore the resources neces-

sary to address these key needs. While the legislation makes few substantive changes in this successful program, it does make two improvements. First, it establishes a separate line-item authorization for contraceptive research. Many couples are dissatisfied with the contraceptive alternatives available to them, and research has revealed that failures from current methods are higher than had been previously known. A modest increase in research spending represents a wise investment.

Second, the legislation establishes a new program of community-based information and education. Family planning clinics provide high quality service to those who come for help, but a program of outreach and education is needed for those who need but are not using clinic services.

In addition to reauthorizing title X, the Family Planning Program, the legislation extends title XX, the adolescent family life demonstrations. Teenage pregnancy is one of our most serious social problems. Almost one million teenagers become pregnant annually, and in 75 percent of the cases the pregnancy is unintended. Teenage pregnancy results in a higher risk of infant mortality than other pregnancies, and it can start an intergenerational cycle of welfare dependency.

The Adolescent Family Life Program is designed to deal with this pressing social problem. Two-thirds of the funds under the program are used to care for pregnant teens, to improve their likelihood of becoming successful parents, to maximize their chances of finishing school and avoiding welfare.

Interestingly, only about half of the teenage pregnant mothers ever finish high school. That particular information is based upon completing high school by the age of 20. It surprises me that even half of them are able to complete high school. But this program is designed to try to provide the support services so that they may be able to finish school and avoid welfare and increase their chances of delivering a healthy baby.

The remaining one-third of the funds are used for prevention of teenage pregnancy. Unlike pregnancy prevention programs under title X, programs are directed exclusively at teenagers, and the use of innovative methods outside clinic settings is encouraged.

I urge my colleagues to support title X. All Americans should have access to comprehensive and high quality family planning services. As with many other problems that confront us today, it is not a question of resources—it is a question of whether we will demonstrate the courage and leadership to deal effectively and responsibly with this worsening national problem.

Mr. President, in this legislation we encourage, to the maximum extent

possible, the inclusion of family members, particularly the parents. During the course of the debate we will probably have some discussion about the role of the parents.

It is our desire, our commitment, our firm belief that to the extent possible parents should be involved. But since this program is primarily directed at low-income families, we have to note that in many instances in those particular areas many of the young people do not even know their father and, in too many instances, their mother may be tied up with substance abuse or other kinds of challenges. But we do emphasize and stress the involvement of the parents and family members, particularly in that part of the program that is directed toward the teens.

Second, we have provided in this program that there has to be information with regard to adoption. That has to be included in the program. We have other adoption programs that are in other parts of our legislative effort, but we have ensured that information referrals with regard to adoption will also be included. I know that is another aspect of general concern of the membership in the past debates, and we have tried to include those particular items.

I know that my colleague, the Senator from Utah, is on his way here. I know that he will want to have his statement included in the *RECORD* following my statement. But I would hope we could proceed with the discussion and debate.

Just before yielding the floor, Mr. President, am I correct in stating that presently pending is the committee reported substitute S. 110?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. KENNEDY. I send a modification of the committee substitute to the desk, and advise my colleagues I have been authorized by the majority of the members of the Labor Committee to present and make this modification.

The ACTING PRESIDENT pro tempore. The Senator has the right to make that modification.

Mr. KENNEDY. I send the modification to the desk and I ask unanimous consent that it be considered original text for the purpose of further amendment.

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

Mr. KENNEDY. Just for the benefit of the membership the modification just extends the authorization from 3 years to 5 years. That is the only alteration or change.

I yield the floor.

The committee amendment, as modified, is as follows:

## SECTION 1. SHORT TITLE; REFERENCE.

(a) **SHORT TITLE.**—This Act may be cited as the "Family Planning Amendments of 1990".

(b) **REFERENCE.**—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

## SEC. 2. FINDINGS.

Congress finds that—

(1) comprehensive voluntary family planning services still are not readily available to all individuals in the United States desiring such services;

(2) new and improved contraceptive devices, drugs, and methods are needed in order to ensure optimum safety and choice for each individual desiring to use such devices, drugs, and methods;

(3) the high incidence of teenage pregnancies and sexually transmitted diseases has made it essential that the public receive information to prevent such pregnancies and diseases, as recommended by the Surgeon General of the United States; and

(4) sound medical practices require that all individuals be fully informed of their options in making decisions about their health care, and such practices should be promoted in the Nation's family planning program.

## SEC. 3. PROJECT GRANTS AND CONTRACTS.

Section 1001 (42 U.S.C. 300) is amended—

(1) in subsection (a), by adding at the end thereof the following new sentence: "Such projects shall also offer adoption referral services, except that any adoption referral service provided under this subsection shall be nondiscriminatory as to race, color, religion, and national origin."; and

(2) by striking out subsections (c) and (d) and inserting in lieu thereof the following new subsection:

"(c) For the purpose of making grants and contracts under this section, there are authorized to be appropriated \$171,000,000 for fiscal year 1991, \$180,000,000 for fiscal year 1992, \$189,000,000 for fiscal year 1993, \$198,500,000 for fiscal year 1994, and \$208,500,000 for fiscal year 1995."

## SEC. 4. REPEAL OF FORMULA GRANTS.

(a) **REPEAL.**—Section 1002 (42 U.S.C. 300a) is repealed.

(b) **CONFORMING AMENDMENT.**—Section 1006(c) (42 U.S.C. 300a-4(c)) is amended by striking out "or 1002".

## SEC. 5. TRAINING AND TECHNICAL ASSISTANCE GRANTS AND CONTRACTS.

Section 1003 (24 U.S.C. 300a-1) is amended to read as follows:

## "SEC. 1003. TRAINING GRANTS AND CONTRACTS.

"(a) **AUTHORIZATION.**—The Secretary may make grants to public or nonprofit private entities and may enter into contracts with public or private entities and individuals to provide technical assistance, clinical training for personnel (including obstetric-gynecologic nurse practitioners), training for educators and counselors, and training of other personnel, to carry out the family planning service programs described in section 1001 and the information and education programs described in section 1005.

"(b) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of making grants and contracts under this section, there are authorized to be appropriated \$5,000,000 for each of the fiscal years 1991 through 1995."

## SEC. 6. CONDUCT OF RESEARCH ACTIVITIES.

Section 1004 (42 U.S.C. 300a-2) is amended—

(1) by inserting "(a)" before "The";

(2) in paragraph (2)—

(A) by inserting "and evaluation" after "development"; and

(B) by inserting before the period the following: "and research to improve the clinical management and direct delivery of family planning services"; and

(3) by adding at the end thereof the following new subsections:

"(b) To enhance the ongoing work of the National Institute of Health under section 301 and under subsection (a) in applied contraceptive research and evaluation, and specifically to promote the development, evaluation, and bringing to the marketplace, of new and improved contraceptive devices, drugs, and methods, the Secretary may conduct, and make grants to public and nonprofit private entities and enter into contracts with public and private entities and individuals for the conduct of—

"(1) applied research into the development of new or improved contraceptive devices, drugs, and methods; and

"(2) evaluations of the acceptance, convenience, safety, efficacy, and cost of contraceptive devices, drugs, and methods.

"(c) For the purpose of making grants and entering into contracts under subsection (b), there are authorized to be appropriated \$10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995. Amounts appropriated under this subsection shall be in addition to amounts allocated under section 301(a) for the National Institute of Child Health and Human Development."

## SEC. 7. INFORMATION AND EDUCATION.

Section 1005 (42 U.S.C. 300a-3) is amended to read as follows:

## "SEC. 1005. COMMUNITY-BASED INFORMATIONAL AND EDUCATIONAL PROGRAMS.

"(a) **AUTHORIZATION.**—The Secretary may make grants to or enter into contracts with public and nonprofit private entities to establish community-based information and education programs to assist individuals in making responsible choices concerning human sexuality, pregnancy, and parenthood, and to enable individuals to prevent unintended pregnancies and sexually transmitted diseases. Programs supported under this section shall place special emphasis on the provision of information and education to parents and adolescents, and shall include information about the availability of a broad range of acceptable and effective family planning methods and services.

"(b) **AWARDING OF GRANTS, CONTRACTS, ETC.**—The Secretary shall—

"(1) conduct, or make grants to public and nonprofit private entities and enter into contracts with public and private entities and individuals for the conduct of, training and technical assistance activities to assist in carrying out subsection (a); and

"(2) make grants to public and nonprofit private entities and enter into contracts with public and private entities and individuals for the development, evaluation, and dissemination of educational and informational materials that are consistent with the objectives specified in subsection (a) for information and education programs.

"(c) **AUTHORIZATION OF APPROPRIATIONS.**—For grants and contracts under this section, there are authorized to be appropriated \$10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995. Not more than 10 percent of the amounts appropriated under this preceding sentence for a

fiscal year shall be available to carry out subsection (b)."

## SEC. 8. DATA COLLECTION.

(a) **IN GENERAL.**—Title X (42 U.S.C. 300 et seq.) is amended by adding at the end thereof the following new section:

## "SEC. 1010. DATA COLLECTION.

"(a) **COLLECTION OF DATA.**—The Secretary shall collect on an annual basis data concerning—

"(1) the number of low-income and marginal-income individuals, and the number of adolescents, at risk of unintended pregnancies;

"(2) the sources of funding available for family planning services in the United States;

"(3) the number of individuals who receive family planning services from entities that receive grants and contracts under section 1001 and the age, gender, race, and family income of such individuals; and

"(4) the types of family planning services chosen by individuals who receive services from entities which receive grants and contracts under section 1001.

"(b) **GRANTS AND CONTRACTS.**—The Secretary may make grants to public and nonprofit private entities and enter into contracts with public and private entities and individuals for the collections of data under this section. The Secretary shall make available to the public data and information collected under this section."

"(b) **TECHNICAL AMENDMENT.**—Section 1009 (42 U.S.C. 300a-6a) is amended by adding at the end thereof the following new subsection:

"(d) Each plan prepared under this section shall be based upon data collected under section 1010."

## SEC. 9. BREAST EXAMINATIONS.

Title X (as amended by section 8(a) of this Act) is further amended by adding at the end thereof the following new section:

## "SEC. 1011. BREAST EXAMINATIONS.

"All grantees who receive assistance under this title shall provide education to patients concerning self breast examinations."

## SEC. 10. STUDY OF PARENTAL CONSENT FOR FAMILY PLANNING.

Section 301 (42 U.S.C. 241) is amended by adding at the end thereof the following new subsection:

"(e)(1) The Secretary shall make available \$1,800,000 during the fiscal years 1991 through 1993 for the selection of a single State in which to establish a research project meeting the requirements of paragraph (2), to determine the impact of family planning services in a State that has in effect a law prohibiting the use of public funds for the provision of family planning services to an unmarried minor without the prior written consent of the parent or guardian of the minor.

"(2)(A) Notwithstanding any other provision of this Act, the Secretary may, for any fiscal year, make grants to or enter into contracts with public agencies in a State described in paragraph (1) for the provision of family planning services. Activities conducted by public agencies in the State under such grants and contracts shall be carried out in accordance with the State law described in paragraph (1).

"(B) A public agency in a State described in paragraph (4) that desires to receive a grant or contract under this subsection shall submit an application to the Secretary in accordance with such requirements as the Secretary may prescribe.

"(C) An application submitted under subparagraph (B) shall contain assurances satisfactory to the Secretary that—

"(i) prior to April 1, 1981, there was enacted in the State a law described in paragraph (1);

"(ii) for the fiscal year for which the application is submitted, such law will not be applied to family planning services provided by private agencies;

"(iii) if a public agency of the State makes a grant to, or enters into a contract with, a private agency for the provision of family planning services, and such grant or contract is funded in whole or in part from amounts received by that agency under this subsection, the State shall ensure that such private agency meets the same requirements for eligibility for assistance under title X as the Secretary may prescribe for all private agencies assisted under title X;

"(iv) Federal funds made available under this subsection to public agencies in the State will be used to supplement and increase the level of public funds expended for family planning services within the State, and will in no case be used to supplant such public funds; and

"(v) the State shall submit to the Secretary annual reports in such form as the Secretary shall require in order to assess the effectiveness of the financial assistance provided under this subsection within the State.

"(3) This subsection shall not be construed to authorize the Secretary to make grants to, or enter into contracts with, a private entity in which the research project under this subsection is conducted unless that private entity complies with the requirements established under title X for a private entity outside of the State that applies for grants and contracts under this subsection.

"(4)(A) Not later than 3 years after the date of enactment of this subsection, the Comptroller General of the United States shall prepare and submit to Congress a report that—

"(i) evaluates the effect of requiring the parent or guardian of an unmarried minor to give written consent prior to the provision of family planning service to such minor on the reduction of the rate of unintended adolescent pregnancies in the State in which the research project is conducted under this subsection; and

"(ii) compares the rate of unintended adolescent pregnancies in that State with rates of such pregnancies in other States.

"(B) The Secretary, in consultation with the Comptroller General of the United States, shall provide for the collection of data to assist the Comptroller General in preparing the report required under this paragraph."

#### SEC. 11. AUTHORIZATION OF APPROPRIATIONS FOR ADOLESCENT FAMILY LIFE PROGRAM.

Subsection (a) of section 2010 (42 U.S.C. 3002-9) is amended to read as follows:

"(a) For the purpose of carrying out this title, there are authorized to be appropriated \$9,529,000 for each of the fiscal years 1991 through 1995."

#### SEC. 12. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the date of enactment of this Act.

Mr. HATCH. Mr. President, it is with great reluctance that I rise in opposition to S. 110, the Family Planning Reauthorization Act. This legislation extends title X of the Public

Health Services Act which authorizes funds for family planning services.

Today, I will instead support President Bush's substitute which will continue directing money to the States for important family planning efforts. Under this proposal, services are provided to those truly in need through the States. Acceptance of the President's bill will reduce the level of controversy surrounding this program's activities. Such controversy serves only to deflect attention from the true and legitimate purposes of the program. The President's proposal properly places resources as well as public attention on broadly accepted methods for delivering family planning services.

I support family planning, and I support the reauthorization of title X. Unfortunately, the Title X Program has been captured in the most controversial issue of today: abortion.

This bill, S. 110 provides no wall for separating abortion services from family planning services. I have asked repeatedly for abortion and family planning services to be separated.

If such a wall is constructed, Federal family planning programs can survive. Unfortunately, S. 110, which we are considering here today, only exacerbates the connection between family planning and abortion. And, I must oppose this bill.

While abortion will most likely be a centerpiece of our debate on this legislation, our society is currently confronted with a number of other serious social and ethical issues.

It is important that we frankly and fully consider these sensitive issues and their effects on the delivery of family planning services.

Even as we are faced with conflicts surrounding the separation of abortion services from family planning services, we are also faced with debate about the role of parents in federally assisted family planning services to teenagers; the ability of teenagers to make intelligent decisions about the risks and benefits of contraceptive alternatives; and, the increased incidence of sexually transmitted diseases in our society, especially AIDS.

There are no easy answers and no single solution to address all the differing views concerning the Title X Program.

Since 1974, we have spent over \$1 billion supporting family planning programs for low-income women. But, we have not seen a drop in the rate of unintended pregnancies.

We need to find new and unique ways to reduce unintended pregnancies and to provide health services to low-income women.

States have begun to take interesting and innovative steps to address the problems of teenage pregnancy. For example, in my home State of Utah, a law was enacted in 1981 requiring pa-

rental consent if a teen was given a prescription for contraceptive drugs or devices paid for with Federal or State funds.

Unfortunately, the Tenth Circuit Court of Appeals invalidated this State statute and, as a result, family planning services sponsored through the Utah Department of Health were forced to forfeit all Federal funding. Today, because of this decision, non-governmental clinics are the only legitimate grantees under the title X programs.

S. 110 does nothing to correct this problem for parents throughout this country. If we pass S. 110 in its current form, we will be making the determination that parents do not have a legitimate role in making decisions about their children and their children's medical needs as they relate to contraceptive drugs and devices.

Can you imagine the public outrage if this body were to overturn State laws requiring parental consent prior to other medical procedures?

I believe parents have a right and responsibility to know and to help minors make appropriate and good decisions about sexuality. We should not endorse a Federal law or any Federal law that permits Government to substitute itself for parents.

S. 110 further mires title X in the abortion controversy by expanding research and education efforts without providing assurances that no funds will be used for abortifacient research or proabortion education.

These two activities will further erode support for title X and will undermine women's opportunities to seek and receive important health care services. S. 110 also does little to ensure that low-income women in rural communities have access to family planning services.

We need to continue providing family planning services for low-income women which include cancer screening, contraceptive services, and infertility treatment.

We need to make sure that we are devoting resources under the Title X Program where they are needed—direct services.

That is, again, why I support President Bush's proposal to continue title X efforts by transferring authority to the States to provide services. There would be few administrative costs; and, resources would be targeted on necessary family planning and health care services.

I plan to offer amendments to S. 110 which will strengthen these services so that low-income women will have access to health care.

I hope my colleagues will favorably consider these amendments. Only a few issues cloud the Title X Program. They should be eliminated, repealed, or reexamined.

I ask my colleagues to consider the sensitive health and ethical issues involved and to help us enact a program that will enjoy broad support.

Mr. President, let me spend a few more minutes discussing children. I have a lot of difficulty in having governmental entities, governmentally sponsored, or paid entities telling children what they can or cannot do without any parental involvement whatsoever. In many schools in this country, children cannot get an aspirin without the consent of the parents. Yet, we are going to continue to allow, if the amendment of Senator CHAFEE is agreed to, advice to these kids on how to terminate pregnancies without any thought of informing the parents or bringing them into the equation.

I realize this is a difficult issue. However, that is no reason to ignore the rights of parents or ignore the obligation of parents to raise their children. Yes, some parents may never mean anything to their children, and they are never going to do what is right by them. But, the vast majority of parents are concerned about their children, and they should have the right to counsel their children.

With regard to terminating a pregnancy, choice has to be well-balanced on both sides. I have to tell my colleagues, all we hear is one side of that equation—the right to choose abortion. This bill has the Government emphasize that. The Chafee amendment says "Forget the parents, we are going to tell the kids what to do," and it will be advice to get an abortion.

The original bill and underlying language that already exists in law is quite clear on what can or cannot be done. There needed to be regulations, and the Reagan administration proposed regulations to clarify the abortion restrictions. Many of my colleagues disagreed with those regulations, and they may be able to repeal them here today. But this matter is before the court and should be decided by the court.

I am concerned about lack of parental involvement. I am concerned about this wholesale Government approach to interject itself between the parents and their children with regard to matters that are of great ethical and moral importance.

President Bush has offered a plan to reauthorize family planning. I think the President's program is a better program. It extends, accentuates, and implements family planning that will really benefit women in our society.

I am a strong believer in family planning. We have to do something to reduce the 2 million abortions a year that are occurring in this country. We can do that with effective family planning programs that are not connected with abortion services.

The President' bill will accentuate family planning. It will help family

planning. It will work in a way that will benefit all of America and, in the process, help defuse the issues that divide us. In the end, President Bush's proposal will do more good for the children and families in our society than this particular bill is going to do.

Mr. President, there are legitimate arguments on both sides of all these issues. But, we must be more concerned about getting good family planning knowledge and information out to people. The President's program will do a better job than this bill we have here on the floor today.

Mr. President, I urge my colleagues to consider these issues with great care. This whole matter should not be decided just on the single issue of abortion. We must bring the parents back into the children's lives; we should allow parents to do the things that should be done; and we must give parents an opportunity to work with their children. In the end, society will benefit as problems are solved.

I am a strong supporter of the Adolescent Family Life Act. We put \$9 million in Adolescent Family Life and \$130 million into title X. This is an imbalance. The purpose of the Adolescent Family Life Act is to counsel teenagers that there are reasonable ways to resolving problems; that morality is better than immorality. And, it does this without preaching any particular church doctrine, but by talking in terms of values. And, the Adolescent Family Life Act has been upheld by the Supreme Court of the United States of America. It is a better alternative to reducing teenage pregnancy.

We should put more money into it. If we did, there would be less controversy, and we would have more success in reducing the rates of teenage pregnancy.

The Adolescent Family Life Act is a positive approach to solve these problems, while letting our young people know that there are values and good choices in society.

I want to support the reauthorization of title X. The President's bill, it seems to me, is the way to do it and the Adolescent Family Life Act adds to it if we enact it in the form upheld by the Supreme Court of the United States of America. I yield the floor.

Mr. PACKWOOD. Mr. President, as a cosponsor of this legislation, I rise today in strong and enthusiastic support of S. 110, which would at long last reauthorize the title X Family Planning Program.

When Congress created this program in 1970, we had no idea how enormously successful it would be. Title X has served approximately 5 million low-income women each year, providing them with family planning information and services. The cost benefit of these services has been tremendous. A study just completed by the Alan Guttmacher Institute esti-

mates that if publicly funded family planning were not available, our additional short-term expenditures in mandated health and welfare costs alone would average \$1.8 billion annually. This is an average savings of \$4.40 for every dollar spent on title X.

Health and welfare savings is not the only benefit of title X. An unforeseen but substantial benefit is that its impact extends beyond family planning services. For many low-income women, the title X funded clinic they visit is their only point of contact with the health care system. These clinics provide not only contraceptives, but screening for high blood pressure, cancer, sexually transmitted diseases, and other serious health problems, and referrals for treatment.

Mr. President, title X has been such a success and fills such a unique and critical health care need that it is all the more unfortunate that this fine program has had to struggle for survival. From 1970, when title X was first enacted, until 1980, the annual appropriation increased gradually, reflecting the ever greater need for family planning services. Then in 1980, the title X appropriation began a downturn, dropping from an all-time high of \$162 million in 1980 to \$135 million in 1988, despite the fact that we had significant inflation in those 8 years. Since 1984, Congress has not even reauthorized title X, and it has received appropriations through a series of continuing resolutions. In my home State of Oregon, title X funding was cut 22 percent from 1980 to 1988. Yet during this period Oregon experienced a dramatic increase in demand for family planning services.

Why has such an undeniably successful program experienced such difficulty in maintaining support from Congress? The primary culprit is apparently an unfortunate spillover effect from the controversy about abortion. Misunderstanding and misinformation have caused some people to confuse title X funding with abortion. Mr. President and my distinguished colleagues, I cannot say this with enough emphasis: No title X money has ever been used to pay for abortion. This legislation would not change that situation. No abortions would be funded when this legislation passes. There is one connection, and one connection only between title X family planning services and abortion: Adequate funding for title X helps prevent abortion.

There is much concern in this country about the 3 million unintended pregnancies that occur among American women each year, many of which end in abortion. Title X keeps that number from going much higher. The Alan Guttmacher Institute estimates that in the absence of publicly funded family planning services, an additional

1.2 million unintended pregnancies would occur each year. For those Senators who are concerned about abortion, one of the most positive actions you can take, no matter which side of that debate you are on, is to cast your vote for immediate reauthorization of title X. Congress needs to pass this legislation to allow the title X program to continue and to surpass its very impressive track record of providing high quality family planning services to low-income people in this country.

I ask for my colleagues' support of this long-overdue legislation.

I thank the Chair.

Mr. JEFFORDS addressed the Chair.

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

AMENDMENT NO. 2761

(Purpose: To provide women with information and counseling regarding their pregnancies)

Mr. JEFFORDS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. JEFFORDS] proposes an amendment numbered 2761.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . PREGNANCY INFORMATION AND COUNSELING.

In the projects authorized under this Act, or an amendment made by this Act, the Secretary of Health and Human Services shall ensure that pregnant women are offered information and counseling concerning all legal and medical options under such projects regarding their pregnancies.

Mr. CHAFEE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes Mr. CHAFEE.

AMENDMENT NO. 2762 TO AMENDMENT NO. 2761

(Purpose: To specify the types of information and counseling that women should be offered regarding their pregnancies)

Mr. CHAFEE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE] proposes an amendment numbered 2762 to amendment numbered 2761.

On page 1 of the amendment, strike out line 3 and all that follows and insert in lieu thereof the following:

SEC. . PREGNANCY INFORMATION AND COUNSELING.

In the projects authorized under this Act, or an amendment made by this Act, the Secretary of Health and Human Services shall ensure that pregnant women are offered information and counseling concerning all legal and medical options under such projects regarding their pregnancies. Women requesting such information regarding the options for the management of an unintended pregnancy shall be provided with non-directive counseling, and referral on request, concerning alternative courses of action that shall include—

- (1) prenatal care and delivery;
- (2) infant care, foster care, or adoption services; and
- (3) pregnancy termination.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. CHAFEE. Mr. President, the subject before us, the underlying bill, is title X of the Public Health Service Act. I have an amendment to that. But, basically, let me just say a couple of words about title X. That was enacted in 1970, 20 years ago. The goal of title X is to provide quality family planning and health care services.

Mr. President, I hope that throughout the discussion of title X and of my amendment today, the focus would be attached to the fact that this is a health care measure, and it is a health care measure dealing with providing health care and family planning services to low-income women who, except for this measure, title X, would have no access to proper health care and proper advice in family planning for themselves and their futures.

Mr. President, for 20 years this bill has been in effect, and for 18 of those years, it was perfectly proper when the woman came into one of these clinics—a typical situation would be a community health clinic like one which exists in the northeastern part of my State—and she seeks not only prenatal care advice, but she is in the very early stages of her pregnancy, and frequently, of course, they are low income, or they would not be in the clinic.

Second, frequently they are very young, pregnant teenagers. Teenage pregnant women are one of the major users of this service.

For 18 years, throughout the Reagan administration, mind you, up to 1988, when that woman came in and sat down with the doctor and said, "What are my options?"—mind you, she asked the question; the doctor does not volunteer the information—she asked the question, "Doctor, what

are my options?" And the doctor says to her, "These are your options: You can bear the baby. When the baby is born, you can keep it. You can put it out for adoption, or you can put it in a foster care, or you can what they call terminate the pregnancy, and that terminating the pregnancy is permitted in 50 States in the Nation."

So those were the options that the doctor gave to the woman when asked. The distinguished Senator from Oregon who previously spoke in his opening statement stressed that title X does nothing about providing funding for abortions. Nor does my amendment have anything to do with that. Not a nickel of the money that has been appropriated for title X over the past 20 years has been used for abortions.

The subject before us is solely whether the woman, when she asks, can be given the full range of options before her. What happened? Why are we here if this went on for 18 years? Because the Department of Health and Human Services in 1988 changed the regulations, and they said, when the woman asked—here is a woman who is rather desperate, poor, frequently a teenager, who comes in and says "What are my options?" The doctor under these regulations cannot say one of the options that is permitted in 50 States in the Nation is terminating the pregnancy. In other words, he does not give her the full range of information. To me, that is just plain wrong.

What is happening here is that a poor woman who uses one of these clinics is not being told the truth. She is not being told the full range of her options. If she was wealthy enough or well-off enough to go to any doctor and ask the doctor that same question, where she was paying for it, not a low-income woman, the doctor would be required to give her the options. He would be required to go through the list just as I have, including termination of pregnancy.

But for some reason that is beyond me, HHS changed those regulations. What does that mean? It means several things. It means, first of all, the woman, a low-income woman, and desperate, is not being told the truth. She asked for her options, and she is not given the list of her options. Mind you, this only applies to women who ask, who request it.

Second, what does it mean? It means that she is in an unfavorable position, as I mentioned. If she is rich enough or well-off enough, she can get those options.

Third, it means that the very doctor who is operating under those rules can subsequently be subjected to a malpractice suit.

If there is one thing that most of the Senators agree on in this body, it

is that the whole malpractice situation has gotten out of hand. It is resulting in very, very unfortunate consequences in many sections of our country, all over the country. In many sections, obstetricians are being subjected to so many malpractice suits, and the cost of their malpractice insurance is so high that many of them are no longer practicing obstetrics. And we have many rural counties in our Nation where there are no obstetrical services whatsoever. They have to drive 50, 60, 70 miles to go to a doctor. You might say that does not sound right. The law says he cannot give this information when she asks for it, so he ought to be protected. Not at all.

There are cases in the supreme courts of various States, wherein the court has said, when a woman asks for the information, she has to be given the information, including the rights she has in all 50 States in the Nation: to terminate the pregnancy.

So, what we are doing, if these regulations should remain in force, is opening the door to a whole series of malpractice suits.

So, Mr. President, that, in brief, is what my amendment is all about. It provides that those regulations be changed. We are not saying that the doctor has to urge a woman to have an abortion or has to come forward and volunteer that information. We are saying, under this statute, when she asks in one of these clinics—I am going to touch on whether the clinic is supported, and the amount of money that comes through title X to these clinics is modest, but it is a marginal amount that helps.

We are saying that when a woman comes in and she asks—she has to request the information—she be given the information, and we are putting that in the statute. She is given the information on bearing the baby, then subsequently having the right to put it up for adoption, to keep the child, or to terminate the pregnancy, as I mentioned previously.

So this is a health care issue, because many women are in a situation where bearing the baby would produce very unfortunate health consequences for themselves. So just as a woman who can afford it is entitled to their information, so should be a low-income woman.

Again, I stress let us get the word "abortion" away from this debate. There is no encouragement of abortion; there is no paying for abortion. She requests what her options are. She can have the abortion in that clinic, because that clinic is assisted by title X funds. No clinic assisted with title X funds can do abortions. So she then says, "What are my options?" She is given her options. If she then says, "Where might I go," the doctor can then say, "You can go to such and such a doctor to receive the informa-

tion," or he can direct her to someplace else. But it has nothing to do with the clinic that that doctor is functioning in.

I would just like to say another word, Mr. President, about this whole subject. A typical situation where title X funds go is a community health center. I think we all agree these are wonderful organizations. A typical situation is that the amount of funds that would go to a community health center would be maybe \$17,000, or if these are title X funds, a very modest amount of money for the total health center.

But every nickel counts. As we know, those centers are operating on very modest budgets and need all the money they can get.

Of the women that come to those community health centers, not all of them qualify for the low-income status. In other words, a doctor might be talking to a woman who is not quite in the lowest circumstances that would qualify her to be included in the title X category. So when he talks to a patient, he is not sure whether this is a title X woman or a woman with a little more income. He does not ask. He does not say, "By the way, what is your income?" He counsels these women.

So these restrictions mean, as they currently exist in the regulations, that the doctor in effect has to say under the current regulations, "Well, how poor are you? If you are poor enough, I will not tell you the whole options. But if you are well off enough and paying a little something for your services, I can tell you the truth. I can give you the full options when you ask for them."

I do not think there is a person who has looked at this who thinks that is fair. First, it is totally unfair. We recognize that. Second, it provides all kinds of problems for the physicians and for the community health centers.

So, Mr. President, this is a very modest amendment. It makes total sense. It returns to the situation that was perfectly all right for the Reagan years. President Reagan came in in 1981. In 1981, 1982, 1983, 1984, 1985, 1986, and up until 1987, those were the regulations. You informed. You asked. The poor income woman asked and she was told.

It was all right for President Reagan. No one will ever say he was soft on abortion.

All we are doing is going back to the status quo that this title X money functions under for 18- out of its 20-year history.

Therefore, Mr. President, I do hope that my colleagues will support this modest amendment. I will say this, that this amendment is supported by the American Medical Association, it is supported by the American Society of Obstetricians and Gynecologists, and I will submit those letters later in con-

nection with my full statement when we debate this thoroughly, which presumably will be this afternoon.

I thank my colleagues for their attention. I do wish to leave them with this thought, the thought that the Senator from Oregon made earlier, that this bill or this amendment has nothing to do with abortion. Nobody is funneling money into these clinics for abortion. Anyone who raises that red herring is doing a disservice, I believe, to the debate. The debate on this amendment solely deals with when a woman asks for information, that she is given the information that any woman is well off enough to go to a doctor she was paying for would receive. It is a health issue, Mr. President.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from California.

Mr. CRANSTON. Mr. President, I am pleased to rise in support of S. 110, legislation which extends the authorization of appropriations for the Federal family planning program authorized under title X of the Public Health Service Act and strengthens important provisions of this law which support research in the area of contraceptives. I am an original cosponsor of this measure which was introduced by the chairman of the Labor and Human Resources Committee, the Senator from Massachusetts [Mr. KENNEDY] at the beginning of this Congress.

Before I begin to discuss this legislation and the importance of the title X family planning program, I thank Senator HATCH for his courtesy in letting me speak at this particular moment when he also has other demands upon his time. Also, I very strongly commend the distinguished chairman of the committee, Senator KENNEDY, for his tremendous work in developing and bringing this measure before the Senate.

I know that he has devoted many arduous hours on behalf of this measure, and he deserves the thanks of all those who recognize the importance of providing access to family planning services to the millions of Americans who utilize title X programs.

Mr. President, I am very proud to have been one of the original sponsors of the legislation enacted in 1970 which established title X of the Public Health Service Act.

I also had the privilege of serving as chairman of the subcommittee of the Labor and Human Resources Committee which had jurisdiction over the title X program for almost 10 years during the 1970's. During that period of time, we were successful, with strong bipartisan support, in expanding and strengthening this program.

Mr. President, the title X Program has been successful over its 20-year history in making family planning

services available to millions of low-income women who want and need these services to avoid unintended pregnancies.

In fiscal year 1989, more than 4,300,000 clients received family planning services through title X programs located at approximately 4,000 clinic sites throughout the country. Title X grantees include State and local health departments, hospitals, universities, and other nonprofit agencies. Over 90 percent of the low-income women who received subsidized family planning services use family planning clinics.

Participating clinics are required by the title X statute to provide a broad range of acceptable and effective family planning methods and services to individuals desiring these services. Studies have shown that hundreds of thousands of unintended pregnancies and abortions have been averted each year as a direct result of the Government's investment in this family planning program. It has been estimated that if title X programs were eliminated, there would be more than 1 million unintended pregnancies each year, with more than half ending in abortion.

Title X has thus been tremendously important in reducing the number of unintended pregnancies and the number of abortions.

The law, since its inception, has provided that none of the title X funds can be used to pay for abortions. Every investigation and study of the title X Program has found that this prohibition has been rigorously enforced.

Title X funds cannot be and are not used for abortion services. Title X, by reducing the number of unintended pregnancies, has directly reduced the number of abortions.

This legislation will extend and increase the authorization of appropriations for the basic title X family planning program. It is tragic that this program has not been reauthorized since fiscal year 1985. In fiscal year 1980, the program was funded at \$162 million; last year, it was funded at only \$138.3 million. We should be increasing, not decreasing, funding for this important program. S. 110 would increase the authorization to \$163 million for fiscal year 1990; \$171 million for fiscal year 1991, and \$179.5 million for fiscal year 1992. These are modest increases in authorization levels which are fully justified.

#### CONTRACEPTIVE RESEARCH

Mr. President, since its inception, in addition to authorizing direct family planning services, title X has authorized biomedical and social research in the area of family planning and population.

S. 110 continues this basic research authority and would also establish a much needed new authority to support

additional research in the areas of contraceptive development and evaluation to encourage the expansion of applied research leading to the development, evaluation and marketing of new contraceptive devices, drugs and methods that will be safe, effective, and acceptable to the American people.

Mr. President, this is an extremely important and very necessary step forward. A report released earlier this year by the National Research Council and the Institute of Medicine of the National Academy of Sciences highlighted the tremendous inadequacies in contraceptives currently available to the American public. The Federal Government's commitment to research and development of new approaches has been woefully inadequate. This report concluded that "unless steps are taken now to change public policy related to contraceptive development, contraceptive choice in the next century will not be appreciably different from what it is today."

#### CONCLUSION

Mr. President, those individuals who want to see the number of abortions reduced ought to be among the strongest supporters of this legislation because one of the most effective ways to achieve that goal is through the development and utilization of safe and effective family planning services.

I strongly support this measure and the right of women, regardless of their economic status, to have access to the family planning services that will allow them to prevent unintended pregnancies.

Mr. President, I yield the floor.

Mr. PACKWOOD. Mr. President, I have a statement in support of the amendment of the Senator from Rhode Island, but I would ask the Chair if he would respond to a question first.

Did the Senator from Rhode Island in any way indicate that, if a clinic received title X funds, it can still offer to paying patients, as opposed to those who do not pay, advice on abortions?

Mr. CHAFEE. No. The Senator's question is a very good one, and I might have misstated, in my brief opening statement, the situation.

If the patient goes to a clinic that is receiving title X funds, and that patient might be paying a modest amount on some sliding scale, that patient cannot receive the full information from the physician.

In other words, despite the fact that there are a variety of patients, some who are very low income, not paying anything; some who are paying a modest amount, as I say, on some sliding scale, the clinic itself is bound by the title X regulations, even though the amount that the clinic receives is very modest, and the same rules apply to the doctors advising all patients.

In other words, the doctor cannot give any of the patients the full information. The doctor is prohibited, even upon request from a patient, from saying to that patient she has option A, B, C, or D, and one of those is termination of pregnancy.

So I am glad the Senator asked that question, because I did not want to convey any confusion.

Mr. PACKWOOD. I thank the Senator from Rhode Island.

Mr. ADAMS. Mr. President, will the Senator yield so I might make a unanimous-consent request?

Mr. PACKWOOD. Absolutely.

Mr. ADAMS. Mr. President, I ask unanimous consent that the time between now and when the Senate resumes consideration of S. 1224, the CAFE standards bill, this morning be reserved from this point on for debate only.

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

Mr. PACKWOOD. Mr. President, I rise as a cosponsor of the amendment of the Senator from Rhode Island. With this amendment, we offer the Senate the opportunity to right a wrong which has been inflicted upon the low-income women of this country, and in many instances, upon non-low-income women who happen to receive health care through title X clinics. That wrong is the denial of the opportunity to receive full and uncensored information about all their available medical alternatives.

Title X was enacted by Congress in 1970, for the laudable purpose of providing family planning services, primarily, but not exclusively, to low-income people in this country. It has been successful beyond our wildest belief. It has provided millions of women not only with reproductive health services, but in many instances with basic care in areas where no other provider was available. I and my colleagues who strongly support title X will have ample opportunity to detail its impressive track record elsewhere in this debate.

For 18 years, until 1988, health care professionals in title X programs were able to provide the quality and type of counseling which is not only a patient's basic right, but which organizations such as the American Medical Association state in their guidelines that physicians should give. Prior to 1988, women diagnosed as pregnant in title X clinics were offered information and referrals on all their options, including carrying the pregnancy to term, keeping the child, adoption, or terminating the pregnancy. That policy was codified in the original Health and Human Services guidelines for title X.

Then in 1988, after Congress rejected numerous attempts to bring down

or significantly weaken title X, Health and Human Services, the very agency charged with stewardship of this program, enacted new regulations intended to hamstring the medical professionals providing title X services. Although title X funds have always been prohibited from being used to pay for abortions, and have never been so used, Health and Human Services' new rules explicitly forbid doctors, nurses, or any other employee at a title X clinic from even mentioning abortion to a woman. In fact, the new rules do not allow such communication even if the woman asks herself about that option. Furthermore, no written information about pregnancy termination can be presented, and no referrals given. This is true even if the pregnancy which has been diagnosed is life threatening to the woman. This is true even if the woman is a rape or incest victim. This is true even if the woman is a self-paying patient who just happens to obtain her health care from a provider who also receives title X.

As I reviewed the rules promulgated by the Department of Health and Human Services in preparation for today's debate, I found them no less shocking and deeply troubling today than when I first encountered them in 1988. Mr. President, these gag rules are a travesty. Imagine tying the hands of a doctor in this enlightened scientific age and in the most advanced nation on the planet, to keep him or her from giving basic health information to a patient. Where will we stop if we allow this policy to continue? Will we look over physicians' shoulders and decide that if we disagree with some other procedure, like a transplant or plastic surgery, that we will simply forbid them from telling a patient that such technology is available?

Courts have found that doctors who fail to share medical information with patients commit malpractice. The American Medical Association guidelines direct physicians to give complete information. The Department of Health and Human Services, the Federal agency whose business is the health and well being of America, should be sensitive to those concerns, not purposely obstruct them.

Notwithstanding the very serious effect these regulations have on patient rights and physicians' ethical duties, the first amendment implications alone are sufficient reason to override them. What other professional in what other situation is literally forbidden by the Federal Government from speaking? The chill these prohibitions place on communication between medical provider and patient is devastating. Mr. President, the American Medical Association and the American College of Obstetrics and Gynecology strongly oppose these rules, and with good reason.

The amendment which Senator CHAFEE and I offer would restore the situation to what it was for nearly 20 years prior to 1988. Medical professionals in title X clinics would be free to provide the same quality of service to women that other medical providers do: Information and referrals on abortion for those women who want such information. Our amendment would have no effect whatsoever on the prohibition against title X clinics providing abortions.

I want to emphasize that. Our amendment has no effect on the prohibition against title X clinics providing abortions. Government funding of abortion is a separate issue, and this amendment is not related to that issue.

Mr. President, Senators have every reason to support this amendment regardless of their position on abortion. What is at stake here is the integrity of the physician-patient relationship and the first amendment rights of medical professionals. I, therefore, ask my colleagues' support of this very important amendment.

#### PRIVILEGE OF THE FLOOR

Mr. ADAMS. Mr. President, I ask unanimous consent that privilege of the floor be granted to Ben Chu of Senator BRADLEY's staff during the pendency of S. 110 each day that the measure is pending.

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

The Senator from Vermont.

Mr. JEFFORDS. Mr. President, first I would like to address the pending amendment and clear up any confusion as to whether I support the amendment. I do. I support the Chafee amendment to the Jeffords amendment. I do this because specifically this amendment reverses a portion of the regulations promulgated by the administration in 1988 prohibiting doctors and other health professionals in federally funded clinics from giving their patients objective information or referrals regarding their legal and medical options when facing unintended pregnancy.

In March 1988, the Department of Health and Human Services issued final regulations denying title X patients their right to receive any information—even nondirective, factual information—about pregnancy termination.

The regulations, which are pending court decisions, are not in effect for most providers. However, the consequences of these regulations, if allowed, would be significant. The prohibition against providing counseling regarding pregnancy termination or referral imposes a weighty ethical conflict for medical professionals whose guidelines for practice insist on a patient's right to full information. In ad-

dition, health care professionals would be at risk of medical malpractice.

Second, it has the effect of creating a two-tiered health care system whereby low-income women, relying heavily on federally funded clinics, receive more limited care and information than women who can afford a private health care services.

Further, I believe the 1988 regulations are inconsistent with congressional intent. Since its enactment in 1970, title X has included a prohibition on the use of family planning funds for abortion. However, in enacting title X, Congress intended that pregnant patients served by the title X program be provided with nondirective counseling and all information necessary to make an informed choice between parenting, adoption, and pregnancy termination.

This body must be perfectly clear on one fundamental issue—title X clinics have always been prohibited from using Federal money to fund abortions. Barring Federal funds for pregnancy termination is consistent with the intent of Congress and distinct from the issue at hand. The issue is the right of women to have full access to information, counseling and referral regarding their pregnancy.

In my mind it is a matter of equity—equity for all women regardless of their income level to receive full and adequate health care information. This amendment is supported by both the American Medical Association and the American College of Obstetricians and Gynecologists. I urge my colleagues for the millions of women currently being served by title X clinics to support this important amendment.

Mr. President, further, I rise in support of S. 110, the Family Planning Amendment of 1989, as reported by the Committee on Labor and Human Resources.

This bill provides essential family planning services and information to high risk populations prioritizing low-income individuals. S. 110, title X of the Public Health Service Act, provides funds for family planning clinics to provide health care services for adolescent and young women on a sliding fee scale, as well as research, training, information and education activities relevant to family planning.

There has been considerable debate and, in some instances, misinformation concerning these programs. Among the arguments voiced by opponents of title X is that it will in some way promote or encourage women to have abortions. Statements of this sort are simply untrue. Since the inception of the title X program in 1970, prohibitions against the use of Federal funds for abortion services have been clearly mandated in the statute. There is no question that Federal funds cannot be

used to fund abortions—such is the intent and mandate of Congress.

Opponents further state that these programs will encourage promiscuity among teenagers and young adults by promoting the use of contraception. Again, one of the goals of S. 110 is to educate individuals regarding human sexuality. Title X projects do provide contraceptive information and services, along with related preventive health services, in order to help lower the incidence of unintended pregnancy, curtail the transmittal of sexual disease and reduce the incidence of abortion.

There are those who question the need for such prevention, education, and health care services for adolescents and women. Perhaps I, too, might question the need if the statistics were not so unequivocally strong and the demand so clear. Knowing just a few of these statistics has confirmed my strong support of this program.

Quickly, let me give you an example. Approximately 1.1 million teens became pregnant in 1985, most of them the result of unintended pregnancies. Among them were 178,000 births to teens 17 and younger and 10,000 births to girls 14 and younger. Each day, 488 babies are born to women younger than 18, many of whom drop out of high school to care for their child.

These numbers are tangible evidence that more than half of all teens are sexually active today. The incidence of sexually transmitted diseases, including AIDS, among teenagers continues to rise, which points to the lack of knowledge regarding the transmittal of diseases.

Moreover, while teen pregnancy and parenthood are problems that afflict all Americans, regardless of economic background, it is clear that poverty greatly increases a teen's risk of becoming a parent too soon and greatly increases the risk of bearing a child with increased health risks. Too often health care is unattainable for low-income women. We know, however, that no woman should bear a child without having received early and comprehensive maternity care, including prenatal services and a planned delivery in a medically appropriate setting. Babies who are born to mothers who do not receive comprehensive maternity care are three times more likely to die than those born to mothers who receive such care and 50 percent more likely to be born at a low birthweight.

Unfortunately, there remain close to 1.5 million American families with no health insurance. Accessibility to health care for low-income families continues to be an increasing problem.

Yet even with such telling statistics, with the disgrace of the United States placing 19th in the world in its infant

mortality rate, this body is struggling to reauthorize a program that attempts to abate the disgraceful lack of health care services and pregnancy prevention for pregnant women and adolescents.

My own State of Vermont illustrates the need and value of federally supported family planning programs. In 1985, there were 680 pregnancies involving young women 17 and under. In 1987, Vermont had 31,360 teenage and poor women at risk for unintended pregnancy. Yet, despite this need, Vermont's title X funds have been cut 12 percent over the course of the last decade.

I cannot give a more persuasive argument than the telling facts that I have outlined above. If this country is to begin to reverse the tragic trend of unintended pregnancies, poor health care for pregnant women, and sexually transmitted disease, then it must begin to commit resources to education, prevention, and health care services. The statistics are such that we can no longer turn a blind eye and deny the fact that babies are being born with high health risks to young women with little access to health care. America must begin to focus its attention on prevention of unintended pregnancies via proper education, family planning, and health care services. Such is the goal of the Title X Program.

I urge my colleagues to support this important program for the sake of our young people and our future generation.

Mr. President, I yield the floor.

Mr. ADAMS. Mr. President, I rise to speak on title X today, but prior to doing that I also want to indicate, while Senator JEFFORDS is still here, I am in support of the Chafee-Jeffords amendment. I think it is a good amendment. I think it is necessary that all of our people get full medical information.

I stress, as the others have, this has nothing to do with payment for abortions or the actual performing of abortions at all. That should stay out of this debate.

Mr. President, I rise today to speak in support of passing legislation to reauthorize title X of the Public Health Services Act. I was an original cosponsor of this bill as it came out of committee, and I would like to thank Senator KENNEDY and Senator HATCH for seeing that this bill has come to the floor. I particularly want to thank Senator KENNEDY for his tremendous leadership on this issue over many years. He has been a tireless advocate on behalf of family planning since its inception over 2 decades ago.

I was also part of this during that time while in the House of Representatives. But over the last 5 years, we have been involved in protracted debate over family planning, and Sen-

ator KENNEDY has committed himself to getting title X reauthorized. I am pleased to join the chairman today to make sure that we pass a bill that will ensure access to family services to those who seek them.

I also would like to recognize several individuals because often they are not recognized as these debates proceed forward.

These individuals have worked tirelessly with members of the committee over the years, and have helped to get title X to the floor. They are Jo Blum, Ellen Battistelli, and Bill Hamilton with Planned Parenthood, Lisa Kaeser with the Alan Guttmacher Institute, and Lisa Sugar and Sarah Szanton of National Family Planning and Reproductive Health Association. I thank each of them for their help and dedication to this issue.

Title X provides vital services and information to reduce the incidence of unintended pregnancy to almost 5 million women each year. These women are typically young and poor—80 percent have incomes below 150 percent of poverty. It should come as no surprise that for many of them family planning clinics are not only a critical resource for contraceptive information and services but are the entry point for very basic health care services.

Family planning is a vital link in the health care chain. The clinic is often the only access to health and medical care for millions of American women. Family planning clinics offer women preventive services for cervical and breast cancer, screening for sexually transmitted diseases that can lead to infertility, AIDS prevention, and prenatal care.

Title X is also the only Federal program specifically targeted to family planning. It provides contraceptive information and the provision of contraceptive services to all who want and need them—including 1.5 million teenagers annually who would otherwise not get help. Title X services, despite what opponents may say, reduce adolescent pregnancy. In fact, the National Academy of Sciences in a 1987 study found that the "major strategy for reducing early unintended pregnancy must be the encouragement of diligent contraceptive use by all sexually active teenagers."

The National Academy is not alone in their support of a Federal program to reduce adolescent pregnancy: The Southern Governor's Association issued a report last year, "Breaking the Cycle," that looked at adolescent pregnancy in the South, and concluded that the Federal Government should continue strong support of title X.

Unfortunately, major funding cuts have hurt the program over the last decade. Funding for title X is roughly

15 percent or \$30 million less today than it was in 1981.

The consequences of this decline have been dramatic. Since 1982, as many as 1,000 clinics have closed. In my own State, clinics are stretched to the breaking point. Since 1980, an additional 11,000 women in Washington State sought title X services, but the State suffered a 10 percent cut in funding in constant dollars. At the same time, health care costs rose exponentially, particularly for OB/GYN services: tests for pap smears have doubled in cost and medical malpractice insurance and laboratory costs have skyrocketed. For rural areas—and I have money in my State—this situation is catastrophic.

Nationally, women are not any better off. We are only able to serve 2 out of every 3 low-income women who are eligible for the title X program. Yet almost 32 million women remain at risk of an unintended pregnancy.

The debate today is really about whether or not the Federal Government should support access to voluntary family planning services to women and adolescents as we have done over the last 20 years. It is not about abortion. Title X has never permitted funding for abortion and S. 110 does not change that. It is not about encouraging teenagers to become sexually active. Title X provides information and methods to avoid unintended pregnancy. It is not about sex selection, or school-based clinics, or RU-486. It is about access at the most local level to care that is supported by good research and training and outreach.

The question you must answer today must not be about whether you are for or against abortion. The question is whether you support providing women access to health care they otherwise would go without.

One out of four women in the United States who uses a contraceptive method obtains it through a publicly subsidized source. Over 90 percent of these women, about 4.1 million women rely on family planning clinics. We cannot afford to delay passage of this bill any longer. We have the technological and medical sophistication to provide help to those women who want to avoid an unintended pregnancy. What we need is the will.

We need to demonstrate real leadership by acting quickly and make family planning services understood and available to all who need and want them.

S. 110 makes some important improvements to the current title X law that I strongly support. I would like to point out just two that are especially important to me. First, S. 110 establishes a new authority to support applied research leading to the development, marketing, and evaluation of new contraceptive devices, drugs and methods under the auspices of the Na-

tional Institute of Child Health and Human Development and, second, establishes a grant program to implement community-based education and information programs.

The new research program builds on current law, but recognizes that if we are to develop safe, effective and appropriate contraceptive choices for women we need to promote research. Tragically, existing contraceptive methods do not meet the needs of many women. Yet, there has not been a major breakthrough in contraceptive research in the last three decades. Medical researchers predict that without Federal support for contraceptive research, there will be no new contraceptive methods until well into the next century.

I also believe that contraceptive and health care information and education should be readily available to all young men and women who want them. The best place to provide this information is at the local level. S. 110 enables local community-based entities to seek grants to provide this information.

The decision is made at the local level as to how such programs will operate and what types of materials will be available. I have toured these in my area, and I find them to be scientifically based and excellent materials.

Reauthorization of title X is important public policy. We cannot let the impasse on the budget delay our action. I know many of you, as I, are genuinely concerned about passing a spending bill while we still have not settled on a deficit package. But I can assure you that the cost of the bill more than pays for itself, both in economic terms and in human terms. The Alan Guttmacher Institute recently found that, for every dollar spent for contraceptive services, we save \$4.40 in funds that otherwise would have to be provided for medical care, welfare benefits, and social services to women who, by law, would be eligible for such services if they became pregnant.

In human terms, the National Academy of Sciences Institute of Medicine found that family planning plays a critical role in reducing low birth rate and infant mortality by helping women receive vital prenatal services they would not otherwise receive.

The position of the United States in prenatal care and in mortality of infants is really a national tragedy. Family planning can be part of correcting that. And that is what the institute found. Healthier babies are delivered to healthy moms who plan their pregnancy, not to adolescents who are too young to parent.

Family planning and contraceptive counseling also gives our adolescents the opportunity to make choices about their future to plan and to succeed as adults and parents. Last year, the Labor Committee heard from Dr.

Daniel Federman from the Harvard Medical School about the cost of not providing family planning services.

In other words, if we do not pass this bill and get on with this, Dr. Federman found 1 million unintended pregnancies a year to young women under the age of 18, and what do they do? This has resulted in 400,000 abortions and more than 500,000 births to adolescents not mature enough to parent.

Dr. Federman describes this situation as "wasted opportunities, wasted personal potential, and wasted social contributions." I could not agree more.

Our responsibility is to give every young woman a chance to succeed, the chance to succeed. Providing the opportunity, the services, the information to make responsible plans, to have a family, that is the beginning of success. But these have to be responsible plans, and control over their lives.

I cannot urge you enough to support this bill and to vote against amendments which seek to weaken what we know is a successful program.

Mr. President, it is one of the great tragedies of this country that we allow unintended pregnancies, to force very young women, often very poor young women, to a point where they have to make choices that they would not otherwise have to make. I believe truly that everyone who does not wish to have young women have abortions should vote for this bill, and for family planning.

Let us save our adolescents. Let us save and help our young women. I hope that all of my colleagues will vote for this bill and vote against amendments which seek to weaken this very successful program.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BRADLEY. Mr. President, I rise in support of this legislation to reauthorize the Title X Family Planning Program and the title XX adolescent family life demonstration projects under the Public Health Service Act.

America's children are in trouble. As we look across the country, we see the mounting shame of an infant mortality rate that ranks twentieth in the world. In other words, 19 countries have lower infant mortality rates than the United States. More infants die of preventable diseases and malnutrition here than in any other industrialized nation, and in some inner cities, the infant mortality rate is comparable to Panama's or Chile's. Millions of other children are held back by handicaps

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

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and disabilities that prevent them from reaching their full potential as human beings, and which are often the result of insufficient prenatal and neonatal care.

Mr. President, no one who has ever visited a neonatal unit and seen a baby no bigger than your hand can lack the understanding of how important prenatal services are.

Nearly half a million teenage girls in America every year interrupt their education to give birth to a child. Many do not see a doctor during pregnancy and their babies do not see a doctor after birth for checkups or vaccinations. These teens give birth to many more low birth weight babies than older women, and these babies are forty times more likely to die before the age of 1 than are other children. For many of these pregnant teenagers, two children become victims: the teenager and her child, both of whom face bleak futures.

Not all of this misery can be prevented, but we do have successful programs that bring vital services to help break the cycle of unhealthy pregnancies for low-income women. And yet year after year, these programs are blocked, hindered, diluted, or filibustered, not because they do not work or we cannot afford them. They do work and they are cost-effective, but because of an ideological faction that wrongly sees these programs as territory to be won in their ongoing war against a woman's right to choose a safe and legal abortion. It is as simple as that.

Mr. President, these systematic obstructions only add to the shame of the way we treat infants and pregnant women in this country. The title X family planning programs make a difference for 5 million low-income women, including 1 million adolescents. These funds give women access to comprehensive family planning, basic health screening, preventive health services, and information that helps them make wise choices for and about their families. While the program provides funding for infertility diagnosis and treatment, referral for cervical and breast cancer and for sexually transmitted diseases among others, it does not pay for abortions.

Indeed, the family planning information provided by these programs give women knowledge about alternatives and choices that, if allowed to function without interference, will ultimately reduce the number of abortions. They will also reduce the number of low birth weight babies, the number of babies born to mothers who are not emotionally or financially prepared to give them a good life, and the number of children who die before their first birthdays.

Mr. President, we may not be willing right now to devote the resources to a basic, cost-effective preventive health

network to address our grave problems of maternal and child health. But to deny young women information about their choices and basic health screening out of a misguided ideological crusade is, in my view, not only unfortunate, but it is inexcusable. I urge my colleagues to join me in strongly supporting this reauthorization so that we can get on with the business of saving America's children.

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

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

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Colorado.

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

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

Mr. WIRTH. Mr. President, in an earlier incarnation I was a member of the board of Planned Parenthood in Denver, CO. We had a wonderful, broad, cross-section of the community on that board: Men and women, black, Hispanic, old, young. They were a very, very aggressive group of people concerned about ensuring that family planning services were made available to people from all segments of the community.

That program, as far as it has gone, with the funding available, has been wonderfully successful. It has been successful because it has such broad community support. In my State of Colorado I have difficulty imagining that there is not very broad majority support for family planning services, particularly for girls aged 17 and younger.

My experience on that board occurred in the late 1960's and early 1970's. Since then, Mr. President, we have seen, as you know, and as everybody knows, a dramatic escalation in the need for family planning services for kids, particularly young people in our inner cities. For example, in 1985 alone, in my State of Colorado, there were almost 6,000 pregnancies of girls age 17 and younger; 6,000 in a small State like Colorado.

In 1987, Colorado had 184,000 teenage and poor women at risk for unintended pregnancy. Again, these escalating numbers demonstrate the need for the Title X Program that we are debating here in the Senate today. Yet, given these needs in the State of Colorado—5,700 pregnancies in 1985 to Colorado women age 17 and younger, 184,000 teenage and poor women at risk for unintended pregnancy—from 1981 to 1988, title X family planning and contraceptive services funding for my State were cut by 5 percent. We see a dramatic increase in need in Colorado and elsewhere, but we see the funds going down apace.

That kind of gap will be social dynamite in the future. In addition to all the problems that have been discussed here, we are asking for very, very significant problems down the line. It is imperative that we, in the U.S. Senate and the U.S. Congress, in Washington, make the investments necessary as in title X, to ensure that family planning services are available to everybody.

In fiscal year 1988, the State of Colorado received \$1.7 million in title X funds; \$1.4 million to the Department of Health for family planning services, \$130,000 to the Larimer County Health Department for services, and \$200,000 for the JSI research and training program for training. Title X services were provided in my State of Colorado at approximately 51 clinic sites, and we were just beginning to meet the need that is out there.

Probably no single program is as important for us to address. I realize there are some hackles that get raised by this program, concerns that get raised about the program. But overall, the need for investment in this program is absolutely dramatic, and I hope we will have not only a majority, but a very strong majority of Members of the U.S. Senate voting for the Title X Program. It is such an extraordinarily important piece of legislation for the well-being, the very fabric of this society.

If we do not support family planning services, we are just asking for and getting more and more problems. We cannot bury our heads in the sand. We cannot continue to go ahead with the enormous cost to this society when women are having unintended children. The caseloads are increasing. We have seen what has happened to maternal and child care costs when health care services are inadequate, and they are for many of these women who are having children at a very early age.

It is absolutely imperative, Mr. President, that all of us band together in this country and understand the future of this society is very closely wrapped up with what we do on this Title X Program today.

Mr. President, I hope after we all go through the debate process and look at this, we will have the good judgment to continue to fund this program, and not only continue to fund it, but to sharply increase the amounts of money we are spending on it.

I am pleased that the Senate today is beginning debate on the reauthorization of title X programs. I think that these are the exact kind of preventative programs that the Federal Government should be supporting—by supporting these programs, we are making a conscious decision to try to prevent the detriments and expense derived from unwanted pregnancies and make basic health screening and

fairhanded treatment to recommending abortion as one form of birth control.

For these reasons, Mr. President, when the time comes I shall vote against the Chafee amendment.

The PRESIDING OFFICER. The Senator from Connecticut [Mr. LIEBERMAN].

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business for no more than 5 minutes.

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

#### TIME TO TAP THE STRATEGIC PETROLEUM RESERVE

Mr. LIEBERMAN. Mr. President, I rise today with a single message that it is time to tap the strategic petroleum reserve. The price of crude oil today on the futures market is nearing \$40 a barrel. Gasoline prices at the pump continue to rise. In fact, they have hit an all-time historic high in this country. Heating oil prices are also rising, just as furnaces begin to click on in northern regions of our country. The American consumers and the American economy are being hit hard by panic and profiteering in the oil industry.

Mr. President, for the administration not to tap the strategic petroleum reserve at this time is a little bit like a man being hit in the stomach over and over again and just laying back and letting it happen and not responding. It is time to fight back against these incredibly exorbitant oil prices, and the first step in fighting back is to tap into the strategic petroleum reserve which all of us have created with our tax dollar investments.

Judicious tapping of that reserve may just possibly save our economy from the devastation of recession. Second quarter figures for our GNP were released just this morning and they show that the economy grew by only four-tenths of 1 percent in the second quarter as compared to 1.7 percent in the first quarter, and that does not even measure the profound impact of oil price increases that occurred during the third quarter of this year.

Mr. President, we simply cannot wait for third quarter reports of economic growth before we act. We know we are in the midst of a dramatic slowdown in our economy. Raising oil prices in an already sluggish economy is literally like throwing gasoline on a fire. If we do not tap this reserve, crude oil prices are likely to climb much higher before they begin to fall.

At this stage of the Persian Gulf crisis, there appear to be only three possible outcomes in the weeks ahead. One is that Saddam Hussein will buckle under the pressure of international sanctions and pull out of Kuwait. Such an action would have an

immediate and positive impact on the oil markets and on our economy. But until that happens, should we not benefit from the lower prices that tapping into the strategic petroleum reserve would bring us?

The second possible outcome is continued stalemate, and that also means increased oil prices and growing pressure on consumers and on the economy. Diverting oil from the reserve could ease that pressure.

The third possible outcome is war. That clearly would send oil prices sharply upward, even if the Saudi oil fields are protected against attack, as most experts believe they would be. If war is coming, it only makes sense to begin tapping that reserve now before it happens.

Mr. President, this is only the first step that I believe the administration and Congress should take in dealing with this oil crisis. As I have said before, Congress should pass legislation that I have introduced that would prohibit price gouging during times of a national emergency. I am very proud to announce that now more than 20 of my colleagues in this Chamber have cosponsored this legislation and more than 40 Members of the other body have joined in support of a companion bill. It is time to give the President the power he needs to deal with oil price gougers.

We also have to do more to protect consumers from outrageous prices or actual shortages of heating oil as temperatures continue to drop, and that includes increasing the amount of money available for LIHEAP to ensure the poor and the elderly are not forced to choose between heating and eating this winter. I think we also have to take a closer look at the operations of the oil industry itself and examine such questions as should we tax the windfall profits we know that big oil is making at our expense?

Should a precious commodity like oil be traded on a volatile futures market which responds to rumor, innuendo, and threats? Because the prices rise today up to \$40 per barrel, it does not reflect a shortage in supply, only a fear of what the future may be.

Are the big oil companies hiding their profits from public view by settling claims, buying their own stocks, and making large new investments? Does competition exist regionally in the oil industry, or is it time to take steps to break up oligopolies and make oil a freer market?

Finally, Mr. President, is there anything we can do to break the grip that OPEC has on the international market? If OPEC existed in the United States—and I speak as a former attorney general who had the responsibility to enforce antitrust laws—the heads of OPEC would be in jail today. We have accepted it as if there is nothing we can do about it. But when

we think about the devastation that increasing oil prices are bringing to our economy, I think it is time to take a second look at that question.

The reality is that if oil were being sold on the world market at market prices, it would not be \$40 a barrel but \$10 a barrel. So just as the Persian Gulf crisis may lead to a new world order on the international scene, let us use this crisis to lead to a fairer market for our consumers and economy at home.

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

Mr. FORD. Mr. President, I wish to take just a minute.

The PRESIDING OFFICER. Will the Senator suspend momentarily.

Does the Senator ask unanimous consent to postpone the pending order that we move to S. 1224 at the hour of 11:30?

Mr. FORD. I apologize to the Chair. I certainly do. I request that the pending measure be set aside and I might proceed as if in morning business.

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

#### INCREASED OIL COSTS

Mr. FORD. I might say to my good friend from Connecticut that this is exactly what happened back in the seventies. The American people became very concerned about oil prices, shortages, gasoline lines, and when the bell stopped ringing, they rolled over and went back to sleep. Now we are in the same position we were then. Lo and behold, we wondered where the national energy strategy went. It went the way of a free market and our energy strategy now is imported oil.

I noticed in the news this morning that Saudi Arabia has increased their production by some 25 percent since the Persian Gulf crisis.

If they have increased their production by some 25 percent, and oil is now near \$40 and when the Persian Gulf problem started it was between \$10 and \$15, you can see they are making above \$50 billion more per year than they were prior to August 2.

So I do not see how we can turn our back on what the Senator is trying to do and what we need to do as it relates to a national energy strategy. I compliment him on his effort.

Mr. LIEBERMAN. I thank the Senator.

Mr. FORD. I thank the Chair. I apologize again for not making the proper motion.

#### FAMILY PLANNING AMENDMENTS OF 1989

The Senate continued with the consideration of the bill.

Mr. HARKIN. Mr. President, I rise in strong support of S. 110, the reauthorization of title X of the Public Health Service Act.

Since 1970, title X has served as the mainstay of our national family planning effort. Each year 4,500 local clinics around the country provide medical and educational services to over 5 million low-income women and teenagers. While the primary focus of title X is contraceptive services, title X-supported clinics offer basic preventive health services, and are often the first place low-income women—and especially teenagers—receive formal medical care.

Title X is a program that works. It provides needed health care services, it prevents unintended pregnancies and reduces the need for abortion; it helps to reduce teen pregnancy—and it accomplishes these objectives in a cost-effective manner.

A recent study by the Alan Guttmacher Institute [AGI] found that every public dollar spent to provide contraceptive services saves an average of \$4.40 in taxpayer funds that otherwise would have to be allocated toward medical care, welfare, and other mandated social services—an overall total of \$1.8 billion in savings annually. Further, a study released yesterday by the Center for Population Options, a non-profit educational organization, put the annual cost of assistance to families begun by teen-aged mothers at an astronomical \$21.5 billion in 1989. These costs, which include AFDC, Medicaid, and food stamps, are paid for by the taxpayers of this Nation. Clearly, we must redouble our efforts to reduce teen pregnancy and the legislation before us today affords us the opportunity to take an affirmative step in that direction.

My State of Iowa illustrates the need and value of federally supported family planning programs. In 1987, Iowa had approximately 155,000 teenage and poor women at risk for unintended pregnancy. In a recent 4-year period, the number of births in Iowa to unmarried women grew from 1 out of every 8, to nearly 1 out of 6. A 1985 report by the University of Iowa's Center for Health Services found that, for the age group 14-19, every dollar spent on family planning saved the State \$8.50 in unspent welfare support each year.

Yet, despite this need for family planning services and despite the accomplishments and proven cost savings of the title X program, title X funds for Iowa have been cut 17 percent over the course of the last decade. Nationally, the program funding has declined from \$162 million in 1981 to \$139 million in fiscal year 1990.

As chairman of the Health Appropriations Subcommittee with jurisdiction over the title X program, I intend to continue the fight for increased ap-

propriations for family planning begun last year. In fact, the Labor-HHS-Education Subcommittee recently approved my recommendation of \$148 million for title X for the coming fiscal year, an increase of \$8 million. I hope to be able to maintain that increase, and those efforts will certainly be enhanced by our reaffirmation of the importance of the title X program through action on this long-awaited reauthorization.

I would also like to note that the critical complement to family planning services for preventing unintended pregnancies, and thus reducing the need for abortion, is improved contraception. The inadequacy of available contraceptive methods in this country is reflected in the fact that more than half of the nearly 6 million pregnancies that occur each year in the United States are unintended. S. 110 will provide an additional \$10 million authorization to the National Institutes of Health for contraceptive research and development, to enhance the ongoing basic contraceptive research at NIH. The development of safer, more effective methods of contraception is critical to helping to bring down the number of abortions being performed in this country.

Frankly, I think it is important we keep focused on that goal, and not let antiabortion politics continue to mire progress on this legislation. The legislation before us today retains the longstanding prohibition on abortions under title X. No funds authorized or appropriated for title X are permitted to be used to pay for abortions, and there is no evidence to suggest that this prohibition is being violated. I hope that antiabortion amendments would not be offered since they are not relevant to the legislation, they are likely to protract the debate on the bill, and they will make it more difficult for us to achieve the goal of getting title X reauthorized this year.

In conclusion, I would like to thank Senator KENNEDY for his efforts to bring this legislation before us today, and I hope our colleagues will join with us to demonstrate Congress' support for revitalization of the program critical to the lives of millions of women in our Nation.

#### MOTOR VEHICLE FUEL EFFICIENCY ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1224, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1224) to amend the Motor Vehicle Information and Cost Savings Act to require new standards for corporate average fuel economy, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Under the order, there will now be 1 hour for debate only, equally divided and controlled by the Senator from Nevada [Mr. BRYAN] and the Senator from Michigan [Mr. RIEGLE].

Who yields time?

Mr. BRYAN. I yield, Mr. President, 5 minutes to the distinguished Senator from Connecticut [Mr. LIEBERMAN].

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Senator from Nevada. I am privileged to rise in strong support of S. 1224, and again to commend and thank my colleague and classmate, Senator BRYAN, from Nevada, for his leadership on this critical issue.

Mr. President, I spoke just a few moments ago on the floor about the impact of rising oil prices on our economy. I think it is important to link that threat that every consumer, every business, and our economy in general, face from rising oil prices to this bill.

This is a good bill for energy conservation. It is a good bill for the environment. But it is also a good bill for the American economy because of what it does to help us break our dependence, or diminish our dependence, on a source of fuel that we do not control. So long as that is true, somebody far away, acting alone or in concert with a group of others, a group known as OPEC, is going to be literally able to pull our chain and affect the way we live in America.

I think economic reasons are part of why we have to support this CAFE bill. The numbers associated with this bill are dramatic. Let me just cite them again. The Department of Transportation estimates that if we pass this bill by the year 2000 we would save a total of more than 49 billion gallons of gasoline. By 2005, the bill would save more than 2.8 million barrels of oil every single day. Talk about energy conservation. Talk about cleaning our environment. Talk about protecting the independence of our economy, our ability as Americans to determine the quality of life, the standard of living; this is the bill that will do it.

Mr. President, there has been much comment by those who oppose this bill that, in a catch-22 logic, by bringing more fuel efficiency, this bill will actually harm the environment.

Earlier this year, at the end of last year, I sat through a lot of meetings, a lot of conferences, a lot of hearings as a member of the Environment and Public Works Committee on the Clean Air Act. We dealt specifically with this question.

I will include in this statement some very strong testimony from experts, particularly Michael Walsh, who is the former head of the Mobile Source Office at EPA. He is a widely respect-

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In short, the evidence I have seen indicates that improving fuel economy and improving emissions of pollutants from automobiles are fully compatible. We don't need to choose between cleaner and higher fuel economy. As Mr. Walsh pointed out in his testimony, technologies which both cut emissions while improving fuel economy, such as advanced air fuel and spark management systems, are available and are, in fact, being utilized by the manufacturers today.

Second, opponents of this legislation contend that rather than pass this bill we should enact legislation requiring old cars which are less fuel efficient than newer cars to be taken off the road.

While it would be beneficial to the environment if some of the older cars were no longer on the road, if that's all that happened, in 5 years from now, many of the cars on the road actually would be less fuel efficient than the cars on the road today. As Senator BRYAN pointed out earlier in this debate, the Wall Street Journal recently reported that as model year 1990 begins "the automakers are wheeling out some of the biggest and brawniest cars in years." It goes on to describe General Motors' Buick Roadmaster wagon that gets 16 miles per gallon and also describes Ford and Chrysler offerings. This article is in line with the overall trend in 1989 and 1990; average fuel efficiency for new cars actually declined.

In short, if we encourage people to trade in old cars and do nothing to mandate that newer cars be more fuel efficient and carmakers continue to produce less fuel efficient cars, at best the fleet average fuel efficiency would improve during the next two decades to the 1989 level of new car efficiency of 28.3, but get no better.

In fact, Mr. President, if we take no steps to mandate increased fuel efficiency, oil consumption and carbon dioxide emissions will actually increase. One thing which I learned very clearly during the Clean Air Act, was that the number of cars on the road and the number of miles those cars travel, has increased dramatically in the last 20 years. If this historic rate of growth continues, overall energy consumption by automobiles in the year 2000 will be 8 percent higher than in 1990, and carbon dioxide emissions from cars will increase 35 percent from 1986 levels by 2005, according to studies by Public Citizen and World Resources Institute.

Mr. President, we must act now to adopt this bill, to put into place a program which we know must be part of any truly effective energy policy. In doing so, we will also be acting to help protect our economy and our global environment.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I know we started late on the 1 hour of debate. I am wondering if we will be provided a full hour or do I need to pose a request to the Chair to extend the time so that the full hour is preserved?

The PRESIDING OFFICER. The full hour is preserved. The Senator has 29½ minutes.

Mr. RIEGLE. Thank you.

Let me say at the outset that I think we had a good debate as far as it has been able to go. We are trying to cover a major subject in a limited period of time at the end of the session. Members are necessarily distracted by other important activities. We have Members, for example, participating in the budget summit. We have activities going on in a variety of Senate-House conference committees.

So when a major issue of this kind comes late in the session with a lot of technical complexity which is necessarily part of it, it is very difficult I think for the Senate to be able to give it the time and give it the attention that something of this enormous importance requires. Probably first and foremost is the fact that if this legislation were to pass—I hope it does not—but if it were to pass it will, according to the best estimates, impose on the auto industry over the next several years an additional capital cost of about \$62.5 billion. It is a phenomenal amount of money.

It is not at all clear where that money is going to come from in terms of how it is going to come out of the capital markets in light of our high interest rates, low savings rate, and other pressing national needs which all place calls on our limited supply of capital.

We have huge budget deficits, and a huge trade deficit. We are borrowing money from Japan and other foreign lenders all the time. They are backing away now because they have their own needs. The German reunification is causing the Germans to want to spend more of their money at home. The fall in real estate prices and the stock market in Japan, and rising interest rates there are causing Japanese investors to want to keep more of their money at home.

So I do not know where this \$62.5 billion of capital investment is going to come from. In addition someone is going to have to invent this technology. The best technical people in the field say it is not even out there. The technology has to be found for these new higher standards that are proposed.

Neither the money nor the technology is out there. I do not see where they are going to come from.

Now, I am all for government acting when there is an appropriate need for

government to act. I think we need that now in the area of providing health insurance, and access to health insurance to every American. That is a different subject. But I think that is an area where the Government now needs to act affirmatively. I hope to help lead the effort to see that we will.

But this area, like so many others, falls into a different category where the Government is attempting to mandate something unrealistic, telling somebody else to do something—in this case the automobile industry. There are any number of other illustrations of mandates that we put out in legislation. We tell State and local governments they are supposed to do certain things. We tell private businesses they are supposed to do certain things. We do not provide the money. We just say "Look, you go and do it. We now it will be expensive, but we would like to see it done. So we are going to tell you to do it."

Quite apart from all the other issues, when you mandate things that cost this much money, there is a very practical issue as to whether it can be done and whether it is sound for the economy or whether it will begin to apply a kind of crushing pressure on an industry that is already in great distress.

Yesterday I went through the stock prices and the price-earnings ratios, the earnings performance of the automobile companies in the United States. They are under great stress. They have been losing market share. They are having a hard time raising capital, even the amounts they need to do other things coming out of Government mandates; for example, clean air requirements, safety requirements and things of that sort.

So we have to be practical in what we do. But this is not a practical amendment. Not only is it not practical with respect to the cost mandates that it shoves out there on the private sector economy, but it is not practical with respect to the advertised benefits.

We are talking, for example, about something that will, if it were to be achieved at this enormous cost, begin to produce some additional fuel savings after 1995, but this represents a very, very tiny percentage increase with respect to all of the different energy consumption that will be going on at any given time in 1995 or the year 2000.

And that is why we do not need just a piecemeal idea of this kind that comes in and addresses just one part of the energy equation. What we need is a comprehensive national energy strategy; this item ought to be looked at in the context of an overall national energy strategy. That is the exercise we need to be engaged in.

But we cannot do that right now, because we have a near war going on in

the Middle East; we have a budget summit that is trying to avoid a shutdown of major parts of the Government in just a few days; we have terrible problems in the banking system, which we are trying to deal with in legislative activity. We have any number of other problems. So right now we are not in a position to be able to craft a comprehensive national energy strategy.

The Energy Secretary is going to give us some recommendations later this year. Hopefully, the President will come forward, and in the early part of next year, we can sit down and craft and put into place a comprehensive national energy strategy. That is the time to take up this issue, the part that CAFE standards should be of an overall, encompassing national energy strategy.

We can consider it at that time and weigh it in terms of the tradeoffs and the costs and benefits of all other forms of conservation or alternative energy use, and so forth. We can then make an intelligent decision and connect all the parts so we can weigh everything together, and so we can come up with a sensible and balanced national energy strategy.

But that is not what this is. This is, by its very nature, an unbalanced, uncomprehensive, piecemeal approach to one part of the problem that, when you get down into the guts of the analysis, just does not make sense. It is horrendously expensive. We are pushing that cost out there into the private sector, and there is no prospect that amounts at those levels are going to be raised over the next 5 years. It is just crazy.

We cannot disconnect ourselves from that reality. We disconnect ourselves from too many realities. That is one of the reasons the Stock Market was down 60 points yesterday, the lowest point in 14 months, and why long bond yields were up yesterday to about 9.2 percent, because we have major problems out there in the credit markets.

The other day when Chase Manhattan had to finance a debt offering in their holding company, they had to pay nearly 14 percent interest. These danger signs and warning signs have to tell us something. It means we cannot keep spending money here, either ourselves, or mandating other people to spend tens of billions of dollars that we, frankly, do not have. It is not out there. It is not out there.

We start chasing these will-o'-the-wisp ideas, telling somebody else to raise and spend over \$60 billion over the next 5 years, to do it. We are just not practical; we are just not sound.

Let me go to the technical side of the argument. People say, look, back in 1974, cars were big; they were heavy. We put on these CAFE standards to require higher mileage, and we

put all of the best scientific and technical people to work, and we worked and worked and worked, and we took about 1,500 pounds out of the average car; completely redesigned every single aspect of the car from bumper to engine, tailpipe, you name it.

Everything was redone with the idea of accomplishing multiple objectives, but one was better fuel economy mileage per car. We made phenomenal success. We have taken 1,000 to 1,500 pounds out of the weight of the average car.

We cannot do that again. I mean, we cannot assume that we are back in 1974 and there is another 1,500 pounds to wring out of a car. It would be nice if there were. The only way you can wring another 1,500 pounds out of the car is to make the car much lighter, smaller, much less safe, as the insurance industry has told us.

We have cars like that. We have them today. You can go out and buy a car this afternoon that gets 40 to 50 miles to the gallon. We know what they are like: very small; not very safe. People do not like them. No Senator that I know of drives one. About 3 percent of the cars sold in the United States are those kinds of cars.

We cannot say to a family of six people: Say, look, we are going to require you, because of the high mileage requirements in this bill, to buy that kind of a car come 1995, because that is this kind of car you are going to have to have if you want to get these mileage requirements. You cannot necessarily squeeze six or seven people in one of those little tiny cars. So what does that family do? Are they going to buy two cars? Maybe they will. That is where this amendment takes us.

Yes, you can have smaller, more cramped, fuel-efficient cars of the kind that are available today that nobody is buying. A family of six or seven can buy two of them. They can load up to go to church or load up to go to the shopping center, and so forth. We are not going to save any gas that way. That is part of the goofiness of the concept here.

Government cannot just wave a wand and say, "do something," and impose that burden on somebody else. It has technical requirements and tradeoffs affecting safety and emissions and it has an absolutely horrendous capital cost. It is as if we are living in an unreal world. We have to get outside of this Chamber in our thinking.

Right outside this door is a ticker tape, and the news coming across that ticker tape on the financial and economic circumstances of this country ought to be printed in red, flashing red colors, because we are in serious economic trouble; serious economic trouble. The banking system is in trouble. In fact, I am introducing a comprehensive deposit insurance bill today

to try to deal with part of that problem that has been building up for years. The stock market is in trouble. Our credit markets are less stable. Part of it is the fact that we are not being practical and sound in some of the decisions we are making.

This decision today cannot just be reaching for something that sounds good; it has to have a sound economic foundation. The bill does not have that; it has an unsound economic foundation. It is going to cost us tons of money, lots of jobs, and hurt our international competitiveness. We are going to fool ourselves if we think somehow or other we are going to be able to take and reach out and get these gains, without all of these enormous tradeoffs and costs on the other side. That is what is involved here.

I will finish by saying this: Who are the experts in the administrative branch of Government that might know something and what is their opinion, and what have they said to us? Energy Secretary Watkins says it is a lousy idea. He is against it. He is the Energy Secretary, the person who is supposed to figure out how to save energy. He says this proposal does not make sense. Maybe the people that support the amendment know more than the Energy Secretary, but I do not think that is likely on the issue of energy.

What does the Secretary of Transportation say? He looks after cars and trucks on our roads. The Secretary of Transportation says it is a bad idea; do not do it. I think his thoughts ought to be considered.

The National Highway Traffic Safety Administrator, what does he say? They are concerned about making sure people get to where they are going on our roads safely; and perchance, if they are in an accident, they have a chance to come out alive. He says it is a lousy idea. That is more polite than how he says it. He says it is going to hurt safety; it is going to cost lives. A bad idea.

Finally, we asked the Administrator of the Environmental Protection Agency. We have heard this talk about the great impact on global warming. That is nonsense. We put the data in the RECORD in previous debate.

We got a letter from Mr. William Reilly yesterday, head of the EPA, and he says it is a bad idea. How many experts do we have to hear from, who are actually qualified and in the top policy positions of this Government, to try to understand these issues? There are four of them; they have all looked at it, and they all say it is a bad idea. That does not mean they are necessarily right, but it does not mean that the sponsors of this amendment are necessarily right, in the face of that kind of expert opinion and the weight of that kind of evidence.

So let us not go out and harm this economy any more than it is harmed already, even if it is in the name of an issue that we all would like to see. I am willing to look at this issue next spring; I am willing to see this be part of a comprehensive national energy strategy. I am willing to weigh this, along with 100 other items of important consequence, where we can maybe conserve energy or find alternative energy sources.

Yes, we need to do that; it is an urgent piece of work that needs to be done. That is where this bill belongs, in that debate; not here as a one-shot item. That is how this country gets into such big trouble, because we never connect this one to the other. We get a scheme, a great idea, and rush off and do that. It costs up \$62½ billion, but we are not going to worry because somebody else is going to have to pay that bill.

Well, let us not kid ourselves. That bill is going to have to be paid eventually by the citizens of this country. That is who pays it. There are no money trees out there. This is going to have to come right out of the pockets of the American consumer. They are the ones who are going to have to fork over that \$62.5 billion unless all these companies are going to go down the drain.

So let us follow this thing all the way through. People today do not have the extra money. They do not have the money right now to buy private health insurance. They are having trouble sending their kids to college. They are having trouble trying to scrape up the money to make a down-payment on a house. About 80 percent of the families in this country are going backward in real economic terms. They are under great stress, and we do not seem to understand that here—I am very troubled about it—because this is exactly the kind of proposition that is going to make these problems worse.

But we sometimes disconnect ourselves from reality, and we see some wonderful gossamer concept out there that we want to reach for, and we say, "Let's go do it regardless of all these other things." I say "No." I hope today the Senate will vote against the cloture motion, because this is an issue where debate ought not to be shut off. The consequences are just too great.

I reserve the remainder of my time.  
The PRESIDING OFFICER. Who yields time?

Mr. BRYAN. Mr. President, if the distinguished senior Senator from Michigan has no objection, I suggest the absence of a quorum chargeable to each side until the next round of speakers arrive.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Who yields time?

Mr. BRYAN. Mr. President, I yield to the distinguished Senator from Washington so much time as he may require.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, at 2:15 this afternoon, the Senate of the United States will vote on whether or not it is important to consider perhaps the most important piece of legislation dealing with energy policy which has come before this body in the course of this Congress. The dramatic increases in the price of petroleum products brought on by the crisis in the Middle East once again highlights the excessive dependence of the United States of America on sources like the Middle East for its most important fuel source.

This bill, which was written long before this crisis, was designed to build on the successes in the 1970's of the first set of standards imposed by Congress requiring increased automobile engine efficiency by adding modestly to that effort and causing an additional 20-percent increase in that efficiency by the middle of this decade and a 40-percent increase by the beginning of the next decade.

The goals set by the distinguished Senator from Nevada, working with this Senator on this legislation, are, I believe, modest goals. They are also highly necessary goals. Once the standards required by the 1975 legislation had been reached early in the 1980's, we have seen a flattening, we have seen an actual loss in the average efficiency of Japanese automobiles and an incipient loss, at least, on the part of those made here in the United States. We have seen that at a time of increased auto ownership and increased automobile and small truck usage. The net result has been a sharp increase over the last 2 or 3 years in our dependence on foreign sources for oil.

Mr. President, we are going to end up with more efficient automobiles one way or another. We can do it in the way which is suggested by the bill proposed by the distinguished Senator from Nevada and myself, or we can do it by allowing our dependence on uncertain sources to drive up prices to the point at which the American people will make absolute demands on their manufacturers for a greater degree of fuel efficiency.

We have seen, during the course of the last 2 months, an increase in gasoline prices, a sharp one, in some respects unjustified, certainly an unex-

pected one, which is already causing great dislocation among many American families and one which, paradoxically enough, now for the first time in the better part of a decade has many of our automobile manufacturers advertising fuel efficiency on the part of their automobiles. It is exactly those same manufacturers. Mr. President, who have so sharply opposed this bill, as they did the 1975 CAFE standards bill.

But, if the price of gasoline continues to go up as it will if our dependence increases, and if stability is not returned to the Middle East, we will pay far more to those foreign sources for petroleum products than the wildest estimates of the cost to the American manufacturers for meeting the requirements of a bill of this sort.

Had we passed this precise bill in this Congress 5 years ago, we would not have as severe a crisis as that with which we are faced today. And I warrant that we would not have had this rapid an increase in gasoline prices as we have had in the course of the last months.

If we wait 3 or 5 years before we pass this legislation, we will have spent all the money that this legislation will cost and more in increased dependence, in national weakness, and on overseas sources rather than on improving the quality of our own manufacturing process.

Mr. President, it is simply untrue that the requirements of this bill can be met only by downsizing of automobiles. Studies from half a dozen different organizations in and outside government show that these dramatic increases can be made by changes in the way we design our engines, by streamlining our automobiles, and by a wide range of other changes which do not require tiny three-wheel automobiles, or the carrying out of the threats, which were hollow threats in the 1970's and are hollow threats in the 1990's, on the part of automobile manufacturers.

No single proposal which has been before this Congress can do more to assure the independence of the United States of America, the economic benefits to its citizens, and our security in a world which is still not as peaceful and as orderly as we would like. No bill, with perhaps the exception of the Clean Air Act, can do more to cleanup our atmosphere. No bill, in other words, has more pluses and fewer minuses than one which will add to the quality of our air, decrease our dependence on foreign sources of gasoline, increase the economy of our principal mode of transportation, and protect the future of the United States and its allies.

I urge my colleagues, with all of the eloquence at my command, to vote in favor of cloture this afternoon and

thereby assure the passage of this bill. Whether it passes the House of Representatives this year is still something of an open question. But even if it does not, for the Senate of the United States to have spoken out for environmental quality, for engine efficiency, and for energy independence, will be a very important step forward when we return to this subject as we inevitably will, next year and perhaps the year after that, until this requirement is a part of the law of the United States.

I want to thank my colleague from Nevada, with whom it has been a great pleasure to work in this connection, as it has been in the past, even before either of us were Members of this body. His courage and his skill, his intelligence and his willingness to stick to his guns, has been an inspiration to all Senators.

**THE PRESIDING OFFICER (Mr. KERRY).** Who yields time?

**Mr. RIEGLE.** I yield 5 minutes to Senator NICKLES.

**THE PRESIDING OFFICER.** The Senator from Oklahoma is recognized for 5 minutes.

**Mr. RIEGLE.** I want the Senator to take whatever time he needs.

**Mr. NICKLES.** I thank my friend and colleague from Michigan. I also wish to compliment him for his debate. I heard many of the arguments and I hope not to repeat all of them. I also see my friend from Kentucky, and I compliment him on his position on this issue as well.

**Mr. President,** I urge my colleagues to vote against cloture this afternoon. I think if we vote for cloture basically we are going to be rushing in to pass a bad bill, a bad bill that we will regret, a bad bill that consumers will be upset about, a bill that will cost lives, probably thousands of lives. We will be passing a bill denying consumers choice. We will be passing a bill that will cost jobs. Thousands of people will lose their jobs in the United States if we pass this bill.

So we need to be aware of that. At least let us not say I did not think it would do that. I thought it was a goal. This bill is not a goal. I favor goals. I favor fuel efficiency. I think that is vitally important. What I object to is mandates. This bill mandates averages like 40 miles per gallon by the year 2000. That is 9 years from now, but actually it is only about 6 model years because the automobile manufacturers are already working on the 1992 and 1993 model years.

The result is it is going to mandate that Americans buy little, small, mini-subcompacts. I have heard my colleagues say, no, they think technology will be able to achieve it.

I, frankly, just disagree, and most of the automobile manufacturers, most of the experts disagree. They do not think it can be done strictly with technology. I hope it can.

Frankly, if the price of gasoline is \$5 a gallon, my guess is these changes are going to be made regardless. But if the price of gasoline is \$1.50, they will not. But the result is a massive infusion of government interference in the marketplace, and I think that is a serious mistake. The result is that we are going to be mandating American consumers buy these little, small cars.

There are actually five or six cars that are made that meet these standards today, and they are the very small, light cars. They weigh about 2,000 pounds. They will not meet Americans' demands. Americans happen to like air conditioners; Americans happen to like family-sized automobiles, if they have a large family, as I do. I have a family of six. We do not fit in these cars.

There are some people by themselves who will not fit in these cars. Yet we are going to mandate that that is what America has to buy. I think that is a serious mistake.

These cars are not as safe as the bigger cars. That means, if we mandate that the future size of cars is going to have to be in this range because they have to average 40 miles per gallon, there are going to be thousands of lives lost. I do not think we want to do that. I think that would be a serious mistake.

Already, in today's newspapers, I read where auto plants are being shut down in Michigan and Illinois, where a lot of auto-related companies are in trouble. Not just the manufacturers but also the supply companies are shutting down. They are already in trouble. That is without even counting the added costs that we have in the clean air bill and some of the other legislation that is going through Congress right now. The auto industries are taking a big, heavy hit. I do not think they can afford this kind of hit.

Does this mean I am against fuel efficiency? No. I am very much in favor of fuel efficiency. I have a couple of teenagers who drive too much and it costs too much. I want fuel efficiency. I wish they would get 40 miles per gallon. But I do not want to pass a law that says that all the cars made by the year 2000 have to meet 40 miles per gallon, because I am afraid the cost of those cars is astronomical. I will not be able to afford them. Certainly my kids will not be able to afford them. If they cannot afford them they are not going to buy them.

If they are not going to buy them, that means they are going to continue to drive that older car, the heavier car that is less fuel efficient than the cars made today. The cars made today are averaging 27 or 28. Frankly, the cars my kids are driving are much older, so they are less fuel efficient than that. As a matter of fact they are far less efficient than that.

So I am afraid with this policy, instead of saving a lot of energy we are going to be keeping a lot of the gas guzzlers out on the road. Certainly that is not going to help us as far as conservation is concerned.

I think we have to be very careful. Let us encourage fuel efficiency, let us not mandate it. Let us not put thousands of people out of work. Let us not put thousands of lives at risk. And let us not dictate from the floor of the Senate or from Congress, the micro-management in the design of automobiles. Sure, we want to encourage safety, and we have done that, but do we want to get involved so much by picking a figure out of the air? And that is exactly what we are doing—well, we will have 20 percent increase in 5 years, we will have a 40 percent increase by the year 2000 or 2001. If that is good, if that is the proper route, why do we not make it 50 percent? Why do we not make it 60 percent? Why do we not encourage all automobiles to make 60 miles per gallon and save a lot more energy, if this theory makes good economic sense? Why not make it 60 miles per gallon? Because it will not work. We could pass a law, Mr. President, and tell everybody to ride bicycles. We would save a lot of energy, but it would be an enormous consumer inconvenience.

I predict that passing this bill will be an enormous consumer inconvenience, and if it does pass—in the first place I do not think it will become law because the President has already stated he will veto it. I have letters, Mr. President, signed by William Reilly, the head of EPA, and also by Secretary of Energy James Watkins, and also Secretary Skinner, the Secretary of Transportation, urging opposition to this bill.

The President is going to veto it if it passes. Frankly, we're wasting our time. I think there is little chance, if any, that it will pass the House. Even if both Houses did pass it, and it went to conference, and sent it to the President, he would veto it. The Senate has a lot of better things to do like working on the budget resolution, working on our appropriations bills, trying to get our financial house in order than working on legislation that we all know is not going anywhere. I urge my colleagues to vote against cloture this afternoon.

**THE PRESIDING OFFICER.** Who yields time? If no one yields time, time will be charged equally to both sides.

**Mr. RIEGLE.** Mr. President, I want to commend the Senator from Oklahoma for his outstanding leadership on this issue and for the important presentation he has just made and the logic of the position he sets forward. I just hope it will carry the weight it ought to carry in this debate.

I wonder if the Senator from Oklahoma asked unanimous consent to print the Statement of Administration Policy of the Executive Office of the President in the RECORD?

Mr. NICKLES. I did not include it in my latest enclosure. I have a copy of it and will be happy to include it, or if the Senator wishes to include it, that is fine.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

OFFICE OF  
MANAGEMENT AND BUDGET,  
Washington, DC, September 10, 1990.

STATEMENT OF ADMINISTRATION POLICY  
(S. 1224—Motor Vehicle Fuel Efficiency Act of 1990, Bryan of Nevada and 14 others)

The Administration strongly opposes enactment of S. 1224. If S. 1224 were presented to the President, his senior advisors would recommend a veto.

S. 1224 would require each motor vehicle manufacturer to increase the Corporate Average Fuel Economy (CAFE) level it achieved in 1988 by 20 percent in model year (MY) 1995 and by 40 percent in MY 2001 for cars and light trucks. This would:

Require major reductions in vehicle size and weight, which would increase the risks of deaths and injuries to drivers and passengers in automobile crashes. (Department of Transportation studies clearly demonstrate that significant weight and size reductions increase the risk of highway injuries and fatalities.);

Impose costs on automobile owners which are not likely to be offset by fuel savings;

Achieve fuel consumption reductions more slowly (since higher vehicle costs would cause some consumers to keep their older, less efficient vehicles) and less substantially (since purchasers of very fuel-efficient vehicles tend to drive them more than the vehicles they replace) than a simple projection of CAFE levels would suggest; and

Be unattainable without significant and costly restrictions on consumer choice.

Approaches grounded in market incentives, rather than the rigid requirements S. 1224 would impose, would be more effective in addressing energy, environmental, and other concerns related to the level of fuel use.

ENVIRONMENTAL PROTECTION AGENCY,  
Washington, DC, September 24, 1990.

HON. GEORGE J. MITCHELL,  
The Majority Leader, U.S. Senate,  
Washington, DC.

DEAR SENATOR MITCHELL: I am writing with regard to S. 1224 which is now before the U.S. Senate. I want to add my opposition to that of Energy Secretary Watkins and Transportation Secretary Skinner to S. 1224. I believe, as they stated in their letter of September 13, 1990, that the fuel economy levels required by S. 1224 are not achievable with available fuel technology without sacrificing performance and size.

In addition to the technical feasibility, there are other important factors which need to be considered before a decision can be made on fuel improvements. These include the effects of the proposed changes on the competitiveness of the domestic auto industry and the changes in vehicle design

and product mix that would be required by overly stringent standards. These also include potential impacts on air quality because higher vehicle costs would likely cause some consumers to keep their older, less fuel efficient, more polluting automobiles longer.

I also want to reiterate the point Secretaries Watkins and Skinner made regarding the auto industry's engineering resources. The Clean Air Act and other new requirements will tax the ability of the industry without the additional need to make rapid changes in fuel economy technology.

I urge Congress not to rush ahead with ill-considered policies, such as S. 1224 that may unnecessarily jeopardize other equally important goals.

Sincerely yours,

WILLIAM K. REILLY.

SEPTEMBER 13, 1990.

HON. GEORGE J. MITCHELL,  
Majority Leader, U.S. Senate,  
Washington, DC.

DEAR SENATOR MITCHELL: We understand that the Senate is preparing to consider a bill sponsored by Senator Bryan and others (S. 1224) that would substantially increase the corporate average fuel economy (CAFE) requirements for cars and light trucks sold in the U.S. The bill would increase fuel economy levels for the new car fleet to almost 40 mpg by the year 2001.

We want to take this opportunity to express once again the Administration's strong opposition to this bill. If this bill were presented to the President for his signature, his senior advisors would recommend that he veto the bill. We have consistently expressed our concern about the bill's adverse effects on highway safety, American workers, and American consumers.

The fuel economy requirements of S. 1224 cannot, as claimed, be met without significantly changing the size and composition of cars that consumers would be able to purchase. Analyses prepared by DOE and DOT concur on this important finding. Therefore, our most immediate concern is that the proposed CAFE standards would cause significant weight and size reductions for both the passenger car and light truck fleets. Such downsizing would have a noticeable adverse impact on the safety of occupants. DOT's statistical analyses have demonstrated that the downsizing of the 1970's had adverse safety effects. In our view, it would be a tragic mistake to enact legislation that would undermine this country's progress in highway safety.

The CAFE increases would also curtail the choice of new vehicles available to American consumers. Manufacturers would be forced to dramatically scale back or eliminate the production of large- and mid-size cars and trucks, which would adversely affect those with large families, those in car pools, and those who desire the security of larger cars, among others.

We are also concerned that S. 1224 provides inadequate administrative flexibility. Under the terms of S. 1224, the Administration would be barred from undertaking a regulatory process to make adjustments to fuel efficiency requirements for MYs 1995-2000 and would have only very limited authority to modify the standards for and after MY 2001.

The motor vehicle industry is already facing substantial regulatory demands, including the emerging Clean Air Act amendments and upgraded side-impact protection. These air quality and safety requirements

need to be carefully assessed before imposing yet another, potentially conflicting, set of requirements on the automobile industry.

Approaches grounded in market incentives, rather than the rigid requirements S. 1224 would impose, would be more effective in addressing energy, environmental, and other concerns related to the level of fuel use. As part of developing the National Energy Strategy, DOE and DOT are engaged in an interagency process to develop policies to improve automobile fuel economy, as well as other policies to reduce transportation energy consumption. We do not believe that recent events in Kuwait should cause us to rush ahead with ill-considered policies such as S. 1224. There are a number of conservation and energy efficiency measures which will produce greater near-term energy savings and do not impose significant safety and economic costs on the public. We urge the Congress to consider them.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report, and that enactment of S. 1224 would not be in accord with the program of the President.

Sincerely,

SAMUEL K. SKINNER,  
Secretary of Transportation.

JAMES D. WATKINS,  
Secretary of Energy.

Mr. RIEGLE. Mr. President, it obviously comes from the President's office. It says in the first paragraph: "The administration strongly opposes enactment of S. 1224. If it were presented to the President"—meaning if it were passed—"his senior advisors would recommend a veto." Then it goes on to explain the rationale.

It is obvious the President, in addition to his chief Cabinet officers, which the Senator has pointed out and I also pointed out earlier, have all come out against this proposal. I think it makes it very clear where the executive branch is on this matter. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN. Mr. President, I suggest the absence of a quorum and ask unanimous consent that it be charged equally to both sides.

The PRESIDING OFFICER. Is there objection?

Mr. RIEGLE. Mr. President, if we can withhold on that just for a moment, could the Chair advise how much time is left on each side?

The PRESIDING OFFICER. The Senator from Michigan has 3 minutes and the Senator from Nevada has 15 minutes.

Mr. RIEGLE. Mr. President, I yield myself a minute and a half.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I want to also indicate to colleagues, depending on how this cloture vote goes today, I certainly hope cloture will not be invoked. This is a major issue; it is complex. There are a lot of items to

debate. There are a lot of amendments later to consider and will be considered in a postclosure situation.

One of those that has been developed by Senator LOTT from Mississippi relates to exempting trucks from this requirement, trucks that would be used for business purposes, farming purposes, and the like. That will be one of the amendments Members can anticipate, I think it is fair to say, voting on in a postclosure situation because that amendment would be germane in that setting, and there are several others to be offered.

I would hope that cloture would not be invoked; that we would have time to debate those under the normal circumstances but, in either case, we will be dealing with those amendments. So Senators ought to be, I think, on notice of the fact that there will be amendments of that kind that will require votes at a later time should cloture be invoked.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN. Mr. President, I am informed that the Presiding Officer may desire to speak on this issue. If so, I will be happy to yield to him and temporarily occupy the position of the Chair.

The PRESIDING OFFICER. The Chair would suggest that perhaps the Senator suggest the absence of a quorum.

Mr. BRYAN. I suggest the absence of a quorum and I ask unanimous consent that the time be charged to each side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BRYAN. Mr. President, parenthetically may I express my appreciation for the personal courtesy of the Chair to make it possible for our distinguished colleague from Massachusetts to speak. It is my privilege to yield to him 5 minutes, if that is agreeable, charged to my time.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 5 minutes.

Mr. KERRY. Mr. President, I thank the Chair, and I thank the distinguished President for permitting me the courtesy of taking a few moments to speak. I thank the distinguished Senator from Nevada and congratulate him on his efforts with respect to this legislation.

Mr. President, as I listened to the distinguished Senator from Oklahoma, I could not help but think back to the debates which occurred on this floor

previously with respect to this issue. I would like to share with my colleagues some of the words of the automobile industry back in 1974.

In 1974, the Ford Motor Co. told us, and this was regarding the effort to try to take from 14 miles per gallon up to 28 miles per gallon the requirements on fuel efficiency. Here was their argument against it in 1974:

This proposal would require a Ford product line consisting of either all sub-Pinto-sized vehicles or some mix of vehicles ranging from a sub-sub-compact to perhaps a Maverick.

Chrysler stated at that time that the provision "would outlaw a number of engine lines and car models, including most full-size sedans and station wagons."

In 1990, General Motors said:

Absent any unforeseen technological developments, CAFE targets of the magnitude of those in S. 1224 would force us to consider drastic measures, such as cutting production of our larger, family sized cars.

Mr. President, every American knows how wrong they were in 1974. They toed the line and it was precisely the mandatory requirement that forced them to meet the standards that Americans demanded and requested. It would be nice if we could simply leave it to their good will, but Detroit, frankly, has had a history of missing the mark, not only with respect to those kinds of standards but, frankly, with respect to the standards that are expected by the people of this country about the automobiles that they drive. You can remember the Volkswagen came in and they said this is a niche market, we do not have to worry about it, do not bother with small automobiles. So the Germans, Japanese, and others took over that market.

It has been an extraordinary process, I think, of avoidance of responsibility. This bill is about fuel efficiency; it is about conservation; it is about cleaner air; it is about global warming; and it is, most important, also about our extraordinary dependency on oil, which has grown from about 20-some percent in the early 1980's or late 1970's up to about 50 percent now in foreign oil. As we have troops poised with the potential of war in another country, though not exclusively over oil—it obviously has a significant role to play in it—I think it is absolutely critical that we take this kind of measure.

Those who are knowledgeable about safety, like the Center for Auto Safety, the long-time watchdog of auto safety, has told us this legislation will not compromise automobile safety. This legislation is not about downsizing; it is about fuel efficiency.

Moreover, the fatality rate has declined since 1975, as we have had smaller cars and put in seatbelts and airbags and other kinds of measures.

So I hope that my colleagues will not be distracted by the arguments of Detroit again, and I hope that we will stand by the vote which we previously executed on this floor. This is a vital bill for health of Americans, not to mention for the strategic purposes of this country.

I thank the distinguished occupant of the chair, and I thank the manager of the bill for permitting me to take a few moments to express my thoughts on the bill.

I yield whatever time I have remaining back to the manager.

Mr. BRYAN. Mr. President, I thank my distinguished colleague from Massachusetts for his comments and for his support of the bill and for the arguments he has so eloquently advanced.

(Mr. KERRY assumed the chair.)

Mr. BRYAN. Mr. President, the debate about technology is more than just a numbers crunching, esoteric discussion. The committee very carefully considered a full range of testimony from a number of experts—experts engaged by the Environmental Protection Agency, experts engaged by the Office of Technology Assessment, experts engaged by the Department of Energy at a staff level—all of whom indicated that the goals we seek to achieve in this bill are in fact attainable.

My good friend and the very able chairman of the Senate Banking Committee says but there are administrators such as the Secretary of the Department of Energy, the Secretary of Transportation, and the Environmental Protection Agency who have expressed opposition.

Mr. President, if they have opposition to this bill, let them come forward with their own alternatives. Let them come forward with their own alternatives. All of the staffs represented by those agencies appeared before the subcommittee, which I am privileged to chair, more than a year ago, all of whom indicated that the technology was there and possible.

Finally, let me just say a word about the argument that, in effect, this legislation deprives us of choice, will cause more highway accidents, will cause loss of jobs, and, indeed, air-conditioning units will no longer be possible.

My colleague, the occupant of the chair, pointed out the industry's testimony in 1974 that, indeed, none of the technology required then was achievable. So I would respectfully submit that there is a credibility gap.

Let me get out a chart for a moment. The argument has been made that any changes or improvements will require downsizing. That is the myth, the slender reed, if you will, upon which their argument is posited.

One will note, Mr. President, from that chart, on my far left, 1975 and

the outyear 1989. The weight in 1975 was over 4,000 pounds.

Right after the first round of CAFE was mandated, weights did decline significantly. But if you will look at the fuel efficiency line, average fuel economy, the line is tending up there at 28.5 miles per gallon. Those improvements came not as a consequence of weight reduction—I urge my colleagues to look at that chart—not as a consequence of weight reduction but because of improved technology. As you will see, from the year roughly 1981 average weights of automobiles remained relatively constant. The downsizing had already occurred. The fuel economy improvement had skyrocketed.

The industry itself has argued it cannot do all of the things this legislation has asked to be done. Let me invite your attention to an ad that appeared in the Washington Post last week. It bears upon the industry's credibility. This was an ad from General Motors. "We want you to get the most mileage out of GM quality."

We agree, Mr. President. So do we. So do the American people. This is what that ad said. "We've made significant progress across our entire product line." And then the ad goes on to say, "The 1991 Olds Cutlass Supreme with an advanced quad-4 engine, is a mid-sized 6-passenger automobile, yet it gets 29 miles per gallon, EPA estimated highway mileage, better than the subcompact 1979 Chevette."

As the occupant of the chair pointed out just a moment ago in his debate, this was the industry that said it could not be done. So let us dismiss the argument that it requires downsizing. It does not. The committee bill which was put together after testimony was received from the auto industry and others is premised upon keeping the fleet size the same size it was in 1987.

The able chairman of the Senate Banking Committee has indicated we ought not to disconnect from reality, and he is right. He is absolutely right. Mr. President, this is reality; it greets us on the front page of the morning newspaper: "Price of Oil Surges Nearly \$3 a Barrel." We are now looking at the spot crude price as of September 24, \$39.05 a barrel. This is not just some academic price quotation.

What is happening? It is driving the price of gasoline at the pump up substantially, meteoric rises, and it is sending our financial markets reeling.

Yesterday, the Dow Jones went down some 60 points—all, Mr. President, because of our dependence on foreign oil and because we consume too much.

The reality is that every division of American troops that we send to the Middle East is because we import too much oil. Every ship that sails to that region of the world with our troops aboard is a reminder that we import

too much. And every squadron of airplanes that we dispatch to that part of the world is also a constant reminder that we import too much.

Indeed, the President faces some very difficult choices. This Senator has been supportive of his policy. But the reality is our personnel would not be in the Middle East if we did not import 50 percent of all of the oil that we consume in this country.

Finally, when it comes to solutions what have the critics, the naysayers to offer? Nothing. There is no alternative. There is not a choice A, a choice B, a choice C. There is no other alternative they have offered to us. Here is the reality again in terms of the amount of petroleum consumed by the transportation sector in this country. Sixty-three percent. You can talk about nuclear power as a substitute for electric utilities. That is 5 percent. You can talk about residential, commercial improvements and, indeed, I think many of us would concede that there are some improvements that could be made as well as with American industry. But 63 percent, no major improvement is possible unless we concentrate on that. And the majority in the transportation sector is consumed by the American automobile.

So we have two choices, Mr. President: We can force greater economy by dramatically increasing gas taxes. That would be above and in addition to the prices that have already increased so enormously in the last few weeks, some 20 to 25 cents a gallon average, and at an enormous cost to the American public. That might work. Or we can do what this legislation proposes, and that is to require mandated fuel economy, 34 miles per gallon by 1995, 40 miles per gallon by the year 2001, and by so doing we do not embark upon a noble experiment. We do not chart a course into the unknown. We have the benefit of experience.

In 1975, this Congress passed the first round of CAFE legislation. As the occupant of the chair pointed out in his debate and discussion on the floor, we nearly doubled the fuel economy. This goal incorporated in this legislation is more modest than was incorporated in the legislation that was proposed and adopted in 1975. We can do it and we must do it.

What is at stake is an improvement in a rather sharp and dramatic fashion in terms of fuel savings. This legislation offers a 2.8 million barrels a day savings by the year 2005. It changes a policy in Detroit—more horsepower, more performance in the sense of how fast can you accelerate from zero to 60 miles an hour. A vote against this legislation is a vote against conservation and for continued dependence on foreign oil.

I thank the Chair.

Mr. FORD. Mr. President, I rise in opposition to the legislation, S. 1224, which will require strict new fuel economy standards for automobile manufacturers. I have been very impressed with the campaign waged by the sponsor of S. 1224, Senator BRYAN. He has done an excellent job in raising the level of information on fuel economy issues. His personal persuasion is indicated in the vote count on the motion to proceed. I compliment his dedication and regret that I have to oppose his legislation.

Kentucky is blessed to have three automobile manufacturing concerns. Ford has two plants in Louisville that produce trucks, General Motors is located in Bowling Green and manufactures the Corvette, and Toyota recently built a state-of-the-art plant in Georgetown. According to the Kentucky Department of Commerce, 10,030 employees work at the four Kentucky automobile plants. This does not include the Kentucky jobs in the supplier industry. For various reasons, all three companies oppose this bill.

Since I have served on the Commerce Committee and the Energy Committee for many years, the question of fuel economy has been addressed in many forms in both committees. I certainly am not opposed to increased fuel economy. The problem is that the goals in S. 1224 are impossible to meet. I believe a better approach would be to create a program where there are incentives to seek the technological advances needed to increase automobile fuel economy.

Toyota, one of the leaders in the fuel economy issue, produces the Toyota Camry in Georgetown, KY. Since 1988, the Camry has included all the fuel economy technologies recommended by S. 1224—and then some. The 1988 Camry has a fuel economy rating of 33 mpg and that is excellent, but far short of 45 miles per gallon envisioned in S. 1224. Toyota cannot reach the targets in S. 1224 without significantly downsizing.

Many Kentuckians have called my office perplexed that they may have to soon drive smaller vehicles if S. 1224 becomes law. Comfort is a consideration, but I believe the larger issue is automobile safety. The Insurance Institute for Highway Safety, certainly no friend of the automobile industry, has produced a pamphlet in the CAFE debate titled "Where Is Safety in the Fuel Economy Debate?" IIHS indicates that fuel economy standards create safety problems if they force automobile manufacturers to make cars smaller in order to increase the average miles-per-gallon of their fleets. IIHS comes to the conclusion that car size is perhaps the most important single factor when it comes to protecting occupants in crashes. All

things being equal, people in larger cars sustain fewer injuries in crashes than people in smaller cars. I would urge my colleagues to carefully review the work of IHHS on the CAFE issue.

It is interesting that the Senate is considering increasing CAFE when this Congress will probably produce a Clean Air Act, which will have a CAFE penalty. Also, many in this chamber have been urging more stringent safety standards such as the side-impact regulation. That is also going to make the goals of S. 1224 more difficult to achieve. You cannot calculate increased fuel economy without taking changes in regulation and law into consideration.

I have also heard from many in the environmental movement indicating that they are willing to drive smaller cars in order to save fuel. This is admirable, but I am not certain that all American citizens share their views. One thing that I am sure, S. 1224 will downsize automobiles. There are many fuel efficient automobiles on the market now that are not selling. The situation in the Middle East has raised concern about fuel consumption, but the impact of S. 1224 will not kick in until 1995 and 2001. There will be no immediate lowering of fuel consumption if this bill passes. One measure that would have immediate effect is if Americans started buying the fuel efficient cars already being manufactured.

Mr. President, I will oppose S. 1224, but I will do all that I can to look for immediate answers to America's dependence on foreign oil.

Mr. LAUTNERBERG. Mr. President, I rise today in support of closure on S. 1224, the Motor Vehicle Fuel Efficiency Act of 1985 introduced by the Senator from Nevada. I am pleased to be a cosponsor of this bill, which builds on the success of the Corporate Average Fuel Economy or CAFE law enacted in 1975—one of the most effective energy efficiency measures ever passed by Congress. S. 1224 would increase fuel efficiency standards for new cars to levels that will average 34.4 miles per gallon in 1995 and 40.3 miles per gallon in 2001.

Since the CAFE measures was enacted there has been an approximate doubling in automobile fuel efficiency. Despite the auto industry's claims that the standards would harm them, they managed to meet those standards. The increased efficiency of our automobile fleet now saves 2.5 million barrels of oil a day and consumers save \$40 billion per year. At the same time, U.S. automakers have retained their ability to compete with foreign automakers. Sales of cars manufactured by the Big Three have increased dramatically since CAFE was enacted.

Unfortunately, the success of the 1975 CAFE standards began to level off in 1985. Between 1986 and 1989 the Secretary of Transportation reduced

the CAFE standards below 1987 levels. The average new vehicle fuel efficiency in 1988 was actually lower than the standards set in 1985.

In recent years we have witnessed a decline in fuel efficiency of some manufacturers.

Mr. President, we need S. 1224 to reduce our over dependence on foreign oil. Today, we witness young American men and women risking their lives in the Persian Gulf to protect our energy interests there.

Our overreliance on foreign fuel forces the United States to remain vulnerable to a madman like Saddam Hussein and presents a threat to our national security.

We are now more dependent on foreign oil than ever before. Today we import twice as much oil from the Persian Gulf as we did during the Arab oil embargo of 1973. The current crisis in the Persian Gulf is forcing us to face this monkey on our back—this unnecessary overdependence on foreign oil. If the average fuel economy was just 5 miles per gallon higher today, we would be importing 2 million fewer barrels of oil each day.

Over 60 percent of all oil we use is consumed in transportation alone. By the year 2005, S. 1224 would save us an estimated 2.8 million barrels of oil a day—nearly one-third of the oil we use in the transportation sector today—and help move America toward greater energy independence and economic stability.

In addition to saving oil, enactment of S. 1224 will represent an important step in saving our planet. Carbon dioxide emitted from motor vehicles is a significant contributor to the threat of global warming or the greenhouse effect. The combustion of a single gallon of gas produces almost 20 pounds of carbon dioxide. And it is estimated that an average car emits about 58 tons of CO<sub>2</sub> over its lifetime. The United States emits more CO<sub>2</sub> than any other nation—about 20 percent of the world's CO<sub>2</sub> emissions. And automobiles account for 25 percent of the U.S. contribution of CO<sub>2</sub> emissions.

Carbon dioxide is accountable for almost half of the gases that contribute to the greenhouse effect.

As greenhouse gases become trapped in the Earth's atmosphere temperatures will increase around the globe. The impacts are far reaching. Mass extinction will result as species are unable to adapt to rapidly changing environmental conditions. Reduced soil moisture and altered weather patterns will disrupt United States and world agricultural cycles.

Rising sea levels due to melting of the polar ice caps will inundate coastal areas around the world, resulting in loss of low lying coastal lands where millions of people reside.

Although there is some disagreement as to the rate and magnitude of change, there is a remarkable degree of scientific consensus that global change is upon us.

This change presents a serious threat to our national security and the continuation of life as we know it.

We have a choice today to deny our part in contributing to global warming or we can act responsibly. The single most important step Congress can take to reduce CO<sub>2</sub> emissions is to improve the fuel economy of our auto fleet.

The standards proposed in this bill would decrease carbon dioxide by about 500 million tons per year by the year 2005.

By setting these new CAFE standards, the United States can assume a leadership role for the development of efficient technologies that can help us to reduce greenhouse gas emissions and address the problem of global climate change.

Higher fuel efficiency will also help our Nation address our trade deficit. Over half of our trade deficit is due to oil imports alone.

Driving cars that consume less fuel will help reduce our trade deficit and wean the United States from our dependence on foreign oil.

Last year, the Senate Environment Committee recognized the success of the 1975 CAFE requirements and the critical need for continued improvements in automobile fuel efficiency in passing the Clean Air legislation. The committee bill contained a carbon dioxide standard which translated into increased fuel efficiencies.

It acknowledged the time needed for changes and supported the two-phase program of a 20-percent improvement beginning in 1995 and a 40-percent improvement beginning in 2001. The committee supported these provisions because these are achievable goals. Unfortunately, these provisions were deleted from the Senate-passed bill at the insistence of the administration.

Mr. President, S. 1224 addresses the same concern. It requires each auto manufacturer to improve its CAFE by 20 percent over the 1988 model year by 1995, and a 40-percent improvement over the 1988 model year by 2001. The Office of Technology Assessment and the Department of Energy have testified before Congress that that the technology exists now to make these improvements without sacrificing performance or interior size.

The percentage improvement required in S. 1224 is a progressive step that replaces the current numerical standard. The existing numerical standard allows small car manufacturers who easily meet the standard with their small car fleets offset the fuel efficiency savings by building less fuel efficient large cars. As a result of the

things being equal, people in larger cars sustain fewer injuries in crashes than people in smaller cars. I would urge my colleagues to carefully review the work of IIHS on the CAFE issue.

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Mr. LAUTENBERG. Mr. President, I rise today in support of cloture on S. 1224, the Motor Vehicle Fuel Efficiency Act of 1985 introduced by the Senator from Nevada. I am pleased to be a cosponsor of this bill, which builds on the success of the Corporate Average Fuel Economy or CAFE law enacted in 1975—one of the most effective energy efficiency measures ever passed by Congress. S. 1224 would increase fuel efficiency standards for new cars to levels that will average 34.4 miles per gallon in 1995 and 40.3 miles per gallon in 2001.

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The percentage improvement required in S. 1224 is a progressive step that replaces the current numerical standard. The existing numerical standard allows small car manufacturers who easily meet the standard with their small car fleets offset the fuel efficiency savings by building less fuel efficient large cars. As a result of the

able and must be enacted by joint resolution of Congress.

This requires the President and Congress to make hard, but important decisions. The act offers a balanced approach to reducing oil imports by requiring both energy conservation and increased domestic energy production.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The time of the Senator from Nevada has expired.

The Senator from Michigan has 2 minutes 43 seconds remaining.

Mr. RIEGLE. Is there any other time accruing to either side?

The PRESIDING OFFICER. The answer is no, there is no additional time.

Mr. RIEGLE. I want to reserve my time.

Does the Senator from South Dakota want to speak on this topic or a different topic?

Mr. PRESSLER. A different topic. I ask unanimous consent that I speak for a 3 minutes on a different topic.

The PRESIDING OFFICER. Is there objection?

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I do not intend to object, although I would like 2 minutes likewise to be offered to the Senator from Nebraska on another subject after the Senator from South Dakota has had his chance.

The PRESIDING OFFICER. Is there objection?

Mr. BRYAN. Reserving the right to object, I shall not object, I do not object either to the request of the distinguished Senator from South Dakota or the distinguished senior Senator from Nebraska. I am wondering, however, since the distinguished Senator from Michigan and I have been on this floor for the last couple of days, if we can conclude our CAFE debate this morning. I believe he has a minute left, if he chooses to exercise that. My time is fully occupied. I am wondering, if the two Senators seek recognition, if it is agreeable to the Senator from Michigan that they allow us to do so.

Mr. RIEGLE. I will be accommodating if anybody has a time problem. We will just switch it around.

The PRESIDING OFFICER. If there is no objection, the Senator from Michigan is recognized for the duration of the time coming to him, after which time the Senator from South Dakota will be recognized for a period not to exceed 3 minutes, and the Senator from Nebraska will be recognized for a period not to exceed 2 minutes.

Is there objection? Hearing none, it is so ordered.

The Senator from Michigan.

Mr. RIEGLE. I thank the Chair.

Mr. President, we are trying to balance four items here when we design and build a car. We are trying to balance the fuel efficiency; controlling the emissions so we do not damage the environment; having the car structurally sound so we have a good safety factor; and finally the cost, because in the end we have to have a car that not only meets all of these other requirements but also is not so expensive people cannot afford it.

We know if we take one of these four items, namely the CAFE standards that are being imposed here, that will impose a cost of \$62.5 billion extra cost on the industry over the next 5 years. They cannot afford it. It is an unsound decision if we force them to go that way.

We need a comprehensive energy strategy. We should develop it next spring. This issue should be one of many. It should be looked at in the context of an overall energy plan.

I ask my colleagues to vote against cloture. That vote is a very important vote. I hope that we can continue the debate after that. Perhaps the bill will be taken down if the cloture does not succeed. But, in any event, even if cloture were to be successfully invoked, there will be some voters post cloture on light trucks and other things. But I urge my colleague in the name of good practical policy making to vote against the cloture motion when it comes up around 2 o'clock.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. PRESSLER. I thank the Chair.

(The remarks of Mr. PRESSLER, pertaining to the submission of an amendment, appears in today's RECORD under "Amendments Submitted.")

#### REGARDING THE FURLOUGH "NO WAY TO RUN A GOVERNMENT"

Mr. EXON. Mr. President, the American people are growing impatient with year after year of budget brinksmanship. I rise today to say that the American people are right. This is no way to run a Government.

I have the highest degree of respect for the individuals involved in the President's budget summit. I am hopeful that an agreement is forthcoming. The participants from both sides of the aisle and both sides of the Capitol, along with the President's top economic team, are among the most talented, knowledgeable and experienced in the Government. My disappointment is not with them, but with the process which has brought this Congress, this Government and the Nation to yet another countdown to chaos.

Mr. President, this Senator shares the anger of the American people. With 5 days remaining in the fiscal year, farmers do not know what their

crop payments will be, travelers do not know whether air traffic controllers or weather service employees will be able to provide for the safety of air transport, food processors do not know whether to close plants because of reduced Federal inspections and Federal workers do not know whether they will be able to feed their families and pay their mortgages when faced with a 22-day unpaid furlough. This is not right.

The state of play on this 25th day of September further proves the failure of the Gramm-Rudman law. When I opposed the Gramm-Rudman law and its subsequent rewrite, I predicted that it fakes action and does not force action on the deficit. Once again the prospect of further delay looms and the orientation of Congressional and administration efforts is not to reduce the deficit but to avoid a sequester. After 5 years of fakery and delay, the national debt well exceeds \$3 trillion. Mr. President, this is one time that I do not relish being able to say "I told you so."

History will record the Gramm-Rudman law merely as little more than a political device in 1985 to garner enough votes to push the debt ceiling above the \$2 trillion mark. After the Supreme Court ruled that Gramm-Rudman No. 1 violated the Constitution, Gramm-Rudman No. 2 provided the Congress another convenient engine to drive the debt ceiling through the \$2.5 trillion mark. Simply put, the budget is no closer to being balanced today than it was when the Nation's fiscal policy took its first detour along the crooked Gramm-Rudman road. Rather than reach the promised land of a balanced budget by 1991, the Nation is on the edge of one of its most serious fiscal disasters.

As a result of the Gramm-Rudman law, the Congress turned away from traditional means of budget making which used the give and take of the committee system and vigorous floor debate to produce consensus, and instead institutionalized the budget summit.

The results of past budget summits have been less than successful. Rather than forge friendships of fiscal responsibility, historically, summits create conspiracies to craft slide-by budgets.

The last budget summit agreement resulted in a pre-Thanksgiving budget which was loudly heralded as meeting the \$100 billion target for the 1990 fiscal year as required by the Gramm-Rudman law. Next week, when the books are closed on the fiscal year, the deficit will weigh in at a hefty \$242 billion. If the trust fund surpluses are not counted, the true deficit will likely exceed \$370 billion.

This year, the public anxiety is greater than ever because the irresponsibility of the present situation

and the manifest flaws of the present procedure are greater than ever. In the closing days of this fiscal year, there is no budget, no enacted appropriation bills, an imminent expiration of the statutory debt ceiling and a Gramm-Rudman sequestration poised to destroy the Federal Government as we know it.

It is important to review for one moment how we got to this point. When the President presented his optimistic and abbreviated budget, the Senate Budget Committee gave the President's recommendations careful consideration. While it was criticized for significantly underestimating the true size of the deficit and overstating the health of the economy, unlike previous budgets, the President's document was not dismissed as dead on arrival. After having the first Bush administration budget summit produce so little in terms of lasting savings, the Senate majority leader expressed his desire to pursue the budget the old fashioned way, with the Congress producing its own budget on a timely basis.

Early in the process, with a couple of notable exceptions, most of the Republican members of the Senate Budget Committee made it clear that they were going to be observers during the formulation of the budget and that a budget summit was their preferred method of dealing with the growing fiscal crisis. No Republican alternatives were offered, and with one brave exception, no Republican participation in crafting the budget was volunteered. The Democratic members of the Budget Committee, with the help of one Republican member, produced an impressive \$54 billion budget package which held the line on most spending, reduced the Defense budget by a significant but manageable amount, granted full retirement COLA's and attempted to collect a portion of the 100 billion dollars' worth of taxes which are presently due and owing. On the revenue and fee side, the budget used the very same figures endorsed by the President, viewed as fully consistent with the President's no new tax pledge.

A week after the passage of that \$54 billion package, the President requested a summit. Today, months later, the summit is attempting to craft a legislative bundle which contains a budget, a reconciliation bill, a debt ceiling extension, a continuing appropriations, a third rewrite of the ill-fated Gramm-Rudman law, and a package of budget reforms.

I expect that eventually agreement will be found among the summitters and one or several rather big lumps of legislation will be force-fed to the Congress in a last minute, take-it-or-leave-it flurry of late night activity designed to beat the clock which tolls the end

of the fiscal year and then the expiration of the debt ceiling.

The problem with this procedure is that it serves to mask responsibility by giving elected officials an excuse to hide behind a bill produced by a cabal rather than a Congress. As the clock ticks toward the end of the fiscal year, and the fiscal trains line up to crash into each other, the whole objective switches from reducing the deficit to avoiding a sequester. In a real sense, the brinkmanship politics of the Gramm-Rudman law deprive this Congress of doing the job that the American people expect of us, and that is to legislate. It creates a false hope of finally fixing the problem, and with each failure, the disappointment of the public breeds cynicism toward the process and the Congress.

In its purest form, the solution is simple. When a family or business faces a shortage of funds, they stop spending. For years, Senator HOLLINGS and I have put forward "freeze" budgets which would have held the line on spending. If our first proposal had been adopted, and followed, the budget would have been balanced by now.

With an economy so soft it squishes, this type of brinkmanship is not good for the country and it is not good for this institution. A recent article in the Washington Post which I will ask to be printed at the conclusion of my remarks highlights how much time and money is being spent simply to prepare, explain, and plan for a possible furlough in the event of a sequester. Even if disaster is averted, there will be an unnecessary cost attached.

Senator GRASSLEY and I recently released a comprehensive report on the Federal Budget which I recommend to all my colleagues. The report reveals that even if the President's budget summit meets its goal of reducing the deficit by \$500 billion in 5 years, much work still remains to be done. There needs to be at least another \$500 billion in savings produced over the next 6 to 7 years before the true budget deficit can be balanced. In going after that second \$500 billion I implore the leadership and the President not to take the Nation down this path again. With respect for the separation of powers, let the President propose and the Congress dispose. The Congress, not a summit, should control the purse strings, and the President can use his veto pen to pursue his policies.

Unless the Congress and the President get control of the process and squeeze the annual deficits down, the Nation faces certain peril. The GAO report portrayed a bleak fiscal picture with the accumulated national debt reaching \$5 trillion by 1995 and gross interest expense exceeding all other Federal spending programs within 2 years. Every dollar spend on interest and increasingly given to foreign lend-

ers is money which could have been used to build bridges, schools, or best of all left in the pockets of working Americans. The budget is not in such a state that it is not a choice between borrowing or taxes. Debts are taxes. It is only a question of whether they are paid now or later, and without or with interest.

As the Congress braces for another round of budget brinkmanship, I encourage my colleagues to consider the comments of the GAO on the Gramm-Rudman-Hollings law which brought us to the edge of our present fiscal abyss. The GAO reports:

The bottom line is that 5 years of technical compliance with the Gramm-Rudman-Hollings law have resulted not in meaningful deficit reduction, but rather in a whole new generation of off-budget and other misleading budget reporting practices that hide the true magnitude of the problem.

Cooking the books has become a way of life in Washington \* \* \*. Unwillingness to make the painful revenue and spending choices implied by the Gramm-Rudman-Hollings legislation has resulted in some sobering numbers: Whereas the general fund deficit stood at \$226 when Gramm-Rudman-Hollings went into effect, we project \* \* \* that it will reach almost \$400 billion in 1997.

I will take a careful and close look at the recommendations of the President's budget summit. If it is a fair, balanced and meaningful package, I will support it. If however, it does not address the problem or creates more harm than good, I will not hesitate to oppose it. My concern, Mr. President, is that I smell some pots boiling and some books about to be cooked. In the coming years, let's not try to serve up the Nation's business in such an unappetizing manner.

Mr. President, I ask unanimous consent that the Washington Post article to which I earlier referred be printed in the RECORD, and I also ask unanimous consent that an excellent article by Mr. Art Hovey of the Lincoln Star be printed in the RECORD. It outlines in clear detail the devastating effect of the Gramm-Rudman law on agriculture.

Thank you, Mr. President. There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Lincoln (NE) Star, Sept. 25, 1990]  
HOWEVER AX FALLS, AG AID IS VULNERABLE—  
"DEFICIT REDUCTION" TRANSLATES TO LESS  
FARM SUPPORT—EVEN WITHOUT GRAMM-  
RUDMAN CUTS

(By Art Hovey)

The outlook for federal support of agriculture next year has gotten so grim that even the up side has a down side.

If Congress is able to agree on some sort of budget reduction package before the Gramm-Rudman-Hollings deficit reduction measure is automatically triggered Monday, Nebraska farmers can expect to see about a 10 percent reduction in government spending. If Gramm-Rudman kicks in, the reduction in price supports and other direct payments that add up to millions of dollars

and the manifest flaws of the present procedure are greater than ever. In the closing days of this fiscal year, there is no budget, no enacted appropriation bills, an imminent expiration of the statutory debt ceiling and a Gramm-Rudman sequestration poised to destroy the Federal Government as we know it.

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In its purest form, the solution is simple. When a family or business faces a shortage of funds, they stop spending. For years, Senator HOLLINGS and I have put forward "freeze" budgets which would have held the line on spending. If our first proposal had been adopted, and followed, the budget would have been balanced by now.

With an economy so soft it squishes, this type of brinkmanship is not good for the country and it is not good for this institution. A recent article in the Washington Post which I will ask to be printed at the conclusion of my remarks highlights how much time and money is being spent simply to prepare, explain, and plan for a possible furlough in the event of a sequester. Even if disaster is averted, there will be an unnecessary cost attached.

Senator GRASSLEY and I recently released a comprehensive report on the Federal Budget which I recommend to all my colleagues. The report reveals that even if the President's budget summit meets its goal of reducing the deficit by \$500 billion in 5 years, much work still remains to be done. There needs to be at least another \$500 billion in savings produced over the next 6 to 7 years before the true budget deficit can be balanced. In going after that second \$500 billion I implore the leadership and the President not to take the Nation down this path again. With respect for the separation of powers, let the President propose and the Congress dispose. The Congress, not a summit, should control the purse strings, and the President can use his veto pen to pursue his policies.

Unless the Congress and the President get control of the process and squeeze the annual deficits down, the Nation faces certain peril. The GAO report portrayed a bleak fiscal picture with the accumulated national debt reaching \$5 trillion by 1995 and gross interest expense exceeding all other Federal spending programs within 2 years. Every dollar spend on interest and increasingly given to foreign lend-

ers is money which could have been used to build bridges, schools, or best of all left in the pockets of working Americans. The budget is not in such a state that it is not a choice between borrowing or taxes. Debts are taxes. It is only a question of whether they are paid now or later, and without or with interest.

As the Congress braces for another round of budget brinkmanship, I encourage my colleagues to consider the comments of the GAO on the Gramm-Rudman-Hollings law which brought us to the edge of our present fiscal abyss. The GAO reports:

The bottom line is that 5 years of technical compliance with the Gramm-Rudman-Hollings law have resulted not in meaningful deficit reduction, but rather in a whole new generation of off-budget and other misleading budget reporting practices that hide the true magnitude of the problem.

Cooking the books has become a way of life in Washington \* \* \*. Unwillingness to make the painful revenue and spending choices implied by the Gramm-Rudman-Hollings legislation has resulted in some sobering numbers: Whereas the general fund deficit stood at \$226 when Gramm-Rudman-Hollings went into effect, we project \* \* \* that it will reach almost \$400 billion in 1997.

I will take a careful and close look at the recommendations of the President's budget summit. If it is a fair, balanced and meaningful package, I will support it. If however, it does not address the problem or creates more harm than good, I will not hesitate to oppose it. My concern, Mr. President, is that I smell some pots boiling and some books about to be cooked. In the coming years, let's not try to serve up the Nation's business in such an unappetizing manner.

Mr. President, I ask unanimous consent that the Washington Post article to which I earlier referred be printed in the RECORD, and I also ask unanimous consent that an excellent article by Mr. Art Hovey of the Lincoln Star be printed in the RECORD. It outlines in clear detail the devastating effect of the Gramm-Rudman law on agriculture.

Thank you, Mr. President.

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

[From the Lincoln (NE) Star, Sept. 25, 1990]  
HOWEVER AX FALLS, AG AID IS VULNERABLE—  
"DEFICIT REDUCTION" TRANSLATES TO LESS  
FARM SUPPORT—EVEN WITHOUT GRAMM-  
RUDMAN CUTS

(By Art Hovey)

The outlook for federal support of agriculture next year has gotten so grim that even the up side has a down side.

If Congress is able to agree on some sort of budget reduction package before the Gramm-Rudman-Hollings deficit reduction measure is automatically triggered Monday, Nebraska farmers can expect to see about a 10 percent reduction in government spending. If Gramm-Rudman kicks in, the reduction in price supports and other direct payments that add up to millions of dollars

The Senator from Michigan is recognized.

Mr. RIEGLE. I thank the Chair.

(The remarks of Mr. RIEGLE pertaining to the introduction of S. 3103 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:52 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. SANFORD].

#### MOTOR VEHICLE FUEL EFFICIENCY ACT

The Senate continued with the consideration of the bill.

#### CLOTURE MOTION

The PRESIDING OFFICER. The hour of 2:15 p.m. having arrived, under the previous order, the quorum call has been waived. The question is, Is it the sense of the Senate that debate on the committee substitute, as amended, if amended, to S. 1224, the CAFE standards bill shall be brought to a close? The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The yeas and nays resulted—yeas 57, nays 42, as follows:

[Rollcall Vote No. 248 Leg.]

#### YEAS—57

Adams	Dodd	Lieberman
Akaka	Durenberger	McCain
Baucus	Exon	Metzenbaum
Bentsen	Fowler	Mikulski
Biden	Gore	Mitchell
Bingaman	Gorton	Moynihan
Boschwitz	Graham	Packwood
Bradley	Harkin	Pell
Bryan	Hatfield	Pressler
Bumpers	Heinz	Pryor
Burdick	Hollings	Reid
Chafee	Inouye	Robb
Cohen	Jeffords	Rockefeller
Conrad	Kennedy	Roth
Cranston	Kerry	Rudman
D'Amato	Kerry	Sanford
Danforth	Kohl	Sarbanes
Daschle	Lautenberg	Simon
DeConcini	Leahy	Wirth

#### NAYS—42

Armstrong	Gramm	McConnell
Bond	Grassley	Murkowski
Boren	Hatch	Nickles
Breaux	Heflin	Nunn
Burns	Helms	Riegle
Byrd	Humphrey	Sasser
Coats	Johnston	Shelby
Cochran	Kassebaum	Simpson
Dixon	Kasten	Specter
Dole	Levin	Stevens
Domenici	Lott	Symms
Ford	Lugar	Thurmond
Garn	Mack	Wallop
Glenn	McClure	Warner

#### NOT VOTING—1

Wilson

The PRESIDING OFFICER. On this vote, the yeas are 57; nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. LEVIN. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### EXECUTIVE SESSION

TREATY WITH THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE LIMITATION OF UNDERGROUND NUCLEAR WEAPON TESTS

TREATY WITH THE UNION OF SOVIET SOCIALIST REPUBLICS ON UNDERGROUND NUCLEAR EXPLOSIONS FOR PEACEFUL PURPOSES

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to consider executive calendar Nos. 21 and 22, en bloc, which the clerk will report.

The assistant legislative clerk read as follows:

Treaty with the Union of Soviet Socialist Republics on the Limitation of Underground Nuclear Weapons Tests.

Treaty with the Union of Soviet Socialist Republics on Underground Nuclear Explosions for Peaceful Purposes.

Mr. HELMS. Mr. President, I suggest the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order. The debate on the treaty is limited to 2 hours equally divided and controlled by the chairman and ranking minority member of the Foreign Relations Committee.

The Senator from Rhode Island.

Mr. PELL. Mr. President, I am pleased to present for Senate consideration the Threshold Test Ban Treaty negotiated in 1974 at President Nixon's direction and the companion 1976 Peaceful Nuclear Explosions Treaty completed in 1976 by President Ford's administration, together with two new verification protocols signed at the June summit by President Bush and Soviet President Gorbachev.

The TTBT is a logical tightening of the obligation undertaken by the United States, Soviet Union and Great Britain in 1963 in the Limited Test Ban Treaty, which prohibits nuclear explosions in the atmosphere. Outer space, and under water. These restrictions meant that the parties could only continue nuclear testing underground, so that risks of continued contamination of the atmosphere could be removed. The 1974 treaty served several purposes by lowering allowable yields to 150 kilotons or less. First, it removed the opportunity to test the sides' larger nuclear weapons at high yields. This serves to prevent the development and deployment of new weapons with very high yields while

preserving the capability to do all the testing necessary for weapons currently in the arsenal or projected for future development. Second, the limit reduces the risk of a major, accidental release of radioactive debris. Third, it makes sure that the Soviet Union will not be able to test at higher yields than the United States, thus removing any theoretical testing advantages. Finally, it represents a modest but significant step, with minimal risk, toward the ultimate goal of a complete end to nuclear testing.

The companion Peaceful Nuclear Explosions Treaty was designed to ensure that neither side could conduct so-called peaceful nuclear explosions and gain some testing knowledge not available in the weapons testing program. Accordingly, the PNET provides for verification of the yields of explosions other than stated weapons tests at test ranges. This is an important treaty even to this day, although the United States has not had a peaceful nuclear explosion since 1973, and the Soviets have not set off a peaceful nuclear explosion since 1988.

The two new protocols supplant protocols originally negotiated in 1974 and 1976. Those original protocols provided precedent-setting verification. The new protocols go further to provide for extensive on-site and in-country verification measures designed to ensure effective verification of compliance with the TTBT and PNET.

Mr. President, it has now been 16 years since the TTBT was signed, and 14 years since the signing of the PNET. Although the parties have been obligated to comply since 1976, the failure to ratify meant that important provisions related to verification were not fully implemented. Our decision today will put all of this behind us and open the way to ratification of these two Treaties and pursuit of new accords.

Until 1986, the Reagan administration opposed ratification of the two treaties on the grounds that the verification provisions of the TTBT needed improvement.

In the fall of 1986, to break an impasse on the Defense bill, President Reagan informed Congress of his intent to:

Make ratification of these treaties a first order of business for the Congress, with an appropriate reservation to the treaties that would ensure they would not take effect until they are effectively verifiable. I will work with the Senate in drafting this reservation.

Second, I intend to inform the General Secretary in Reykjavik that, once our verification concerns have been satisfied and the treaties have been ratified, I will propose that the United States and the Soviet Union immediately engage in negotiations on ways to implement a step-by-step parallel program—in association with a program to reduce and eliminate all nuclear weapons—

of limiting and ultimately ending nuclear testing.

Accordingly, I chaired hearings on the treaties as a first order of business in 1987. At a committee markup on February 19, 1987, the committee, by voice vote, ordered the treaties reported with a reservation providing for a presidential certification on verification and a declaration supporting the President's commitment to immediate negotiations on further testing restraints following TTBT and PNET notification. Unfortunately, despite the President's pledge, the administration remained committed to a scheme under which the Senate would consider the treaties at that time and then go through the whole process again when new protocols were completed. That notion did not sit well with Senators, and the treaties were not taken up on the Senate floor.

The nuclear testing talks began in Geneva in November 1987, with the goal of achieving the new verification protocols. Before the Reagan administration left office, agreement in principle had been worked out on the PNET protocol. The negotiating effort in the Bush administration was centered on the TTBT protocol.

In September 1989 the sides announced an ad referendum agreement on the TTBT protocol. Remaining details were worked out over the next several months.

The committee held open hearings on July 17, 31, and September 13, 1990. Administration witnesses were heard at the July 17 hearing. Representatives of the intelligence community testified on July 24 in closed session. Outside experts were heard on July 31. Finally, our distinguished colleagues, the Senators from Oklahoma and Maine, Mr. BOREN and Mr. COHEN, the chairman and vice chairman, respectively, of the Senate Select Committee on Intelligence, appeared before the committee on September 13. The Senators testified to the committee regarding the select committee's report to the Committee on Foreign Relations and the Senate on the ability of the United States to monitor compliance by the Soviet Union with the treaties.

Senators BOREN and COHEN will be addressing the monitoring issue directly. I will not duplicate the issue beyond noting that the select committee devoted considerable time and attention to its inquiry and concluded that the United States will be able to monitor compliance. The committee's excellent unclassified report is included in the Foreign Relations Committee report. The classified report is available at this time to interested Members in the Vice President's office off the Senate floor.

In its deliberation, the committee noted a significant issue raised by article XI of the TTBT protocol, which

allows the treaty partners to amend the protocol through agreement in a new Bilateral Consultative Commission. Given the great detail of the protocol, the committee was sensitive to the possible need for technical, administrative, and procedural changes through agreement without the need for Senate approval. At the same time, it was important that the executive branch understand that any changes of a substantive nature would require the advice and consent of the Senate.

I raised this matter with ACDA Director Lehman on July 31, informing him of my concerns. At the same time, I cautioned Ambassador Lehman that my committee would only allow modifications not requiring advice and consent on a case-by-case basis. I wrote:

\*\*\* I conclude that it is necessary to have the Administration's written clarification of the areas of permissible modification contemplated by paragraphs 3 and 4 of Section XI of the Protocol to the Threshold Test Ban Treaty. This would ensure that changes to the Treaty and Protocol requiring Senate advice and consent would be treated according to constitutional requirements. . . . The Committee would expect the Administration to inform it of any proposed modification under this procedure. This will enable the Committee to voice an objection in appropriate cases, before the issue becomes moot.

At the same time, I asked for assurances, regarding the authoritativeness of administration testimony. Mr. Lehman replied on September 11. He wrote:

I can affirm that the Senate should regard explanations of the meaning of the Treaties and the obligations they entail as authoritative, and that the Senate can expect the Administration to interpret and implement the Treaties in accord with such explanations.

He also wrote:

Second, with respect to the modifications or changes contemplated by paragraphs 3 and 4 of Section XI of the TTBT Protocol, I can confirm that the intention of these paragraphs is to enable the Parties, on the basis of their day-to-day experience in living with the Protocols, to make such changes, of a technical, administrative or procedural nature as do not affect substantive rights and obligations under the Treaty and Protocol, that will improve the effectiveness of the verification regime. Any change of substantive nature that would have an effect upon basic aims of the Treaty or rights and obligations of the Parties would have to be made by means of an amendment.

This response reassured me on the authoritativeness issue and on the issue of how distinctions would be made between those changes of a substantive matter, requiring Senate advice and consent, and those that could be handled through notification. Ambassador Lehman's letter did not resolve the question of how the Senate would be involved before the issue became moot. Discussions on the day of the markup led to a second letter from Ambassador Lehman, resolving the issue as follows:

The Administration will provide notice concerning any modifications and changes negotiated with the Soviets to the provisions of the TTBT Protocol prior to such modifications or changes becoming binding on the Parties. The objective of this further assurance is to provide notice before an issue becomes "moot".

Based on these assurances, I am satisfied that changes or modifications pursuant to section XI of the TTBT protocol will be handled satisfactorily.

Mr. President, I ask unanimous consent that my correspondence with Ambassador Lehman be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. PELL. Mr. President, the committee marked up the treaties on September 14. Each treaty and its new protocol was approved by the committee in an 19-0 vote. The declarations were approved in connection with the TTBT.

The first declaration states that there should be specific safeguards to protect against unexpected political and technical events affecting the military balance. Safeguards were originally proposed by the Joint Chiefs of Staff in 1987 and modified in staff-level discussions. At my request, those discussions were resumed this year with representatives of the Joint Chiefs and other executive branch officials. My goal was the development of safeguards that would merit bipartisan support. I believe the safeguards approved by the committee with administration support meet that standard.

According to the committee report:

The Committee can appreciate the concerns of the Joint Chiefs with regard to safeguards. It is important to be prepared to cope with developments which may affect the military balance. It is also important to understand that unexpected political or technical events can have positive, as well as negative, effects. Accordingly, safeguards must be seen as guidelines to maintain the proper balance of nuclear testing programs, legitimate national security interests, and budgetary priorities.

The first safeguard, Safeguard "A," calls for effective and continuing underground nuclear testing programs within the constraints of treaties on nuclear testing.

It is clear that effective and continuing programs are possible within current spending levels and at other levels, depending on financial resources and priorities. This should not be seen as a mandate for any particular spending level. This safeguard applies to the situation under current treaty constraints, but it leaves the door completely open to further treaty constraints and should not be seen as a barrier to further steps.

Safeguard "B" is designed to show affirmative support for modern nuclear laboratories, again with the as-

sumption that such is the case now and that it is important the laboratories remain healthy enterprises while the United States has an active testing program.

Safeguard "C" is designed to provide a reasonable assurance that we would retain the basic capability to test at levels above 150 kilotons in the unlikely event that the United States were no longer bound by the TTBT. Of course, we would also have the theoretical technical capability to test in the atmosphere, but our awareness of dangers to the environment of any nuclear test or, even, accident could pose indicates to me that we would never be foolish enough to test anywhere but far underground. This safeguard was reworked from its original form to remove any intimation that the United States would do any less than meet its full obligations under testing treaties.

Safeguard "D" is designed to ensure that both seismic and hydrodynamic research are supported in order to improve our monitoring capabilities under existing treaties, as well as accords which may be reached in the future, including a comprehensive test ban.

Safeguard "E" was modified to clarify the need for intelligence gathering and analytical work regarding worldwide nuclear arsenals and nuclear weapons programs. Clearly, recent developments indicate that it would be ill-advised to focus our efforts to too great a degree on the Soviet Union, given the changes there, including the new openness, at the price of lesser effort in the area of worldwide proliferation.

Safeguard "F" which would have required a periodic review to determine whether testing treaties remain in the national interest was dropped as being unwarranted. Clearly, there will be such reviews if there is any reason to believe they are called for. Reviews done as necessary make much more sense.

The second declaration approved by the committee recalls the commitment of the United States, Soviet Union, and Great Britain in the 1963 Limited Test Ban Treaty and in the Nonproliferation Treaty to seek to achieve the discontinuance of nuclear weapons for all time and to continue negotiations to that end.

I would note for my fellow Members that these commitments are solemn ones. While we may not treat these commitments as seriously as we should, others do. Our failure to show a commitment to and progress toward a complete ban was the underlying reason for the heated disagreements and the failure to reach an agreed position at the recent Nonproliferation Treaty Review Conference. Frankly, by continued disregard for a complete ban, the United States will put the

Nonproliferation Treaty at risk. We must remember that the parties must decide whether to renew that treaty in 1995. Otherwise, it will expire and, thus, wreak havoc on efforts to control the spread of nuclear weapons.

It is appropriate that our commitment to a complete ban is renewed in the TTBT. In the first article of the treaty, the parties, for the first time, have undertaken a legally binding commitment to "continue their negotiations with a view toward achieving a solution to the problem of the cessation of all underground nuclear weapon tests."

The President's National Security Adviser, Brent Scowcroft, wrote me in July to make the following commitment:

As we put into practice the new verification Protocols, the United States will be ready to propose negotiations on possible further limitations that make sense from a national security standpoint, contribute to stability, and still guarantee a reliable, safe, and effective deterrent.

Mr. President, the Senate's vote today will demonstrate strong bipartisan support for the continuation envisaged by General Scowcroft. I would urge that the administration not be timid. Early agreement on further limitations poses no risks to our security and offers a chance that must not be ignored.

Thank you, Mr. President.

#### EXHIBIT 1

U.S. SENATE,  
COMMITTEE ON FOREIGN RELATIONS,  
Washington, DC, July 31, 1990.

HON. RONALD F. LEHMAN II,  
Director, U.S. Arms Control, and Disarmament Agency, Washington, DC.

DEAR AMBASSADOR LEHMAN: I want to thank you for the very helpful presentation you and other executive branch witnesses made on July 17 before the Committee on Foreign Relations with regard to the two new verification protocols to the Threshold Test Ban and the Peaceful Nuclear Explosions Treaties.

As I have reviewed the record of that hearing and started planning for the Committee consideration of the Treaties and protocols in early September, two matters occur which require clarification.

First, I would appreciate your affirming that your testimony in explanation of the meaning of the Treaties and the obligations they entail, along with that of other Executive branch witnesses and materials submitted for the record, can be regarded as authoritative, and that the Senate can expect the Executive branch to regard itself as bound to interpret and implement the Treaties in accord with these representations without the need for the Senate to incorporate such interpretations in its resolution of ratification.

This affirmation would necessitate that the Administration identify any instance in which an Executive branch witness's testimony is not authoritative and any discrepancies that may exist between the testimony given by its representatives and the testimony of representatives of previous Administrations concerning the obligations of the United States under the two Treaties.

Second, I conclude that it is necessary to have the Administration's written clarification of the areas of permissible modification contemplated by paragraphs 3 and 4 of Section XI of the Protocol to the Threshold Test Ban Treaty. This would ensure that changes to the Treaty and Protocol requiring Senate advice and consent would be treated according to constitutional requirements.

I expect the Committee to recognize that there is a need for an expedited modification of purely technical matters in the cases of highly detailed agreements such as the Protocol. However, the Committee's report will make it clear that the Committee will allow modification only on a case-by-case basis. The Committee would expect the Administration to inform it of any proposed modification under this procedure. This will enable the Committee to voice an objection in appropriate cases, before the issue becomes moot.

Please let me have your response, including the necessary affirmation and clarification, at your earliest convenience.

Ever sincerely,

CLAIBORNE PELL,  
Chairman.

ARMS CONTROL AND  
DISARMAMENT AGENCY,  
Washington, September 1, 1990.

HON. CLAIBORNE PELL,  
Chairman, Committee on  
Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: I write in response to your letter of July 31, 1990 requesting clarification of two matters relating to the Committee's consideration of the Threshold Test Ban Treaty (TTBT) and the Peaceful Nuclear Explosions Treaty (PNET).

First, with respect to the testimony of Administration witnesses received by your Committee during consideration of these two Treaties, I can affirm that the Senate should regard explanations of the meaning of the Treaties and the obligations they entail as authoritative, and that the Senate can expect the Administration to interpret and implement the Treaties in accord with such explanations. With respect to testimony on these Treaties given by previous Administrations, we are unaware of any substantive differences that we would have with such testimony as it relates to interpretation of the Treaties, and we will be happy to comment on any specific statements that you may have in mind.

Second, with respect to the modifications or changes contemplated by paragraphs 3 and 4 of Section XI of the TTBT Protocol, I can confirm that the intention of these paragraphs is to enable the Parties, on the basis of their day-to-day experience in living with the Protocols, to make such changes, of a technical, administrative or procedural nature as do not affect substantive rights and obligations under the Treaty and Protocol, that will improve the effectiveness of the verification regime. Any change of a substantive nature that would have an effect upon basic aims of the Treaty or rights and obligations of the Parties would have to be made by means of an amendment.

It is the expectation of the Administration that implementation of the Treaties and their Protocols will include continuing consultations with the Senate. Briefings should be a matter of course. Any proposed amendment would be the subject of specific con-

sultations and, following negotiation, would be subject to advice and consent.

Sincerely,

RONALD F. LEHMAN II.

ARMS CONTROL AND  
DISARMAMENT AGENCY,

Washington, DC, September 14, 1990.

HON. CLAIBORNE PELL,  
Chairman, Committee on Foreign Relations,  
U.S. Senate.

DEAR MR. CHAIRMAN: I write in further response to your letter of July 31, 1990, concerning questions that have arisen prior to mark-up of the resolution of ratification of the nuclear testing treaties.

I would like to provide the following further assurances concerning paragraphs 3 and 4 of Section XI of the TTBT Protocol. The Administration will provide notice concerning any modifications and charges negotiated with the Soviets to the provisions of the TTBT Protocol prior to such modifications or changes becoming binding on the Parties. The objective of this further assurance is to provide notice before an issue becomes "moot."

The Administration offers this further assurance because of the unique technical nature of the TTBT Protocol. The Administration does not consider this further assurance to be a precedent for other arms control agreements with similar provisions that may be concluded in the future.

Sincerely,

RONALD F. LEHMAN II.

Mr. HELMS. Mr. President, in February 1987 the Committee on Foreign Relations reported out resolutions of approval for the Threshold Test Ban Treaty—the TTBT—and the Peaceful Nuclear Explosions Treaty—the PNET. Unfortunately, at that time, the two treaties could not be effectively verified. The President had reported to the Congress that it was likely that the Soviets had violated the TTBT many times, but there was great controversy over whether or not these Soviet violations had occurred. The new verification protocols for each treaty had not yet been negotiated with the Soviet Union. In effect, the Senate was being asked to vote for a pig in a poke.

It was at that time that our distinguished colleague, Senator KASSEBAUM, proposed a solution. The solution was this: to approve the two treaties at the same time as an executive resolution directing the President to negotiate a new protocol calling for "direct, accurate yield measurements taken at the site of all appropriate nuclear detonations, or equivalent enhance verification methods." This phrase was a reference to the so-called CORTEX verification system.

As I recall, Senator KASSEBAUM worked with our former colleague, Senator Evans, and I was pleased to join as a principal sponsor.

Thus the Kassebaum-Evans-Helms resolution was reported to the Senate Executive Calendar at the same time as the treaty resolutions of ratification. Subsequently, a group of 34 Republican Senators wrote to the President that they could not vote to give

advice and consent to the TTBT and PNET unless and until the President negotiated new verification protocols with the Soviets that would assure direct, accurate yield measurements using the CORTEX method.

As a result of this letter, the Senate did not act on the two treaties, since it was clear that a two-thirds majority would not be present without the new protocols. The President now has completed negotiation on the new protocols, assuring use of the CORTEX method, and the resolutions of ratification for the TTBT and PNET, including their new verification protocols, are before the Senate today.

Mr. President, after 16 years, we have finally achieved a TTBT that is effectively verifiable. The administration followed the advice of many of us that we should propose to the Soviets explicit trigger levels for CORTEX measurements and other onsite inspection procedures, and at least two such CORTEX measurements per year.

Many experts believe that, over the past 14 years, the Soviets have exceeded the 150 kiloton threshold in their underground nuclear weapons tests at least 24 times in order to increase their nuclear weapons capabilities. Unfortunately, the benefits they have gained by these violations cannot be reversed. But that is now past history.

The Soviets accepted these new verification protocols, contrary to the dire predictions of many experts in the United States who contended that a reasonable verification methodology would "kill the treaties."

I am pleased, therefore, to support the new verification protocols and the treaties.

Mr. President, I would like to quote some summary remarks from three unclassified Presidential reports to Congress on Soviet noncompliance with arms control treaties related to nuclear testing.

First, President Reagan's unclassified Report to Congress on Soviet Noncompliance With Arms Control Agreements, dated December 1, 1987, stated the following in regard to Soviet nuclear testing:

The record of Soviet noncompliance with the treaties on nuclear testing is of legal and military concern. Since the Limited Test Ban Treaty (LTBT) came into force over 20 years ago, the Soviet Union has conducted its nuclear weapons test program in a manner incompatible with the aims of the Treaty. That conduct regularly resulted in the release of nuclear debris into the atmosphere beyond the borders of the U.S.S.R. When the Soviets ended their unilateral nuclear testing moratorium on February 26, 1987, they resumed their pattern of noncompliance with treaties on nuclear testing by conducting the tests in a way which resulted in the release of radioactive matter into the atmosphere beyond the borders of the U.S.S.R. Even though the material from these Soviet tests does not pose calculable health, safety or environmental risks, and these infractions have no apparent military

significance, our repeated attempts to discuss these occurrences with Soviet authorities have been rebuffed. The United States presented demarches to the Soviets on two separate occasions of unambiguous venting in 1987 and received completely unacceptable explanations. Soviet refusal to discuss this matter calls into question their sincerity on the whole range of arms control agreements. During their 1985-86 moratorium, the Soviets undoubtedly maintained their test sites because they quickly resumed testing and have since conducted a series of tests. One of these tests raised sufficient concern about Soviet compliance with the 150 kt limit of the TTBT that the United States raised the issue with the Soviets. In the March 1987 Report we reaffirmed the December 1985 U.S. Government judgment that, "Soviet nuclear testing activities for a number of tests constitute a likely violation of legal obligations under the Threshold Test Ban Treaty." We also reported that the finding would stand until a number of studies, which had been initiated in an attempt to provide a somewhat improved basis for assessing Soviet compliance, could be completed. While significant progress has been made on those technically difficult issues, we do not expect to provide an update until next spring. \* \* \*

President Reagan's unclassified report to Congress on Soviet Noncompliance With Arms Control Agreements dated December 1, 1988, stated the following on Soviet nuclear testing:

The record of Soviet noncompliance with the treaties on nuclear testing is of political, legal, and military concern. Since the Limited Test Ban Treaty (LTBT) came into force over 20 years ago, the Soviet Union has conducted its nuclear weapons test program in a manner incompatible with the terms of the Treaty. That conduct has regularly resulted in the release of nuclear debris into the atmosphere beyond the border of the U.S.S.R. When the Soviets ended their unilateral nuclear testing moratorium on February 26, 1987, they resumed their pattern of noncompliance by conducting tests in a way which resulted in the release of radioactive matter into the atmosphere beyond the borders of the U.S.S.R. Even though the material from these Soviet tests does not pose calculable health, safety or environmental risks, and the infractions have no apparent military significance, in response to our repeated attempts to discuss these occurrences with Soviet authorities, they have only denied that these events have occurred and rebuffed U.S. requests for technical discussions which might lead to prevention of further Soviet venting. . . . Prior to the preparation of the March 1988 Report, a number of studies had been undertaken in an attempt to provide a somewhat improved basis for assessing Soviet compliance with the TTBT. The March 1988 Report found that: "The recent studies produced no definitive evidence supporting a change which would diminish the previous finding of 'likely violation.' The totality of evidence strengthens the previous findings, and the U.S. continues to find that the Soviet Union has likely violated its legal obligations under the TTBT."

President Bush's unclassified report to Congress on Soviet Noncompliance With Arms Control Agreements dated February 23, 1990, stated the follow-

ing: "Past evidence suggested that the Soviet Union also violated the TTBT."

Mr. President, I ask unanimous consent that some unclassified documentation supporting the President's case for ratification of the TTBT and the PNET, be printed in the RECORD:

First, a letter to me dated September 18, 1990, from the Assistant to the Secretary of Defense for Atomic Energy, Dr. Robert B. Barker. This letter endorses the five safeguards for the U.S. Nuclear Weapons Program, as requested by the Joint Chief of Staff of the Armed Forces. I strongly agree with Dr. Barker's statement that "These safeguards are essential to permit the United States to conduct those activities, including a vigorous underground nuclear testing program, necessary to maintain a safe, effective, reliable, and survivable nuclear deterrent."

Second, a letter to me dated September 4, 1990, from the Counselor of the Arms Control and Disarmament Agency, Ambassador Richard N. Holwill. This letter answers a series of questions that I posed on the TTBT and the PNET.

Third, another letter to me dated September 4, 1990, from the Counselor of the Arms Control and Disarmament Agency, Ambassador Richard N. Holwill. This letter also answers a series of questions that I posed on the TTBT and PNET.

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

ASSISTANT TO THE  
SECRETARY OF DEFENSE,

Washington, DC, September 18, 1990.

HON. JESSE HELMS,  
Ranking Republican Member, Committee on  
Foreign Relations, U.S. Senate, Wash-  
ington, DC.

DEAR SENATOR HELMS: I write in further response to questions concerning the position of the Office of the Secretary of Defense [OSD] on the nuclear testing safeguards contained in the TTBT-PNET resolution of ratification passed by the Committee on Foreign Relations.

OSD believes the language on safeguards in the resolution is acceptable. Although there are minor changes in wording from the safeguards submitted to the Senate in 1987 and endorsed by President Bush in his June 28 letter to the Senate, OSD believes that the clear intent of the new language is not to change the meaning of, or to lessen the United States Government commitment to, the safeguards. These safeguards are essential to permit the United States to conduct those activities, including a vigorous underground nuclear testing program, necessary to maintain a safe, effective, reliable, and survivable nuclear deterrent.

Sincerely,

ROBERT B. BARKER.

ARMS CONTROL AND  
DISARMAMENT AGENCY,

Washington, DC, September 4, 1990.

HON. JESSE HELMS,  
Ranking Member, Senate Foreign Relations  
Committee.

DEAR SENATOR HELMS: Ambassador Lehman thanks you for the opportunity to

testify before the Senate Foreign Relations Committee on the two new verification protocols to the Threshold Test Ban and the Peaceful Nuclear Explosions Treaties.

Enclosed are the unclassified responses to the written questions you submitted in connection with the testimony of Ambassador Lehman, Ambassador Robinson, Doug Graham, Vic Alessi and Lt. Gen. George L. Butler on July 17, 1990. I trust that you will find all the answers fully responsive. We are sending a classified response to you in separate package. I trust that you will find all the answers fully responsive.

If you have any questions or need additional information, please feel free to contact me at 647-3612.

Sincerely,

RICHARD N. HOLWILL,  
Counselor.

Enclosure:

#### SFRC QUESTIONS AND ANSWERS

1. Results. Were all of the Administration's objectives met in the TTBT and PNET Protocol negotiations?

A: Yes. All Administration objectives were met in the negotiations. The principal objective of the Nuclear Testing Talks was to negotiate protocols that would provide for effective verification, which would allow ratification of the TTB and PNE Treaties. In pursuing this objective, we obtained Soviet agreement for the right to use on-site hydrodynamic yield measurements for any test that might by remote means appear to exceed the 150-kt threshold. Additionally, the United States preserved U.S. nuclear testing options and protected the secrecy of U.S. nuclear weapons, defense, and intelligence programs. (U)

2. Benefit for Soviets. What do you see as the benefit of the Treaties for the Soviet Union?

A: We cannot say what benefits that the Soviet Union feels it has obtained from the Treaties. (U)

3. Cheating. During the last decade, the Soviet Union has been charged by Reagan Administration officials of being in likely violation of the TTBT and PNET. Critics have charged that the obligations [sic] of cheating were based more on political desire than scientific evidence. With ample opportunity to assess the new information, do you believe there is convincing evidence that the Soviets committed intentional breaches of the ceiling?

4. Soviet Compliance. Does the information available now indicate that the Soviets have, in all likelihood, endeavored to comply with and have in all probability been in compliance with the TTBT and PNET?

A: There is no information available today that would cause the President to change his findings on past likely Soviet violations of the Soviet Union's commitment not to exceed the 150-kt limit of the TTBT. These findings stand as submitted to the Congress. Unfortunately, the United States was unable to use CORTEX on past Soviet events that raised compliance concerns and which resulted in a judgment of "likely violation." While CORTEX data that the United States gathers on future Soviet tests may shed light on past concerns, there is no guarantee that past compliance concerns will be clarified by data collected under the provisions of the new Protocol. (U)

5. Prospects. Do you believe that the Soviets now intend to live up to their commitments under the Treaties and the new Protocols?

A: The U.S. hopes the Soviets now intend to live up to their commitments under the Treaties and the new Protocols. However, there is no guarantee that they will. The Protocol provisions are intended to deter and detect cheating in a timely manner. (U)

6. Intrusive Techniques. Given the intrusive nature of the hydrodynamic monitoring and the enhanced seismic measuring, would it be possible for the Soviets to engage in any significant deception in their testing program?

A: We are confident that the implementation of the new verification Protocols will enable us to detect with high confidence any plausible Soviet attempts at deception. (U)

7. Detection. Are you convinced that we would detect any cheating of any military significance?

A: Yes. (U)

8. Follow-on Negotiations. The Reagan Administration was committed to seeking immediate follow-on negotiations with the Soviets when the TTBT and PNET were completed.

What did the Reagan Administration tell the Soviets regarding this commitment?

What had this Administration told the Soviets in this regard?

A: From the point-of-view of U.S. national security objectives, the commitments of the Reagan Administration with regard to nuclear testing limitations were to a step-by-step process and to hold a comprehensive test ban as an ultimate goal, but only at a time when our national security no longer depended on nuclear deterrence. The Reagan Administration also stated that for the foreseeable future nuclear testing would be a vital national security requirement of the U.S.

The Bush Administration reaffirmed the commitment both to a step-by-step approach and to a CTB as a long-term goal, but pointed out that so long as the U.S. must rely on nuclear weapons for security we must continue to test. In addition, during the course of the NTT negotiations, as well as at various ministerial meetings, the Administration has emphasized to the Soviets that we believe that, due to the complex verification provisions of the TTBT and PNET, it would be necessary, as a practical matter, to gain experience with their implementation so that the U.S. might better assess the verification lessons learned before considering further nuclear testing limitations. (U)

9. Scowcroft Letter. In a July 9 letter to the Chairman, Brent Scowcroft said the President believes we must gain some experience with the Protocols "as a guide to the character of the most appropriate next steps. . . ."

Does that mean the Administration intends for there to be a long delay before anything further happens with regard to new constraints?

Is a long delay fine with the Soviets?

How will a long delay sit with other nations attending the Non-Proliferation Treaty Review Conference in a matter of weeks?

Do you believe we will pay a political price of any significance if we seem prepared now to stop any further progress on testing constraints?

A. In January, 1990, President Bush reaffirmed the Administration's commitment to a step-by-step approach to further limits on nuclear testing. Because of the unprecedented nature and complexity of the techniques required for effective verification of

underground nuclear tests, it is only prudent that we should learn how well the just-agreed verification regime works as a necessary foundation for making or accepting proposals which build on it. Therefore, we cannot say at this time how long a period of observation of implementation of the TTBT and PNET following the ratification will be required. However, as we put into practice the new verification protocols, the U.S. will be ready to propose negotiations on possible further limitations that make sense from a national security standpoint, contribute to stability, and still guarantee a reliable, safe, and effective deterrent.

Nuclear weapons will continue to play a critical role in U.S. national security strategy. So long as this is the case, the U.S. must be free to conduct nuclear tests to ensure the credibility of our forces. The U.S. has not identified any further limitations on nuclear testing beyond those now contained in the TTBT that would be in the U.S. national security interest.

The Soviets have stated that they do not require a period of observation of implementation. We do not know the views of other nations on this question.

The U.S. believes that effective implementation of—and Soviet compliance with—these Treaties and their Protocols would represent significant progress in the area of nuclear testing limitations. (U)

11. *Who's in Charge?* What executive agency will be in charge of the verification programs set forth in these Protocols?

A: The Arms Control Policy Coordinating Committee (PCC), composed of ACDA, OSD, JCS, DOE, DCI and State and chaired by the National Security Council, has overall responsibility for implementation of the TTBT and PNET. It will issue guidance for U.S. inspectors, consider questions of compliance, provide public affairs guidance on implementation and compliance, etc.

The On-Site Inspection Agency (OSIA) will manage the conduct of in-country nuclear test and peaceful nuclear explosion monitoring activities in the U.S. and USSR, including scheduling, transportation, linguistic, communications, escort, and housing associated with these activities.

A Team Leader (senior U.S. representative) appointed by OSIA will lead each team of U.S. inspectors sent to the Soviet Union and shall have final authority over the team and in all dealings with the Soviet counterparts. The Team Leader will also serve as the Representative of the Verifying Party to the Coordinating Group established by the Protocols. The Department of Energy (DOE), augmented by Department of Defense (DOD) as appropriate, will provide the technical/operations members of the team to conduct CORRTEX and the other on-site inspection activities permitted by the Treaties. The Department of Defense, augmented by DOE as appropriate, will provide the technical/operations members of the team for tests involving "hydro-plus" measurements and for in-country seismic measurements. Personnel from other agencies, as appropriate, may also be included as members of the teams.

DOE (for CORRTEX) and DOD (for hydro-plus and seismic) will designate a chief of technical operations for each event. The chiefs of technical operations will operate under the overall direction of the Team Leader, and will also participate in the U.S.-USSR Coordinating Group established by the Treaties.

For Soviet activities in the U.S., OSIA will be responsible for all U.S. activities related

to Soviet monitoring of U.S. tests at Designated Seismic Stations and will designate the U.S. representative who will be responsible for the U.S. escorts and for all dealings with the Soviet inspection team.

OSIA will be responsible for all escort activities related to Soviet monitoring of tests at the Nevada Test Site (NTS) and will appoint a senior U.S. representative (Team Leader) who will have overall responsibility for dealing with the Soviet inspection team.

At the Nevada Test Site (NTS), DOE will oversee technical operations and advise the U.S. Team Leader at the U.S.-USSR Coordinating Group. DOE will retain responsibility for testing operations, matters of safety, safeguarding classified information, and public affairs at the Nevada Test Site.

For tests conducted by the Defense Nuclear Agency (DNA) that are subject to the TTBT Protocol, the division of responsibilities between DOE and DNA will parallel the responsibilities of the DOE Test Controller and the DNA Test Director for the nuclear device and the conduct of the experiments.

OSIA currently has deputy directors from ACDA (Principal), State, and the FBI. Given the extensive interaction between OSIA and DOE, a senior DOE representative has been assigned to OSIA to help maintain effective coordination between OSIA and DOE. (U)

12. *Requirements.* What are your best estimates as to the people and money needed by each of the involved agencies to carry out the verification program set forth in these Protocols? To what extent can costs be absorbed within the existing agency budgets?

A: The Administration is currently developing cost estimates for the various verification options. When this process is complete, the Administration will forward its cost estimate to the Senate. (U)

13. *Trigger Levels.* Why was the trigger level of 50 kt chosen for hydrodynamic measurement? Why was the 35 kt level chosen as the trigger level for on-site inspection (OSI)?

A: The trigger levels were established to preclude cheating through the conduct of tests in geologic conditions (e.g., cavities, porous rock) which would muffle or "decouple" the energy produced by the tests, thereby causing remote seismic means to underestimate the yields of the tests.

A trigger level of 50 kt for the use of the hydrodynamic yield measurement method ensures that even if we assume an error factor of up to three for the seismic method, we can be confident of monitoring compliance with the 150-kt limit. Given U.S. verification capabilities, it is highly unlikely that tests whose actual yields are below 50 kt could appear by teleseismic estimates to be above the 150-kt limit of the TTBT.

An identical trigger level was established for in-country seismic monitoring to ensure reciprocity.

For added measure of protection, OSI rights were established at 35 kt. For tests or explosions with yields greater than 150 kt, credible decoupling factors greater than 4 or 5 are unlikely; hence the 35-kt trigger for OSI ( $4 \times 35 = 140$ ;  $5 \times 35 = 175$ ). (U)

ARMS CONTROL  
AND DISARMAMENT AGENCY,  
Washington, DC.

Hon. JESSE HELMS,  
Ranking Member, Senator Foreign Relations Committee.

DEAR SENATOR HELMS: Ambassador Lehman thanks you for the opportunity to

testify before the Senate Foreign Relations Committee on the two new verification protocols to the Threshold Test Ban and the Peaceful Nuclear Explosions Treaties.

Enclosed are the unclassified responses to the written questions you submitted in connection with Ambassador Lehman's testimony on July 17, 1990. I trust that you will find all the answers fully responsive. We are sending the classified responses to you in separate package. I trust that you will find all the answers fully responsive.

If you have any questions or need additional information, please feel free to contact me at 647-3612.

Sincerely,

RICHARD N. NOLWILL,  
Counselor.

2. Will the new TTBT Verification Protocol in effect "grandfather," pardon, or condone all the previous "likely" Soviet violations of the TTBT that the President has reported to Congress? (U)

A: Approval of the Treaties and their new Protocols does not constitute "grandfathering," pardoning or condoning of past likely Soviet violations of the Soviet commitment not to exceed the 150-kt limit of the TTBT. Findings on this subject stand as submitted to the Congress. Unfortunately, the United States was unable to use CORRTEX or carry out on-site inspection on past Soviet events which raised compliance concerns. While CORRTEX or OSI data that the United States gathers on future Soviet test may shed light on past concerns, there is no guarantee that past compliance concerns will be clarified by data collected under the provisions of the new Protocol. (U)

3. Would a vote for the TTBT, even with its better new Verification Protocol, mean that one was in effect forgiving the likely, previous Soviet violations of the TTBT reported to Congress by the President? (U)

A: Approval of the Treaties and their new Protocols does not constitute a "forgiving" of past likely Soviet violations of the Soviet commitment not to exceed the 150-kt limit of the TTBT. Findings on this subject stand as submitted to the Congress. Unfortunately, the United States was unable to use CORRTEX or carry out on-site inspection on past Soviet events which raised compliance concerns. While CORRTEX or OSI data that the United States gathers on future Soviet tests may shed light on past concerns, there is no guarantee that past compliance concerns will be clarified by data collected under the provisions of the new Protocol. (U)

4. Could the Soviets declare soon after ratifications of the TTBT that they were moving all their nuclear testing from the old range at Semipalatinsk in Central Asia, to a new range at Novaya Zemlya in the Arctic Ocean? (U)

A: Yes. The Novaya Zemlya test site, however, is not a new site. It has been in use for over 30 years. In addition, it has been declared as a test site in the TTBT Protocol. Thus, U.S. inspectors would have on-site inspection rights and the right to carry hydrodynamic measurements at Novaya Zemlya if the Soviets declared there were tests scheduled there with planned yields over 35 kt and 50 kt, respectively. (U)

5a. Would the U.S. have the right to CORRTEX twice a year at the new Novaya Zemlya range, regardless of yield, for only five years? (U)

A. The TTBT Protocol provides that the Verifying Party always has the right, for the life of the Treaty, to carry out hydrodynamic yield measurement on all tests with planned yields over 50 kt. For the first five years after entry into force, if the Testing Party does not conduct at least two tests per year over 50 kt, the Verifying Party has the right to carry out hydrodynamic yield measurements on two tests chosen by the Testing Party from among those having the highest planned yields. (U)

After the first five years, if the Testing Party does not conduct at least one test having a planned yield greater than 50 kt each year, the Verifying Party has the continuing right to conduct hydrodynamic yield measurements on one test per year from among those with the highest planned yield, unless the sides otherwise agree. (U)

If the Soviet Union does not conduct any tests with declared planned yields over 50 kt, the United States would have the right, during the first five years, to use CORRTX on up to two tests per year chosen by the Soviet Union from among those having the highest planned yields. These tests could be at either Soviet test site or both. (U)

Similar provisions providing a minimum guarantee to conduct CORRTX govern the case where a side opens a new test site. Novaya Zemlya, however, is not a "new" test site as that term is used in the Protocol. In fact, it is identified as one of two declared Soviet test sites in the TTBT Protocol. (U)

In addition, if the Soviet Union conducts a nuclear explosion with a planned yield over 35 kt somewhere other than at their declared test sites, the provisions of the PNET Protocol are applicable. Thus, the Soviet Union would not be able to cheat by moving a nuclear weapon test off a test site and claiming it is a non-weapon explosion not subject to the provisions of the TTBT Protocol. (U)

5b. After five years, could the Soviets test at almost any yield at the new Novaya Zemlya range? (U)

A. As long as the TTBT is in force, the Soviet Union has the right to conduct a test at any yield up to and including 150 kt at Novaya Zemlya (NZ). Following entry into force of the TTBT and its new Protocol, the United States has the right to conduct on-site inspection on any test having a planned yield exceeding 35 kt and on any test having a planned yield over 50 kt if CORRTX is not used on that test. In addition, any test with a planned yield over 50 kt is subject to hydrodynamic yield measurement by the Verifying Party. These rights apply whether the test is at NZ or any other test site. (U)

5c. Are there any other realistic cheating scenarios for the Soviets under the new protocols? If so, how will we try to cope with them? (U)

A. The United States has not been able to identify any realistic cheating scenarios for either the TTBT or PNET. In addition, an independent Red Team review of both TTBT and PNET Protocols was unable to identify any realistic cheating scenarios. (U)

6. Because the TTBT preamble "reaffirms Soviet adherence to the Limited Test Ban Treaty," which the Soviets have been confirmed by the President to have clearly and unambiguously violated, does voting for the TTBT also condone multiple clear Soviet violations of the LTBT? (U)

A. Approval of the Treaties and their new Protocols does not constitute a condoning of

past likely Soviet violations of the LTBT. Findings on this subject stand as submitted to the Congress. (U)

7. Why can data on the results of the observations or measurements of all tests only be released to the public with agreement of both Parties? Would not compliance enforcement leverage and confidence in compliance be enhanced by the required public release of these observations and measurements? (U)

A. It is of great importance to the United States that each Party must retain the right to make independent judgments of compliance with the Treaties and the right to make public its findings. Public release, however, of the raw data from on-site measurements and observations would only invite compliance judgments from many individuals or groups. None of these individuals or groups, of course, would have access to the full suite of information available to the U.S. Government upon which it will base compliance judgments. In addition, in the negotiations both sides were concerned that some data obtained during on-site measurements might be proprietary or otherwise sensitive. To protect both sides, the Protocol provides that the Parties must agree before either may release data collected on-site. (U)

8. Section XI of the TTBT Verification Protocol establishes the Bilateral Consultative Commission, and states that it may consider amendments to the TTBT or to the Verification Protocol. Will any and all such amendments be submitted to the Senate and be subject to advice and consent by the Senate? If not, why not? (U)

A. Yes. Under paragraph 1(a) of Section XI of the Bilateral Consultative Commission (BCC) may "consider any suggestions for amendments to the Treaty or this Protocol." Such amendments would require Senate advice and consent and presidential ratification. (U)

9. What are the specific estimated costs of the various TTBT/PNET verification options? How much do we estimate that the TTBT/PNET will cost to monitor and verify each year for the first five years? (U)

A. The Administration is currently developing cost estimates for the various verification options. When this process is complete, the Administration will forward its cost estimates to the Senate. (U)

10. What is the degree of confidence in the CORRTX monitoring method, as compared to the "factor of two" uncertainty in using only the seismic method? (U)

A. The CORRTX hydrodynamic yield measurement method is expected to be initially accurate to within 30% with 95% confidence at Soviet test sites. (U)

11. Why does the U.S. have only one test site, and the Soviets two? (U)

A. The United States believes all the objectives of the U.S. test program can be met consistent with its arms control commitments at one test site—the Nevada Test Site. (U)

The United States cannot confirm the reasons for two Soviet test sites. (U)

12. Why are the minimum of two tests per year that are subject to CORRTX selected by the Testing Party and not by the Verifying Party? (U)

A. When the United States proposed inclusion of a provision for the right to CORRTX a minimum of two tests per year if no tests were conducted with planned yields exceeding 50 kt, our primary motivation was to guarantee U.S. access to Soviet test sites. Otherwise the Soviet Union

could deny the United States the opportunity to use hydrodynamic measurements by claiming that all their tests were below 50 kt. (U)

We tried to avoid unwarranted intrusion into each side's test program. The "two per year" minimum is to be from among the tests with the highest planned yields. For the Verifying Party to make that choice, the Testing Party would have to provide the planned yields of all its tests. From the standpoint of our own test program the United States regarded this as an undesirable and unnecessary intrusion. (U)

13. Why is the Testing Party allowed to "case" or "line" a satellite hole used for testing monitoring? (U)

A. Satellite holes may require casing to prevent them from caving in. When the Testing Party cases a hole, the TTBT Protocol requires that Parties must agree on the casing materials to be used. This provision is intended to prevent casing materials from interfering with hydrodynamic measurements of the Verifying Party. (U)

14. Why are tests in cavities allowed? (U)

A. When the sides began to draft the new Protocols to the TTBT and PNET, they agreed that they should not place additional limitations on the test program or peaceful nuclear explosions program that were not in the treaties themselves. As such, our concern was not with test or PNE configuration but with verification. Since both sides conduct tests in cavities, our only concern was that Soviet testing in cavities would not be used as part of an evasion scenario that would interfere with U.S. seismic national technical means. (U)

Mr. HELMS. Mr. President, I yield the floor.

Mr. NUNN addressed the Chair.  
The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, will the Senator from Rhode Island yield me approximately 3 minutes?

Mr. PELL. I yield such time as he may need to the Senator from Georgia.

Mr. NUNN. I thank my colleague.

Mr. President, I support the resolution of ratification reported by the Foreign Relations Committee on September 14 on the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty, and recommend that the Senate give its advice and consent thereto. The United States has been observing the 150-kiloton ceiling on underground nuclear tests since the TTBT was signed in 1974. Thus the treaty will make no difference in terms of our compliance with this limitation. However, the protocol to the TTBT which was signed by President Bush and President Gorbachev on June 1 contains important advances in on-site monitoring of nuclear tests and should significantly increase the level of U.S. confidence in Soviet compliance with the 150-kiloton ceiling.

Mr. President, on September 17, the Senate Armed Services Committee conducted a hearing on the national security implications of these two treaties. The committee received testimony from two panels of executive

branch witnesses. Panel 1 was comprised of Ambassador Ron Lehman, the Director of the Arms Control and Disarmament Agency, the Ambassador C. Paul Robinson, the chief United States negotiator at the United States-Soviet nuclear testing talks. The second panel included Robert Barker, Assistant to the Secretary of Defense for Atomic Energy; Victor Alessi, Director of the Office of Arms Control in the Department of Energy; and Rear Admiral Thomas R. Fox, Deputy Director for International Negotiations on the Joint Chiefs of Staff.

During the hearings, the Senate Armed Services Committee developed an important legislative record on several substantive and procedural issues that I would like to bring to my colleagues' attention as we prepare to vote on the treaties.

Mr. President, the first issue concerns nuclear safeguards.

These safeguards were recommended by the Joint Chiefs of Staff in 1987 and considered an integral part of the TTBT/PNET ratification package by both the Reagan and Bush administrations. In his June 28 letter transmitting TTBT/PNET and their protocols to the Senate, President Bush stated that these safeguards "are essential to our national security and the maintenance of a credible nuclear deterrent." The safeguards are of particular interest to me and to the Armed Services Committee because they provide a form of insurance against unexpected political or technical developments that could affect the military balance in the future and ensure that the United States could respond to any significant military advantage the Soviets might achieve through any cheating scenarios.

The Foreign Relations Committee resolution ratification for the TTBT recommends ratification of the treaty subject to a condition in the form of a declaration concerning the safeguards. This declaration expresses the sense of the Senate that:

To ensure the preservation of a viable deterrent there should be safeguards to protect against unexpected political or technical events affecting the military balance; that such safeguards, consistent with national interests and resources, should be an important ingredient in decisions on national security programs and allocation of available resources.

The committee's resolution for ratification lists five specific safeguards. Since the text of the safeguards recommended by the Foreign Relations Committee differs in some respects from the safeguards text submitted by the executive branch in 1987, questions were raised during the Armed Services Committee hearing as to whether the administration supported the Foreign Relations Committee's modifications.

We asked each of the witnesses whether they agreed that the safe-

guards understanding that the President and the Joint Chiefs had reached was reflected in the Foreign Relations Committee report and in the Foreign Relations Committee deliberations. The answer each time we asked that question was that they did agree that the committee's resolution of ratification was consistent with the administration's safeguards.

So there has been a meeting of the minds between the Foreign Relations Committee and the executive branch on this important issue.

At the Armed Services Committee hearing, Ambassador Lehman stated:

We have agreed to the five safeguards that are in fact contained in the Senate Foreign Relations Committee declaration.

Ambassador Robinson, testifying on behalf of Secretary of State Baker, said:

The Administration does strongly support the language of the safeguards, the particular safeguards that appear in that resolution.

Admiral Fox, testifying on behalf of the JCS, stated:

We have no objections to the Senate Foreign Relations safeguards. \* \* \* Although the words are general and we think they are couched in general terms, less specific than before, we feel that their intent is still very clear.

Mr. Alessi, representing DOE, stated:

I agree with the Admiral's remarks.

Finally, Mr. Barker, representing the Secretary of Defense, testified that:

It is my understanding that that [i.e., the text of the Foreign Relations Committee's declaration] was intended to capture the full intent of the administration's original position.

Mr. Barker also affirmed that the Defense Department is ready to implement the safeguards in fiscal year 1991. The day following the hearing Mr. Barker wrote me a letter confirming that the Office of the Secretary of Defense believes the committee's declaration is acceptable.

Mr. President, I ask unanimous consent that Mr. Barker's letter be printed in the RECORD at the conclusion of my remarks.

Mr. President, the second concern that we went into in considerable detail in the Armed Services Committee relates to the overall executive branch and congressional position that has been held for a long time that, following the ratification of these two treaties, the United States and the Soviet Union would begin to engage in negotiations to work toward further limitations on testing, leading eventually to a Comprehensive Test Ban Treaty, or CTB. This has been a U.S. goal for a long time.

In October 1986, when President Reagan and Gorbachev were about to engage in the summit conference at Reykjavik, we had a big dispute in the

conference between the House and the Senate relating to the provision in the House bill requiring an immediate move toward a CTB. We reached a compromise that with a letter from President Reagan and a very specific pledge that once the verification improvements for TTBT and PNET had been negotiated, the United States and the Soviet Union would—this is President Reagan's letter to the Senate and the House conference on the military authorization bill—"immediately engage in negotiations on ways to implement a step-by-step parallel program, in association with a program to reduce and ultimately eliminate all nuclear weapons, of limiting and ultimately ending nuclear testing."

In exchange for that very specific pledge, the House dropped the provision in its bill mandating a comprehensive test ban that would have gone into effect immediately, which the administration was adamantly opposed to.

I want to make it clear to our colleagues that the President's use of the word immediately, in that letter was not inadvertent. We spent hours negotiating that. In fact, I had a specific conversation with, I believe, Admiral Poindexter on that point. The NSC staff wanted to drop the word immediately, and we in the conference insisted that word remain in the letter. So that word did remain in the letter. So it was not inadvertent. The President himself focused on that, I am sure, based on the assurances I had from the National Security Council staff.

That was a very important pledge. It now comes into play, and we were very interested in the Bush administration's position on the next steps issue. We went into considerable detail with Ambassador Lehman on that point, and in the Armed Services Committee hearings he gave assurances that any pause—he did refer to a pause in the negotiations—will not be extremely lengthy.

In response to my question as to whether the delay would involve a matter of months, as opposed to years, Ambassador Lehman replied, "We are not talking about years." So the clear implication here was that he was talking about a matter of months. I do not know whether he meant 4, 6, 8, or 9 months. There is not an absolute understanding here, but there has been so much discussion—and so many confusing signals being sent from the executive branch over the years on this point—that it is important that the administration's authoritative spokesmen made it clear that they are talking about a brief pause that would not be a matter of years before moving toward a step-by-step process of further limitations, including possibly further reductions in the number and the overall kilotonnage of these tests.

I do not think we are talking about going in one step to a comprehensive test plan, but I think we do now have the Bush administration on record on this process.

Mr. President, we also went into considerable detail on the whole question of the Sofaer Doctrine that came into play, of course, with regard to the interpretation of the ABM Treaty. We also had a very big debate on that during the INF Treaty ratification. The Senate acted on two different votes on that and made it very clear, both in the approval of the Byrd-Biden amendment and on a second vote, exactly what the Senate expected and what it demanded. It was made a part of the ratification proceeding, with a specific understanding on that point by the Senate.

It was further clarified in the next amendment that came up, by Senator SPECTER, that would basically have moved back toward the Sofaer doctrine, and that was rejected by an overwhelming vote of 67 to 30. So the Senate, on the INF Treaty, repudiated the Sofaer Doctrine on treaty interpretations and made it clear that when we are given assurances by administration spokesmen as to what a treaty means, those assurances are binding, if they are authoritative and delivered to the Senate in the course of its overall consideration of the ratification of the treaty.

We wanted to make sure the Bush administration understood how strongly we felt on this point, and we wanted to get them on record as to how they interpreted the overall executive-legislative relationship with respect both to treaty interpretation and to political commitments made during the ratification proceedings.

On July 31, Chairman PELL wrote Ambassador Lehman asking him to affirm on behalf of the administration that:

Your testimony in explanation of the meaning of the treaties and the obligations they entail, along with that of other Executive branch witnesses and materials submitted for the record, can be regarded as authoritative, and that the Senate can expect the Executive branch to regard itself as bound to interpret and implement the Treaties in accord with these representations without the need for the Senate to incorporate such interpretations in its resolution of ratification.

This language is consistent with the three points on the treaty interpretation issue which I and other Senators insisted upon during our discussions with the Reagan administration prior to the Senate's floor debate on the INF Treaty. At that time, we sought and attained assurances from Secretary Shultz that:

One: the testimony of all Executive branch witnesses and any submissions for the hearing record by the Executive branch can be regarded by the Senate as authoritative.

Two: the meaning of the treaty as presented to the Senate can be regarded by the Senate as authoritative without the necessity of the Senate's incorporating that testimony and material in its resolution of ratification through understandings, reservations, amendments or other conditions.

Three: a meaning for the treaty different from that presented to the Senate by the administration cannot be adopted by the administration without the approval of the Senate.

On September 11, Ambassador Lehman submitted a reply that responded to two—but not all three—of the points raised in Chairman PELL's letter. In his letter to Chairman PELL, Ambassador Lehman stated:

With respect to the testimony of Administration witnesses received by your Committee during consideration of these two Treaties, I can affirm that the Senate should regard explanations of the meaning of the Treaties and the obligations they entail as authoritative, and that the Senate can expect the Administration to interpret and implement the Treaties in accord with such explanations.

Left unaddressed in this reply was any comment as to whether the Bush administration thinks the Senate must incorporate its understandings of the treaty as conditions to the resolution of ratification if it expects to hold the executive branch to those understandings. As I shall explain, I am pleased Ambassador Lehman filled in this blank in a very satisfactory manner during the Armed Services Committee hearing last week.

The notion that shared understandings that the Senate chose not to incorporate in its resolution of ratification were not necessarily binding on the administration was a central element of former State Department Legal Advisor Abraham Sofaer's original doctrine on the division of powers between the Senate and the Executive in the area of treaty interpretation. Judge Sofaer's extraordinary assertion of March 26, 1987, that when the Senate "gives its advice and consent to a treaty, it is to the treaty that was made, irrespective of the explanations it is provided" became shorthand for what came to be known as the "Sofaer Doctrine."

At the heart of the dispute between the Senate and the Reagan administration on the treaty interpretation issue was the question of whether a specific "means test" proposed by senior executive branch legal officials had to be satisfied before executive branch testimony and other official communications to the Senate during ratification proceedings would be treated as binding on all future Presidents under domestic law.

In an April 9, 1987, opinion written by Assistant Attorney General Charles Cooper, the Justice Department acknowledged that in certain instances the President would be estopped from making an interpretation that conflicted with what the Senate was told

at the time of ratification. Mr. Cooper's legal memorandum included the following statements:

If . . . the ratification record unequivocally shows that the President presented the treaty to the Senate based on specific, official representations regarding the meaning of an ambiguous provision, that the Senate regarded that understanding as important to its consent, and that the Senate relied on the representations made by the executive branch in approving the treaty (and thus in refraining from attaching a formal reservation setting forth the understanding), we believe that the President would, in effect, be estopped from taking a contrary position in his subsequent interpretation of the treaty, just as he would be bound by a formal reservation or understanding passed by the Senate to the same effect.

The Justice Department's recognition that executive branch testimony during the ratification proceedings could—at least in certain circumstances—be binding on future Presidents repudiated Judge Sofaer's earlier assertion that the Senate could not rely on the representations it received as to a treaty's meaning. The Justice Department's opinion was endorsed 1 year later in a March 17, 1988, letter to Senator LUGAR from White House Counsel Arthur Culvahouse. In the Culvahouse letter, the White House contended that Presidents would be bound by executive branch representations to the Senate at the time of ratification—but only if those communications met a specific means test. According to Culvahouse, executive branch testimony should be treated as binding only if it was: First, authoritatively communicated; second, clearly intended; and third, generally understood and relied upon by the Senate in its advice and consent to ratification.

For advocates of the reinterpretation of the ABM Treaty, the attraction of the Culvahouse means test that it afforded the executive branch a virtually unlimited set of options for disavowing the binding effect of ratification testimony presented by previous administrations. As the New York Times noted in a May 5, 1988, editorial, "Since it is hard to know what this mumbo-jumbo means, Presidents would be free to do with treaties as they wish."

If a future President wanted to evade the obligations flowing from a particular treaty interpretation presented to the Senate at the time of ratification, he could declare that the Executive branch official who presented the testimony in question was not "authoritative." While the Senate agreed in principle that it could not expect to rely on representations which were not authoritative, efforts by the Reagan administration to discount on this basis testimony on the ABM Treaty in 1972 by certain senior officials, including the Secretary of Defense and the Director of Defense

Research and Engineering, revealed the potential for abuse concerning what would, at first blush, appear to be a commonsense rule.

If a future president preferred not to try to exploit the authoritative witness loophole, he could turn to either of the two other escape clauses incorporated in the Culvahouse/Sofaer criteria. For example, a future president could assert that particular testimony could be disregarded, because it was not generally understood by Senators who voted on the treaty. How would one determine what may or may not have been in the minds of Senators who heard the testimony or reviewed the hearing prints? Alternatively, he could claim—as was done in the ABM case—that the ratification record does not provide sufficient indication that all or most Senators “relied upon” a particular body of testimony in voting on the treaty. Again, how is one to determine what testimony was or was not on the minds of particular Senators at the time they cast their votes?

If the Senate had accepted all three components of the Culvahouse means test and carried it to its logical conclusion, Senators would have had no recourse during the INF ratification proceedings not only to have confirmed that each witness was authoritative (as we in fact did), but also to have paused after each bit of testimony and made it a matter of record that they regarded each statement as clearly intended, generally understood, and one on which they would rely. Such an approach would not only have placed an inordinate burden on the Senate, it also would have made a mockery of Senate ratification proceedings.

In lieu of the straightjacket which would have been imposed on the Senate by the Culvahouse criteria, the Senate adopted a treaty interpretation amendment to the resolution of ratification accompanying the INF Treaty, which incorporated a more comprehensive and common-sense definition, based on the treaty clauses of the Constitution, of what constituted binding testimony. The provision, known as the Byrd-Biden amendment provided, first, that the INF Treaty must be interpreted by future Presidents “in accordance with the common understanding of the treaty shared by the President and the Senate at the time the Senate gave its advice and consent to ratification.” The amendment declared that this common understanding was based on:

(A) First, the text of the Treaty and the provisions of this resolution of ratification; and

(B) Second, the authoritative representations which were provided by the President and his representatives to the Senate and its Committees in seeking Senate consent to ratification, insofar as such representations were di-

rected to the meaning and legal effect of the text of the Treaty.

During the Senate debate on the Byrd-Biden amendment, Senator SPECTER argued that it should be defeated because, *inter alia*, the amendment's definition of what constituted a “common understanding” of the treaty's meaning did not enumerate the three criteria of the Culvahouse means test. Rejecting this and other criticisms, the Senate on May 26, 1988, adopted the Biden-Byrd amendment by an overwhelming and bipartisan vote of 72-27.

Although supporters of the Byrd-Biden amendment thought that this vote had resolved the issue, Senator SPECTER pursued the debate further the following day. As I previously mentioned, the Senator demanded a roll-call vote on an amendment he offered which would have qualified the Byrd-Biden amendment by adding the following sentence:

Common understanding means a shared interpretation which is both authoritatively communicated by the Senate by the Executive and clearly intended, generally understood, and relied upon by the Senate in its advice and consent to ratification.

By offering his amendment, Senator SPECTER performed an important service in ensuring that the Culvahouse means test would be put to a clear-cut vote. Following an extensive debate in which the opposing sides forcefully and intelligently argued their respective cases, the Senate rejected the amendment—and with it what remained of the Sofaer Doctrine—on a bipartisan vote of 67 to 30.

Mr. President, until the ratification proceedings on TTBT/PNET, the Senate had no indication of where the Bush administration stood on these critical issues. I am very pleased, therefore, that in his correspondence with Chairman PELL and his testimony before the Armed Services Committee, Ambassador Lehman provided assurances that fully recognize the Senate's rights and prerogatives in this area.

At the Armed Services Committee's September 17 hearing, I pointed out to Ambassador Lehman that on September 11, he had provided the Foreign Relations Committee a letter containing various clarifications and assurances concerning the meaning of the TTBT protocol as it applies to changes that can be made in the TTBT protocol without requiring an amendment, and hence without Senate approval. The Foreign Relations Committee was satisfied with these representations and chose not to incorporate this shared understanding as to the meaning of the treaty as a condition in its resolution of ratification. I then asked him the following question: “Can the Senate rely on the Administration to adhere to this shared understanding if the Senate does not explicitly incorporate the understanding in its resolu-

tion of ratification?” Ambassador Lehman replied, “Yes, Mr. Chairman.”

I then asked Ambassador Lehman the following: “Can we assume, then, that your assurance applies in all other instances in this treaty ratification proceedings wherein the Senate and the Executive Branch, as a result of authoritative testimony and other official communications, reached shared understandings as to the meaning of the treaties and their protocols?” Again, Ambassador Lehman replied, “Yes, Mr. Chairman.”

After obtaining these assurances as to the meaning of the treaties, I pursued with Ambassador Lehman the manner in which the Executive branch would inform the Senate of proposed technical changes in the TTBT Protocol that would not require submission in the form of amendments. I pointed out that on September 14 he had provided the Foreign Relations Committee with a letter on this subject in which he gave an assurance that the administration would provide the Senate prior notice of such changes.

This issue, in distinction to the understandings we reached with the executive branch on the question of changes requiring submission of an amendment, does not involve the meaning of the treaty or any understanding reached with the Soviets during the negotiations. Rather, it relates solely to political commitments the executive branch has made to the Senate during the ratification proceedings. After confirming that giving the Senate prior notice of technical changes was not required by the TTBT Protocol, I asked whether the Senate could rely on the Administration to adhere to its commitment to provide such prior notice if the Senate did not explicitly incorporate this assurance in its resolution of ratification. Ambassador Lehman stated: “Yes, Mr. Chairman.”

Finally, I addressed the question of another unilateral political commitment provided the Senate by the executive branch during the TTBT/PNET ratification proceedings. I pointed out that on September 13, General Scowcroft had written Senator COHEN a letter in which he provided an assurance that the Administration would expeditiously implement “effective counterintelligence and security measures to protect United States personnel and programs from improper collection of information by Soviet on-site inspectors or monitors.” I asked Ambassador Lehman whether the Senate could rely on the Administration to adhere to this commitment if the Senate does not explicitly incorporate it in the form of a condition to its resolution of ratification? Ambassador Lehman replied: “Once again, the answer is yes.”

Mr. President, I commend Ambassador Lehman for providing such straight-forward and unambiguous answers to the crucial questions I posed concerning the Senate's ability to rely on assurances provided by the executive branch during the ratification proceedings related either to the meaning of the treaty or to political comments made in conjunction with treaty ratification.

In sum, we got an answer from him affirming, in my view, the Senate position which we held so strongly during INF ratification and also on the ABM interpretation question.

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

ASSISTANT TO THE  
SECRETARY OF DEFENSE,

Washington, DC, September 18, 1990.

HON. SAM NUNN,  
Chairman, Committee on Armed Services,  
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I write in further response to questions concerning the position of the Office of the Secretary of Defense (OSD) on the nuclear testing safeguards contained in the TTBT-PNET resolution of ratification passed by the Committee on Foreign Relations.

OSD believes the language on safeguards in the resolution is acceptable. Although there are minor changes in wording from the safeguards submitted to the Senate in 1987 and endorsed by President Bush in his June 28 letter to the Senate, OSD believes that the clear intent of the new language is not to change the meaning of, or to lessen the United States Government commitment to, the safeguards. These safeguards are essential to permit the United States to conduct those activities, including a vigorous underground nuclear testing program, necessary to maintain a safe, effective, reliable, and survivable nuclear deterrent.

Sincerely,

ROBERT B. BARKER.

Mr. PELL. Mr. President, I yield such time as he may need to the majority leader.

Mr. MITCHELL. Mr. President, today the Senate will offer its advice and consent to the ratification of two treaties limiting nuclear testing. I am confident that the Senate will approve these treaties, and the associated protocols on verification. They merit the support of the Senate.

Ratification of the Threshold Test Ban Treaty [TTBT] and the Peaceful Nuclear Explosions Treaty [PNET] has been deferred for over a decade since they were first negotiated in the 1970's, as the United States and the Soviet Union discussed further limits on testing and improved methods of verifying these treaties. With the incorporation of the two protocols on verification that have been successfully negotiated, we can now have high confidence that these two treaties can be effectively monitored and treaty compliance effectively verified.

The TTBT and the PNET have been carefully examined by the Foreign Relations Committee, the Intelligence

Committee, and the Armed Services Committee. The Committee on Foreign Relations, under the able leadership of Senator PELL, conducted extensive hearings and solicited the views of experts inside and outside the Government. The record produced is fair and balanced, and, most importantly, it is one of overwhelming support for the ratification of these two treaties with their associated protocols.

The Intelligence Committee also conducted an extensive evaluation of these treaties, with special attention to the issues of monitoring and compliance that fall within the purview of that committee. This detailed examination provided valuable insights for the use of the Foreign Relations Committee and for all other senators as well. The Armed Services Committee provided useful explorations of the military implications of the treaties.

The work of the Senate's committees has been thorough, careful, and comprehensive. The Senate can have high confidence that these treaties have received the necessary scrutiny required to enable the Senate to fulfill its Constitutional responsibilities in consenting to ratification.

The Senate arms control observer group also made a valuable contribution to this process. For the past 2 years, while the protocols on verification were under negotiation in Geneva, Senate observers met frequently with the United States and Soviet negotiators. Senators were familiar with the details of the protocols as they were developed. This understanding has contributed greatly to the facility with which the Senate has handled the process of consenting to ratification.

The cooperation between the two branches in the case of these two protocols provides a model that will prove even more valuable as the Senate considers further arms control agreements in the coming year, notably the START and CFE agreements soon to be completed.

I am pleased that the Senate Foreign Relations Committee added a declaration to the resolution of ratification of the TTBT endorsing the commitment to take further steps toward limiting nuclear testing. A complete ban on nuclear testing has long been a goal of the United States, and I believe the administration should move immediately to explore further steps toward that goal which could be taken.

While it will be necessary, of course, to evaluate the experience gained in implementing the two treaties we will vote upon today, we should nevertheless move forward promptly to explore further limits on nuclear testing. The declaration attached to the resolution of ratification calls for these steps to be taken, and I strongly support its adoption. I urge the administration to

take seriously the call for further steps limiting nuclear tests.

Finally, I note the assurances which the Senate received concerning the authoritativeness of administration testimony and the provision of advance notice and prior consultations to the Senate if changes to the verification protocols are contemplated. These assurances remove the necessity of incorporating into the resolution of ratification the Senate's understanding, which it shares with the administration, of these matters. This sets a good precedent for future treaties. It is my hope that unproductive debates over treaty interpretation, such as that which accompanied consideration of the INF Treaty in the Senate, can be avoided in the future as well.

I thank my colleagues for their courtesy and I yield the floor.

Mr. WARNER. I see that the distinguished Senator from Indiana [Mr. LUGAR] is on the floor. I would like to ask my distinguished colleague several questions on the second declaration contained in the resolution of ratification approved by the Foreign Relations Committee upon which he serves. I am concerned that this declaration may be interpreted by some as inconsistent with this administration's policy, and that of the last several administrations, regarding future limitations on nuclear testing. I believe that Senators should have a clear understanding of the meaning and intent of that declaration before voting on the resolution.

My first question pertains to the declaration's reference to the 1963 Limited Test Ban Treaty [LTBT] and the 1968 Nonproliferation Treaty [NPT]. Do these treaties commit the United States "to seek the discontinuance of all tests explosions of nuclear weapons for all time", as stated in the resolution?

Mr. LUGAR. I heartily agree with the point made by my distinguished colleague from Virginia. Before approving this resolution, the Senate should have a clear understanding of the meaning and intent of the second declaration, which urges the administration to follow a certain policy with respect to nuclear testing limitations. Such limitations have important implications for the Nation's ability to maintain the safe and effective nuclear deterrent that is critical to our national security.

Responding to the question, the preamble to the LTBT states that the parties are "seeking to achieve the discontinuance of all test explosions of nuclear weapons for all time". However, the preamble to the LTBT clearly places the question of nuclear testing within the context of achievement of an agreement on general and complete disarmament under strict international control, which would put an end to

the armaments race and eliminate the incentive to the production and testing of all kinds of weapons, including nuclear weapons.

In short, the LTBT looks toward the goal of a world in which we would no longer need to rely on nuclear or non-nuclear weapons for our security. In such a world, we would no longer need to produce or test nuclear or non-nuclear weapons. But the LTBT clearly does not establish any commitment by the parties to pursue a comprehensive test ban [CTB] *per se*. In fact, the legislative record of the LTBT ratification, including formal communications to the Senate from President Kennedy, makes clear that it was the U.S. intention to continue a vigorous underground nuclear testing program.

Let me add that, with respect to the NPT, article VI of that treaty has been interpreted by some as committing the United States to negotiate a CTB. In fact, there is no mention of nuclear testing in article VI. Article VI simply states that the parties undertake to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control. The United States, as evidenced by INF Treaty, the recent bilateral CW destruction agreement, and significant progress toward START and CFE agreements, is clearly seeking to fulfill its commitments under article VI of the Nonproliferation Treaty.

Mr. WARNER. I thank the honorable Senator from Indiana for that very helpful clarification.

My second question concerns the declaration's references to the 1974 Threshold Test Ban Treaty [TTBT]. Will this treaty, when ratified, commit the United States to begin CTB negotiations?

Mr. LUGAR. No; it does not, and this language in the resolution of ratification should not be interpreted, in my view, to commit the United States to begin negotiations on a CTB. While article I, paragraph 3, of the TTBT states that the "Parties shall continue their negotiations with a view achieving a solution to the problem of the cessation of all underground nuclear weapon tests", the treaty's preamble—in a manner similar to the LTBT and NPT—puts this question within the broader context of effective measures toward reductions in strategic arms, nuclear disarmament, and general and complete disarmament under strict and effective international control. Thus, the TTBT does not commit the United States to begin immediate CTB negotiations. Moreover, I would again add that the process of elimination of an entire class of nuclear missiles is taking place under the INF Treaty, and negotiations are well along toward

important and stabilizing reductions of strategic nuclear arms. These achievements represent real contributions to the long-term objectives embodied in the TTBT's preamble and article 1.

Mr. WARNER. Again, I thank my distinguished colleague from Indiana for this very helpful and informative elaboration.

The declaration also states that the United States shares a special responsibility with the Soviet Union to continue the bilateral nuclear testing talks to achieve further limitations on nuclear testing, including the achievement of a verifiable comprehensive test ban. The Bush administration, for its part, has stated that it has a step-by-step approach to further limits on nuclear testing. It also has stated that while a CTB remains—as it has been in previous Republican and Democratic administrations—a long-term objective, that a CTB must be viewed in the context of a time when we do not need to depend on nuclear deterrence to ensure international security and stability, and when we have achieved broad, deep, and verifiable arms reductions, substantially improved verification capabilities, expanded confidence-building measures, and greater balance in conventional forces.

My next question, then, is perhaps the most important for those of us, like yourself, who are concerned about the relationship between U.S. national security requirements and our nuclear testing policies: Is it the intent of the declaration to change fundamentally or undermine the administration's step-by-step approach to nuclear testing limitations?

Mr. LUGAR. This resolution would not have been voted out of committee by a vote of 19-0 if it had been intended to change or undermine existing U.S. policy.

As we know, the President, in his statement of January 9 of this year, affirmed that the United States has a step-by-step policy regarding further limits on nuclear testing. He made clear that once the TTBT and PNET are ratified, it will be necessary as a practical matter to observe their implementation, so that the United States will be better able to assess the verification lessons learned, and also to determine the additional moves that make sense from a national security standpoint.

The President also stated that nuclear weapons will continue to play a critical role in U.S. national security, and so long as this is the case, the United States must be free, consistent with treaty obligations, to conduct nuclear tests to ensure the credibility of our forces. Finally, the President, stated—and administration officials reiterated during recent Senate hearings—that the United States has not identified any further limitations on nuclear

testing beyond those now contained in the TTBT that would be in the U.S. national security interest.

As my distinguished colleague from Virginia may recall, the vital importance of nuclear testing was further emphasized by this administration in a July 1990 letter to Senators from Brent Scowcroft, Assistant to the President for National Security Affairs. In that letter, General Scowcroft wrote: "Recent revelations regarding safety of certain nuclear warheads underscore the importance of testing, both as a vehicle for detecting possible weaknesses in weapons safety and in devising appropriate corrective measures for any such weaknesses. To do otherwise would create uncertainty as to the safety of the stockpile, and render us unable to make safety improvements and unable to react to new threats. This could tend to erode stability, not enhance it."

With respect to a CTB, the Senator from Virginia has correctly summarized the President's position. In other words, while a CTB remains a long-term objective, this is an objective that must be viewed in the context of having achieved significant changes in the world as we know it today—and most particularly, an end to dependence on nuclear deterrence to ensure international security and stability.

In conclusion, in my view and I believe that of many of my colleagues on the Committee of Foreign Relations, the declaration is not intended to criticize or change administration policy. I believe the administration's policy with respect to nuclear testing limitations is a sound one, and that it deserves the support of the Senate.

Mr. WARNER. This has been a very important and useful exchange. It is important for Senators who would like to support ratification of these treaties to know that, in voting for this resolution, we are not seeking to undermine the nuclear deterrent that have helped to keep the peace for more than 40 years, or to change a sound U.S. policy on nuclear testing limitations. They should also know that we are not somehow endorsing further limitations on nuclear testing, or even a total ban, as goals in and of themselves. Rather, we are endorsing sound arms control agreements that make sense from a national security standpoint, contribute to stability and still guarantee a reliable, safe and effective deterrent for as long as we need to depend on it.

That said, I have one additional question for the Senator from Indiana. Is it the intent of the resolution that the United States should, as the next step, begin CTB negotiations with the U.S.S.R. at the Nuclear Testing Talk?

Mr. LUGAR. I do not believe that the committee's language was intended, nor do I believe it should be inter-

puted to suggest this. Since the CTB is a long-term objective that must be viewed in the context of a number of other important factors, it should not be the objective of actual negotiations under present circumstances. The declaration should be seen as consistent with the idea that a CTB remains a long-term goal, as the administration has stated, and that the Senate expressed its support for a CTB in that context. For now, we must proceed with implementation of these important treaties once they are ratified and explore what additional steps make sense from the perspective of U.S. national security.

Mr. WARNER. I see that the distinguished ranking member of the Committee on Foreign Relations, Senator HELMS, is now on the floor and has been listening to our exchange. Does the distinguished Senator from North Carolina agree with our understanding of the committee's declaration on U.S. responsibilities with respect to further limitations on nuclear testing.

Mr. HELMS. I have listened to the exchange between the two distinguished Senators and agree fully with Senator LUGAR's understanding of this declaration on the context for negotiations to further limit, and ultimately ban, nuclear testing.

Mr. PELL. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays on both resolutions to the ratification.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Reserving the right to object.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. PELL. Mr. President, I withdraw my request.

The PRESIDING OFFICER. The Senator has withdrawn his request.

Mr. PELL. I yield the floor.

Mr. WARNER. Mr. President, the two treaties before the Senate today—the Threshold Test Ban Treaty, or TTBT, and the Peaceful Nuclear Explosions Treaty, or PNET—have been delayed for final Senate advice and consent since their signing in 1974 and 1976, respectively, due to the lack of adequate monitoring and verification protocols. Thanks to Presidents Reagan and Bush, and the tireless efforts and negotiating skill of Ambassador Paul Robinson, the protocols which are an integral part of each treaty contain provisions necessary to ensure that the United States has sufficient monitoring rights for assessing Soviet compliance with the treaties. I now fully support these treaties and hope that the Senate will approve ratification of the agreements in an expeditious manner.

My distinguished colleagues on the Senate Foreign Relations Committee and the Senate Select Committee on Intelligence have conducted extensive

reviews of the treaties and their related protocols, focusing particularly on the U.S. capability to monitor Soviet compliance with the provisions of the treaties and protocols. The comments and recommendations contained in the reports furnished by these two committees have been very helpful in my own review of the treaties.

The Senate Armed Services Committee held a hearing on September 17, 1990, to examine the military implications of further limitations on nuclear testing. Ambassador Ron Lehman, Director of the Arms Control and Disarmament Agency, and Ambassador Robinson testified at this hearing, as well as officials from the Office of the Secretary of Defense, the Joint Chiefs of Staff, and the Department of Energy. Several important issues were raised at our hearing, which I would like to discuss briefly.

Since World War II, nuclear deterrence has maintained peace between the major powers. As long as nuclear weapons are in the U.S. stockpile, underground testing will remain an important requirement in order to ensure the credibility of the U.S. nuclear deterrent. Specifically, there are five reasons why the U.S. needs to test nuclear devices:

To have confidence and ensure the reliability of our nuclear weapons,

To ensure the safety and security of our nuclear weapons,

To understand and enhance the survivability of U.S. systems, including the command, control, and communications network,

To modernize our forces and redesign weapons for changes in military requirements, and

To avoid technological surprise.

I express my support for the President's policy toward future nuclear test negotiations as articulated by Ambassador Lehman in his prepared testimony before the Senate Armed Services Committee:

The President is firm in his commitment to the step-by-step process and to a Comprehensive Test Ban as a long-term objective of the United States. But we are not there yet. We are convinced that so long as the U.S. must rely upon nuclear weapons for deterrence, we must also have a sensible program.

In a further comment on the step-by-step approach toward negotiating a comprehensive test ban in the future, Robert Barker, Assistant to the Secretary of Defense for Atomic Energy, told the Committee that "the Departments of Defense, State and Energy are exploring alternatives \* \* \*" for further limitations, but he went on to say, "To date, we [the Departments of Defense, State and Energy] have not succeeded in finding a next step which does not have adverse national security implications."

The second declaration to the TTBT resolution of ratification concerns

future negotiations toward the ultimate goal of a comprehensive ban on all nuclear testing. I was concerned that this declaration may be construed by some as being at odds with the President's or, for that matter, long-standing U.S. policy. I sought further clarification from Ambassador Lehman on this issue, who assured me in a statement dated September 24, 1990, that:

The language in the SFRC resolution of ratification is consistent with the Administration's stated long-term objective of a Comprehensive Test Ban (CTB), an objective for a time when we do not need to depend on nuclear deterrence to ensure international security and stability, and when we have achieved broad, deep, and effectively verifiable arms reductions, substantially improved verification capabilities, expanded confidence-building measures, and greater balance in conventional forces.

Ambassador Lehman further explained his understanding of the term "special responsibility" contained in the declaration as an acknowledgment of the position of the United States and the Soviet Union as the world's major nuclear powers and the bilateral approach to negotiations on nuclear testing that our two countries have undertaken in the interest of promoting peace and security in the world.

Mr. President, I ask unanimous consent to print Ambassador Lehman's statement in the RECORD.

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

ARMS CONTROL AND  
DISARMAMENT AGENCY,

Washington, September 24, 1990.

Hon. John W. Warner,  
Senate Committee on Armed Services,  
U.S. Senate

DEAR SENATOR WARNER: Ambassador Lehman thanks you for the opportunity to testify before the Senate Armed Services Committee and appreciates you giving him the forum to clarify the Administration's views on certain points with regard to the two new verification protocols to the Threshold Test Ban and the Peaceful Nuclear Explosions Treaties.

Pursuant to conversations with your staff after Ambassador Lehman's testimony on 17 September, we are providing you with clarification of certain points, for you to enter into the record. I trust that you will find all the comments fully responsive.

We also wish to thank you for your support of the new protocols which for the first time provide the opportunity to verify effectively compliance with the TTBT and PNET treaties.

If you have any questions or need additional information, please feel free to contact me at 647-3612.

Sincerely,

RICHARD N. HOLWILL,  
Counselor.

ADDITION TO THE STATEMENT OF AMBASSADOR RONALD F. LEHMAN II IN ANSWER TO QUESTIONS POSED BY SENATOR WARNER SENATE ARMED SERVICES COMMITTEE, SEPTEMBER 17, 1990

As far as safeguards are concerned, the SFRC resolution is acceptable. As a matter

of policy, as stated by the President in his letter to the Senate of June 28, the Administration will pursue all safeguards in an effective manner.

As I stated at the SASC hearing, the preambular language of the Limited Test Ban Treaty (LTBT) and the Nuclear Non-Proliferation Treaty (NPT) does not commit the U.S. to seek the discontinuance of all test explosions of nuclear weapons for all time. However, the language in the SFRC resolution of ratification is consistent with the Administration's stated long-term objective of a Comprehensive Test Ban (CTB), an objective for a time when we do not need to depend on nuclear deterrence to ensure international security and stability, and when we have achieved broad, deep, and effectively verifiable arms reductions, substantially improved verification capabilities, expanded confidence-building measures, and greater balance in conventional forces. In this sense, the Administration understands that it is the intent of the second declaration of the SFRC resolution of ratification to be consistent with the President's policy.

You also asked about Article I, paragraph 3 of the TTBT, which states that "the parties shall continue the negotiations with a view toward achieving a solution of the problem of the cessation of all underground nuclear tests." As I stated at the hearing and in my prepared statement, the Administration has a step-by-step approach to further limits on nuclear testing. The U.S. is guided by general objectives such as pursuing peace and security and seeking stabilizing arms control agreements which promote the national security of the U.S. and its allies. This is the context in which we have developed the step-by-step approach.

You also asked whether the U.S. shares a special responsibility with the Soviet Union to continue the bilateral nuclear testing talks to achieve further limitations on nuclear testing, including the achievement of a verifiable comprehensive test ban. As I stated at the hearing, since the U.S. and the Soviet Union are the world's major nuclear powers, obviously we have focused on a bilateral approach to negotiations on this subject. We take the term, "special responsibility" in the context of the national security of the United States and in a manner consistent with the conditions for progress that I cited above.

Mr. WARNER. Mr. President, with these assurances in mind, it is my understanding that the intent of the second declaration to the TTBT resolution of ratification is consistent with the long-standing policy of the United States and that U.S. participation in continued negotiations toward a comprehensive test ban will be conducted in accordance with the President's stated policy and in a way which assures no detriment to our future national security.

As part of the January 13, 1987 letter of transmittal to the Congress for the TTBT and PNET, there were six safeguards that were termed "essential" to protect United States technical capabilities necessary to mitigate any advantage that the Soviet Union might gain in the event they violate or abrogate the treaties and protocols.

Mr. President, I ask unanimous consent to print in the RECORD the text of the President's letter.

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

PRESIDENTIAL LETTER, JANUARY 13, 1987

TO THE SENATE OF THE UNITED STATES: Two treaties between the United States of America and the Union of Soviet Socialist Republics on (1) the Limitation of Underground Nuclear Weapon Tests, and the Protocol thereto, known as the Threshold Test Ban Treaty (TTBT) signed in Moscow on July 3, 1974, and (2) Underground Nuclear Explosions for Peaceful Purposes, and the Protocol thereto, known as the Peaceful Nuclear Explosions Treaty (PNET) signed in Washington and Moscow on May 28, 1976, were transmitted to the Senate by President Ford on July 29, 1976, with a view to receiving advice and consent to ratification. (Senate Executive N, 94th Cong., 2d Sess.) Although hearings were held a year later, the Senate itself has not acted on the treaties. I ask the Senate to consider these important treaties anew in light of developments that have taken place over the last decade.

On August 14, 1986, I transmitted to the Congress a comprehensive study which stated U.S. national security concerns as well as our views on necessary verification improvements to the TTBT and the PNET, in response to the requirements of Section 1003 of the FY 1986 Department of Defense Authorization Act (P.L. 99-145). I am enclosing a copy of this study and commend it to your attention.

The security of the United States and the entire free world, today and for the foreseeable future, depends on the maintenance of an effective and credible nuclear deterrent by the U.S. This is a considerable challenge, in light of continuing efforts by the Soviet Union to undercut the effectiveness of our deterrent. With the support of Congress we have succeeded in meeting this challenge, and together we must continue to do so in the future.

Today, I am requesting per my October 10, 1986, letter that the Senate give advice and consent, subject to the condition set out below, to two pending treaties that have significant implications for Western security: the TTBT and PNET. These treaties have the common purpose of limiting individual nuclear explosions to no more than 150 kilotons. The TTBT, which prohibits nuclear weapon tests above 150 kilotons, places significant constraints on the efforts we may undertake in the U.S. nuclear test program to respond to Soviet nuclear and non-nuclear activities aimed at undercutting our deterrent. Hence, it is imperative that we have the necessary provisions that will make the TTBT effectively verifiable and thus assure ourselves that the Soviet Union is fulfilling its obligations and is thereby equally constrained.

Unfortunately, as I have frequently stated and the enclosed study makes clear, the TTBT and PNET are not effectively verifiable in their present form. Large uncertainties are present in the current method employed by the United States to estimate Soviet test yields. I have on several occasions reported to the Congress on the problems with Soviet compliance with the TTBT. Therefore, achieving Soviet agreements to improved verification measures that would provide for effective verification of these treaties has been my highest priority in the area of nuclear testing limitations.

As I stated in my March 14, 1986 letter to General Secretary Gorbachev, effective verification of the TTBT and PNET requires that we reduce the current unacceptable level of uncertainty in our estimates of the yields of nuclear tests. Indeed, leaders in previous Congresses have shared my view that the present large degree of uncertainty in such estimates is unacceptable, as well as my desire for sharp improvements. In this regard, we require—and have conveyed to the Soviets that we require—effective verification through direct, on-site hydrodynamic yield (CORRTEX) measurement of all appropriate high-yield nuclear detonations. Further, I informed General Secretary Gorbachev that, if the Soviet Union would agree to essential verification procedures for the TTBT and the PNET, I would then be prepared to request the advice and consent of the Senate to ratification of the treaties. Ratification of the treaties without such provisions would be contrary to the national security interests of the United States.

As written, the TTBT relies solely on teleseismic detection and yield measurement systems and on inadequate and unverifiable data exchange. The Soviet Union has apparently had problems in correctly assessing the yields of U.S. nuclear tests. Despite our best efforts, the Soviet Union has so far not accepted our practical proposal for achieving the necessary verification improvement of the TTBT and the PNET. We have not yet found any alternative approach which equals the effectiveness of CORRTEX—we are striving to achieve a yield-estimation accuracy of about 30 percent by this method. We have, nonetheless, advised the Soviets, at three Geneva nuclear testing experts meetings in 1986, that the U.S. is willing to consider any other direct yield measurement method the Soviets might propose, provided it is at least as capable (in terms of accuracy and non-intrusiveness) as CORRTEX. To date, they have not been forthcoming in proposing or explaining alternative verification techniques that would meet our requirements.

Recognizing the role of the Senate in the ratification process, I am therefore requesting that the Senate give its advice and consent to ratification of the TTBT and the PNET, subject to a condition in the following form:

"The Senate's Resolution of advice and consent to ratification is subject to the condition that the President shall not proceed with ratification of the Treaty on Limitation of Underground Weapon Tests and the Treaty on Underground Nuclear Explosions for Peaceful Purposes until the President has certified to the Senate that the Union of Soviet Socialist Republics has concluded with the United States additional agreements expanding upon the obligations stated in Article II of the Treaty on Limitation of Underground Weapon Tests including provisions for direct, accurate yield measurements taken at the site of all appropriate nuclear detonations so that the limitations and obligations of these treaties, inter alia the 150 kiloton limit, are effectively verifiable, and until such agreements have been submitted to the Senate, and the Senate has advised and consented to their ratification."

I am hopeful we can reach an agreement with the Soviet Union which will allow me to certify that the treaties are effectively verifiable. I will be prepared to ratify the TTBT and the PNET at such time as the condition cited above has been fulfilled.

Further, I informed the General Secretary in Reykjavik that, once our verification concerns have been satisfied and the treaties have been ratified, and in association with a program to reduce and ultimately eliminate all nuclear weapons, I would propose that the United States and the Soviet Union immediately engage in negotiations on ways to implement a step-by-step parallel program of limiting and ultimately ending nuclear testing.

The steps in this program would take into account our long-standing position that a comprehensive test ban is a long-term objective which must be viewed in the context of a time when we not need to depend on nuclear deterrence to ensure international security and stability, and when we have achieved broad, deep, and verifiable arms reductions, substantially improved verification capabilities, expanded confidence-building measures, and greater balance in conventional forces.

Now and for the foreseeable future, our nuclear weapons stockpile plays a prominent role in our national security posture. As long as this is the case, we must safeguard the efficacy of that stockpile and our confidence in it. These safeguards are considered an essential element in ensuring the nation's ability to have the technical means and knowledge necessary to support the nuclear deterrent and existing and future national security policy.

Safeguard "A": The conduct, within the constraints of existing treaties on nuclear testing, of comprehensive, aggressive, and continuing underground nuclear test programs designed to add to our knowledge and improve our weapons in all areas of significance to our military posture for the future.

For the purpose of Safeguard "A," the underground nuclear test programs shall include, but not be limited to, tests sufficient to ensure that our nuclear forces and their supporting command, communications, and intelligence systems are safe, secure, effective, reliable, and survivable, and to advance our understanding of nuclear weapons effects.

Safeguard "B": The maintenance of modern nuclear laboratory facilities and programs in theoretical and exploratory nuclear technology which will attract, retain, and ensure the continued application of our human scientific resources to those programs on which continued progress in nuclear technology depends.

Safeguard "C": The maintenance of the basic capability to resume essential nuclear test programs in prohibited environments; and to conduct testing promptly in prohibited yield ranges, should such tests be deemed essential to our national security.

Safeguard "D": In conjunction with a vigorous verification program, the conduct of a comprehensive and continuing research and development program to improve our monitoring capabilities and operations with a goal of providing high-confidence monitoring of the actions from which noncompliance with existing nuclear testing treaties could be inferred.

Safeguard "E": The continuing development of a broad range of intelligence gathering and analytical capabilities and operations to improve our knowledge of the nuclear arsenals, nuclear weapons development programs, related nuclear programs, and the capabilities and achievements of the Soviet Union and other nations.

Safeguard "F": The conduct of a governmental review at periodic intervals to determine whether continued compliance with

the provision of existing treaties on nuclear testing is in the U.S. national security interests.

Mr. WARNER. Mr. President, these safeguards were virtually identical to those formulated by the Joint Chiefs of Staff and submitted along with the 1963 Limited Test Ban Treaty [LTBT]. In his letter transmitting the TTBT and PNET protocols to the Senate on June 28, 1990, President Bush stated that he "remains committed to the nuclear testing treaty safeguards that were submitted to the Senate in 1987, which are essential to the national security and to the maintenance of a credible nuclear deterrent."

The Senate Foreign Relations Committee has recommended a declaration to the TTBT protocol which sets forth five safeguard provisions. While the administration participated in negotiating the revised safeguards and supports the declaration, the agreed-upon provisions may be considered by some to be less forceful than those contained in the 1987 transmittal letter. Moreover, the declaration altogether excludes a provision relating to periodic review of treaty compliance.

During our hearing last week, I raised this issue and asked whether the administration would shift to the minimum standard for safeguards as set out in the declaration recommended by the Foreign Relations Committee, or whether the administration would continue to pursue activities as set out in the originally proposed safeguards. Mr. Barker stated in a letter dated September 18, 1990, the position of the Department of Defense that the "clear intent of the new language is not to change the meaning of, or to lessen the U.S. Government commitment to, the safeguards." In addition, in his statement of September 24, 1990, Ambassador Lehman states that "the Administration will pursue all safeguards in an effective manner."

While I support the declaration on safeguards, I strongly urge the administration to continue to act in accordance with the full set of safeguards proposed in 1987 to protect United States technical capabilities and to ensure against a possible Soviet advantage in the event of a future violation or abrogation of the treaties.

In both the Foreign Relations and Intelligence Committees, several other issues were raised which required clarification or further assurances from the administration. These issues included questions regarding the authoritativeness of testimony from executive branch witnesses on matters of treaty interpretation, prior notice to the Senate on all proposed changes to the treaty protocols, release of information to the Senate on possible Soviet treaty violations, and implementation of effective counterintelligence and security measures to protect

U.S. personnel and programs from improper collection of information during activities regulated by the protocols. These matters are discussed in the reports of these two committees to the Senate. As a member of the Intelligence Committee, I have reviewed the documents referenced in these reports, and I am satisfied there is now a clear understanding between the Senate and the executive branch on these matters.

Mr. President, the protocols to the TTBT and PNET represent several years of hard work in negotiating the comprehensive technical provisions contained in these documents. In the coming year, the Senate may be asked to give its advice and consent to ratification of agreements to reduce strategic arms, conventional forces in Europe, and chemical weapons, and I urge the administration to use these protocols as a model for negotiating tough verification provisions in future arms control agreements.

Mr. HELMS. Mr. President, I yield such time as the distinguished Senator from Maine may require.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Chair recognizes the Senator from Maine.

Mr. COHEN. Mr. President, I am pleased to participate in the Senate's floor consideration of the Threshold Test Ban Treaty and Peaceful Nuclear Explosions Treaty and the protocols to them that were signed at the Washington summit in June.

Since the early 1980's, I have advocated the United States move forward with the ratification of these treaties with appropriate verification arrangements. In fact, it was exactly 6 years ago tomorrow that I and the other conferees on the 1985 defense authorization act reached agreement on a bill that called for the ratification of the TTBT and PNET and the resumption of negotiations on a comprehensive test ban.

In the ensuing 6 years, the relationship between the United States and the Soviet Union has changed significantly, and this was instrumental in enabling the two sides to take the steps that were essential to achieving the protocols to these decade-old treaties.

In September 1987, Secretary Shultz and Foreign Minister Shevardnadze reached agreement on establishing a new forum to conduct step-by-step negotiations on nuclear testing issues. Under the Shultz-Shevardnadze agreement, these nuclear testing talks would, as the first step, seek effective verification measures for the TTBT and PNET to enable their ratification and "proceed to negotiating further intermediate limitations on nuclear testing leading to the ultimate objective of the complete cessation of nucle-

ar testing as part of an effective disarmament process."

The Shultz-Shevardnadze agreement also provided that in order to find effective verification arrangements for the TTBT and PNET, the two sides would design and carry out joint verification experiments in which they would conduct hydrodynamic and seismic monitoring of nuclear explosions at each other's nuclear testing sites. After months of complex negotiations, agreement was reached on how to conduct the so-called JVE and interpret its results, and the actual experiments were carried out in August and September of 1988.

The JVE was not only crucial to the achievement of the verification protocols signed at the Washington summit, but also served as a precedent for the two nations' subsequent agreement to conduct experiments related to the verification of strategic bombers and land- and sea-based ballistic missiles to promote progress in the START negotiations.

As a result of this great care taken by the two sides in elaborating improved verification arrangements for the two treaties, we now have before us protocols which I am confident will enable the effective verification of Soviet activities covered by the treaties.

Accordingly, Mr. President, I think that the administration and its negotiators should be justly proud of these verification protocols.

#### IMPLEMENTATION AND COUNTERINTELLIGENCE

At the same time, however, I believe that I need to put my colleagues on notice that, based on where we stand today, there are two important areas which will require constant congressional vigilance—implementation and future protocol changes. As vice chairman of the Intelligence Committee, I would like to note that our committee looked at these issues in some detail.

With regard to the first, implementation and counterintelligence, we reached the following conclusions:

The executive branch has made sensible decisions on organization and policy for implementing the verification protocols, analyzing the resulting data, producing monitoring estimates, and reaching verification judgments.

There is a threat of Soviet intelligence exploitation of the inspection process, including efforts to compromise the secrecy of United States nuclear weapons and defense programs and to target United States inspectors in the Soviet Union.

No comprehensive interagency risk assessment has yet been completed. The risks at the Nevada test site and at potential locations for housing Soviet inspectors have not been fully evaluated, partly because not all relevant executive branch elements have participated adequately in the assessments.

The executive branch has not yet resolved major issues of funding for implementation and counterintelligence. While the President could postpone exchanging instruments of ratification until funds for implementation are available, the mere availability of funds will not guarantee that the several agencies involved will have the needed counterintelligence resources in place before the first inspection occurs.

As a consequence of these findings, the committee made the following recommendations:

The executive branch should complete a comprehensive risk assessment immediately. In conjunction with that assessment, relevant agencies should inform the Intelligence Committee of their plans for effective counterintelligence and security countermeasures.

The committee recommends that a condition to the instrument of ratification be enacted requiring that the President not exchange instruments of ratification until he certifies to the Senate that sufficient resources and time are available to prepare for TTBT implementation, including counterintelligence and security countermeasures.

In a written response to the committee's recommendations, Lt. Gen. Brent Scowcroft, Special Assistant to the President for National Security Affairs, stated:

I want you to know that we share the Senate Intelligence Committee's concern over the need to implement effective counterintelligence and security measures to protect U.S. personnel and programs from improper collection of information by Soviet on-site inspectors or monitors. This is a matter of high priority for the Administration.

General Scowcroft went on to provide the committee the following assurance:

I want to assure you that the Administration will take no action under the Treaty that would endanger or compromise vulnerable U.S. programs.

While this response is a step in the right direction, I remain concerned that it does not go far enough. The Intelligence Committee's recommendation specifically called upon the President "not to exchange the instruments of ratification until he certifies to the Senate that sufficient resources and time are available to prepare for TTBT implementation, including counterintelligence and security countermeasures." However, I can find no commitment in General Scowcroft's letter to certify to the Senate that the necessary programs will be in place prior to the exchange of the instruments of ratification or, if the executive branch were to require more time, before the first inspectors arrive.

In my judgment, it would be preferable if the Senate were to propose a condition of ratification which required a Presidential certification

before proceeding with the first inspection. However, this is not forthcoming. Thus, it will be incumbent on the Senate and its relevant committees to carefully monitor executive branch progress in fulfilling the commitment made by General Scowcroft.

In saying this, I do not mean to question the good faith of the administration or General Scowcroft. He is in an ideal position to orchestrate the activities of the various agencies involved, and I know that he is a man of his word. The executive branch is a large entity, however, with powerful competing interests among and within its various agencies. Resolving the funding as well as intra- and inter-agency battles is no easy feat, and it takes time. Thus, unless we in the Senate remain vigilant and keep the pressure on to resolve these issues in a timely and orderly fashion, we run the risk of the U.S. Government making important decisions at the last minute that are not properly thought through.

#### PROTOCOL CHANGES

On the second issue—protocol changes—the committee's report cites the vast array of rights and obligations included in the protocols and then indicates its concern over executive branch assurances. Specifically, we made the following findings:

The TTBT protocol contains not only the basic monitoring rights, but also other provisions regarding verification procedures that are essential for effective verification. They include those that specify data to be provided by the testing party; assure the reliability of CORRTEX monitoring; set the criteria for standard nuclear tests; and list the permitted activities and equipment of inspectors and monitors.

The TTBT protocol also contains provisions that are essential for effective counterintelligence. They include provisions requiring the use of anti-intrusiveness devices and giving the United States the right to escort Soviet personnel at all times; to control the travel and contacts of Soviet personnel; to examine any equipment brought to the United States; and to inspect the baggage, personal belongings, and packages brought or mailed by Soviet personnel.

These provisions are subject to change by the Bilateral Consultative Commission established pursuant to paragraphs 2-4 of section XI of the TTBT protocol. Executive branch statements thus far do not provide sufficient assurance that changes in such essential provisions will be subject to the advice and consent of the Senate.

The key point that should be kept in mind is that in any verification regime as complex as this one, or the INF regime, or the future CFE and START regimes, the devil is in the detail.

Technical changes to the protocols could have a substantive impact on our monitoring or counterintelligence capabilities. Since the protocols are considered an integral part of the treaties, advice and consent to ratification now means advice and consent to treaty changes without further Senate concurrence on potentially important issues. As a consequence, in its report, the Intelligence Committee recommended that:

The executive branch should provide firm assurances that any changes in the TTBT protocol regarding provisions that are essential for effective U.S. monitoring, counterintelligence, or security—such as those listed above—will be treated as amendments to the protocol that are subject to the advice and consent of the Senate. The committee recommends that a condition to the instrument of ratification be enacted to buttress those assurances.

The executive branch should also assure the Senate that it will provide the Senate Intelligence Committee prior notice of any other proposed change in the TTBT protocol that may have a negative impact on U.S. monitoring, counterintelligence, or security capabilities, to enable the committee to voice an objection in appropriate cases, before the issue becomes moot. The committee recommends that a condition to the instrument of ratification be enacted to protect the interests of all relevant committees of the Senate.

In response to the committee's recommendation, and similar concerns raised by the Foreign Relations Committee, that significant changes should only be made by treaty amendment requiring the Senate's advice and consent, ACDA Director Ronald Lehman wrote that "any change of a substantive nature that would have an effect upon basic aims of the Treaty or rights and obligations of the Parties would have to be made by means of an amendment."

In testimony before the Foreign Relations Committee, the issue was raised as to whether the Lehman letter sufficed to address the committee's concerns. This presents a difficult issue, because the committee report recommended that certain key subjects should only be changed by the amendment process. Senator SARBANES, however, raised the important point that this is a complex treaty and that it is probably impossible to identify in advance all areas which should require a treaty amendment. I concur with Senator SARBANES. As a practical matter, a requirement for prior notice seems the best approach. With such notice, the Senate can object to a change if it believes such a change is substantive enough to require an amendment.

Concerning prior notice, Senators from both committees concurred that the Lehman letter was clearly deficient in that it failed to commit the administration to such notice. Thus Director Lehman sent a second letter, in which he stated:

I would like to provide the following further assurance concerning paragraphs 3 and 4 of Section XI of the TTBT protocol. The Administration will provide notice concerning any modifications and changes negotiated with the Soviets to the provisions of the TTBT protocol prior to such modifications or changes becoming binding on the Parties. The objective of this further assurance is to provide notice before an issue becomes "moot."

A similar letter was sent to the Intelligence Committee, stating that,

To the extent that any changes or modifications affect matters under the jurisdiction of the Senate Select Committee on Intelligence, we will ensure that they are brought to your attention as well.

These assurances of prior notice provide the Senate an opportunity to voice concerns and raise objections should any changes in the protocol appear to be of more than of a day-to-day technical and administrative nature with limited impact on substantive treaty rights and obligations. As such, I am pleased with the administration's commitment to unequivocal prior notice.

Having acknowledged the cooperative approach of the administration, I think it is important to remind my colleagues that it was not too long ago that an administration tried to render itself free from the interpretation of a treaty provided to the Senate by a preceding administration during the ratification process. Accordingly, it does not take much imagination to foresee that a future administration might seek to render itself free from this commitment to provide prior notice of all modifications and changes to the protocol. Thus, in my judgment, it would be better for the Senate to require as a condition of ratification prior notice of protocol changes before they become binding. However, since the Senate is choosing not to do so, we are assuming a continuing responsibility to remain vigilant and steadfast for monitoring executive branch behavior on this matter, as with the counterintelligence issue. The importance of this should not be diminished or underestimated, lest we abrogate our constitutional responsibilities and allow the Senate's treaty-making powers to be eroded.

#### DECLARATIONS

Mr. President, another important matter related to the TTBT are the declarations adopted by the Foreign Relations Committee.

Mr. President, I would like to discuss some recent history that has a bearing on the Foreign Relations Committee's second declaration, which addresses

follow-on negotiations to achieve further limitations on nuclear testing.

In 1986, the defense authorization conference was dead-locked, with a key issue being the question of whether the United States should adopt a nonnegotiated, 1-year moratorium on nuclear tests above 1 kiloton as proposed by the House of Representatives. Critical to the resolution of this matter was a letter President Reagan, then in Reykjavik for his summit with General Secretary Gorbachev, sent to congressional leaders. In this letter, the President stated that he would inform Mr. Gorbachev that,

Once our verification concerns have been satisfied and the [TTB and PNE] treaties have been ratified, I will propose that the United States and the Soviet Union immediately engage in negotiations on ways to implement a step-by-step parallel program—in association with a program to reduce and ultimately eliminate all nuclear weapons—of limiting and ultimately ending nuclear testing.

This commitment regarding follow-on negotiations was repeated on other occasions, such as in the President's report to the Congress entitled "Relationship Between Progress in Other Areas of Arms Control and More Stringent Limitations on Nuclear Testing," dated August 28, 1988.

Earlier this year, however, the Bush administration indicated that before proceeding with follow-on negotiations, it intended to permit a period of time to pass to allow the provisions of the TTBT protocol to be implemented so that the follow-on negotiation could benefit from the knowledge to be gained from implementation. This raised concerns that follow-on negotiations could be delayed indefinitely, perhaps years.

During the course of the Armed Services Committee's review of the TTBT and the PNET, administration officials testified that the time between ratification of the treaties and the resumption of negotiations would be a period of "months, not years." This assurance has helped to remove the concerns that there could be a lengthy period before the United States agreed to the resumption of the nuclear testing talks with the Soviet Union.

Mr. President, in my view, there is no compelling justification for an extended delay before we begin negotiations on further nuclear testing limitations. Indeed, I believe that the executive branch is bound by the October 1986 agreement to proceed with these follow-on negotiations as soon as is practicable following the ratification of the TTBT and PNET.

Accordingly, I am pleased that the Senate can proceed with the consideration of these treaties having received assurances that follow-on negotiations for further limitations will be initiated in the coming months.

Technical changes to the protocols could have a substantive impact on our monitoring or counterintelligence capabilities. Since the protocols are considered an integral part of the treaties, advice and consent to ratification now means advice and consent to treaty changes without further Senate concurrence on potentially important issues. As a consequence, in its report, the Intelligence Committee recommended that:

The executive branch should provide firm assurances that any changes in the TTBT protocol regarding provisions that are essential for effective U.S. monitoring, counterintelligence, or security—such as those listed above—will be treated as amendments to the protocol that are subject to the advice and consent of the Senate. The committee recommends that a condition to the instrument of ratification be enacted to buttress those assurances.

The executive branch should also assure the Senate that it will provide the Senate Intelligence Committee prior notice of any other proposed change in the TTBT protocol that may have a negative impact on U.S. monitoring, counterintelligence, or security capabilities, to enable the committee to voice an objection in appropriate cases, before the issue becomes moot. The committee recommends that a condition to the instrument of ratification be enacted to protect the interests of all relevant committees of the Senate.

In response to the committee's recommendation, and similar concerns raised by the Foreign Relations Committee, that significant changes should only be made by treaty amendment requiring the Senate's advice and consent, ACDA Director Ronald Lehman wrote that "any change of a substantive nature that would have an effect upon basic aims of the Treaty or rights and obligations of the Parties would have to be made by means of an amendment."

In testimony before the Foreign Relations Committee, the issue was raised as to whether the Lehman letter sufficed to address the committee's concerns. This presents a difficult issue, because the committee report recommended that certain key subjects should only be changed by the amendment process. Senator SARBANES, however, raised the important point that this is a complex treaty and that it is probably impossible to identify in advance all areas which should require a treaty amendment. I concur with Senator SARBANES. As a practical matter, a requirement for prior notice seems the best approach. With such notice, the Senate can object to a change if it believes such a change is substantive enough to require an amendment.

Concerning prior notice, Senators from both committees concurred that the Lehman letter was clearly deficient in that it failed to commit the administration to such notice. Thus Director Lehman sent a second letter, in which he stated:

I would like to provide the following further assurance concerning paragraphs 3 and 4 of Section XI of the TTBT protocol. The Administration will provide notice concerning any modifications and changes negotiated with the Soviets to the provisions of the TTBT protocol prior to such modifications or changes becoming binding on the Parties. The objective of this further assurance is to provide notice before an issue becomes "moot."

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Having acknowledged the cooperative approach of the administration, I think it is important to remind my colleagues that it was not too long ago that an administration tried to render itself free from the interpretation of a treaty provided to the Senate by a preceding administration during the ratification process. Accordingly, it does not take much imagination to foresee that a future administration might seek to render itself free from this commitment to provide prior notice of all modifications and changes to the protocol. Thus, in my judgment, it would be better for the Senate to require as a condition of ratification prior notice of protocol changes before they become binding. However, since the Senate is choosing not to do so, we are assuming a continuing responsibility to remain vigilant and steadfast for monitoring executive branch behavior on this matter, as with the counterintelligence issue. The importance of this should not be diminished or underestimated, lest we abrogate our constitutional responsibilities and allow the Senate's treaty-making powers to be eroded.

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Once our verification concerns have been satisfied and the TTBT and PNET treaties have been ratified, I will propose that the United States and the Soviet Union immediately engage in negotiations on ways to implement a step-by-step parallel program—in association with a program to reduce and ultimately eliminate all nuclear weapons—of limiting and ultimately ending nuclear testing.

This commitment regarding follow-on negotiations was repeated on other occasions, such as in the President's report to the Congress entitled "Relationship Between Progress in Other Areas of Arms Control and More Stringent Limitations on Nuclear Testing," dated August 28, 1988.

Earlier this year, however, the Bush administration indicated that before proceeding with follow-on negotiations, it intended to permit a period of time to pass to allow the provisions of the TTBT protocol to be implemented so that the follow-on negotiation could benefit from the knowledge to be gained from implementation. This raised concerns that follow-on negotiations could be delayed indefinitely, perhaps years.

During the course of the Armed Services Committee's review of the TTBT and the PNET, administration officials testified that the time between ratification of the treaties and the resumption of negotiations would be a period of "months, not years." This assurance has helped to remove the concerns that there could be a lengthy period before the United States agreed to the resumption of the nuclear testing talks with the Soviet Union.

Mr. President, in my view, there is no compelling justification for an extended delay before we begin negotiations on further nuclear testing limitations. Indeed, I believe that the executive branch is bound by the October 1986 agreement to proceed with these follow-on negotiations as soon as is practicable following the ratification of the TTBT and PNET.

Accordingly, I am pleased that the Senate can proceed with the consideration of these treaties having received assurances that follow-on negotiations for further limitations will be initiated in the coming months.

to maintain the peace, and find new solutions to problems, based more on our wit and wisdom, than on our weapons of war.

I hope that an early marker in our search for a peaceful and prosperous new world will be a complete end to nuclear testing. We have a solemn obligation we must not ignore, and a promise we are bound to keep.

Mr. President, I yield the floor.

I suggest the absence of a quorum, the time to be equally divided.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. Who yields time?

Mr. PELL. I yield such time as he may desire to the Senator from Hawaii.

Mr. AKAKA. Mr. President, I wish to speak on the ratification of the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty, which I favor.

Mr. President, 1989 was a time when people and events moved swiftly, and the world watched in awe: the Berlin Wall fell, Germany took its first steps toward unification, the Nicaraguan people voted for peaceful change, and democratic renewal transformed the face of Eastern Europe. In 1990, we are witnessing a dawning of a new era. And landmark changes are once again taking place.

Today we are moving world peace forward. I will vote to ratify the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty. These important votes will become a historic legacy, as we close the 101st Congress.

The Threshold Test Ban Treaty carries the intent of the United States and the Soviet Union to end our nuclear arms race. Through verification and limits on underground nuclear explosions, the treaty reaffirms our commitment to stop all nuclear testing.

The Peaceful Nuclear Explosions Treaty promotes cooperation with the Soviet Union and other nations, to limit peaceful nuclear testing. It specifies and requires notification and information regarding nuclear tests, allows on-site inspection, and prohibits individual countries from conducting nuclear explosions with a yield of more than 150 kilotons.

Mr. President, I am honored to stand here on the Senate floor today and represent Hawaii in this milestone achievement. Ratification of these two nuclear test ban treaties will bring the superpowers closer toward a verifiable comprehensive test ban—closer toward

a stable, more peaceful and secure world.

John F. Kennedy once said, "Peace is a daily, a weekly, a monthly process, gradually changing opinions, slowly eroding old barriers, quietly building new structures. And however, undramatic the pursuit of peace, the pursuit must go on." And with the passage of these treaties, we will continue to pursue that universal and age-old longing for world peace.

Mr. PELL. Mr. President, I suggest the absence of a quorum, the time to be equally divided.

The PRESIDING OFFICER. The Senator from Rhode Island has suggested the absence of a quorum, the time to be equally divided. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LUGAR. Mr. President, with the submission by the Bush administration to the Senate of the new protocols providing for additional verification measures for the Threshold Test Ban Treaty [TTBT] of 1974 and the Peaceful Nuclear Explosions Treaty [PNET] of 1976, we can now take up our responsibility for advice and consent on these accords. The United States and the Soviet Union undertook unilaterally in 1976 to observe the threshold limitations provided for by the TTBT. This action has provided the United States with some useful experience related to the monitoring of Soviet compliance with the treaty's threshold limitation. Our concerns about possible Soviet noncompliance with the threshold limit in the past has made it all the more important to examine closely the contributions of the protocols to addressing concerns about Soviet compliance with the treaties in the future.

The Soviet Union, through these protocols, has formally acknowledged United States concerns and methods for adequate verification. By codifying our rights to employ more precise methods of verification in this manner, the protocols also make a contribution to stability, in that additional verification methods can be employed to insure that past concerns over possible Soviet noncompliance can now be dealt with in a forthright manner.

#### PROVISIONS

The verification protocols for both the TTBT and the PNET are important in ensuring that, while the United States and the Soviet Union both have the same opportunities to test, both will also be able to effectively verify compliance of the other with the treaties. In the negotiations leading to the achievement of the new verification

protocols, the United States sought the right to carry out verification measures that would provide accurate and straight-forward measurement of the yield of a test or explosion, and permit us the means to obtain validated data and information on the conditions under which the underground nuclear explosions took place. The need to validate such data and information meant that all information used for verification had to be directly derived by United States personnel and United States instruments without the possibility of interference by the Soviets in the process of data collection. It was this requirement that led the U.S. negotiators to insist on the inclusion of on-site measurements and inspections as essential elements of the protocols.

The new protocols provide for unprecedented on-site and in-country verification measures. Each protocol provides the right to make on-site hydrodynamic yield measurements through a direct, close-in measurement of the velocity of the shock wave produced by the explosion. The U.S. hydrodynamic measurement technique is called CORTEX and is the most accurate yield measurement currently available that does not compromise sensitive test information. CORTEX leaves open little if any possibility to evade the 150 kiloton limit through exploiting any plausible evasion scenarios.

The protocols provide the right to make hydrodynamic yield measurements for any test or explosion whose planned yield exceeds 50 kilotons. The value of 50 kilotons was conservatively chosen to be sure that the United States would have the right to directly measure the yield of any test or explosion that might be, or appear by remote national technical means [NTM] to be, in excess of the 150-kiloton yield limit mandated by the treaties. For the United States, this fundamental right to undertake hydrodynamic measurements under specified conditions is the cornerstone of the verification provisions in the new protocols.

A separate and independent right, which is also provided by both protocols, is the right to carry out on-site inspection [OSI] for any test or explosion whose planned yield exceeds 35 kilotons. Such on-site inspection does not actually measure the yield of the explosion, but provides the opportunity to independently validate the conditions of emplacement of the explosive and to collect geological samples of the soil around each explosive. The data obtained through on-site inspection should allow the United States to better correlate seismic data to the actual yield of the explosion. Thus, the measurement of yield, when on-site inspection is selected, will be

through U.S. National Technical Means; that is, the primary U.S. network of seismic monitoring stations.

A third verification right is the right provided in the TTBT Protocol to make in-country seismic measurements, at three stations designated by each side, for every test or explosion whose planned yield exceeds 50 kilotons. These measurements may be exclusively selected or may be undertaken at the same time as hydrodynamic measurements or on-site inspections.

Thus, the primary verification package for the TTBT Protocol, which covers weapon tests, is really a menu of choices from which the verifying party is free to choose: hydrodynamic, on-site inspection, and in-country seismic. Since a party's national technical means will likely always be used as well, the new protocols provide a means by which each party can, over time, obtain the data essential to improve the use of any or all of the verification measures, including improvements to national technical means. Of particular value will be the correlation of the on-site hydrodynamic yield measurements with those obtained through NTM (seismic) stations. The on-site measurements will serve as calibration points for NTM and should allow the United States to better estimate the yields of subsequent tests, in particular those whose yields are below the so-called trigger levels, where hydrodynamic measurements are not made.

The United States was able to negotiate several provisions that ensure that each party will have the right to obtain at least a minimum number of on-site hydrodynamic yield measurements each year if any tests are conducted. Twice a year for the first 5 years and once a year thereafter, each party is guaranteed the right to make hydrodynamic measurements regardless of whether the other party declares any tests to be above the 50 kiloton trigger level. Moreover, if either party opens up new test sites—that is, other than those declared in the protocol—then the verifying party has the additional right to make hydrodynamic measurements on at least two tests per year at the new site, commencing in the first year that the new test site is used and continuing for 5 years.

The protocols contain many more useful provisions that, taken together with those previously mentioned, make these verification packages among the most comprehensive arms control verification agreements ever developed.

It is also worth noting that extensive procedures were also designed to limit a verifying party's ability to misuse the right to bring equipment into the other's territory, either in an attempt to measure sensitive data related to weapon design features or in an at-

tempt to record any electronic intelligence information. Both protocols include a number of so-called antiintrusiveness features, requiring that a verifying party must deliver certain key pieces of equipment in two sets. The testing party will itself designate one of these as the set of equipment to be used and can immediately begin inspecting the other set for 30 days. Only if this inspection uncovers no prohibited equipment will the other set be delivered to verifying party personnel for use at the test site. Moreover, after the test, all of the equipment actually used may then be inspected for 30 days. Additionally, to insure that neither party can record electromagnetic pulse radiation associated with the detonation, special antiintrusiveness devices can be used to block the transmission of such signals to the recording facilities. These measures, taken together, provide a high degree of protection against misuse of the verification rights for other purposes, while carefully preserving the right for the verifying party to obtain the data it needs to ensure effective verification.

#### SUMMARY OF PROVISIONS

The TTBT was negotiated more than 15 years ago and its companion treaty soon thereafter. There has been controversy ever since, with the essential question relating to Soviet compliance with the pledge not to exceed the 150-kiloton limit. The inadequacy of the original verification measures was reason enough not to ratify the treaties. Today, with the new verification protocols that provide on-site verification measures, there are no longer reasons to oppose their ratification.

The two treaties limit the yield of underground nuclear weapon tests, or explosions for peaceful purposes, to no more than 150 kilotons. The arms control rationale for such a yield limitation was to prevent, or at least restrain the development of very high-yield weapons. Prior to their negotiation, the United States had conducted nuclear weapons tests at yields much higher than the 150-kt limit, and the Soviet Union had conducted test with even higher yields. Thus, the treaties represent a real constraint, but one which the two sides have agreed is acceptable. These treaties and protocols will improve overall U.S. security.

The new protocols provide a verification regime that is among the most comprehensive ever developed. These agreements protect United States testing interests while ensuring that the Soviet Union must abide by the same treaty limits. Much care has been taken in the effort to develop and evaluate the new verification measures, in the conduct of the unprecedented joint verification experiment, and throughout the 2½ years of the Geneva negotiations. The result is a

solid agreement that deserves the support of the Senate.

#### "SAFEGUARDS" AND THE TREATIES/PROTOCOLS

In considering any agreements which place limits on the U.S. nuclear testing program, the Joint Chiefs of Staff and the Department of Defense are asked for their judgments on whether such limitations are consistent with U.S. national security interests. Their position has been that so long as nuclear weapons remain an essential element of our overall deterrent strategy, there should be safeguards to hedge against unexpected political or technical events affecting the military balance.

With respect to the language of the safeguards desired by the JCS and the Department of Defense in connection with the TTBT and PNET, the President submitted in his letter of transmittal the safeguards language suggested by DOD back in 1987. When General Butler, representing the JSC, appeared before the committee during its initial hearing in July 1990 on the TTBT and PNET and their associated protocols, he stated that any safeguards are designed to ensure the United States could respond to any significant military advantage the Soviets might achieve through any cheating scenarios.

However, mindful of the need to involve the Senate in the final drafting of the specific safeguards language so that the safeguards could reflect a common view of the administration and the Senate, General Butler avoided a specific list of safeguards but rather dealt with the general concepts that any safeguards must address. Those concepts included: continuation of the nuclear test program; maintenance of competent laboratories and programs to attract and retain scientific expertise; maintenance of a United States capability to overcome any Soviet advantage achieved by a breakout; improvements in compliance monitoring capabilities; improvement in knowledge of other countries' nuclear arsenals and weapons programs; and the conduct of periodic reviews of the advisability of continued United States compliance.

Subsequent to the committee hearings, negotiations were held between DOD and JCS representatives and committee staff for the purpose of drafting the final safeguards language. That language now before the committee reflects the compromises arrived at during those negotiations. It has been agreed to at the highest levels of the administration.

During Senate consideration of the Limited Test Ban Treaty [LTBT], the safeguards recommended by the administration-of-that-day were not formally incorporated into the ratification process but rather were read into the CONGRESSIONAL RECORD during the

Senate deliberations. With that experience in mind, it was determined by the committee that the safeguards language for the TTBT and PNET and their associated protocols should be the subject of negotiations between the two branches, should enjoy the explicit support of both branches, and be deserving of incorporation as a formal part of the ratification process.

While a clean resolution of ratification might have been preferable, that was not really an option. Moreover, given the good faith and hard work demonstrated by both branches in negotiating the safeguards language, I was strongly supportive of the committee's decision to incorporate the safeguards as a formal part of the ratification process.

Subsequent to the action of the Foreign Relations Committee, Rear Adm. Thomas Fox, Deputy Director for International Negotiations on the Joint Staff, testified on September 17, 1990, before the Armed Services Committee and reiterated the various general concepts that any safeguards must address. In describing the purpose that each concept and attendant safeguard is to meet, Admiral Fox noted that appropriate programs and capabilities are already in existence and being implemented. Indeed, Admiral Fox himself notes that the first four Safeguard concepts have been exercised in one form or another since ratification of the Limited Test Ban Treaty in 1963.

Admiral Fox concluded that the Joint Chiefs recommended ratification of the TTBT/PNET and their associated protocols. The only conditions of that support were: First, an assurance that the United States will maintain the national resolve to execute the verification methods permitted by the new protocols; and second, congressional support for the safeguards.

With respect to the first, the Foreign Relations Committee sought and received assurances from the executive branch with respect to full implementation of our rights under the protocols. With regard to the second condition, the committee undertook negotiations with the JCS on safeguards language precisely so that such safeguards represented the views of both branches of Government and could be incorporated as such into the formal ratification process.

#### TTBT/PNET AND THE "AMENDMENT PROCESS"

During the Foreign Relations Committee's consideration of the TTBT and PNET and their associated protocols, one of the issues of concern to me related to section 11 of the TTBT protocol that dealt with modifications or changes subsequent to ratification. More particularly, I was concerned whether amendments of substantive significance altering the treaty or protocol, as under section 11, would be submitted to the Senate for advice and

consent. I was interested in what criteria would be utilized in deciding between purely technical changes and those of a substantive nature.

During the August recess, I was in touch with the administration regarding its intentions with respect to consultations with the Senate on any proposed modifications or amendments to the treaties or protocols. Various clarifications have been offered in writing that have assuaged any concerns I may have had in this regard. These clarifications should become an integral part of the committee's permanent record.

The questions I raised relate to the mandate of the Bilateral Consultative Commission [BCC] and the distinction between amendments and modifications to the TTBT protocol, the former being subject to the ratification process and the latter requiring only agreement of the parties to the Bilateral Consultative Commission.

At the outset it should be noted that the Treaty on Underground Nuclear Explosions for Peaceful Purposes—the so-called PNET—calls for the establishment of a Joint Consultative Commission whose purposes, among others, are "to promote the objectives and implementation of the provisions of this Treaty," within which the Parties will " \* \* \* (d) consider changes in technology or other new circumstances which have a bearing on the provisions of this Treaty; and (e) consider possible amendments to provisions governing nuclear explosions for peaceful purposes."

No such consultative mechanism is provided for in the articles of the Threshold Test Ban Treaty [TTBT]. Thus, one of the priority items on the U.S. list of objectives in the TTBT protocol negotiations was establishment of a consultative mechanism for the TTBT like that provided for in the PNE Treaty. The result was paragraph 1 of section 11 of the TTBT protocol that established the Bilateral Consultative Commission, the mandate for which is largely based on the mandate of the Joint Consultative Commission set forth in the PNE Treaty.

The Joint Consultative Commission and the Bilateral Consultative Commission are each charged with considering any suggestions for amendment to their respective treaty and protocol. The protocols are integral parts of the treaties and an amendment to a protocol is subject to exactly the same procedures as an amendment to the articles of the treaty—that is, an amendment is subject to ratification in accordance with the constitutional procedures of each party and enters into force only upon the exchange of instruments of ratification. From the U.S. perspective, an amendment to the articles of the TTBT and PNET or their protocols would always be sub-

mitted to the Senate for its advice and consent to ratification.

During the course of the negotiations on the new protocols it became apparent to the negotiators that they were dealing with a multitude of technical and administrative details and procedures with which both countries have had little operating experience on a bilateral basis or in the kinds of environments in which verification activities will be carried out. The joint verification experiment carried out in 1988 provided extremely useful experience, but it still remains an open question whether each of the logistical arrangements and operating requirements set forth in the protocols is adequately described or optimally suited to the needs of the parties. It became apparent that adjustments might be called for, and that a means, like that provided for in the INF agreement, should be established for making such adjustments in an expeditious manner in order to facilitate implementation of the regime. These would not be changes to the treaty intent, but rather only changes in the modality of fulfilling that intent.

Allowing for changes or modifications to annexes or protocols to a treaty without going through the ratification process is not without precedent. For example, in the INF agreement it is provided, in the final clause of the inspection protocol, that "the parties may agree upon such measures as may be necessary to improve the viability and effectiveness of this protocol. Such measures shall not be deemed amendments to the treaty."

In addition, section II (10) of the elimination protocol to the INF treaty permits the parties to agree upon different—elimination—procedures to achieve the same result as the elimination procedures in the protocol itself. In the TTBT and PNET protocols the kinds of changes that might be made are described in greater detail than in INF, but the underlying principles are the same. The measures in INF or the changes/modifications in the TTBT would not alter substantive rights, but would deal with matters such as periods of time with respect to notification, the provision of services such as food and lodging, and refinements arising from technological advances that might permit improvements or simplifications in operating procedures.

In implementing the protocols, the administration has pledged to include continuing consultations with the Senate. Any proposed amendment would be the subject of specific consultations with the Senate, and following negotiation would be subject to advice and consent. By the same token, while any change or modification of the nature described in paragraphs 2, 3, or 4 of section 11 of the TTBT protocol

would be a matter of public record, the administration has pledged as well close consultation on modifications or improvements.

Indeed, in addition to his August 20, 1990, letter to me offering assurances with respect to the prior consultation issue, Ambassador Lehman responded further on September 11, 1990, to the committee with the following written elaboration on his assurances:

\*\*\* (With respect to the modifications contemplated) \*\*\* I can confirm that the intention of these paragraphs (in Section 11) is to enable the Parties, on the basis of their day-to-day experience in living with the Protocol, to make such changes of a technical, administrative or procedural nature as do not affect substantive rights and obligations under the Treaty and Protocol, that will improve the effectiveness of the verification regime. Any change of a substantive nature that would have an effect upon the basic aims of the Treaty or rights and obligations of the Parties would have to be made by means of an amendment.

The Foreign Relations Committee concluded that the foregoing assurances adequately safeguarded the Senate's constitutional responsibilities in the treaty-making process and that the procedures outlined in section 11 of the TTBT protocol will not be implemented in a manner inconsistent with those responsibilities.

Nonetheless, this matter was further pursued in connection with the presentation to the Foreign Relations Committee of the findings and recommendations of the Select Committee on Intelligence. In addition to seeking assurance from the executive branch that any changes in the TTBT protocol regarding provisions essential for effective verification, counterintelligence, or security would be treated as amendments and thus subject to advice and consent of the Senate, the Intelligence Committee expressed concern as to whether sufficient resources and time were available to prepare for TTBT implementation, including counterintelligence and security measures, prior to any anticipated exchange of the instruments of ratifications.

Additional assurances were forthcoming from the executive branch which, the Foreign Relations Committee believes, should assuage such concerns. The executive branch has explicitly recognized the need to implement effective counterintelligence and security measures to protect United States personnel and programs from improper collection of information by Soviet on-site inspectors or monitors, and has pledged, in the form of a letter from the President's National Security Adviser, Brent Scowcroft, to the chairman and vice chairman of the Select Committee on Intelligence, that the executive branch will take no action under the treaty that would en-

danger or compromise vulnerable United States programs.

By the same token, further assurances have been forthcoming from the executive branch which will facilitate any review of any proposed section 11 changes or modifications in a manner that reinforces Senate responsibilities in the treaty-making process. In order to deal with any potential difficulties in distinguishing between changes of a technical or procedural nature and those of a substantive nature, the committee has been assured, in writing, that the executive branch will engage in continuing consultations with the Senate and that it will provide:

\*\*\* notice concerning any modifications and changes to the provisions of the TTBT Protocol negotiated with the Soviets prior to such modifications and changes becoming binding on the Parties. The objective of this further assurance is to provide notice before an issue becomes moot.

Based upon these assurances, the Foreign Relations Committee has satisfied itself that no changes or modifications pursuant to section 11 of the TTBT protocol that require Senate advice and consent will become binding on the parties unless and until the Senate has exercised its constitutional responsibilities.

Mr. President, the TTBT and PNET protocols are unprecedented in the extent of technical detail that has been included. Based on the lessons learned in implementing the INF agreements, the administration has told us that it was necessary to include sufficient detail to guarantee that U.S. rights will be protected. The administration has also requested that the possibility of some modifications or changes to those details be allowed. The administration has assured us through letters to the Foreign Relations Committee that there will be prior notice to the Senate before any proposed changes take effect. These assurances, in light of the unique technical nature of the TTBT protocol, are consistent with and will facilitate Senate oversight of the implementation of these treaties in the future.

Mr. GORTON. Mr. President, while for the past 14 years the United States has observed the 150-kiloton threshold limit of the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty, I am pleased that the United States and Soviet Union have agreed to effective verification procedures that now make formal ratification of these treaties possible. Although advances in verification technology make this possible, it has been the political changes in the Soviet Union and the commensurate improvement in United States-Soviet relations that, to my mind, has contributed most toward this achievement.

It is the responsibility of the Armed Services Committee to assess the national security implications of these

nuclear testing agreements. During testimony before the committee, both the Chairman of the Joint Chiefs of Staff and the Secretary of Defense recommended ratification of the treaties. Their only caveat was an assurance that the United States maintain the national resolve to carry out the verification methods permitted by the protocols to the treaties and that there be congressional support for the safeguards enumerated in the resolution of ratification.

In addition to the safeguards, which I wholeheartedly support, the resolution of ratification, as prepared by the Senate Foreign Relations Committee, contains a declaration regarding follow-on negotiations that bears some discussion and clarification. I am referring to paragraph II.

The United States shares a special responsibility with the Soviet Union to continue the bilateral Nuclear Testing Talks to achieve further limitations on nuclear testing, including the achievement of a verifiable comprehensive test ban.

While most of us would support an eventual ban on nuclear testing, I think it important to include a caveat that the administration makes plain: The United States should only enter into new negotiations on further limitations that, in the words of National Security Adviser, Brent Scowcroft:

Make sense from a national security standpoint, contribute to stability, and still guarantee a reliable, safe, and effective deterrent.

It is clear that there exists a difference of opinion between the Foreign Relations Committee and the administration as to what the appropriate next step should be. The administration makes it clear in numerous statements that it would be prudent to evaluate the operation of the new treaties before deciding whether further limitations on testing would be tolerable. The Foreign Relations Committee, on the other hand, would like to see every effort made to achieve a verifiable comprehensive test ban as soon as possible.

The central difference between the two positions is that while both support an end to all nuclear testing, the administration views this in association with a program that would reduce and ultimately eliminate our dependence on nuclear weapons for national security. Supporters of immediate negotiations leading to a CTB, by contrast, have concluded that nuclear testing is no longer essential for our security and that a ban on testing will make the world a safer place.

There are many arguments in favor of continued testing; I would like to mention only three: First, we need to assure ourselves—and prospective opponents—that our nuclear deterrent is reliable and effective. Despite advances in supercomputing, there is no

substitute for actual testing to determine the reliability of the existing stockpile.

Second, as we continue to reduce our arsenal through arms control and normal attrition, we will need to modernize those residual forces. A smaller force needs to be a more survivable force. Nuclear testing will be required to develop new systems that do not necessarily add to the destructive capability of our forces, but improve its survivability.

Finally, and this reason is of immediate concern to the people of my State, testing is required to improve the safety and security features of existing nuclear weapons. I note the recent problems associated with the W-79 artillery shell and the SRAM-A missile. The latter was removed from alert B-52 bombers stationed at Fairchild AFB. According to the directors of our nuclear weapons labs, nuclear testing played an important role in discovering these problems associated with our nuclear forces.

Still, despite these reasons to continue testing many argue that a ban on nuclear testing would make an important contribution toward improved United States-Soviet relations and would set an example for other states that are on the verge of testing nuclear weapons.

I would argue, however, that these agreements now before us are a result of improved relations, not a factor contributing to them. In the same vein, a CTB can only be a result of a new strategic environment in which nuclear deterrence has become irrelevant, not the other way around. As for setting an example, Third World countries do not acquire nuclear weapons to face the United States, but to enhance their regional positions. Restraint on our part has little impact on such regional power balances and antagonisms.

To conclude, Mr. President, I would hope that the Congress not force the administration's hand with respect to follow-on negotiations on nuclear testing. Let us first see how well these two treaties now before us work before we take the final step toward a complete ban on nuclear testing. Most important, however, is that when we begin down that path, we make certain that we are joined by the entire international community. For it would be folly for the United States—and the Soviet Union—to halt nuclear testing while other nations continue to develop nascent nuclear capabilities.

Mr. DURENBERGER. Mr. President, I rise today to offer my strong support for the Nuclear Test Ban Treaty and the Peaceful Nuclear Explosions Treaty. I believe the U.S. Senate should act affirmatively in exercising its constitutionally mandated responsibility to offer its advice and

consent to the ratification of these treaties.

For many years, I have supported these treaties. The lack of adequate verification, of course, has long been the principal stumbling block. Those issues have finally been resolved.

I express my appreciation and congratulations to President Bush for his persistence and commitment to negotiating the new verification protocols that make this vote possible.

And of course, the new era of cooperation between the United States and Soviet Union has contributed measurably to the completion of the new protocols.

I look forward to future cooperation with the Soviet Union that hopefully will yield a comprehensive test ban treaty. I urge all my colleagues to offer their affirmative advice and consent to these treaties.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HELMS. I yield such time as the distinguished Senator from Mississippi may require.

The PRESIDING OFFICER. The Senator from Mississippi [Mr. LOTT] is recognized.

Mr. LOTT. Mr. President, I rise in support of ratification of the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty and their new protocols.

Nuclear deterrence is the foundation for the defense of our homeland and many of our most vital interests around the globe. The nuclear stockpile is the essential component of the United States national policy on nuclear deterrence. This policy has succeeded in bringing the longest peace in the modern history of Europe. As such, it deserves major credit as one of the tools responsible for the ultimate disintegration of the Warsaw Pact and the resulting decline in the Soviet threat to Western Europe. The elimination of the Iron Curtain and the peaceful liberation of Eastern Europe can be counted among the long-term accomplishments of our steadfast policy of nuclear deterrence.

Nuclear testing is important in ensuring the viability of our nuclear deterrent and the safety and security of the weapons in the stockpile. Confidence in the stockpile is essential to maintaining stability by convincing friend and potential foe alike that we have a reliable nuclear deterrent force. Confidence in the U.S. nuclear deterrent among our friends and allies also

contributes to nonproliferation of these devastating weapons because many of these countries draw comfort from the explicit or implied guarantees of the U.S. nuclear umbrella. Therefore, they do not feel a need to pursue their own nuclear capabilities.

I have had strong reservations about the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty as negotiated in their original form. The verification provisions of these treaties were clearly unsatisfactory and could not lead to increased suspicion of bad faith and charges of cheating. In my view, they fell into the category of bad treaties that were worse than no treaties at all. To describe them another way—arms control for arms control sake alone as opposed to arms control measures that contribute to increased stability between the objective of treaties like this.

The new verification protocols that have been recently negotiated correct the fatal flaws of the original treaties. The Director of the Arms Control and Disarmament Agency, Ambassador Lehman, and our chief negotiator in Geneva, Ambassador Robinson, and his delegation deserve credit for this major achievement. These negotiations have blazed a new trail when it comes to openness and to cooperative strict verification measures. The precedents established by the provisions in the protocols will influence all future arms control negotiations with the Soviet Union and should establish much higher levels of trust and confidence between our two nations.

Last but not least, these negotiations have confirmed a belief I have long held—we must be tough, consistent, and patient when it comes to arms control negotiations. Most of all, we must always stick to our long-term objectives, and these objectives must fit into the overall goal of adequate security for the United States. This administration and its predecessor have followed this policy, and our country has been well rewarded by their persistent approach.

I believe that the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty with the accompanying new protocols pass the crucial test of contributing to our national security. For this reason, I join in support of their ratification.

The PRESIDING OFFICER. Who yields time?

Mr. LOTT. Mr. President, I yield the floor at this time.

The PRESIDING OFFICER. The Senator from Rhode Island, [Mr. PELL].

Mr. PELL. Mr. President, I suggest the absence of a quorum, the time to be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. PELL. Mr. President, it is important for the record that we briefly review the apparent record of Soviet compliance.

My fellow Senators will recall that the Reagan administration offered the view shortly after coming into office that the Soviets were in likely violation of the Threshold Test Ban Treaty. That administration held to its position during its first term of office despite mounting evidence that Soviet behavior was in fact consistent with compliance.

Following its first independent review of the issue, the Bush administration dropped the charge of its 1990 report on Soviet noncompliance. I think it fair to say the early charges reflected wishful thinking in some quarters more than solid evidence. At this point, it would seem that very few people still believe the Soviets are in "likely" violation, and for many of these people it reflects some sort of wistful, wishful thinking.

Frankly, I believe we would be well advised to put this kind of thinking behind us, since compliance is far too serious an issue to be the domain of polemicists. Mr. President, advances in seismic techniques, exchanges of data on previous tests, and information from joint verification experiments conducted in 1988 have, taken together, led to increasing doubt as to the validity of any charge of Soviet cheating. Unfortunately, uncertainty over certain scientific factors was exploited in the early 1980's in lieu of a serious effort to resolve questions.

A major factor in earlier disagreements was the so-called magnitude bias factor, a measure of the difference in seismic magnitudes caused by geological differences between the Soviet test site and our Nevada test site. In 1988, the parties to the treaties exchanged data on five earlier tests each and visited each others' test sites for one joint verification experiment each. This data has been used by Government scientists to examine the data on past Soviet explosions. The data is still classified, so I cannot say too much about it, but it is clear that the JVE data allowed the first direct measurement of the "magnitude bias effect" since we had U.S. CORTEX measurements at the test site, while at the same time we measured the seismic data. Witnesses before the committee pointed out that the unclassified U.S. Geological Service data for the explosion at the Soviet test site

was 6.1. If that explosion had been fired at NTS, such a magnitude would have corresponded to a yield of at least 350 kilotons. If the value of 350 kilotons was correct, then, of course, these treaties would not be considered today by the Senate. Fortunately, measurements at the site in the Soviet Union demonstrated conclusively that the explosion was under the threshold level.

Clearly, the verification provisions in the TTBT will guarantee the kind of reassurance regarding Soviet test yields that will present new dispute about Soviet compliance. Although I did not believe that the new Protocols were necessary to ensure compliance, it is clear that they will help reassure both skeptics and doubters regarding Soviet compliance and will help in the long run to put the testing compliance issue behind us.

The committee has heard considerable testimony on the compliance issue. On February 23, 1987, Dr. Roger Batzel, Director of the Lawrence Livermore National Laboratory, told the committee:

We have considered the non-seismic evidence as well as the seismic evidence. Our conclusion, like that of the DIA panel which also reviewed all of the data, is that the seismic evidence is currently the most reliable basis for estimating the yields of Soviet underground nuclear explosions. We continue to attempt to reconcile the available data. However, we believe that the interpretation of the past Soviet test program which is most consistent with the best available data is that: The Soviets appear to have obeyed a testing limit. The limit is consistent with compliance with the provisions of the TTBT. The uncertainties of the yield estimation process are such that we cannot rule out the possibility that a few of the tests could have exceeded the threshold. These uncertainties are, in part, the source of the differences in the assessments of the extent of Soviet compliance with the TTBT. On-site hydrodynamic yield measurements would help to reduce the uncertainties and improve confidence in the results of the compliance evaluation process.

The Directors of both the Los Alamos and Lawrence Livermore National Laboratories have confirmed this testimony at the July 31, 1990, hearing of the Committee.

Most recently, on September 13, 1990, Senator BOREN testified that the Senate Select Committee on Intelligence \* \* \* went on to look at past Soviet compliance with the 150-kiloton limits which both we and they had promised to observe since 1976. Given the current U.S. Government estimates of yields of past nuclear tests, we can rule out any major Soviet violation since 1976. The pattern of past Soviet testing is consistent with either of two other hypotheses: Soviet compliance with the 150 kiloton limit; or a few slight violations of it. I would say very slight violations might have been possible, but I stress, given the improvements of our own seismic tech-

niques and our own capabilities of looking at the data, that it is very possible that there have been no violations at all.

Although the possibility exists that a few Soviet tests in the past 14 years may have exceeded the limit, it is important to remember that the parties agreed that "one or two slight, unintended breaches a year," while cause for concern and discussion, would not be considered violations. Significantly, President Bush made it clear in his letter of transmittal his intent that such infrequent, slight and unintended breaches should not be considered violations.

#### TTBT AND PNET VERIFICATION

Because of the disagreement over Soviet compliance, we have negotiated enhanced measures for verifications. There are four approaches to monitoring Soviet nuclear tests to determine if they are in compliance with the terms of the TTB and PNE Treaties. The four are: First, seismic monitoring; second, hydrodynamic monitoring; third, on-site inspections; and fourth, national technical means. Each of the four will make particular contribution to the overall fabric of verification. The administration has ascribed particular importance to the achievement of agreement on hydrodynamic yield measurement and intends, according to administration witnesses, to use hydrodynamic yield measurement at every available opportunity. It is important to understand the value of other monitoring methods, since hydrodynamic yield measurement would have decreased value of lower yields, if agreed upon later, and not applicability to a complete ban.

Under the TTBT and PNET protocols, each side would have the right to conduct hydrodynamic yield measurements at the site of all nuclear detonations of the other side which had a declared yield of over 50 kilotons. The United States would use the CORTEX technology for this purpose. Ambassador Robinson told the committee that CORTEX can determine the yield of nuclear weapons with an error of about 30 percent for 95 percent of the explosions in the region of 150 kilotons. The 95-percent confidence level implies a very high confidence in measurement, twice the usual standard deviation for errors. The protocols specify that tests in nonstandard geometries would require further measurements: First, the use of CORTEX in more satellite holes; second, the use of reference explosions; and third, the use of seismic monitoring.

The TTBT shall also be monitored by seismic methods. The nation carrying out the seismic monitoring of a nuclear explosion will be allowed the use of three seismic stations inside the testing country, as well as the already-existing seismic network outside the

nation. At the time of the original treaty negotiations in 1974, the accuracy of seismology was thought to be within a factor of 2–100 percent error—for 95 percent of the events. Since that time, there has been considerable improvement in the methods and equipment for seismology: First, the discovery of the unified-seismic method, using both body and surface waves; second, the use of new seismic arrays; third, the advent of in-country seismic stations in the Soviet Union, 3 from the TTBT regime and 12 from the IRIS Consortium; and fourth, the possibility of using CORRTEX to calibrate nuclear test sites by measuring the magnitude bias factor. Lawrence Livermore scientists, the Office of Technology Assessment, and many other scientists have stated that the improved, calibrated seismic techniques can be as accurate as CORRTEX.

The two monitoring technologies, CORRTEX and seismology, can complement each other following ratification. As was shown by the joint verification experiments, the use of CORRTEX will greatly reduce the systematic errors in the seismic measurements by reducing the error in the magnitude bias factor. Ultimately, this approach will make seismology and CORRTEX very competitive, but different technologies. The hydrodynamic methods are not affected by the large-scale geological properties, but the hydrodynamic methods are much more sensitive than seismology to the geometry of the nuclear test and region within 20 meters of the test. Since these two complementary methods measure different aspects of nuclear explosions, their combined use will allow the technologies to cross-check each other. Because these are two independent measuring technologies, they will reduce the total error in the measurements and, thus, strengthen the total capability to determine violations of the 150-kiloton threshold.

Mr. BOREN. Mr. President, I rise to speak as chairman of the Senate Select Committee on Intelligence. While I intend to vote in favor of ratifying these treaties and their new verification protocols, my foremost concern is to bring to my colleagues' attention the work, the findings, and the recommendations of the Intelligence Committee.

The Senate Foreign Relations Committee has formal responsibility for reviewing all treaties before they are acted upon by the full Senate. Our committee's role has been to support this process by providing both the Foreign Relations Committee and the Senate as a whole with our assessment of the monitoring and counterintelligence issues raised by these treaties.

#### THE WORK OF THE INTELLIGENCE COMMITTEE

The committee has undertaken more than 2 years of research and analysis

regarding the monitoring and counterintelligence issues raised by the two nuclear testing treaties. In October 1988, we commissioned a series of formal, on-the-record briefings for our staff. Since then, the committee has had half a dozen such briefings and three hearings on the treaties and protocols.

The committee has also received numerous responses to questions for the record. In addition, our staff has had many informal briefings and has visited U.S. facilities involved with nuclear tests and nuclear test monitoring: The Lawrence Livermore, Los Alamos, and Sandia National Laboratories; the Nevada test site; and the Air Force Technical Applications Center.

Our committee also took steps to get the executive branch to conduct the best possible analyses of the ability of the United States Government to monitor Soviet compliance with the two treaties. On September 19, 1988, we requested that the Director of Central Intelligence produce a formal document on this subject, to be approved by the National Foreign Intelligence Board. This led first to an analysis published by the Director of Central Intelligence's Joint Atomic Energy Intelligence Committee in July 1989, and eventually to a national intelligence estimate published in July 1990.

To maximize the usefulness of the national intelligence estimate, we also asked the Chairman of the Joint Chiefs of Staff to submit to the Director of Central Intelligence his assessment of the levels of Soviet evasion that he would consider militarily significant. We asked the Secretary of Energy to provide an assessment of the Soviet technical, logistic, and programmatic requirements necessary to conduct such evasion. As a result, the national estimate is directly relevant to the policy maker and reflects the combined expertise of many agencies in the executive branch.

Finally, the committee solicited and obtained the written views of numerous outside experts in arms control, seismology, and nuclear testing fields.

The culmination of the committee's effort is a classified report of some 116 pages, which addresses in detail the verification protocols, United States collection and analytical capabilities, cooperative verification measures, the Soviet compliance record, evasion scenarios, monitoring judgments, counterintelligence issues, and implementation concerns. As I announced when filing this effort on September 14, it is available to all my colleagues, under the provisions of Senate Resolution 400. During this afternoon's debate, it has been available to any Member of this body in the Vice President's office, just off the floor.

The committee's public report, approved unanimously on September 12 and issued on September 14, discusses

the logic of the verification protocols and lists the committee's key findings and recommendations. This is essentially the executive summary of the larger, classified report.

#### THE COMMITTEE'S KEY FINDINGS

Mr. President, the committee's key findings regarding these treaties and protocols merit careful consideration before the Senate gives its advice and consent to ratification. I would like to set forth those findings and some of the analysis that underlies them.

The committee's basic monitoring judgments are as follows:

1. As a result of the cooperative monitoring and inspection measures negotiated with the Soviets and recent improvements in U.S. analytical methodologies, the overall U.S. capability to monitor Soviet compliance with the 150-kiloton limits in the Threshold Test Ban Treaty (TTBT) and the Peaceful Nuclear Explosions Treaty (PNET) has been significantly improved.

2. The Committee concludes that unilateral U.S. capabilities and the cooperative measures provided for in the verification Protocols are sufficient to monitor Soviet compliance with the 150-kiloton limits.

United States Government experts have gained increasing knowledge of the geology of the Soviet test sites, developed new analytical methods, and calibrated their seismic efforts with onsite measurements. All of this has reduced their uncertainties and resulted in lower seismic estimates of the yields of current and past Soviet tests.

In addition, the new verification protocols to the treaties address the uncertainty problem associated with estimating nuclear yields. Onsite inspection will provide geological data that are crucial to the analysis of how well seismic signals will be generated and transmitted from an explosion site. In-country seismic monitoring will improve U.S. collection of regional seismic signals. On site hydrodynamic monitoring will provide an independent and, generally, a more accurate estimate of explosive yield, which will reduce the uncertainty in all-source estimates of yield and also contribute to the refinement of seismic equations, thus lowering the uncertainty attached to yield estimates that are based only on seismic data.

The protocols will also make evasion much more difficult. Onsite inspectors will be able to detect the use of large cavities or porous material to reduce the size of the seismic signals emitted by a nuclear explosion. This means that any evasion scheme using those methods would have to depress the apparent yield of an explosion to near 35 kilotons, rather than merely to near 150 kilotons—a much more daunting challenge. Onsite hydrodynamic monitoring will protect against evasion by forcing the evader to contend with more than just seismic monitoring. A scheme that might reduce a test's apparent yield in seismic monitoring will

be fruitless unless it can either depress the apparent yield to near 50 kilotons or also fool the hydrodynamic monitors that measure the shock wave as close as 35 feet from the explosion.

Several other protocol provisions are specifically designed to thwart evasion: A limit on the size of cavities for nuclear tests; limits on closely spaced nuclear tests; local seismic monitoring of group peaceful nuclear explosions [PNE's] with a declared aggregate yield over 150 kilotons, to detect any undeclared explosion; and the requirement that the verifying party agree to verification measures for any group PNE with that large of a declared aggregate yield.

Monitoring is never perfect, however, and the committee added two cautionary findings:

3. The Soviets could conduct tests slightly above the 150-kiloton limits without the U.S. Government being certain that they had done so. The Soviets could not evade the 150-kiloton limits by a significantly amount, however, without a lengthy, costly and risky covert evasion effort.

4. It will be more difficult to monitor Soviet compliance with the 35-kiloton and 50-kiloton "trigger levels" for on-site inspection and hydrodynamic or in-country seismic monitoring. These trigger levels will still serve their primary purpose, however, of making any major evasion of the 150-kiloton limits a much more daunting task for the Soviets.

These findings are prompted by the remaining uncertainty in U.S. monitoring and by the lack of collateral constraints to protect against protocol violations. Uncertainty is unavoidable in monitoring, and any uncertainty gives the other side some leeway to edge over the limit with little risk of being caught unambiguously in a violation. In the absence of a major evasion effort, however, edging over the limit does not buy you much.

The constraints in the protocols are designed to make it harder to violate the treaties' 150-kiloton limits without being caught. There are no such additional protections, however, for the protocol constraints themselves. Our fourth finding is thus not unexpected.

Even a 100-percent violation of those trigger levels would still leave the Soviets well below the 150-kiloton limit. The United States can live with an imperfect ability to monitor compliance with the 35-kiloton and 50-kiloton thresholds for inspection and monitoring, therefore, so long as violations of those thresholds would not be, in and of themselves, a threat to our national security.

We asked United States experts why the Soviets might want to evade—or comply with—the provisions of these treaties or the protocols. Our report summarizes their answers as follows:

5. The primary motivations for Soviet evasion would be to conduct full-yield tests to validate the performance, reliability or safety of old or new weapons, or to preclude

U.S. knowledge of Soviet exotic weapons programs.

6. These motivations are offset by Soviet reliance on proven nuclear weapon designs; by the fact that most nuclear testing needs can be met by tests under 150 kilotons; by the high costs of covert evasion; by the uncertainty that any evasion scenarios would work as intended; and by the risk of detection by the United States or revelation by an increasingly open and anti-nuclear Soviet press and society. The cost, risk and uncertainty factors would all increase if more than one illegal test were attempted.

The reason for full-yield tests would be because the Soviets did not trust their scientists' ability to predict the performance of some high-yield weapon on the basis of extrapolations from low-yield tests. Small extrapolations are more readily accepted than large ones, so this possible motivation leads us to guard against large violations of the 150-kiloton limit, rather than small ones.

The goal of precluding U.S. knowledge of new weapons programs relates most directly to the 35-kiloton threshold for onsite inspection. Some Soviet nuclear tests above that level might be impossible to conduct in the presence of United States inspectors without betraying their basic purpose. The tests would be perfectly permissible, however, under the treaties and protocols, so the Soviets would have to ask themselves how much expense and risk they were willing to accept just for the sake of keeping our inspectors out.

The committee then turned to the question of specific evasion scenarios:

7. Although the motivations and risks described above did not lead any Executive branch witnesses to expect the Soviet Union to attempt any evasion of the Treaties, the following evasion scenarios were presented as examples of the most feasible approaches:

a. The Soviets could attempt an unannounced 300-kiloton explosion in a large cavity to reduce the seismic signal generated by the explosion, and thus the estimated yield, to near the 35-kiloton trigger level for on-site inspection. Covert construction of such a cavity would be a major activity costing hundreds of millions of dollars, requiring years to create and still running the risk of being detected.

b. Because the TTBT Protocol does not restrict the timing or separation of any tests below 35 kilotons, the Soviets could conduct multiple tests that would degrade seismic estimates of yield. Multiple-explosion evasion scenarios appear more feasible regarding the [35-kiloton and 50-kiloton] trigger levels than for any significant evasion of the 150-kiloton limit.

c. Testing in deep space, a violation primarily of the Limited Test Ban Treaty of 1963, is the only technically feasible method of completely concealing the occurrence of a large nuclear explosion. The Soviets would not only have to fly a nuclear payload and testing equipment deep into space and be willing to pay the cost, but would also have to develop an adequate cover story for the mission and for their retrieval of testing data at a time when they are increasingly open about their scientific space missions.

The committee went on to look at past Soviet compliance with the 150-kiloton limits, which both we and they have promised to observe since 1976:

8. Given current U.S. Government estimates of the yields of past nuclear tests, the Committee can rule out any major Soviet violation of the 150-kiloton limits of 1976. The pattern of past Soviet testing is consistent with either of two other hypotheses: Soviet compliance with the 150-kiloton limit; or a few slight violations of it. The military rationale for slight violations remains in doubt.

If the Soviets did violate the limit, and they claim they have not, none of our witnesses could come up with a particular advantage that they would have achieved. But our country has a strong interest in the rule of law and, thus, in holding others to their obligations even if we cannot find a logical motive for a violation. The committee therefore found as follows:

9. The inability of the U.S. Government to determine whether the Soviets had or had not violated the 150-kiloton limits was sufficient reason for the United States to negotiate more stringent verification protocols.

During its deliberations on the treaties, the committee solicited the views of a broad spectrum of individuals with expertise in nuclear weapons design, nuclear test monitoring, and arms control policy. The committee requested that they focus their views primarily on topics under the committee's jurisdiction: The treaties' monitoring and verification protocols; United States capabilities and procedures to monitor Soviet compliance; and the treaties' implications for United States counterintelligence and security. I want to thank those individuals who responded to the committee's invitation to contribute their perspectives, and I ask unanimous consent that their responses appear in the RECORD at the end of my statement.

#### COUNTERINTELLIGENCE AND SECURITY PREPAREDNESS

In addition to examining U.S. monitoring capabilities, the Intelligence Committee explored the question of how prepared the U.S. Government is to implement the verification protocols. An important element of implementation is to take the counterintelligence and security measures needed to protect United States personnel and programs from possible Soviet efforts at intelligence collection, as opposed to normal inspection, monitoring, or escort activities. The committee's findings in these areas were mixed:

10. The Executive branch has made sensible decisions on organization and policy for implementing the verification Protocols, analyzing the resulting data, producing monitoring estimates and reaching verification judgments.

11. There is a threat of Soviet intelligence exploitation of the inspection process, including efforts to compromise the secrecy of U.S. nuclear weapons and defense programs

and to target U.S. inspectors in the Soviet Union.

12. No comprehensive interagency risk assessment has yet been completed. The risks at the Nevada Test Site and at potential locations for housing Soviet inspectors have not been fully evaluated, partly because not all relevant Executive branch elements have participated adequately in the assessments.

13. The Executive branch has not yet resolved major issues of funding for implementation and counterintelligence. While the President could postpone exchanging instruments of ratification until funds for implementation are available, the mere availability of funds will not guarantee that the several agencies involved will have the needed counter-intelligence resources in place before the first inspection occurs.

The committee also noted a procedural and institutional issue that could affect both U.S. monitoring capabilities and U.S. counterintelligence and security. The issue concerned TTBT protocol provisions regarding changes in the protocol. The committee's findings on this matter were as follows:

14. The TTBT Protocol contains not only the basic monitoring rights, but also other provisions affecting monitoring capabilities that are essential for effective verification. They include those that specify data to be provided by the Testing Party; assure the reliability of CORTEX monitoring; set the criteria for "standard" nuclear tests; and list the permitted activities and equipment of inspectors and monitors.

15. The TTBT Protocol also contains provisions that are essential for effective counterintelligence. They include provisions requiring the use of anti-intrusiveness devices and giving the United States the right to escort Soviet personnel at all times; to control the travel and contacts of Soviet personnel; to examine any equipment brought to the United States; and to inspect the baggage, personal belongings and packages brought or mailed by Soviet personnel.

16. These provisions are subject to change by the Bilateral Consultative Commission established pursuant to paragraphs 2-4 of Section XI of the TTBT Protocol. Executive branch statements thus far do not provide sufficient assurance that changes in such essential provisions will be subject to the advice and consent of the Senate.

#### THE INTELLIGENCE COMMITTEE'S RECOMMENDATIONS ON TTBT PROTOCOL CHANGES

The committee's findings on TTBT protocol changes led us to make two recommendations in our report of September 14:

1. The Executive branch should provide firm assurances that any changes in the TTBT Protocol regarding provisions that are essential for effective U.S. monitoring, counterintelligence or security—such as those listed above—will be treated as amendments to the Protocol that are subject to the advice and consent of the Senate. The Committee recommends that a condition to the instrument of ratification be enacted to buttress those assurances.

2. The Executive branch should also assure the Senate that it will provide the Senate Intelligence Committee prior notice of any other proposed change in the TTBT Protocol that may have a negative impact on U.S. monitoring, counter-intelligence or security capabilities, to enable the Committee to voice an objection in appropriate

cases, before the issue becomes moot. The Committee recommends that a condition to the instrument of ratification be enacted to protect the interests of all relevant Committees of the Senate.

When the Intelligence Committee adopted these recommendations, nearly 2 weeks ago, I believe we all intended to identify potential problem areas and to create a vehicle for further debate. It was clear, at the time, that further dialog with the executive branch was needed to resolve these matters before the treaties came to the floor of the Senate.

Since we made those recommendations, and at least partly in response to them, the executive branch has indeed given assurances to the Senate. A letter of September 11 from ACDA Director Ronald Lehman to the chairman of the Foreign Relations Committee, who had raised similar concerns, addressed the first issue as follows:

I can confirm that the intention of these paragraphs is to enable the Parties, on the basis of their day-to-day experience in living with the Protocols, to make such changes, of a technical, administrative or procedural nature as do not affect substantive rights and obligations under the Treaty and Protocol, that will improve the effectiveness of the verification regime. Any change of a substantive nature that would have an effect upon basic aims of the Treaty or rights and obligations of the Parties would have to be made by means of an amendment.

In testimony before the Senate Armed Services Committee on September 17, Director Lehman stated that the Senate could rely upon the assurances in his September 11 letter without having to add a condition to the resolution of ratification.

The Intelligence Committee had recommended more specific assurances that would list some of the provisions that could not be changed without using the amendment process. Senator SARBANES, at the Senate Foreign Relations Committee hearing of September 13, raised a concern that it would never be possible to specify precisely what provisions should be subject to change only through amendments, since we could not anticipate what truly technical changes might later be needed. Senator SARBANES suggested that greater specificity regarding prior notice of all changes to the protocol would be a more reasonable and useful goal. In practice, this is what we have obtained.

Director Lehman's letter of September 11 addressed the issue of prior notice of TTBT protocol changes as follows:

It is the expectation of the Administration that implementation of the Treaties and their Protocols will include continuing consultations with the Senate. Briefings should be a matter of course. Any proposed amendment would be the subject of specific consultations and, following negotiation, would be subject to advice and consent.

Neither the Intelligence Committee nor the Foreign Relations Committee viewed this assurance as sufficient, and Senator LUGAR, at the September 13 hearing, joined in calling for further assurances. ACDA Director Lehman sent a second letter to Chairman PELL on September 14 that included the following statement:

I would like to provide the following further assurance concerning paragraphs 3 and 4 of Section XI of the TTBT Protocol. The Administration will provide notice concerning any modifications and changes negotiated with the Soviets to the provisions of the TTBT Protocol prior to such modifications or changes becoming binding on the Parties. The objective of this further assurance is to provide notice before an issue becomes "moot."

The Administration offers this further assurance because of the unique technical nature of the TTBT Protocol. The Administration does not consider this further assurance to be a precedent for other arms control agreements with similar provisions that may be concluded in the future.

The Intelligence Committee has a particular interest, of course, in TTBT protocol changes that might affect U.S. monitoring, counterintelligence or security capabilities. For that reason, ACDA Director Lehman also sent a letter to the vice chairman and me on September 20, with the following additional assurance.

To the extent that any changes or modifications affect matters under the jurisdiction of the Senate Select Committee on Intelligence, we will ensure that they are brought to your attention as well.

Mr. President, I ask unanimous consent that the full text of Director Lehman's letter be printed in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mr. BOREN. Mr. President, the Senate has thus received substantial assurances from the executive branch, just as our committee had hoped when it made its recommendations. While the assurances regarding the line between amendments and other TTBT protocol changes are not as detailed as those proposed by our committee, I believe that the Senate's interests have been well protected.

We might ask whether a future administration would be bound to observe the current administration's commitment to prior notice. In the Armed Services Committee hearing of September 17, Director Lehman stated that the assurances in his letter of September 14 were not required by the TTBT treaty of protocol; were rather an administration commitment to the Senate; and could be relied upon by the Senate without any need for a condition to the resolution of ratification.

There appears to be no way, however, for the Senate to bind a future administration to a political commit-

ment. This contrasts with the Senate's ability to bind future administrations to the explanations of treaty or protocol provisions that are provided when a treaty is submitted for the Senate's advice and consent.

A condition to the resolution of ratification would make the Senate's concern regarding this commitment clearly a matter of record. The Foreign Relations Committee has recommended against such a condition, however, on the grounds that we have already made the Senate's concern quite clear.

I agree, and I am confident that future administrations will honor the commitment that the current administration has made to us. If they ever should not do so, they would precipitate a major crisis between the legislative and executive branches on any future treaties that might contain similar modification provisions.

THE COMMITTEE'S RECOMMENDATION ON  
FUTURE VERIFICATION TECHNOLOGIES

The Intelligence Committee has always tried to ensure that U.S. monitoring capabilities would be as robust as possible, within the limits of fiscal responsibility. Last year, we used our influence to secure a modest increase in the funding for seismic monitoring of Soviet nuclear explosions. This year, we supported an increase in the Department of Energy's R&D funding for all sorts of new verification technologies.

Looking to the future of nuclear test monitoring, the committee adopted the following recommendation:

3. The Parties agree, in paragraph 3 of Article I of the TTBT, to "continue \* \* \* negotiations with a view toward achieving a solution to the problems of the cessation of all underground nuclear tests." The Committee did not consider whether the United States should negotiate further constraints on nuclear tests, but supports further research into technologies that may contribute to verification of compliance with any new obligations the United States may undertake.

The committee's support for further verification R&D in the nuclear testing field does not require a specific executive branch response at this time.

THE COMMITTEE'S RECOMMENDATIONS ON IMPLEMENTATION, COUNTERINTELLIGENCE, AND SECURITY PREPAREDNESS

In light of the committee's disturbing findings regarding U.S. preparedness to host Soviet inspectors and monitors, the following recommendations were adopted in our report:

4. The Executive branch should complete a comprehensive risk assessment immediately. In conjunction with that assessment, relevant agencies should inform the Intelligence Committees of their plans for effective counterintelligence and security countermeasures.

5. The Committee recommends that a condition to the instrument of ratification be enacted requiring that the President not exchange instruments of ratification until he certifies to the Senate that sufficient resources and time are available to prepare for TTBT implementation, including coun-

terintelligence and security countermeasures.

The executive branch has responded in part by devoting high-level attention to the concerns raised by the committee. Relevant officials have been brought together, funding needs have been addressed and the timetable for a comprehensive risk assessment has been accelerated. Although major decisions are still pending, we now are much more confident than we were last week that the need to make those decisions in a timely, as well as careful, manner is clearly understood.

The committee's fifth recommendation prompted quick assurances from the administration. The special assistant to the President for national security affairs, General Scowcroft, sent letters to the vice chairman and me on September 13 that discussed the decisions on counterintelligence and security that remained to be made. These letters included the following:

I want to assure you that the Administration will take no action under the Treaty that would endanger or compromise vulnerable U.S. programs.

I ask unanimous consent that the full text of General Scowcroft's letter be printed in the RECORD at the end of my statement.

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

(See exhibit 2.)

Mr. BOREN. Mr. President, the assurance that I have quoted is important for two reasons. First, it comes from a ranking official who is in a position to bring together the several agencies that will be involved in implementing U.S. security measures. Second, it is based upon discussions between our committee and the executive branch on what actions might "endanger or compromise vulnerable U.S. programs" and how to avoid those actions.

The executive branch has asked us not to go into detail in public regarding the steps that they can take to avoid endangering U.S. programs. I want to assure my colleagues, however, of my confidence not only that they understand the importance of this problem, but also that they know of steps they can take in order not to endanger the national security.

I also want to note that the other steps the executive branch can take would be preferable to delaying the exchange of instruments of ratification. This is because a delay in the treaty's entry into force could deprive the United States of a chance to monitor a Soviet nuclear test that we would otherwise be entitled to monitor. For example, the delay could push back the 200th day after the treaty's entry into force until sometime in May of 1991, say, while a Soviet test might be scheduled for sometime in April. So my own view is that the alternative steps that the executive branch is pre-

pared to take are not only reasonable, but an improvement over the step that we had recommended.

At the Senate Armed Services Committee hearing on September 17, ACDA Director Lehman stated that the Senate could rely upon the assurances in General Scowcroft's letter without adding a condition to the resolution of ratification. Since both recommendation #5 and that letter deal with the initial preparations for hosting Soviet inspectors and monitors, there is no issue of whether these assurances bind future administrations.

Given the assurances that we have received from General Scowcroft and Director Lehman, I am satisfied that we do not need the condition to the resolution of ratification recommended in our report. I pledge to my colleagues, however, that the Intelligence Committee will watch closely over the implementation of the TTBT to make sure that the executive branch lives up to those assurances.

SUMMARY

In summary, Mr. President, I can report to my colleagues that the Senate Intelligence Committee's findings and recommendations have prompted a series of important executive branch actions and assurances. In light of those developments, I do not believe that we need to pursue any of the three conditions to the resolution of ratification that the committee recommended in its report of September 14.

I want to take this opportunity to commend the Committees on Foreign Relations and Armed Services for the manner in which we all have worked together to protect the interests of the Senate. I seriously doubt that any single committee could have achieved as much on the Senate's behalf as we have by combining our efforts.

The assurances received by the Foreign Relations Committee have been placed into the RECORD by the chairman of that committee, and Director Lehman's assurances to the Armed Services Committee will appear in the published record of their hearing. The letters of assurance to the committee from General Scowcroft and ACDA Director Lehman will be printed in the RECORD after this statement.

As for our other findings, my colleagues must assess them for themselves. We have concluded that the United States can effectively monitor Soviet compliance with the 150-kiloton limits in the treaties. We have also found, however, that slight, undetected violations may be possible and that it will be more difficult to monitor Soviet compliance with the 35-kiloton and 50-kiloton thresholds for on-site inspection and monitoring in the new protocols.

Our role has been to secure and evaluate the best information possible

on United States monitoring capabilities and the risks of undetected Soviet evasion. The Senate's role is to decide the ratification issues before us, taking into account both the committee's findings and the wider national security concerns that also rightly influence our decisions.

Finally, Mr. President, I would like to acknowledge some people who have contributed greatly to the success of our work on these treaties. Ambassadors C. Paul Robinson, the chief U.S. negotiator for the new verification protocols, and Dick Holwill have been especially helpful in answering our questions and in working to reconcile the Senate's concerns with executive branch interests so that needed assurances could be provided to the Senate in a timely manner. Many other executive branch officials have been less visible, but no less important.

The intelligence community has also been extremely helpful on these treaties, throughout the negotiations as well as in recent months. I want especially to thank Dr. Lawrence K. Gershwin, National Intelligence Officer for Strategic Programs, and Dr. John T. Kriese, Chairman of the Joint Atomic Energy Intelligence Committee.

Within the Senate, I want to acknowledge the staff of the Foreign Relations and Armed Services Committees. We all pulled together on these treaties, and all three committees contributed to the resolution of Senate concerns. On the Intelligence Committee staff, I especially want to thank the four authors of our report—John Elliff, Edward Levine, Don Mitchell and Gary Sojka. Our thanks extend as well to all who contributed to the committee's efforts.

Mr. President, I ask unanimous consent to print in the RECORD the written responses of outside experts.

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

PRINCETON UNIVERSITY, SCHOOL OF  
ENGINEERING/APPLIED SCIENCE,  
CENTER FOR ENERGY AND ENVIRONMENTAL STUDIES,

Princeton, NJ, July 11, 1990.

Senators DAVID BOREN and WILLIAM COHEN,  
Select Committee on Intelligence,  
Washington, DC.

DEAR SENATORS BOREN AND COHEN: This letter is in response to your request for my comments on the verification protocols of the Threshold Test Ban Treaty (TTBT) and Peaceful Nuclear Explosions Treaties (PNET).

I believe that the verification arrangements described in these protocols can do what they have been advertised as doing: verify with high confidence and with an accuracy of about 30 percent that U.S. and Soviet underground nuclear explosions have yields of less than 150 kilotons. I doubt whether there will be any significant controversy on this question in your proposed hearings.

However, I wonder whether it would be wise for the Select Committee on Intelli-

gence to limit its planned enquiry to just the TTBT and PNET protocols. I raise this question for the following reasons:

(1) The preamble of the TTBT notes "the determination expressed by the Parties in the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water in its preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end."

(2) Although the TTBT was signed 16 years ago this month, there have been no negotiations for more than ten years on steps beyond to the TTBT.

(3) In large part because of this inaction on the part of the U.S., Soviet Union and U.K., in January 1991, most of the Parties to 1963 Partial Test Ban Treaty will meet at the U.N. to discuss amending that Treaty into a Comprehensive Test Ban.

Inevitably, in the debate over testing limitations that go beyond the TTBT and PTBT, arguments will arise as to the verifiability of such additional limitations. I would therefore recommend that the Select Committee use the opportunity provided by the forthcoming hearings to make a preliminary exploration of the U.S. government's preparations for discussing the verifiability of treaties with much lower thresholds all the way down to some practical definition of zero. (It has been suggested that such a definition might be an explosion, such as those envisioned for inertial-confinement fusion, that could be contained within a continuously occupied above-ground structure.)

If you do pick up on this suggestion, I would urge that you not limit your enquiry to seismic methods for detection and identification of underground explosions. It is well known that, in the region below about ten kilotons, explosions can be "decoupled" in large underground cavities so as to reduce their seismic magnitudes by a factor of one hundred or so. As a result, the seismic signal of, for example, a one-kiloton explosion, would appear similar to that of a 10 ton chemical explosion. This does not mean that such an explosion could not be detected by a high-quality in-country seismic monitoring system with tens of stations in the USSR. However, it would be necessary to discriminate the decoupled nuclear explosion from the many chemical explosions of this magnitude that are routinely used in surface-mining operations.

There are many approaches to this problem. Some are specific, such as exploiting the facts that: (i) Many large mining explosions are ripple fired, resulting in different high-frequency signals than would be emitted by a decoupled nuclear explosion, or (ii) A surface chemical explosion would produce a much more powerful acoustic wave in the atmosphere than a deeply buried and decoupled nuclear explosion with the same seismic magnitude. Some require cooperation—with each side having to declare large chemical explosions and providing opportunities for on-site inspections and local seismic monitoring. Other approaches are general, such as checking suspect locations with before and after multi-spectral satellite photographs. Most general would be to rely on overall intelligence capability to be able to detect a clandestine research, development and testing program of the size required to develop a new type of nuclear warhead.

My impression is that the U.S. currently has no coherent research program of significant size focused on developing the basis for a U.S. government position on these questions. I therefore urge you to use your

forthcoming hearings as a device to get a commitment from the Executive Branch to establish such a program and task it to deliver initial results in time for the January 1991 Partial Test Ban Treaty Amendment Conference.

I hope that this is useful. If I can be of any further use on this matter, please feel free to contact me. My research office number is 609-258-4695.

Sincerely yours,

FRANK VON HIPPEL.

Hon. DAVID L. BOREN,  
Hon. WILLIAM S. COHEN,  
Select Committee on Intelligence,  
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND MR. VICE CHAIRMAN: Thank you for your courtesy in inviting me to submit my thoughts on the ratification of the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty, now before your Committee for recommendation of the Senate. I am honored to be invited to contribute.

I will not attempt a detailed analysis of the verification aspects of these two treaties, but rather would like to invite your attention to the basic approach I believe the Senate should take in considering these issues. President Reagan has said that verification cannot be absolute, and he is right. It must be considered possible for any verification regime to be evaded in some small respect.

But this is not the real question before you. That is whether the verification procedures will protect our nation against violations of the treaty by other signatories while we respect its limitations to the extent that our national security would be put in jeopardy. A rather simple set of propositions in my opinion clarifies the real issues:

1. Our intelligence services will "verify" any dangers to our national security whether there is a treaty or not. This is their continuing responsibility and function, and the impressive set of national technical means we have developed does an outstanding job of doing must this, as I am sure your own review of the product indicates to you.

2. The verification provisions of the treaties makes this process easier, due to their provisions for reporting, transparency, inspections, etc.

3. It is plain that any attempt to evade these two controls could only produce a marginal advantage, and for a short time at that. It may be possible to hide a weapon, but it is not possible to hide a force which would have strategic value. The famous Krasnoyarsk radar illustrates this, and is incidentally a triumph of verification (and only by national technical means, unassisted by treaty verification processes). Our intelligence identified this violation of the ABM Treaty within about a year of the beginning of its construction. Three years later, after we had called the Soviets on the matter many times and they had tried to turn us off with a cover story, three of our Congressmen visited the site with Soviet permission. They reported that the cement and other construction was still incomplete, and not even a beginning had been made on the electronics aspects of the project, which would probably require another three years or so. When one considers that the radar by itself would be of no strategic value without associated ABM bases which it would direct, it is clear that another three or four years would be necessary to construct them. In sum, our intelligence "verified" that viola-

tion within a bit over a year of its commencement, and some ten years before it could be a strategic threat to our nation. The final begrudging Soviet agreement to tear it down is a better test of the verification process than highly speculative scenarios as to how they might make a marginal violation of the treaties before you.

4. The opening established by these treaties for specific inspections has a parallel effect in opening closed societies more generally, and moves the world as a whole to greater transparency. Since we are already essentially open, this is of advantage to us.

Our security is better obtained by convincing our potential adversaries to lay down their arms than by building ones of our own. These treaties are an example of this process, and their ratification is very much in our interest. Their verification provisions make the process of monitoring Soviet behavior even easier than the process we follow through our own technical and other intelligence means, and certainly would identify at an early stage any violations which would have any effect on our national security.

Sincerely,

WILLIAM E. COLBY,

Director of Central Intelligence, 1973-76.

LAWRENCE LIVERMORE

NATIONAL LABORATORY,

Livermore, CA, July 24, 1990.

Senator DAVID L. BOREN,

U.S. Senate, Select Committee on Intelligence, Washington, DC.

DEAR SENATOR BOREN: Thank you for your letter of July 2 inviting me to submit a written statement of my views concerning matters within the Select Committee's purview pertaining to the ratification of the Threshold Test Ban Treaty (TTBT) as outlined in your letter. I must plead "innocent", however, to your expectation that I am an expert in these matters. My expertise lies in the area of the design and characteristics of nuclear weapons themselves, rather than the area of the monitoring and verification of agreements limiting their testing.

Instead of myself, I highly recommend to your Committee Professor Lynn R. Sykes, professor of geological sciences, Lamont-Doherty Geological Observatory, Columbia University. He is a distinguished seismologist and an outside expert in the field of verifying and monitoring limits on nuclear testing. I am sure that his views would be most helpful to your deliberations concerning the TTBT.

Having disavowed any claim to being an expert, I will take advantage of this opportunity to express my views concerning the need for the "hydrodynamic yield measurement method" defined on page 3 of the Protocol to the TTBT.

I believe that this method is costly, awkward, potentially divisive to implement, and unnecessary. The "seismic yield measurement method", also defined on page 3 of the Protocol, is widely understood by both Soviet and U.S. experts in the field to be entirely adequate for the task of measuring nuclear explosive yields over a very wide range of yield levels including 150 kilotons.

I hope I may be forgiven for suspecting that the primary reason for U.S. insistence on the hydrodynamic method of yield measurement was a mistaken belief that its intrusiveness would result in its unacceptability by the Soviets.

Sincerely,

RAY E. KIDDER,

Theoretical Group Physics Department.

THE IRIS CONSORTIUM,  
August 6, 1990.

HON. DAVID L. BOREN,

Chairman,

HON. WILLIAM S. COHEN,

Vice Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BOREN AND VICE CHAIRMAN COHEN: Enclosed is my statement regarding the verification protocols of the 1974 Threshold Test Ban Treaty and the 1976 Peaceful Nuclear Explosions Treaty. Thank you for inviting me to submit a statement to the Select Committee.

If you have any questions or would like further explanation, please contact me at 524-6222.

Sincerely,

GREGORY E. VAN DER VINK.

VERIFICATION OF THE 1974 THRESHOLD TEST BAN TREATY AND THE 1976 PEACEFUL NUCLEAR EXPLOSIONS TREATY

(Statement of Dr. Gregory E. van der Vink to Select Committee on Intelligence, U.S. Senate, Aug. 10, 1990)

PREFACE

This statement is based both on my past experience as Project Director for two U.S. Congress Office of Technology Assessment (OTA) studies on seismic verification, and on my current work in the IRIS university research consortium that includes the coordination of the joint US/USSR seismic program being conducted by IRIS and the USSR Academy of Sciences.

In 1988, I directed the Congressional OTA study on seismic verification of nuclear testing treaties.<sup>1</sup> The study was requested by the Senate Select Committee on Intelligence, with additional requests from the House Committee on Foreign Affairs and the House Permanent Select Committee on Intelligence. Over 40 scientists contributed to the report and reviewed its contents. The study accessed both the classified and unclassified research that pertained to seismic verification, and included an evaluation of hydrodynamic methods of yield estimation.

Following the seismic verification study, I directed a special OTA study on Soviet compliance with the 150 kiloton limit of the Threshold Test Ban Treaty.<sup>2</sup> This study was performed at the request of the Senate Foreign Relations Committee.

Currently, I am Director of Planning for the IRIS Consortium, a university research organization representing 71 universities. The IRIS program includes the installation of seismic stations in the United States and the Soviet Union under a cooperative agreement between the Soviet Academy of Sciences and the university research community in partnership with the U.S. Geological Survey. The program is now providing scientists with continuous seismic data directly from within the Soviet Union. The data from the Soviet Union have allowed us to better evaluate seismic monitoring techniques.

This testimony represents my views as an individual well acquainted with both the technical and political arguments surrounding the test ban issue. I am not testifying on behalf of the Office of Technology Assessment, or the IRIS Consortium.

Status of the two treaties for the past 16 years

The 1974 Threshold Test Ban Treaty (TTBT) limits the size of underground nuclear explosions by the United States and

the Soviet Union to explosive yields no greater than 150 kilotons. This yield limit corresponds approximately to the explosive equivalent of 150 kilotons of TNT,<sup>3</sup> or ten times the explosive yield of the bomb that was dropped on Hiroshima.<sup>4</sup> The 1976 Peaceful Nuclear Explosion Treaty (PNET) is a complement to the TTBT. It restricts individual peaceful nuclear explosions by the United States and the Soviet Union to yields no greater than 150 kilotons, and groups explosions (consisting of a number of individual explosions detonated simultaneously) to aggregate yields no greater than 1,500 kilotons.

Since the signing of the TTBT and the PNET over a decade and a half ago, the treaties have been in force even though they have not been ratified. Neither country has indicated an intention not to ratify the treaties; consequently, both parties are obligated to refrain from any acts that would defeat the treaty's objective and purpose.<sup>5</sup> Provisions have existed, however, for one or two slight, unintentional breaches per year of the 150 kiloton limit due to the technical uncertainties associated with predicting the exact yield of nuclear weapon tests.<sup>6</sup>

For the past several years, efforts to negotiate further restrictions on nuclear testing have been forestalled pending ratification of the TTBT and PNET. Ratification of the two treaties, in turn, has taken several years due to the controversial insistence on the part of the Reagan administration to verify the treaties with the on-site hydrodynamic method called CORRTEX. The controversy over the verification of these two treaties has ostensibly been over technical issues, but in reality has been driven by political agendas. On the surface, the debate is over the ability of different technical methods to measure the size of an underground nuclear explosion. At the heart of the debate is the issue of whether we want further restrictions on nuclear testing.

To differentiate what is political from what is technical, we must first accept that no method of verification is exempt from uncertainty and therefore a subjective decision has to be made about what level of uncertainty is acceptable.

No method of verification is exempt from uncertainty

Measuring the size of a nuclear explosion, like measuring one's weight or the speed of one's car, is imperfect. No matter what method is used, there will always be some uncertainty. An illustration of this point occurred during the 1988 US/USSR Joint Verification Experiments (JVEs).

As part of the JVEs, the United States Government invited several dozen Soviet scientists to the Nevada Test Site to witness the use of the U.S. CORRTEX method for measuring the yield of a U.S. underground nuclear explosion. As reported in the Washington Post,<sup>7</sup> the CORRTEX system measured the yield of the explosion as being around 155 to 163 kilotons, an apparent violation of the 150 kiloton limit of the Threshold Test Ban Treaty. The Post article went on to say that despite these measurements, a State Department press advisory declared the explosion was "in conformity" with the 150-kiloton limit; and U.S. Ambassador Paul Robinson stated that "the test yield was clearly below the [treaty] threshold, and neither we nor the Soviets have a problem with that." Soviet seismic methods, however, indicated that the yield was within the limit. The Soviet newspaper TASS recognized the irony and, in reporting

<sup>1</sup> Footnotes at end of article.

the incident under the headline, "American Corrtex Registers American 'Violation'",<sup>8</sup> stated:

"Both Corrtex devices installed at the range, which are favoured by the U.S. as a monitoring technique, showed the yield of American nuclear explosion, witnessed by Soviet specialists, to be over 150 kilotons, i.e. over the limit which the two countries have pledged to observe. At the same time the Soviet telesismic monitoring means, which were dismissed by the American specialists as unreliable, showed that the yield of the American explosion was 140 kilotons as planned and that the United States did not violate the threshold test ban treaty."

The apparent inaccuracy of the CORRTEx measurement above 150 kilotons for the U.S. test does not mean that the United States violated the treaty, nor does it mean that CORRTEx is an inadequate method of yield estimation. If the numbers in the Washington Post story are accurate, CORRTEx performed well within its advertised capability. It is simply the nature of this type of measurement that if testing occurs up to the yield limit, some measurements of those tests will give results slightly above the yield limit. As the United States demonstrated at the US/USSR JVEs, no method of yield estimation is exempt from uncertainty.

The arguments about the verification of the TTBT and the PNET are therefore not about eliminating uncertainty, but about deciding what level of uncertainty is acceptable. This decision is, in turn, fueled by the concern that the Soviets will be able to cheat on the treaty if there is uncertainty in the yield estimate. But uncertainty does not necessarily translate into opportunities for cheating.

*Enforcing the treaty: When is enough enough?*

Although there is uncertainty in every method of yield estimation, this does not mean that the treaty is unenforceable. As an analogy, consider the enforcement of automobile speed limits. The police use radar measurements to catch drivers exceeding the 55 mph speed limit. For comparison, a measured yield of 160 kt (as in the US's JVE test) under the 150 kt limit of the Threshold Test Ban Treaty is like a radar reading of 58.7 mph under the 55 mph speed limit. The police do not generally give tickets when their radar shows a speed of 58.7 mph because most speedometers are not that accurate and because curves and other factors can lead to small errors in the radar's measurement of speed. Similarly, a 160 kt measurement should not be regarded as a legal lack of compliance because such a number can well arise from uncertainties in the measurement technique, whether it be hydrodynamic, seismic, or radiochemical.

The police can enforce speeding limits by using radar measurements to monitor the speed limit even though there is uncertainty in the measurement. At radar measurements over 65 mph the police have confidence that the 55 mph limit has been exceeded, and the speeder is charged with a speeding violation. Similarly, if the measured yield of the US JVE test was 180 or 190 (rather than the reported 155 to 163) kilotons, we would have concluded that the 150 kiloton limit had probably been exceeded.

It is important to note that this argument does not necessarily mean that a country could take advantage of the uncertainty and test at 180 or 190 kilotons. A country attempting to cheat would have to worry that the uncertainty might work against them:

in other words, their test at 180 or 190 could appear as 200 which would be a clear violation. The point is worth making, however, that the calculated yield for declaring a violation will always be higher than the limit imposed by the treaty. A country intent on cheating might try to take advantage of this by risking one or two tests slightly above the limit, just as a driver might risk driving past a police car slightly above the 55-mile per hour speed limit on the assumption that neither her speedometer nor the radar measurement will be high.

*Are the verification provisions technical or political?*

Given that some margin for error in yield estimation is unavoidable, the question becomes: how much is acceptable? Unfortunately, this issue has never been adequately addressed. No credible technical analysis has ever been presented to justify the national security requirement for a specific level of accuracy. In the absence of such analysis, debate over the relative capabilities of seismic methods, hydrodynamic methods, and radiochemical methods are meaningless. As a consequence, the verification requirements of the TTBT and PNET have been driven by the capabilities of available technology, rather than by national security requirements.

Seismic methods of yield estimation were declared inadequate by the Reagan Administration, and in their place on-site hydrodynamic methods were required. The requirement was based not on the need to achieve a certain level of accuracy in yield estimation, but rather on the desire to use a specific technology. In fact, it is not clear that an improved yield estimation capability will be obtained through the use of on-site hydrodynamic methods in place of a local seismic network. The 1988 OTA report on seismic verification concluded that "hydrodynamic [CORRTEx] yield estimation will not provide a significantly superior yield estimation capability over what could be obtained through well-calibrated seismic means." The OTA conclusion was based on the U.S. capability to measure yields within a 30 percent margin of uncertainty at our own test site using a local network, and because of the promising results that were being obtained in the mid-1980s using a regional seismic wave called Lg which travels along the Earth's surface is recorded within short distances (typically 2000 kilometers).

At a Congressional Hearing before the House Committee on Foreign Relations, witnesses on behalf of the administration charged that the OTA report was "flawed" and that "No one should use [the conclusions of the report] as the basis for challenging the established course of the negotiation of nuclear testing limitations." Because no supporting technical arguments were provided for the administration's charges, the Committee requested that such evidence be provided for the hearing record. The administration, however, failed to produce any technical evidence to support its charges against the OTA report prompting the Committee chairman to remark:<sup>9</sup>

"This instance of witnesses on behalf of the administration making unsupported and unsubstantiated charges is an unfortunate matter which I hope is an anomaly. It is in the interest of both the Legislative and Executive Branches to avert such a development from becoming a dangerous precedent that could adversely influence the arms control and national security policy of this country".

[Graphs not reproducible in the Record.]

Additional data available since the publication of the OTA report, has only strengthened its conclusion. In 1989 an article was published in Soviet journal *Atomnaya Energiya*,<sup>10</sup> listing the yields of many Soviet explosions. For four of the more recent explosions in the article for which yields were given, measurements of the seismic wave Lg were available from a seismic station in Norway. The following figure shows the reported yields of the Soviet explosions plotted against the measured Lg wave: The measurements of Lg were determined from weak signals at great distance. Although there are only four points on the graph, they lie remarkably close to a straight line. All of the seismic measurements fall within the 30 percent uncertainty described for hydrodynamic methods. In fact, all of the seismic measurements have an uncertainty of less than 20%. A conclusion from this figure is that seismic methods of yield estimation, based on Lg-waves, for Soviet explosions at the Shagan Test Site may be as accurate as hydrodynamic methods based on CORRTEx.

Unfortunately, the graph contains only four data points. By coincidence, however, the original proposal to use CORRTEx deployed in satellite holes, was also based on only four data points. Six additional data points could be included on this graph: the yield of the USSR JVE test, and the 5 historical yields that were provided by the Soviet Union to the United States as part of the JVE. Unfortunately, the United States has refused to release these yields, despite permission from the Soviet Union to do so.<sup>11</sup> Such a refusal creates the impression that the information is being withheld because it does not support the administration's position that seismic methods are incapable of providing adequate yield estimation. Efforts to obtain this information have resulted in a lawsuit that is currently pending.<sup>12</sup> We will be able to determine whether the additional points fall along the line, if and when this information is released.

The extensive verification provisions of the TTBT and the PNET do not appear to be motivated by technical arguments or national security concerns. Evidence for such suspicion is found in the 1988 statement by the Deputy Assistant Secretary of Defense (Nuclear Forces and Arms Control Policy) of the Reagan Administration:<sup>13</sup>

"The more time wasted on discussions and experimentation of monitoring techniques irrelevant to the verification of an environment in which there are no legal tests, the easier it will be to stave off demands for the more constraining comprehensive test ban"; and by statements of White House officials reporting to *Scientific American* in 1988:<sup>14</sup>

"Privately officials in the White House have acknowledged to *Scientific American* that they have another aim. By creating the appearance of progress toward a test ban, the officials said, they hope to divert attention from the achievements of genuine test ban proponents and so reduce their momentum."

This strategy has been successful. The extensive verification provisions of this treaty have effectively forestalled progress in the area of test ban agreements. Furthermore, if the provisions of the treaty become the standard for verification, it will effectively preclude the possibility of any low-yield or comprehensive test ban treaty. Hydrodynamic methods have no application to monitoring such treaties, because they can not detect unannounced tests. The verification provisions of these treaties appear to be

driven more by posturing over future limits of nuclear testing than about concerns of Soviet violations. Several of the technical requirements of the new protocols further contribute to this appearance.

*Technical questions raised by the new protocols*

Several of the technical requirements contained in the new protocols of the TTBT and PNET will have the effect of limiting progress in developing further restrictions on nuclear testing. In particular, the following questions are raised by the description of the seismic requirements contained in the TTBT protocol:

1. Why do the new protocols limit the operation of in-country seismic stations to only about two weeks per high-yield shot?

The continued operation of such stations would improve the basis upon which the U.S. could make decisions about the verification of a Comprehensive Test Ban Treaty or a Low-yield Threshold Test Ban Treaty.

2. Why are there no provisions to release the seismic data from in-country stations, or allow independent parties to review the analysis?

The current responsibility for assessing the verification provisions of nuclear testing treaties resides in agencies that build nuclear weapons and manage the nuclear weapon stockpile. Such an inherent conflict of interest is not supportive to an aggressive problem-solving approach on issues concerned with limiting nuclear testing.

3. What is the basis for requiring an Lg-wave signal-to-noise ratio of not less than nine?

Although the protocol uses a non-standard definition of signal-to-noise, the ration appears to be twice that which is normally used. For example, in the NORSAR seismic array a signal-to-noise value of 1.5 is all that is needed for the L<sub>s</sub> signal to be of sufficient quality for a reliable yield estimate. By the definition in the TTBT protocol, a signal-to-noise ratio of about 3 should be adequate. It is also curious that the number 9 was chosen rather than 10. The choice implies a level of precision that is difficult to justify.

4. Does the USSR claim that the three seismic stations they have selected (ARU, NVS, and OBN) have signal-to-noise ratios of at least nine for all underground 150 kt tests on its territory?

Given the public opposition to continued nuclear testing in the Republic of Kazakhstan, it is likely that future Soviet tests will be conducted on Novaya Zemlya. It is hard to believe that these three stations will have such high quality recording of Lg for Novaya Zemlya.

*Where do we go from here?*

The TTBT was signed by President Nixon and General Secretary Brezhnev on July 3, 1974. The PNET was signed by President Ford and General Secretary Brezhnev on May 28, 1976. Presidents Bush and Gorbachev signed the new verification protocols for the TTBT and the PNET on June 1, 1990. These two treaties have now been sent to the U.S. Senate for advice and consent to ratification three times. To date, the treaties continue to be held hostage to political agenda. I hope that the U.S. Senate will promptly recommend ratification.

Article I (3) of the TTBT states "The Parties shall continue their negotiations with a view toward achieving a solution to the problem of the cessation of all underground nuclear weapon tests." This article appears contradictory to the statements made by the Bush administration in early 1990 that

1) they have identified no type of further limitation that they regard as being in the national security interests of the U.S., and 2) that a period of implementing the new TTBT protocol is in order before considering any follow-on.<sup>15</sup> Advice for consent and ratification of the TTBT and PNET should therefore require an explanation from the administration on how the commitment of Article I (3) will be sent. Furthermore, an appropriate basis for continued negotiations on further limitations of nuclear testing must be clearly identified.

In negotiating the TTBT and PNET, the U.S. and Soviet governments respectively favored the hydrodynamic and seismic yield measurement methods. Consequently, the protocols give equal weight to both methods. Assuming that the hydrodynamic measurements will be released, the coincidental use of the two measurement systems will allow both a reduction in the uncertainty of yield estimation and an improvement in the confidence of seismic methods.

Reliance on seismic methods will increase if further restrictions on nuclear testing are pursued. Much of the past debate surrounding our ability to monitor further restrictions on nuclear testing has occurred because we have had to rely on theoretical predictions about the performance of hypothetical networks within the Soviet Union. Since 1986, however, a network of seismic stations within the Soviet Union has been evolving through the initiatives of independent organizations and university research groups.

Under a May 1986 agreement between the Natural Resources Defense Council (NRDC) and the Soviet Academy of Sciences, three temporary seismic stations were installed at the Soviet test site in Kazakhstan. Under a June 1987 agreement between NRDC and the Soviet academy, the three stations were relocated, and beginning in 1988, two additional stations were to be established. Recognizing that the Soviet Union would now allow seismic stations within their country, the U.S. university consortium IRIS negotiated an agreement with the Soviet Academy of Sciences to install seismic stations within the USSR as part of the IRIS Global Network. In April 1988, a US/USSR joint seismic program was established with the IRIS Consortium and the U.S. Geological Survey representing the United States, and the Soviet Academy of Sciences representing the Soviet Union.

As the following map indicates, four seismic stations are currently operational, and it is expected that a total of 13 stations will be sending continuous seismic data back to the United States within a year. A comparable number of stations within the U.S. are sending data to the Soviet Union under the reciprocal arrangements of the program. In addition, two arrays of approximately 10 seismic instruments are being installed. General plans call for the networks to include approximately 20 stations within each country.

SEISMIC STATIONS

Location	Code	Lat./Long.	Status
Garm	GAR	39.0N / 70.3E	Operational.
Kislovodsk	KIV	44.0N / 44.7E	Do.
Arti	ARU	56.4N / 58.6E	Do.
Obninsk	OBN	55.1N / 36.6E	Do.
Talaya	TLY	51.7N / 103.6E	Summer/Fall 1990.
Ala-Archa	AAK	42.6N / 74.5E	Do.
Garni	GNI	40N / 45E	December 1990.
Novosibirsk	NVS	54.5N / 83.7E	Winter 1990/91.
Apity	APA	67.6N / 33.3E	Do.
Aktubinsk	AKB	50.5N / 58.0E	Do.

SEISMIC STATIONS—Continued

Location	Code	Lat./Long.	Status
Yakutsk	YAK	62.0N / 129.7E	Do.
Petropavlovsk-Kam	PET	53.0N / 158.6E	Do.
Ashkhabad	ASH	37.6N / 58.2E	Do.

SEISMIC ARRAYS

Location	Lat./Long.	Status
North Caucasus	40N / 45E	Operational.
Kirghizia	43N / 75E	1991.

The cost of an IRIS seismic station within the Soviet Union is approximately \$250,000 per station. The cost of building and installing a full network of 20 stations would be approximately \$5M. The predicted cost of a single CORRETEX measurement is \$5-10M; and the cost of the single measurement made of the Soviet JVE test was \$30M. Consequently, a full network of seismic stations recording data continuously for all test explosions could be built and installed within the Soviet Union for approximately the cost of a single CORRETEX measurement. This comparison is somewhat unfair in that the IRIS network is simply a network of seismic stations collecting data; it is not an operational monitoring system. The point remains, however, that a network of seismic instruments can be used to monitor underground nuclear explosions at a relatively inexpensive cost. In addition, the seismic network being installed through the US/USSR Joint Seismic Program will establish the technical basis for a verification regime in support of a Comprehensive Test Ban Treaty or a Low-Yield Threshold Test Ban Treaty.

In summary, it is my judgment that the TTBT and PNET should be promptly ratified. Along with the recommendation for ratification, the Senate should obtain assurances from the administration that:

- (1) the requirements of Article I(6) of the TTBT will be met,
- (2) an appropriate mechanism for further negotiations on nuclear testing will be established,
- (3) technical data and analysis will be released whenever possible, and
- (4) adequate funding will be provided for the continued operation and expansion of seismic networks and the US/USSR joint seismic program.

If the Senate recommends ratification of the TTBT and the PNET along with these assurances, it will indicate a commitment on the part of Congress to move away from paralyzing political agendas and honestly address the national policy issue of nuclear testing.

FOOTNOTES

<sup>1</sup> U.S. Congress, Office of Technology Assessment, Seismic Verification of Nuclear Testing Treaties, OTA-ISC-361 (Washington, DC: U.S. Government Printing Office, May 1988); also, Nuclear Testing: Arms Control Opportunities, Hearing before the Subcommittee on Arms Control, International Security and Science, Committee on Foreign Relations, House of Representatives, June 28, 1988, U.S. Government Printing Office.

<sup>2</sup> "Test Ban Issues", Hearing of the Committee on Foreign Relations, United States Senate, October 6, 1988, U.S. Government Printing Office.

<sup>3</sup> A kiloton (kt) was originally defined as the explosive equivalent of 1,000 tons of TNT. This definition, however, was found to be imprecise because a) there is variation in the experimental and theoretical values of the explosive energy released by TNT, and b) a kiloton could refer to a "short", "metric",

or "long" kiloton. It was agreed, therefore, during the Manhattan Project that the term "kiloton" would refer to the release of  $10^{12}$  calories of explosive energy.

<sup>4</sup> "The Yields of the Hiroshima and Nagasaki Nuclear Explosions," Los Alamos National Laboratory report LA-8819, 1985.

<sup>5</sup> Article 18, 1969 Vienna Convention on the Law of Treaties.

<sup>6</sup> Statement of understanding included with the transmittal documents accompanying the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty when submitted to the Senate for advice and consent to ratification on July 29, 1979.

<sup>7</sup> "Data From Atom Blast Adds to Treaty Verification Questions" by R. Jeffrey Smith, Washington Post, September 8, 1988, p.A3.

<sup>8</sup> "American Corrtex Registers American "Violation" ", by Vladimir Bogachev, TASS, September 15, 1988.

<sup>9</sup> Nuclear Testing: Arms Control Opportunities, hearing before the Subcommittee on Arms Control International Security and Science of the Committee on Foreign Affairs, House of Representatives, June 28, 1988, p.iii.

<sup>10</sup> "The Characteristics of 96 underground Nuclear Detonations at the Semipalatinsk Test Range", by V.S. Bocharov, S.A. Zelentsov, and V.N. Mikhaylov, *Atomnaya Energiya*, vol. 67, no. 3, September, 1988, pp.210-214.

<sup>11</sup> "U.S. Opposes Release of Soviet Nuclear Test Data", by Michael R. Gordon, *The New York Times*, March 23, 1989, A7.

<sup>12</sup> Lawyers Alliance for Nuclear Arms Control / Philadelphia Chapter et al versus Department of Energy, U.S. District Court for the Eastern District of Pennsylvania, Civil Action #88-7363.

<sup>13</sup> "Test Ban Would be Real Tremor to U.S.", by Frank Gaffney, *Defense News*, September 5, 1988, pp. 36-37.

<sup>14</sup> "Test-Ban Countdown", by John Horgan, *Scientific American*, October 1988, P.16.

<sup>15</sup> "U.S. Policy Statement on Nuclear Testing", Memorandum from the Executive Secretary of the National Security Council, Jan. 9, 1990.

RICHARD L. GARWIN, IBM RESEARCH DIVISION, THOMAS J. WATSON RESEARCH CENTER, Yorktown Heights, NY, August 8, 1990.

HON. DAVID L. BOREN, Chairman, Select Committee on Intelligence, Senate Hart Office Building, Washington, DC.

DEAR CHAIRMAN BOREN: This letter responds to the invitation you and Senator William S. Cohen provided in your letter of 07/02/90 (SSCI No. 90-2976) to submit a written statement that would assist the Select Committee in its deliberations on the monitoring and security aspects of the TTBT and the PNET, together with their verification protocols.

Following receipt of your letter, I have read once again the text of the treaties (1974 and 1976), and the verification protocols signed 06/01/90. I have reviewed the implications for U.S. counterintelligence and security, and I judge that U.S. interests are adequately protected in the circumscription of the rights and privileges of the Soviet "Designated Parties" as prescribed in the Protocols. In general, such potential vulnerability to the United States might stem logically from actions of Designated Personnel outside the test site, or, alternatively, within the test site. Practically, the Designated Personnel will be under substantially greater surveillance than are many known or unknown foreign agents, and will not add significantly to the foreign espionage hazard.

The test site itself, however, may not be entered by the vast majority of these other foreign agents, and the Protocol to the TTBT (Page 99—Section X.17) prohibits possession or use by Designated Personnel at the test site of various equipment that could be used to record or transmit information. Of course, this prohibition will have to

be supplemented by observation of the activities of Designated Personnel to verify that the prohibition is respected.

Considering the value and nature of the information that might be gained, and the close surveillance of actions of Designated Personnel provided for in the Protocol, I see no difficulty here.

In general, the Protocols are very thorough, and it seems entirely feasible to carry out the procedures as prescribed. I am confident that the United States, with the means prescribed by the treaties and the Protocols, and, in addition, with NTM, will be able to detect a militarily significant violation of the TTBT or PNET. On the other hand, the cost of verification is high—particularly that aspect associated with the "hydrodynamic method," or CORRTEX. I believe that we will not desire to exercise our right to hydrodynamic yield monitoring of many Soviet nuclear explosions, even when that is our option. It has been indicated that the cost of such monitoring of a single shot might be as much as 50 percent of the cost of the nuclear test itself, and I do not believe that the additional confidence in measurement of yield to be obtained from the hydrodynamic method, in many cases, will be judged to be worth the price.

"What is worth doing is worth doing well" is a commonly quoted adage, but I believe the relevant maxim in this case is "What is not worth doing is not worth doing well." Time, money, and opportunity have been wasted in the preparation and negotiation of these Protocols, as evidenced by the candid comment of Former Assistant Secretary of Defense Frank Gaffney who wrote, "The more time wasted on discussions and experimentation of (yield) monitoring techniques irrelevant to the verification of an environment in which there are no legal tests, the easier it will be to stave off demand for the more constraining comprehensive test ban."<sup>1</sup>

Whatever the motivation for these agreements, I believe that the Senate Select Committee on Intelligence can in good conscience give its consent to ratification of the TTBT and the PNET, together with their Protocols.

Thank you for the opportunity to make this brief comment. I know that more detailed testimony will be given by Dr. W.K.H. Panofsky, dealing with the specific measurements to be made, and their significance.

Sincerely yours,

RICHARD L. GARWIN.

Also Adjunct Professor of Physics at Columbia University (views not necessarily those of IBM or Columbia).

LOS ALAMOS, NM,  
August 24, 1990.

Senator DAVID L. BOREN,  
Senator WILLIAM S. COHEN,  
Select Committee on Intelligence,  
U.S. Senate, Washington, DC

DEAR SENATORS BOREN AND COHEN: I much appreciate your invitation to send comments to the Select Committee on Intelligence in connection with your review of the TTBT and the PNET. I regret having been unable to respond by the time suggested in your letter of July 2, 1990 but am sending comments nevertheless.

I have long felt that it would be in the national interest to ratify these treaties, and had once hoped that by this time we would

<sup>1</sup> Gaffney, F. "Test Ban Would be Real Tremor to U.S. Security," *Defense News*, Sept. 5, 1988, pp. 35-36.

be considering more significant limitations on nuclear testing than these treaties involve. We should still proceed further in this direction as that may be feasible.

You identify three questions of particular interest to your committee in its consideration of these treaties.

1. Provisions for monitoring and verification.

For announced shots—understandably the only ones addressed in the Protocol—these provisions are far more than sufficient. Indeed, the remote seismic monitoring, which has been in place for many years and on which we have relied since 1974, has provided the sort of information essential to our needs. For unannounced tests we must still rely on remote seismic methods, but the requirements on these will be much easier to meet under the proposed circumstances by which any unannounced test with a yield exceeding 35 kilotons would constitute a violation of the Treaty.

What is new since 1974 are the Protocols of June 1, 1990 with their important provisions that the test schedules are to be announced and that various options may be used for close-in confirmation of yields. The Protocol discusses the procedures to be observed in connection with the hydrodynamic yield measurement method in great detail, actually in inordinate detail—particularly in the case of TTBT. This may make it appear more messy to exercise this option than it may turn out to be in practice, but in any case it would seem unlikely that we would find it worthwhile or sufficiently interesting to want to exercise this option more than a rather few times, or to be happy to have an opponent exercise it very often. However, now that we have it available, we should exercise it on at least two or three occasions for the special purpose of obtaining a calibration for the remote seismic method of yield measurement. In addition to being directly useful, this could help us avoid any repetition of the unseemly spectacle of several years ago when the Administration, apparently bent on claiming that the Soviet's had violated the intent of the TTBT, used for the purpose correlations between seismic signal and yield which, in the studied opinion of reputable non-government seismologists, were of highly dubious quality (which under the circumstances they necessarily were) and which even may have been deliberately biased.

2. Your second question concerned our capability to monitor Soviet compliance.

For this it is useful to decide whether the TTBT is about the number 150 (an obviously arbitrary number of no intrinsic importance), or is about the "limitation of underground nuclear weapon tests" as spelled out in the Preamble. Obviously some quantification is necessary to indicate the class of weapons for which the agreed limitation was intended to apply, and the number 150 kilotons was used for that purpose. The latter reading is the more meaningful one, and the one more consistent with the intent of the Preamble and also with operational reality. It can accommodate with less strain the unavoidable margins of error involved in all methods of yield measurement.

As examples, even persons conducting a test explosion cannot determine the yield realized with a precision much better than  $\pm 10\%$ . I do not know just what is claimed at present for the accuracy of the hydrodynamic yield measurement method, but three or four years ago (and it is probably not much different today) it was said to be capable of determining the yield within 395 at

the 150 kiloton level, and with less accuracy at much lower levels. In that same time frame it was the position of Administration spokesmen that remote seismic yield determination was accurate only to within a factor of 2—though serious non-government seismologists held that 1.5 would be a more proper value for that factor.

In particular, suppose the Soviets conduct a test with an actual yield of 150 kilotons which we observe by a remote seismic system capable of determining yield within a factor of 1.5. The yield we might read could, then, lie somewhere between 100 and 225 kilotons. Had our reading been near the top of that range it would, on the surface, look like a significant violation; but we would have to allow for the fact that the reading was not inconsistent with having come from a legitimate test. To assess the significance of such a serious violation (if it should have been one) one may consider that the radius of blast damage at a given intensity—the damage criterion most frequently used in connection with hard targets—varies only as the cube root of the yield. Had the test actually been one of 225 kilotons the damage radius would, then, have been only about 15% larger than that of a weapons deemed permissible under the Treaty. Had we used the hydrodynamic yield measurement method for the same test, things would have been better, but not much different. Assuming that the 1.3 factor still applies for the precision of yield determination by that method, the largest possible ambiguous yield reading and the increase in damage radius, instead of being 225 and 15%, would have been 195 and 9%. For the purpose of assuring ourselves that an opponent was complying with an agreement to restrict the capabilities of new elements of his arsenal within some bounds, possible occasional discrepancies of the sort indicated above would scarcely seem to warrant much concern. At least for all practical purposes our ability to monitor for compliance is in hand, and we can tell if they appear to be complying with the intent of the Treaty, which is all our interest really requires.

3. Your third question had to do with the Treaties' implications for counterintelligence and security.

As to counterintelligence, there is nothing about the Treaty, or Soviet participation in on-site activities, which would put weapon design information in their hands beyond what they could learn from Congressional hearings on new U.S. weapons systems. It could be that we have some tricks, or elegant equipment in methods useful in site preparation or emplacement operations which are new to them—though this could just as well work the other way—but there is no reason we should be troubled should they learn something of that sort.

As to security, no doubt there may be proposals for possible new weapons with which we may be unable to proceed because of the yield limits opposed by the Treaty. The same could apply with respect to some imaginable proposals for effects tests. Similar considerations could complicate, or vitiate, possible modernization proposals or reliability tests for some of our older high-yield stockpile models. Similarly, also, with respect to tests to improve safety—though these are all with respect to devices which have not proved dangerous in the past, and which might (or might not) provide serious consequences in the event of some accident which, in itself, has only a small probability of occurrence. (Usually the safety improve-

ment reduces the already small probability of experiencing the serious consequences, but does not remove it.)

Some such proposals might seem worth going ahead with if our possible opponents, as well as we, were continuing with testing on an unrestricted basis. But none are essential, and to forego all of them while our opponents are under similar constraints does not jeopardize our security. Our security, after all, depends very directly on not having to fire any of our weapons—old or new, large or small—in combat with a nuclear-armed opponent. To the extent that our adherence to this Treaty may further that objective, or the objectives spelled out in the Preamble of the Treaty, that will improve our security far more than any new weapon or weapon test precluded by the Treaty could possibly do.

4. Finally, a matter not called out by your questions.

There would seem to be something ludicrous about having a "Protocol" of 107 pages appended as "an integral part" of a two-page Treaty such as the TTBT. Particularly when the Protocol includes such a wealth of trivia as, in V7e, that the volume of core samples shall be no less than about three quarters of a pint and no more than four fifths of a gallon unless the Parties otherwise agree, or that certain holes shall be no smaller than 3½ inches or larger than 6 inches in diameter, and so one, and so on.

Would it not be better to propose a new Protocol made up of the few pieces of the present one which contain Treaty-like provisions—the sort of items, that is, which might reasonably be judged to be necessary as an integral part of the Treaty—and attach all the rest of the present volume as, for instance, an "Appendix of Agreed Procedures"? The new Protocol would include primarily the provisions of the present Section IV having to do with notification of projected tests during the coming year, the parts of Section III laying down the rights of the Verifying Party to carry out verification activities by one or another means, and the part of Section XI setting up the Bilateral Consultative Commission, along with a statement that this Commission would administer and amend as deemed necessary the agreed procedures laid out in the Appendix?

I am aware that it is probably much too late to take up item 4, and besides, that it is no part of the responsibility of the Select Committee on Intelligence. But perhaps we could watch out for this when we get around to ratification of TTBT—Two at—what would you say?—15 kilotons?

Yours sincerely,

J. CARSON MARK.

CENTER FOR STRATEGIC AND  
INTERNATIONAL STUDIES,  
Washington, DC, July 30, 1990.

MR. DON MITCHELL,  
Select Committee on Intelligence,  
U.S. Senate, Washington, DC.

DEAR MR. MITCHELL: Enclosed is my statement on the TTBT/PNET in response to the chairman's letter of July 2, 1990.

Sincerely yours,

FRED C. IKLE.

STATEMENT FOR THE SELECT COMMITTEE ON  
INTELLIGENCE, U.S. SENATE  
COMMENTS ON THE THRESHOLD TEST BAN  
TREATY

(by Fred C. Ikle)

As Director of the U.S. Arms Control and  
Disarmament Agency from 1973 through

1976, I have been directly involved in the negotiation of the Threshold Test Ban Treaty (TTBT) and the associated treaty on Peaceful Nuclear Explosions (PNET). In fact, the latter treaty was negotiated with the Soviets between 1974 and 1976 under my supervision.

A sense for the history of these treaties may help the Committee to place the verification question in the proper context. Proposals for a nuclear test ban, of course, date from 1950s, and in 1958-59 the Eisenhower Administration was seriously trying to reach agreement with the Soviet Union on a method for verifying a comprehensive test ban. Had Khrushchev then agreed to the verification measures that Gorbachev has now accepted for the TTBT, it seems likely that President Eisenhower would have settled on a complete test ban (or a nearly complete ban). It is interesting to speculate how the Soviet and U.S. nuclear missile programs would have proceeded, had such a treaty entered into force 30 years ago.

Instead, the verification systems that was the subject of prolonged negotiations in 1958-59 was found deficient in two respects. First, the global network of seismic stations that was envisaged could not have overcome certain deception methods that seemed quite feasible (seen from Washington) in that pre-glasnost, pre-satellite era. Second, the negotiations were stuck on the mistaken approach of trying to create an "impartial" international verification organization. We have since learned that the right approach is the "adversary" method, whereby each side manages the agreed verification operations to monitor the other side. It is far too difficult, if not impossible, to create a reliable impartial management.

The Threshold Test Ban Treaty of 1974 represented, in a sense, an amendment of the Limited Test Ban Treaty of 1963. It was negotiated rather quickly, and the U.S. Administration concluded at the time that the verification procedures then agreed to would be adequate. This assessment proved too optimistic. During the late 1970s and the 1980s our intelligence community and seismic experts were frequently uncertain whether or not certain Soviet tests exceeded the 150 kiloton threshold, perhaps by significant amounts. Thus, while the Ford Administration (and for the first few months also the Carter Administration)<sup>1</sup> recommended to the Senate that the TTBT be ratified, the Reagan Administration concluded that the verification regime of the treaty required improvement. It is a testimony to the sweep of Glasnost that the Protocol that is now before the Senate could be negotiated during the last few years, providing extensive on-site monitoring and a substantial enhancement in verifiability.

It is my understanding that given the Protocol's verification arrangements, a substantially lower threshold yield (such as 75 kilotons) would also be verifiable. When the Nixon Administration first formulated its position on the TTBT, my recommendation as Director of ACDA was for a 75 kiloton threshold, but given the strenuous objection of ERDA (the precursor agency of DoE) President Nixon chose the 150 kt threshold.

Finally, a word on the PNET treaty. After we had reached agreement on the TTBT in 1974, the Soviets kept insisting they wanted

<sup>1</sup>The Carter Administration withdrew the TTBT from the Senate; not for verification reasons, but because it favored a comprehensive test ban instead.

the right to conduct PNEs. The United States had no interest in such an option. The submission of the TTBT treaty to the Senate therefore was held up until the PNE treaty had been negotiated. In that treaty the Soviets for the first time agreed to on-site inspections, albeit reluctantly and in the context where these inspection rights were unlikely ever to be invoked. Today, PNE's should be strongly discouraged because they can give other countries an excuse for starting a nuclear weapons program under the guise of peaceful applications. It would have been far better if we could now have agreed with the Soviets to ban PNE's entirely.

UNIVERSITY OF COLORADO  
AT BOULDER,  
Boulder, CO, August 10, 1990.

HON. DAVID L. BOREN,  
Chairman, Senate Select Committee on Intelligence, Washington, DC.

DEAR CHAIRMAN BOREN: Enclosed is a written statement regarding verification protocol for the Threshold Test Ban Treaty (TTBT) and the Peaceful Nuclear Explosion Treaty (PNET). I appreciate the opportunity to submit this assessment to the committee and hope that it will be of use during the committee hearings on the subject.

If I can be of any further aid to the committee, or if there are any questions regarding my statement, please feel free to contact me.

Sincerely yours,  
CHARLES B. ARCHAMBEAU,  
Cooperative Institute for Research in the Environmental Sciences (CIRES).

STATEMENT OF DR. CHARLES B. ARCHAMBEAU  
GENERAL OVERVIEW

The restrictions on testing contained in the TTBT and PNET agreements are sufficiently different that it is necessary to consider them separately, even though the protocols are at least superficially similar. The essential differences between the two treaties lies in the fact that the PNET allows group explosions made up of individual explosions of no more than 150 kt each that can be closely spaced in time and location and can exceed in total yield the 150 kt limit; in particular they can have a total yield of 1,500 kt in aggregate. However, under the TTBT the total yield for one or more explosions, the latter detonated within a total time interval of 0.1 second and within an area of no more than 2 kilometers in radius, is 150 kt.

The essential questions to be raised regarding verification of these two treaties are therefore different, inasmuch as the limitations imposed are quite different when multiple explosions are involved. That is, when a single nuclear explosion is detonated under either treaty the yield limit is 150 kt, and the verification methods used can be the same for both and can be accomplished by seismic methods, by the hydrodynamic method, or both. However, when more than one nuclear device is detonated in a single test the situation is different, in that under the PNE agreement the aggregate yield of all devices can exceed the 150 kt limit while under the TTBT agreement they cannot.

This means that verifying compliance with the TTBT is simpler than verification of the PNET since we only have to make sure (with reasonable certainty) that the aggregate yield is at or below 150 kt for the TTBT tests which, under the restriction of the treaty, is not difficult using seismic methods as discussed later. On the other hand, for the PNET we have to verify that

no one of the several explosions in a multiple explosion group is above the 150 kt limit when the total yield of the group can be as much as 1500 kt. As described later, determining accurate individual yields in at least some multiple explosion tests will be difficult to accomplish by the seismic methods available in the PNE agreement, or at least it would be an uncertain endeavor in many test circumstances.

In addition, while I am not an expert on the hydrodynamic method to be used, it appears to me that some test circumstances, described later, make it difficult to obtain good estimates of certain of the individual yields in a multiple explosion sequence by such methods. While these test circumstances are rather special and could be anticipated beforehand with accurate information regarding a multiple explosion PNE, it may nevertheless be a possible weakness in PNET verification. In particular, the verifying party would have to rely on the timing information supplied by the testor. (See in this regard section II-2, section V-3 and section VI-1 of the PNET protocol.) Here a concern might be that a weapons test could be conducted above the 150 kt yield limitation as part of a large PNE multiple explosion and that slightly delayed detonation of the weapons test could be used to thwart its accurate yield estimation because of interference from other (smaller yield) explosion signals.

My concerns with the protocols of these treaties are such that it is appropriate to consider each separately and to explain my reasoning more fully. The essential points I wish to establish are as follows: (1) It certainly does not appear to be necessary to include the hydrodynamic method for verification of the TTBT. While it can be of some utility for additional site calibration it is also intrusive, costly and complex. In the last analysis it is non-essential and its inclusion could set a poor precedent for future negotiation of a lower threshold or comprehensive treaty. It could also prove to be an irritant during the course of verification of the treaty if overused. (2) It may be useful to include both the local seismic array and the hydrodynamic measurement method for yield estimation in the PNE agreement in order to verify compliance with the 150 kt limitation on individual explosions in a multiple set of explosions exceeding the 150 kt limit in aggregate yield. However, it is not clear whether individual explosion yield estimates from either the CORREX method or the local seismic network will be nearly as accurate, or reliable, as that obtained for a single explosion test. Further, there exists a possibility for testing somewhat above the yield limitation on individual explosions.

These concerns are not, however, of the type or at a level that would lead me to conclude that verification of the treaties under the protocol is compromised. Clearly the first concern is only that the monitoring is excessive and redundant, not ineffective, so that there is no concern, with TTBT operational verification. The second concern, while directly related to operational verification, brings up a possible problem that is actually unlikely to be encountered. That is, the possibility of a violation only arises for a very large yield PNE experiment involving several large individual explosions near 150 kt. No such experiment has ever been conducted in the past and there is not too much likelihood that they would be done in the future. In any case such experiments would certainly be infrequent, perhaps one every 10 years, and one could hardly conduct a

weapons testing program on such an infrequent testing basis. Finally, the largest yield device that might be evasively tested would be in the 300 to 400 kt range (otherwise the seismic methods would be likely to identify it) and not much, if anything, would be gained over the allowed tests at 150 kt. Thus the second concern, while it seems worth noting, does not lead me to believe that the PNET agreement leads to any serious verification problem. I therefore recommend ratification of both treaties as they stand.

#### TTBT VERIFICATION

The TTBT allows one or more explosions to be conducted below the total yield of 150 kt. Because the treaty contains multiple explosions to be detonated within an area of no more than a 2 km radius and within a total time interval of 0.1 second, the multiple explosions will produce signals with low frequency content (below 1 Hz) that will not distinguish between the individual events but instead will represent a sum of them. Consequently the standard seismic yield estimates which are made using seismic signals at and below 1 Hz will produce yield values that reflect the total yield of such a multiple explosion. Therefore the multiple explosions allowed in the treaty can be seismically verified for yield compliance in the same way as a single explosion test since they must meet the same yield limitation as single explosion test.

Use of in-country seismic stations, involving three fixed stations for the TTBT, combined with National Technical Means—which includes the use of many seismic stations surrounding each country and various kinds of satellite acquired data—would be fully adequate for verification of the treaty when combined with the agreed data exchanges and on-site inspections. This is particularly the case since test sites in each country have been studied in some detail by both sides. In this regard, under a joint US-USSR cooperative program,<sup>1</sup> the Semipalatinsk site in Kazakhstan and the NTS site in Nevada have been studied using three high performance seismic stations surrounding each site at distances of about 200 km (125 miles) from their boundaries. Further, a "Joint Verification Experiment" (JVE) has

<sup>1</sup> In May of 1986 the Natural Resources Defense Council (NRDC) and the Soviet Academy signed an agreement to establish and operate three ultra broad-band seismic stations near the Semipalatinsk and NTS test sites. These stations operated from 1986 to 1988, at which time they were moved to more distant sites in both countries in order to conduct studies involving seismic wave propagation to larger distances. Also in 1988 the project sponsorship was changed to a consortium of U.S. Universities (Incorporated Research Institutions for Seismology, IRIS) and the U.S. Geological Survey on the U.S. side, with an agreement to this effect signed with the Soviet Academy of Sciences. Shortly after this change, agreement was reached for the establishment of a total of seven isolated seismic stations in each country, of which four are now operating with three more scheduled to become operational during the fall of this year in each country. In the spring of this year agreement was reached to establish six more widely separated stations at specific sites in USSR, with a matching number in the U.S. These are scheduled to be operational in 1991-92. The Soviets have also agreed to establish an additional six more seismic stations at, as yet, undesignated sites in the USSR, for a total of about 20 stations that cover the entire USSR. A similar number and distribution of isolated stations are planned for the U.S. Data exchanges from all these stations has been on-going since 1986 by exchanges of magnetic tapes, but in 1990-91 data exchanges will be by satellite from a site near Moscow to various receivers in the U.S.

Mr. ARMSTRONG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator will suspend while the Chair discusses the matter with the Parliamentarian to get an appropriate ruling.

The Senator from Massachusetts has the floor. He was recognized and therefore is entitled to finish whatever remarks he wishes to make. The Chair will further state that the recognition of the Senator is not for purposes of debate of the Lieberman motion, because the motion to table is pending, and it is not debatable.

Mr. LEAHY addressed the Chair.

Mr. KENNEDY addressed the Chair. The PRESIDING OFFICER. The Senator from Massachusetts.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. LEIBERMAN. Objection.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to call the roll.

The assistant legislative clerk continued the call of the roll.

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

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

Mr. KENNEDY. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to call the roll.

The assistant legislative clerk continued the call of the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. I object.

Mr. ARMSTRONG. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to call the roll.

The assistant legislative clerk continued the call of the roll.

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

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

#### UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be 30 minutes of debate on the pending amendment equally divided and controlled in the usual form between Senator KENNEDY and Senator ARMSTRONG, and that upon the conclusion

or yielding back of that time, there be a vote on the Lieberman motion to table.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. Reserving the right to object, and I shall not object, but I would like to make an inquiry at this time, and I think it is an appropriate time to make an inquiry of the leader and the manager of the bill on this side.

The record will show that this Senator has held very faithfully to his views on this abortion matter up and down. The record will also show that this Senator has been a supporter of family planning, and I happen to also feel that notification of parents of minor children are a key point.

I would like to have a chance, if I could, before the cloture vote, to have a vote up or down on the amendment proposed for parental notification by the Senator from Colorado.

I would like to inquire of the managers of the bill as to whether or not we are going to have an up-or-down vote on the amendment being offered by the Senator from Colorado before the cloture vote, because that will have a great deal to do with how this one Senator votes on cloture if it comes up and when it comes up, as I understand it, at 5 o'clock.

Mr. KENNEDY. Mr. President, last night the Senator from Colorado proposed an amendment with regard to parent notification on the issue of abortion. I put in a second-degree amendment because there are no funds in this bill whatsoever that deal with abortion. The issues of parental notification, parental consent, the whole wide range of issues that relate to abortion should be debated, should be discussed at some particular time. There have been those who have tied that particular issue into this debate. But since there are no funds whatsoever that are involved in abortion, we thought we ought to clarify that very clearly. That is why the amendment in the second-degree spelled that out very clearly, because that is the fact with regards to this legislation.

If there is some other public policy dealing with the whole range of different abortion issues and the Senate desires to vote on that, so be it. But that really is not what this bill is about.

Mr. ARMSTRONG. Would the Senator—

Mr. EXON. Will the manager of the bill, my good friend, Senator KENNEDY, then please advise me what would be wrong with expressing—or seeing if the Senate would express an opinion that we should have parental notification?

Mr. KENNEDY. Parental notification for what?

Mr. EXON. Parental notification when a minor is contemplating having an abortion. Certainly I would have to

agree, in my view at least, with the adoption of the Chafee amendment yesterday we went further down the road than we have ever gone before with regard to family planning and abortion.

Different people have differing views on that point and I am not criticizing anyone who does not agree with me on that. But I felt when we passed the Chafee amendment yesterday that we went quite a little further down the road than we had previously.

I am asking this question only because—and I want to say again, I support family planning—I do not think they should be involved in abortions. They say they are not involved in abortions. But the Chafee language of yesterday at least went further than we have ever gone previously.

It seems to me I should have a right to vote up or down on the amendment proposed by the Senator from Colorado and I do not see that would impair the bill in any way.

Mr. ARMSTRONG. Will the Senator yield for an answer to that question from me?

Mr. EXON. I am not sure I have the floor, since I was reserving the right to object. But I yield the floor.

Mr. ARMSTRONG. Mr. President, if I may respond to the Senator from Nebraska briefly, first to congratulate him on his understanding of the situation we found ourselves in and, second, to say the only way, so far as I can tell, we will be able to get to an up or down vote on the parent notification amendment is to defeat the motion which is or at some point will be pending to table the Lieberman amendment. Because, when I offered my amendment last night Senator KENNEDY did offer a second-degree amendment which expressed another thought on the subject but did not deal with parental notification, the effect of which was to simply wipe mine out. Under the circumstances I withdrew it.

Then today, when the Senator from Connecticut offered his amendment, I offered mine as a second-degree amendment. Therefore either the Senator from Connecticut or the Senator from Massachusetts has or will offer a motion to table.

To get to the vote the Senator from Nebraska desires and which I desire to have, and have quickly—I am not trying to delay in any way—we must first defeat the tabling motion.

I will have more to say, but that is a brief answer to the Senator's question. I thank him for his inquiry.

Mr. MITCHELL. Mr. President, I renew my request.

The PRESIDING OFFICER. There is an unanimous-consent request pending. Hearing no objection, the request is agreed to.

since such stations are not included in the protocol this is not an option.

It might be noted that the hydrodynamic method again plays a secondary role in that, whenever it applies, seismic methods also apply and when it does not apply, then special seismic methods are used—that is the local seismic network.

#### SOME ADDITIONAL COMMENTS AND RECOMMENDATIONS

In addition to the two areas of concern described in the preceding, there are a few other comments and recommendations that I feel might be appropriate. Specifically:

Assurances should be obtained that the administration will pursue negotiations on a comprehensive or low threshold treaty in a timely manner. That is, without a long delay, as implied by Article I-3 in the TTBT Treaty.

There should be assurances from the administration that the US-USSR cooperative seismic program will be supported in the long term at a reasonable level.

There should be assurances from the administration that technical data relating to test ban issues be released to public and private scientific groups in a timely manner and without unnecessary restrictions.

There should be assurances from the administration that there will be long term substantial support for basic research related to LTTB and CTB verification.

There should be assurances from the administration that there will be careful and independent evaluation of proposals to advance elaborate and intrusive verification procedures in treaty negotiations in order to avoid possible inclusion of non-essential monitoring issues.

HOOVER INSTITUTION ON WAR,  
REVOLUTION AND PEACE,  
Stanford, CA, August 6, 1990.

HON. DAVID L. BOREN,  
Chairman,

HON. WILLIAM S. COHEN,  
Vice Chairman,  
Senate Select Committee on Intelligence,  
Washington, DC.

DEAR SENATOR BOREN AND SENATOR COHEN: Thank you for sending me the material on the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty, and thank you even more for asking me to comment on them. I read the material as carefully as possible, and I am deeply impressed by the thoroughness given to the matters of verification. I should like to make two suggestions because I believe that the adoption of either could lead to a considerable strengthening of verification.

One difficulty is that the Threshold Test Ban Treaty could be violated without too much difficulty in space. However, major rocket launchings can be monitored for the presence of nuclear materials. One need not open the rocket and interfere with it; it suffices to irradiate it from a short distance and observe the response.

Regulation of rocket launchings, of course, would have great advantages in other respects. I realize that my proposal would complicate your procedures. I will understand completely if you do not consider the time right for this suggestion. But if you would like, I would be happy to submit a detailed proposal.

My second suggestion is connected with the circumstance that work on Brilliant Pebbles for defense purposes had made it possible to put highly sophisticated American satellites into orbit for an expenditure of about \$1 million each. Peaceful applica-

tions of this possibility appear to me to be deserving of interest. I am enclosing copies of two memoranda I sent John Tuck in regard to this matter.

An observation system based on those satellites could be very effective in connection with corner reflectors or "cat's eyes" (an arrangement of three mutually perpendicular mirrors) placed on the ground at test sites or where nuclear explosives would be employed for civilian projects. These corner reflectors could provide considerable information for little expense. This, of course, presupposes that a worldwide observation system is set up which might happen by the middle of the 1990s.

I would consider such a system particularly valuable in the case of peaceful nuclear explosions. On the one hand, I would not like to see any interference with this constructive program. But on the other hand, I am worried that the actual monitoring in a great number of places might turn out to be complicated and expensive. An additional way of checking might therefore be of value.

Let me repeat that I do not intend to complicate the process of positive cooperation with the Soviets. In particular, in the case of peaceful uses of nuclear explosives, we might learn something from them. As I said earlier, I will fully understand if you and your committee want to proceed and ratify these treaties, which after all have been in force for more than a decade, without amendment. However, in case you are interested in either of the two suggested possibilities, I would be delighted to help in any way I can.

With repeated thanks,

EDWARD TELLER.

#### MEMORANDUM

Subject: Satellites in Universal Service.  
Date: May 3, 1990.

#### PURPOSES

Recent developments in Livermore guided by Lowell Wood and his associates have shown that highly sophisticated satellites weighing approximately 100 pounds can be placed into low earth orbit in great numbers at an approximate cost of one million dollars a copy. In this memorandum, I will describe some possible peacetime uses of systems of small and inexpensive satellites based on similar principles.

The novelty in these satellites is the use of the latest computers, miniaturization, minimal distances from earth, and the use of advanced lasers. A worldwide network could be established in which information pre-processed on the satellites would be transmitted to designated reception points on earth. A pre-planned range of instructions could be given from these points to the system of satellites. As an example, I have in mind a deployment of a thousand satellites in the next three or four years costing a billion dollars, to be renewed approximately every three years.

Five examples of applications are:

Global instantaneous weather reporting with a resolution of a few miles. The integration of the data obtained from the different satellites would occur, of course, on the ground.

Information on emission and distribution of pollutants.

Early warning of disasters. Forest fires and floods are examples that could be observed at an early stage at which time appropriate measures could be taken with greater ease.

Traffic control. Airplane traffic, particularly over the oceans, could be appropriately guided. One could see the airplanes more easily by mounting corner reflectors on the top of them.

Communications, not only from the observing system to the ground, but also from ground-to-ground, reaching into regions not supplied by telephone cables or microwave towers.

#### IMPLEMENTATION

From the tremendous volume of data that one can collect, maximum use of computer equipment will permit selection of the most useful information; therefore, the best of the rapidly developing computer equipment should be used. Since three-year-old equipment might be considered obsolete, one may want to replace the satellites at this rate. The most powerful means of observation depends on illumination by lasers or microwaves. In some of these applications, the power required is approximately proportional to the inverse distance to the fourth power, in other cases, to the inverse distance to the second power. Therefore, we want satellites in the lowest possible orbit that can survive for three years. This is 400-500 kilometers from the surface.

Assuming an array of 1,000 objects, the average distance between the orbiting satellites is 800 kilometers. Thus, the satellites can easily communicate and transmit information among each other. On the average, one would expect that there will be a satellite not farther than 700 kilometers from each point on the earth's surface at any time. The earth would be under continuous observation by satellites which will replace each other in less than two minutes.

The needed weight in microwave equipment may be more than 100 pounds, and the cost of the laser equipment could be very much higher than one million dollars. If, in both cases, emitters on the order of 100 watts are considered, the energy may be supplied through solar batteries. In the case of lasers, a rapid development of diode lasers is underway. This will transform electric current into crudely directed and roughly monochromatic laser light, which in turn can drive glass lasers or tunable dye lasers. In this way, sharply pulsed and sharply directed lasers may be produced in two to five years. A lowering of the cost from millions of dollars to tens of thousands of dollars for such a laser appears to be assured.

A total cost of two million dollars and a weight of 100 kilograms per satellite might be appropriate in two to five years.

The plans for NASA's Earth Observing System (EOS) include substantial expenditures on improving systems of observation. This is a forward-looking and essential measure which should be coupled at each point with the cost estimate of future systems.

#### WEATHER OBSERVATION

Small corner reflectors a few inches in size and a few milligrams in weight placed in the atmosphere have a time of settling measured in days or weeks. In connection with doppler lasers, these would be very useful in obtaining global wind patterns.

The proposed continuous global weather observation would be a significant improvement over existing capabilities. At the present time, in big areas of the world like the oceans; the best data have a resolution on the hundred kilometer scale with practically no information concerning the height distributions above the earth's surface. In the proposed system, the low altitude of the

satellites permits stereoscopic viewing and a reasonable estimate of elevations. In the end, laser or microwave ranging could accomplish the best figures. In the case of lasers, penetration through thick clouds will present a problem. On the other hand use of the doppler shift will give ample opportunity to gather significant information about wind velocities.

Precise and continuous data will greatly improve our ability to observe and predict weather. Nevertheless, weather prediction will remain limited by instabilities in the atmosphere. These same instabilities present an opportunity for weather modification. One must, of course, realize that such modification will lead to grave complications for which one cannot be responsible without the best knowledge of the status and the prediction of weather. It is obvious that all of this will have international significance.

Thus, we have an obvious motivation to carry out the program with international cooperation in mind. This point can obviously apply in various ways to every one of the subjects discussed below.

The use of lasers must, of course, be carefully considered in connection with the possibility of eye damage. It is of interest to note that a laser pulse of a milliwatt per cm<sup>2</sup> and the duration of a nanosecond would be harmless, though visible, and its reflection by a corner reflector observable in the satellite.

#### EMISSION AND DISTRIBUTION OF POLLUTANTS

In view of the great interest in pollutants, it would seem that the earliest possible reliable information one can obtain on their emission and distribution would be desirable. Furthermore, such information is best obtained on a global scale and should, of course be published including all details in order to assure credibility.

The rapidly developing art of lasers is of great importance here because specific pollutants have high cross sections and visibility for well defined frequencies.

Early deployment of satellites for the observation of pollution is important for two reasons.

Proposed alleviation of pollution may require large expenditures. Appropriate information may result in great savings. In the case of acid rain, more solid information is needed to justify action. In case expensive action is decided on and limitations on the sulphur content of fuels are imposed, then such limitations may have to be rigorously enforced when weather patterns indicate that the combustion products will be moving into sensitive areas. While at other times, the limitations may be relaxed or removed. All of this will, of course, require practice and experience, and an early start is clearly an advantage.

The second reason is that experience gathered by early observations will be of great value in planning later more refined and more expensive systems.

It is quite possible that the most significant environmental consequences of human activities will be those slowly established through gradual change of the atmosphere. The much discussed Greenhouse Effect is an obvious example. It is by no means clear whether and to what extent this effect will have a serious impact, but one series of observations is already documented.

The temperature reports of the last decade in the United States show only one systematic effect: in the Southwest of the United States containing our desert areas, in the periods between spring and fall equinox, minimum temperatures have system-

atically risen by a couple of degree centigrade. This is what should be expected in that carbon dioxide impedes escape of heat waves, which is particularly significant in that absence of water and clouds. The effect is accentuated because carbon dioxide is known to be more effective at high temperatures.

It would be interesting, at least as an example, to see whether similar and possibly stronger effects exist in the truly great deserts of our globe. Even observation for four years could give some indication.

A case of special interest is investigation of emissions due to volcanic eruptions. Release of particulate matter can influence the climate for several months. This has been discussed for some big eruptions. Emission of "pollutants" like sulphur has been measured, for instance, in the case of the recent eruption of Mount St. Helens. But for many eruptions at remote places, no data are available. The continuous survey which we are discussing would automatically furnish these data. The effect on phenomena like acid rain would be most interesting.

#### WARNING OF DISASTERS

Continuous global weather reporting is in itself an effective way of predicting some disasters. When Hurricane Hugo struck St. Croix Island, the first indication at FEMA was the interruption of all communications. Successful action of FEMA was carried out but required extraordinary effort. Pictures obtained from a satellite in synchronous orbit did not suffice as an effective warning.

Other disasters like forest fires, floods, as well as the traffic hazard of icebergs require individual human observation. These and many more could be accomplished on a global scale. Of course, much of the benefit, would accrue to regions where no warning system exists at the present time. In this sense, the proposed activity could be considered as foreign aid. Its success would, therefore, depend on the appropriate way to make the needed information available for the purpose of diminishing the effects of that which we can foresee.

A large scale crop failure is among the biggest possible disasters. In this case, the timeliness of the reporting appears less important, but the global availability of the information may nevertheless be highly useful and could be easily available.

It would be interesting to consider whether damage by locusts could be predicted and perhaps prevented.

#### TRAFFIC CONTROL

By mounting corner reflectors on airplanes, global control of airplane traffic could be achieved. This could be useful at an early date for the avoidance of collisions over the oceans. An incident like that of KAL #007 where the plane went off course could be prevented easily as a bi-product of this particular application. The simultaneous availability in the satellite system of airplane locations and weather information could be put to constructive use.

In case of any serious accidents in remote locations, rescue operations could benefit from the system of satellites. This holds in particular for accidents at sea.

#### COMMUNICATIONS

The interconnection between satellites and the ease by which information can be transmitted to and from a satellite at a distance of 700 kilometers makes worldwide communication more available. It is possible that this might develop into profitable private undertakings. Whether this application is practical will obviously depend on eco-

nomical considerations. In a comparison with transmission of information by synchronous satellites, the advantage of our system (if an advantage exists) lies in the fact that the sender of information requires less than one-thousandth of the power due to the proximity of the nearest satellite. Indeed, this advantage may be further enhanced if lasers are used on the small satellites and the sender reflects the light directed toward him by a vibrating corner reflector; modulation of the vibration would carry the information to be transmitted. Such a scheme has an advantage of low capital investment (if the satellites are already established for other purposes). The disadvantage is high cost of operation (since time is required on an expensive collection of satellites). This should result in easy introduction of the communication by small satellites, but severe limitations on extended usage.

#### CONCLUSION AND RECOMMENDATION

Some of the suggestions made above will probably prove impractical. On the other hand, there certainly are many others which are practical that have not been mentioned. The five headings discussed may be carried out by a common system of satellites. It is also possible that from the beginning, special purpose networks may have to be developed.

It is, therefore, an immediate practical recommendation to initiate a modest study of three to six months which explores these peaceful applications together with the required improvements in instrumentation. It would be of great benefit to involve in such a study as many different viewpoints from different laboratories as ever possible.

#### DEVELOPMENT OF COMPACT SATELLITES FOR EARTH OBSERVATION

(By Edward Teller and Gregory Canavan)

Recent developments in small, capable passive and active sensors and their packaging could make it possible for constellations of a few hundred satellites to continuously observe all parts of our globe with the resolution needed for meteorological and climate studies, pollution monitoring, and other applications. This note enumerates, describes, and gives an initial evaluation of the sensors and platforms required.

Research on Brilliant Pebbles has multiplied the functions that can be performed with small satellites. Moreover, their development and testing make it appear possible that they could be deployed for a cost of about a million dollars apiece. The satellites for meteorological and ecological observations would be simpler and have no military requirements.

The constellation needed for continuous observation could be developed and deployed for a cost not much more than a billion dollars. Since the data they obtained on pollutants and climate change would influence decisions impacting policies with \$100 billion or more, and there are no alternative means of obtaining such data on the time scale required, the compact satellites would obviously be highly cost effective.

*Cost and Deployment.* To meet a cost goal of less than a million dollars per satellite it will be necessary to use instruments with unit prices under \$100,000. As indicated below, both passive and active sensors that operated from close range could apparently meet such costs.

We also consider the criteria for early deployment. The development of the appropriate compact sensors should be rapid, and their integration into satellites that only

carry a few of them could be similarly rapid. Brilliant Pebbles and existing, tested prototype satellites are useful models for the carriers onto which our instruments could be fitted.

The small satellites and their sensors deployed at low altitudes might only be useful for a few years. That is also the approximate timescale on which sensor and computer technology are doubling. That suggests a deployment in which the simplest sensors were deployed first, and then replaced at the end of their useful lifetimes, about 3 years, by ones with the next generation of sensors and computers. Deployment of great numbers of satellites also facilitates the correction of mistakes at limited expense.

*Passive means of observation* have been strongly emphasized in the past, but there are still significant opportunities for innovation. Wide angle, high resolution systems like fisheye lenses in combination with smart retinas are worth considering. Brilliant Eyes would use small, thick lenses to achieve the large fields of view needed for autonomous target acquisition and engagement. They would have resolutions of  $\approx 100$  m in the infrared, but that would improve to  $\approx 10$  m at visible wavelengths. That resolution could be useful for preliminary surveys and for queuing sites for sensors with finer resolution but limited fields of view to examine in detail.

Meteorological structures have horizontal dimensions of tens to hundreds of kilometers, and clouds have gross vertical structures of several kilometers. Thus, Brilliant Eyes should have adequate resolution to measure both and address the interim energy budget required for climate change studies. Much of the spectral information required could be provided by existing flight-tested sensors, computers, and communications.

Such combinations achieve  $30^\circ$  fields of view, which from an altitude of 250 km would cover  $(500 \text{ km})^2 = 250,000 \text{ km}^2$ . They would also give search rates of  $500 \text{ km} \times 7 \text{ km/s} = 3,500 \text{ km}^2/\text{s}$ . To keep the whole earth surface under continuous observation would require 1,600 satellites.

The satellites' mosaic sensors could be fitted together on the ground, and the effective stereoscopic viewing due to the motion of the satellites could provide approximate cloud elevations. The sensors might have about 1,000 detectors in the transverse direction, or about half kilometer resolution. If a new  $1,000^2 = 10^6$  pixel frame with 10 gray scales was generated every  $\approx 500 \text{ km}/7 \text{ km s}^{-1} \approx 70 \text{ s}$  (the time of satellite passage over one frame), the data rate would be about  $10^6 \times 10/70 = 1.4 \times 10^5$  bits per second, which is low enough to be telemetered back. The rate from the whole constellation would be  $10^8$  bits per second.

In many cases repetitions are unnecessary and the possibility exists of taking the differences between successive frames and only reporting the changes on clouds, pollutants, or temperatures. The reports from neighboring satellites could then be adjusted by computers on the ground.

For higher resolution it would only be necessary to add a larger aperture, presumably a lightweight Cassegrain reflector using the 30 cm lightweight primaries available. From overhead, that would give  $\approx 3$  m resolution in the infrared and  $\approx 0.5$  m in the visible. That would give adequate resolution for the identification and classification of formations and manmade objects and in disaster assessment. Larger mirrors

would gather more return signals, greatly simplifying the development of spectrometers for the measurement of the spectra of pollutants. Large apertures would also reduce the power requirements on active sensors such as lasers.

*Lasers* could supplement passive measurements to give specific metric information, doppler-derived velocities and structures, and measurements of pollutant scattering, absorption, and fluorescence. They could also be useful for high band width data transmission. Diode lasers operating in the near infrared have the small masses and power consumption needed for application on small satellites. The costs of diode lasers with the appropriate energies and doppler capabilities is rapidly decreasing into the \$100,000 range required. There are other lasers such as excimer lasers or frequency multiplied Yag lasers that could provide in combination with the diode lasers appropriate control of frequency and tuning for fluorescence sources.

Such combinations would be almost ideal for probing the evolution of clouds and pollution streams. A laser with 10 Watts transmitted could probe the motion of pollution streams a few kilometers across. It could also probe the spatial and velocity structure of the inside of clouds, with or without signature enhancement from corner reflectors. It would complete the instruments needed for a preliminary survey of atmospheric structure and transport.

An alternative to space basing the lasers would be to locate the lasers on the ground and equip the satellites with mirrors, possibly active, to direct the beam to the proper targets. That could make a greater variety of lasers available, but they would only be available to the satellites overhead, and the mirrors required could be of significant size. The laser intensities required should not be large enough to make accidental eye damage a major concern.

*Reporting* would proceed by information transfer between a satellite, all its neighbors, and eventually to the ground. The transmission could go through nearest-neighbor satellites, or from the compact satellites up to higher altitude communication satellites which would be required in much lower numbers. Lasers could provide high bandwidth data links for the latter. On-board data processing could be used to reduce the amount of information transmitted to the instantaneous channel capacity of the transmission link used.

There should be a command-link from the ground to satellites to instruct the computers on the satellites on the relative priorities of different possible observations and how and in what detail to report on observations. Constellations of several hundred satellites or more could give warning of natural disasters or accidents anywhere on the globe.

Auxiliary means of reporting may be deployed to enhance continuous uninterrupted service. The auxiliary means could take the form of corner reflectors of low weight and low cost containing more simple computers and low power supplies. In these, important pieces of information could be stored in the form of vibrations. The satellite and the ground could transfer information to them, read out the information, and also cancel the stored information.

Other corner reflectors could easily enhance the laser light reflected to the satellite a million-fold. Simple, exceedingly low-weight corner reflectors could float in the atmosphere long enough to be used to increase the return from cloud-free areas.

They could also be used to adjust the path length and signal strength for pollution absorption measurements. Corner reflectors on airplanes would be useful in traffic control.

*Radar* is a very flexible form of active observation. One of its obvious advantages is continuity of observation, independent of time-of-day or cloud cover. Doppler radars could provide information on the spatial and velocity structure inside clouds. It could also make weather measurements, survey ground damage, and perform disaster damage assessments in all weather and lighting conditions. Synthetic aperture radars (SARs) would be ideally suited to that application. Not only could it image affected areas through clouds, it could do so with high resolution. Even from small satellites its resolution would be roughly equal to the size of the antenna or satellite, which is more than enough for disaster reporting. SARs could also look for areas of crop damage, natural disasters, oil spills, and other phenomena that produce changes in radar cross sections.

The processing power needed to realize this resolution can be performed by computers that can now be mounted on those small satellites. Thus, it would no longer be necessary to transmit the very high volume of information back. They could be interpreted on board and only the partial or differential information needed transmitted back to the ground. The same sensors could provide images useful for disaster, peacetime weather, and conflict. By handing over information on important target areas from the fish-eye sensors and the higher resolution SARs their complementary advantages might be used to efficiently maintain observation on big scale to meter-sized objects.

Radars provide both the resolution and large area surveillance needed for damage assessment for military or natural disasters. Compact satellites exist that could perform needed measurements for either. They need to be at low altitudes for good resolution. They need to be small for affordability and proliferation.

*Altitude.* The powers required for active measurements with lasers or radars scale as the fourth power of altitude. Thus, operation at the minimum sustainable altitude is essential. Fortunately, several techniques now exist that permit long-term operation at the  $\approx 250$  km altitudes where active and passive sensors are most effective. First, the small satellites can be shaped and oriented to minimize drag. They can also use probes in front of them to shock the approaching air and turn it aside to reduce drag. They can also use eccentric orbits, which are lower over the northern hemisphere and higher over the southern. That reduces the drag per orbit. Finally, they could use thrust to compensate for drag. Three years of make-up gas is not a great amount for a small satellite, through it would be for a large one.

*Two Year Program.* To impact major environmental and climate decisions it is necessary to provide at least preliminary data on the energy budget, flow, structure, and correlation with pollutants in the next few years. Fortunately, the extensive development of small satellites and their sensors over the last few years should make that possible. Small satellites exist, so do prototype sensors. Both have already been tested in space. Thus, it should be possible to take advantage of existing hardware and software to produce small satellites with limited lifetimes that could provide the preliminary

data base needed, starting in about two years in an orderly program.

UNIVERSITY OF ILLINOIS AT URBANA,  
CHAMPAIGN, DEPARTMENT OF  
PHYSICS,

Urbana, IL, July 26, 1990.

HON. DAVID L. BOREN,  
Chairman, Select Committee on Intelli-  
gence, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of July 2, inviting us to submit a written statement that would assist the Select Committee in its review of the monitoring and security aspects of the Threshold Test Ban Treaty (TTBT) and the Peaceful Nuclear Explosions Treaty (PNET) and their respective protocols. We are pleased to offer the following observations.

#### 1. OVERALL ASSESSMENT

The new Protocols to the PNET and TTBT significantly strengthen the verification provisions of these treaties. In particular, the combined use of seismic and hydrodynamic verification methods that is allowed under some conditions by the TTBT Protocol is an improvement over the provisions of the previous TTBT Protocol.

The seismic and hydrodynamic verification methods complement each other in important ways. For example, hydrodynamic methods are not affected by the large scale geologic features of the test site or the geophysical properties of the earth beneath it. They are, however, affected by features within twenty meters of the center of the explosion, such as the sizes and shapes of any canisters, cavities, voids, and tunnels in this region. In contrast, seismic methods are much less affected by small features close to the explosion but are affected by the large scale geologic features of the test site and the geophysical properties of the earth beneath it. Thus, the simultaneous use of both verification methods is superior to the use of either method alone.

#### 2. UNCERTAINTIES

In our judgment, it is likely that the uncertainties in some Soviet nuclear test yields derived from data collected under these agreements during their first few years will be greater than a factor of 1.3. As the United States gains experience in nuclear test monitoring at Soviet test sites under these agreements, we expect the uncertainties to diminish.

#### 3. FURTHER ANALYSIS

We believe that further technical analysis is necessary in order to accurately assess the uncertainties that may be encountered in monitoring these agreements and the potential for Soviet circumvention of them. In particular, further studies of shock wave verification methods are needed to evaluate the reliability of these methods for monitoring the yields of (a) tests conducted in complex geometries involving several tunnels, shafts, or adits; (b) tests conducted in cavities with volumes approaching 20,000 cubic meters; (c) tests involving multiple explosions; (d) tests conducted in media that are unfamiliar to the United States, such as the carbonaceous rocks that could be encountered at the Soviet Kazakh Test Site near Semipalatinsk and the frozen carbonate and silicate rocks that are likely to be encountered at the Soviet test site on Novaya Zemlya Island; and (e) tests conducted near Karsts or other voids in carbonate rocks. We do not believe that the uncertainties are so large that ratification of these agreements should be delayed while these studies are completed.

#### 4. UNRESOLVED ISSUES

We note that paragraphs 3, 4, and 6 of Section III of the TTBT Protocol leave unresolved the verification measures that would be employed to monitor certain types of tests. If tests of these types are unlikely to be conducted leaving these verification measures unresolved is appropriate. If instead tests of these types are probable, leaving these measures unresolved may create significant problems in the future.

#### 5. NONDISCLOSURE PROVISIONS

Section XII, Paragraph 2 of both the PNET and TTBT Protocols provides that "Public release of the results of observation or measurements . . . may take place only with the agreement of both Parties." This provision is more restrictive than the related provision of the PNET Protocol negotiated in 1976. By enabling either party to veto the release of observation or measurements, this clause may prevent the United States government from obtaining information and analyses from outside the government that would materially improve its verification capabilities. Past experience has shown that restrictions of this kind seriously impede close scrutiny of measurements, correction of errors, and the development of improved analysis techniques. This clause may also prevent the United States government from making available to its citizens information that they need to properly assess Soviet compliance or noncompliance with the provisions of these treaties.

#### 6. FUTURE AGREEMENTS

For nuclear explosions with yields of 10-20 kilotons or less, the disturbing effects on hydrodynamic yield estimates of canisters, tunnels, voids, shafts, and cavities is much greater than it is for explosions with yields greater than 50 kilotons. In addition, significant practical, operational, and engineering problems would be encountered in attempting to use hydrodynamic verification methods to monitor nuclear tests with yields of 10-20 kilotons or less. It may be possible to overcome some of these difficulties by developing new measurement techniques, more accurate models, and new analysis methods. Others could be alleviated by further restrictions on testing practices and additional cooperative arrangements. However, these and other possible approaches have not yet been carefully studied. Unless the difficulties are surmounted, shock wave methods could not be used with confidence to monitor a low threshold test ban in which the threshold is significantly less than several tens of kilotons.

Shock wave verification methods can only be used if extensive preparations are made in advance at the test site, if monitoring personnel are present during the test, and if data are taken within meters of the center of the explosion. Therefore, shock wave verification methods could not be used to monitor a comprehensive test ban. Teleseismic and regional seismic verification methods are highly developed and could play an important role in monitoring such a ban.

Sincerely yours,

FREDERICK K. LAMB,  
Professor of Physics and Astronomy.  
BRUCE W. CALLEN,  
Postdoctoral Research Associate.

LAMONT-DOHERTY GEOLOGICAL OB-  
SERVATORY OF COLUMBIA UNIVER-  
SITY,

Palisades, NY, August 8, 1990.

MR. DON MITCHELL,  
U.S. Senate, Select Committee on Intelli-  
gence, Washington, DC.

DEAR DON: The enclosures are my response to the July 2 letter I received from Senators Boren and Cohen, inviting me to give a written statement on the new verification provisions of the TTBT and PNET.

It was a pleasure to hear from you again. (I had not known that you have moved from working in Senator Glenn's office, where we met a few years ago.) Although you sent out that letter several weeks ago, I did not in fact receive it until Monday August 6, because it went to Livermore (where I have been on sabbatical) and has only just been forwarded to my address at Columbia University, to which I have returned after an absence of 12 months. Hence my use of "attachments" to my statement.

I know that the TTBT is perceived as a mass of detail, and that it is not much of a treaty for those who advocate stringent test bans. (Senator John Glenn said at the original ratification hearings in 1977 that TTBT stood for "timid test ban treaty." He failed to get a substantive answer to his basic question of "why 150 kilotons?") I am therefore concerned that in its present consideration of advice and consent, the Senate may miss the wood for the trees, and not recognize that in an overall sense the Reagan/Bush handling of TTBT verification issues has set a disastrous precedent for what is needed in verifying genuinely restrictive nuclear test ban treaties in the future. I hope this opinion is clear in my statement.

Yours sincerely,

PAUL G. RICHARDS.

#### VERIFICATION OF THE 1974 THRESHOLD TEST BAN TREATY AND THE 1976 PEACEFUL NUCLEAR EXPLOSIONS TREATY

(August 1990 statement by Paul G. Richards, Mellon Professor of the Natural Sciences, Columbia University, for the Select Committee on Intelligence, U.S. Senate)

I am familiar with the protocols, signed June 1 this year by Presidents Bush and Gorbachev, describing new provisions for verifying the 1974 Threshold Test Ban Treaty (TTBT) and the 1976 Peaceful Nuclear Explosions Treaty (PNET).

The new verification provisions can be expected to improve U.S. capability to estimate the yields of Soviet underground nuclear explosions. In fact, improvement has already occurred, because technical information acquired in 1988 by the U.S. (as part of TTBT/PNET negotiations) can already be used to reduce significantly the uncertainty of U.S. estimates of the yield of Soviet explosions, for all such explosions at the Shagan River test site in East Kazakhstan (the only test site for explosions that have been of concern with respect to TTBT compliance).

On the question of whether the new (or old) verification provisions are "adequate," there is a fundamental difficulty in that no administration during the last 20 years has given a technically meaningful statement that translates into a requirement for the monitoring community. Absent such a statement, it does however appear to me, from various items of congressional testimony such as statements of U.S. weapons lab directors and from work done by the Office of Technology Assessment, that the U.S. needs to be able to estimate the yields of large underground Soviet nuclear explosions with a factor of uncertainty not greater than 1.5.

(For a definition of the "factor of uncertainty"—a term essential to the understanding of much of the technical debate on TTBT verification—see attachment 1.)

If the requirement of "a factor of uncertainty less than 1.5" is taken as the standard of adequacy, then I believe the TTBT is now verifiable for the Shagan River portion of the Soviet Kazakhstan test site, with no further need to acquire CORRTEX data. My reason for this position, is that: (1) national technical means (NTM) for Shagan River are highly developed (since this has been the site of the largest Soviet explosions since the TTBT went into effect in 1976); and (2) methods of interpreting NTM data, which are principally seismic, have already been significantly improved since 1987 (see attachment 2). However, although stating the CORRTEX deployment seems unnecessary to me on technical grounds for future large-yield Shagan River explosions (if there any), I recognize the importance here of a non-technical issue—namely, that CORRTEX data may act to ensure confidence in U.S. monitoring capability for this test site. In this sense, CORRTEX is an enabling technology: it enables people who are sitting on the fence (when statements are made about the capability of seismic methods) to have confidence that there is a process for independently evaluating NTM.

For Soviet explosions conducted at locations other than Shagan River (notably, at Degelen Mountain and at Novaya Zemlya), the U.S. currently lacks any verified calibration data, and I believe there is significant benefit in having secured, in the new verification provisions, the right to deploy CORRTEX for all shots planned to be above 50 kilotons. The principal benefit comes from the very first deployment of CORRTEX at a test site, since this alone gives the U.S. significant information that reduces the uncertainty in interpreting NTM data (seismic), for purposes of estimating yields of all previous and future explosions at that test site.

Two ironies concerning CORRTEX may be noted. First, that although the declared need for an alternative monitoring technology was driven by nuclear testing advocates who also declared a lack of confidence in seismic methods, a principal outcome of CORRTEX turns out to be restoration of confidence in seismic methods—which can in turn be applied to the verification of more stringent treaties [For example, note that seismic methods result in an estimate of 111 kilotons (with an uncertainty factor less than 1.2) for the Shagan River Joint Verification Explosion of September 14, 1988. This estimate is derived from an application of Figure 9 in attachment 2, using a magnitude value measured as 5.969 at NORSAR in Norway. It appears that seismic signal quality is adequate, if in-country stations are used within the territory of a country executing a nuclear test, to supply yield estimates for explosions down to 1 kiloton. Note, however, that for such small tests there would be a need to ensure access by the monitoring side to the site of the test, and rights to ensure that the test was conducted under conditions of normal coupling of explosion energy into seismic signal.] The second irony, is that negotiation of CORRTEX (and rights of the Soviets to deploy their equivalent hydrodynamic methods at the Nevada Test Site) itself places some restrictions upon U.S. nuclear testing practice. In fact, it may be that negotiation of CORRTEX for even smaller explosions (i.e. with planned yield less than 50

kilotons) is a path toward further restrictions on nuclear testing practice, regardless of the question of yield estimation. The reason, is that for smaller tests hydrodynamic methods must entail access by foreign observers down to a very few meters from the device canister, and the exchange of detailed information about the physical configuration of the device being tested, so that the testing side must operate under some difficulties associated with the need to avoid releasing sensitive information.

Two overall issues, related to the new TTBT/PNET verification protocols, concern me greatly. The first is that technical information supplied to the U.S. Congress and the general public by leading spokesmen for the Reagan and Bush administrations has often been grossly flawed, and slanted in ways that exaggerate difficulties with traditional methods of explosion monitoring. It is widely presumed in the technical community that the intent here is to use false presentation of verification issues, to deflect national and international pressures for new, more restrictive, bans on nuclear testing. I give an example of what I believe to be misrepresentation, in attachment 3. [Another example, is administration testimony presented to the Senate Foreign Relations Committee on July 17 this year, to the effect that cavity decoupling is a plausible scenario for spoofing seismic yield estimates of large Shagan River explosions. Such decoupling is a problem for CORRTEX, not seismology—though it is a problem for both technologies, at yield levels down at around ten kilotons.] The second overall issue, is that of how the U.S. has generated its official estimates of the yield of Soviet underground nuclear explosions. I am very familiar with procedures for making these estimates, since I have served on pertinent government panels for several years. Broadly speaking, I believe I have witnessed institutional failure in agencies charged with addressing technical aspects of U.S. capability to monitor foreign nuclear explosions. The underlying problem is usually conflict of interest—an agency whose primary mission includes nuclear weapons development, and/or planning for nuclear weapons use, cannot be expected (without very strong oversight) to take a comprehensive problem-solving approach in providing technical support to test ban monitoring.

Because of the two issues raised in the preceding paragraph, I do not believe that key monitoring problems associated with a Comprehensive Test Ban Treaty or a Low-Yield Threshold Test Ban Treaty will be targeted for solution, unless a re-organization of federal agency responsibilities (both R and D, and operations) is undertaken. In fact, I believe that one of the principal indicators of a political commitment to seek more stringent test bans will be a re-organization in the way that U.S. capabilities for nuclear explosion monitoring are assessed. If such a re-organization is to withstand the pressures that surely will face any new framework that purports to supply technical advice on politically sensitive and military important issues, then a guiding principle must be to incorporate mechanisms that will ensure the highest professional standards in the technical work undertaken.

As attachments to my statement, I add:  
 (1) my Senate Armed Services Testimony (from Feb. 26, 1987) because it gives a common understanding of what the "factor of uncertainty" is;  
 (2) a preprint of a paper entitled "Seismic Methods for Verifying Test Ban Tre-

ties: Progress since 1987," that I have just had accepted by the IEEE Technology and Society Magazine, because it is an up-to-date tutorial on many TTBT issues; and

(3) a retyped excerpt from the July/August 1990 issue of the journal "Arms Control Today," in which Ambassador C. Paul Robinson makes many statements on technical issues concerning seismic methods of TTBT verification. I have heard all these arguments presented on government panels on which I have served, and they are simply not deemed persuasive in the expert technical community.

TESTIMONY OF PAUL G. RICHARDS, PROFESSOR OF GEOLOGICAL SCIENCES, COLUMBIA UNIVERSITY, BEFORE THE SENATE COMMITTEE ON ARMED SERVICES, FEBRUARY 26, 1987

Mr. Chairman, members of the Committee, I was asked last Monday evening to testify to you on technical issues in seismology, with reference to monitoring explosions and specifically in connection with the Threshold Test Ban Treaty (TTBT). I have taught seismology at Columbia University for 15 years. For twenty years I have been familiar with research programs related to seismic monitoring of explosions. In 1984 I began a 12-month appointment as a Visiting Scholar (a William C. Foster Fellow) with the U.S. Arms Control and Disarmament Agency. I am currently a member of the Advisory Panel recently set up to oversee an Office of Technology Assessment study, entitled "Seismic Verification of Nuclear Test Limitation Treaties."

The first part of my testimony is a tutorial on what is meant by "uncertainty" in yield estimation. I then comment on how this issue has recently been presented to the Congress. I conclude with some remarks about the accuracy of seismic methods of yield estimation, and an acknowledgement that the assessment of Soviet compliance with the TTBT is not a purely technical issue.

#### TUTORIAL

Ideally, the technical community would like to assign yield (for a particular explosion) as a single unambiguous value. This would amount to picking a particular point as in the diagram below. Thus, we'd like to accumulate evidence that specifically points to one value of yield, for example 143 kt.

[Charts not reproducible in the RECORD.]  
 But this is never possible. Whatever technical method is used to measure yield, there is always some uncertainty. This is true for radiochemical, seismic, and CORRTEX methods.

The method used to characterize the uncertainty is to think of a yield estimate not as an arrow pointing to one particular value, but as a kind of histogram that indicates which yields are probable and which are improbable. The diagram for conveying this uncertainty looks as follows:

For yield values where the curve is high, one has a greater chance of finding the actual, correct yield. This idea is the basis for developing precise statements about the uncertainty of a particular yield estimate, because the curve as a whole has some very informative uses. Thus if we pick any range of yields, then there is a property of the curve that allows us to give the probability that the actual yield lies within that range. This probability turns out to be the area under the curve, over that yield range.

The shaded area, expressed as a percentage of the total area under the whole curve, is the probability that the actual yield truly

does lie within the range of yields we have chosen. This is the main idea, and once it is grasped one has a method of examining any yield range of interest, and then stating the probability that the actual yield lies within that range.

Clearly, the shape of the "histogram" is important in that it determines whether a yield estimate is accurate or not. (The desired standard of accuracy is set from requirements external to the particular method used for yield estimation.)

A good method of yield estimation will result in sharply peaked histograms, a poor one in broad and low histograms. Thus, in the first example (above) even a narrow range of yields can achieve high probability of capturing the actual yield, because most of the area under the curve is concentrated over a narrow range. In the second example, a relatively wide range of yield values must be taken in order to include the actual yield with high probability.

Fortunately, the overall shape of these curves is quite well understood, using ideas that go back to the 1800's. For various seismic methods, these curves are known as "gaussian" or "normal" or "bell shaped" if one chooses to plot them not against yield but against the logarithm of the yield.

It follows that they become slightly unsymmetrical if we plot them actually against yield, as shown in the earlier examples. Fortunately, however we choose to plot them, a particular curve can be specified by only two numbers. One, is the so-called "central value yield." This is the yield value where the curve is highest (more precisely, where it is highest when the curve is plotted, as just given above, against log (yield)). The other important number is a measure of how wide the curve is, and thus of the uncertainty to be associated with the central value. There are several different though wholly equivalent ways to give this number, but fortunately there is now an accepted convention in the application to yield estimation. The second number is called the "factor of uncertainty," and by convention it gives the range of yields (about the "central value") that is covered by 95% of the area under the curve. This range extends from the central value yield divided by the "factor of uncertainty," up to the central value multiplied by the "factor of uncertainty." For example, if we say of a particular explosion that its central value yield is 120 kt with a factor of uncertainty equal to 2, we mean that there is a 95% chance that the actual yield lies somewhere in the range 60 kt to 240 kt. The presentation is as follows:

Of course, there is a greater chance that the actual yield lies nearer the middle of the range than nearer the ends. For example, it turns out that another way to present the above results is say that there is a 50% chance of the actual yield lying in the range from 96 kt to 150 kt. The graphical presentation looks like this:

In other words, there is a trade-off between whether we want to give a larger range of yields that has a high probability (95%) of capturing the right value (the actual value), or whether we want to give a smaller range and accept a lower probability (50%). The "histogram" can be used to give the answer in either case.

We can now give some master curves that underlie much of the current debate concerning verifiability of the Threshold Test Ban Treaty (TTBT):

These curves show the sense in which probability is more concentrated about the

central value (150 kt), as the factor of uncertainty is reduced from 2.0 to 1.3.

From the above material, one can see the importance of working with a yield estimation method that has a lower "factor of uncertainty." For reference, note that the CORTEX method, as proposed for application by the U.S. to nuclear explosions at Soviet test sites, is characterized by a factor of uncertainty equal to 1.3 (this may be inferred from statements in U.S. Department of State Special Publication 150, August 1986).

#### COMMENTS ON REPORTAGE TO THE CONGRESS

It is widely reported that the seismic method has a factor of uncertainty equal to 2 (often stated simply as a "factor of 2"). I wish to comment, first, on how this seismic capability has recently been reported to the Congress, and later on the question of whether a "factor of 2" is indeed an accurate summary of yield estimation uncertainty by seismic methods.

Thus, on January 13, 1987, Dr. Robert Barker (the Assistant Secretary of Defense for Atomic Energy, and leader of a U.S. delegation at bilateral talks on improving verification of the Threshold Test Ban Treaty) testified before the Senate Committee on Foreign Relations. Referring to the widely assumed "factor of 2" that is often said to characterize uncertainties of yield estimation in seismology, Dr. Barker gave the following description: "... this uncertainty factor means, for example, that a Soviet test for which we estimate [by the seismic method] a yield of 150 kt may have, with 95% probability, an actual yield as high as 300 kt—twice the legal limit—or as low as 75 kt."

The problem of such a characterization is the false impression it conveys, that seismic yields have a high chance of being badly wrong. Dr. Barker could have continued in the same vein with a conclusion that the same explosion may have, with 99% probability, an actual yield as high as 420 kt—or as low as 53 kt! Had the uncertainty factor been 1.3, his argument also would translate to saying that "a Soviet test for which we estimate [by, for example, the CORTEX method] a yield of 150 kt may have, with more than 99% probability, an actual yield as high as 300 kt—or as low as 75 kt" and thus falsely leave the impression that the CORTEX method is even more inaccurate than other methods, since it here appears even more likely (than, for example, seismology) to fail to identify a high actual yield.

The fallacy in these conclusions stems from taking a large yield range (so that indeed there is a good chance of bracketing the actual yield) and then wrongly inferring that the extremes of this range are representative of what the actual yield could be. It's like saying that "a 'man in the street' may be, with high probability, actually a billionaire, or he may be very poor".

In a sense this statement is strictly true, because of a meaning of the word "may." But it is not a useful statement, and it is certainly not the way to characterize such information about the 'man in the street' as we may have.

An interagency study titled "Possible avenues for cooperation with the Soviet Union in the development of capabilities for verifying compliance with nuclear testing limitations", in a report issued on July 14, 1986 (see House Document 99-258), had a description of seismic capabilities as follows:

"While we judge that, at present, there is approximately a factor of two uncertainty

in the yield estimates derived by seismic methods, there are reasons to suggest the uncertainty would be actually smaller (or conceivably larger). A factor of two uncertainty means, for example, that a Soviet test for which we derive a "central yield" value of 150 kt may have, with a 95 percent probability, a yield as high as 300 kt or as low as 75 kt."

Dr. Barker's statement before the Committee is essentially a repeat of part of the interagency report, though he did not take the opportunity to indicate the expert technical community in general would characterize seismic yield estimates as having less than a factor of two uncertainty. I would suggest that the report, generated by (presumably) the key agencies working on nuclear testing policy, indicates that there is a poor understanding of the central issue of what is meant by uncertainty in measurement of explosion yields. Thus, on the question of whether a yield estimate reported as 150 kt (central value) could actually be above 300 kt, the answer can be given graphically as follows (again, assuming a factor two uncertainty):

The probability is only two and a half percent (one chance in forty).

On January 15, 1987, Dr. Siegfried Hecker (the Director of Los Alamos National Laboratory) testified before the Committee on Foreign Relations. Referring to the accuracy of current methods of yield estimation he said statistical studies at his Laboratory have reached the conclusion that "the opportunity to test at 300 to 450 kt cannot be denied to the Soviets."

His written testimony noted: "A violation at the 300 to 450 kt level can no longer be dismissed as having little significance. . . . The ability to conduct such tests cannot be denied the Soviets under the present treaty provisions, even after the exchange of data that will follow ratification [of the Threshold Test Ban Treaty]. On the other hand, the U.S. has scrupulously complied with the 150 kt limit. Since both sides have strategic weapons requirements will in excess of this limit, violation of the limit by the Soviets could create an asymmetry that has significant military implications."

With his assertion that the Soviets could test at yields two or even three times above the allowed threshold without U.S. discovery, Dr. Hecker is apparently saying that seismic methods of yield estimation (and other National Technical Means) are fundamentally incapable. Of course, he has a perfect right to hold his opinion, and it is difficult for me as a seismologist to debate the issue since it does not appear to be a debate within my profession on technical matters. Rather, it appears to be a dismissal of my profession as a whole. But there is the question of accountability, and for someone in Dr. Hecker's position, it is surely necessary that he explain why at this time he holds an opinion so different from that of others who have studied these issues extensively. His statements in this area are clearly true, if they mean that current methods are not perfect. But we know that future methods will not be perfect either. Discussion of yield estimation has substance, at this stage of exploring what is meant by "effective verification" and "improved verification", only if it is developed in terms that reflect the reality that no method is perfect.

#### COMMENTS ON THE ACCURACY OF SEISMIC METHODS

Moving on to the question of what really is the accuracy of seismic methods, a natu-

ral place to begin is to inquire what is the accuracy in application to our nuclear explosions at the Nevada Test Site (NTS). There are open studies of this question, and from what appears to be one of the best methods (the use of the seismic wave known as "Lg") it appears that the factor of uncertainty can be pushed down to around 1.3. Some of my professional colleagues will argue with me here, and I am not offering this number (1.3) as one that represents a consensus within the technical community. However, I do believe there is clearly a consensus that the factor of uncertainty (for the best seismic methods, taken as a whole) is well below 2, for estimation of NTS yields above 10 kt (in hard rock, below the water table). I am prepared to give a technical defense of my claim that the factor is as low as 1.3.

Concerning yield estimation for the Soviet nuclear tests of concern with respect to the TTBT, I would again claim that a value of 2 for the factor of uncertainty is not a fair summary of current capabilities, because it refers only to one type of seismic method, and for large explosions there are typically three or more independent seismic waves upon which separate seismic yield estimates can be based. If the average of these estimates is taken as the central value yield, with a factor of uncertainty of 2 (at the 95% level) for each of three methods, it is easy to show that the resulting seismic yield estimate has only a factor of 1.5 uncertainty. There may be debate as to whether the available seismic methods are each equally good, and how they should be weighted in coming up with a best estimate using more than one seismic method. (For example, I do not believe the Lg method is yet as good, for Soviet explosions, as it is for events at NTS.) My point is simply that for large explosions, which generate a variety of different seismic waves, the factor of uncertainty achieved by combining various seismic methods is less than two. The debate on this question turns out not to be a purely technical one, because in order to build the technical case (for a particular value for the factor of uncertainty) there has to be a review of what information can be folded in to the process. For example, the question of whether any Soviet-supplied data can be used, cannot be decided purely by the technical community.

On the question of Soviet compliance with the Threshold Test Ban Treaty, I recognize that this has to be decided as a political judgement. The way that the technical community can contribute, is to give a best professional opinion on the relevant numbers. For example, we can come up with estimates for the yield of Soviet explosions, and we have to describe our uncertainty associated with these estimates.

The biggest Soviet explosions in recent years have been in Eastern Kazakh, near the town of Semipalatinsk. There have been many open-literature studies of these events, and typically these papers do show some with yield estimates above 150. But there's a couple of ways to see that this not the end of the story. For example, consider a program of testing at 149 kt every year. Then, because each seismic estimate is not going to be absolutely accurate, some seismic estimates will come in above 150. In fact, this would be expected to happen, if the Soviets were repeatedly testing right up to the allowed threshold. Another way to appreciate that a few events with seismic yields above 150 does not directly indicate non-compliance, is to consider what would

happen if the seismic method were applied to our own test site in Nevada. [This basic idea is described in a Congressional Research Service document, No. 86-155 SPR "Monitoring Nuclear Test Bans" by David W. Cheney.] Because of the uncertainties, some of the U.S. weapons tests would be estimated, from seismic measurements, to be over 150 kilotons.

I conclude by commenting that the problem of assessing compliance with a yield threshold will always have difficulty because of technical uncertainties. The technical uncertainty is not unique to seismology, nor to 150 kilotons. If a method that had a 1.1 factor of uncertainty were used, and testing was routinely taken up to the threshold but not above, then there would still be a nearly 50-50 probability that the "central value" estimate would exceed that threshold for the largest events.

#### SEISMIC METHODS FOR VERIFYING TEST BAN TREATIES: PROGRESS SINCE 1987

(By Paul G. Richards)

##### ABSTRACT

Until 1987, the United States monitored Soviet nuclear explosions by the use of seismometers deployed outside the territory of the U.S.S.R., and without access to direct information on yields of any explosions at Soviet weapons test sites. This paper briefly describes the way in which indirect information has been used to calibrate seismic signals, for purposes of yield estimation, and the fact that seismic methods were deemed inadequate at the political level in the U.S., particularly in monitoring compliance with the 150-kiloton limit imposed by the 1974 Threshold Test Ban Treaty. At greater length, a description is given of three different technical initiatives, beginning in 1988, that have improved the accuracy and reduced the uncertainty of seismic methods for estimating nuclear explosion yield.

##### INTRODUCTION

There have been well over 1000 underground nuclear explosions worldwide, occurring on average roughly once a week since the first was set off by the U.S. in Nevada in 1957. Most of these have been weapons tests. The debate on nuclear test bans has continued too far over 30 years, and continues to develop and change as new information becomes available.

Such testing activity is widely recognized to lie at the heart of the qualitative nuclear arms race, and raises the central question of whether nuclear testing should be banned in whole or in part. The central debate is related to the present and future status of superpower plans to research, develop, build, deploy, and possibly use new nuclear weapons—and to the superpowers' concepts of deterrence and the prevention of nuclear war. For those who believe that qualitative improvement and modernization of nuclear weapons is a part of the solution in maintaining peace, continued nuclear testing seems essential. For those who believe the prospect of more sophisticated nuclear weapons is part of the problem in peace-keeping, some form of nuclear test ban—perhaps, the most stringent ban that can be verified and negotiated—is appropriate.

Whether for purposes of arms control, or for seeking information in nuclear weapons development by a potential opponent, it is important to reach some understanding of how well nuclear testing may be monitored. For this reason, over the last 30 years a special branch of seismology has developed, to detect, locate, and identify the occurrence

of nuclear explosions that take place underground—the only environment now permitted for countries that have signed the 1963 Limited Test Ban Treaty (LTBT), which banned testing in the atmosphere, the oceans, and outer space. Since 1974 when the Threshold Test Ban Treaty (TTBT) was signed, banning underground nuclear weapons-test explosions with a yield in excess of 150 kilotons, it has been important that monitoring capability be extended to provide yield estimates.

This monitoring requirement is likely to continue, even if a Comprehensive Test Ban Treaty (CTBT) becomes universally accepted as a desirable goal—apparently obviating the need for yield estimation. The difficulty with a CTBT lies with current estimates of the yield level at which underground nuclear explosions could be conducted clandestinely (perhaps about 10 kilotons, see below). This level admits the possibility of a concealed test program that could have some military significance. Until this yield level can be significantly reduced, the main approach to more stringent limitations on nuclear testing is likely to be based on reductions in the threshold of allowed tests, and hence the need for accurate yield estimates will persist.

It appears that seismology will provide the principal techniques for monitoring nuclear test bans for the foreseeable future. This is the case because only a worldwide seismic network can assure a comprehensive detection capability for underground testing activities of nuclear-capable nations, thus discouraging cheating. Because of numerous inherent limitations, other methods of monitoring currently in use will remain supplementary and supportive in nature to a more comprehensive seismic monitoring regime.

In 1987, following a break of seven years, the U.S. and the U.S.S.R. resumed negotiations on nuclear testing limitations after issuing a joint statement saying in part that: "... the sides at the first step will agree upon effective verification measures which will make it possible to ratify the US-USSR Threshold Test Ban Treaty of 1974 . . . and [will] proceed to negotiating further intermediate limitations on nuclear testing." Behind this simple statement lies a ten-year history of acrimonious debate in the U.S., over whether the U.S.S.R. has occasionally tested weapons at yields greater than the 150 kiloton threshold—and whether such cheating, if it occurred, could have been of such a degree as to confer a military advantage on the Soviet side. The Reagan Administration asserted on many occasions that there had been "likely violations," but no technical evidence in support of this position was openly offered, and broadly speaking the technical community can be said to have reached a different conclusion. This, summarizing the opinion of many people who have examined, these technical issues, Dr. Roger Batzel (as Director of Lawrence Livermore National Laboratory) testified for the Senate Foreign Relations Committee in 1987 on the question of compliance, saying that:

"Based on our assessment of the relationship between yields and seismic magnitudes for the Soviet test sites and the pattern of Soviet testing, we have concluded that the Soviets appear to be observing some yield limit. Livermore's best estimate of this yield limit, based on a probabilistic assessment, is that it is consistent with TTBT compliance. However, because of the statistical uncertainty of teleseismic yield estimates and the uncertainty in extrapolating U.S. experi-

ence to Soviet test sites, we cannot rule out the possibility that a few Soviet tests may have exceeded the limit. . . I believe that it is impossible to state with certainty that the Soviets have or have not violated the TTBT."

Informed discussion of these issues requires access to an understanding of much technical information, some of it quite sophisticated. Which policy options are technically possible (and at what cost?) Which are impossible? What is black and white, and what are the shades of grey?

Several documents addressing these questions have been published by the U.S. Congress since mid-1987. In addition to committee hearing records, these include the following four reports on nuclear testing, explosion monitoring, and their relationship to arms control:

Intelligence Support to Arms Control, a report (number 100-450) issued November 1987 by the House Permanent Select Committee on Intelligence, 67 pp.,

Seismic Verification of Nuclear Testing Treaties, a report (OTA-ISC-361) issued May 1988 by the Office of Technology Assessment, 139 pp.,

Nuclear Weapons and Security: The Effects of Alternative Test Ban Treaties, a report prepared by the Congressional Research Service, issued June 1989 as a Committee Print of the House Committee on Foreign Affairs, 306 pp., and

The Containment of Underground Nuclear Explosions, a report (OTA-ISC-414) issued November 1989 by the Office of Technology Assessment, 80 pp.

The technical content of these reports represents a great improvement over the quality of information previously made available to policymakers by U.S. federal agencies. However, several new developments in explosion monitoring in the past two or three years are not covered in these reports—developments in negotiations as well as several important new results at the technical level. The main purpose of this paper is to describe these recent technical results, giving particular emphasis to the monitoring issue seen as most important in the U.S., namely the discussion of how to improve or complement conventional methods of yield estimation.

Thus, as an aid in the evaluation of methods to verify the 1974 Threshold Test Ban Treaty, two "Joint Verification Experiments" (JVEs) were carried out in 1988. Centered on the execution of two special nuclear explosions, one in Nevada (August 17, 1988) and the other in East Kazakhstan (September 14, 1988), the JVEs constitute a remarkable milestone in the more than 40 years of nuclear weapons development by the superpowers. Associated data have been examined with more interest than perhaps for any explosion since underground nuclear testing began in Nevada in 1957. Potentially, these data can help resolve claims of non-compliance with current test ban treaties, and can give credibility to methods of monitoring that have relevance for verifying further restrictions on nuclear testing, for example, a low-yield threshold test ban.

The JVEs and associated programs of monitoring at weapons test sites were executed by technical teams acting for their respective governments. In addition, beginning in 1988, seismic data on underground nuclear explosions have become available from modern stations installed within the U.S.S.R. under the private initiatives of U.S. scientists. These data supply the first hard information on the quality of nuclear weap-

ons-test signals that can be observed in the U.S.S.R. The data are pertinent both for estimating the yield of large explosions, and for detecting and identifying even very small nuclear explosions.

A third major source of new information is an openly available paper, published in September 1989 by Soviet scientists<sup>1</sup>, giving technical details concerning 96 underground nuclear explosions carried out by the U.S.S.R. prior to 1973 at the main weapons test site near the city of Semipalatinsk, East Kazakhstan.

Following this introduction, I briefly give some historical background and a review of technical issues in explosion monitoring as understood from the perspective of the U.S. using National Technical Means (NTM), that is, by use of equipment available to the U.S. and operated around the world, but not on the territory of the country being monitored. I then describe the stated goals and accomplishments of the Joint Verification Experiments, which go beyond NTM. The concluding technical section gives preliminary results obtained from operation of seismic stations within the Soviet Union, and an interpretation of the associated data using yield information recently made available by the U.S.S.R.

#### NUCLEAR TEST MONITORING—THE VERIFICATION REGIME USING NTM

Ever since the LTBT of 1963 prohibited testing in the atmosphere, the U.S. and the Soviet Union have conducted their nuclear weapons development tests underground. When the TTBT was signed in 1974, it established limits on underground testing by prohibiting tests after March 1976 having a yield exceeding 150 kilotons (often abbreviated as kt)<sup>2</sup>. This threshold was intended to prevent the development of new types of large nuclear warheads. Prior to the mid-1970s, both the U.S. and the U.S.S.R. had been testing underground at levels well above a megaton.

In negotiating the TTBT, the U.S. and the U.S.S.R. recognized the need to deal with underground nuclear explosions conducted for peaceful purposes, such as mining or dam-building. Such action was necessary because there is no clear distinction between the technology of a nuclear device which would be used as a weapon and one used for peaceful purposes. The Peaceful Nuclear Explosions Treaty (PNET), signed in 1976, covers all nuclear explosions carried out by the U.S. and the Soviet Union at locations outside their weapons test sites. The U.S.S.R. has carried out more than 100 such explosions; the U.S., relatively few. The PNET limits individual explosions to 150 kt, and group explosions (detonated in close proximity) to an aggregate yield of 1500 kt.

The TTBT and PNET, as monitored by NTM, were presented twice to the U.S. Senate for advice and consent to ratification—once in 1977 and again in 1987. However, the Senate did not give such advice and consent, for a variety of reasons stemming from the fact that these treaties have never had strong advocates. They do not represent significant progress to those who seek a CTBT, and they are not favored by those who wish nuclear testing to continue unhampered by future limitations, because formal ratification would likely lead to new pressure to negotiate further restrictions. However, the two threshold treaties (as monitored by NTM) have remained formally in effect under international law prior to

ratification, because neither party has ever indicated that ratification would not occur. At this time of writing, the TTBT is undergoing a third review in the U.S. Senate, following an agreement on a new verification protocol signed on June 1, 1990, at the Washington Summit Meeting. This new protocol goes beyond NTM, in that some types of in-country monitoring are permitted, as described below.

#### Technical Aspects of Seismic Monitoring: General Issues

Monitoring underground nuclear explosions is done mainly by studying seismic waves, using instrumentation that originally was designed for recording the motion of the ground associated with naturally-occurring earthquakes. Note that observations made by satellite, which are the principal component of NTM for many arms control treaties including the LTBT, contribute relatively little to the verification of bans on underground nuclear testing.

Seismic monitoring can be broken down into three separate steps:

*Detection* (location can also be included under this heading): can we detect seismic signals from underground nuclear testing, and can we use them to locate the source of the signal?

*Identification* (sometimes called discrimination): can nuclear explosions, once detected, be distinguished from earthquakes and chemical explosions?

*Yield estimation*: once signals have been detected and identified as coming from an underground nuclear explosion, how do we use them to estimate how big the explosion was, and what uncertainty characterizes the estimate? This is particularly important in the context of current treaties imposing a threshold on the size of allowed explosions.

Each of these three steps can be looked at in terms of current practice, given that nuclear explosions occur at recognized weapons test sites together with the current types of peaceful explosions, and using monitoring networks that now exist at installations around the world. Each step can also be evaluated in terms of hypothetical situations, in which a country might carry out a nuclear test designed to evade the restrictions of present or future, more stringent treaties. In considering such an attempt at evasion, one usually assumes the existence of a monitoring network on the territory of the country being monitored—a network that would be negotiated as part of any future agreement restricting testing. Such future treaties may also require improvements in current methods of monitoring for explosions in the oceans, the atmosphere, and outer space (i.e., improved verification of the LTBT).

In general, detection capability using NTM is very good for underground nuclear explosions. U.S. identification capability for nuclear explosions carried out by the U.S.S.R. is also very good for events above a certain size, including those that raise questions of compliance with the 150-kt limit of the present TTBT, and even for events 10 times and maybe 100 times smaller. However, there is lack of agreement on how well nuclear explosions can be identified at very low magnitude, and whether the U.S. could, with access to seismic data from the U.S.S.R., identify all underground nuclear explosions down to 1 kt. The question of yield estimation raises a series of debates, first on whether yield estimation can be done accurately for purposes of monitoring the treaty now in force (that is, the TTBT

<sup>1</sup>Footnotes at end of article.

of 1974), and then separately on the question of monitoring prospective new treaties that would allow testing only at low yields, with a threshold set perhaps at around 10 kt or even at 1 kt. As part of the debate on how well one would be able to estimate the yield of small explosions, there is a need for discussion of what restraints on the allowed testing environment might be negotiated, to ensure that a new low-yield threshold was not being exceeded. Also needed is an assessment of the accuracy of yield estimates needed for military purposes, and an evaluation of the significance of evasion as a function of threshold. However, even without conclusive discussion of these issues, there appears to be basic agreement in the expert community that limitations on nuclear testing far more stringent than the current 150-kt threshold treaties could be monitored. The chief contribution that this community could make to an informed debate on options for new testing limitations would be the development of a consensus on how low a yield threshold it would be possible to monitor with high confidence.

Concerning evasion, or "spoofing," one asks how well the evidence of a nuclear explosion can be hidden in various manmade and natural environments. Again, this debate has to be developed in terms of thresholds: under realistic operational constraints, what size nuclear explosion might go undetected, what size unidentified, and at what size can methods of yield estimation be subverted? The most important evasion scenarios are those based on a limited ability to reduce the signal from a nuclear explosion by carrying out the test in an underground cavity. In this scenario, energy from the blast is "decoupled" from the surrounding rock, and the seismic signal can be much diminished.

At this point, we can introduce some pertinent aspects of seismology, noting that the simplest type of seismic wave to detect and measure is the *P*-wave, which is a type of sound wave that has propagated through the Earth's deep interior.

The *P*-wave is the simplest of seismic waves to monitor, because it is the first seismic wave to arrive. (Hence its name: the "*P*" derives from the Latin word *primus*.) At a particular location, the arrival of the *P*-wave caused by an explosion is expressed by a sudden motion of the ground, which may be recorded by a seismometer. The *time* of the arrival can be accurately measured, commonly to the nearest tenth of a second, or even better with good equipment. The *amplitude* of this *P*-wave motion can also be easily measured, and then used to determine the *seismic magnitude* of the source.

Subsequent to the *P*-wave arrival, many other types of seismic waves may be detected and measured. Sometimes these other waves are harder to analyze than the *P*-wave, partly because, by definition, they arrive after the *P*-wave and at a time when two or more waves may be superimposed. However, although the analysis of later-arriving seismic waves may be harder, it can still be straightforward and may result in valuable information about the seismic source that is independent of what can be learned using *P*-waves. Some types of seismic waves are particularly useful in discriminating between earthquakes and explosions. Some are particularly useful (even better than the *P*-wave in many instances) for obtaining accurate estimates of the yield of an underground nuclear explosion.

For treaty verification and explosion monitoring that rely upon NTM, the seismic

waves of greatest utility are those that propagate substantial distances—more than about 2000 km. Such waves are said to be *teleseismic*.

Different types of teleseismic waves are separated into two broad categories. There are those called *body waves*, which, like the *P*-wave, travel via paths through the Earth's deep interior. And there are those called *surface waves*, which are confined to paths close to the Earth's surface. A useful analogy for seismic surface waves is the set of ripples on the surface of a pond spreading away from a disturbance such as a stone thrown into the water. One of the strongest types of seismic surface wave is the *Rayleigh wave*, named for the British scientist who discovered its properties in 1887.

Figure 1 shows a schematic of the paths of these two main types of seismic waves. An explosion or earthquake source at A sends out seismic waves that are picked up at a seismic receiving station at B. The signal, recorded as a function of time by such a station, is called a *seismogram*. Examples are given in Figure 2.

[Figures not reproducible in the RECORD.] At the stage of analyzing signals to pick arrival times and processing them to obtain the location, a source of seismic signals is commonly referred to as an "event." Once the location has been obtained, often using stations deployed all around the globe, the next question is that of *identification*: was the event an earthquake, or an explosion?

Identification is easy for large seismic sources, but becomes progressively harder for smaller events. It becomes harder, not only because the quality of signals for small events is lower, but because the number of earthquakes occurring each year increases rapidly as one considers events of decreasing size. To appreciate this problem on a quantitative basis, and to understand seismic methods of yield estimation, we must begin to work with seismic magnitudes.

To describe the strength of signals sent out by an earthquake or explosion, scientists assign a numerical value using a seismic magnitude scale. There are many different magnitude scales, but the most common is that based on *P*-waves, and is denoted by the symbol  $m_b$ . It is determined by taking the logarithm of the observed *P*-wave amplitude, and making a correction that depends on the distance between the seismic source and the seismometer. A typical 1-kt underground nuclear explosion has seismic magnitude roughly about 4.0. Because the magnitude scale is logarithmic and seismic signal strength is roughly proportional to yield, it follows that  $m_b$  about 5.0 corresponds very roughly to a 10-kt explosion, and  $m_b$  about 3.0 corresponds to 0.1 kt. (Detailed studies have shown that a 1-kt underground explosion set off under typical conditions is associated with somewhat different  $m_b$  values at different test sites. The range goes from about  $m_b$  3.8 to  $m_b$  4.4. Also, studies of magnitude as a function of  $\log_{10}$  yield find slopes typically a little smaller than 1, usually in the range 0.7 to 0.9.)

There are about 7,000 earthquakes each year with signals as strong or stronger than those of a typical 1-kt underground nuclear explosion.<sup>4</sup> Around 150 to 200 of them occur on Soviet continental territory. Most of them can be identified as earthquakes, simply on the basis of their *location* and *depth* below the surface of the Earth. If more analysis is needed, then one of the most effective techniques is to compare *P*-waves with surface waves, which are more efficiently excited by earthquakes than by explosions.

An example of the relative strength and different frequency content of *P*-waves and Rayleigh waves is shown in Figure 2, showing seismograms for an earthquake and an explosion near each other at the Nevada Test Site (NTS).

To the trained analyst, working with the amplitude ratio between *P*-wave and surface wave signals, explosions and earthquakes can be distinguished for signals at least down to around  $m_b$  4.0, using data that has been available for about 20 years.<sup>5</sup>

It is much harder to identify the source of seismic signals (whether explosion or earthquake) if the signals get much below  $m_b$  4.0. For this reason, if we want to identify explosions down to a really small size, we would have to use a network of seismometers installed at stations within the country being monitored. It is difficult to reach consensus on the capabilities of a hypothetical monitoring network, especially when hard data on signal levels and noise levels in the U.S.S.R. have only recently been available. However, a useful summary conclusion was reached as a result of workshops on seismic verification that were conducted in 1987 by the Office of Technology Assessment (OTA). The resulting OTA report, published in May 1988 and cited above in the Introduction section of this paper, includes the following statement:

"There appears to be general agreement that, given a capable internal network characterized by a detection threshold of [seismic magnitude] 2 to 2.5 throughout the Soviet Union and special provisions to monitor large chemical explosions associated with [magnitude] values greater than 3.5, identification can be accomplished down to about [magnitude] 3.5 with virtually no false alarms. That is, the identification threshold is currently set by the occurrence of routine chemical explosions, and essentially all earthquakes above this level would be positively identified as earthquakes."

What this careful consensus statement means, in conjunction with an understanding that  $m_b$  somewhere in the range 3.8-4.4 corresponds to a typical 1-kt underground nuclear explosion, is that nuclear explosions down to less than 1 kt in the Soviet Union could be routinely identified in a future verification regime if the explosions are set off under conditions typical of current nuclear testing practice. Possibly, with the experience in deploying a network of in-country stations, the identification threshold could be reduced still further. But one loses consensus within the technical community when claims are made that identification is possible for events below  $m_b$  3.5. Hence, those who seek stringent limitations on nuclear testing must consider the policy question: how much to rely upon unproven technology—if it is deemed necessary to monitor down to levels much below seismic magnitude 3.5, in order to verify a Comprehensive or Low Yield Threshold Test Ban Treaty.

The OTA statement above does not address the question of how big an underground nuclear explosion could be and still generate seismic signals no greater than  $m_b$  3.5, if the explosion were conducted not under conditions typical of current testing practice but rather with an intent to escape identification by a monitoring network. This raises the subject of evasion. The OTA report concluded (claiming this was conservative) that identification down to about 10 kt would be possible under a future verification regime, assuming that serious attempts at evasion might be made.

It might seem simpler, from the verification perspective, to monitor a CTBT rather than a low-yield TTBT, since yield estimation would not be a dominant issue. However, as long as identification capability can be assured only down to 10 kt, claims will be made that military significant tests can be carried out clandestinely—claims so strong, that a CTBT is unlikely to be politically acceptable in the U.S., regardless of international opinion. It follows that limitations on nuclear testing more stringent than the 150 kt TTBT are likely to be based upon reduction in allowed yield, and that yield estimation by various methods will continue to be a required component of explosion monitoring. For this situation to change, it would be necessary to demonstrate that identification capability can be reliably achieved, in all environments, well below 10 kt. To this end it is important to deploy high-quality seismic monitoring equipment at stations around the globe, to operate this equipment as an international network in the sense that data are communicated from all stations to one or more central facilities, and to continue to improve methods of data analysis.

On the general subject of capability to monitor explosions, note that the technical community can review technical issues and can (if pushed) strive for consensus, but the standard of what is or is not an acceptable capability requires ultimately a *policy* evaluation—just as the decision to carry out a nuclear test that was a serious attempt at evasion, accepting the risks of being caught, would be a matter of policy. Technical input is important, but a telling phrase is used by political scientists: "verification capability is set from the political agenda." This is particularly well exemplified in political/technical debates over compliance with the TTBT. To follow such debates, we need background in yield estimation, using NTM alone.

#### Technical Aspects of Seismic Monitoring: Yield Estimation via NTM

The basic method for estimating the size of a particular underground nuclear explosion, when one does not have access to information available to those who executed the test, is first to develop a relationship between  $m_b$  (the seismic magnitude as measured from *P*-waves) and test yield, using explosions other than the particular one of interest. This can be regarded as a process of calibrating the  $m_b$  scale in terms of yield. Once calibrated, yield estimates can easily be made for any explosion whose  $m_b$  can be measured. An example of a calibration curve is shown in Figure 3, which is for nuclear explosions at NTS.

As yield increases, so does the size of the seismic signal. Since the size of the *P*-wave is reported in terms of  $m_b$ , which is related to the logarithm of the amount of ground motion in the *P*-wave, it is expected and indeed found that  $m_b$  increases in proportion to increases in the logarithm of the yield. This relationship between  $m_b$  and explosion yield in Figure 3 is expressed by the fact that the data points lie close to a straight line. If a nuclear explosion at NTS occurs in hard rock below the water table, and its  $m_b$  were measured as 5.7, the yield estimated in this case (as inferred from the best-fitting line shown in Figure 3) would be 161 kilotons.

The question then becomes whether such a magnitude-yield relation, derived for NTS in this case, can be applied to other test sites for purposes of turning the seismic magnitudes at those other sites into accurate yield estimates. The jargon for this is

to ask if the magnitude-yield curve is "portable," and in practice the answer is usually "No." If the curve is known at one test site, where seismic magnitudes and yields are both available, it usually must be modified for application of the seismic method to a new test site where explosions occur with unknown yield.

The framework within which the problems of different magnitude-yield relations for different test sites can be understood, and solutions can be found, is shown schematically in Figure 4. This figure illustrates what may happen if nuclear explosions are set off at different test sites A and B, and the signals are received and recorded at the same seismic station. The lower part of the Figure shows a region within the Earth, beneath the explosions at A but not beneath the explosions at B, where attenuation occurs. The net effect on magnitude-yield curves in this case is that  $m_b$  from the sources at B will be offset upward compared to the relation between magnitude and yield derived at site A. The amount of such offset is called the *bias*, often symbolized as  $\Delta m_b$ .

By every major type of geological and geophysical measurement that can indicate the presence of a region that attenuates seismic waves at depth within the Earth, an underground nuclear explosion at NTS exhibits the characteristics of "Source A" in Figure 4. The attenuating region extends down to depths of about 200 km and is associated with rocks that are unusually hot—possibly even partially molten. At the Earth's surface, such heat results in volcanism and active mountain-building. Evidence that these processes have occurred near NTS in the last few million years is very strong. In geological terms, a few million years is a short period of time, not long enough for cooling at depth to have occurred. In contrast, the major Soviet test sites are in places that geologically have been relatively inactive over the last several hundred million years. On this basis, as well as from a variety of geophysical measurements, the regions of the Earth's interior beneath Soviet test sites can be presumed to be quite cool and less attenuating in their effect upon seismic waves.

Lapsing again into jargon, we may say that the magnitude-yield relation is portable for *P*-waves if we can estimate the bias. This is equivalent to estimating the extra amount of attenuation occurring under test site A, assuming that explosions excite seismic signals equally efficiently in the vicinity of the shot points (the position in the ground at which the nuclear device is placed and detonated).

Since the mid-1970s, more than 1000 man-years of effort have gone into estimating test site bias, at a cost on the order of \$100 million. This effort has been one of the largest projects in geophysics. Methods of estimating test site bias include: overall assessment of geological and geophysical observables; detailed properties of the *P*-wave signal (in particular, its frequency content); comparison of *P*-wave-based yield estimates, with yield estimates derived from other seismic waves; and comparisons of *P*-wave-based yield estimates with estimates available from non-seismic methods.<sup>7</sup>

The appreciate why the problem of bias must be addressed, note that the largest Soviet nuclear explosions since 1976 (when the Threshold Test Ban went into effect) have been about  $m_b$  6.2, which is about 0.5 magnitude units greater than the largest U.S. explosions since 1976. Such seismic magnitudes, if interpreted only in terms of

the magnitude-yield relation for NTS (Figure 3), would indicate the largest Soviet yields since 1976 were about 750 kt, that is, *five times larger* than the Threshold Test Ban Treaty allows.

The implications of incorrect yield estimation at this level are severe. They include not just the possibility of failure of an arms control treaty, but the consequences in terms of "first strike" capability and its ramifications when overestimated test yields are used to assess the capability of warheads in the Soviet strategic arsenal. Thus "estimation of bias," a specialized technical exercise in seismology, can (if handled incorrectly) have formidable, albeit false, implications for evaluating the Soviet nuclear threat.

U.S. methods of yield estimation, based upon the interpretation of teleseismic signals (i.e., NTM), have an uncertainty factor of about 1.5 for underground nuclear explosions below the water table at NTS. Usage of such a factor is conventionally a method of describing the width of a 95% confidence interval. Specifically, if the factor of uncertainty is 1.5, this means for example that for repeated tests at 150 kt, 95% of the estimates would lie within the range 100 to 225 kt. [The factor of uncertainty of the seismic method is somewhat lower (i.e., better) than 1.5 in practice at NTS, because it is possible to use other types of seismic waves, not teleseismic, that propagate out to distances of one or two thousand km in continental rock structures. Using such so-called *regional* seismic waves, as well as teleseismic signals, it appears that the factor of uncertainty of the seismic method for explosions in saturated hard rock at NTS is about 1.3-1.4.<sup>8</sup>] Note, however, that a value around 1.5 cannot immediately be taken as the uncertainty in yield estimation using conventional/teleseismic methods in application to nuclear explosions at the Soviet Union's weapons test sites. If the bias at these sites were accurately known, then teleseismic methods would be about as good as for NTS. (They might even be better, because of the better azimuthal coverage of seismic stations in the case of explosions at the main Soviet test site near the town of Semipalatinsk, in East Kazakhstan.) But, to the extent that there is uncertainty about the bias, this acts to increase the overall factor of uncertainty of the seismic method for estimating the yield of Soviet explosions.

For most of the 1970s and 1980s, technical progress in procedures for yield estimation consisted principally in refining estimates of the bias. However, although consensus on bias values, and their uncertainty, developed within the expert technical community, it is apparent from congressional testimony that key policymakers have been very negative about the capability of conventional methods of yield estimation. Here, for example, is a quote from a senior spokesman for the Department of Defense, Robert Barker, giving testimony for the Senate Armed Services Committee in February 1987:

"The Threshold Test Ban Treaty and Peaceful Nuclear Explosions Treaty, as ratified, assume that teleseismic techniques would be sufficient to estimate Soviet yield with an accuracy such that U.S. national security could be protected. We have had, since 1974, 13 years to gather data, and in the course of that time, we have discovered that we understood a lot less about seismology than we thought we understood in 1974. Fundamentally, we saw no way in which teleseismic techniques alone would ever

achieve accuracies substantially less than a factor of two. The President, for that reason, concluded in 1982 that he wanted something which was a lot better than that factor of two, and also something which could be empirically demonstrated. Telesismic techniques are always based on theory, but the treaty provides no mechanism for calibrating, for trying to understand whether your guess, whether your theoretical estimate is right."

An increase in the estimated value of bias had been made in 1986, that resulted in a reduction of U.S. official estimates of Soviet yields.<sup>9</sup> In 1988, the OTA report on seismic verification of nuclear testing treaties concluded that "without calibration Soviet yields can be seismically measured with present resources to a factor of 1.6 to 1.5 uncertainty." But, again in congressional testimony, Barker asserted that "[the OTA Report] has homogenized fact with fiction."

There is little hope of resolving such disputes without new initiatives, because arguments are not confined to arenas where technical issues are the sole subject of debate. The expert technical community may have a consensus on how well seismic methods can be used to estimate Soviet yields, but clearly this is not deemed persuasive to non-technical critics, some of who have taken a position containing strong ideological elements concerning Soviet compliance with the TTBT.

Fortunately, since 1987 there have been three major developments concerning technical issues, all providing consistent evidence about the accuracy of seismic methods. These have all increased confidence in seismic methods, as I next discuss.

#### IMPROVEMENTS OVER THE NTM VERIFICATION REGIME

##### Non-Seismic Methods

Of all the political/technical developments in nuclear explosion monitoring over the years, one of the most important to have occurred since the first underground nuclear explosion took place in 1957 has been the negotiation and execution of the pair of Joint Verification Experiments (JVEs), specified and carried out as a result of bilateral U.S.-U.S.S.R. negotiations, later known as the Nuclear Testing Talks, that began in 1987.

The JVEs were the result of an agreement announced at the May 1988 Summit Meeting in Moscow between President Reagan and General Secretary Gorbachev to carry out two special underground nuclear explosions. It was agreed that one would be carried out by the U.S. at NTS, with Soviet observers allowed to install and operate on-site equipment to measure yield; the other would be carried out at the Shagan River Test Site, near the town of Semipalatinsk in East Kazakhstan, with U.S. observers. Both sides could use their own on-site *hydrodynamic methods* to estimate yield, i.e., methods based on study of the shock wave sent out into the rock from the exploding nuclear device. One such method, known as CORRTEX and favored by the U.S., is a particular way of measuring the shock-wave speed. (CORRTEX is an abbreviation for Continuous Reflectometry for Radius versus Time Experiment.)

The physical principles upon which CORRTEX is based have been known since the 1950s. The underlying idea is that a nuclear explosion in the moments just after it is set off generates a small region of such high energy density that the strength of the material does not influence the expansion rate (the speed of the shock)—which is gov-

erned by very simple hydrodynamic rules. Initially the shock wave propagates at a speed faster than the usual speed of sound in solid rock. But this occurs only over a scale of a very few tens of meters from the shot point (for an explosion of yield high enough to be of concern with respect to TTBT compliance). After the shock wave has propagated such a distance it slows down and eventually propagates the rest of the way through the Earth at the sound speed (as a P-wave). The CORRTEX technique uses a coaxial cable that can be located in the device emplacement hole. For TTBT verification it would be placed in a nearby parallel "satellite" hole in order to be less intrusive. When the nuclear device is detonated, a shock wave propagates through the ground, crushing and shorting out the cable. The rate at which the unshorted cable length changes is recorded by measuring the changing transit times of low-energy electrical pulses sent down to and reflected (because of electrical shorting) from the cable end. Many measurements are made over a time period lasting about a hundredth of a second, to determine how quickly the shock wave spreads in space and time. These measurements of the cable length vs time are then interpreted, together with information about the equation of state of rock at the shot point, to give an estimate of the explosion yield.

CORRTEX has been shown to be accurate to within -15% (with 95% confidence) of the more direct, radiochemical yield measurements, for weapons test with yields greater than 50 kt conducted at NTS under routine conditions in rock with known properties. This is based on measurements in over 100 explosion with the sensing cable in the same hole as that used to place the nuclear device in the ground (the emplacement hole). According to a 1986 State Department report, the CORRTEX method had been used only four times in a satellite hole when it was proposed by the U.S. for use on Soviet test sites to improve the verification of the TTBT. In this type of application, the CORRTEX method is expected initially to be accurate to within  $\pm 30\%$  (with 95% confidence), for tests above 50 kt. Using the terminology of the previous section, this would be called a factor of uncertainty of 1.3.

These statements about the CORRTEX method, which appear in several official U.S. government publications of the late 1980s, lack detailed technical reports giving evidence to support this level of accuracy. The available literature on the CORRTEX method suggests that the measurements can be interpreted in several ways to give yield (each with somewhat different results), and also suggests ways in which the explosion could be set off so that the measurements could be interpreted incorrectly, resulting in underestimation of the yield. In many respects, these aspects of the CORRTEX method are similar to those which have been criticized in the seismic method of yield estimation. However, rather than emphasize weaknesses of either technique (hydrodynamic vs seismic), it is more constructive to recognize that they are complementary. In particular, if the U.S. can make CORRTEX measurements for a few nuclear explosions on Soviet test sites, this will enable improve calibration of various magnitude/yield relations (for P-waves and Rayleigh waves, and for so-called Lg-waves, described below). In this sense, CORRTEX improves seismic methods. In turn, the seismic method improves upon CORRTEX, by

adding the capability to monitor for unannounced events even at yields very substantially lower than 150 kt, whether on or off recognized test sites.

The U.S. and the U.S.S.R., as Parties of the 1998 JVEs, formally agreed upon several ground rules:

"The planned yield of the JVE explosion at each test site shall be not less than 100 kilotons and shall approach 150 kilotons."

"To assist in telesismic measurement, the Parties shall exchange data on five nuclear explosions conducted [during 1978-1987]."

"Each Party shall report to the other Party the yield value of each of the JVE explosions that are derived by each Party on the basis of hydrodynamic measurements undertaken within the satellite hole and within the emplacement hole."

"The JVE . . . will provide sufficient information to resolve all concerns . . . for verification of the 1974 Treaty. . . ."

"As a result of the JVE the sides will discuss telesismic methods . . . The U.S. side states that it will not propose any telesismic methods for discussion."

What also was important was that for the first time many technicians from one superpower would visit the other side's proving grounds for research and development in the qualitative nuclear arms race, would make measurements with sophisticated equipment in what had hitherto been some of the most secretive communities in the world, and would for the first time see details of the other side's practices in nuclear testing. The U.S. Air Force flew seven C5 planes, loaded with CORRTEX equipment and a drilling rig, from Frankfurt across Soviet territory to East Kazakhstan.

The JVEs took place as planned in 1988: the first in Nevada on August 17 and the second in Kazakhstan on September 14. Information on hydrodynamically measured yields has not at this time of writing been openly released, but the U.S. has stated that both explosions did have yields in the stipulated range, 100-150 kt.<sup>10</sup> The P-waves were, as expected, large enough to be picked up and identified at hundreds of seismic observing stations around the world. To a seismologist, the JVEs represent the most direct experiment that could possibly be devised for checking out the concepts displayed in Figure 4, and indeed, the magnitudes of the two explosions were significantly different. The NTS explosion had  $m_b$  about 5.5, and the Kazakhstan explosion had  $m_b$  about 6.1. Given that they were both in the range of 100-150 kt, it is clear from these measured magnitudes that a substantial bias does exist.

The JVEs represent a breakthrough in several ways, not least in demonstrating to precisely the community that hitherto had been most skeptical of seismic methods—namely, that which promoted deployment of CORRTEX—that modern seismology in this instance did not result in misleading yield estimates.

According to congressional testimony, the JVEs cost the U.S. about \$28 million to execute, and it is estimated that the cost of using CORRTEX equipment to monitor a future explosion in Kazakhstan would be about \$410 million—a significant fraction of the cost of executing a nuclear test.

Another effect of the JVEs and the use of CORRTEX has been the exposure of the nuclear weapons designer community to a series of verification issues, including the problem of Soviet technicians operating at NTS and the prospect of future new limitations on nuclear testing.

However, as is usual with nuclear testing issues, the JVE agreement itself was controversial and some arms control advocates spoke strongly against it. For example, Spurgeon Keeny, Jr., Director of the Arms Control Association and an expert on nuclear testing issues ever since his work in the 1950s for President Eisenhower on the attempt to negotiate a Comprehensive Test Ban Treaty, has written:

"[The Kazakhstan JVE is] a monument to the incredible lengths to which the United States is prepared to go to achieve technical solutions to unimportant or even nonexistent problems."

#### Seismic Methods

On technical issues concerning explosion monitoring, the years 1988 and 1989 have seen two additional developments, as well as the use of CORRTEX in the JVEs: namely, the deployment of in-country seismic stations, and further information on Soviet test yields.

In 1986, during a Soviet unilateral moratorium on nuclear testing, a pioneering agreement between the Natural Resources Defense Council (NRDC) and the Soviet Academy of Sciences led to U.S. scientists operating seismometers about 200 km from Shagan River. But when Soviet testing resumed in 1987, the NRDC-sponsored equipment, at the insistence of the Soviet military, was turned off prior to each Soviet nuclear test. In 1987 the NRDC negotiated a new agreement with the Academy that led to these in-country seismometers being moved back in 1988, to greater distances from Shagan River, and subsequently allowed to operate during Soviet nuclear testing. Early in 1988, the Soviet Academy of Sciences reached an agreement on seismometer deployments with another private U.S. organization, this time the Incorporated Research Institutions in Seismology (IRIS), which obtained funding (for its program to operate in the U.S.S.R.) from the U.S. Defense Advanced Research Projects Agency (DARPA).

IRIS is a consortium whose members are more than 70 U.S. colleges, institutes and universities offering graduate degrees in geophysics. IRIS was formed in 1984, having as one of its main objectives the development of a state-of-the-art global digital seismometer network to replace a global network designed around 1960 that had become outdated and unreliable. DARPA is an agency that has had responsibility since 1959 for a research and development program for improving U.S. capability in seismic monitoring of underground nuclear explosions.

The 1988 agreement allowed IRIS to install broadband seismic stations in the U.S.S.R., and the sites initially chosen were the same as those identified by the NRDC. Four of these IRIS stations were in place and operating, as was the NRDC equipment, in time for the Soviet JVE of September 14, 1988. This time, under the new agreements, the seismometers were allowed to remain on, thus recording for the first time the signals of a Soviet weapons test-site nuclear explosion at in-country stations whose data were made available for study in the U.S. Several other Soviet explosions since the JVE have been recorded by the four-station IRIS in-country network, which is located at the sites shown in Figure 5 as OBN (Obninsk), KIV (Kislovodsk), ARU (Arti), and GAR (Garm).

The principal advantages of working with in-country seismic data are that explosions can be monitored down to smaller size, and

yield estimates can be made more accurately. These advantages stem from the fact that in-country stations permit the recording of types of seismic waves, known collectively as regional waves, that are not observed teleseismically. Analysis of regional waves, one of the main research areas of current efforts to improve seismic monitoring, shows that improved estimates can often be made of source depth for small events—thus improving identification capability, and the verification of a low-yield TTBT or CTBT. To appreciate the recent improvements in yield estimation, afforded by access to in-country data, it is necessary first to review the principal properties of the most important regional wave.

Thus, at distances less than a few thousand kilometers, the strongest regional wave is neither the body wave nor the surface wave of Figure 1, but rather is a type of guided wave known as *Lg*, shown schematically in Figure 6. The type of reflection shown at the Moho (a nickname for an interface discovered by Mohorovičić) is the total internal reflection found also for light propagating within an optical fiber. Energy is trapped in the low-velocity wave guide, and can therefore propagate to great distances. For a fixed source and receiver, there may be many reflection paths, all totally reflected and thus trapped within the crust. The *Lg*-wave is composed of the whole family of trapped waves. It does not propagate across oceans, because there the crust is much thinner than under continents. Its amplitude can be measured by taking a root mean square average over an appropriate time window, corresponding to the times of arrival of the family of trapped waves.

From observations of Soviet explosions made since 1988 at IRIS stations, *Lg*-waves have high signal-to-noise ratios. Their amplitudes are found to be stable, and thus *Lg*-waves are potentially useful for supplying accurate yield estimates.

By "stable," we mean that a set of seismic sources all in the same general location (e.g., the same nuclear weapons test site) produces signals that have relatively the same amplitudes at different stations. Thus, if explosion *X* appears to be twice as strong as explosion *Y* when we measure the seismic signal at station *P*, we say the signals are *stable* if the signal from *X* is found to be twice as big as the signal from *Y* on stations *Q, R, S, . . .* also. The basic reason why conventional (i.e., *P*-wave) seismic methods of yield estimation have greater uncertainty than those based on *Lg*, is that teleseismic *P*-wave signals are focussed and defocussed by inhomogeneities within the Earth. They do not display the key quality of stability to anything like the degree seen with *Lg*-waves originating from explosions at the Semipalatinsk test site. [If explosion *X* indeed has *P*-wave magnitude greater by 0.3 units than explosion *Y* (0.3 corresponds to a factor of two, since  $\log_{10} 2 = 0.301$ ), then this is apparent only after averaging magnitudes from a large network of seismic stations, because individual magnitudes determined for each station may, for the *P*-wave, indicate substantial scatter. For example, the standard deviation of a single-station *P*-wave magnitude for an explosion at the Shagan River Test Site is thought to be above 0.1 magnitude unit.]

Indications that *Lg*-waves might be much more stable than *P*-waves, at least for Shagan River explosions, were first discovered by workers in Norway from data recorded at an array of seismometers known

as NORSAR (see Figure 5 for location), and another array in West Germany. At these distances from Shagan River (more than 4000 km), *Lg* signals are weak even from large explosions. Confirmation of *Lg*-wave stability was provided by the IRIS stations in the U.S.S.R., which by mid-1989 had recorded six nuclear explosions at Shagan River. Five of them had *Lg*-waves large enough to be recorded also at NORSAR. A comparison is shown in Figure 7, indicating an unprecedented degree of stability in single station measurement of seismic magnitude. The standard deviation of a single-station *Lg*-wave magnitude appears to be about 0.03 magnitude unit.<sup>12</sup>

In order to turn such seismic measurements into yield estimates, it is necessary to know independently the yield of some Soviet explosions from the test site of interest. With such information, it is possible to calibrate the *Lg* signals, thus enabling yields to be estimated accurately for all explosions that generate measurable *Lg* waves.

Until 1988, the U.S.S.R. had released some information on the yields for a few underground nuclear explosions off weapons test sites (so-called peaceful nuclear explosions), but had released no information on yields of explosions of greatest interest to other countries, namely those occurring at weapons test sites. This situation changed in June 1988, when (as part of new negotiations on nuclear testing) the U.S. and the U.S.S.R. exchanged information on the yields of five explosions at NTS, and five explosions at the Shagan River Test Site. As of mid-summer 1990 these data had not been released on an unclassified basis, because they have been part of confidential negotiations on improving the verification of the TTBT. These data are "unverified," in that each country released the data without the other side participating in the necessary measurement procedures. The degree of reliance on such data, for calibration purposes, is therefore in part a matter of policy, recognizing the negotiating environment in which the data became available. Note, however, that if the data were misrepresentative, this would presumably be apparent from comparison with the JVE data.

In August and September 1988 the two JVE explosions were conducted, as described above, one at Nevada, one at Shagan River, with yield measured on-site by both sides.

In the September 1989 issue of the journal "Atomnaya Energiya," published in Moscow, scientists from the Soviet Ministry of Defense gave information on the yields of 96 underground explosions at the Semipalatinsk Test Site (including Shagan River), giving specific yields for 22 explosions, and a range (e.g., "less than 20 kt," or "100-150 kt") for each of 74 other explosions (see footnote 1). All 96 explosions occurred prior to 1973, making this Soviet information roughly comparable to the release of open information by the U.S. on yields of explosions at NTS. All of this information is unverified yet presumably not misrepresentative, in the sense noted above.

All of the newly available information on Soviet yields, if it is accepted as accurate, can be used to obtain magnitude-yield curves for *P*-waves, surface waves, and *Lg*-waves. Note that for all explosions conducted under routine conditions at the same test site, there may be no need to introduce a specific magnitude scale, since amplitude data may be calibrated in terms of yield separately at each instrument. For example, to those with access to yield information for the Soviet JVE, all the IRIS stations as well

as NORSAR and stations in the People's Republic of China have already had their *Lg* readings for Shagan River explosions calibrated in terms of yield with this single explosion. Other explosions of known yield at Shagan River would improve the calibration, giving increased confidence if the calibration is not much changed.

Parenthetically, in this section describing uses of *Lg* data, it is interesting for purposes of comparison of different seismic methods to look at an example of a conventional *P*-wave magnitude-yield plot using the newly-released data on Soviet yields. Such a plot is shown in Figure 8, and is typical of what can be achieved if NTM is combined with information on Soviet yields. The *P*-wave magnitudes here were obtained by Lynn Sykes at the Lamont-Doherty Geological Observatory of Columbia University, working in 1986 with a student, Steven Ruggi.<sup>13</sup> Note that the bias between the best-fitting lines of Figures 3 and 8 is about 0.5 magnitude units. Using *P*-wave magnitude 6.1 for the Shagan River JVE, the inferred yield from Figure 8 is 152 kt. The factor of uncertainty is 1.6, from the scatter of the 19 calibration points.

Returning to the subject of *Lg*-waves, we note that as yet only the Soviets yields prior to 1973 have been openly released, and capability to measure *Lg*-waves for Soviet nuclear explosions with high-quality stations such as NORSAR did not develop until about 1970. Consequently, only four Semipalatinsk explosions have both an openly announced yield, and an *Lg* magnitude. For these four, the plot of *Lg* magnitude versus yield is shown in Figure 9. These magnitudes were determined at NORSAR (see Figure 5) from weak signals at great distance. Although there are few points, they lie remarkably close to a straight line. Note too in Figure 9 that the scales for both magnitude and log yield are greatly expanded compared to other magnitude-yield plots in this paper (compare the lengths of a line in Figures 8 and 9, representing a factor of 1.3 on each log yield scale), in recognition of the precision with which *Lg* magnitudes can be determined, and of the potential for greater accuracy and lower uncertainty in the resulting yield estimates (compared to yield estimates based on *P*-waves).

Thus, a conclusion from Figure 9 is that seismic methods of yield estimation, based on *Lg*-waves, for Soviet explosions at the Shagan River Test Site, may be as accurate as hydrodynamic methods based on CORRTX. (By coincidence, the original proposals to use CORRTX, deployed in satellite holes, were based in 1986 on only four data points, just as Figure 9 has only four data points.)

On September 26, 1988, a sub-kiloton explosion at Shagan River was detected by NORSAR using teleseismic *P*-waves. The *Lg* signal at IRIS station ARU, in the Urals at a distance of about 1,600 km from Shagan River, was very weak, but of adequate quality to enable its use for yield estimation. This is significant in the context of debates on capability to monitor compliance with a low-yield threshold test ban treaty. What is important about results based on the IRIS stations, is that they are not predictions of the capability of a hypothetical network, but are measurements from actual data. The IRIS network in the U.S.S.R., now funded at around \$4 million per year, is being built up to 13 stations by the end of 1991. It will supply key data needed for evaluating methods of identifying small nuclear explosions, using regional seismic waves.

#### RECENT DEVELOPMENTS

On June 1, 1990, at the Washington Summit Meeting, Presidents Bush and Gorbachev signed a lengthy new protocol for verification of the TTBT that improves upon NTM in several ways. For explosions expected to have yields above 50 kt, each side has rights to deploy on-site equipment (such as CORRTX) to make yield estimates based on the hydrodynamic method, and rights to deploy seismometers at 3 in-country sites where good *Lg* signals may be expected. At this time of writing, the TTBT has for the third time been submitted to the U.S. Senate for advice and consent to ratification. Because the new verification protocol is so extensive, prompt approval is widely expected.

However, political debate on nuclear testing may become heated over the bilateral commitment made by the U.S. and the U.S.S.R. in 1987 to "proceed to negotiating further intermediate limitations on nuclear testing" once the TTBT is ratified. The Bush administration, early in 1990, state that it has identified no type of limitation that it regards as being in the national security interests of the U.S., and that a period of implementing the new TTBT protocol is in order before considering any follow-on.

Three major developments can be listed that will bring pressure on the U.S. to reconsider this position, and resume substantive negotiations:

A big change in Soviet testing practice was announced in Moscow in March 1990, to the effect that the Semipalatinsk test site is to be closed down because of the perceived environmental hazard, and Soviet testing will be conducted only at Novaya Zemlya (a pair of islands in the harsh climate of the Arctic Sea).

A great reduction in Soviet testing is already apparent, as shown for example in the seismic data recorded at NORSAR, with no tests carried out since October 1989, up to mid-summer 1990, except possibly a sub-kiloton explosion on April 23.

The Non-Proliferation Treaty of 1970 effectively comes to an end in 1995, unless renegotiated, which may be a lengthy, arduous and important process. This treaty is structured as an agreement between non-nuclear capable and nuclear capable states, requiring the latter to make progress on nuclear disarmament, in terms which the former understand as necessitating a CTBT.

In 1986, when the U.S. House of Representatives took issue with the Reagan administration on its refusal to negotiate on testing, all funds were cut from the 1987 U.S. nuclear weapons test program (about \$700 million), and only restored when the President agreed to submit the TTBT for Senate advice and consent. There is resentment still in the U.S. Congress over the years of delay in ratifying the 150 kt TTBT, and the U.S. program may once again be held hostage to new negotiations.

#### DISCUSSION

One theme rarely raised in consideration of nuclear explosion monitoring is the question of how technical issues are handled with the U.S. federal government. At present, the Department of Defense has operational responsibility for test ban treaty monitoring, and shares, with the Department of Energy, responsibility for R&D in verification methods. Both agencies effectively exert control over reviews of current monitoring capability, and over reviews of future capability as improved techniques are considered for deployment. But these two agencies will naturally give priority to

their other responsibilities, which include the design, manufacture, and deployment of new nuclear weapons and associated delivery systems, and plans for their use. Right from the beginning of the test ban debate in the mid-1950s, there appears to be no agency of the federal government that has accepted a mandate to adopt a comprehensive problem-solving approach to improve methods of nuclear explosion monitoring, in order to attain arms control objectives. Execution of such a mandate would require the development of new links between workers in diverse technical fields, an ongoing forum to promote consensus on technical issues, and channels to communicate results to policymakers.

Among various technologies that are called upon to support arms control treaty verification, seismology is unusual in that expertise principally resides outside official agencies of the U.S. government. Although the principal sources of explosion monitoring data may often be found in the Department of Defense and the Department of Energy (and even this is not always true), perhaps less than 1% of U.S. seismologists at the Ph. D. level work in these agencies. Although many more are supported by contracts with federal agencies, their progress in solving technical problems may go unreported to senior policymakers for many years after the solution is common knowledge in the technical community. This can create a problem for those who stake out a political position, such as assertions of Soviet non-compliance, not knowing how strong the technical arguments against this position may be.

Verification of nuclear test bans concerns a specialized issue in arms control and a specialized part of seismology. Yet the subject will continue to find its way into front-page headlines, and will occasionally demand attention from the highest levels of political leadership. It will do so simply because of the importance of the underlying issue, which is whether or not to promote the qualitative development of nuclear weapons indefinitely. "Indefinitely" is a very long time, and at some point in the future—whether because of some terrifying accident, or because of elections in which new policies emerge, or because the logical conclusion of stated conservative or liberal goals is reached—I believe there will be a serious desire by an American President and the leaders of other nuclear weapon states to place new limitations on R&D in nuclear weapons technology. When that time comes, constructive consideration of new policies will require a well-informed forum in which presentation and analysis of the technical issues is not dominated by agencies that build and manage nuclear weapons.

Paul G. Richards is the Mellon Professor of Natural Sciences at Columbia University, where he has taught seismology since 1971. He co-authored the textbook, "Quantitative Seismology—Theory and Methods" in 1980, and held a fellowship from the MacArthur Foundation from 1981 to 1986. He has worked in the U.S. Arms Control and Disarmament Agency and in the Lawrence Livermore National Laboratory, and since 1986 has testified several times for the US Congress on verification of nuclear test ban treaties. He is currently Vice-Chairman of the IRIS consortium of 71 US graduate schools in geophysics, which has operated seismometers in the USSR since 1988, and President-elect of the Seismology Section of the American Geophysical Union.

## FOOTNOTES

<sup>1</sup> Bocharov, V.S., S.A. Zelentsov, and V.N. Mikhailov, Characteristics of 96 underground nuclear explosions at the Semipalatinsk test site [in Russian], Soviet Atomic Energy [Atomnaya Energiya], 67, 210.14, September 1989. The technical information in this Soviet paper is also available in: Vergino, E.S., Soviet test yields, EOS, Transactions of the American Geophysical Union, 1511-25, November 28, 1989.

<sup>2</sup> A kiloton is a unit of energy used to quantify the yield of a nuclear explosion. Originally defined as the energy equivalent to exploding a thousand tons of TNT, it is now defined as  $10^{12}$  calories. A fairly large World War II bomb was equivalent to about one ton of TNT, and so the first atomic bomb, dropped on Hiroshima with a yield of about 14 kt, represented more than a thousandfold increase in the delivered yield of a single weapon. Since World War II, with the development of hydrogen bombs, there has been a further thousandfold increase in the size of the largest weapons.

<sup>3</sup> Figure from Jarpe, S. P., Lawrence Livermore National Laboratory Nevada Site Regional Seismic Network, brochure LLL-TB-100, 1989.

<sup>4</sup> Ringdal, F., Study of magnitudes, seismicity, and earthquake detectability using a global network, in *The VELA Program: A Twenty-Five Year Review of Basic Research*, ed. A.U. Kerr, Washington, DC: Executive Graphic Services, 964 pp. 1985.

<sup>5</sup> Richards, P.G., and J. Zavales, Seismic Discrimination of Nuclear Explosions, Annual Reviews of Earth and Planetary Sciences, 18, 257-86, 1990.

<sup>6</sup> P-wave magnitudes and announced yield from Otto Nuttli, Yield estimates of Nevada Test Site explosions obtained from seismic Lg waves, *Journal of Geophysical Research*, 91, 2137-51, 1986.

<sup>7</sup> Richards, P.G., Seismic methods for verifying test ban treaties, chapter 4 of *Nuclear Arms Technologies in the 1990's*, edited by D. Schroer and D. Hafemeister, AIP Conference Proceedings 178, pp 54-108, American Institute of Physics, New York, 1988.

<sup>8</sup> Work of Vergino, E.S., and R.W. Mensing, personally communicated by Vergino. Also footnote 7, and work sponsored by the Department of Defense, described in the 1988 OTA report.

<sup>9</sup> U.S. Congress, report 100-450 by the Permanent Select Committee on Intelligence, House of Representatives, *Intelligence Support to Arms Control*, p 22, November 1987.

<sup>10</sup> Robinson, C. Paul, The Joint Verification Experiment: A unique approach to developing verification agreements, *DISARMAMENT*, 12(2), 90-95, 1989.

<sup>11</sup> Soviet joint verification experiment of 1988, Proceedings of the National Academy of Sciences, USA, 86, 3456-60, May 1989.

<sup>12</sup> Hansen, R., F. Ringdal, and P.G. Richards, The stability of RMS Lg measurements, and their potential for accurate estimation of the yields of Soviet underground nuclear explosions, accepted for publication *Bulletin of the Seismological Society of America*, issue of November 1990.

<sup>13</sup> Sykes, L.R., and S. Ruggi, Soviet nuclear testing, in *Nuclear Weapons Databook, vol 4, Soviet Nuclear Weapons*, ed. T.B. Cochran, W.A. Arkin, R.S. Norris, J.I. Sands, pp 332-82, Cambridge, Mass.: Ballinger, 1989.

[Annotated excerpt from the July/August 1990 issue of Arms Control Today]

AN INTERVIEW OF AMBASSADOR C. PAUL ROBINSON, CONDUCTED ON JUNE 14 BY JACK MENDELSON AND DUNBAR LOCKWOOD

(Annotation consists of four footnotes added here by Richards, to convey his criticism of Robinson on technical issues)

Arms Control Today: What is the effort factor that we have now with seismic and teleseismic monitoring stations?

Robinson: There are two errors. There is the random error, and this is what is usually talked about. I am afraid far too much attention was given to it. People used to say a factor of two. I think over time, with some of the JVE data and measurements we have made of geological samples and so forth, they are coming down to ranges like factors of 1.7 or 1.75, instead of a factor of two.

But there are possibilities for systematic variations that range up to factors of five due to geological variations, such as tests conducted in extremely porous soil or tests conducted inside cavities. The United States has looked at such factors on tests and found factors of 100 in yield discrepancy at lower yields. When you go to higher yields, the tendency weakens, but still a factor of five or six may be possible for greater than 150 kiloton.<sup>1</sup>

ACT: There were connected with evasion scenarios. What if it takes place at test sites and we know it's a test?

Robinson: If it takes place at a test site and if we know it is completely coupled into the soil and if we know the nature of the soil that it's coupled into then you can apply only the random uncertainty. It would be very difficult for either side to ever try and exploit a random uncertainty because, as you know, random uncertainties can go either way. It might make a 200 kiloton shot look like a 350.

But the systematic uncertainties can unfortunately always go the other way and give the appearance at long distances—if you don't have any further information—that a test has a lower yield when in fact it has a high yield.

These trigger levels, the 35 and 50 kiloton, are really tied to the worst-case scenarios that we think people could try to get by with, with some allowances for what would be militarily significant if yields could be disguised to lower values. Going on site and making yield measurements or detailed inspections of the best conditions, you cut out most of those systematic possibilities for test yield evasions.

ACT: When you talk about these evasion scenarios, such as setting off a shot in a cavity, wouldn't that require a fairly massive excavation?

Robinson: Well, yes, but it turns out that at the size that it would take to give factors of five decoupling, the Soviet Union has published that there are more than a dozen such cavities in their territory.

There have also been studies done in this country, by the Defense Nuclear Agency after testing moved from atmospheric to below ground. These studies examined the digging of a big cavity for an underground test so it would provide some data appropriate to a test in the atmosphere. How much would it cost and how long would it take you?

We used those studies to think about what is the realistic possibility of somebody building cavities that could make a big differ-

ence. And they are a big part of where we set out limits as to what should be worried about.

Let me tell you about the resulting provisions that we negotiated and that are, I feel, among the strongest verification features in both protocols. A side cannot set off a test in a cavity greater than 20,000 cubic meters unless the other side makes an entirely new agreement on how to verify that test. This provision is really a prohibition that gives the verifying party veto power if they are not comfortable about being able to verify effectively a shot in such a cavity. We negotiated this because, if there were no such limit, it puts you into a range of not being able to make dependable measurements. And there are lots of cavities bigger than 20,000 cubic meters in the Soviet Union, and there are some in this country, too, but not near our test site. We don't know about what exists at their test site.<sup>2</sup>

ACT: If we put seismic monitoring stations inside the Soviet Union very close to the cavities that we are aware of, would the five to one error factor still apply?

Robinson: I don't know the answer to that for sure. I suspect it probably would still apply, because again, seismic waves have direct analogy to hydrodynamic waves. It's just that you are measuring a lot further away. The cavity dampens the energy such that the energy that goes into the soil to create the seismic wave is much reduced.

So, whether you measure it close up or at a long distance, I think you would still get the same decoupling effects.

ACT: What would be the error factor for CORREX?

Robinson: The U.S. experience with CORREX gives an average error of 12 percent. That is what our experience has been on our tests. Now in looking at unknown geologies, new things you haven't had experience with, we are qualifying it to 30 percent.<sup>3</sup>

ACT: Can we expect any improvement in the overall error factor as a result of putting into place these monitoring means?

Robinson: Combining this fabric of overlying verification options, I think we will expect to be in the 20 percent range or possibly lower, depending on the exact test conditions.

ACT: Are you saying that under the current arrangement, prior to the implementation of these protocols, we wouldn't have been certain if the Soviets had been testing at, say, 250 to 300 kilotons?

Robinson: Possibly over 400 to 500 kilotons. We couldn't be sure. We could make judgements but would lack data essential to narrow the range of possibilities.

ACT: We really weren't confident that they weren't testing at those levels?

Robinson: That is correct.<sup>4</sup>

<sup>1</sup> By seismic methods applied to explosions at the main Soviet test site, the factor of uncertainty (including both random and systematic effects) is surely less than "1.7 or 1.75." Claims of "a factor of five or six" error in yield estimation at higher yields, in the context of TBT compliance, are unfounded. (Yes, the claims persist, as do claims that smoking does not contribute to lung cancer.) Detailed discussion requires a closed hearing.

<sup>2</sup> The restriction on cavities greater than 20,000 cubic meters is not pertinent to the question of whether seismic methods can be spoofed to hide a test above the 150 kiloton threshold. A cavity with more than ten times greater volume would be required, to reduce the seismic signal of a 300 kiloton test to that of a standard 150 kiloton explosion. It is not credible that such a cavity, with a diameter of about 80 meters, could be built at depth and used clandestinely on a Soviet test site.

<sup>3</sup> Note that small cavities, which would not affect seismic signals for high yield tests, can spoof CORRTEX.

<sup>4</sup> This summary claim is not in my opinion a technical judgement, though it may appear so because Ambassador Robinson has long served in the nuclear weapons community as a highly trained scientist. It is not a technical judgement, because when this type of claim has been presented since 1985 in technical review panels with knowledge of seismic monitoring, it has been looked at with interest, and dismissed (in the context of TTBT compliance by the Soviet Union). When the claim has persisted, as it does in groups of people who do not avail themselves of good information, it is now ridiculed in the technical community. If the concern is that the Soviets might declare a new test site, in a region that might already contain some unknown (to the U.S.) gigantic deep cavities that would not be revealed when used to hide an explosion larger than 15 kilotons, then this concern could be allayed by on-site inspection far more primitive than the several million dollars required for each CORRTEX deployment. It is very disconcerting to find that someone who should be knowledgeable makes such a summary claim. I believe the Ambassador should be pressed to give documentary support for his position on this technical issue, since it calls into question the whole technical framework under which the U.S. has developed its negotiating position.

LAMONT-DOHERTY GEOLOGICAL OBSERVATORY OF COLUMBIA UNIVERSITY,

Palisades, NY, August 1, 1990.

Select Committee on Intelligence,  
U.S. Senate,  
Washington, DC.

GENTLEMEN: I am responding to your letter of July 2, 1990 inviting me to submit a written statement that would assist the Select Committee in its deliberations on the Threshold Test Ban Treaty and the Peaceful Nuclear Explosion Treaty and their revised verification protocols.

Sincerely yours,

LYNN R. SYKES,  
Higgins Professor of Geological Sciences.

VERIFICATION OF THE THRESHOLD TEST BAN AND PEACEFUL NUCLEAR EXPLOSIONS TREATIES AND THEIR VERIFICATION PROTOCOLS

(By Lynn R. Sykes)

INTRODUCTION AND MAJOR CONCLUSIONS

The following comments and conclusions are based on my more than twenty-five years experience working with the verification of nuclear testing. I was a member of the U.S. delegation that negotiated the Threshold Test Ban Treaty (TTBT) with the Soviet Union in 1974. I have been a member of a number of committees of the U.S. Government that have considered verification of various nuclear test bans, including the question of Soviet compliance with the TTBT and the determination of the yields of Soviet weapons tests. I have been the author or co-author of about 40 professional papers and statements presented in congressional testimony on the verification of nuclear testing. I was recently a member of the review panel for Congress' Office of Technology Assessment (OTA) for their study "Seismic Verification of Nuclear Testing Treaties." That year and a half long study by OTA was requested by the Select Committee on Intelligence of the United States Senate and two committees of the House of Representatives.

I conclude that the Threshold Treaty and Peaceful Nuclear Explosions Treaty (PNET) and their Verification Protocols are verifiable with very high confidence. I believe that treaties with similar language, if they were to be negotiated with the Soviet Union, would permit the threshold to be moved down to 5 to 10 kilotons and to be verifiable

with high reliability. That was also a major finding of the OTA Report of 1988 on "Seismic Verification of Nuclear Testing Treaties."

I have also examined and analyzed the written statements of five witnesses of the Administration who testified on these matters before the Committee on Foreign Relations of the U.S. Senate on July 17, 1990. I think that they have given too much emphasis to the hydrodynamic (CORRTEX) method of yield estimation and have gone to considerable efforts to depreciate both the role and considerable accuracy of seismic methods for determination of the yields of Soviet explosions. Enough is known now through a combination of seismic data and the results of the Joint Verification Experiment (JVE) in the Soviet Union in 1988 so that yields of underground explosions at the Shagan River test site in Central Asia can now be determined with high accuracy. I see no need to wait five to ten years before negotiating further limits on underground nuclear testing with the Soviet Union.

I am very concerned that with the great emphasis placed on the (CORRTEX) technique that the Department of Energy has moved to make that verification technology one that is solely in their control. In addition to being a verification technology, the CORRTEX technique has become a major political vehicle for DOE, the nuclear weapons laboratories and other agencies with a major stake in continued nuclear testing to use verification as an excuse for halting progress on negotiations to further limit the testing of nuclear weapons. While I urge the Senate to give its advice and consent to these treaties and their protocols, I also recommend that some measures be taken to insure that the United States Government will move rapidly to negotiate further limitations on nuclear testing.

ACCURACY OF YIELD DETERMINATIONS AND WHAT CONSTITUTES SUFFICIENT ACCURACY

The field of seismology has long provided methodologies for detecting, identifying, locating and determining the yield of Soviet underground nuclear explosions. When I was a member of the TTBT negotiating team in 1974, sufficient accuracy in the determination of the yields of Soviet explosions near 150 kilotons was judged to be a factor of 2 at 90% confidence. That translates into an uncertainty factor of 2.3 for the more customarily used 95% confidence limits. Over the last 16 years the U.S. has probably spent more than \$100 million on seismic determinations of yields of Soviet explosions. As a result, the accuracy of those methods has improved greatly.

More than ten years ago a number of colleagues and I argued that seismic determinations of yield for Soviet weapons tests could be improved considerably by combining estimates from two or more different types of seismic waves. The U.S. Government, however, has long used only one type of seismic wave for yield determination for Soviet explosions. For many years, however, spokespersons for the government have stated that seismic techniques are uncertain by a factor of 2. This has continued even in the face of several classified and unclassified studies and the findings of the OTA Report of 1988 that have indicated that seismic techniques are much more accurate than a factor 2.

A question that seems to have rarely been asked in the more than 16 years of debate about these treaties is what constitutes sufficient accuracy in yield determination. One of the most cogent statements about the

sufficiency of yield determination came in testimony and questioning in 1985 of Dr. Donald Kerr, who was then the Director of the Los Alamos National Laboratory, before the House Foreign Relations Committee. He was asked if a 30% exceedence of the 150 kiloton limit of the TTBT would represent the test of a weapon of greater military significance than one of 150 kt. He stated that a 30% increase would not be of greater military significance but that a factor of 2 or more, i.e. tests at 300 kt or greater could be of greater military significance.

The U.S. hydrodynamic method of yield estimation called CORRTEX was developed in the mid-1970's by the Los Alamos laboratory. Scientists and officials from Los Alamos as well as various government officials have stated that the accuracy of the CORRTEX technique in the Soviet Union would be 1.3 at 95% confidence, and by inference is of sufficient accuracy for U.S. requirements whereas the factor of 2 they attributed to seismic techniques was not. To my knowledge however, they have neither stated a military requirement for a given level of accuracy nor indicated if they agree or disagree with the 1985 testimony of Dr. Kerr.

MAJOR IMPROVEMENTS IN THE ACCURACY OF SEISMIC DETERMINATIONS OF YIELD FOR SOVIET EXPLOSIONS

About three years ago a major advance in yield determination for U.S.S.R. explosions was made by Norwegian seismologists who operate a large seismic array in their country for nuclear monitoring and research. They used a different seismic wave, called Lg, for Soviet explosions in Central Asia. With their methodology, the precision of that technique for yield determination is very high. Determinations for only one or two seismic stations in either Asia or Europe have a precision comparable to that obtained by averaging about 50 measurements with the more conventional P-wave technique.

Two initiatives starting a few years ago have led to modern and sophisticated U.S. seismic stations being operated in the Soviet Union. The first was by the Natural Resources Defense Council (NRDC), which demonstrated that quiet and sensitive sites can be found for seismic recording in the Soviet Union. It also demonstrated that the U.S.S.R. was willing to accept U.S. seismic listening posts on its territory in conjunction with verification of nuclear testing. The second effort, by the university consortium for seismology in the United States (IRIS), led to four stations being operated in the U.S.S.R. Several more stations will be installed in the near future as part of the agreement between IRIS and the Soviet Academy of Sciences.

Both initiatives have seen modern, state-of-the-art equipment being operated for long periods of time in the U.S.S.R. Analysis of data from the four existing stations as well as from the NRDC stations indicates that the Lg seismic wave can be detected for Soviet explosions in Central Asia with yields as small as about 1 kiloton. Those stations, of course, give excellent recording for larger explosions, such as those near the 150 kiloton limit of the Threshold Treaty. Most importantly, the scatter in the observations at those stations for Soviet nuclear explosions using the Lg wave is very small. Seismic observations using the Lg wave at stations in the U.S.S.R., western Europe and China have become competitive with CORRTEX measurements for yield determination and

in some cases give a higher accuracy than the factor of 1.3 quoted for CORRTEX. In addition, seismic techniques have the advantage that they can be extended to very small yields, which is virtually impossible with the CORRTEX technique.

The most reasonable way to approach the verification problem for either the present 150 kiloton limit of the Threshold Treaty or a much lower threshold for a future treaty would be to use a few CORRTEX measurements to calibrate a test site and then to use much less expensive seismic methods for ongoing determinations of yields of future Soviet explosions. In addition, since CORRTEX measurements have only been made thus far for the Joint Verification Experiment of 1988, it is necessary to use seismic observations to estimate the yields of past Soviet weapons tests.

#### COMPARISON OF STATEMENTS BY ADMINISTRATION SPOKESPERSONS WITH OTA REPORT

I have read carefully the written statements by five Administration spokespersons that were distributed at the July 17, 1990 hearings on the TTBT and PNET of the Committee on Foreign Relations of the U.S. Senate. One is immediately struck by how different those statements are when they are compared with the OTA Report of 1988. The written statements of those five individuals (Lehman, ACDA; General Butler representing the JCS; Graham, DOD; Robinson, Department of State; and Alessi, DOE) go to great lengths to praise the CORRTEX technique and to denigrate seismic methods of yield estimation. One is almost given the impression that those five individuals did not read the OTA report. That is, of course, not the case since several of those agencies have gone to great lengths to criticize the OTA Report.

The OTA Report states (p. 19) that a number of studies concluded that the Soviets are observing a yield limit consistent with compliance with the 150 kiloton limit of the Threshold Treaty. Of the various issues examined in the OTA Report, this was one in which a clear consensus was found among experts and where the Report arrived at a definitive conclusion. Nonetheless, Graham repeats a statement of Administration policy of the past eight years that it is likely that the Soviets have violated the 150-kiloton limit of the TTBT. That finding is contrary to my own work on estimating yields of Soviet explosions, the OTA Report, several classified reports of panels of the Department of Defense, and the opinions of nearly all experts on this subject in the field of seismology.

Lehman states that seismic methodology involves uncertainties stemming from both systematic and random sources. He fails to point out that the same holds for the CORRTEX technique. In contrast to the OTA Report, he states that uncertainties have prevented the U.S. from reaching definitive conclusions regarding Soviet compliance.

Ambassador Robinson was the only one of those five witnesses who stated that recent research indicates that certain seismic surface waves may be particularly useful in estimating yields in addition to other seismic waves that travel deep below the earth's surface and which are normally measured only at large distances from the site of the explosion. It is clear from that statement that he is, in fact, aware of the results based on Lg waves for accurate determination of yield.

#### CHEATING ON THE THRESHOLD TREATY BY DETONATING EXPLOSIONS IN LARGE UNDERGROUND CAVITIES IS NOT POSSIBLE AT AND ABOVE 150 KILOTONS

In their written statements Lehman and Robinson both discuss possible Soviet cheating on the Threshold Treaty by testing in large underground cavities. On this item the written statements by those two individuals are very misleading. Testing in large underground cavities using the method known as decoupling is a possible method of evasion that becomes important for explosions below 10 kilotons (as described in the OTA Report). Those two written statements, however, imply that it is important and possible cheating method at 150 kilotons in conjunction with verification of the Threshold Treaty.

The important consideration here is could the Soviet Union use this technique to test a weapon with a yield large enough to be of greater military significance than one of 150 kilotons and have the seismic waves look like those from an explosion of 150 kilotons? To make the seismic waves from a 300 kiloton explosion be equivalent to those of a normal 150 kiloton explosion, it would be necessary to mine a spherical cavity about 265 feet in diameter. That is a huge cavity, larger than the 240 foot height of the Statue of Liberty and its pedestal. At its two main test sites in Central Asia and Novaya Zemlya (the two permitted under the TTBT), it would not be possible for the Soviet Union to make such a cavity in salt, the most common material for constructing very large underground cavities. Salt simply is not present in anything like those thicknesses at either of those testing areas. Mining such huge cavities in hard rock would be detected by the United States through the huge amounts of rock that must be carried to the surface and disposed of in some manner.

#### DISCUSSION AND CONCLUSIONS

As seismic determinations of yield have improved, it is clear that there is still no evidence for Soviet cheating on either the TTBT or PNET. The U.S. CORRTEX measurement for the Soviet Joint Verification Experiment of 1988 corroborates those determinations and gives an independent calibration for their testing area in Central Asia. Seismic determinations of yield, like those from CORRTEX, always have a certain amount of uncertainty associated with them. It is evident that both the United States and the Soviet Union have tested near the limits of the TTBT since it became effective in 1976. Nevertheless, it is not possible to determine whether one to a few Soviet weapons tests could have exceeded the 150-kiloton limit by a small amount, say 1 to 15%. The measurements are compatible, however, with the idea that all Soviet tests since 1976 have been in compliance with that limit. Kerr's testimony in 1985 indicates that small exceedences, if they in fact occurred, would not be of greater military significance than tests at the 150-kiloton limit.

The TTBT and PNET have served their main purpose to us for more than 14 years by preventing the Soviet Union from testing large, high-yield weapons at full size or at more than a small fraction of their full size. This has prevented the U.S.S.R. from replacing existing nuclear weapons on their ICBMs with weapons of greater yield for the same weight, i.e. making them more powerful.

The choice of the CORRTEX method by the United States for determining yields of

Soviet explosions should be seen as part of a political agenda rather than merely as a scientific technique. CORRTEX is very intrusive since it must be used very close to the explosion in question. It is also very expensive compared to seismic method for determining yield. The "cart has been put before the horse" in this matter in that no assessment seems to have been made of the military necessity for determining yields with a particular accuracy, but yet Administration spokespersons have stated that the use of CORRTEX is somehow necessary.

Administration spokespersons have stated that it will take a number of years for the compliance question to settled since the CORRTEX technique is very complicated. In fact, the United States and U.S.S.R. negotiated a long, complicated document on the conduct of the two Joint Verification Experiments of 1988 and conducted those experiments at the other's test sites in a very short amount of time. Thus, claims that the United States must forgo further negotiations to limit nuclear testing is part of a strategy in a political agenda rather than a verification requirement as it may appear.

In his written statement Mr. Graham states that "the United States has not identified any further limitations on nuclear testing beyond those now contained in the TTBT that would be in the U.S. national security interests". That philosophical conception of what serves the national security interests of the United States is, in fact, what is at stake, not verification. The main purpose of nuclear testing is now, as it has been since 1945, the development of new nuclear weapons. While it is of fundamental importance that treaties be verifiable with high confidence, verification should not be used, as it is being here, as a proxy or subterfuge for what is, in fact, a political agenda and a political philosophy.

In 1988 the United States and the Soviet Union entered into an agreement for negotiations over nuclear testing. They agreed to a three-step negotiating process: 1) better verification for the TTBT and PNET (which the U.S. wanted), 2) further limitations on nuclear testing, and 3) an eventual comprehensive test ban. Now that part 1) has been completed to the satisfaction of the United States Government, Administration spokespersons are arguing for a long delay before commencing the negotiations for step 2). It was clear beforehand from numerous statements of the last 8 years that the United States Government did not want to see further limitations on nuclear testing. I think it is a mistake for the United States to renege on its commitment to negotiate further limitations on nuclear testing.

I favor a two-step process to limit nuclear testing: a very-low yield TTBT followed about 5 years later by a comprehensive test ban treaty. A low-yield ban on underground testing and/or a comprehensive test ban should be seen as part of several measures to slow down or halt the qualitative arms race, i.e. the modernization of existing nuclear weapons and their delivery systems. As strategic delivery systems are destroyed under a START agreement, (and its possible follow-ons), it makes less and less sense for the U.S.S.R. and the U.S. to test and develop new nuclear weapons and their delivery systems. A threshold below 10 kilotons would also have symbolic value since the weapons that opened the nuclear age in 1945 were of somewhat larger yield.

One unfortunate aspect of the revised protocols for the TTBT and PNET is that they

place much of the responsibility for monitoring and ascertaining compliance on the U.S. Department of Energy and the nuclear weapons laboratories. CORRTEX has been built and operated by the Los Alamos laboratory. DOE and the weapons laboratories have a long, unfortunate track record of using secrecy to keep the public and Congress either uninformed or misinformed on the safety of the production complex for nuclear weapons and on atmospheric testing at the Nevada Test Site. From my more than 25 years experience with the verification of nuclear testing, it is clear to me that DOE and the weapons laboratories will do everything possible that will permit them to continue nuclear testing. They seem now to have succeeded in making CORRTEX an in-house technology that is difficult for others to question even if they have security clearances.

University scientists have played a vital role in providing scientific assessments of the verifiability of various existing and proposed nuclear testing limitations. There is great danger that that community will be shut out of the verification of the revised protocols for the TTBT and PNET. There are two developments that strengthen that suspicion. Geophysicists who received funding for work on the physical properties of rocks from the Joint Verification Experiment in the Soviet Union of 1988 have been denied access to those samples by Los Alamos. Also, the yields of the two Joint Verification Experiments remain classified as do the yields and other information on five past explosions that each of the parties turned over to the other as part of the negotiating process for the JVEs. While the agreements for the JVEs state that one country cannot divulge the information turned over to it without the permission of the other, the Soviet Union has stated that it has no objection to the release of the information that they turned over to the United States. Scientists working on better verification would benefit from publication of those results, all of which, of course, are known to the U.S.S.R. These are the mere tip of the iceberg of attempts to control and limit knowledge for the furtherance of a political agenda.

STANFORD LINEAR  
ACCELERATOR CENTER,  
Stanford, CA, August 6, 1990.

HON. DAVID L. BOREN,  
Chairman,  
HON. WILLIAM S. COHEN,  
Vice Chairman,  
Select Committee on Intelligence,  
U.S. Senate, Washington, DC.

DEAR SENATORS BOREN AND COHEN: This is in response to your letter of June 29 inviting me to submit a written statement to the Select Committee in support of its deliberations on the TTBT and the PNET.

I have little to add to the testimony and answers that I gave before the Subcommittee on Arms Control, International Security, and Science of the House Committee on Foreign Affairs on June 12 (copy enclosed). In that testimony I endorsed these treaties as one of the important arms control issues that emerged from the Summit. During the question period I answered Congressman LEE HAMILTON as follows:

Chairman HAMILTON. "I know I am jumping around a little, but I want to finish up here quickly.

"We have had previous U.S. administrations who have committed the United States to further negotiations on lowering the test-

ing threshold from 150 kilotons just as soon as these treaties of 74 and 76 were ratified.

"What is the next step in nuclear testing limitations?"

Mr. DRELL. "Let me start by saying I am delighted we could finally get on to serious talk on this question. I think the diversion on whether or not we could verify the TTBT and this whole CORRTEX business has been a sad example of U.S. obstruction in arms control which I am not proud of. Let's get on.

"It seems to me that there is no reason for this country not to be moving down to something in the range of ten kilotons to five kilotons where we can carry out the kinds of tests we need and certainly meet our concerns about safety and redesign there for the time being."

Chairman HAMILTON. "Should you have a quota of the number of tests a year?"

Mr. DRELL. "I would like to delay answering that question. As you know, Mr. Chairman, the Armed Services Committee has created a panel of three scientists to look into the safety of the U.S. weapons stockpile in view of recent stories and concern about the SRAM warhead and the artillery shell in Europe. And I am a member of that committee which is now beginning some serious review of all our weapons. Before I speak of the number or quota, I would like to have that review under my belt."

Mr. PERLE. "If I might say, Mr. Chairman, so long as we have nuclear weapons in the inventory, I can't think of a compelling reason for inhibiting the freedom with which we can refine, develop and in other ways, improve those weapons, including among other things, to make them safer to deal with unexpected developments. It just doesn't accomplish any useful purpose. It is meddling, and fundamentally misdirected in my view. Leave it alone."

Mr. DRELL. "In my statement when I speak of ten kilotons, that gives us the opportunity to do that."

In brief, my view is that the treaties are verifiable and in our interest. By adding the protocol on CORRTEX as an added means of verification, we have increased the cost of verification. This procedure will give us on-site access to Soviet testing, and the increased transparency thus provided about their activities has some real value by removing ambiguities and adding to the clarity of our understanding of what they are doing. On the other hand, it also gives the Soviets greater access to our testing activities.

It seems to me that the cost-benefit ratio of this is not a very crucial issue one way or the other, and I fully support ratification of the TTBT and the PNET as verifiable treaties in accord with our security requirements.

Sincerely,

SIDNEY D. DRELL,  
Professor and Deputy Director.

STATEMENT BY SIDNEY D. DRELL  
THE SUMMIT

I view the recent Washington Summit to be a major success both for its specific achievements in arms control and, of even greater significance, for its contributions to expanded political cooperation between the US and the USSR.

Watching the summit proceedings, it became clear that a very important and productive political dialogue, as well as a warm personal chemistry, developed between the leaders of the two governments, based on mutual respect and understanding, and a se-

rious commitment to work toward achieving shared goals. The two countries differ in a variety of tactics and strategies enroute to accomplishing these shared goals, but in the new post-cold war environment, no major conflicts remain between our goals; not between our stated goals or the ones currently being pursued actively. I view this as a major achievement—a continuation on an epic voyage to a safer world on which President Reagan and Secretary Shultz embarked with President Gorbachev and Foreign Minister Shevardnadze more than three years ago.

Progress in our political and strategic relations greatly enhances the significance of the specific provisions agreed to in arms control. This progress provides a framework for moving ahead with dispatch and optimism to still more major accomplishments to which the two countries are committed.

Important progress on four important arms control initiatives emerged from the summit:

(1) The US and the USSR resolved major differences at START and instructed their negotiators to resolve the remaining specific issues toward a goal of signing a treaty by the end of 1990.

(2) The US and the USSR reached an agreement that calls for destruction of the vast bulk of our declared stockpiles of chemical weapons. They will be reduced by 80% or more.

(3) The US and the USSR completed verification protocols for the previously signed but unratified Threshold Test Ban Treaty (TTBT) of 1974 and the Peaceful Nuclear Explosives Treaty (PNET) of 1976.

(4) The US and the USSR agreed to speed negotiations toward completing a CFE treaty. The goal is to complete the treaty by the end of this year although it is clear that the German security issue will have to be settled first.

START

The principal provisions of START were negotiated 2½ years ago at the Washington Summit of December 1987. They include a decrease in the number of deployed Soviet ballistic missiles by about ½ and in the number of their deployed ballistic missile warheads by more than a factor of two, under equal ceilings for both countries. Furthermore the number of deployed heavy ICBMs, which only the Soviets possess currently in their force of 308 SS-18's with 3080 warheads, will be cut in half; so will their aggregate throw-weight of deployed ICBMs and SLBMs. This represents a considerable accomplishment, reducing by a factor of two the Soviet missile forces that are credited with presenting the most serious nuclear threat to US security and which in some quarters were viewed a decade ago as responsible for the so-called "window of vulnerability".

The significance of these reductions in missile forces can best be seen in the following numbers: After the START provisions are implemented, the number of threatening warheads on Soviet ballistic missiles will be reduced by approximately 5,000, from 10,000 today to a maximum of 4900. The corresponding US reduction will be about 3000. The number deployed on the land-based ICBMs that are viewed with greatest concern as a potential counterforce threat will be reduced by approximately 3000 by the USSR compared to 1000 by the US. This will leave Soviet planners with no more than about one-half as many warheads capable of threatening the hardened ICBM

silos that, under START, will comprise no more than 15 to 20 percent of the US retaliatory force.<sup>1</sup> A major fraction of the US deterrent will be deployed on the Trident submarines at sea and on the alert strategic bombers that are invulnerable to such a threat.

START also sets limits on numbers of heavy bombers and their "accountable" weapons. These limits are in the form of a complex set of provisions that substantially discount their numbers. This is as proposed by the United States in recognition of the reality that the aircraft-delivered bombs and the cruise missiles pose no threat of a preemptive first strike and therefore, in contrast to ballistic missiles, are not viewed as destabilizing.

The summit resolved a very contentious issue of how, or whether, to include limits on long range nuclear-armed sea launched cruise missiles (SLCMs). The US view prevailed and they will not be constrained within the START treaty itself. This recognizes the special and still unresolved verification difficulties presented by this weapon. At the same time both countries reaffirmed their 1987 Washington summit commitment "to continue to seek mutually acceptable and effective methods of verification". During START the SLCM deployments will be in accord with mutually binding political declarations to be provided annually, and will not exceed 880 in number. This number is well above current US deployment plans for nuclear SLCMs.

The summit reached a compromise on some outstanding issues of numbers, and on verification and deployment procedures, for mobile ICBMs.

Modernization of strategic systems may be carried out under START except as specifically prohibited. Although START contains a number of important bans—par ex. no new types of heavy ICBMs, no long-range nuclear cruise missiles with MIRVd warheads, no new types of ballistic missiles with more than 10 warheads—it accedes to the Soviet insistence to continue modernizing its large SS-18 missiles.

Critics of START have attacked this provision on grounds that the SS-18 "concession opens the way to Soviet deployment of heavy missiles that are twice as capable as the ones they replace. This will largely vitiate the 50 percent reduction in the ceiling for heavy missiles agreed to at Reykjavik in 1986" (Richard Perle writing in the New York Times, June 6, 1990). The origin of the claim that the improved SS-18 Mod 5 is "twice as capable" lies in the possibility that, with its higher yield and greater accuracy, a single warhead will have the same kill probability against a US silo as two of the earlier Mod 4 warheads now deployed. However, I find it very hard to believe that a Soviet war planner would have sufficiently high confidence in both the reliability and accuracy of an SS-18 to allocate only one warhead per US silo; and this also goes for US planners with our superior MX missile versus Soviet silos. Therefore on the basis of realistic operational considerations the SS-18 Mod 5 should not be viewed as "twice as capable" against US silos.

Nor should we underestimate the value of constraints on the SS-18 that are included in the START treaty:

The Soviet Union has already agreed to reduce the number of its SS-18s by 50 percent. Without a START treaty the Soviet Union would be free to modernize all 308 of its SS-18s rather than just 154. Obviously, the United States is better off confronted by 154 SS-18 Mod 5s than 308 SS-18 Mod 5s.

Without START, the Soviet Union could deploy 20-30 RVs on the SS-18, instead of 10, the maximum number permitted by the treaty on any existing or new type of strategic ballistic missile.

Without START, the Soviet Union would be permitted to test and deploy "new types" of heavy missiles.

Because a START treaty would place virtually no constraints on the modernization of US or Soviet strategic missiles other than the SS-18, it is likely that by the time START reductions are fully implemented (probably not until 1998), the Soviet Union will have improved the accuracy of its other ICBMs, such as the silo-based SS-24 and the SS-25, to the extent that they will also have a significant hard target kill capability. Therefore, even if the United States were to succeed in persuading the Soviet Union to let the SS-18 "wither away on the vine," such a provision would have little effect on the strategic balance in the long run.

A US proposal still under consideration at START would limit flight testing of SS-18's. Although this would allow some reliability testing it would slow modernization and also prevent the development of high confidence in the missile performance, particularly if only two or so flight tests per year are permitted. This proposal remains to be negotiated, along with two other issues: possible constraints on Soviet Backfire bombers; and the specifics of a "non-circumvention" clause that affects the special relationship between the US and the United Kingdom. These to me are not of major significance compared to what was negotiated and hardly seem to be show stoppers.

Beyond the sizable numerical reduction in the ballistic missiles and warheads I value most the verification provisions in START "the most thorough and innovative verification provisions ever negotiated" in the words of the joint statement issued on June 1 by Presidents Bush and Gorbachev. I speak on the basis of 27 years of direct involvement in technical issues of verification (I currently chair the Technology Review Panel of the Senate Select Committee on Intelligence) when I strongly endorse the joint presidential statement that these verification provisions "will not only provide for effective verification of the obligations of the treaty, but will also greatly increase the mutual confidence which is essential for a sound strategic relationship."

This verification regime will create a much greater transparency about military activities by supplementing "national technical means" with extensive, short-notice on-site inspection (OSI), cooperative measures to enhance effectiveness of OSI, a ban on denial of telemetric information, exchange of baseline information, and procedural restrictions on deployments of mobile ICBMs. This is not an appropriate forum to enter into a full analysis of this question but when this comprehensive verification regime is in force, one can be comfortable with the knowledge that covert activities are not being carried out on a scale and of a nature to threaten US security.

Overall START is a good deal. Some have expressed disappointment that it did not accomplish more—for example, banning long range nuclear SLCMs under a comprehensive and intrusive verification regime. Others allege that the US should have bargained harder with a weakened Soviet government and, for example, banned any SS-18 testing or improvement. I support the START treaty as negotiated. The counting rules, the numerical reductions, and the comprehensive verification regime mandated by its provisions are in the security interests of both the United States and the Soviet Union.

The United States achieved a number of its goals in working out the compromises during negotiations at START and the summit, including:

(1) deep cuts in the deployed Soviet Union ballistic missile force, including reductions in aggregate throw-weight and in the number of large SS-18's by a factor of two;

(2) limits on the number of deployed and undeployed mobile ICBMs together with limitations on deployment procedures in order to enhance the effectiveness of a comprehensive verification regime;

(3) exemption of three ballistic missile submarines from the numerical limits to allow for time in drydock;

(4) favorable discounting of the number of deployed air-launched cruise missiles allowing the US to deploy up to approximately 4000 weapons on the B-52H and B-1B aircraft under a count of 1100; the total number can be larger with deployment of B-2 bombers;

(5) exclusion of SLCM limits within START, in order to avoid more intrusive on-site inspection than currently acceptable to the United States; verifiable treaty limits on SLCMs will be negotiated in future talks.

(6) establishment of a comprehensive, cooperative verification regime.

(7) permitting modernization of the strategic forces as deemed necessary.

(8) separating negotiations on defense and space issues from START and proceeding without a commitment not to withdraw from the ABM treaty.

#### BEYOND START

We should complete the START negotiation, ratify the treaty, and move ahead boldly and carefully to more major progress. Among the major issues that START II should address are:

(1) de-MIRVing mobile ICBMs, and eventually all ICBMs. (An addendum to my statement describes one proposal for moving ahead with de-MIRVing the mobile ICBM force that I described in a column that appeared in the Los Angeles Times on February 15, 1990.)

(2) developing a verification regime for long-range nuclear-armed SLCMs in order to further constrain their deployment. This opens up the important issue of naval arms control. I support the view that the removal of tactical naval nuclear weapons would be of advantage to the US Navy, and in particular the survivability of its aircraft carriers.

(3) deeper reductions in the number of warheads deployed on the strategic forces. Before approaching this issue the United States must first decide what if any changes in the targeting requirements for deterrence are appropriate, particularly in view of recent political developments. For example how does the demise of the Warsaw Pact and the balancing of East-West military forces at lower levels in Europe impact US

<sup>1</sup> The US now deploys 950 Minuteman plus 50 MX missiles in hardened silos. Under START this number could well total between 600 and 700 depending on the mix of single-warhead and MIRVd missiles deployed. The potential Soviet threat to these silo-based missiles will thus be greatly reduced by START.

requirements for a nuclear umbrella to protect our allies against conventional attack; i.e., for extended deterrence?

The importance of such a review is underscored by remarks made by General Chain, Commander of the US Strategic Air Command, in a Pentagon briefing this past March. As reported in *Aviation Week & Space Technology* (March 12, 1990, page 22) General Chain said "Right now against the guidance we are given—the target set we have to hold at risk—132 B-2 aircraft are necessary . . . If the guidance ever changes, then that number could change accordingly." What General Chain is pointing out is that there must be a reassessment of targeting and damage requirements before there can be serious consideration of substantial reductions in the size of the US strategic forces below the level of 6000 accountable, but between 11,000 and 12,000 actual, warheads allowed by START.

At present the "Defense Planning Guidance" for military commanders for the period 1992 to 1997, includes the requirement to "hold at risk those assets the Soviets leadership would need to prevail in a nuclear conflict and to dominate in a post-nuclear world." (Quoted in the *Washington Post*, Feb. 13, 1990). Does this formulation of the requirements remain valid and, if so, what is required to implement it? Do all components of a complex industrial system that is increasingly internetworked and computerized have to be attacked by a nuclear warhead or will it break down much more rapidly? (For example, the 1979 study on the Effects of Nuclear War by the Congressional Office of Technology Assessment points out that 73% of the Soviet refining capability plus 15% of their petrol storage will be destroyed if only 10 aimpoints are attacked by 10 equivalent megatons.) What are the appropriate damage criteria? (For example, a one megaton nuclear explosion will generate a peak overpressure of 10 pounds per square inch (psi) over an area roughly two and one half times as large as that subject to at least 20 psi. A peak overpressure of 10 psi and accompanying winds of more than 250 miles per hour will lead to total destruction of most industrial structures.) Answers to questions like these have very large impact on the strategic targeting requirements and thereby on the level of weapons which can be set as goals for reductions at START II and beyond.

We are at a moment in history with a promising opportunity for the United States, the Soviet Union and our respective allies to close out the cold war and build a durable structure of peace and cooperation. As I see it President Bush and Gorbachev began "seizing the moment" at the summit. Based on their achievements we should push ahead now. There are still major issues to be addressed cooperatively by the United States and the Soviet Union as we jointly strive for safe passage in a world that is, and for many years in the future will remain, under threat of nuclear weapons. I hope that the history books of the 22nd century will record that before the end of this, the 20th century, we advanced beyond counting "angels on the head of a pin" in the form of relatively minor negotiating details at START and began to address the serious challenges before us of hunger, poverty, disease, conflicting ideologies, pollution, environmental damage, and the spread of nuclear know-how among the nations of the world.

NATURAL RESOURCES DEFENSE COUNCIL,  
Washington, DC, July 25, 1990.

HON. DAVID L. BOREN,  
Chairman, Senate Select Committee on Intelligence, Hart Senate Office Building,  
Washington, DC.

DEAR CHAIRMAN BOREN: Enclosed please find my written statement regarding verification protocols for the Threshold Test Ban Treaty (TTBT) and the Peaceful Nuclear Explosions Treaty (PNET). I appreciate the opportunity to submit these comments, and hope they will be of use to the Committee in its deliberations.

Please feel free to contact me at 783-7800 if you have any questions.

Sincerely,

THOMAS B. COCHRAN, Ph.D.,  
Senior Staff Scientist.

STATEMENT BY THOMAS B. COCHRAN

In 1974 when the Threshold Test Ban Treaty (TTBT) was negotiated and signed, there was an uncertainty factor of two in the estimated yields of high-yield (greater than 20 kt) Soviet tests, as measured by National Technical Means with seismic stations outside the Soviet Union.<sup>1</sup> At that time, this level of accuracy was deemed adequate for verifying compliance with the TTBT, partly because nuclear warheads need not be tested at full yield for certification. Uncertainty in high-yield measurements using either hydrodynamic or seismic yield measurement methods (both are permitted under the treaty protocol) is on the order of 30 percent, or better. This improvement in accuracy is nice, but completely unnecessary for national security. No credible technical analysis has ever been presented to justify a requirement, on national security grounds, for this greater accuracy. Consequently, no useful purpose can be served by extensive Senate debate over the question of whether the protocol will achieve—as I believe it will—the degree of accuracy touted by proponents of the hydrodynamic yield measurement method.

Following the signing of the TTBT in 1974, analysts in the U.S. intelligence community argued that the Soviets were violating the treaty by deliberately testing over the 150 kt limit. The Reagan Administration even issued a finding that:

"Soviet nuclear testing activities for a number of tests constitute a likely violation of the legal obligations under the Threshold Test Ban Treaty."<sup>2</sup>

Overwhelming evidence reveals this conclusion as false. Yield estimates of Soviet tests that formed the basis for this claim were too high, due to inaccurate estimates in the seismic amplitude bias between the Soviet and U.S. test sites in Kazakh and Nevada, respectively. The evidence as of May 1988 has been summarized by the Office of Technology Assessment, which concluded:

Extensive statistical studies have examined the distribution of estimated yields of explosions at Soviet test sites. These studies have concluded that the Soviets are observing a yield limit consistent with compliance with the 150 kt limit of the Threshold Test Ban Treaty.<sup>3</sup>

More recent evidence exists in classified analyses of (a) the 1988 nuclear test at Semipalatinsk that was part of the U.S./U.S.S.R. Joint Verification Experiment (JVE), whose yield was measured hydrodynamically and seismically; (b) five historical Soviet underground tests whose yields were revealed to the U.S. under the JVE protocol; and (c) the  $L_w$  wave amplitudes of several

historical underground tests whose specific yields have been published by the Soviets.<sup>4</sup> In sum, past performance offers absolutely no evidence that the Soviets would violate the 150 kt yield limit under the TTBT, nor the TTBT and PNET verification protocols.

The Reagan Administration's insistence on TTBT and PNET verification protocols permitting on-site hydrodynamic yield measurements was a successful political tactic intended to short-circuit public and Congressional momentum favoring a moratorium on testing and a comprehensive, or low-yield threshold, test ban. Strong evidence for this is found in a 1988 statement by Frank Gaffney, Deputy Assistant Secretary of Defense (Nuclear Forces and Arms Control Policy) during the Reagan Administration:

The more time wasted on discussions and experimentation of [yield] monitoring techniques irrelevant to the verification of an environment in which there are no legal tests, the easier it will be to stave off demands for the more constraining comprehensive test ban.<sup>5</sup>

It will be a tragedy for America and the world if the Senate continues supporting this tactic by failing to promptly recommend ratification of these two treaties.

In negotiating the TTBT and PNET verification protocols, and conducting the JVE, the U.S. and Soviet governments respectively favored the hydrodynamic and seismic yield measurement methods. The protocols allow for, and give equal weight to, both methods. In recent years several developments have strengthened the U.S. capability to measure yields of Soviet tests seismically. The most important development include installation of in-country seismic stations in the Soviet Union, and recognition that uncertainty in estimates of the yield of nuclear tests can be substantially improved by utilizing  $L_w$  wave data.

Since 1986 the United States has operated seismic stations within the Soviet Union. Under a 25 May 1986 agreement between the Natural Resources Defense Council (NRDC) and the Soviet Academy of Sciences, three seismic stations were established around the Semipalatinsk test site in July-August 1986. The stations were jointly manned; personnel from the Institute of Physics of the Earth represented the Soviet Academy, while scientists from the Scripps Institution of Oceanography (University of California-San Diego) and the University of Nevada at Reno, worked on behalf of NRDC. Under a 25 June 1987 agreement between NRDC and the Academy, these three stations were relocated, beginning in 1988, and two additional stations were to be established. Four of the five of new stations, at Obninsk (OBN), Arti (ARU), Kislodvsk (KIV), Garm (GAR), were operating at the time of the JVE at Semipalatinsk on 14 September 1988. The fifth station at Irkutsk (YAK) is not yet operational.

In April 1988 the Eurasian Seismic Studies Program (ESSP), a joint U.S.-Soviet research program in seismology, was established with Incorporated Research Institutes for Seismology (IRIS) and the U.S. Geological Survey (USGS) representing the United States, and IPE representing the Soviet Union. This arrangement permitted the U.S. consortium (with Scripps as its principal contractor) to continue the joint program with IPE, using funding from the U.S. Government rather than NRDC. The U.S. component of the program is currently funded by Congress through an addition to the budget of the nuclear monitoring pro-

gram of the Defense Advanced Research Projects Agency (DARPA). The program is carried out under Area IX of the Agreement on Cooperation in the Field of Environmental Protection.

Four ESSP stations (GAR, KIV, ARU, and OBN) are currently operational and data is being sent to the U.S. after processing at Obninsk. The stations will be upgraded with new high-frequency channels in August-September 1990. Additionally, two new stations, at Talaya (TAL) and Ala-Archa (AAK), will be installed, bringing the total number of in-country stations to six. A seventh station at Garni (GNI) is scheduled for late 1990, and six additional stations have been approved for 1991, including one at Novosibirsk (NVS). The ESSP scientists anticipate the six additional stations will be approved next year for the Soviet Union, bringing the total to 19 stations. In the region of two of the stations, Garni (GNI) in Armenia and Ala-Archa (AAK) in Kirghizia, about 10 additional surface stations will be installed to form two arrays covering about 10,000 square kilometers each. The Kirghizia network will also include a tight array similar to the Norwegian Regional Seismic Array (NORESS), established by the U.S. and Norway in 1984.

The TTBT verification protocol designates Arti (ARU), Obninsk (OBN), and Novosibirsk (NVS) have been designated as the seismic stations to be used by the U.S. to conduct seismic yield measurements. But in fact, under the ESSP program the U.S. will receive seismic data from many more stations in the Soviet Union. Furthermore, these stations will operate during all Soviet tests, not just the high yield tests designated under the protocol. The cost of establishing and operating this network for a year is a fraction of the cost of a single hydrodynamic measurement in the Soviet Union.

Another recent, significant breakthrough in yield estimation using the seismic method derives from studies begun in 1985 indicating that the accuracy of yield estimates can be improved through utilization of  $L_w$  wave data.<sup>6</sup> The  $L_w$  wave is a type of guided wave, composed of numerous seismic waves trapped between the earth's surface and the earth's crust/mantle boundary. At distances below a few thousand kilometers the  $L_w$  wave amplitude is larger than the body and surface wave amplitudes traditionally used for yield estimation. At greater distances, the signal is typically too weak to be of much use. Hence, for the purpose of estimating the yields of Soviet tests, the use of  $L_w$  waves data is limited to cases where the seismic stations are within or near the Soviet border.

To maximize the utility of  $L_w$  wave data for measuring Soviet test yields, the relationship between the amplitude of the  $L_w$  wave and the yield of Soviet tests must be established. This involves using recorded  $L_w$  signals from previous Soviet tests where specific yields have been disclosed. This has been done for at least ten tests at Semipalatinsk, namely (as mentioned above), the five whose yields were exchanged under the JVE protocol, the JVE test itself, and four tests whose specific yields were published by the Soviets.<sup>7</sup> These data demonstrate that when regional  $L_w$  data is included, uncertainty in the seismic yield estimate is on the order of 15 percent—comparable to, if not better than, the accuracy achievable using the hydrodynamic method. Furthermore, this seismic yield measurement capability was established independently of the TTBT protocol. It will be operational for all Soviet tests,

and is dramatically less expensive than the hydrodynamic method. These in-country seismic stations, coupled with the hydrodynamic method, represent a U.S. capability to monitor Soviet test yields greatly exceeding our national security needs.

The strong public opposition to testing which has developed in the Kazakh Republic makes further testing at Semipalatinsk unlikely. Future Soviet nuclear tests will probably be restricted to the arctic site at Novaya Zemlya—a site for which the U.S. has limited seismic data from nuclear tests. The site is closer than the Semipalatinsk site to NORESS. Relative to the Semipalatinsk site, geology and seismic paths for P and S body waves from Novaya Zemlya are well understood. Thus, the seismic yield estimates (based on analyses of body wave data) for tests at Novaya Zemlya have smaller uncertainties than similar seismic (body wave) estimates for tests at Semipalatinsk. On the other hand, no  $L_w$  wave data exists yet from ESSP in-country stations for tests at Novaya Zemlya. It is not even known whether ARU, OBN, and NVS—the three stations designated in the Soviet TTBT protocol—will provide  $L_w$  wave data for Novaya Zemlya at a signal-to-noise ratio of nine as specified in the protocol. Some of the future ESSP stations will be located closer to Novaya Zemlya; and hopefully with a few hydrodynamic yield measurements for calibration, they could provide yield estimates with uncertainties comparable to the uncertainties currently being obtained for tests at Semipalatinsk.

The yields of the five historical U.S. and Soviet tests which were exchanged under the provisions of the JVE, and the results of the JVE itself, remain classified by the Administration despite the fact that JVE protocol permits release of these data if both parties agree, and despite the fact that the Soviets do not object to their release. The Administration's failure to negotiate with the Soviet government for release of this data hampers independent research on nuclear testing verification, and prevents full debate on the merits of the TTBT protocol and future test-limiting treaties, e.g., a low-threshold or comprehensive test ban treaty. Section XII of the TTBT and PNET protocols permits the Administration to withhold from public disclosure much of the information obtained in accordance with the TTBT and PNET protocols, either by classifying the U.S. data which is shared with the Soviets, or by failure to seek Soviet permission to release information that cannot be released without mutual agreement. In its deliberations the Senate should obtain assurances that the Administration will make every effort to maximize the amount of information released to the public regarding measurement of yields by seismic and hydrodynamic methods.

In sum, NRDC supports prompt ratification of the TTBT and PNET. In its deliberations the Senate should demand assurances from the Administration that it will release, seeking permission from the Soviets when necessary, all information collected in accordance with the TTBT and PNET protocols, and the JVE. Finally, in its normal budget cycle the Senate should insure that adequate funding is provided to the Eurasian Seismic Studies Program to permit continued operation and expansion of its seismic network in the Soviet Union.

#### FOOTNOTES

<sup>1</sup> An uncertainty factor of two implies, for example, that given a measured yield of 150 kt, one can

be 95 percent certain that the actual yield was between 75 and 300 kt.

<sup>2</sup> "The President's Unclassified Report on Non-compliance with Arms Control Agreements," transmitted to the Congress Mar. 10, 1987.

<sup>3</sup> U.S. Congress, Office of Technical Assessment, "Seismic Verification of Nuclear Testing Treaties," OTA-ISC-361, (Washington, D.C.: U.S. Government Printing Office, May 1988), pp. 124-126.

<sup>4</sup> The date, time, location, and in 22 cases the exact yield, of 96 historical Soviet underground nuclear tests conducted between 1961 and 1972, were revealed in V.S. Bocharov, S.A. Zelentsov, and V.N. Mikhaylov, "The Characteristics of 96 Underground Nuclear Detonations at the Semipalatinsk Test Range," Atomic Energy, vol. 67, no. 3, September, 1989, pp. 210-214. (translated into English by the Library of Congress)

<sup>5</sup> Frank Gaffney, "Test Ban Would be Real Tremor to U.S. Security," Defense News, 5 September 1988, pp. 36-37.

<sup>6</sup> A more thorough review of the  $L_w$  wave and new information on Soviet yields can be found in publications by Paul G. Richards and Lynn R. Sykes of Columbia University. Much of the discussion here derives from early drafts of their book Verification of Limits on Nuclear Testing: A Review of Historical, Technical and Political Review, (in preparation).

<sup>7</sup> V.S. Bocharov, et al., op. cit.

#### EXHIBIT 1

##### ARMS CONTROL AND DISARMAMENT AGENCY,

Washington, DC, September 20, 1990.

Hon. David L. Boren,

Chairman, Senate Select Committee on Intelligence, U.S. Senate.

DEAR MR. CHAIRMAN: I am writing concerning a question posed to the Administration by the Senate Foreign Relations Committee prior to their mark-up of the resolution of ratification to the nuclear testing treaties.

With respect to paragraphs 3 and 4 of Section XI of the TTBT Protocol, the Administration will provide notice concerning any modifications and changes negotiated with the Soviets to the provisions of the TTBT Protocol prior to such modifications or changes becoming binding on the Parties. To the extent that any changes or modifications affect matters under the jurisdiction of the Senate Select Committee on Intelligence, we will ensure that they are brought to your attention as well.

The Administration offers this further assurance because of the unique technical nature of the TTBT Protocol. The Administration does not consider this further assurance to be a precedent for other arms control agreements with similar provisions that may be concluded in the future.

Sincerely,

RONALD F. LEHMAN II.

#### EXHIBIT 2

##### THE WHITE HOUSE

Washington, DC, September 13, 1990.

Hon. David L. Boren,

Chairman, Select Committee on Intelligence, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As the Threshold Test Ban Treaty and the Treaty on Peaceful Nuclear Explosions proceed toward the Senate's advice and consent on ratification, I want you to know that we share the Senate Intelligence Committee's concern over the need to implement effective counterintelligence and security measures to protect U.S. personnel and programs from improper collection of information by Soviet on-site inspectors or monitors. This is a matter of high priority for the Administration.

There are several elements to these measures, all of which need to be in place before Soviet inspectors and monitors may safely

be hosted. These include the selection of suitable locations for housing Soviet personnel for the Nevada Test Site and the Designated Seismic Stations. (It might prove necessary to select a temporary site, with the understanding that a permanent site will be completed promptly.)

Once these decisions are made, we can finalize the necessary security details to protect personnel or programs that might otherwise be vulnerable to compromise and also resolve any remaining funding matters. While these matters must be addressed expeditiously, we do not want to rush into decisions that could later prove harmful to the national security.

I want to assure you that the Administration will take no action under the Treaty that would endanger or compromise vulnerable U.S. programs.

I appreciate your concerned approach to these questions and look forward to our continued cooperative efforts to ensure that the interests of arms control verification and security are satisfied.

Sincerely,

BRENT SCOWCROFT.

Mr. PELL. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays on both resolutions of ratification.

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

Mrs. KASSEBAUM. Mr. President, I would like to join my colleagues in recommending that the 1974 Threshold Test Ban Treaty [TTBT] and the 1976 Peaceful Nuclear Explosion Treaty [PNET] be ratified.

Over 15 years ago, the United States and the Soviet Union negotiated the Threshold Test Ban Treaty which was intended to be a first step toward a comprehensive test ban agreement by setting a limit of 150 kilotons on nuclear test explosions. Fourteen years ago, we negotiated the Peaceful Nuclear Explosion Treaty to ensure that tests for peaceful means were not used to circumvent the restrictions of the TTBT.

Although we have abided by these treaties over the years, we are finally here today recommending advice and consent. Verification concerns were one of the main reasons for the delay in ratification of these treaties. In 1987, as Senator HELMS has mentioned, I offered a resolution which was accepted by the Senate Foreign Relations Committee, expressing these concerns and urging their timely resolution. The detailed protocols negotiated by the Bush administration are a vast improvement over the original verification provisions of these treaties. They are a further sign of the growing accommodation between the United States and the Soviet Union and lend hope for more significant arms control measures between us.

Mr. President, I believe we all should use this opportunity to urge the negotiation of a comprehensive test ban agreement. As the events in the Middle East have so dramatically demonstrated, our arms control agenda for

the 1990's must have as a top priority the curtailment of the spread of nuclear, and other weapons of mass destruction. Gaining control over the proliferation of nuclear and chemical weapons has proved difficult, if not impossible. I believe it has become imperative. The 1963 Limited Test Ban Treaty, which prohibits the explosion of all nuclear tests except underground, has the support of over 100 countries. A widely supported comprehensive nuclear test ban could be an important step in not only curtailing the nuclear weapons programs of the United States and the Soviet Union, but also in helping to stop the spread of nuclear weapons.

The challenges before us in the 1990's are vast. The ratification of these treaties is a step in the right direction. But, I would hope that we would face these challenges and pursue an arms control agenda with more urgency than we have shown over the past 15 years.

Mr. PELL. Mr. President, I ask unanimous consent that there be one vote for the two pending resolutions of ratification and that it count, however, as two separate votes.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. PELL. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I support these treaties. My only regret is that they were not ratified 14 years ago, when they were first submitted to the Senate for advice and consent, thereby removing them from the diplomatic agenda.

At this late date, when the international community is struggling to find new ways to restrain nuclear weapons proliferation, the submission of an elaborate Soviet-American agreement enshrining the legitimacy of conducting so-called Peaceful Nuclear Explosions can hardly be regarded as a significant diplomatic achievement.

The United States conducted its last PNE in 1973, and it has been the policy of the U.S. Government not to recognize any distinction between so-called peaceful nuclear explosions and nuclear weapons tests. The government of the Soviet Union last conduct-

ed a PNE in 1988, following a resumption of weapons testing after President Gorbachev's 18-month unilateral moratorium failed to convince the Reagan administration to enter negotiations on a comprehensive ban on all nuclear tests, including PNE's.

However, in the wake of the Chernobyl accident and revelations of radioactive contamination from the Soviet nuclear weapons program, large segments of the Soviet public are now opposed to the conduct of any more underground nuclear explosions, for any declared purpose, peaceful or military. In fact, the Soviet Government has not conducted an underground nuclear weapons test explosion since October 1989. The elaborate monitoring provisions of the PNE Treaty are unlikely to be used.

Agreement on the threshold test ban was reached at the 1974 Moscow summit, only a month before President Nixon resigned. While both President Nixon and General Secretary Brezhnev harbored hopes for a SALT II agreement, they recognized at the July summit that the necessary compromises by both sides would not be made in time, and both were ready to reach quick agreement on a high threshold ban to provide evidence of the summit's success.

The 150 kiloton threshold was chosen, not for reasons of verification, but for its minimal impact on nuclear weapons development programs, and for its removal of a possible asymmetry favoring the Soviets in the capability to conduct very high yield tests. This background is important for understanding the decade long-debate over the requirements for "effective" verification of this treaty.

In the mid-1970's, the now much criticized "factor of two" uncertainty for the range of United States yield estimates for Soviet nuclear tests near the 150 kiloton threshold seemed adequate for guaranteeing the very modest arms control benefits of this treaty. Today, it is instructive to compare Soviet evasion opportunities under the original factor-of-2 uncertainty with the 1.3 factor of uncertainty associated with the use of the CORTEX monitoring device at Soviet test sites.

Under the situation prevailing in the 1970's, an actual Soviet test at 300 kilotons had only a 1-in-40 chance of registering on U.S. monitoring systems as though it were 150 kilotons or less, but a 50-50 chance that the yield would be measured as above 300 kilotons. Under these conditions the chances of two Soviet explosions at 300 kilotons both being recorded as 150 kilotons or less is about one in 1,600; and the chance of three 300 kiloton explosions being so recorded is one in 64,000. A very respectable argument can be made that these odds al-

ready constituted adequate deterrence of Soviet evasion.

The verification improvements contained in the new TTBT Protocol would reduce the Soviet test yield associated with these same marginal chances of evasion from 300 kilotons to 195 kilotons. After 8 years of debate, no one that I am aware of has yet come forward to explain why this reduction in yield for an already improbable cheating opportunity is of any strategic significance to anyone. On the contrary, in February 1987 the Director of the Livermore National Laboratory, Dr. Roger Batzel, testified that "the nuclear design advantages of increasing test yields from 150 kilotons to 300 kilotons would not have been very significant from my viewpoint of U.S. experience."

The leader of Livermore's Treaty Verification Program, Milo Nordyke, testified that, based on his assessment of opinions in the nuclear weapons community, "it does not appear to me that the yield range of possible Soviet violations would open up unique nuclear design opportunities."

One can also examine the impact of the new protocol on the detection of more modest violations of the 150 kiloton threshold. For example, under the old assumption of a factor of two uncertainty, a test at 190 kilotons had a 1-in-4 chance of being recorded on U.S. monitors as being at or below the threshold. Under the new protocol, that same risk of evasion is now associated with 165 kilotons rather than with 190 kilotons. Looked at another way, the new protocol arrangements reduce the chance that a single Soviet 190 kiloton test would be recorded as 150 kilotons or below from 25 to about 5 percent. Current seismic techniques have already reduced this risk to about 10 percent.

Thus it appears that improved deterrence of militarily meaningless violations is the chief contribution of this much heralded new protocol.

On the question of Soviet compliance, some officials tied themselves up in knots trying to explain how a Presidential finding of "likely Soviet violations" could be substantiated by seismic verification techniques which were simultaneously believe to be too uncertain to verify Soviet compliance with the treaty. On this point I refer my colleagues to the conclusions of the recent report of the Select Committee on Intelligence:

Given current U.S. estimates of the yields of past nuclear tests, the Committee can rule out any major Soviet violation of the 150-kiloton limits of 1976. The pattern of past Soviet testing is consistent with either of two other hypotheses: Soviet compliance with the 150-kiloton limit; or a few slight violations of it. The military rationale for slight violations remains in doubt.

I would only add to the committee's conclusion that the scientific basis for the downward revision in estimates of

Soviet test yields that ultimately occurred had been available in both the open scientific literature and in classified Government reports for at least a decade. Why these revisions took so long to implement has yet to be adequately explained.

Without doubt, the primary and overriding virtue of CORTEX for the Reagan-Bush administrations has been that its use requires an ongoing legal nuclear test program. During the 8 year quest to implement CORTEX, the United States Government conducted on the order of 126 nuclear tests, and the Soviet Union, about 140. Indeed, no testimony has ever been provided that relates the extensive use of CORTEX contemplated in these protocols to the reduction of militarily significant uncertainties in the yield estimates afforded by either current or improved seismic methods.

In fact, the reduction of uncertainty has been presented as an iron-clad requirement in its own right, divorced from any meaningful analysis of the benefits and costs for national and international security.

Early in 1987 I expressed my concern that the Reagan administration was using the CORTEX proposal to tie-up the test ban negotiations, with the intent of delaying indefinitely the resumption of negotiations on meaningful limitations. In fact, technical aspects of the treaty verification process were deliberately distorted in order to weaken the political pressures for a resumption of test ban negotiations, as several Reagan administration officials confirmed when they left the Government in the fall of 1988.

The conclusion is supported by the persistence of the "likely violations" charge until 1989, despite the recommendations of several scientific advisory panels that this charge could not be sustained by the seismic evidence. Further evidence can be found in the record of numerous material false statements to Congress on test ban issues by Government officials over the last decade.

Unfortunately, this cynical strategy for handling the test ban issue has succeeded to a considerable extent, ultimately entangling not only the Congress but also the Soviets in detailed monitoring improvements to a treaty that has little political or arms control value. Now we are told that these protocols will require an unspecified "period of implementation" before test ban negotiations are resumed.

The most hopeful aspects of the treaties are that some on the on-site inspection provisions and detailed data exchanges will set a useful precedent for future agreements, and that the sheer logistical burden of the complex monitoring provisions may actually result in some diminution of testing on both sides.

Unfortunately, the protocol itself artificially restricts the collection of in-country seismic data to just three stations for limited time periods. On the plus side, however, the three "in-country" stations to be used by the United States are part of a larger 20 station network being deployed by the IRIS Consortium of American university researchers in cooperation with the Soviet Academy of Sciences. I hope this important program, which is improving the technical foundation for verification of a comprehensive ban, will continue to enjoy the bipartisan support it has received to date from members of both the Senate and House Armed Services Committees.

The goal of a global comprehensive test ban is more important than ever as part of a new world order which will begin to respond decisively to the challenges of eliminating weapons of mass destruction.

Unfortunately, the two treaties before us today have little to offer nations that claim to see little merit in extending the Nonproliferation Treaty beyond 1995. As a basis for their position, these nations often cite the failure of the nuclear weapon powers to agree on a comprehensive test ban and other disarmament measures that would close the gap between the nuclear weapon and nonweapon states.

Mr. President, while my remarks have focused on their shortcomings, I nonetheless urge the Senate to approve these treaties, and I ask unanimous consent that copies of correspondence conducted with the White House on nuclear test ban policy printed in the RECORD.

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

SENATORS CALL FOR PHASE-OUT OF NUCLEAR WEAPONS TESTS BY 1995

MAY 11, 1989.

Senator Edward M. Kennedy (D-MA) announced today that 23 Senators and 142 Representatives have signed a letter to President Bush urging him to adopt a step-by-step program for phasing out nuclear test explosions by 1995.

In a statement, Kennedy said:

"This letter begins a new effort to make progress toward a comprehensive nuclear test ban treaty between the United States and the Soviet Union that might be opened for signature by all nations.

"While supporting the Reagan Administration's successful effort to negotiate the INF Treaty, many of us in Congress regretted the decision to abandon efforts to end nuclear test explosions.

"I hope that President Bush will pick up where previous Presidents of both parties left off on this essential aspect of arms control. Our letter outlines a bipartisan, balanced approach to the issue. In fact, it represents a substantial compromise for many of us who have long urged immediate negotiation of a Comprehensive Test Ban."

The full text of the letter to the President is attached.

HOUSE OF REPRESENTATIVES,  
Washington, DC, May 11, 1989.

President GEORGE BUSH,  
The White House,  
Washington, DC.

DEAR MR. PRESIDENT: We understand that you will soon be completing a review of existing U.S. arms control and national security policies. One of the important issues for your decision during this review will be setting objectives for the Geneva negotiations on nuclear testing. We are writing to urge you to adopt a policy which supports negotiation of significant new limits on underground nuclear tests.

As you know, every American President since Eisenhower has supported the ultimate objective of a comprehensive test ban, which would halt all underground nuclear weapons test explosions. While officially subscribing to this view, the preceding administration took the position that it no longer considered a test ban to be a near-term objective and that "for the foreseeable future, nuclear testing will continue to be indispensable to our security." We believe the time has come to reexamine this policy and begin practical steps towards negotiation of an end to all nuclear testing.

Limits on nuclear testing would help enhance strategic stability by complementing strategic arms reductions with "qualitative" limits on potentially destabilizing future developments in nuclear warhead technology. A test ban would prevent the Soviet Union from developing new types of nuclear warheads or bombs that might threaten our future security, such as so-called "third generation" nuclear weapons.

A nuclear test ban would significantly advance our nation's longstanding interest in preventing the proliferation of nuclear weapons of other countries. Conclusion of a multilateral test ban, beginning with an agreement between the U.S. and the Soviet Union, would help to establish a global norm of "non-testing" that would raise the political costs of acquiring nuclear weapons. This could tip the balance against proliferation in key nuclear threshold states. A test ban would also have a direct technical impact on the proliferation of thermonuclear weapons capabilities.

As you know, the Nuclear Non-Proliferation Treaty (NPT) comes up for renewal in 1995, and under Article VI of the Treaty the nuclear weapons states are committed to pursue "effective measures relating to the cessation of the nuclear arms race at an early date." Renewal of the NPT will depend on a majority of its parties concluding that the Treaty continues to promote their security interests. If the U.S. and the Soviet Union do not do more to distance themselves from the logic that a dynamic nuclear arms competition confers greater security than negotiated restraints, other nations can be expected to employ a similar logic to rationalize decisions to pursue their own nuclear weapons programs. This would not only compromise efforts to broaden nonproliferation controls, but could actually threaten the unraveling of the existing regime.

International interest in a comprehensive test ban has grown steadily in recent years. Forty nations which are parties to the Limited Test Ban Treaty (LTBT) have now formally requested a conference of LTBT parties to consider amending the atmospheric test ban to halt underground nuclear testing. As a result, it now seems possible that such a conference will occur within the next year. Unless the U.S. has made significant

progress on an alternative plan to end underground testing by that time, it would face a difficult decision on whether or not to accept or reject a CTB amendment sought by most of the world's nations and accepted by the Soviet Union. A decision to veto such an amendment could have serious consequences for our moral and diplomatic standing in the world, as well as for the survival of the non-proliferation regime.

We believe that your Administration should not wait for international pressures to reach a critical point before taking action, but should instead begin formulating its own initiatives to limit and ultimately ban nuclear testing. We strongly suggest that you do so by challenging the Soviet Union to a mutual, verified phase-out of nuclear weapons tests leading to conclusion of a comprehensive test ban treaty by the time the Non-Proliferation Treaty expires in 1995. Such a challenge could be framed to:

Allow both sides a limited period to conduct an agreed quota of tests to assure themselves that their existing arsenals could be maintained in a predictable and safe condition under a future test ban agreement;

Progressively lower both the permitted size and number of nuclear tests in order to constrain testing of new types of nuclear warheads or bombs, beginning with high-yield components of strategic weapons;

Install and operate a nationwide network of seismic monitoring stations in the U.S. and the Soviet Union to verify compliance with testing limits; and

Negotiate a formal U.S.-Soviet comprehensive test ban treaty of unlimited duration that could be opened for signature by all nations, to take effect in the period 1995-2000.

We believe that such an approach would represent a sensible and realistic way for your administration to address the question of further limits on nuclear testing. We hope you will give serious consideration to undertaking an initiative of the type we have outlined, and we look forward to working with you in a bipartisan fashion to make the long-standing U.S. objective of a comprehensive test ban a reality.

Yours sincerely,

Senators Claiborne Pell, Edward M. Kennedy, Alan Cranston, John Glenn, James M. Jeffords, and Timothy E. Wirth. Representatives Dante B. Fascell, Edward J. Markey, John M. Spratt, Jr., Norman D. Dicks, Bill Green, and Patricia Schroeder.

Senators Jeff Bingaman, Tom Harkin, Donald W. Riegle, Jr., Brock Adams, Quentin N. Burdick, Carl Levin, Paul S. Sarbanes, Howard M. Metzenbaum, Thomas A. Daschle, Patrick J. Leahy, Spark M. Matsunaga, John F. Kerry, Paul Simon, Dennis DeConcini, Terry Sanford, Barbara A. Mikulski, and Daniel Patrick Moynihan.

THE WHITE HOUSE,  
Washington, February 20, 1990.

HON. DANTE B. FASCELL,  
Chairman, Committee on Foreign Affairs,  
House of Representatives, Washington,  
DC.

DEAR MR. CHAIRMAN: Thank you for your letter to the President, cosigned by a number of your colleagues, suggesting new limits on underground nuclear tests, leading to a comprehensive test ban. The President has reaffirmed the previous Administration's commitment with respect to the step-

by-step process on nuclear testing and a comprehensive test ban.

In negotiations with the Soviet Union we are working to complete agreement on verification protocols to the TTBT and PNET to permit their ratification. That work is progressing well and we have every expectation of being able to sign the Protocols at the Summit in June 1990. Bringing these treaties into force—with effective verification provisions—remains our highest priority in nuclear testing arms control.

We are actively pursuing the numerous elements of arms control. In addition to the Nuclear Testing Talks, the Nuclear and Space Talks, including both START and Defense and Space, are being vigorously negotiated. The President has accelerated the work on START with the goal of resolving all the substantial issues by the time of the June Summit, and, if feasible, signing the treaty at the same time. The President's initiatives to reduce forces in Europe significantly have the potential to break through roadblocks in the CFE negotiations. The Soviets have said they are willing to negotiate toward conclusion of CFE this year. We continue to press for a global ban on chemical weapons—the President's UNGA initiative and his proposal at Malta to cease production when the global ban goes into effect have given new momentum to the solution of this particularly thorny problem. Improved confidence and security building measures are on our agenda as well. This broad spectrum of initiatives clearly demonstrates the Administration's commitment to arms control designed to improve national security.

The Administration shares your view that the Non-Proliferation Treaty serves the interests of the United States, and we are participating actively in the preparations for the upcoming Review Conference. The implementation of the INF Treaty eliminating the entire class of U.S. and Soviet INF missiles and our efforts to accelerate the START negotiations demonstrate a commitment to practical and effective measures to constrain nuclear arms. However, we believe that further restraints on U.S. or Soviet testing are not likely to affect the motivations of states seeking to acquire nuclear weapons and are unlikely to strengthen Soviet non-proliferation policies.

After careful review by this Administration, the fundamental position of the United States on nuclear testing remains unchanged: nuclear testing is indispensable to the maintenance of the credible nuclear deterrent which has kept the peace for over 40 years. As long as we depend on nuclear weapons for our security, some nuclear testing will be necessary. This policy was clearly stated by the previous Administration—changes in the international environment, while significant, have not altered our dependence on an effective nuclear deterrent. Today we test only as much as is required to ensure the reliability of our weapons; to improve the safety, security, reliability, and effectiveness of our deterrent forces; to ensure we understand the effect of a nuclear environment on military systems; and to avoid technological surprise and respond to an evolving threat.

As mentioned earlier, the negotiations now underway in Geneva are moving to complete the Protocols to the TTBT and PNET as part of the step-by-step process. As we consider next steps, it is prudent first to gain some experience with these new and complex verification methods. Certainly, further restraints on nuclear testing must

be viewed in the context of our overall control national security requirements and the details of the arms control agreements that may result from the current, unprecedented negotiations.

While a comprehensive test ban remains a long-term goal of the United States, the Administration cannot endorse a ban, as you suggest, as a 1995-2000 goal. A testing ban must be viewed in the context of a time when we do not need to depend on nuclear deterrence to ensure international security and stability, and when we have achieved broad, deep, and effectively verifiable arms reductions, substantially improved verification capabilities, expanded confidence-building measures, and greater balance in conventional forces.

The United States and the Soviet Union are engaged in a broad range of negotiations that will further the President's goal of improving stability and reducing the risk of war. We should remain on the track we have set to improve stability and recognize testing as an essential requirement for a secure and stable deterrent.

Sincerely,

BRENT SCOWCROFT.

SENATORS URGE PRESIDENT TO SEEK IMMEDIATE PROGRESS IN TEST BAN NEGOTIATIONS

APRIL 8, 1990.

Senator Edward M. Kennedy today released a letter to President Bush from twenty-two Senators asking the President to renew the U.S. government's commitment to reduce and ultimately end nuclear testing.

The letter was prompted by recent statements from officials in the State and Energy Departments indicating that the United States was not prepared to negotiate further limits on testing below 150 kilotons, the limit now set by the pending Threshold Test Ban Treaty, despite U.S. treaty obligations to pursue an end to all nuclear testing and Reagan-era political commitments to negotiate further interim limits on testing.

In releasing the letter, Senator Kennedy said:

"I am concerned by the lack of progress toward a global test ban that would help stem the tide of nuclear proliferation and prevent the emergence of new types of nuclear weapons. The Department of Energy's proposed ten-year timetable of stepping-up nuclear testing before accepting further limitations on testing is badly out of step with the policies of the vast majority of nations. Many of these countries will seek next year to attain the goal once sought by President Kennedy by supporting an amendment to convert the Limited Test Ban Treaty of 1963 into a Comprehensive Test Ban.

"Because of a lack of White House leadership, our treaty obligations and long-term international security interests are being undermined by the narrow concerns of weapon bureaucrats in the Pentagon and the Department of Energy. The current situation deserves hands-on attention from the President himself."

U.S. SENATE,

Washington, DC, April 6, 1990.

President GEORGE BUSH,  
The White House,  
Washington, DC.

DEAR MR. PRESIDENT: We are writing to commend you for your determination to complete the first stage of the Nuclear Testing Talks at the June summit, and we assume the negotiations will proceed without interruption into the next stage of

reaching agreement on further interim limits. To do otherwise would contravene presidential assurances to the Congress in 1986 and subsequent assurances to the Soviet Union.

As you may recall, in order to break an impasse over the fiscal 1987 defense authorization bill, President Reagan provided certain specified assurances regarding the negotiation of future nuclear test limitations in an October 10, 1986 letter to the Chairman of the Senate Armed Services Committee. In that letter, President Reagan expressed his commitment to the "ultimate attainment of a total ban on nuclear testing," and indicated that he was "determined to take *practical steps in the near future toward this goal* (emphasis added)." We note that more than three years have expired since this commitment was made. Yet there is no sign that the promised "practical steps" toward a CTB are underway in the Executive Branch.

On the contrary, in a recent letter transmitting the Department of Energy's FY 1989 Report to Congress on implementation of the Test Ban Readiness Program, Secretary of Energy James Watkins argues for "restoration of a healthy nuclear test program" and complains that "progress in attempting to prepare for further limitation on nuclear testing is severely limited by fiscal constraints" on his Department's ability to increase nuclear testing above the current level.<sup>1</sup> According to this DOE Report, "The Department believes that at least 10 years will be required to have any significant success in evaluating the capability to maintain and modernize the U.S. deterrent under further testing constraints."<sup>2</sup>

Such an extended timetable for adoption of further test limitations would contravene the Executive Branch commitment made to the Congress in October 1986. President Reagan wrote:

"... Once our verification concerns have been satisfied and the treaties have been ratified, I will propose that the United States and the Soviet Union *immediately engage in negotiations* on ways to implement a step-by-step parallel program—in association with a program to reduce and ultimately eliminate all nuclear weapons—of limiting and ultimately ending nuclear testing. *These steps can be taken in the near future—steps which will show the world that the United States is moving forward* (emphasis added).

Moreover, President Reagan placed this commitment squarely in the context of a legislative compromise on the nuclear testing issue: "I believe that the approach outlined in this letter is consistent with the broad purposes and objectives of the Congress with respect to limiting nuclear testing . . . and will provide a foundation for a bipartisan consensus on this important policy issue."

We also draw your attention to the fact that upon ratification, Article I of the Threshold Test Ban Treaty itself obligates the Parties "to continue their negotiations with a view toward achieving a solution to the problem of the cessation of all underground nuclear weapon tests." Similar obligations are contained in the Limited Test Ban Treaty of 1963 and the Nuclear Non-

proliferation Treaty of 1968. We note that the commitment to proceed to negotiation of further limits on nuclear testing, following ratification of the TTB/PNE treaties, has also been reiterated in a series of U.S./Soviet joint statements and Executive Branch documents.<sup>3</sup>

In a September 1988 Report to Congress, President Reagan stated. "The United States is prepared to consider a variety of approaches to see what types of further limitations might contribute to our national security based on the outcome of [arms reduction] negotiations." Yet after a year of momentous reductions in the Soviet threat to the Western alliance, the State Department's recent policy statement is even less forthcoming: "The United States has not identified any further limitations on nuclear testing beyond those now contained in the TTB that would be in the U.S. national security interest."<sup>4</sup>

In September 1987, the United States government agreed to engage in "full-scale stage-by-stage negotiations . . . in a single forum" that would make it possible to ratify the existing treaties "and proceed to negotiating further intermediate limitations on nuclear testing leading to the ultimate objective of the complete cessation of nuclear testing as part of an effective disarmament process." How then is it possible to conclude at this late date that no such intermediate limitations can be identified? This negative assessment may be seen as further evidence that the United States entered into the process of stage-by-stage negotiations in bad faith. We are also aware of Soviet government's view that the January 9, 1990 U.S. Policy Statement on Nuclear Testing "contradicts the existing U.S.-U.S.S.R. agreements."<sup>5</sup>

We are concerned that a reversal of U.S. policy on the test ban could be seen as an affront to the concerns of many nations that will convene later this year to begin consideration of a CTB amendment to the Limited Test Ban Treaty of 1963, and to review compliance with the Nuclear Non-proliferation Treaty. The heightened importance of the international context for U.S. test ban policy was set forth in some detail in a bipartisan letter to you dated May 11, 1989 from 165 members of Congress.

Nine months later a reply, dated February 20, 1990, was received from your national security adviser, Mr. Brent Scowcroft. While we appreciate the general reaffirmation of a U.S. commitment to "the step-by-step process on nuclear testing and a comprehensive test ban" contained in this belated response, it did not address several of the most important issues raised in the May 11, 1989 congressional letter:

A *multilateral test ban* would help establish a global norm of "non-testing" that

<sup>1</sup> E.g. the September 1987 ministerial joint statement, the December 1987 joint U.S.-Soviet summit statement, the March 1988 ministerial joint statement, and the May 1988 joint statement of the heads of state at the Moscow summit. The pledge to undertake these negotiations "immediately" upon ratification of the TTB/PNE Treaties is included in the State Department's July 1988 public information document, "Nuclear Testing Limitations: U.S. Policy and the Joint Verification Experiment," and in President's Reagan's September 1988 Report to Congress, "The Relationship Between Progress in Other Areas of Arms Control and More Stringent Limitations on Nuclear Testing."

<sup>2</sup> "U.S. Policy Statement on Nuclear Testing," January 9, 1990.

<sup>3</sup> Soviet Ministry of Foreign Affairs Press Center Briefing, Jan. 30, 1990.

<sup>1</sup> Letter from the James D. Watkins, Secretary of Energy, to the Honorable Sam Nunn, Chairman, Committee on Armed Services, February 22, 1990.

<sup>2</sup> Department of Energy, "Annual Report to Congress, Vol. I, Program Status of Preparations for Further Limitations on Nuclear Testing," (mandated by Section 1436 of the National Defense Authorization Act for FY 1989) December 1989, p. 17.

would ultimately affect the *conduct* of key nuclear threshold states, thereby helping to tip the balance against further proliferation. In contrast, the White House response dismissed the restraining effect of partial *bilateral testing limits* on the *motivation* of states seeking to acquire nuclear weapons.

While implicitly acknowledging that a global test ban is not a cure-all, in the technical sense, for the problem of basic fission weapon proliferation, the congressional letter noted that such a multilateral test ban would have "a direct technical impact" inhibiting the proliferation of more powerful and sophisticated thermonuclear weapons. This distinction was not acknowledged in the February '90 White House response.

The May '89 congressional letter drew attention to the difficult political situation this country will face if the U.S. government vetoes a CTB amendment to the Limited Test Ban Treaty that is supported by most of the world's nations and accepted by the Soviet Union. This concern was not addressed in the February '90 White House response.

While rejecting the concept of a gradual phase-out of nuclear tests, culminating in the conclusion of a global CTB in the 1995-2000 period, the February '90 White House response declined to advance any specific policy with respect to further interim limits—limits which the United States is pledged to begin negotiating soon, possibly as early as the summer or fall of 1990.

Mr. President, in view of the ongoing international obligations, prior Executive Branch commitments, and international security concerns outlined above, we ask that you take urgent steps to revitalize the U.S. government's commitment to engage in good-faith negotiations, immediately following ratification of the Threshold Test Ban Treaty, to further limit underground nuclear explosions as part of a step-by-step process leading toward ratification of a multilateral Comprehensive Test Ban Treaty by all the world's nations before the year 2000.

Sincerely,

Edward M. Kennedy, Paul Simon, George J. Mitchell, Alan Cranston, Claiborne Pell, Timothy E. Wirth, Dennis DeConcini, Terry Sanford, Tom Harkin, Daniel Patrick Moynihan, Brock Adams, Spark M. Matsunaga, Jeff Bingaman, John F. Kerry, Howard Metzenbaum, Thomas A. Daschle, Quentin N. Burdick, Patrick J. Leahy, Carl M. Levin, Donald W. Riegle, Jr., Barbara A. Mikulski, and Paul S. Sarbanes.

THE WHITE HOUSE,  
Washington, July 9, 1990.

HON. EDWARD M. KENNEDY,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR KENNEDY: This is in reply to the recent letter to the President from you and a number of your colleagues concerning the Administration's policy on follow-on negotiations of further nuclear testing limits.

The just-signed verification protocols to the Threshold Test Ban and Peaceful Nuclear Explosions Treaties are an important step in the area of nuclear testing—a step which will permit us to seek ratification of the treaties that were negotiated so long ago.

As you know, these protocols establish extensive on-site presence at the test site by the verifying country. They involve complex yield-measurement techniques using electronic instruments in the immediate vicinity

of the test. The President believes that the unprecedented nature and complexity of these verification provisions require that we gain some experience with them as a guide to the character of the most appropriate next steps toward further limitations on testing. This approach is based on the simply proposition that we should learn how well the just-agreed verification regime works as a necessary foundation for making or accepting proposals which build on it.

The President is firm in his commitment to the step-by-step process and to a Comprehensive Test Ban as a long-term objective of the United States. We are convinced, however, that so long as the United States must rely upon nuclear weapons safety and in devising appropriate corrective measures for deterrence, we must also have a sensible test program. Recent revelations regarding safety of certain nuclear warheads underscore the importance of testing, both as a vehicle for detecting possible weaknesses in weapons safety and in devising appropriate corrective measures for any such weaknesses. To do otherwise would create uncertainty as to the safety of the stockpile, and render us unable to make safety improvements and unable to react to new threats. This could tend to erode stability, not enhance it.

As we put into practice the new verification protocols, the United States will be ready to propose negotiations on possible further limitations that make sense from a national security standpoint, contribute to stability, and still guarantee a reliable, safe, and effective deterrent.

As you know, we have forwarded the new protocols to the Senate to begin the ratification process. Early action by the Senate will permit prompt implementation of these important treaties and enable us to begin the "step-by-step" process.

Sincerely,

BRENT SCOWCROFT.

Mr. SARBANES. Mr. President, I rise in strong support of the Threshold Test Ban and Peaceful Nuclear Explosions Treaties, together with the new verification protocols, to which the Senate has been asked to provide its advice and consent. Ratification of these two treaties, signed in 1974 and 1976, respectively, will significantly improve our national security. It will not only put into legal force testing limitations to which the United States and the Soviet Union have informally adhered for well over a decade, but also will help set back on track the arms control process which is so critical to our future. At a time when unprecedented opportunities are arising for major reductions in the United States and Soviet arsenals, it is essential that we reaffirm and codify earlier commitments which form the foundation for new agreements.

Let me first commend Chairman PELL for his persistent and dedicated efforts to bring about ratification of these two treaties. Without his personal interest and support, the treaties could not have received such prompt consideration and in fact might never have been acted upon. I should note that this is the second time the chairman has steered the treaties through a careful and thorough process of

committee hearings and review, both times resulting in their being favorably reported to the full Senate. It is my hope and expectation that his diligence finally will be rewarded by the affirmative vote of two-thirds of the Senate this afternoon.

The treaties now before us would provide several clear benefits for our country's security. First, by banning underground nuclear tests over 150 kilotons, the Threshold Test Ban and Peaceful Nuclear Explosions Treaties will prevent the development and stockpiling of nuclear warheads designed primarily for use against large population centers or against hardened targets, which are built to withstand a first strike. Thus the TTBT and PNET promote long-term stability.

Second, the new verification protocols will provide even greater confidence in our ability to accurately measure the size of explosions, and thus to ensure full compliance with the treaties. They will do this by requiring both parties to provide advance and detailed notification of all underground nuclear tests, and by guaranteeing each side the right to verify tests over 35 kilotons through either onsite inspection, seismic monitoring from a nearby station, and/or use of hydrodynamic yield measurement. The latter method, known as CORRTEX, involves placing a special cable in the ground adjacent to the nuclear explosive, and is a technology for which the administration had long sought Soviet approval. These methods will be used in addition to, and as a way of confirming the information we receive from, our satellites, our international seismic network, and other means of intelligence. Although it was the determination of Presidents Nixon, Ford, and Carter, as well as of numerous respected scientists, military analysts and intelligence experts that the treaties were adequately verifiable even prior to the negotiation of these protocols—which led the Foreign Relations Committee to recommend ratification twice before, in 1977 and 1978—the new protocols will strengthen our monitoring capabilities and build confidence in the agreements considerably.

Third, ratification of these treaties will continue the process of progressively restricting nuclear testing, which has long been considered key to halting the nuclear arms race. This process was begun in 1963 with the Limited Test Ban Treaty, which prohibits nuclear tests in the atmosphere, under water and in outer space, and was continued in the Non-Proliferation Treaty of 1968. Without testing, new generations of ever-more destructive weapons cannot be built, and the level of confidence necessary to carry out a first strike is lost. It is impera-

tive that we continue toward the goal of eliminating nuclear testing, not only by ratifying these treaties, but by resuming negotiations on a Comprehensive Test Ban Treaty. Such negotiations had made substantial progress before they were halted in 1981, and I would urge the administration to seriously pursue such an agreement.

Finally, ratification of the treaties and protocols will set the stage for further progress in arms control by demonstrating America's good faith in undertaking and adhering to its treaty obligations. Allowing well-crafted treaties to languish after being signed raises questions about United States intentions in the minds of not only the Soviets, but of all our partners in other negotiations. In this regard, I would like once again to emphasize to the administration the importance of sustaining momentum in the arms control process by completing and submitting to the Senate at the earliest possible date the bilateral chemical weapons accord, as well as a START Treaty and a CFE agreement. As I have indicated on several occasions to Secretary of State Baker and other administration officials, it is my view that any unnecessary delay in finishing work on and ratifying these treaties would constitute a serious setback for U.S. interests.

Mr. President, today we have an historic opportunity to register our support for mutual, verifiable agreements which reduce the threat of nuclear war and contribute to international stability. Approval of the Threshold Test Ban and Peaceful Nuclear Explosions Treaties is only an intermediate step toward ending the arms race, and one which perhaps should have been taken much sooner, but it is an important step, both symbolically and substantively. I want to thank the majority leader for making time in the Senate's extraordinarily full schedule for debate and a vote on the treaties, and I would urge my colleagues to join me in approving the resolutions of ratification which are now before us.

Mr. DOLE. Mr. President, the United States and the Soviet Union concluded negotiations on the Threshold Test Ban Treaty [TTBT] in 1974 and the Peaceful Nuclear Explosions Treaty [PNET] in 1976. Yet, the treaties did not come to the Senate floor for advice and consent until today. I would like to spend a few moments reviewing our experience with these two treaties and then look at what we should have learned.

The TTBT provides for a limitation of 150 kilotons on underground nuclear tests conducted by the United States and the Soviet Union and the PNET limits nuclear explosions for peaceful purposes to 150 kilotons, as well. Although the TTBT and PNET were concluded in 1974 and 1976, respectively, for various reasons, the

Senate did not act on the treaties during the Ford and Carter administrations, and the Reagan administration was left with the judgment of how to proceed with ratification.

In June 1982, President Reagan decided that no ratification was possible unless the Soviets agreed to expanded verification provisions for TTBT and PNET.

The Reagan administration had determined that the verification provisions contained in the treaty protocols were inadequate. Moreover, concerns regarding Soviet compliance with the yield limitation of the Threshold Test Ban Treaty further corroborated this determination. In the administration's annual report to the Congress on Soviet noncompliance, the first of which was submitted to the Congress in 1984, the compliance finding with respect to the TTBT was that the Soviets have been in likely violation of the TTBT.

Although the Reagan administration did not find that the Soviets were in violation of the TTBT, the uncertainty of Soviet compliance was significant, since the Threshold Test Ban Treaty yield limit has a direct impact on our military capabilities and those of the Soviet Union.

The U.S. Nuclear Testing Program is at the heart of the maintenance of our nuclear deterrent. Nuclear tests are conducted for reasons of nuclear weapons safety, reliability, modernization, and survivability. The 150-kiloton threshold established by the TTBT is militarily significant because it serves to limit the explosive force of nuclear warheads. Conducting tests above 150 kilotons could have military implications, depending on the yield and the type of test. Therefore, monitoring Soviet compliance with the 150-kiloton threshold limit is essential to avoid technological surprise.

From 1983 to 1987, the United States tried to engage the Soviets in negotiations on added verification provisions for the two testing treaties.

In late 1987, the Soviets finally agreed to negotiations on strengthening the TTBT and PNET verification provisions, as the first order of business in the newly established nuclear testing talks.

In addition to achieving effective verification provisions, the nuclear testing talks broke new ground in that verification procedures were tested in two joint verification experiments [JVE's] prior to the conclusion of the protocols. In 1988, as part of the joint verification experiments—which were conducted at the Nevada test site and at the Soviet test site—the United States demonstrated the technique and equipment associated with the cortex system of yield measurement. Cortex and onsite inspection are the foundation of our monitoring capabili-

ties as established in the new protocols.

The TTBT and PNET testing protocols were signed this past June in Washington during the summit. After more than 15 years, these treaties will finally be ratified.

It seems to me that there are some lessons to be learned from our experience with these two testing treaties:

First, verification is essential to our confidence in the arms control process.

Second, verification should not be viewed as an afterthought to any arms control treaty—it should be considered an integral part of the treaty and negotiated as such. Verification is tough—especially with the Soviets who, in spite of glasnost, still have a rather closed society. And, I recognize that this means that negotiating solid verification takes time. But, we need to be patient.

Third, there is a relationship between Soviet political openness and arms control verification. Increasing Soviet political openness over the last few years clearly contributed to the achievement of effective verification provisions for these two treaties.

Mr. President, I believe that the United States needs to take these lessons to the negotiating table—whether we are negotiating START, CFE, or chemical weapons. I am confident that our negotiators in Geneva and Vienna recognize the importance of verification and its essential role in the arms control process.

Mr. BUMPERS. Mr. President, in considering the Threshold Test Ban Treaty [TTBT] and the Peaceful Nuclear Explosions Treaty [PNET], the Senate has the chance to make a small but useful contribution to a safer world. These treaties not only will place important legal restraints on the nuclear testing activities of the Soviet Union, but they will also be an important step on the longer and ultimately more important task of halting the proliferation of nuclear weapons to countries that currently do not have them.

The tragedy of these treaties is that it has taken us 15 years after their signing to get to this point. It saddens me to realize that the White House should have sent these treaties to the Senate for ratification just a year or two after I entered the Senate in 1975, rather than doing so this year. While we are late in getting around to this important task, this is clearly a case of better late than never.

These treaties have taken so long to be ratified because of attitudes towards arms control in the White House that were first too optimistic and then too pessimistic. President Carter did not press for their ratification because he thought they did not go far enough, and set them aside to

pursue a comprehensive test ban on all nuclear tests. In retrospect, we see that he should have submitted these treaties for ratification and pressed on from there. He likewise made the same mistake on SALT II—rather than wrap up what had been accomplished under Presidents Nixon and Ford, President Carter tried to do much more, and ended up with no ratified SALT agreements at all.

When President Reagan was sworn in, his administration did almost nothing about nuclear testing except accuse the Soviet Union of violating the 150-kiloton limit of the TTBT. Let the record show that these accusations were reluctantly abandoned late in Reagan's second term. Why? Because the CIA and other agencies found that the evidence was quite strong that the Reagan administration was consistently overestimating the yields of Soviet nuclear tests. I will ask unanimous consent that two articles from the New York Times entitled "CIA Changes Way That It Measures Soviet Atom Tests" and "Scientists Voice Doubts Soviet Breached Treaty" be inserted in the RECORD at the conclusion of my remarks.

In fact, Ronald Reagan threw obstacles in the path of these treaties even before he became President. One of the reasons President Ford did not press for ratification of these treaties was because in 1976 he faced political pressures from the right wing of his party, in the form of a primary challenge from Ronald Reagan. Pushing for the ratification of the TTBT and PNET could have hurt President Ford's prospects in the primary. It appeared politically prudent for him to delay the ratification of these treaties until his second term, which never came to pass.

Fortunately, both the United States and the Soviet Union agreed to abide by the limits of these nuclear testing treaties even though they had not been formally ratified. Because of these treaties, we have not had an expansion of high-yield nuclear warheads, we have not had our scientists working on brand new high-yield warhead designs.

In addition, under these treaties we have important verification provisions that will provide a major degree of intrusive verification, the likes of which would have been unthinkable just a few years ago. There are important precedents here for the START Treaty that I hope will be completed before the end of this year.

But this should not be the end. I believe that we should continue to increase the restrictions on nuclear testing. The ceiling of 150 kilotons can and should be reduced substantially. We could easily, without jeopardizing our national security go down to no more than 50 kilotons, and perhaps down to about 20 kilotons. The exact

figure should depend upon factors such as the internal physics of thermonuclear devices, and verification considerations. Based on our experience with such a reduced threshold, we may then want to go further, down to a 1-kiloton ceiling, which would be a de facto comprehensive test ban. With the dramatically improved climate of United States-Soviet relations, we can contemplate, and seriously explore, such options with greater confidence than we ever could have had in the past, and do our environment a great favor in the process. We may also want to consider limits on the numbers of nuclear tests conducted by each side. The Soviets will be reducing the number of tests they conduct in any event, with the forthcoming closing of their nuclear test site at Semipalatinsk.

In this new, post-cold-war era that has just dawned, we have better reasons than ever to ratify these treaties and get on with negotiating even further limits, and that is the threat of proliferation of nuclear weapons to countries that do not have them. We all shudder to think of what Saddam Hussein might do if he had nuclear weapons. There can be no more urgent international task than to take whatever steps are possible to discourage nuclear proliferation.

Mr. President, let us now act. Though much delayed, the affirmative advice and consent of the Senate to the ratification of these two treaties will add another important building block to the structure of the more peaceful and more civilized world that we want to leave to our grandchildren.

I ask unanimous consent that the articles to which I referred be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follow:

[From the New York Times, Apr. 2, 1986]

C.I.A. CHANGES WAY THAT IT MEASURES  
SOVIET ATOM TESTS

(By Michael R. Gordon)

WASHINGTON, April 1.—The Central Intelligence Agency has changed its procedures for estimating the yield of large Soviet nuclear tests because it has decided its previous estimates were too high. Reagan Administration officials said today.

The officials said the decision to use the new method was made in January by William J. Casey, the Director of Central Intelligence, despite objections from some Defense Department officials.

REAGAN REQUESTS A REPORT

The C.I.A. decision has raised questions about past Administration assertions that the Soviet Union had probably violated the Threshold Test Ban Treaty of 1974, which limits underground tests to no more than 150 kilotons.

Before the C.I.A. decision was made, President Reagan ordered a report on how the change would affect Administration concerns about Soviet Union violations, the Administration officials said. That report has not yet been completed.

Mr. Casey formally approved the change on Jan. 21, officials said. Experts familiar with the change say it will lower estimates of the yield of Soviet tests by about 20 percent.

NO WHITE HOUSE COMMENT

Richard N. Perle, the Assistant Secretary of Defense for International Security Policy, reportedly opposed adopting the recommendations and argued that the issue needed more study. Mr. Perle declined to discuss the issue.

Edward P. Djerejian, a White House spokesman, said the White House had no comment at this time on the decision and its implications.

Administration experts, who asked not to be identified, were divided about whether the change should lead the Administration to drop its allegations against the Soviet Union.

The accusations of Soviet arms control violations has become a central issue in United States-Soviet relations. No significant progress has been made in this area since the November summit meeting President Reagan and Mikhail S. Gorbachev, the Soviet leader.

DELIBERATIONS OVER TREATY

The Reagan Administration is currently deliberating over what actions to take in response to reported arms control violations and in considering whether to modify its commitment not to undercut the 1979 Strategic Arms Limitations Treaty.

The Administration has said that many of the Soviet tests had "likely" violated the threshold treaty, which stipulates that the size of warheads being tested should not exceed 150 kilotons, equal to the explosive force of 150,000 tons of TNT. The Soviet Union has denied violating the treaty.

But Administration and nongovernmental experts have long questioned the accuracy of the intelligence estimates on which those charges were based.

The debate has centered on the seismological procedures for assessing the yield of nuclear tests. The main Soviet test site at Semipalatinsk in Central Asia is older and more geologically stable than the site in Nevada where the United States conducts its tests.

LARGER WAVE IS PRODUCED

Scientists say Soviet explosives produce a larger sound wave through the earth than American tests of the same size.

While Government intelligence estimates of Soviet tests have long been adjusted to take this into account, experts have questioned whether the adjustment factor was large enough.

Officials said the question of changing the United States estimating procedure has been under review and study for years.

NEW STUDIES COME TO LIGHT

The issue came to the fore again last year after several new studies.

Last Oct. 18, a panel of scientists selected by the Defense Advanced Research Projects Agency prepared a classified report that concluded that Government's method for estimating the yield of Soviet explosions was based on faulty assumptions.

The eight-member panel recommended a change in procedures that would lower the estimates.

The panel's report was submitted in late October to the Joint Atomic Energy Intelligence Committee, which issues reports on the size of foreign nuclear explosions. The

committee is made up of members from the military services and intelligence agencies.

#### SECOND STUDY ADDS SUPPORT

Adding support to the scientists' recommendation was a separate study, also completed in October, that was overseen by the Air Force Technical Applications Center, which operates a system of seismic stations to monitor Soviet tests. This study agreed with the finding of the military research agency report.

On Dec. 17, the Joint Atomic Energy Intelligence Committee recommended that the C.I.A. adopt the advice in the report commissioned by the research agency. Officials said the Defense Intelligence Agency disagreed, but was overruled.

The new C.I.A. procedure will be used to estimate the size of explosions in the Shagan River area of Semipalatinsk, where the Soviet Union conducts its largest nuclear tests. Officials said they expected the new estimating procedure to be applied to the next Soviet test in this area. The Soviet Union has not held a nuclear test since last summer, when it declared a unilateral moratorium on tests and asked the United States to join in a total test ban.

What the new procedure means about past Administration allegations about Soviet cheating is unclear.

#### REAGAN SIGNS DIRECTIVE

At the time the Administration prepared its report to Congress charging Soviet arms control violations, President Reagan signed a National Security Decision Directive, NSDD-202, that asked for a report on how the new method would reflect on past United States charges of violations by the Soviet Union.

This is the report that has not been completed, and officials are divided about whether the Russians have been violating the treaty.

Officials said applying the new methods retroactively would still leave about a dozen Soviet tests that appear to be above the limit, although one official said that three or four of these exceeded the limit enough to warrant special concern.

The new procedure also suggests that the largest Soviet blast since the signing of the threshold treaty in 1974 was no higher than 250 kilotons. The Administration has previously said that the Soviet Union has conducted a test that was greater than 300 kilotons.

#### VIOLATIONS STILL LIKELY

One Administration official said the new data still point "in the direction of a likely violation" and noted that the Administration qualified its charges against the Soviet Union.

But another official said the change in the estimating procedure would significantly undercut the charges.

He said that given the uncertainty involved in seismic measurements, it was usual to expect some Soviet tests to appear to exceed the 150-kiloton limit. He added that some American tests that are under that limit may also appear to the Soviets to exceed the limit.

A spokesman for the Arms Control and Disarmament Agency said the agency was "not in a position to put forward any official agency view on this matter at this time."

#### SOME LONGSTANDING QUESTIONS

While officials familiar with the C.I.A. decision declined to be quoted on the record, other experts have openly supported the

view that some estimates of the yield of Soviet tests have been too high.

Roger Batzel, the director of the Lawrence Livermore National Laboratory in California, said in written testimony to Congress yet to be made public that the Soviet Union might be complying with the treaty.

"Based on our assessment of the magnitude for the Soviet test site and the pattern of Soviet testing," he said. "We have concluded that the Soviets appear to be observing a yield limit. Our best estimate of this yield limit is consistent," with the threshold test ban. "However," he added, "the seismic data are subject to considerable statistical uncertainty."

That view differs from officials at the Los Alamos National Laboratory, in New Mexico, who have told Congress that verification of the threshold treaty is highly uncertain.

But a retired admiral, Sylvester R. Foley Jr., the Assistant Secretary for Defense Programs at the Energy Department, which oversees nuclear testing said in an interview that he tended to agree with Mr. Batzel's assessment.

[From the New York Times, Jan. 16, 1987]

#### SCIENTISTS VOICE DOUBTS SOVIET BREACHED TREATY

(By Michael R. Gordon)

WASHINGTON, January 15.—Experts from the United States nuclear laboratories today questioned Administration charges that the Soviet Union has probably exceeded the limits of an unratified 1974 treaty that limits the size of underground nuclear tests.

The Administration charged in a report last year that it was "likely" that Moscow had stopped honoring the treaty, which limits tests to 150 kilotons.

But the Administration's view was disputed today in testimony to the Senate Foreign Relations Committee.

#### 'CONSISTENT' WITH COMPLIANCES

Roger E. Batzel, the director of the Lawrence Livermore National Laboratory, told the Senate Foreign Relations Committee that studies carried out by the lab showed that the pattern of Soviet tests "is consistent" with compliance with the treaty.

Mr. Batzel noted that the laboratory could not rule out the possibility that "a few" Soviet tests may have exceeded the treaty limit.

But he also noted that even if the Soviet Union had conducted a few tests that were over the treaty limit that might not constitute a violation.

The treaty provides that one or two slight unintended breaches per year would not be a violation. This provision was included because there are some technical difficulties in anticipating how large a planned detonation will turn out to be.

#### ROLE OF NATIONAL LABORATORIES

Siegfried S. Hecker, the director of the Los Alamos National Laboratory, also told the Committee that there was not a firm basis to charge that the Soviet Union had exceeded the treaty's limits.

"The view of my colleagues who have worked hard on this problem," he said, is "guilt not proven." He added that the pattern of Soviet tests was consistent both with compliance with the treaties and militarily significant violations of the agreement.

The national laboratories design American nuclear weapons, help test the weapons and work on techniques for measuring the size of those tests.

Paul G. Richards, an expert on seismic measurement, told the committee that the detection of a few Soviet tests over the 150-kiloton limit "does not directly indicate non-compliance," Mr. Richards is a professor of geology at Columbia University who also serves as a consultant to the Government on seismic monitoring issues.

Mr. Richards said that seismic measurements involve some uncertainties, and as a result some American tests that are below the treaty limit of 150 kilotons appear to be over those limits, judging from seismic measurements.

The Reagan Administration is currently preparing an updated version of its annual report on Soviet adherence with arms control treaties.

Since the last report was released the Central Intelligence Agency has decided that previous estimates of Soviet tests have been too high and has lowered them.

A senior Administration official said today that he expected the Administration to stick to its judgment that it is "likely" that Moscow has violated the treaty, despite the C.I.A. revision.

The Administration official took exception to the testimony by the laboratory officials. "We have looked at the same evidence that they have looked at, and have concluded that the Soviet Union is likely violating the treaty."

The Senate Foreign Relations Committee is taking up President Reagan's proposal that the Senate approve the 1974 treaty. Mr. Reagan has proposed that the treaty be approved with the reservation that it not go into effect until Moscow agrees to new monitoring measures to improve verification.

Mr. CRANSTON. Mr. President, I rise today to support the ratification of the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty and the new protocols which accompany them.

As a member of the Foreign Relations and Intelligence Committees, I had the opportunity to review these documents at length. I have long supported these treaties, which were signed in 1974 and 1976, to limit nuclear weapons testing and all other underground peaceful nuclear explosions. My only disappointment is that it has taken so long to move forward on the vital issue of nuclear testing. If not for the reluctance of the Reagan administration to endorse these treaties unequivocally, the full Senate would have ratified these treaties several years ago.

I want to commend the fine work of the Senate Foreign Relations Committee and Senator PELL. These treaties have been a priority for him since he became the chairman of the Foreign Relations Committee, and I commend him for ensuring that they have had ample consideration, and for drafting a resolution of ratification which makes a forceful and bipartisan statement on the commitment of the United States and the Soviet Union to seek the end of all nuclear weapons testing.

We must do our utmost to hold the administration to its commitment in

this regard. Although the modest limits on nuclear testing in these treaties should be applauded as an important step forward, we must not lose sight of the ultimate goal—a comprehensive test ban treaty.

I also want to commend the Intelligence Committee and Senator BOREN for its important work—slogging through the technical details of the protocols—to ensure that the protocols provide adequate mechanisms for the United States to monitor successfully Soviet compliance with the treaties.

The Intelligence Committee raised a number of key issues with the administration during its consideration of the protocols: The lack of a clear plan to fund the verification procedures laid out in the protocols, the intelligence risks involved in the actual inspection process—and the risk of the Soviets exploiting that process—and the very contentious issue of how to make changes to the protocols—an issue both committees have grappled with in the last few months.

The protocols have essentially frozen today's technology into a verification regime. By definition, such detailed protocols needed a provision to give the United States and the Soviet Union the right to modify aspects of these agreements relating to verification. Although this latitude is necessary, given the changes in technology which are bound to take place and the learning curve as future tests are monitored, I share the concern that if we give the administration carte blanche to renegotiate aspects of the protocols, we may be relinquishing the Senate's right to advise and consent.

The administration responded to this and other concerns in a letter to Senator PELL from ACDA Director Ron Lehman on September 14, 1990, and a letter to Senator BOREN from National Security Advisor Brent Scowcroft on September 13, 1990. These letters contain administration assurances about its intent to resolve the issue of finalizing security details and the issue of funding, as well as the commitment that,

The Administration will provide notice concerning any modifications and changes negotiated with the Soviets to the provisions of the TTBT Protocol prior to such modifications or changes becoming binding on the Parties. The objective of this further assurance is to provide notice before an issue becomes "moot."

These assurances adequately address my concerns.

During consideration of the protocols, we heard from a number of witnesses who stated that the detailed protocols were probably not necessary, and may have in fact served to delay the more important talks which need to take place on a comprehensive test ban. Nonetheless, we now have set forth one of the most detailed arms

control verification regimes in order to satisfy even the most skeptical of critics.

I hope that our detailed analysis of the verification procedures has laid to rest allegations of Soviet cheating once and for all. We have learned much about the technology of measuring the magnitude of nuclear tests in the joint verification experiment. We have also learned that earlier measures of so-called Soviet violations may have in fact reflected differences in measuring that can occur at different testing sites. I asked Senator BOREN during his testimony before the Senate Foreign Relations to comment on the issue of Soviet violations, and I would like to read this exchange for the RECORD:

Senator CRANSTON. Is it true that the U.S. Government has concluded that the Soviets may indeed never have violated the [testing] treaty since it was written, subject to ratification?

Senator BOREN. That is correct. There is a high level of possibility that there have been no violations.

Senator CRANSTON. If we are confident, as we are, that we would learn of any significant violation, or might not learn of a very minor one, is there any military rationale for attempting a minor one by the Soviets?

Senator BOREN. Senator Cranston, the experts testified before us and before our committee, and our findings found that there was a very, very small likelihood that there would be sufficient military justification and motivation, given the risks and the down-side costs of attempting an evasion for the Soviet Union to try to undertake such an evasion, and that we would have a very high level of probability of being able to detect any level of violation that would be significant.

In other words, that levels of violation that we might not be able to fully detect would be minor, would be not very much above the 150 kiloton limit, if there were such small violations, and then it would be very unlikely that they would be militarily significant.

Mr. President, let us hope that this administration will follow through on its past commitments—it is imperative that we proceed to the next stage of talks for a comprehensive test ban treaty.

A comprehensive ban on nuclear explosive testing is crucial as we enter the post-cold-war era. Nuclear testing is not a bilateral issue—as we can see in the Persian Gulf, the threats of the future are not from the Soviets.

Nuclear proliferation poses a serious threat to global security. The notion that the men and women of our Armed Forces could have been eyeball to eyeball with an Iraqi force backed up with nuclear weapons should give us all pause. By signing a United States-Soviet ban on nuclear testing—and urging other nations to join us in this effort—we are in a better position to inhibit the research and development of nuclear weapons in the rest of the world.

Mr. President, I urge my colleagues to consent to the ratification of these treaties and their respective protocols.

Mr. DOMENICI. Mr. President, I rise in support of the two treaties before the Senate today, the Threshold Test Ban Treaty [TTBT], limiting nuclear weapons tests to 150 kilotons was signed in 1974. The Peaceful Nuclear Explosions Treaty [PNET] was signed in 1976 to cover 150 kiloton explosions for peaceful purposes.

The treaties were not ratified due to questions about adequate verification. In 1987, nuclear testing talks commenced and led to the signing of verification protocols to the treaties on June 1, 1990. Subsequent to the signing of the protocols the Senate Foreign Relations Committee held hearings and endorsed both treaties and the protocols subject to two resolutions of ratification.

There are three general methods of verification permitted under the two treaties, the most accurate of which is a method known as continuous reflectometry in radius versus time experiments [CORRTEX]. This is an on-site method which measures how quickly the shock wave in the ground crushes a cable buried near the explosive device. I am very proud that this method was developed by the Los Alamos National Laboratory, which is located in my State of New Mexico. Los Alamos National Laboratory is truly on the cutting edge of technology, and we are very proud to know that they are contributing toward making this treaty a truly valuable one. President Reagan introduced Americans to the Russian phrase "Trust but verify," and we in New Mexico are proud that Los Alamos will be taking the lead for the United States in the vital area.

The first resolution contains five safeguards designed to ensure the U.S. ability to respond to unexpected political or technical events in the future. The second resolution concerns follow-on negotiations toward a comprehensive test ban.

While I support these resolutions and commend my fellow Senators for their diligent work on these important treaties I do have reservations about a comprehensive test ban. So long as U.S. national security is dependent on a nuclear deterrent capability, nuclear testing will be needed to ensure that capability. Should the United States redefine its national security policy and reduce its dependency on nuclear weapons, then it would be appropriate to focus on further limiting or even eliminating nuclear testing.

I believe that further reductions in nuclear testing yield limits would eliminate our ability to maintain an effective and modern nuclear deterrent. Major reductions in the yield level of nuclear tests would preclude

confidence testing of the vast majority of stockpile weapons.

Nuclear testing is the only way to ensure the safety, reliability, and survivability of nuclear weapons. No amount of calculation and/or simulation of nuclear effects has been able to replace actual nuclear testing either as a means to discovering serious problems with our nuclear weapons, or later as a means of confirming that they have been dealt with successfully. The best way to avoid complacency is to maintain testing programs which continually produce improvements in safety.

Before closing, Mr. President, I would like to note that implementation of these treaties will not be costless. At my request, the Congressional Budget Office has estimated the costs of verification and compliance of pending arms treaties. It will be released in the coming weeks.

CBO estimates that the one-time costs associated with the treaties will be between \$85 and \$200 million. The annual recurring costs will be between \$50 and \$100 million. These expenditures are necessary. The implementation of these treaties will build confidence and enhance arms control stability.

Finally, Mr. President, I would like to extend my personal congratulations to Paul Robinson, formerly of LANL, who led the team of negotiators that so successfully negotiated these two treaties. They have done a great service to the United States in furthering peace and security throughout the world.

Mr. PELL. I am prepared to cede back the remainder of my time.

Mrs. KASSEBAUM. Mr. President, I speak for the ranking member, Senator HELMS, of the Foreign Relations Committee, who is asking that all the time be yielded back on this side as well.

The PRESIDING OFFICER. All time having been yielded back on both sides, the question is on agreeing to the Resolution of Ratification, as amended by the committee reported declarations, to Executive Calendar No. 21, the treaty with the Soviet Union on the limitation of underground nuclear weapons tests, and the Resolution of Ratification to Executive Calendar No. 22, the treaty with the Soviet Union on underground nuclear explosions for peaceful purposes. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON], is necessarily absent.

I further announce that the Senator from New Hampshire [Mr. RUDMAN] is absent due to a death in the family.

The PRESIDING OFFICER (Mr. ROBB). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 98, nays 0, as follows:

[Rollcall Vote No. 249 Ex. N(A), 94-Z; No. 250 Ex. N(B), 94-Z]

## YEAS—98

Adams	Ford	McCain
Akaka	Fowler	McClure
Armstrong	Garn	McConnell
Baucus	Glenn	Metzenbaum
Bentsen	Gore	Mikulski
Biden	Gorton	Mitchell
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boren	Grassley	Nickles
Boschwitz	Harkin	Nunn
Bradley	Hatch	Packwood
Breaux	Hatfield	Pell
Bryan	Heflin	Pressler
Bumpers	Helms	Pryor
Burdick	Helms	Reid
Burns	Hollings	Riegle
Byrd	Humphrey	Robb
Chafee	Inouye	Rockefeller
Coats	Jeffords	Roth
Cochran	Johnston	Sanford
Cohen	Kassebaum	Sarbanes
Conrad	Kasten	Sasser
Cranston	Kennedy	Shelby
D'Amato	Kerrey	Simon
Danforth	Kerry	Simpson
Daschle	Kohl	Specter
DeConcini	Lautenberg	Stevens
Dixon	Leahy	Symms
Dodd	Levin	Thurmond
Dole	Lieberman	Wallop
Domenici	Lott	Warner
Durenberger	Lugar	Wirth
Exon	Mack	

## NAYS—0

## NOT VOTING—2

Rudman  
Wilson

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the resolutions of ratification are agreed to.

The resolutions of ratification agreed to are as follows:

*Resolved (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to ratification of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Underground Nuclear Weapon Tests, signed in Moscow on July 3, 1974, and the Protocol thereto, signed in Washington on June 1, 1990, subject to—

I. The declaration that to ensure the preservation of a viable deterrent there should be safeguards to protect against unexpected political or technical events affecting the military balance; that such safeguards, consistent with national interests and resources, should be an important ingredient in decisions on national security programs and allocation of available resources; and that such safeguards should be as follows:

## SAFEGUARD "A"

The conduct, within the constraints of treaties on nuclear testing, of effective and continuing underground nuclear test programs designed to add to our knowledge and improve our weapons in all areas of significance to our military posture for the future.

## SAFEGUARD "B"

The maintenance of modern nuclear laboratory facilities and programs in theoretical and exploratory nuclear technology which will attract, retain, and ensure the continued application of our human scientific resources to those programs on which continued progress in nuclear technology depends.

## SAFEGUARD "C"

The maintenance of the basic capability to resume nuclear test activities prohibited by treaties should the United States cease to be bound to adhere to such treaties.

## SAFEGUARD "D"

In conjunction with an effective verification program, the conduct of comprehensive and continuing research and development programs to improve our treaty monitoring capabilities and operations.

## SAFEGUARD "E"

The continuing development of a broad range of intelligence gathering and analytical capabilities and operations to ensure accurate and comprehensive information on worldwide nuclear arsenals, nuclear weapons development programs, and related nuclear programs.

II. The declaration that, mindful of the commitment of the United States, the Soviet Union and Great Britain in the Limited Test Ban Treaty of 1963 and in the Non-Proliferation Treaty of 1968 to seek the discontinuance of all test explosions of nuclear weapons for all time and of the commitment which shall be legally binding on the Parties upon ratification of the Treaty on the Limitation of Underground Nuclear Weapons Tests to "continue their negotiations with a view toward achieving a solution to the problem of the cessation of all underground nuclear weapon tests," the United States shares a special responsibility with the Soviet Union to continue the bilateral Nuclear Testing Talks to achieve further limitations on nuclear testing, including the achievement of a verifiable comprehensive test ban.

*Resolved, (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to ratification of the Treaty Between the United States of America and the Union of Soviet Socialist Republics on Underground Nuclear Explosions for Peaceful Purposes, signed in Washington and Moscow on May 28, 1976, and the Protocol thereto, signed in Washington on June 1, 1990, and an Agreed Statement relating to paragraph 2(c) of Article III of the treaty, signed on May 13, 1976.

Mr. PELL. Mr. President, I move to reconsider the vote.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, I ask unanimous consent that the President be immediately notified of the Senate action.

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

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Without objection, the Senate will resume the consideration of legislative business.

## RURAL DEVELOPMENT, AGRICULTURE, AND RELATED AGENCIES APPROPRIATIONS ACT, 1991

The PRESIDING OFFICER. Under the previous order the clerk will

report H.R. 5268, the Agriculture Appropriations Act.

The bill will be stated by title.

The clerk read as follows:

A bill (H.R. 5268) making appropriations for Rural Development, Agriculture, and Related Agencies programs for the fiscal year ending September 30, 1991, and for other purposes.

The Senate resumed the consideration of the bill.

Mr. GORTON. Mr. President, the United States has the safest, most abundant food supply in the world. This situation exists in part due to the importance we place on research in agriculture. H.R. 5268, the agriculture and rural development appropriations bill for fiscal year 1991, proposes a research program in agriculture that will help ensure that U.S. agriculture remains productive and healthy. I support this bill and want to thank the chairman and ranking member of the Agriculture Subcommittee for their work and attention to projects that are important to Washington State.

The 1991 agriculture appropriations bill provides funding for construction of research facilities in Yakima, Pullman, and the Tri-Cities. In addition, the bill also includes funds for new and continuing research on numerous Washington State crops, food safety, agriculture and forest products trade, and animal health. In total, the 1991 agriculture appropriations bill provides over \$9 million in direct funds to Washington State, and indirectly, over \$17 million for the State of Washington.

I am pleased that the committee has included funding for construction of a replacement facility in Yakima devoted to tree fruit research. The Yakima ARS facility has a vital responsibility to the entire Nation's fruit and vegetable industry. The President recognized the importance of this research laboratory when, at my request, he included \$10 million in his budget to complete construction of this lab. While the \$5 million in the committee's bill will move the project forward, I am disappointed that only half the funds necessary to start and complete construction were provided. I am hopeful construction of this long-awaited project can begin and the remaining funds necessary for its completion are appropriated next year.

The bill also provides \$1 million for agricultural and forestry trade. The financing provided to the University of Washington and Washington State University for the CINTRAFOR and IMPACT programs, respectively, will allow these trade centers to continue identifying and promoting export opportunities.

Among the oldest food cultivated are fresh and dry peas and lentils. The bill provides \$500,000 to establish centers of excellence on a regional, national, and international basis to focus on

multidisciplinary research on high priority issues affecting food legumes. Research on peas and lentils will benefit farmers, consumers, and the environment.

The agriculture appropriations bill also provides \$1 million for the construction of an animal disease biotechnology facility Washington State University. This facility will serve to link the veterinary hospital with the Veterinary Sciences Building at Washington State University. The House has provided 41.4 million for this project and I encourage the agriculture appropriations conferees to support the House's funding level.

I am pleased that the committee has allocated funds for the Northwest Small Fruit Research Center. The importance of research on small fruits is recognized in the farm bill and a center for research on small fruits grown in the Northwest has been singled out by the Agriculture Committee as a USDA priority. The bill provides \$200,000 for initial construction of this facility.

I concur with the committee's recommendation to provide funding for the establishment of a technology transfer site at Central Washington University in Ellensburg, WA. The \$1 million provided by the committee will allow the technology transfer site to become a part of a nationwide effort to provide geographic information technology to local units of Government.

The reregistration of minor-use pesticides is essential for the continued production of almost all the fruits, vegetables and herbs grown in Washington State. I am pleased that the committee has provided partial funding for the construction of a pesticide research lab in Tri-Cities. This lab will assist agriculture throughout the Northwest by providing resources for residue testing research.

Among several other essential agriculture programs for which I requested funding, I am pleased that research for potatoes, Russian wheat aphid, and Steep II received appropriations.

Finally, the importance of agricultural trade has never been greater. I am pleased that the committee has funded the Targeted Export Assistance [TEA] Program at \$200 million and removed the limits on the Export Assistance Program [EEP]. Both programs are paramount to overcoming unfair trading practices of our agricultural competitors.

Mr. President, this is an important bill, not just for farmers, but for all Americans. I again would like to thank the committee and the subcommittee for its consideration of my requests. I support this bill and urge its adoption.

INCREASED FUNDING FOR THE SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

Mr. CHAFEE. Mr. President, I would like to thank the members of the Appropriations Agriculture Subcommittee for the strong support they have shown in this bill for a very important program: the Special Supplemental Food Program for Women, Infants, and Children, or WIC Program.

As my colleagues know, WIC is one of the Federal Government's best, and most cost-effective, programs. The WIC Program provides food vouchers to low-income mothers and their children who are at risk of serious nutritional deficiencies. This special, nutritious food includes milk, infant formula, orange and other juices, cheese, fruit, and cereals.

This simple idea—making sure that mothers and children receive good, basic, nutritious foods and avoid nutritional deficiencies—is remarkably effective. Studies have shown that every \$1 invested in WIC saves \$3 in long-term health care costs and developmental problems.

Unfortunately, this program serves only about half of the eligible low-income, at-risk population. This gap in coverage represents a considerable missed opportunity, considering WIC's proven effectiveness for an especially vulnerable population.

That is bad news. There is much to be gained by expanding WIC to reach more of the eligible population. Over the past years, I have joined by colleague Senator DeCONCINI in spearheading an annual drive to make slight but steady increases in WIC Program funding. So far, these efforts have been successful. In 1989, 71 of our colleagues joined us in requesting an additional \$150 million over current services for 1990 WIC funding. As a result, WIC was eventually funded at \$2.13 billion.

While last year's funding for WIC went far, much of its benefit was inadvertently counteracted by a new problem; unexpected rises in food inflation. In June, the National Association of WIC Directors revealed that recent food package inflation will have a significant impact on their ability to serve eligible mothers and children. For the greater part of 1990, many States have reported food inflation of greater than 7 percent, much higher than the USDA-projected rate of 4.5 percent. That rise in inflation means a significant gap in WIC coverage—since dollars won't stretch as far; WIC case-loads must be reduced.

Let me tell you what has happened in my home State of Rhode Island. In this fiscal year, our WIC Program served 15,700 women, infants, and children. But because Rhode Island's food package inflation jumped to 12 percent, 500 WIC participants were taken

off the State's caseload. That is 500 women, infants, and children eligible for WIC who lost out because of inflation. So WIC funding is especially vital this year.

And this year, we were able to garner even more Senate support for WIC. In July, 80 Senators joined Senator DeCONCINI and me once again to request \$150 million over current services for WIC. And both the House and Senate committees have responded by allocating \$2.35 billion for the WIC Program. The increase of \$234 million is \$10 million less than our request, but it is also the single largest addition to WIC we have seen in recent years.

I congratulate the members of the Appropriations Committee for moving to expand WIC in fiscal year 1991. Increasing funding for WIC is the right thing to do—not only from the humanitarian point of view, but also from the most hard-nosed, cost-versus-benefit point of view. WIC is one Federal program that saves more than it spends, and deserves every bit of support we can give it.

Mr. SIMPSON. I rise to thank the members of the Agriculture Appropriations Subcommittee for including a provision in this bill which provides for a feasibility study for an environmental simulation facility at the University of Wyoming. The proposed facility is very important to the State of Wyoming, to various Federal agencies, and to the private sector. I am pleased that the Senate has taken this important step toward making this facility a reality.

This computer controlled facility is designed to use biological and technical approaches and modeling to find the most appropriate and efficient methods for vital environmental clean-up operations. By identically duplicating any particular ecosystem at any given point in time, this one-of-a-kind prototype laboratory has the potential to save precious time and money by proving the merits of any one clean-up technology. Different technologies can be experimented with—all in a laboratory setting—and we can then determine the pros and cons at that moment. We will be able to make better decisions on ways to protect and enhance our environment and work toward resolving critical global environmental issues such as acid rain, contaminated surface and ground water, and the disposal of solid waste—thus this facility is especially important. I am very pleased to be a part of such a truly important project.

This feasibility study is but the first step in the eventual construction and establishment of the environmental simulation facility. I will continue to work diligently with my colleagues and the other members of the Wyoming delegation toward this goal.

My special thanks to my colleagues QUENTIN BURDICK, JIM MCCLURE, THAD

COCHRAN, and CHUCK GRASSLEY who have so graciously assisted me in this matter. I also thank their staffs who took the time to listen and understand the importance of this project. I do look forward to working with the committee members in the future with the thrust toward obtaining the sufficient funding to make this fine facility a reality.

Mr. SIMON. Mr. President, I ask the Senator from North Dakota, Mr. BURDICK, if he would enter into a colloquy.

Mr. BURDICK. I would be pleased to enter into a colloquy with my good friend from Illinois.

Mr. SIMON. I would like to thank my distinguished colleague from North Dakota for his support and cooperation in including language in the Agriculture and Related Agencies Appropriations Report 101-468 for a new biotechnology center at Northwestern University. As you know, Northwestern University's outstanding record of research accomplishments and strength in biotechnology have placed it at the forefront of life sciences research. An understanding of basic biological mechanisms provides the foundation for future advances in agriculture, from improving crop yields to producing healthier and faster growing animals. Modern biotechnology developments have included the identification and structural characterization of critical components in complex biological systems, the transfer of genes between organisms, and the production of rare hormones and enzymes in unlimited quantities. These types of investigations represent the primary focus of research to be accomplished by the biotechnology center.

The proposed biotechnology center will be located in Evanston, IL, at a site surrounded by 39 biotechnology companies in the Chicago area and adjacent to the Northwestern University/Evanston Research Park. Establishment of the proposed center will promote corporate investment in life sciences research and accelerate the transfer of new technologies to the Nation's agricultural enterprise. The university has an excellent record of technology transfer in biotechnology, both through patents and licensing of research and through the placement of students trained at the undergraduate, graduate, and postdoctoral levels into agriculture-related industries. Commercialization of basic research discoveries in biotechnology will continue to contribute to the profitability of agriculture-related industries in the United States and to improvements in human life.

Mr. BURDICK. I agree with my colleague that the proposed biotechnology center at Northwestern University could make an invaluable contribution toward addressing the new challenges facing the agricultural industry in our country. It appears that the center's

mission is consistent with current USDA research objectives in such areas as animal growth, plant productivity, and detoxification of our environment.

Mr. SIMON. The Senator is correct. This new center will also create a research environment that more effectively stimulates biotechnology development; that provides a major educational focus for the training of biotechnology scientists; and that encourages the transfer of technology to regional and national agriculture-related industries.

Mr. BURDICK. I can assure my colleague from Illinois that the committee will make every effort, at the appropriate time, to provide funding for such a vital center.

Mr. SIMON. I thank the Senator for his interest in this issue.

Mr. GRASSLEY. Mr. President, last Thursday, September 20, the Senate debated the bill which appropriates funds for Rural Development, Agriculture, and Related Agencies for the fiscal year 1991. A provision in the Senate committee report limiting the administrative expenses of the Farm Credit Administration [FCA] has since been brought to my attention.

I would like to take this opportunity to clarify the committee's intent in relation to the explanatory language and engage in a brief colloquy with the distinguished chairman and ranking member of the subcommittee.

Pages 130 and 131 of the Senate committee report set a limit of \$38,834,000 for administrative expenses from the revolving fund of the Farm Credit Administration. I have no question or concern about that limitation. The accompanying language with respect to the level of assessment that FCA can levy against the Federal Agricultural Mortgage Corporation [Farmer Mac], however, might lend itself to misinterpretation. The report may be read that FCA could, perhaps even should, dramatically increase its current level of assessment against Farmer Mac for the costs of examination relating to safety and soundness.

Would the chairman of the subcommittee, Senator BURDICK, yield for a few questions on the subcommittee's intent with regard to this language in the committee report?

Mr. BURDICK. I would be pleased to respond to the question of the Senator from Iowa.

Mr. GRASSLEY. I thank the Senator. It is always a pleasure to address the senior Senator from North Dakota.

Is it the intent of the subcommittee to, in any way, change the legal basis, as established in the Agricultural Credit Act of 1987, Public Law 100-233, on which the Farm Credit Administration is permitted to levy assess-

ments against Farmer Mac for its examinations?

Mr. BURDICK. No, it was not the subcommittee's intent, nor was it the fill committee's intent, to change the legal authority of FCA for its assessments of Farmer Mac, as set forth in that act and its legislative history. As the Senator and I both know, the Agricultural Credit Act requires FCA to assess Farmer Mac for the costs of any regulatory activity conducted under that act.

Mr. GRASSLEY. I thank him for that clarification. If I may pursue this just a little further with the esteemed chairman, I would like to better understand the intent of the \$908,000 cap placed on FCA's assessment of Farmer Mac. Considering the \$37,926,000 cap on FCA's assessments to Farm Credit System institutions, might it not be possible that FCA will be motivated to maximize the funds it can assess Farmer Mac, in order to prevent a reduction in its available operating funds?

I am concerned about the possibility that Farmer Mac might be burdened with an excessive examination fee from FCA, perhaps coming close to the \$900,000 cap specified in the report, when Farmer Mac is still in the early stages of implementation. It is my understanding that \$900,000 represents nearly one-third of the firm's total operating budget and would quite probably cause insurmountable financial havoc. Like many other Members of this body, I am anxious for Farmer Mac to get up and running. It would be most disappointing, to put it mildly, if Farmer Mac were forced to liquidate, just after certifying its first pooler, in order to pay the examination assessment.

Mr. BURDICK. I understand the Senator's concern. The subcommittee, however, expects FCA to adhere strictly to the provisions of the 1987 Agricultural Credit Act in determining the level of assessment for examinations of Farmer Mac.

Mr. GRASSLEY. I would like to ask my colleague, the ranking member of the subcommittee, to comment on this matter, also.

Mr. COCHRAN. I would be glad to respond to the concerns of the Senator from Iowa.

To reiterate the comments of the good chairman, it is certainly not the subcommittee's intent to change FCA's method of assessment to Farmer Mac or to dramatically increase that assessment. I have a copy of the billing FCA gave to Farmer Mac for its most recent examinations. That bill is for \$35,000. While it may be appropriate to expect an increase in the examination costs as Farmer Mac becomes more fully implemented, there is no reason to assume that the assessment should approximate the cap of \$908,000.

In fact, the purpose of the committee report was so much to affect the specific amount of FCA's assessment to Farmer Mac as it is to assure that the costs incurred by FCA in connection with Farmer Mac are not passed on to the System banks. Simply, FCA cannot assess Farmer Mac more than \$908,000. Obviously, FCA should assess Farmer Mac significantly less than \$908,000, assuming the agency's costs associated with Farmer Mac will be much lower.

Mr. GRASSLEY. I thank both Senators COCHRAN and BURDICK. Their clarification of the committee report has been most helpful.

Mr. COCHRAN. Mr. President, a matter involving the Food and Drug Administration [FDA] was brought to my attention after the Agriculture appropriations bill was reported out of committee and after floor debate had been completed. However, I believe it is a matter that warrants some attention and clarification.

It is my understanding that the FDA recently took action allowing for the importation of a processed seaweed known as Philippine natural grade under the regulation that governs the manufacture of carrageenan, a food additive that has been used widely for many years. We have been advised that there were no toxicological studies done on what appears to be a new food additive. I am told that this product is manufactured in a manner other than as spelled out in the regulation defining carrageenan.

A number of Members of the House and Senate have expressed their concern to the FDA and have requested FDA to advise them of the criteria that was used in making this determination.

In view of this situation, I hope the FDA will reexamine the distinctions between carrageenan and Philippine natural grade in order to ensure that the latter product is safe and properly labeled for consumer use. I look forward to receiving the agency's response.

Mr. BURNS. Mr. President, I rise in support of the Senate appropriations package for agriculture for fiscal year 1991. This is an important bill for Montana.

Most importantly, the bill contains funding for the Federal Crop Insurance Program. The House had earlier zeroed this important program out. I urge conferees to go with the Senate on this.

The package also contains funding for a bioscience building at Montana State University in Bozeman, MT. Biological controls are the future of pest control in agriculture. We in the Northern Plains need a facility that can concentrate on the kinds of insects, fungus, and other diseases that plague our farmers and ranchers. The bioscience building at Bozeman will

provide that cutting edge technology that will allow our producers to compete.

In addition, there is funding for drought research on range grasses at Fort Keogh Range Research Station in Miles City, MT. The Northern Plains have been the subject of continued drought. In fact, the drought of nearly a decade is continuing in parts of my State and neighboring States. Short grass has saved many a ranch family in my neck of the woods. We need to know more about just what that grass can support under the stress of drought.

I am also pleased to see funding for safflower research in Montana. This alternative crop could provide a new direction for Montana producers and needs to be fully examined and developed. In addition, the bill contains funding for barley research at Montana State University. This important program is modest in size but its impact can be enormous. There is also funding for soils and water research in the research facility in Sidney, MT.

All of us need to work to balance the budget. And I share that concern. These programs are important to my State and to agriculture. They will repay their cost manifold. The taxpayer can be sure of that.

Mr. President, I yield the floor.

Mr. KERRY. Mr. President, I rise today in opposition to the Senate Agriculture appropriations bill. The \$52 billion price tag is outrageous, especially at a time when we have a massive Federal budget deficit and essential programs are facing significant cuts due to the possibility of a sequester.

During the farm bill debates, I tried to scale back agricultural programs to reflect today's budgetary realities. I supported an amendment to limit subsidies to wealthy farmers. This amendment alone would have saved American taxpayers \$1 billion. Another amendment I supported would have given smaller subsidies to larger agricultural producers as an attempt to address some of the inequities of the system.

I voted to reduce or eliminate specific commodity programs. I cosponsored an amendment to cut sugar loan rates from 18 to 16 cents, saving consumers \$200 to \$300 million a year and opening the United States to foreign markets. I voted to abolish an archaic peanut quota system that grants a chosen few who inherited quotas the right to farm at heavily supported prices. And I cosponsored an amendment to phase out the honey support system that gave 2,100 beekeepers \$385 million in Federal funds over the past 5 years.

The Senate for the most part rejected these attempts to eliminate or reduce these well entrenched pro-

grams. Few changes were made to address the high costs and inequities of the agricultural system. Only the very small honey program was cut, at a modest savings to the taxpayer.

I would like to emphasize, Mr. President, that there are some programs in this bill that I support and am pleased to see funded at higher levels this year. This is especially true of the child nutrition programs and Women, Infants and Children [WIC]. Important environmental programs, such as the Conservation Reserve Program, are included. The bill funds programs to reduce water pollution from agricultural activities, although I think it is unfortunate that the \$10.4 million funding level is less than the \$15.5 million requested by the administration. The bill would also provide for Farms for the Future, a very important program to Massachusetts.

But overall, this bill does not make the tough choices that are needed to lower our deficit and reduce the budget. The Senate bill is \$1.9 billion more costly than the House version and is an increase of \$7 billion over the 1990 appropriation. The \$52 billion price tag is more than I or the American public can support.

**AGRICULTURAL APPROPRIATIONS GOOD, NEEDED BUT TOO COSTLY**

Mr. PELL. Mr. President, I voted against H.R. 5268, the Agricultural appropriations bill despite my knowledge that there is much that is good and much that is needed in this measure.

Among these good and needed provisions, I count Federal funds for architectural and engineering work on buildings to house the Coastal Institute on Narragansett Bay at the University of Rhode Island.

I want to commend the Agricultural Appropriations Subcommittee and, particularly its chairman, the senior Senator from North Dakota [Mr. BURDICK], for their hard work and the many excellent provisions of this measure.

As I have in the past, however, I found that the total Agricultural appropriations bill was just too costly.

The PRESIDING OFFICER. The bill has been read the third time.

Mr. COCHRAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the bill pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

I further announce that the Senator from New Hampshire [Mr. RUDMAN] is absent due to a death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 79, nays 19, as follows:

[Rollcall Vote No. 251 Leg.]

**YEAS—79**

Adams	Exon	Lugar
Akaka	Ford	McCain
Baucus	Fowler	McClure
Bentsen	Garn	McConnell
Bingaman	Glenn	Mikulski
Bond	Gore	Mitchell
Boren	Gorton	Nickles
Boschwitz	Graham	Nunn
Breaux	Gramm	Packwood
Bumpers	Grassley	Pressler
Burdick	Harkin	Pryor
Burns	Hatch	Riegle
Byrd	Hatfield	Robb
Chafee	Heflin	Rockefeller
Coats	Heinz	Sanford
Cochran	Hollings	Sarbanes
Cohen	Inouye	Sasser
Conrad	Jeffords	Shelby
Cranston	Johnston	Simon
D'Amato	Kassebaum	Simpson
Danforth	Kasten	Specter
Daschle	Kennedy	Stevens
DeConcini	Kerrey	Symms
Dixon	Kohl	Thurmond
Dole	Leahy	Warner
Domenici	Levin	
Durenberger	Lott	

**NAYS—19**

Armstrong	Kerry	Pell
Biden	Lautenberg	Reid
Bradley	Lieberman	Roth
Bryan	Mack	Wallop
Dodd	Metzenbaum	Wirth
Helms	Moynihan	
Humphrey	Murkowski	

**NOT VOTING—2**

Rudman Wilson

So the bill (H.R. 5268), as amended, was passed.

Mr. BURDICK. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. COCHRAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BURDICK. Mr. President, I move that the Senate insist upon its amendments to H.R. 5268 and request a conference with the House on the disagreeing votes of the two Houses and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer [Mr. ROBB] appointed Mr. BURDICK, Mr. BUMPERS, Mr. HARKIN, Mr. ADAMS, Mr. FOWLER, Mr. KERREY, Mr. BYRD, Mr. COCHRAN, Mr. McCLURE, Mr. KASTEN, Mr. SPECTER, Mr. GRASSLEY, and Mr. HATFIELD conferees on the part of the Senate.

**FAMILY PLANNING AMENDMENTS OF 1989**

The PRESIDING OFFICER. Under the previous order, the Senate will now return to consideration of S. 110, which the clerk will report.

The bill clerk read as follows:

A bill (S. 110) to revise and extend the programs of assistance under title X of the Public Health Service Act.

The Senate continued with the consideration of the bill.

**SECURITIES MARKETS REFORM ACT**

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 604, H.R. 3657, a bill to provide additional authorities to the SEC to prevent disruptions to the Nation's securities markets.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 3657) to amend the Securities Exchange Act of 1934 to provide additional authorities to the Securities and Exchange Commission to prevent disruptions to the Nation's securities markets.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

**AMENDMENT NO. 2880**

(Purpose: To provide a complete substitute)

Mr. DODD. Mr. President, I send a substitute amendment to the desk on behalf of myself, Senator HEINZ, Senator RIEGLE, and Senator GARN.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Connecticut [Mr. DODD], for himself, Mr. HEINZ, Mr. RIEGLE, and Mr. GARN, proposes an amendment numbered 2880.

Mr. DODD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the amendment in the nature of a substitute.

The amendment (No. 2880) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment, in the nature of a substitute, and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 3657), as amended, was passed.

Resolved, That the bill from the House of Representatives (H.R. 3657) entitled "An Act to amend the Securities Exchange Act of 1934 to provide additional authorities to the Securities and Exchange Commission to prevent disruptions to the Nation's securities markets", do pass with the following amendments:

Strike out all after the enacting clause and insert:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Market Reform Act of 1990".

**SEC. 2. EMERGENCY AUTHORITY; TRADING HALTS.**

Section 12(k) of the Securities Exchange Act of 1934 (15 U.S.C. 781(k)) is amended to read as follows:

**"(k) TRADING SUSPENSIONS; EMERGENCY AUTHORITY.—**

**"(1) TRADING SUSPENSIONS.—**If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—

**"(A)** summarily to suspend trading in any security (other than an exempted security) for a period not exceeding 10 business days, and

**"(B)** summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding 90 calendar days.

The action described in subparagraph (B) shall not take effect unless the Commission notifies the President of its decision and the President notifies the Commission that the President does not disapprove of such decision.

**"(2) EMERGENCY ORDERS.—(A)** The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under this title, as the Commission determines is necessary in the public interest and for protection of investors—

**"(i)** to maintain or restore fair and orderly securities markets (other than markets in exempted securities); or

**"(ii)** to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities).

**"(B)** An order of the Commission under this paragraph 2 shall continue in effect for the period specified by the Commission, and may be extended, except that in no event shall the Commission's action continue in effect for more than 10 business days, including extensions. In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code, or with the provisions of section 19(c) of this title.

**"(3) TERMINATION OF EMERGENCY ACTIONS BY PRESIDENT.—**The President may direct that action taken by the Commission under paragraph (1)(B) or paragraph (2) of this subsection shall not continue in effect.

**"(4) COMPLIANCE WITH ORDERS.—**No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside as provided in paragraph (5) of this subsection or has ceased to be effective upon direction of the President as provided in paragraph (3).

**"(5) LIMITATIONS ON REVIEW OR ORDERS.—**An order of the Commission pursuant to this subsection shall be subject to review only as provided in section 25(a) of this title. Review shall be based on an examination of all the information before the Commission at the time such order was issued. The reviewing court shall not enter a stay, writ of

mandamus, or similar relief unless the court finds, after notice and hearing before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

**"(6) DEFINITION OF EMERGENCY.—**For purposes of this subsection, the term 'emergency' means a major market disturbance characterized by or constituting—

**"(A)** sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets, or

**"(B)** a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of securities, or a substantial threat thereof."

**SEC. 3. LARGE TRADER REPORTING.**

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

**"(h) LARGE TRADER REPORTING.—**

**"(1) IDENTIFICATION REQUIREMENTS FOR LARGE TRADERS.—**For the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value or exercise value and for the purpose of otherwise assisting the Commission in the enforcement of this title, each large trader shall—

**"(A)** provide such information to the Commission as the Commission may by rule or regulation prescribe as necessary or appropriate, identifying such large trader and all accounts in or through which such large trader effects such transactions; and

**"(B)** identify, in accordance with such rules or regulations as the Commission may prescribe as necessary or appropriate, to any registered broker or dealer by or through whom such large trader directly or indirectly effects securities transactions, such large trader and all accounts directly or indirectly maintained with such broker or dealer by such large trader in or through which such transactions are effected.

**"(2) RECORDKEEPING AND REPORTING REQUIREMENTS FOR BROKERS AND DEALERS.—**Every registered broker or dealer shall make and keep for prescribed periods such records as the Commission by rule or regulation prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, with respect to securities transactions that equal or exceed the reporting activity level effected directly or indirectly by or through such registered broker or dealer of or for any person that such broker or dealer knows is a large trader, or any person that such broker or dealer has reason to know is a large trader on the basis of transactions in securities effected by or through such broker or dealer. Such records shall be available for reporting to the Commission, or any self-regulatory organization that the Commission shall designate to receive such reports, on the morning of the day following the day the transactions were effected, and shall be reported to the Commission or a self-regulatory organization designated by the Commission immediately upon request by the Commission or such a self-regulatory organization. Such records and reports shall be in a format and transmitted in a manner prescribed by the Commission (including, but not limited to, machine readable form).

**"(3) AGGREGATION RULES.—**The Commission may prescribe rules or regulations governing the manner in which transactions and accounts shall be aggregated for the purpose

of this subsection, including aggregation on the basis of common ownership or control.

**"(4) EXAMINATION OF BROKER AND DEALER RECORDS.—**All records required to be made and kept by registered brokers and dealers pursuant to this subsection with respect to transactions effected by large traders are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

**"(5) FACTORS TO BE CONSIDERED IN COMMISSION ACTIONS.—**In exercising its authority under this subsection, the Commission shall take into account—

**"(A)** existing reporting systems;

**"(B)** the costs associated with maintaining information with respect to transactions effected by large traders and reporting such information to the Commission or self-regulatory organizations; and

**"(C)** the relationship between the United States and international securities markets.

**"(6) EXEMPTIONS.—**The Commission, by rule, regulation, or order, consistent with the purposes of this title, may exempt any person or class of persons or any transaction or class of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection, and the rules and regulations thereunder.

**"(7) AUTHORITY OF COMMISSION TO LIMIT DISCLOSURE OF INFORMATION.—**Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be kept or reported under this subsection. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

**"(8) DEFINITIONS.—**For purposes of this subsection—

**"(A)** the term 'large trader' means every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level;

**"(B)** the term 'publicly traded security' means any equity security (including an option on individual equity securities, and an option on a group or index of such securities) listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated interdealer quotation system;

**"(C)** the term 'identifying activity level' means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time

interval during which such transactions shall be aggregated;

"(D) the term 'reporting activity level' means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated; and

"(E) the term 'person' has the meaning given in section 3(a)(9) of this title and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank."

#### SEC. 4. RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following:

"(h) RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.—

"(1) OBLIGATIONS TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—Every person who is (A) a registered broker or dealer, or (B) a registered municipal securities dealer for which the Commission is the appropriate regulatory agency, shall obtain such information and make and keep such records as the Commission by rule prescribes concerning the registered person's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and the customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person, including its net capital, its liquidity, or its ability to conduct or finance its operations. The Commission, by rule, may require summary reports of such information to be filed with the Commission no more frequently than quarterly.

"(2) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—If, as a result of adverse market conditions or based on reports provided to the Commission pursuant to paragraph (1) of this subsection or other available information, the Commission reasonably concludes that it has concerns regarding the financial or operational condition of (A) any registered broker or dealer, or (B) any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, the Commission may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

"(3) SPECIAL PROVISIONS WITH RESPECT TO ASSOCIATED PERSONS SUBJECT TO FEDERAL BANKING AGENCY REGULATION.—

"(A) COOPERATION IN IMPLEMENTATION.—In developing and implementing reporting requirements pursuant to paragraph (1) of this subsection with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Commission shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Commission under this subsection that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. The Commission shall, at the request of the Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

"(B) USE OF BANKING AGENCY REPORTS.—A registered broker, dealer, or municipal securities dealer shall be in compliance with any recordkeeping or reporting requirement adopted pursuant to paragraph (1) of this subsection concerning an associated person that is subject to examination by or reporting requirements of a Federal banking agency if such broker, dealer, or municipal securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 8 of the Bank Holding Company Act of 1956. The Commission may, however, by rule adopted pursuant to paragraph (1), require any broker, dealer, or municipal securities dealer filing such reports with the Commission to obtain, maintain, or report supplemental information if the Commission makes an explicit finding that such supplemental information is necessary to inform the Commission regarding potential risks to such broker, dealer, or municipal securities dealer. Prior to requiring any such supplemental information, the Commission shall first request the Federal banking agency to expand its reporting requirements to include such information.

"(C) PROCEDURE FOR REQUIRING ADDITIONAL INFORMATION.—Prior to making a request pursuant to paragraph (2) of this subsection for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the Commission shall—

"(i) notify such agency of the information required with respect to such associated person; and

"(ii) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the Commission determines that any delay resulting from such consultation would be inconsistent with ensuring the financial and operational condition of the broker, dealer, municipal securities dealer, government securities broker, or government securities dealer of the stability or integrity of the securities markets.

"(D) EXCLUSION FOR EXAMINATION REPORTS.—Nothing in this subsection shall be construed to permit the Commission to require any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to

obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained therein.

"(E) CONFIDENTIALITY OF INFORMATION PROVIDED.—No information provided to or obtained by the Commission from any Federal banking agency pursuant to a request by the Commission under subparagraph (C) of this paragraph regarding any associated person which is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

"(F) NOTICE TO BANKING AGENCIES CONCERNING FINANCIAL AND OPERATIONAL CONDITION CONCERNS.—The Commission shall notify the Federal banking agency of any concerns of the Commission regarding significant financial or operational risks resulting from the activities of any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

"(G) DEFINITION.—For purposes of this paragraph, the term 'Federal banking agency' shall have the same meaning as the term 'appropriate Federal bank agency' in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(4) EXEMPTIONS.—The Commission by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Commission shall provide in such rule or order, from the provisions of this subsection, and the rules thereunder. In granting such exemptions, the Commission shall consider, among other factors—

"(A) whether information of the type required under this subsection is available from a supervisory agency (as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(6))), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

"(B) the primary business of any associated person;

"(C) the nature and extent of domestic or foreign regulation of the associated person's activities;

"(D) the nature and extent of the registered person's securities activities; and

"(E) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

"(5) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection, or any information supplied to the Commission by any domestic or foreign regulatory

agency that relates to the financial or operational condition of any associated person of a registered broker, dealer, government securities broker, government securities dealer, or municipal securities dealer. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraph (B) or (C) of paragraph (3) of this subsection as confidential information for purposes of section 24(b)(2) of this title."

(b) **CONFORMING AMENDMENT.**—Section 15C(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(b)) is amended—

(1) by redesignating paragraphs (2) through (5) as paragraphs (3) through (6), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) **RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.**—

"(A) **OBLIGATIONS TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.**—Every person who is registered as a government securities broker or government securities dealer under this section shall obtain such information and make and keep such records as the Secretary by rule prescribes concerning the registered person's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person, including its capital, its liquidity, or its ability to conduct or finance its operations. The secretary, by rule, may require summary reports of such information to be filed with the registered person's appropriate regulatory agency no more frequently than quarterly.

"(B) **AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.**—If, as a result of adverse market conditions or based on reports provided pursuant to subparagraph (A) of this paragraph or other available information, the appropriate regulatory agency reasonably concludes that it has concerns regarding the financial or operational condition of any government securities broker or government securities dealer registered under this section, such agency may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The appropriate regulatory agency, in requiring reports pursuant to this subparagraph, shall specify the information required, the period for which it is required, the time and date

on which the information must be furnished, and whether the information is to be furnished directly to the appropriate regulatory agency or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

"(C) **SPECIAL PROVISIONS WITH RESPECT TO ASSOCIATED PERSONS SUBJECT TO FEDERAL BANKING AGENCY REGULATION.**—

"(i) **COOPERATION IN IMPLEMENTATION.**—In developing and implementing reporting requirements pursuant to subparagraph (A) of this paragraph with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Secretary shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Secretary under this paragraph that has been published for comment, the Secretary shall respond in writing to such written comment before adopting the proposed rule. The Secretary shall, at the request of a Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

"(ii) **USE OF BANKING AGENCY REPORTS.**—A registered government securities broker or government securities dealer shall be in compliance with any recordkeeping or reporting requirement adopted pursuant to subparagraph (A) of this paragraph concerning an associated person that is subject to examination by or reporting requirements of a Federal banking agency if such government securities broker or government securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 8 of the Bank Holding Company Act of 1956. The Secretary may, however, by rule adopted pursuant to subparagraph (A), require any registered government securities broker or government securities dealer filing such reports with the appropriate regulatory agency to obtain, maintain, or report supplemental information if the Secretary makes an explicit finding, based on information provided by the appropriate regulatory agency, that such supplemental information is necessary to inform the appropriate regulatory agency regarding potential risks to such government securities broker or government securities dealer. Prior to requiring any such supplemental information, the Secretary shall first request the Federal banking agency to expand its reporting requirement to include such information.

"(iii) **PROCEDURE FOR REQUIRING ADDITIONAL INFORMATION.**—Prior to making a request pursuant to subparagraph (B) of this paragraph for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the appropriate regulatory agency shall—

(I) notify such banking agency of the information required with respect to such associated person; and

(II) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the appropriate regulatory agency determines that any delay resulting from such consultation would be inconsis-

ent with ensuring the financial and operational condition of the government securities broker or government securities dealer or the stability or integrity of the securities markets.

"(iv) **EXCLUSION FOR EXAMINATION REPORTS.**—Nothing in this subparagraph shall be construed to permit the Secretary or an appropriate regulatory agency to require any registered government securities broker or government securities dealer to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendation or analysis contained therein.

"(v) **CONFIDENTIALITY OF INFORMATION PROVIDED.**—No information provided to or obtained by an appropriate regulatory agency from any Federal banking agency pursuant to a request under clause (iii) of this subparagraph regarding any associated person which is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this clause shall authorize the Secretary or any appropriate regulatory agency to withhold information from Congress, or prevent the Secretary or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

"(vi) **NOTICE TO BANKING AGENCIES CONCERNING FINANCIAL AND OPERATIONAL CONDITION CONCERNS.**—The Secretary or appropriate regulatory agency shall notify the Federal banking agency of any concerns of the Secretary or the appropriate regulatory agency regarding significant financial or operational risks resulting from the activities of any government securities broker or government securities dealer to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

"(vii) **DEFINITION.**—For purposes of this subparagraph, the term 'Federal banking agency' shall have the same meaning as the term 'appropriate Federal banking agency' in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(D) **EXEMPTIONS.**—The Secretary by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Secretary shall provide in such rule or order, from the provisions of this paragraph, and the rules thereunder. In granting such exemptions, the Secretary shall consider, among other factors—

(i) whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(6))), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

(ii) the primary business of any associated person;

(iii) the nature and extent of domestic or foreign regulation of the associated person's activities;

(iv) the nature and extent of the registered person's securities transactions; and

(v) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets

devoted to, and revenues derived from, activities in the United States securities markets.

"(E) CONFORMITY WITH REQUIREMENTS UNDER SECTION 17 (h).—In exercising authority pursuant to subparagraph (A) of this paragraph concerning information with respect to associated persons of government securities brokers and government securities dealers who are also associated persons of registered brokers or dealers reporting to the Commission pursuant to section 17(h) of this title, the requirements relating to such associated persons shall conform, to the greatest extent practicable, to the requirements under section 17(h).

"(F) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Secretary and any appropriate regulatory agency shall not be compelled to disclose any information required to be reported under this paragraph, or any information supplied to the Secretary or any appropriate regulatory agency by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a registered government securities broker or a government securities dealer. Nothing in this paragraph shall authorize the Secretary or any appropriate regulatory agency to withhold information from Congress, or prevent the Secretary or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552."

#### SEC. 5. COORDINATED CLEARING.

"(a) AUTHORITY TO FACILITATE COORDINATED CLEARING MECHANISMS.—Section 17A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended to read as follows:

"(2)(A) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this title—

"(i) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempt securities); and

"(ii) to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options;

in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection.

"(B) The Commission shall use its authority under this title to assure equal regulation under this title of registered clearing agencies and registered transfer agents. In carrying out its responsibilities set forth in subparagraph (A)(ii) of this paragraph, the Commission shall coordinate with the Commodity Futures Trading Commission and consult with the Board of Governors of the Federal Reserve System."

(b) TRANSFER AND PLEDGE OF SECURITIES.—Section 17A of the Securities Exchange Act

of 1934 (15 U.S.C. 78q-1) is amended by adding at the end the following:

"(f)(1) Notwithstanding any provision of State law, except as provided in paragraph (3), if the Commission makes each of the findings described in paragraph (2)(A), the Commission may adopt rules concerning—

"(A) the transfer of certificated or under-certificated securities (other than government securities issued pursuant to chapter 31 of title 31, United States Code, or securities otherwise processed within a book-entry system operated by the Federal Reserve banks pursuant to a Federal book-entry regulation) or limited interests (including security interests) therein; and

"(B) rights and obligations of purchasers, sellers, owners, lenders, borrowers, and financial intermediaries (including brokers, dealers, banks, and clearing agencies) involved in or affected by such transfers, and the rights of third parties whose interests in such securities devolve from such transfers.

"(2)(A) The findings described in this paragraph are findings by the Commission that—

"(i) such rule is necessary or appropriate for the protection of investors or in the public interest and is reasonably designed to promote the prompt, accurate, and safe clearance and settlement of securities transactions;

"(ii) in the absence of a uniform rule, the safe and efficient operation of the national system for clearance and settlement of securities transactions will be, or is, substantially impeded; and

"(iii) to the extent such rule will impair or diminish, directly or indirectly, rights of persons specified in paragraph (1)(B) under State law concerning transfers of securities (or limited interests therein), the benefits of such rule outweigh such impairment or diminution of rights.

"(B) In making the findings described in subparagraph (a), the Commission shall give consideration to the recommendations of the Advisory Committee established under paragraph (4), and it shall consult with and consider the views of the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. If the Secretary of the Treasury objects, in writing, to any proposed rule of the Commission on the basis of the Secretary's view on the issues described in clauses (i), (ii), and (iii) of subparagraph (A), the Commission shall consider all feasible alternatives to the proposed rule, and it shall not adopt any such rule unless the Commission makes an explicit finding that the rule is the most practicable method for achieving safe and efficient operation of the national clearance and settlement system.

"(3) Any State may, prior to the expiration of 2 years after the Commission adopts a rule under this subsection, enact a statute that specifically refers to this subsection and the specific rule thereunder and establishes, prospectively from the date of enactment of the State statute, a provision that differs from that applicable under the Commission's rule.

"(4)(A) Within 90 days after the date of enactment of this subsection, the Commission shall (and at such times thereafter as the Commission may determine, the Commission may), after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, establish an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.). The Advisory Committee shall be directed to consider and report to the Com-

mission on such matters as the Commission, after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, determines, including the areas, if any, in which State commercial laws and related federal laws concerning the transfer of certificated or under-certificated securities, limited interests (including security interests) in such securities, or the creation or perfection of security interests in such securities do not provide the necessary certainty, uniformity, and clarity for purchasers, sellers, owners, lenders, borrowers, and financial intermediaries concerning their respective rights and obligations.

"(B) The Advisory Committee shall consist of 15 members, of which—

"(i) 11 shall be designated by the Commission in accordance with the Federal Advisory Committee Act; and

"(ii) 2 each shall be designated by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury.

"(C) The Advisory Committee shall conduct its activities in accordance with the Federal Advisory Committee Act. Within 6 months of its designation, or such longer time as the Commission may designate, the Advisory Committee shall issue a report to the Commission, and shall cause copies of that report to be delivered to the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System."

#### SEC. 6. LIMITATION ON PRACTICES WHICH RESULT IN VOLATILITY.

(a) IN GENERAL.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end thereof the following new subsection:

"(h) LIMITATIONS ON PRACTICES THAT AFFECT MARKET VOLATILITY.—It shall be unlawful for any person, by the use of the mails or any means or instrumentality of interstate commerce or of any facility of any national securities exchange, to use or employ any act or practice in connection with the purchase or sale of any equity security in contravention of such rules or regulations as the Commission may adopt, consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets—

"(1) to prescribe means reasonably designed to prevent manipulation of price levels of the equity securities market or a substantial segment thereof; and

"(2) to prohibit or constrain, during periods of extraordinary market volatility, any trading practice in connection with the purchase or sale of equity securities that the Commission determines (A) has previously contributed significantly to extraordinary levels of volatility that have threatened the maintenance of fair and orderly markets; and (B) is reasonably certain to engender such levels of volatility if not prohibited or constrained.

In adopting rules under paragraph (2), the Commission shall, consistent with the purposes of this subsection, minimize the impact on the normal operations of the market and a natural person's freedom to buy or sell any equity security."

(b) CONFORMING AMENDMENT.—Section 25(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78y(b)(1)) is amended by inserting "9(h)(2)," after "section 6."

**SEC. 7. NOTIFICATION OF SEC CONCERNING RISKS TO SECURITIES SUBSIDIARY.**

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

**"SEC. 35. COORDINATION OF RISK ANALYSIS BETWEEN SEC AND FEDERAL BANKING AGENCIES.**

"Any appropriate Federal banking agency shall notify the Securities and Exchange Commission of any concerns of the agency regarding significant financial or operational risks to any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency (as defined in section 3 of the Securities Exchange Act of 1934), resulting from the activities of any insured depository institution, any depository institution holding company, or any affiliate of any such institution or company if such broker, dealer, municipal securities dealer, government securities broker, or government securities dealer is an affiliate of any such institution, company, or affiliate."

**SEC. 8. REPORTS TO CONGRESS.**

(a) **INTERMARKET COORDINATION.**—The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission, shall report to the Congress not later than May 31, 1991, and annually thereafter until May 31, 1995, on the following:

(1) the efforts their respective agencies have made relating to the coordination of regulatory activities to ensure the integrity and competitiveness of United States financial markets;

(2) the efforts their respective agencies have made to formulate coordinated mechanisms across marketplaces to protect the payments and market systems during market emergencies;

(3) the views of their respective agencies with respect to the adequacy of margin levels and use of leverage by market participants; and

(4) such other issues and concerns relating to the soundness, stability, and integrity of domestic and international capital markets as may be appropriate.

The agencies shall cooperate in the development of their reports, and prior to submitting its report to Congress, each agency shall provide copies to the other agencies.

(b) **CLEARANCE AND SETTLEMENT.**—The Securities and Exchange Commission, in consultation with the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System, and other relevant regulatory authorities, shall examine progress toward establishing linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options, and shall submit to the Committees on Energy and Commerce and Agriculture of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Agriculture, Nutrition, and Forestry of the Senate, not later than 2 years from the date of enactment of this section, a report detailing and evaluating such progress.

The PRESIDING OFFICER. The question is on agreeing to the amendment to the title.

The amendment was agreed to so as to read as follows:

Amend the title so as to read: "An Act to amend the Securities Exchange Act of 1934 to strengthen regulatory oversight of the United States securities markets, improve supervision of financial market participants, and improve the safety and efficiency of market mechanisms, and for other purposes."

Mr. DODD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. COCHRAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut [Mr. DODD].

Mr. DODD. Mr. President, now that we have passed the legislation, I want to thank all those responsible. Senator HEINZ, my ranking minority member of the subcommittee, had hoped to be here, but, unfortunately, he is tied up with a group of constituents from Pennsylvania. I want to thank him for his tremendous work and thank my colleagues on the Banking Committee who made it possible for this legislation to be cleared and to accept the substitute. We now have a bill and will not need to go to conference. After House passage, we will be able to send it to the President for his signature.

Mr. President, this amendment, which we have now adopted on behalf of myself, and Senators HEINZ, RIEGLE, and GARN, represents a compromise between provisions of S. 648, the Market Reform Act, as passed by the Senate on August 4, and H.R. 3657, the Securities Markets Reform Act passed by the House on June 5 of this year.

Mr. President, I introduced S. 648 with Senator HEINZ on March 17, a year ago. The companion House and Senator measures were based on legislation that was proposed by the Securities and Exchange Commission to address regulatory gaps and weaknesses revealed in the market break of October 1987.

Numerous reports and studies of that event found that at the time of the crisis in our financial markets, regulators simply did not have the tools to monitor large traders in the market whose activities contributed to the swiftness and the severity of the market decline. They did not have the information to assess the soundness of certain large financial holding companies, whose potential failure posed risks to the system as a whole. And, further, Mr. President, they did not have the statutory authority to take the full range of emergency action that may have been needed. Weaknesses in the system for clearance and settlement for securities, options, and futures led to near gridlock threatening the financial payment system.

Mr. President, this legislation addresses those regulatory gaps and

weaknesses. It will strengthen the SEC's oversight of our securities markets and the participants in those markets. It will safeguard the capital formation mechanisms in this country. And, furthermore, it will protect investors and enhance investor confidence. This may be the most important feature of the bill.

It is my hope that the House will act on the measure soon. I am confident that they will act soon after the Senate approves it, and that the President will sign it without delay. The American investing public deserves no less.

This compromise was developed over the past month by members of the Senate Banking Committee and the House Energy and Commerce Committee. The House and Senate bills contained similar provisions in four major sections, and this compromise adopts those provisions.

First, the provisions of both bills now contained in the compromise agreement will clarify and broaden the SEC's authority to take emergency action to ensure fair and orderly markets during periods of market stress.

Second, the amendment includes provisions that enhance the SEC's ability to obtain information about large traders in the securities markets. This will give the SEC far better tools to detect manipulative or other illegal trading activity.

Third, the compromise includes provisions designed to give the SEC greater ability to identify risks to the financial integrity of broker dealers within holding company systems.

Fourth, this compromise contains measures in S. 648 and H.R. 3656, a separate House bill on clearance and settlement, which will strengthen the coordination of clearance and settlement systems for stocks, options, and futures and thereby reduce the threats to the financial system as a whole. The compromise measure also includes a provision in the original Senate bill which will promote greater coordination among market regulators by requiring reports by financial regulators on a range of issues affecting the Nation's securities markets.

Finally, the compromise accepts, with certain modifications, provisions in the House bill relating to the SEC's authority to address market volatility. Mr. President, this compromise reflects a great deal of hard work on the part of a number of Senators and Members of the House of Representatives. I would just like to take a minute to recognize those efforts.

The ranking minority member of the Securities Subcommittee, Senator JOHN HEINZ, cosponsored the legislation with me in March of last year. He has been my partner in the development of the legislation in every respect. He has spent countless hours in

hearings and in meetings with the SEC, Treasury officials, and others as we worked through the compromises necessary to clarify and improve the legislation. I would like to recognize those efforts and thank Senator HEINZ for them.

Let me also thank Chairman RIEGLE who has supported us at every step of the way. He helped in bringing the SEC and Treasury together to resolve their differences on the bill, and he scheduled a markup at the earliest possible time. I should also note that the legislation itself is in large part a product of many hearings Senator RIEGLE held as the chairman of the Securities Subcommittee in the last Congress.

I also want to thank the ranking minority member of the full committee, Senator GARN, who was able to work with us in resolving a number of concerns and help to expedite passage of the legislation.

Let me also recognize the yeoman efforts to Chairman DINGELL of the House Energy and Commerce Committee and Chairman MARKEY of the Telecommunications and Finance Subcommittee. They not only led their House colleagues in moving the House measure to passage, but they were more than willing to meet us half way in areas of difference between the two bills.

Of course, the measures contained in this amendment were based on the legislation that was proposed by the SEC in June 1988, when the agency was chaired by David Ruder.

Throughout the hearings and further development of legislation, the efforts of Chairman Richard Breeden and his very fine, excellent staff have been invaluable, and I have no qualms in entrusting the SEC with the authority contained in this legislation and the enormous responsibility that entails.

It also does without saying that Secretary Brady's endorsement of the legislation and his efforts to secure its passage are deeply appreciated.

Mr. President, because the House and Senate bills were virtually identical in so many respects, we have agreed that the Senate Bank Committee's report on S. 648 and the House Energy and Commerce Committee's report on H.R. 3657 and 3656 will constitute the legislative history for the compromise amendment to H.R. 3657.

In addition, it may be useful to clarify the intent of certain provisions of the amendment, and I will submit further comments on those provisions for the RECORD.

However, I do want to express my sincere thanks to Senator PHIL GRAMM for his patience and willingness to work with us in clarifying provisions on the SEC's authority to address market volatility. Frankly, Mr. President, PHIL GRAMM was tremendously

generous and helpful in making it possible for us to come to a compromise on those provisions and, without his help, we would not be in the position we are today in passing the bill.

Mr. President, let me say that this bill contains critical authority for the SEC to protect investors in our markets. It will enhance the investor confidence that we all know is essential for capital formation and long-term economic growth in this country. It has been enacted here and hopefully it will be adopted in the House without further delay.

Any finally, Mr. President, I should have added earlier, and let me include here, that as all of us know in this body, you do not get anywhere unless you have good people working with you, good staff, who understand these issues, who are willing to negotiate when there are differences, and come up with reasonable, intelligent compromises that retain the integrity of the legislation without compromising the value the legislation is intended to address.

I am very fortunate, indeed I think the Senate is, in that we have two very fine people on the majority side, Marti Cochran, who is the staff director of the Securities Subcommittee, and Michael Stein of the subcommittee staff. They have done an incredible job not only on this bill, Mr. President, but a whole package of Securities legislation that has come out of the Banking Committee virtually without controversy through the negotiating process.

We still have a bill or two to deal with yet before the close of the session, but we hope to have those before our colleagues in the next few days.

Brad Belt and Ira Paull have done an incredible job for the minority and for Senator HEINZ as well. Sharon Heaton, working for Senator RIEGLE on the Banking Committee, has done a splendid job as well. We want to thank them for their very fine work.

At this point, Mr. President, I would like to insert the remainder of my remarks for the RECORD.

With respect to the risk assessment provisions of the amendment, in the case of associated persons who are subject to examination or reporting requirements of a Federal banking agency, the legislation establishes an alternative procedure for broker-dealers to comply with the legislation's recordkeeping and reporting requirements. To utilize this alternative, a broker-dealer may obtain copies of reports of condition and similar reports filed by the associated person with the appropriate Federal banking agency. However, a broker-dealer is not required under any circumstances to obtain copies of examination reports. Moreover, it is not a condition of this procedure that a broker-dealer obtain copies of reports, such as the F.R. 2068 filed with the Board of Governors of

the Federal Reserve System, that are subject to confidentiality procedures similar to or more stringent than those applicable to examination reports.

There was considerable discussion with respect to the provisions of the legislation relating to the transfer of securities. The legislation gives the SEC authority to adopt rules concerning the transfer of securities other than Government securities, where the SEC determines that the absence of Federal rules substantially impedes the safe and efficient operation of the national system for the clearance and settlement of securities transactions. This provision is explained in the respective Senate and House reports. Areas of special concern to the operation of the national system include: Choice of law rules for participants in the national system; when transfers on the books of a clearing corporation are effective; where clearing corporations may maintain securities certificates—or uncertificated securities positions—to facilitate settlement of transactions in non-U.S. securities; and when and how limited interests—such as security interests—in securities other than Government securities are created and perfected.

Before preempting State law, the SEC must make three specific findings: First, that the rule is necessary and appropriate for the protection of investors or in the public interest; second, that the safe and efficient clearance and settlement of securities will be impeded absent a rule; and third, that the benefits of the rule exceed the detriments. Further, before promulgating such a rule, the SEC must consult with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. If the Secretary of the Treasury objects to the SEC's determination that promulgation of a rule is appropriate, the SEC must consider all feasible alternatives to the proposed rule. In addition, the statute requires the SEC to establish a 15-member advisory committee in order to benefit from the view of experts.

The compromise amendment contains a change to enhance State interests without sacrificing the goals of the legislation. It provides that any State may, within 2 years of the SEC's adoption of a rule under section 17A(f)(1) of the Exchange Act, enact a statute that specifically refers to the SEC rule and subsection 17A(f)(3) of the Exchange Act and Establish a provision that differs from that applicable under the SEC's rule. Any such State statute would be effective prospectively from the date of its adoption.

This change is designed to balance State interests against the need for efficient and safe operation of the na-

tional system for clearance and settlement of securities transactions. It is intended to preserve State law as the principal source of rules for commercial transactions, while providing the SEC the authority it needs related to the transfer of securities—including limited interests in securities, such as security interests in securities, and choice of law or related conflict of law provisions—that substantially impede the safe and efficient operation of the national system for the clearance and settlement of securities transactions. By providing the States with the ability to nullify and SEC rule, this provision permits the relevant State authorities to evaluate whether an SEC rule effectively represents that State's individual interests. Of course, in the event a State law is enacted which differs substantially from an SEC rule to the detriment of the efficient operation of the national system, congressional action to address those detriments would be possible.

There was considerable discussion with respect to the provisions of the amendment relating to the SEC's authority to address manipulative trading practices and market volatility. House Members worked hard to develop these provisions in the original House bill, in order to make it clear that the SEC has broad authority to address trading practices that contribute significantly to extraordinary levels of volatility. At the same time, some Senators expressed concerns that the language of the House bill could be read to limit legitimate trading activity by individual investors that does not affect extraordinary volatility. The compromise language is intended to dispel those concerns, without limiting the SEC's ability to take appropriate action to prohibit or constrain certain trading practices during periods of extraordinary market volatility.

The House report on H.R. 3657 explains at some length the legislative history and purposes of the amendment in subsection 9(h). We have modified the language of paragraph 9(h)(1) to make it clear that the SEC has authority to prescribe means reasonably designed to prevent manipulation of price levels of the equity securities market or a substantial segment thereof.

In paragraph 9(h)(2), the standards for SEC rulemaking are clarified. While the House bill would have authorized SEC rulemaking with respect to any act or practice, the compromise makes it clear that rulemaking should be directed to any trading practice in connection with the purchase or sale of securities. In addition, while the House bill would authorize SEC rulemaking to prohibit or constrain practices reasonably likely to engender extraordinary levels of volatility, the compromise uses the language reason-

ably "certain." It is important to note that, while the standards for SEC rulemaking are improved and clarified under the compromise amendment, both the House bill, and this amendment, make it clear that the SEC has the discretion to determine whether any trading practice meets the standards set forth. It is not expected that the Commission will have to make a factual finding, and deference will be given to the Commission's judgment.

In a provision developed by my colleague, Senator GRAMM, working with our House colleagues, the amendment states that the SEC, in adopting rules under the new section, shall, consistent with the purposes of section 9(h), minimize the impact on the normal operations of the market and a natural person's freedom to buy or sell any equity security. This makes it clear that the SEC's rules should not burden unduly normal market operations and routine purchase and sale transactions by investors.

Another provision developed by Senator GRAMM as part of the new amendment adds an amendment to section 25(b)(1) of the Exchange Act to ensure that persons adversely affected by the SEC's actions are given the ability to challenge the rules prospectively, without awaiting SEC enforcement action. This will allow for expeditious review of SEC action and provide increased certainty as to the enforceability of these rules.

Let me again thank Senator GRAMM for the willingness to work with us in clarifying and improving the language of this provision. I also want to commend our House colleagues, chairmen MARKEY and DINGELL, for their efforts in crafting language to satisfy the concerns raised by Senators, while maintaining the purpose and intent of this provision.

Mr. President, I ask unanimous consent that a comparison of key differences in the House language and the compromise amendment relating to market volatility be included in the RECORD.

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

**KEY DIFFERENCES BETWEEN ORIGINAL HOUSE LANGUAGE AND "COMPROMISE" AMENDMENT RELATING TO SEC AUTHORITY TO ADDRESS MANIPULATIVE PRACTICES AND EXTRAORDINARY MARKET VOLATILITY**

1. Compromise deletes Civil Penalties provisions of House bill (striking language beginning on page 30, line 19 through page 33, line 20 of House bill). Thus, there will be no separate penalties provisions for violations of this section. Penalties and remedies applicable to other securities law violations will be applicable to this section.

2. While the House bill would permit SEC rulemaking to prevent "manipulation of equity securities prices that is reasonably likely to affect market volatility," the Compromise clarifies SEC rulemaking authority by granting authority to prevent "manipula-

tion of price levels of the equity securities market or a substantial segment thereof.

3. While the House bill would give the SEC rulemaking authority "to prohibit or constrain, during periods of extraordinary market volatility, any act or practice that the Commission determines

(i) has previously contributed to extraordinary levels of volatility that have adversely affected the maintenance of fair and orderly markets; and

(ii) is reasonably likely to engender such levels of volatility if not prohibited or constrained."

The Compromise would give the SEC rulemaking authority "to prohibit or constrain, during periods of extraordinary market volatility, any trading practice in connection with the purchase or sale of equity securities that the Commission determines

(A) has previously contributed significantly to extraordinary levels of volatility that have threatened the maintenance of fair and orderly markets; and

(B) is reasonably certain to engender such levels of volatility if not prohibited or constrained.

4. The Compromise adds new language setting forth further standards for SEC rulemaking, by requiring, "the Commission shall, consistent with the purposes of this subsection, minimize the impact on the normal operations of the market and a natural person's freedom to buy or sell any equity security."

5. Through a conforming amendment, the Compromise adds an additional section to provide that a person adversely affected by SEC rulemaking under this provision may obtain judicial review of the rule within 60 days after promulgation of the rule.

Mr. HEINZ. Mr. President, more than 2½ years ago, on a day now known as Black Monday, the Nation's stock markets plunged in their steepest single decline in American history. The Dow Jones industrial average dropped a record 508 points—a loss of 23 percent of its value. In just 4 trading days between October 14 and October 19, 1987, the stocks traded in this Nation's markets lost almost a third of their value—almost \$1 trillion vanished from our markets virtually overnight.

The events of Black Monday dramatized the forces that have transformed our securities markets during the 1980's. The effect of institutionalization, internationalization, modernization of communications and technology, and innovation relating to the development of large derivative markets and program trading strategies that link markets for stocks, options, and stock index futures converged to place our market mechanisms under the greatest stress in modern times.

The market crash of 1987 revealed a number of critically important areas that required reinforcement to withstand the fast-moving and often turbulent environment to which our modern markets are now exposed.

Last month the Senate passed the Market Reform Act (S. 648), which Senator Dobb and I had introduced at the start of this Congress. This legislation is designed to provide the SEC

with the tools needed to protect investors and preserve the integrity of the Nation's capital markets in light of these new realities. I am pleased that the House of Representatives passed a similar measure last summer (H.R. 3657).

Senator DODD and I in cooperation with the House Energy and Commerce Committee, and Telecommunications and Finance Subcommittee, have worked hard to combine the best provisions of the two market reform bills.

Briefly, the Market Reform Act:

Enhances the SEC's emergency authority to act during market disruptions, and clarifies the SEC's ability to halt trading;

Mandates large trader reporting to enable the SEC to monitor and reconstruct market activity;

Grants SEC access to financial information from the holding company and affiliates of registered broker-dealers to enable the SEC to assess risks posed to the broker-dealers;

Facilitates the coordination of our Nation's clearance and settlement systems; and

Provides the SEC with additional authority to combat market manipulation.

Mr. President, our securities markets are a vital national asset. They are the channels through which the savings of millions of Americans flow to meet the capital needs of thousands of American corporations for productive investment, development, growth, and job creation. The capital formation process is promoted by the operation of public trading markets that foster investment and the efficient allocation of capital.

Accordingly, the maintenance of fair, efficient, and dependable systems for the distribution and trading of securities is critical to the Nation's long-term economic growth and national prosperity.

The Market Reform Act will strengthen and protect the Nation's securities markets.

Senator RIEGLE, chairman of the Banking Committee, and Senator GARN, the ranking member, have been tremendously supportive and instrumental in moving this legislation through the committee. Most importantly, Senator DODD, chairman of the Securities Subcommittee, deserves great credit for his leadership in crafting and advancing this important legislation. As the ranking member of the Securities Subcommittee, I am pleased that I had the opportunity to work with him on this essential legislation.

Mr. RIEGLE. Mr. President, this year I set a number of specific priorities for the Banking Committee. Among the highest of these priorities was passage of essential securities legislation, including the Market Reform Act, which is before us now.

I want to commend Senator DODD, chairman of the Securities Subcommittee, and Senator HEINZ, ranking Republican of that subcommittee, for their excellent work on the Market Reform Act. Since Senate passage of the Market Reform Act little more than 6 weeks ago, Senators DODD and HEINZ have succeeded in resolving differences between the House and Senate versions of this legislation. I am pleased that we are able to move so quickly on this important reform legislation.

The Market Reform Act will improve regulatory oversight over the financial markets and its participants and promote coordination among the financial regulators. Since the House and the Senate passed similar versions of this legislation history of this bill is comprised of the material from both the House and the Senate.

To clarify one point regarding the risk assessment provisions of this legislation, I want to note that in the case of associated persons who are subject to examination or reporting requirements of a Federal banking agency, the legislation establishes an alternative procedure for broker-dealers to comply with the legislation's record-keeping and reporting requirements. To use this alternative, a broker-dealer may obtain copies of reports of condition and similar reports filed by the associated person with the appropriate Federal banking agency. However, a broker-dealer is not required under any circumstances to obtain copies of examination reports. Moreover, it is not a condition of this procedure that the broker-dealer obtain copies of reports, such as F.R. 2068 filed with the Board of Governors of the Federal Reserve System, that are subject to confidentiality procedures similar to or more stringent than those applicable to examination reports.

There are few differences between the bill passed by the Senate 6 weeks ago and the bill before us today. One such difference is that, as revised, the bill authorizes States to avoid preemption of State law regarding the transfer and pledge of securities.

The Market Reform Act authorizes the SEC to adopt rules concerning the transfer and pledge of securities other than Government securities, where the Market Reform Act determines that the absence of Federal rules substantially impedes the safe and efficient operation of the national system for the clearance and settlement of securities transactions.

This provision created some controversy because it would allow the SEC, after engaging in a lengthy procedure, to preempt State commercial law on technical issues related to the transfer of securities. As revised, any State may, prior to the expiration of 2 years after the SEC adopts preempting State law, enact a statute that differs

from the rule adopted by the SEC if certain procedures are followed. This revision should alleviate any concerns related to the grant of preemption authority to the SEC on this technical issue.

Another material difference between the Senate bill previously passed and the bill before us today concerns program trading. The earlier Senate bill required the SEC to report to Congress regarding whether the SEC has sufficient authority to prohibit practices in the purchase and sale of securities to protect against market manipulation or fraud through program trading, including any practices or activities that are inconsistent with the statutory mission of the SEC to protect investors. Because of the importance of this issue, Senators DODD, GARN, HEINZ, D'AMATO, and I wrote the SEC in November asking the agency to begin this report immediately. Since the SEC is already working on this issue, the report requirement has been dropped.

In addition, the Market Reform Act, as revised, contains language similar to that contained in the House-passed version. The revised act provides that the SEC may adopt rules or regulations that, \* \* \* prescribe means reasonably designed to prevent manipulation of price levels of the equity securities market or a substantial segment thereof, and prohibit or constrain, during periods of extraordinary market volatility, any trading practices in connection with the purchase or sale of equity securities that the SEC determines (A) has previously contributed significantly to extraordinary levels of volatility that have adversely affected the maintenance of fair and orderly markets; and (B) is reasonably likely to engender such levels of volatility if not prohibited or constrained.

The House has established an extensive legislative history on this provision that remains applicable.

In summary, enactment of the Market Reform Act is necessary to ensure that this Nation's capital markets—which are the best in the world—remain strong, fair, and liquid. The market crash of 1987 and the market instability in October 1989 revealed serious weaknesses in the market's structure and lapses in regulatory oversight. This legislation will correct a number of these deficiencies.

Once again, I want to complement Senator DODD, chairman of the Securities Subcommittee, and Senator HEINZ, ranking Republican on that subcommittee, for their fine work on the Market Reform Act. This is a sound piece of legislation and I strongly urge its passage.

Mr. GARN. Mr. President, as ranking member of the Banking Committee, I am pleased to join with Senators

DODD, HEINZ, and RIEGLE in supporting passage of amended versions of the Market Reform Act of 1990, the Securities Law Enforcement Remedies Act of 1990. And the Penny Stock Reform Act of 1990. Today, we will pass the Market Reform Act of 1990 (H.R. 3657), and in the next few days I expect us to act on the other bills. I would particularly commend Senators DODD and HEINZ, as the chairman and ranking member of the Securities Subcommittee, as well as the staff of the Banking Committee and Securities Subcommittee, for their leadership and effort in moving this important legislation.

The amendment being offered today reconciles differences between the House and Senate versions of the market reform bill. This amendment should significantly enhance the ability of the Securities and Exchange Commission to monitor the operation of the securities markets during periods of volatility and to take appropriate action when there is a threat to fair and orderly functioning of markets which would adversely affect the interests of investors.

The strength of our Nation's markets is in large part due to the fairness, and efficiency. Investors here and abroad have been willing, and able to commit their savings and investment dollars to U.S. Institutions and markets. However, recent periods of turmoil in the securities markets have served to undermine the public's confidence in the integrity and efficient functioning of our Nation's capital markets and institutions.

We can ill afford to have investors, especially small investors, abandon our markets because of a perception that the Federal Government is unwilling to look out for their interests. Fewer investors means a smaller supply of vital investment capital and those investors that remain in the market will demand a higher return to compensate for the perceived heightened risks. In either event, it raises the costs of doing business in U.S. markets and impairs our competitiveness in the global marketplace. This legislation should help to restore investor confidence and enhance the competitiveness of U.S. markets.

The Market Reform Act of 1990, as amended, has six substantive sections which would: First, clarify the SEC's authority to take emergency action during periods of market crisis; second, enable the SEC to monitor the activity of large traders in the securities markets; third, enable the SEC to assess the financial integrity of broker-dealers and major market participants; fourth, facilitate the strengthening of the system for clearance and settlement of securities, options, and futures; fifth, provide for greater interagency and intermarket coordination on an ongoing basis; and

sixth, authorize the SEC to promulgate rules to proscribe manipulative practices related to market price levels and certain trading practices during periods of extraordinary market volatility.

These changes will not result in a market free from risk, nor ensure that there will never again be a sharp decline in market prices. We cannot, and should not, legislate against market declines. We should, however, strive to insure that market movements are not driven by manipulative activity and that, during periods of market volatility, our regulators have the basic information necessary to act in a prudent and responsible manner.

I would also note that the market reform bill strikes an important balance between State and Federal regulation in this area. The provision relating to clearance and settlement systems enables the SEC, a Government agency, to effectively preempt State law in certain limited respects. This authority, to be used judiciously, reflects a need for the Government agency responsible for oversight of the securities market, to provide additional uniformity in clearance and settlement systems. However, States also have a compelling interest in protecting the rights of their citizens. Therefore, the legislation provides that a State may subsequently, and specifically, override SEC action if it believes that the interests of the State warrant such action. I trust that appropriate weight and consideration will be given to the needs and concerns of all parties involved.

In closing, the legislation we are passing today will strengthen the Federal securities laws to ensure that the SEC has at its disposal the most flexible and effective means of monitoring the operation of the securities markets. I expect that the SEC will utilize these newly authorized powers judiciously and in keeping with their traditional mandate of protecting investors, while at the same time enhancing the efficient and competitive operation of the markets.

Mr. GORTON. Mr. President, I ask unanimous consent that I may be allowed to proceed for roughly 7 minutes as if in morning business.

The PRESIDING OFFICER (Mr. BUMPERS). Is there objection? The chair hears none, and it is so ordered.

#### CARING FOR THE WORKING FAMILIES OF THE PACIFIC NORTHWEST

Mr. GORTON. Yesterday, on the floor of this body, the distinguished majority leader of the Senate, who serves with my fellow Washingtonian, Tom FOLEY, as the leader of the Democratic Party, delivered a remarkable speech.

It was remarkable not primarily by reason of its form, though it was typi-

cally eloquent, and not primarily because of its insistence upon rigid adherence to the letter of laws the Democratic leader helped write, which is a common human failing.

No, what made this speech so remarkable was the phenomenal change it signaled in the primary concerns of our respective political parties.

During the past several weeks, the Democratic leader has orchestrated a drumbeat of complaints about the Republican Party, asserting it to be the party of the rich because it worries about things like keeping taxes down. But yesterday, the Democratic leader, perhaps unconsciously, came far closer to defining the true difference between our parties.

For yesterday, the Democratic leader berated the President for caring about the working families of the Pacific Northwest. Yesterday, the Democratic leader characterized a modest proposal by the President to save a few thousand of the tens of thousands of jobs in the Pacific Northwest's timber communities which will be lost to the Endangered Species Act as "a plan that seeks to void every major environmental law governing management of Federal forest lands." Yesterday, the Democratic leader devoted six pages of text to the threatened spotted owl, and not a single sentence to dozens of threatened communities and to thousands of threatened people and families.

To ignore my constituents who live near and work in the Federal forests, and who consider themselves real environmentalists, for the favor of urban preservationists who will pay no part of the awful human price imposed by their ever-increasing demands, is neither fair nor in the now dormant tradition of the Democratic Party. It is not a policy, thankfully, with which our President will agree.

The Democratic leader put his party on record for the proposition that owls are more important than people. We Democrats, he implied, are for unemployment. The fabled Democratic Party of the working man was pronounced dead. Today it stands nakedly captive to the wine and brie urban special interests, attacking the prospect of saving even some of the 35,000 jobs now imperiled in the Northwest.

Scoop Jackson, for too brief a time my seatmate in the Senate, would have found this moment a horror. I watched him campaign through the rural towns which dot my State. He understood, as I do, that the people of those towns are the very definition of what it is to be American.

They work at hard, dangerous jobs, supplying the renewable paper and wood products on which we are almost unconsciously dependent. They pay their taxes, they defend our country, their churches are still full, as are

their high school stadiums when their children play football.

And today they stand victimized by a party which has promised them so much over the years, has taken so many of their votes, and now ignores their desperate needs in favor of abstractions, which venerates harsh regulations over common sense.

The Democratic leader and his party ignore the fact that we already have permanently set aside 5.3 million acres of the Northwest, most of which is old growth forest. The leader and his party ignore the fact that the Thomas Commission report, which will reduce timber harvest levels by almost 50 percent and set aside a land base equal to the total acreage of the States of New Jersey, Rhode Island, and Connecticut combined, is not invaded by the President's 1991 recommendations.

In stating that the President's report asks for an exemption from the protections of the Endangered Species Act, the Democratic leader ignores the fact that under the President's plan no timber will be harvested off of those areas specifically protected under the report of the Thomas Commission.

The Democratic leader believes the current process for establishing the Endangered Species Committee should be followed without the slightest variation. Conversely, the President heard the pleas of working men and women and their families and recommended that the process be expedited and broadened. The President wisely and humanely offered a plan which, without mandating any specific decision, will bypass much of the initial regulatory process and inevitable legal delays. This proposal will enable the Endangered Species Committee to balance the need for preserving old growth forests against the needs of the people who derive a living from these same forests.

In the end, I recognize that in this contest people do not count for everything; but the Democratic leader and his party should try to remember that they do count for something.

When the other party is so irrational as to make a decade old law totally inflexible despite the suffering it will impose on tens of thousands of people, it has lost much more than its historical underpinnings, it has lost its head.

The President's plan is reasoned and balanced. Not one tree in an area the scientists recommended be set aside is to be touched. In asking Congress to get the ball rolling on looking for some other way to protect jobs, the President is in keeping with the spirit of the act, while confronting squarely the human misery its inflexible enforcement in my State will produce.

In the oration he delivered yesterday, the Democratic leader looked the timber families of the Pacific Northwest in the eye and announced a new

Democratic agenda—one with no room for the average working men and women across this land.

As I said, I found it a remarkable admission.

#### FAMILY PLANNING AMENDMENTS OF 1989

The Senate continued with the consideration of the bill.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

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

The PRESIDING OFFICER. The pending business is amendment No. 2762, which is the Senator's amendment in the second degree to the amendment of Senator JEFFORDS, No. 2761, which is a committee substitute; that is to the committee substitute as amended or modified.

Mr. CHAFEE. Mr. President, thus my amendment is up.

Mr. President, I would be glad to have a time agreement on my amendment if the managers were to agree to such a time agreement. I would suggest 90 minutes equally divided. There might be some time left over after that.

The PRESIDING OFFICER. Does the Senator make that request?

Mr. CHAFEE. Yes. If there is a problem, as some suggest, that 90 minutes is too much, if 60 would do the trick, I would be agreeable.

Mr. FORD. Mr. President, I would have to object until our side has an opportunity to check with the managers of the bill to see if 90 minutes would be adequate to them or acceptable.

Otherwise, Mr. President, I have to object to the unanimous-consent request.

The PRESIDING OFFICER. Objection is heard.

Mr. CHAFEE. Mr. President, what I suggest is that I proceed, and for whatever time I take, perhaps the Chair will be good enough to time my remarks. Then I will be glad when we enter into an agreement, if it is 60 minutes equally divided, to add onto that time whatever time I took off; add it to the other side.

Mr. President, my amendment is at the desk. Let me just briefly describe what it is about. First of all, I want to say that Senator WIRTH has joined us and wishes to be added as a cosponsor.

Mr. President, the subject before us is title X. Title X is to the Public Health Service Act. This act was passed, title X was passed, in 1970. It has been on the books for 20 years. The goal of this title X is as follows: It is to provide quality—I stress the word "quality"—family planning and health care services to low-income women who otherwise would have no access to these services.

Title X indeed has been effective in fulfilling this mandate. Thus Congress, over the 20 years, has continued to fund the program.

I think it is important to bear in mind that what we are discussing is a health program. I will be very distressed if this becomes involved with talk about abortion; not a nickel, not a penny of title X money goes to fund abortions.

Let us get that dismissed off the table right away—any talk of abortion funding. That does not exist under title X.

There is no question but what part of quality health care services is information, and indeed it provided—remember we are dealing with low-income women here. Under the experience of the operation of title X during its first 10 years, and actually by regulation during its second—or during the next 8 years—it specifically provided that the doctor, when requested, and I hope everybody listening will remember that the woman has to request it; she has to ask the doctor what are my options?

The doctor then under the guidelines that were published in 1981—mind you, this was under President Reagan. Let us remember whose administration it was. No one can every say President Reagan was easy in this field. He was pretty exacting.

This is what the regulations said, the guidelines. I quote.

Pregnant women should be offered information and counseling regarding their pregnancies.

Getting information:

Those requesting—

Note the word "requesting"—

information on options for the management of an unintended pregnancy are to be given nondirective—

Nondirective means you do not say "and we recommend you do this, this, or this." No. Nondirective. The woman says, "What are my options, Doctor?" The doctor says, and I go on quoting, nondirective counseling on the following alternative courses of action and referral upon request.

This is what the doctors say under the guidelines of 1981. "Prenatal care and delivery." Bear the baby. Infant care; foster care; or adoption. Those are possibilities. Pregnancy termination; that is the other. That is what the doctor was to do under the guidelines that existed from 1981 to 1987.

Then they had these new regulations come out in March 1988. Nearly 8 years went by under the old regulations, practically the whole term of President Reagan. Under the new regulations, it says that the doctor can only do the first two of those options. He can talk about, upon request, prenatal care and delivery, infant care, foster care, or adoption. But no; he cannot say pregnancy termination.

It is important to bear in mind that in all 50 States in the Nation, pregnancy termination is a legal, legitimate possibility. It is also important to remember that we are dealing with poor women here, low-income women. They would not be in the clinic and indeed they could not be in the clinic if they could afford to go to a doctor. But they cannot. This is their source of information.

When we are dealing with people, I think we ought to have a lot of compassion, for not only are they poor but these women are pregnant. Frequently, they are unintended pregnancies. Many of them are teenagers. They are bewildered. They are going for counseling, for help. They are going for health care. That is why they are there. They would not be there. Thank goodness they are there. That is why we fund the program, because absent that, they would be wandering around with no adequate health care.

I do not think there is a single Senator in this Chamber of 100 Senators that does not agree that one of the things that we ought to provide to a greater extent in the United States of America is better prenatal care. Take care of these women.

So they come in they ask, they say to the doctor, "Well, what are my options?" The doctors for 18 years under this program have told them—listen—the options are the same options that they give to a woman who can pay. But now those regulations are being changed, and have been changed, so that the doctor leaves out the last one: pregnancy termination. So the woman indeed is shortchanged.

Somehow, I find this really a tragedy, and totally unfair. If this woman could go where she could afford it, to a doctor, the doctor would provide that information.

I would like to make another point. There are serious problems that arise for these clinics over malpractice suits, because when a patient asks a doctor for information, the doctor is expected to give it. If you have a heart condition and you go to a doctor and say, "Doctor, what are my options?" "Well, there is a bypass, and you can do certain changes in diet," but if the doctor never mentions that a certain drug would be extremely helpful, no one doubts that you can sue that doctor for malpractice, if indeed as a result of not knowing about this particular information, you suffered severe health consequences.

So it is under this particular circumstance, if the doctor fails to give the information, which includes pregnancy termination, the patient can sue. And, indeed, there have been successful suits. I cite the one in New Jersey involving a Mrs. Berman. That was the New Jersey Supreme Court case, in which the New Jersey Supreme Court found for the plaintiff against the

doctor, who failed to give her the information that he could have. In *Berman versus Allan*, 1975, the Supreme Court of New Jersey ruled that the cause of action was based squarely on a physician's depriving a woman of the right to decide to have an abortion. The court said Mr. and Mrs. Berman could not assert that the defendants increased the risk that Sharon would be afflicted with Down's syndrome. Mrs. Berman was deprived of the action of making a meaningful decision of whether to abort the fetus during the first trimester of pregnancy.

Let us get the sequence here. A poor woman goes to a clinic, asks for the information—she has to ask. The doctor does not sit there behind the desk and a woman comes before him and he says, "By the way, these are your options." No. She has to ask. And so she asked. And in 18 of the 20 years of the existence of this measure, the doctor told her what he would tell a patient, which he is required to tell, which would be subject in this situation to malpractice. How many poor women want to resort to malpractice suits? They want the information that any other patient could receive.

Mr. President, I want to stress something else. These title X funds are very modest. The amount of title X funds that go into a typical clinic is a very small portion of the total funds of the clinic. I can just cite a community health center in my State called Thundermist, a community health center. From title X they receive \$20,000 a year. That is very modest, but it is a little bit that counts. They want that money. The total number of family planning patients served at Thundermist is 1,600. Of those who qualify, who are of low enough income, really practically no income, 216 qualify, 216 out of the 1,600. What are the others? The others cannot afford a doctor, but they can pay a little bit toward it, a little bit. They are on a sliding scale, based upon their incomes.

The title X regulations would force this community health center—I think there is no part of the health delivery system that is more popular with Senators on the floor of the Senate than the community health centers. We all know they are doing a good job—the title X regulations would force Thundermist to refrain from providing information regarding all medical options available. They could not do that. They have 1,600 patients. Because of these regulations that are imposed upon the center as a result of receiving this money, they cannot give that information to any of the patients, even those who are paying on the sliding scale. None of the 1,600 can receive the information that they require. Indeed, under these regulations they have to forgo giving them that

third option of termination of pregnancy.

So this community health center is confronted with a difficult problem. Should they forgo these funds? They think maybe they should, because in fairness to the 1,400 patients who do not quite qualify to be low income women, they are having to forgo with them the advice they feel they are entitled to. Indeed, they feel all the patients are entitled to it.

So, Mr. President, what we are liable to see are certain clinics forgoing these funds and, thus, that service to low-income women will no longer exist. I do not think that is what we seek. Some might say, well, hurrah, we save a little money. This community health center does not take the money, and therefore we save \$27,000. That is not the objective of the program. The objective of the program is to reach out and have these low-income women come in; bring them in so they can receive the advice and planning that the whole bill deals with.

If you want to scotch the whole program and get rid of it, that is a separate subject. That is not before us. I do not think there is a proposed amendment on the floor to get rid of the program. Therefore, we want it to serve low-income women and give them this health information that they are entitled to.

So, Mr. President, I just want to wind up this section of my remarks by saying that this amendment is supported by the American Medical Association. I will briefly read a paragraph of what they say:

AMA [American Medical Association] policy, states that a physician should counsel his or her patient on the full range of medical treatment options appropriate for a given medical condition. We believe that each patient is entitled to full and fair disclosure of all relevant information and that such disclosure is essential for the patient to make an informed decision.

Also, the amendment is supported by the American College of Obstetricians and Gynecologists. This is what they say:

Prohibiting physicians from counseling or referring their patients for abortion services does not ensure that women will not seek them. However, women may seek abortions later in pregnancy, thereby increasing their health risks. Clearly, the regulations (the HHS, Health and Human Services regulations) create a two-tiered health care system with low-income women receiving more limited care and information from federally funded services than women who can afford private health services.

Mr. President, I ask unanimous consent that these two letters be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AMERICAN MEDICAL ASSOCIATION,  
Chicago, IL, September 20, 1990.

Re Title X Amendment.

Hon. JOHN H. CHAFEE,  
U.S. Senate, Dirksen Senate Office Building,  
Washington, DC.

DEAR SENATOR CHAFEE: The American Medical Association supports the amendment Senator Jeffords and you will be offering to S. 110, the Family Planning Reauthorization Act. That amendment would allow physicians and other health care personnel to offer, upon request, nondirective counseling regarding management of unintended pregnancies.

AMA policy states that a physician should counsel his or her patient on the full range of medical treatment options appropriate for a given medical condition. We believe that each patient is entitled to full and fair disclosure of all relevant information, and that such disclosure is essential for the patient to make an informed decision.

Your proposed amendment to Title X is entirely consistent with this policy. The amendment would allow physicians to offer the comprehensive counseling they are professionally and ethically bound to provide, and enable women seeking information about unintended pregnancies to make informed health care choices.

We commend Senator Jeffords and you for your significant proposal.

Sincerely,

JAMES S. TODD, MD,  
Executive Vice President.

THE AMERICAN COLLEGE OF  
OBSTETRICIANS AND GYNECOLOGISTS,  
Washington, DC, September 17, 1990.

Hon. JOHN H. CHAFEE,  
Dirksen Building,  
Washington, DC.

DEAR SENATOR CHAFEE: On behalf of the American College of Obstetricians and Gynecologists (ACOG), an organization representing more than 29,000 physicians specializing in the delivery of health care to women, I would like to express our strong support for the amendment you plan to offer when the Senate considers S. 110, the Family Planning Amendments of 1989. This amendment will clarify Congressional intent that pregnant women be offered all legal information about options for dealing with an unwanted pregnancy, including abortion. We applaud your efforts to make the intent of Congress absolutely clear.

As you know, this amendment is necessary because regulations promulgated by the Department of Health and Human Services in 1988 that prohibit physicians and other family planning clinic personnel from providing abortion information and referrals to clients, even when such information is requested specifically. Consequently, these regulations deny those patients receiving care in Title X funded clinics their right to complete information about their health care, including nondirective, factual information for women facing an unwanted pregnancy. Furthermore, the regulations violate a patient's right to informed consent, and conflict with ACOG standards, which state that patients should be counseled about all options in the case of an unwanted pregnancy.

Prohibiting physicians from counseling or referring their patients for abortion services does not ensure that women will not seek them. However, women may seek abortions later in pregnancy, thereby increasing their health risks. Clearly, the regulations create a two-tiered health care system with low-

income women receiving more limited care and information from federally funded services than women who can afford private health services.

Again, ACOG supports your amendment, which will simply clarify Congressional intent regarding guidelines for Title X. We support your efforts to ensure that women in Title X clinics continue to receive high quality medical services.

Sincerely,

HAROLD KAMINETZKY, MD,  
Director, Practice Activities.

Mr. CHAFEE. So, Mr. President, there is the case. Again, I say that this has nothing to do with funding abortions. This is only in response to a question when the woman asks: "What are my options?" The doctor has to give information without urging one course or the other; that is very clear. So, Mr. President, I hope my colleagues will support this amendment.

Mr. KENNEDY. Will the Senator yield?

Mr. CHAFEE. Yes.

Mr. KENNEDY. The Senator, I think, has made a well-stated case in favor of his position and that of Senator JEFFORDS. I think it is also perhaps relevant to mention the various preventive and public health services that are provided in these centers that, if they deny the funding, would be denied to women, such as teaching how to test in terms of cervical cancer, the pap smears, the self-examination of breasts in terms of potential dangers of cancer of the breast, a whole range of other kinds of services, many of which have been particularly troublesome to low-income individuals.

I think the Senator has made an excellent case with regards to the particular point that he is making. But if those funds are not available to these centers, and the centers for some reason are diminished in their ability to serve low-income people, this whole range of public health services that can be so important in terms of reducing the number of low weight babies, the good prenatal care, the whole range of other kinds of services would also be denied.

Is the Senator also recognizing that that would be an attendant result if we were not able to provide funding for some of these centers under title X, that not only the case that the Senator makes with regard to the non-directive birth control provisions but also these other services would be denied to a very needy population?

Mr. CHAFEE. I certainly agree with what the distinguished Senator from Massachusetts said. I would just like to make one other point, that they also counsel in these centers about abstinence. They counsel the young women.

Mr. KENNEDY. And about adoption, too.

Mr. CHAFEE. And about adoption. I mean what we are really stressing here is a point of compassion, if I might

say, treating low-income women with complete fairness, treating them the same as we would some woman who could afford the services.

Also there is a tremendous cost to this program in the fact that young women are not, to a great enough degree, receiving proper counseling on birth control measures, which of course, is part of the legislation.

Here is an AP story that came out yesterday that I saw in the local paper. "Welfare cost for families headed by teens surpassed \$21.5 billion last year." For those who are unsympathetic to this program, but are worried about the national deficit, this \$21.5 billion primarily is paid by the Federal Government through Medicaid, through AFDC, through a whole series of other programs.

It further goes on to say, "The Federal Government spent more than \$21.5 billion last year on welfare programs for families started by teenagers. \* \* \* The amount is \$1.7 billion higher than," for the year before.

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

WELFARE COSTS FOR FAMILIES HEADED BY  
TEENS SURPASSED \$21.5 BILLION LAST YEAR

WASHINGTON.—The federal government spent more than \$21.5 billion last year on welfare programs for families started by teenagers, according to a report released yesterday.

The amount is \$1.7 billion higher than for 1988—partly because of inflation and expansion of Medicaid benefits but also because of an increase in births to teenagers, said the Center for Population Options report.

The figures illustrate the need for greater efforts to prevent teenage pregnancies—including sex education, family planning counseling, support for delaying sexual activity, access to contraception, and medical services, including abortion, said the report by the privately funded organization, which concentrates on world population issues.

"We can no longer let our youth stumble into parenting, a course that should be embarked on only when one is ready, willing and able to become a parent," the report said.

The costs of teenage pregnancies go far beyond those of public support, the report said.

"Too-early childbearing often impoverishes . . . the lives of girls brought too soon into the rigors and responsibilities of motherhood, of boys bewildered and unable to parent and provide adequately, of babies not planned or welcomed," the report said.

"It places a heavy burden on families and communities and contributes to our country's unconscionably high rates of low birth-weight and neonatal mortality," it said.

The most alarming increases in teenage pregnancies are occurring among 15- to 17-year-olds, the report noted.

After a downward trend in births among this age group from 1970 into the mid-1980s, the rate began increasing. It jumped from 30.6 per 1,000 teenagers in 1986 to 33.8 in

1988, according to the National Center for Health Statistics.

Teenage pregnancies too often result in the mother cutting short her education, which increases her chance of living in poverty and needing public assistance, the report said.

In estimating federal spending on families started by teenagers, the center included families currently headed by teenage mothers as well as those in which the mother is now 20 or older but had her first child when she was a teenager.

The center also calculated the public cost for five states and two cities for 1989, adding in the welfare expenditures of the states, cities and towns.

These were: Louisiana, \$360 million; New Mexico, \$80 million; Oregon, \$174 million; Vermont, \$39 million; Wisconsin, \$437 million; Baltimore, \$246 million; and St. Louis, \$81 million.

Mr. CHAFEE. Mr. President, I wonder if we could arrive at a time agreement of some type on the bill, and what I said will count toward my time. I suggest we have several speakers, and I originally was thinking of 60 minutes evenly divided. I wonder if we could make it, say, 80 minutes equally divided; is that fair enough?

Mr. HUMPHREY. Mr. President, if the Senator will yield, I have no objection in principle to the notion, but I think our side is checking who else wishes to come forward.

The PRESIDING OFFICER. Is there objection?

Mr. HUMPHREY. I object.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, the Senator from Massachusetts and the Senator from Rhode Island just a moment ago, tried to make a case that if this reauthorization bill does not pass all these other essential, important, and praiseworthy services which they cited, will somehow lapse. Of course, nothing could be further from the truth. Title X has not been reauthorized since 1985. Have the funds stopped? Have these centers and clinics been shut down as the Senator from Massachusetts seems to suggest might be the case if we do not reauthorize title X? Of course not. The money continued to flow and was used according to regulations.

Mr. President, this is title X; the short title is the Family Planning Amendments of 1989. I think there are very few of us who would oppose family planning. The stated purposes of this program are to provide prenatal care and delivery. That is fine. No one has any objection to that.

Let us bear in mind, while we are on that subject, that when we talk of prenatal care, we talk not only of care of the mother's health, but of the unborn child as well. The program provides also for infant care, foster care, and adoption, again all praiseworthy enterprises: There is no controversy there. But it is that next one that creates the problem—pregnancy

termination, a rather awkward phrase, "pregnancy termination." On the one hand, they talk about prenatal care for mother and an unborn child. When you go down to item three, they talk about pregnancy termination. What happened to the unborn child, medical care, and compassion for the unborn child? Pregnancy termination is abortion; abortion is killing of a human being.

There is the problem with this bill as it might be amended by the Chafee language. And, in any event, even absent the Chafee language, there is language in the committee report that will be used to interpret legislation intent. Clearly the intent of the committee, as indicated by the committee report, is to provide Federal funding to counsel women with respect to abortion, and even to refer women to abortion clinics.

When a woman comes in to one of these federally funded clinics and says, where can I get an abortion, they would be bound under the Chafee language and indeed under the committee report language, as it reflects legislation intent, to look in their directory and to tell that client where she can obtain an abortion.

Mr. President, I need not point out that abortion is a highly controversial subject in our country, ever more so, rightfully so, rightfully ever more controversial because more and more people are beginning to realize that abortion involves the killing of a human being.

Under Roe versus Wade and its progeny, the court decisions which followed, abortion has been established at least for now, until there is some overturning of those precedents, as lawful. And nothing can be done unreasonable to obstruct that option. But it does not follow that the Federal Government has, in any way, any obligation to facilitate the performance of abortion. It does not follow in any way that we have to spend one penny, \$1,000, \$1 million, or any amount of money to facilitate the performance of abortion.

The difficulty with this bill, the committee report, and now the Chafee language, is that it would obligate the taxpayers to fund these clinics, which would then be empowered to refer women to abortion clinics. There is the problem.

So we are back once again, embraced into this controversy over abortion. We hear about the two-tier medical system. We have heard that argument before with respect to Federal funding of abortion. I do not suggest that is the case here before us today, but it is a similar situation in which the proponents of this committee language and the Chafee language argue that the taxpayers ought to be obligated to fund clinics which counsel women

with respect to abortion and even refer them to abortion clinics.

So for the same reason that virtually every pro-life organization in the country opposes this bill, I oppose S. 110. This is not a bill about preventing pregnancy, as some might suggest. This is not a bill about family planning, exclusively, as some might suggest. This is a bill that would use Federal funds to counsel women with respect to the killing of their unborn children. It is not a bill about preventing pregnancy. It is a bill about counseling women who are already pregnant to have their children killed by means of abortion.

The committee report will be interpreted with respect to legislative intent as reversing the regulations issued in 1988 which bar title X clinics from counseling and referring for abortion. That alone is enough to justify defeat of this bill.

Additionally, the bill contains vague language that could open the door to Federal funding new abortion-inducing drugs, the development of such drugs, such as RU486, a drug used in Europe to induce abortion between 4 and 7 weeks into pregnancy.

Further, this bill could encourage federal funding of school-based clinics that promote abortion as a means of family planning.

The report language is damning enough, but to make matters worse, the Senator from Rhode Island and the Senator from Vermont have offered an amendment that would make it clear that federally funded clinics may counsel women about having their unborn children killed by abortion and that such Federally funded clinics may even refer their clients to those medical practitioners skilled in killing unborn babies.

Clearly this is not a bill just about family planning, unless you embrace the notion that killing unborn children is a legitimate method of family planning. I point out that is a notion that is soundly rejected by most people.

This is a bill about using abortion as a means of birth control and family planning. This is a bill about using Federal funds—taxpayer funds—to facilitate the use of abortion as a means of family planning. What next? Infanticide, as a method of family planning?

Those who support S. 110, groups like the Alan Guttmacher institute, the American Civil Liberties Union and the National Abortion Rights Action League, say that we should support S. 110 because it is a family planning bill. That is propaganda. S. 110 is not a family planning bill at all. True family planning programs should prevent unintended pregnancies, not provide funds for counseling the killing of unborn children as a family planning method. True family plan-

ning programs do not, as a family-planning method, refer pregnant women to doctors who practice the specialty of killing unborn children.

S. 110 would radically alter the title X, program. It was created in 1970. It is a grant program which provides funding for a broad range of family planning services, most of which are praiseworthy and not matters of controversy.

Administered by the HHS Office of Population Affairs in the Public Health Service, title X currently supports approximately 4,000 such clinics across the Nation.

Section 1008 of title X contains the following prohibition which has not been altered since 1970:

None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

One would think that would be clear enough with respect to congressional intent. The intent was to create a wall of separation between title X programs and abortion as a method of family planning.

I want to read from the conference report, No. 91-1667, 1970:

It is, and has been, the intent of both Houses that the funds authorized under this legislation be used only to support preventive family planning services, and other related medical, information and education activities. The conferees have adopted the language contained in section 1008, which prohibits the use of such funds for abortion in order to make clear this intent.

In addition, Mr. President, Congressman DINGELL, a chief sponsor of section 1008, made the following floor statement at the time of the debate in 1970:

During the course of House hearings on H.R. 19318 there was some confusion regarding the nature of the family planning programs envisioned, whether or not they extended to include abortion as a method of family planning. With the "prohibition of abortion"—title X, section 1008—the committee members clearly intended that abortion is not to be encouraged or promoted in any way through this legislation. Programs which include abortion as a method of family planning are not eligible for funds allocated through this act.

Several considerations prompt this action. There is a fundamental difference between the prevention of conception and the destruction of developing human life. Responsible parenthood requires different attitudes toward human life once conceived than toward the employment of preventive contraceptive devices or methods. What is unplanned contraceptively does not necessarily become unwanted humanly. Whether a conceived child is loved or unloved is dependent on factors that, at best, can only be marginally related to family planning.

If there is any direct relationship between family planning and abortion, it would be this, that properly operated family planning programs should reduce the incidence of abortion—furthermore, there is evidence that the prevalence of abortion as a substitute or a back-up for contraceptive methods can reduce the effectiveness of family planning programs.

Well, Mr. President, that is in some length a recitation of legislative intent from 1970 at the start of this program. One would wonder how anyone could misinterpret or misunderstand what Congress meant in regard to abortion. However in 1981 pro-abortion forces, working with their allies in the bureaucracy at HHS, were successful in getting HHS to issue revised title X program guidelines.

By the way, they were not regulations in force all those years as mistakenly suggested by my friend from Rhode Island. They were not regulations. They were guidelines. Like previous editions of the guidelines, they did not incorporate prior HHS office of general counsel opinions providing guidance on abortion counseling, referral and program separation. However, unlike prior guidelines, the new guidelines actually reversed congressional intent and required title X projects to engage in abortion-related activities under certain circumstances.

HHS issued these pro-abortion guidelines with no direction from Congress or without any change in the law. I daresay if this had been any other issue we would have put people in jail for doing this. For example, let us pretend that Congress passed a law which prohibited the executive branch from funding or referring those with funds to help the Contras in Nicaragua. Then let us say that after a period of time, the executive branch went ahead and found ways to fund the Contras anyway. Sound familiar? It should. It would seem to me that we would be upset by that action and would demand the services of a special prosecutor to throw those responsible for breaking the law in jail.

Mr. President, after a longstanding concern about the need to return to the law, on September 1, 1987, HHS published a notice of proposed rule-making clarifying the original intent of Congress. During the 60-day public comment period, HHS received approximately 75,000 comments with a majority supporting the proposed rules.

On September 2, 1988, as printed in the Federal Register, the final regulations were printed establishing clearer standards for compliance with section 1008. These were regulations, not guidelines, and properly promulgated as well. The regulations focus the emphasis of the Title X Program on its traditional mission and stated intent of Congress: The provision of preventive family planning services, and the specific prohibition of abortion as a method of family planning.

The regulations have been sustained by one court of appeals and struck down by two others. And now it looks as though the Supreme Court will resolve these inconsistencies between the courts of appeals.

Mr. President, let us be clear; S. 110 is an abortion bill. As stated in a statement of administration policy:

S. 110 is designed to erode the integrity of the Federal Family Planning Program by promoting its involvement in abortion. Title X is a preventive family planning program designed to reduce the incidence of abortion. It should not be involved in abortion-related activities in any way.

Therefore, Mr. President, I urge my colleagues to defeat the Chafee amendment and indeed to defeat the bill; or, if the alternative presents itself, to vote against cloture as a way of defeating the bill because the bill ought to be defeated. It would overturn existing policy, policy that is sound, policy that respects the division in our society about abortion, policy that respects and reflects the long-standing policy of Congress not to use Federal funds in any way to facilitate the performance of abortion.

The Chafee language and the committee report language clearly are intended—no question about it; the authors are quite forthright about it—clearly intended to use Federal funds to counsel women about abortion and even refer them to abortion clinics. That would be a terrible mistake, Mr. President.

I urge my colleagues to oppose the amendment and indeed to oppose the bill.

THE PRESIDING OFFICER (Mr. BRYAN). The Senator from Oregon is recognized.

Mr. PACKWOOD. In some ways—only in some—the argument made by my good friend from New Hampshire is partially, to a minuscule degree, right, when he asks is this debate about abortion. But it is only about abortion if you can make this argument. Under the law, under the Constitution, in the United States today a woman is entitled to an abortion, with certain restrictions in the Supreme Court's decision of Roe versus Wade. But as a matter of constitutional right the Federal Government and State governments cannot take the right away from her. And, if you are middle income—you do not have to be rich—if you are middle income, you go to a doctor and you say: "Doctor, I think I may be pregnant. Please examine me." The doctor examines you. "Sally, you are pregnant."

You are paying the doctor.

She says, "Doctor, give me my alternatives."

He says, "Well, you can carry the pregnancy to term. If you bear the child, you can keep it. You can put it up for adoption. Or, Sally, you have the option of abortion if you like." The doctor may say, "I do not do abortions, but if you like I can refer you to where they do them," and leaves the choice to Sally.

At this moment, family planning clinics that receive title X funds from

the Government cannot recommend, suggest the last option. They can say: "Sally, you can bear the child to term and keep the child. You can put the child up for adoption. You can give it up to foster care." But the doctor's lips are sealed even if Sally asks is there a possibility of abortion. The doctors in the clinic are not allowed to tell you that. They are not allowed to tell you what any other middle income woman or rich woman could find out from her doctor with no problem.

So when the Senator from New Hampshire says is this a bill about abortion—only by the farthest reach of your imagination. If you say that a doctor in the family planning clinic that gets a very small portion of its money from the title X funds and therefore has a slight Federal touching—only if you can say the doctor may not tell you about that option, is this a bill about abortion.

We have had debates, Mr. President, in this Chamber about abortion. I remember an extraordinary debate we had when my good friend, the Senator from Utah, presented a constitutional amendment to overturn the Supreme Court. I had to admire the correctness of his approach. He did not like Roe versus Wade. He offered a constitutional amendment on the floor of this Senate to overturn it.

That is what our founders intended. If you do not like the Constitution, get a two-thirds vote here and in the House, get three-quarters of the States to ratify it and overturn it. We have done it from time to time in our history. That is the way to go about it if you do not like the Roe versus Wade decision. That approach failed. But to the credit of the Senator from Utah, it was the straight-out approach.

As a matter of fact, by one vote he failed even of getting a majority, let alone two-thirds. But it was a fair debate.

Then we have had what I would call circuitous arguments where we have tried to achieve the same thing that the Senator from Utah tried to do forthrightly by what I think are devious or underhanded means. It is called court stripping.

They say, because the Constitution gives to the Congress the right to create all of the courts in this country but the Supreme Court—all the courts of appeals, all the Federal district courts are created by statute and their jurisdiction under the Constitution is determined by statute—it would be their effort to say no Federal district court and no court of appeals, and then the statutes would normally add, "nor the Supreme Court" may consider any case involving abortion.

If this body had the constitutional right, this Congress, to say that a court, including the Supreme Court, could not hear a case, could not even hear a case involving abortion, that

would take only a majority vote in the House and the Senate. That is not a constitutional amendment.

But, if that was constitutional—I do not know if it is, that kind of case never has gone to the Supreme Court because, thank the Lord, we have never done that—but if that is constitutional, then we can stand the Constitution on its head. It will not take any longer a two-thirds vote to amend and three-quarters vote of ratification by the States.

By a majority vote we can pass a statute, the House and the Senate, and say the court may not consider any cases involving abortions and may not consider any cases involving school prayer or legislative apportionment or whether or not a congressional committee can compel somebody to be a witness against themselves; just overturn the Constitution by majority vote.

We have had those debates. Those are debates on abortion. And we have had debates on funding.

In the mid-1970's, Medicaid used to fund lots of abortions, about a quarter of a million a year in this country, for poor women. And then, gradually that was whittled away and whittled away and whittled away, until today we fund about 600 abortions a year, and those when the life of the woman is in jeopardy. When the choice is literally the life of the woman or the life of the fetus—600.

Do you know what the liberal position is today, the debate we have today? The liberal position is, well, the Federal Government, under Medicaid, should pay for abortions if in addition to the life of the woman being threatened she is pregnant because of rape or incest. And if we would fund those we would fund about another 600; we would fund about 1,200.

So the liberal debate versus the conservative debate today is 600 abortions done if it is to save the life of the woman versus 1,200 to save the life of the woman, or for rape and incest.

Twenty years ago we were funding about a quarter a million abortions a year for poor women under the Medicaid program.

The forces that are opposed to the funding of abortions have by and large won those votes. I am on the other side of it. I am sorry they won them, but they have won them, and that has been upheld in the courts.

While the Court has said you have a right, if you are a woman, to an abortion, there is no right to compel the Government to pay for your abortion. The analogy they would use is the first amendment and free speech. They say you have the right to publish a newspaper but the Government is not obligated to buy you a newspaper. So we have lost that battle.

Now our good friend from New Hampshire would say the Chafee

amendment, in fact his whole authorization, is a debate about abortion. Mr. President, it is not a debate about abortion in the sense of funding under Medicaid. It is not a debate about abortion in the sense of should we overturn Roe versus Wade by constitutional amendment. It is not a debate about abortion, saying should we try to strip the Court of jurisdiction to hear cases involving abortion. This is not that kind of a debate.

It is simply this debate: The Federal Government, as a matter of policy, thinks that family planning is good, that planned pregnancies are good; and under what we call title X, we partially fund family planning clinics.

As a matter of fact, most of the money that we fund goes to local councils of government and they in turn pick different clinics to give the money to. And we encourage women and especially poor women to come into the clinics and get counseling about contraception, and we discover in many cases this is the only touch with any medical providers some of these poor women have. They come in and we discover that they have heart problems or breast cancer, or a variety of other medical problems totally unrelated to pregnancy. They may not even be pregnant.

But in many cases when they come in they are already pregnant and they want to know what to do when this pregnancy is over. They would like to, if possible, space their future pregnancies or perhaps eliminate their future pregnancies. But they want to know what to do about this pregnancy. And so if the woman was rich enough to go to her own doctor the doctor would say: "You can keep the child, put it up for adoption, send the child to foster care, you can do what you want; you can have an abortion."

The Senator from New Hampshire makes his argument because the Chafee amendment will simply go back to the practice that used to exist in this country a decade ago that allows the clinic to say to Sally, "In addition to your other options you have the option to choose abortion." The clinic does not pay for an abortion, does not do an abortion; but it can say to Sally, "We can tell you where to go if you want one." Is that a debate about the funding of abortions?

If it is, Mr. President, then we stretch the use of the normal English language. We are almost treading on the first amendment. It is not going to cost any more money in any clinic in this country that exists. It is not going to take one more doctor or one more nurse or one more computer if, when Sally comes in and is pregnant, the doctor says, "Sally, you have four options. One, two, three, four."

The doctor now says, "Sally, you now have 5; 1, 2, 3, 4, or 5. You can

have an abortion." Where does that cost any more money? What more doctors do you have to have to say, "Sally, you can have an abortion. It is your choice; weigh it along with all the other alternatives."

That is all this amendment does. Mr. President, if that is funding of abortion, then every word that is uttered, ever uttered by any Government bureaucrat or by any agency that has any Federal money, is a funding issue. You and I and our colleagues know that is not true.

So I hope that this Senate will bely this argument about is this an abortion issue or a funding issue. We are going to have those debates again in this Congress. I guess we are going to have them in the next Congress. I guess we are going to have them for the next decade. We have had them for the last two. But in this bill, in this amendment, is not that debate.

Vote for it or vote against it, as we choose. I hope we support it. For Heaven's sake, do not vote against it on the fallacious argument that this is an abortion, or an abortion funding, or an abortion-related issue.

I thank the Chair.

Ms. MIKULSKI addressed the Chair.

The PRESIDING OFFICER (Mr. ROCKEFELLER). The Senator from Maryland.

Mr. CHAFEE. Mr. President, I wonder if we could arrive possibly at a time agreement now.

Ms. MIKULSKI. Mr. President, I do wish to speak to the issues here, but I would like to enter into a conversation with the Senator from Rhode Island for the purposes of propounding a unanimous-consent request.

Mr. CHAFEE. Do you want me to proceed? My question was going to be, Mr. President, that we vote at 6:30, and that there would be reserved from the approximately 28 minutes; 5 minutes for the Senator from New Hampshire and 5 minutes for the Senator from Rhode Island.

Ms. MIKULSKI. If the Senator would withhold for a moment, I am advised by the majority leader staff of the need to clarify if that is acceptable to him. We thought it would be. Unless the majority leader has an objection, I do not see one.

But I will give my statement, and by the time I do that, I think we will be ready to move.

Mr. CHAFEE. I thank the Senator.

Ms. MIKULSKI. Mr. President, I rise to speak on behalf of this bill, and I rise both as a Senator and a social worker. Prior to becoming a U.S. Senator, or even entering into the field of politics, I was a social worker for Associated Catholic Charities. I worked as a foster care worker. I worked helping also to get older children adopted; also working at the Department of Social Services as a child abuse worker. And

also I was one of the people who was engaged in the field related to really moving public assistance mothers off welfare rolls and into the employment rolls.

Mr. President, as a social worker and a Senator, I can tell my colleagues, this is one of the most important bills that we can pass. I can say that the Chafee amendment is an excellent amendment. What Senator CHAFEE offers in his amendment is that he codifies into law the opportunity of responsible counselors and professionals to provide to the people who seek their help and guidance the full range of options, and they get that information within a clinical setting with the most professional and medical and responsible advice.

They do not get it from a cheap magazine. They do not get it from a tabloid. They do not get it from an ill-informed girlfriend or boyfriend. And they do not get it from the gutter. They get it from a professionally trained physician, from a nurse practitioner, from a nurse midwife, from a social worker who, in many instances, is licensed and certified, and who wants to be sure when people make a decision, it is the most informed decision; within that context, to know about opportunities for becoming a mother; if for some reason the child is unwanted, what adoption would mean, and also what termination of pregnancy would mean, because there are various aspects of that.

Within that atmosphere, their own health would be evaluated, because we are not talking about going into some mill, some medical or Medicaid mill of some kind. We are talking about going into a professionally run clinic where people are getting Pap smears, are being tested for breast cancer and a whole variety of other things.

It is essential that the Chafee amendment be agreed to so that every bona fide, responsible professional can provide the full range of options available; not only what is available, but what are the negative sides to some of these, and what are the consequences to this decision.

I think the Chafee amendment offers a tremendous framework and opportunity for people who are giving counseling to our young people, and not so young, in some of these instances; the full range of information.

That is why I support the Chafee amendment, but I also vigorously support the title X refunding. I would like to remind my colleagues, title X was enacted 20 years ago. It was part of a Public Health Service Act. It was to ensure the public health of many of our women.

Title X was enacted to keep women, particularly poor women and young women, healthy; to give those women the knowledge and the medical access they needed to control their own lives

and keep their children from having children. To keep their children from having children. We really fundamentally believe that this is absolutely essential.

Mr. President, unlike the B-1 bomber, the Resolution Trust Corporation, and others, title X actually works. Every year, 4,500 local clinics provide medical and educational services to over 5 million women and teenagers. Every dollar in family planning we spend through title X saves almost \$4.50 in welfare payments, food payments and food stamps, and medical care.

Those medical clinics give to poor women critical access to health care services, services to blood pressure monitoring, as I said, screening for breast and cervical cancer, and also information about themselves and their bodies. For some, their own mother does not even know the information to tell them.

I happen to believe the best teacher in many of these cases is the parent. But in some instances, the parent is absent, ignorant, or poorly informed. Despite the critical services provided by title X, and despite the proven long-term savings, funding has fallen by almost \$30 million. This is the kind of short term, shortsighted activity that causes \$200 billion in budget deficits.

In my own home State alone, teenage mothers—teenage mothers—cost \$300 million a year in a variety of social programs. Nationally, the price tag is \$21 billion. But that does not factor in the cost of lost hopes, dashed dreams, high school diplomas that will never be earned, scholarships and opportunities lost, jobs forgone, promising futures foreclosed, by an unintended pregnancy.

A young girl in a poor neighborhood needs every opportunity if she is to succeed. Title X gives her the opportunity to pursue that. Every year it seems, though, we get bogged down by the same problem: the amendments and the arguments and all the emotional turmoil about abortion. This program is not about abortion. It is about options, and it is about preventing pregnancy. Not one single dollar goes toward abortion.

This fall, let us look beyond the short term. We can cast a vote to fund a better future, where every child is wanted and every mother is healthy. I think every Senator has to look into their own lives.

I think that every Senator who has thought about his or her own family has made choices, has looked at his or her own situation, has at various times used family planning. Why is it we would want to deny that same kind of thoughtful, responsible, planned behavior in our teenagers. We hope that they will delay their sexual gratifica-

tion. Abstinence would be the best tool for teenagers. Some might not even have been taught about that. Some might not even have been taught just to say no. In these clinics, that is one of the options that would be promulgated. So whether it is abstinence, adoption, or abortion, I believe young people have a right to know.

Mr. President, I have consumed my time. I note that the majority leader cannot be reached, so we cannot pursue the unanimous-consent request.

Mr. HATCH. Will the Senator yield to me.

Ms. MIKULSKI. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am trying to work this out so that we can have a vote very soon on this amendment. Then what I would like to do is call up the President's substitute and have a vote on that, or at least set a time certain when we can vote tomorrow, or we could probably have a vote tonight. We could have a vote on that if the Senator from Massachusetts is in agreement. I have sent a message to him. He is in a special meeting at this time and cannot be here on the floor. If we can, then we would dispose of these two amendments and that should be it for this evening if the distinguished Senator from Massachusetts agrees.

In the meantime, I wish to say just a few things about the amendment of our distinguished colleague from Rhode Island.

Mr. President, I rise in opposition to the Chafee amendment which would overturn regulations ensuring that no funds under title X may be used for abortion. Those regulations are on the record. Those regulations build a wall which, in my opinion, is necessary to separate Federal family planning programs from abortion services and alleviate the considerable political attention that jeopardizes the important work of title X, which is a family planning bill. Section 1008 of the Public Health Services Act states: "No funds appropriated under this title shall be used in programs where abortion is a method of family planning."

Mr. President, until September 1, 1987, no regulations had been proposed to provide clear guidance on how to comply with this section. When these regulations were proposed, over 75,000 calls were received. Final regulations were issued on February 2, 1988. Today, my colleagues who support this amendment say that these regulations are unnecessary, because title X grantees are not using funds to perform abortions.

Let us be clear about the purpose of these regulations. These regulations merely limit the use of title X funds to family planning services that we all agree are necessary and effective. The

regulations prohibit title X grantees from getting into the business of providing abortions. Providing or advocating abortions at all clearly violates the provision of family planning services.

Now, in 1982, GAO conducted an investigation to determine whether or not funds were being used for abortion services. What they found was that title X grantees needed clear guidance on how to comply with the law. The regulations were promulgated in response to this need. An accurate interpretation of section 1008 would conclude that advocacy of abortion services is inconsistent with the mission of the title X program, that is, to support preventive family planning services. Title X was designed to provide low-income women with family planning services as an alternative to abortion.

If, as the proponents of this amendment indicate, title X grantees are not in fact in the business of performing abortions, it seems to me that they should not be very concerned with the regulations. But they are concerned because there are 32 nonhospitals, title X grantees who provide abortion on site. In other words, they are planned parenthood clinics by and large that provide abortions right there, the same place that they give family planning services. These practices would have to end if they wanted to continue receiving Federal funds.

I ask unanimous consent that I may put into the RECORD a list of these co-cited agencies where they claim they are giving family planning services and where they just ship them right into the next room, in most cases in exactly the same facility on exactly the same floor, except for one case in New York, and they go right in and perform the abortion, right there in planned parenthood clinics by and large. Not all of them are planned parenthood, but a vast majority of them are. I ask unanimous consent this be printed in the RECORD.

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

#### TITLE X COSITED AGENCIES

Cosite Name:  
 Region I: 0.  
 Region II:  
 Planned Parenthood of Monmouth County, NJ,  
 Hudson Health Service, NJ,  
 Planned Parenthood of New York City, NY (different floor).  
 Region III:  
 Jefferson Family Planning Services, Philadelphia, PA,  
 Women and Children Health Services, Inc., Philadelphia, PA,  
 Planned Parenthood Association of Pittsburgh, Pittsburgh, PA,  
 Planned Parenthood Association of Southeastern PA, Phil., PA,  
 Planned Parenthood Assoc. of MD, Baltimore, MD,  
 Dover League for Planned Parenthood, Wilmington, DE,

Women's Health Care Ctr., Charleston, WV.

Region IV:  
 Planned Parenthood, Memphis, TN,  
 Planned Parenthood, Nashville, TN.

Region V:  
 Planned Parenthood of Central Ohio, OH,  
 Planned Parenthood of Mid-Michigan, MI.  
 Region VI: None.

Region VII:  
 Planned Parenthood of Central Missouri, Inc., MO,

Planned Parenthood of Greater Kansas City, MO,

Planned Parenthood of Mid-Iowa, IA.  
 Region VIII: Boulder Valley, Clinic, CO.

Region IX:  
 Alameda/San Francisco Planned Parenthood, San Francisco, CA,

Alameda/San Francisco Planned Parenthood, Oakland, CA,

Planned Parenthood of Marin, San Rafael, CA,

Planned Parenthood of Monterey County, Monterey, CA,

Planned Parenthood of Sacramento Valley, Sacramento, CA,

Planned Parenthood of Santa Barbara/Ventura & San Luis Obispo, Santa Barbara, CA,

Planned Parenthood of Santa Cruz County, Santa Cruz, CA,

Planned Parenthood of Santa Clara County, San Jose/Mountain View, CA,

Planned Parenthood World Population/Los Angeles, Los Angeles/Sherman Oaks/Pomona, CA,

Six Rivers Planned Parenthood, Eureka, CA,

Claude Hudson Comprehensive Health Center, Los Angeles, CA.

Region X:  
 Takilma Peoples Clinic, Takilma, OR,

Planned Parenthood of Seattle/King Co., Seattle, WA,

Planned Parenthood of Snohomish Co., Everett, WA.

Mr. HATCH. The legislative history of title X makes clear that none of the funds are intended to promote or encourage the use of abortion as a method of family planning. Do my colleagues intend to change this policy as well? I hope not. We need to provide real choices for women who are pregnant. Many women have said that they are never presented with favorable or neutral information on any other option but abortion. In my opinion, that is not "pro-choice." They do not have a choice. They are just directed and pushed into having abortions. Instead, women should be offered better choices.

For example, Mary Cunningham Agee has come up with a unique program called Nurturing Network. This is a support network which helps women who are pregnant respond to additional responsibilities or to an unexpected pregnancy. This network began 5 years ago. The founders began by asking how many of last year's almost 2 million abortions were truly the result of the exercise of free choice. Their survey was informal, but it was informative. What they found was that 90 percent of those who had chosen abortion would have preferred

a more positive alternative to abortion—90 percent. If those positive alternatives had been presented or there had been any reasonable chance to have them, they would have chosen them. That is real choice. Today, the way this bill will operate once the Chafee amendment is passed, abortion is going to be the only choice.

Women often find that they have too much to lose by continuing their pregnancy. Women face a lot of pressure as they struggle to continue their education or to start a career. The Nurturing Network offers comprehensive services that cover every pregnant woman's needs from pregnancy testing to delivery of the baby and information on parenting and adoption. This program provides women with real choices. Before we rush to validate what some believe is pro-choice politics, let us step back and discuss real options for women who are pregnant.

I do believe preventive family planning services are a real alternative. I also believe supportive services for women who find themselves with unplanned pregnancies are a real alternative. Advocating abortion with title X funds is just plain not the answer.

I was interested in the comments of my good friend and colleague, Senator PACKWOOD, when he complimented me for approaching these problems in a correct way, doing it in a straight-up way by bringing a true constitutional amendment to the floor and having it debated. In 1973, we probably had 25 Senators who would have voted for that amendment. When we finally brought it to the floor there were 50 basically voting for that amendment. He complimented me for doing it the right way, doing it in a constitutionally sound way, allowing the Court decision to stay until we overturned it with a true constitutional amendment.

Now, if that is true, then it seems to me those who are advocating the Chafee amendment are somewhat inconsistent because, if that is true, there is a case before the Supreme Court right now called *Russ versus Sullivan*. Frankly, that case is going to decide this very issue. It is probably going to be decided in this next term of the court. The first Monday of October, *Russ versus Sullivan* is going to be heard. If you do not like a decision of the Supreme Court, we can overturn it. The case before the Supreme Court, as I have said, is entitled *Russ versus Sullivan*. It is going to be heard in this session of the Court, and that Court may very well rule that what Senator CHAFEE and others want, they should have, or the Court may very well strike down the regulations. I do not think it will. I hope it will not.

But the fact of the matter is it could. I suggest that it is inconsistent to say we can do it one way when you are arguing overrule *Roe versus Wade* and not another way when you are ar-

guing to implement *Roe versus Wade*. In other words you cannot. It seems to me they are inconsistent arguments. If the distinguished Senator from Oregon believes that we should accord deference to the Court on these issues, then he ought to wait. If the distinguished Senator from Rhode Island thinks that, then he ought to wait. We should not have to vote on this amendment.

Why not let the Court make this decision because it is probably going to have to in the end anyway? In any event, be that as it may, I am prepared to go to a vote on this if it is all right with the distinguished Senator from Massachusetts, the distinguished Senator from Rhode Island, the distinguished Senator from New Hampshire, and anybody else in the Senate. I am prepared to go to a vote in the next few minutes.

Mr. CHAFEE. Mr. President, as I understand the problem on the vote is that the majority leader—I have not located him yet.

Mr. HATCH. I have chatted with the majority leader. He made it very clear that Senator KENNEDY and I can agree we can go ahead with these two votes. So we could have this vote in the next 7 or 8 minutes, if I can get Senator KENNEDY's agreement.

Mr. CHAFEE. I had not understood that from the majority side. In that case, we would be prepared to go to a vote with the prior understanding that both Senator HUMPHREY and I would each have 5 minutes. If no one else wishes to speak, we might as well, in other words, vote in 10 minutes with the time equally divided. I make that request.

Ms. MIKULSKI. Mr. President, reserving the right to object, we understand that what the majority leader wants to have in addition to a vote is a type of organized way of voting that would be stacked so that we would complete the debate on the Senator's amendment. Is someone talking about offering a substitute?

Mr. HATCH. Yes. I would like to offer the Administration substitute.

Ms. MIKULSKI. Would the Senator be agreeable to a time agreement on that?

Mr. HATCH. Sure. We can agree on a short-time agreement on that, and stack that vote as well. I went over and met personally with the majority leader. He said if Senator KENNEDY and I can agree on a procedure, we can proceed to vote on the amendment, call up the substitute pursuant to a short-time agreement, probably 10 minutes to the side—that is fine with me—then proceed to vote on that matter. I am prepared to offer it if the distinguished Senator from New Hampshire is agreeable.

The PRESIDING OFFICER. Is there objection?

Ms. MIKULSKI. Withholding the right to object, Senator KENNEDY has just returned to the floor. We want to be sure we all understand the same thing.

Mr. KENNEDY. If the Senator will yield, as I understand it, we would like to propound a unanimous-consent agreement and would circulate it to the other Members before propounding it. Then I will propound it. If it is agreeable, we will move forward if that is satisfactory.

Mr. HATCH. I am prepared to a 10-minute time agreement before a vote on the Chafee amendment, 5 minutes to each side, 5 minutes to Senator CHAFEE, and 5 minutes to Senator HUMPHREY. We could vote on that, or stack it, and then we could move to the substitute. I will call that up. I am willing to take 10 minutes a side.

Mr. KENNEDY. That is fine.

Mr. HATCH. Ten minutes to a side, then have those votes back to back. That should do it for this evening.

Mr. CHAFEE. Mr. President, I cannot speak for the distinguished Senator from New Hampshire. First of all, I am anxious to get this wound up. The proposal as I understand it, if I am incorrect, from the distinguished Senator from Massachusetts, is that Senator HUMPHREY and I would each speak for 5 minutes on this amendment. Then that would end the debate on this amendment. We would proceed and no vote, we proceed then—or was the suggestion having a vote?

Mr. KENNEDY. Yes.

Mr. CHAFEE. Have a vote? I do not think that is the suggestion. There is a little confusion here.

Mr. HATCH. We would be happy to stack the votes until after we debate the substitute or additional time equally divided, have the two votes back to back, and that would be the end of it.

Mr. HUMPHREY. Mr. President, I have no objection to the UC proposed here except the Senator from Utah was mistaken in suggesting that would be the end of it tonight because here is the problem. Under the UC from last week, we go immediately after morning business tomorrow to the cloture vote. Other Senators, including this one, Senator ARMSTRONG, a couple of others who have amendments to offer, have no choice but to offer them tonight unless we can get a further postponement of the cloture.

Mr. KENNEDY. If the Senator will yield, I would be glad to offer a consent agreement that we vote on the Chafee amendment and also the substitute, and as far as I am concerned, I will remain here for the evening to debate any of the amendments that the Senator from New Hampshire has. I have not inquired. I believe that the majority leader would like to continue to make progress to the extent that we

can. I have not had an opportunity to talk to him. But as far as I am concerned, I would be glad to stay here and debate or discuss with the Senator from New Hampshire and the Senator from Colorado on through the evening.

So I would expect that we would propound a consent request that will just bring us to the consideration of the Chafee amendment, and the substitute, and if it is agreeable to both of those sponsors of those amendments, with back-to-back votes. I would not presume to then speak for the majority leader on what he intended to request for the rest of the evening. I would think he would probably want to continue if we are making progress. I would be more than glad to do so. That would be the current situation.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Chair would request on the advice of the Parliamentarian that we have a formal UC request so we are quite certain of the sequence of the order.

Mr. KENNEDY. We were just going to suggest the absence of a quorum, or continue the debate until we work one out.

Mr. HATCH. May I make one point? Could I ask the distinguished Senator from New Hampshire and others who may have nongermane amendments that they would like to bring up tonight to get them to us so we can get UC's on all of them. That would give everybody some idea of what we are going to do here tonight. What we will do is ask for unanimous consent to proceed with these two, and then go from there. I am prepared to stay as well.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. I just want to take care of my amendment. I am not trying to solve all problems. Therefore, I would ask unanimous consent that there be 10 minutes more on this amendment, equally divided, under the control of Senator HUMPHREY and myself, and that that terminates the debate, and then we go to a vote, or if they wish to stack the votes, that is fine by us. But I think we want to wind this up so we will know we are through with this. Is that satisfactory?

Mr. HUMPHREY. I am just dealing with my amendment, not handling the problems of the world. Senator HATCH and his amendment is on a separate subject. I am just dealing with my situation.

Does the distinguished Senator from Massachusetts understand? I am asking that on my amendment there only be 10 minutes more equally divided under the control of Senator HUMPHREY and myself, and that concludes it. If you want to stack the vote, whatever it is, that is fine by me.

Mr. KENNEDY. I will propound a unanimous-consent request, if I could have the attention of the Senator from New Hampshire.

I ask unanimous consent that there be 10 minutes for debate on the Chafee amendment, the time be divided as follows: 5 minutes under the control of Senator CHAFEE, 5 minutes under the control of Senator HUMPHREY; and when all time is used or yielded back the Senate lay aside the Chafee amendment; Senator HATCH be recognized to offer the Hatch administration substitute, 20 minutes for debate on the Hatch amendment; when all time is used or yielded back on the Hatch amendment that the Senate proceed to vote on the Chafee amendment, and then vote on the Jeffords amendment as amended if amended; that without intervening action or debate the Senate then proceed to vote on or in relationship to the Hatch amendment; that no amendments be in order to the listed amendments; no points of order be waived; that no motion to recommit be in order; and, that the time be controlled in the usual form.

Mr. HATCH. Will the Senator yield?

Mr. KENNEDY. Yes.

Mr. HATCH. It is my understanding that we had an objection on our side with regard to the 20 minutes equally divided on the committee substitute, and we may have to change a line or two of the substitute so that it can be amended in order to resolve this. We will try to do that.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. METZENBAUM. Mr. President, I rise in support of the Chafee amendment.

Title X authorizes Federal funds for local family planning clinics.

Clinics provide basic, essential health information and services for many Americans, including many who could not otherwise afford to see a doctor or other health care professional.

Under current guidelines, federally funded family planning clinics can give pregnant women nondirective counseling regarding their options—continuing the pregnancy, placing the child in foster care or adoption, or terminating the pregnancy.

But during the Reagan administration, the Department of Health and Human Services issued regulations that prohibited health care professionals at these family planning clinics from even mentioning the option of

abortion. That does not make sense; it is illogical.

Medical groups have resoundingly criticized these regulations as violating the principles of informed consent. It is their belief that by not even mentioning the option of abortion, the professionals at the clinics will be liable for medical malpractice.

The regulations are ludicrous. How can you believe that a woman is better off not knowing about a medical option that is available? The counselors do not encourage one form of treatment over another—they provide information on options. Ultimately the woman must decide for herself.

But people who oppose a woman's right to choose an abortion want to deny that the option even exists. And they want to impose that requirement on counselors at these family planning clinics.

We would not even consider this type of "gag rule" for any other medical condition. Can you imagine a rule that forbid the mention of chemotherapy to a patient with cancer? But anti-abortion activists have made a public event out of every woman's pregnancy.

The Government should not be in the business of telling health care professionals what treatment options should be presented to patients.

I believe the Chafee amendment is a good proposal. I strongly support it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CRANSTON. Mr. President, I rise today in support of the amendment proposed by the Senator from Rhode Island, Mr. CHAFEE. This amendment would overturn regulations promulgated by the Reagan administration in 1988 which prohibit counselors and health care professionals employed at title X funded clinics from discussing abortion as an option when providing nondirective counseling to their pregnant patients. Under these misguided regulations, these health care providers are also prohibited from referring patients who desire to terminate an unintended pregnancy to appropriate health care providers even though the patient has specifically requested such a referral.

Mr. President, the original guidelines established under the Public Health Service Act of 1970 provided that "Pregnant women should be offered information and counseling regarding their pregnancies. Those requesting information on options for the management of an unintended

pregnancy are to be given nondirective counseling on the following courses of action, and referral upon request: Prenatal care and delivery, infant care, foster care or adoption and pregnancy termination." For nearly two decades, title X clinics functioned appropriately under these guidelines. Several studies confirmed that these clinics strictly adhered to their mandate to provide only information and referral to their patients interested in terminating unintended pregnancies. Clinic counselors, doctors, and nurses were trusted to advise their patients in an appropriate manner. Under the new regulations, these professionals are prohibited from providing any information regarding the option for abortion to a patient who asks for such information.

Title X clinics are often the only source of family planning and pregnancy-related information for low-income women. These women need information on all of their options so they can make the best decision for themselves and their families when faced with an unintended pregnancy. The current regulations create a two-tier system of health care for the women in our Nation—those who can afford private health care and will be advised of all options available to them and those who must make important decisions based on only partial knowledge.

The Reagan-era "gag" rule denies health professionals the right to provide patients full and accurate information about all alternative courses of treatment and the risks and benefits of each option. They are inconsistent with good medical practices and deny women dependent upon title X programs the full information they need to make an informed choice. These regulations should be overturned.

Mr. CHAFEE. Mr. President, I have here a unanimous-consent request that has been cleared by the other side. It reads as follows: That there be 10 minutes for debate on the pending first- and second-degree amendments to the committee substitute; that when time is used or yielded back, the Senate proceed to vote on the Chafee amendment; upon disposition of the Chafee amendment, the Senate proceed to vote, without any intervening action or debate, on the Jeffords amendment, as amended, if amended; that no other amendments be in order until these amendments have been disposed of; that no motion to recommit be in order, or any other point of order waived by this agreement, and that the time be divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, I will start on the 5 minutes that I have on my side.

First of all, I ask unanimous consent that Senator PELL be added as a co-sponsor.

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

Mr. CHAFEE. Mr. President, serving in the U.S. Senate is sometimes a humbling experience. I spoke fervently, perhaps not eloquently, on this measure, and made the points that I thought were pertinent, and then the distinguished Senator from Utah rose and, apparently, had not hung on every word I said. Indeed, far from it. He had not hung on any of the words I said. So he raised points that I thought we had explained very carefully to start with and, indeed, I spoke about them this morning.

So I want to briefly repeat, if I might, that contrary to what the Senator from Utah said, the very distinguished Senator, who is knowledgeable in this field, there is no money provided in title X for abortion. That is agreed to. We set that aside. There is no argument over that. Indeed, there is no encouragement for abortion under the language as it exists under title X now, or under the amendment that I have.

What we are saying, simply, is just as for 18 years of the 20-year life of this measure, that low-income women who are pregnant, who are seeking information, be given that information, and that it be nondirective.

I mean, the distinguished Senator from Utah, somehow has the impression that there is encouragement for abortion because the doctor is asked by this low-income woman—frequently teenagers—"Doctor, what are my options?" And the doctor gives the options. But the language is clear that they must be nondirective. In other words, he cannot say, well, you can carry the baby to term; you can, when the baby is born, have adoption or foster care, but I strongly suggest that you seek pregnancy termination. That is not permitted.

And so the points are, that there is no money provided for abortion under the Chafee amendment; that it is only in response to a request from the woman that the doctor gives her the options.

Finally, it must be nondirective. There can be no encouragement for A, B, C, or D. Indeed, we have had experience under this in the past. If the doctor does not want to do that, does not want to respond, he can say: "I am not going to give you the options. But you can go elsewhere where they will outline the options."

This is in response to a problem raised earlier by Senator ARMSTRONG about the religious hospitals, where they do not even want to mention any of these subjects.

Mr. HATCH. Will the Senator yield?

The reason I point that out is, there are a number of these clinics where

they have the abortion clinic on the same floor, same office as the other, and there is a compulsion in and of itself, for the abortion to take place. That is the reason I pointed it out.

Mr. CHAFEE. If such a place exists, I cannot quarrel with the information the Senator might have. All I know is that the typical situation is a community health clinic where there are no abortions performed. They are operating under other Federal guidelines, and as we all know, no Federal money can go to provide abortions for low-income women, or any women.

So, Mr. President, this is strictly an argument that I am making, and this amendment is for better health care for women. We want them to come to these clinics. We want them to know they are offered the full options.

I think, in a true sense of compassion, I do not think we want to have these women refused information that they could obtain if they could afford to go to a regular doctor. By a regular doctor, I mean a doctor they could afford to go to, because obviously there are full medical certified M.D.'s in these clinics. If they could afford to go to the doctor, and they said, please give me my options, that doctor would be required to give them the full range of options. So we wish to provide it under this amendment.

I reserve the remainder of any time I might have.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, it seems to me that the threshold question that Senators might want to answer is, do they approve of abortion as a means of family planning.

Contraception is family planning, the various kinds of contraception from rhythm to various kinds of mechanical devices, clearly that is family planning. Do Senators want to subscribe to abortion as a matter of family planning? I hope not. Certainly most Americans do not.

Even more emphatically, most Americans do not want their tax dollars used in any way to facility abortion. Nobody is suggesting that under this bill the fund will be used to pay the abortionist to pay his bill; nobody suggested that. It is a red herring, a straw man.

The fact of the matter is, the Chafee amendment and the committee report language in the bill would change the existing situation. It would change the status quo. The status quo is that no title X funds may be awarded to a grantee who promotes abortion in any way, through counseling or referral, as a means of family planning. That is the status quo.

The Senator from Rhode Island forthrightly seeks to overturn the status quo and to provide that Federal funds may be used to counsel women

with respect to abortion, and even to refer them to abortion clinics.

So if Senators want to subscribe to the notion that abortion is a legitimate means of family planning, then certainly they will want to support the Chafee amendment. But most Americans reject that notion, and reject it soundly, and even more reject the notion that their money should be used in any way to facilitate the performance of an abortion.

Let us take a worst case scenario from the point of view of those who like this bill, or may be attracted to it for some reason, because, let us face it, it does have some very salutary and praiseworthy provisions. Were it not for this abortion business it would not be a problem. But that is the problem, and it is a very big one, a moral and ethical problem, may I point out.

But for the benefit of Senators who are worried about the continuance of legitimate family planning services, let me say this again: that we have not authorized title X in 5 years. We have not passed an authorization bill like this in 5 years. We have just refused to deal with it because we could not get by it.

So what has happened? Have the funds dried up? Have the clinics closed? Has counseling on legitimate family planning methods stopped? Have they quit giving pap smears and breast examinations and fertility counsel? No. That has not happened in the 5 years we refused to reauthorize title X.

If we refused to reauthorize it, the worst case scenario, as some might see it, what happened in the last 5 years? The Appropriation Committee will provide money to continue title X under the current arrangements, that is to say, all of these fine services provided in full measure, with the exception that these grantees may not, in any way, facilitate abortion as a means of family planning.

That is a reasonable restriction. It is one that accords with the deep-felt feelings of a great many American people. It is one that accords with the decision made many times over in the last 15 years, or more, by this body not to provide Federal funds in any program that facilitates abortion.

We should stick by that precedent. It is sound ethically, and it is sound morally, and respects the conscience of millions of Americans who find that abortion kills human beings, and that it is morally repugnant, and that the Government should not in any way, however indirectly or tangentially, be involved in facilitating or promoting it, especially not as a means of family planning.

I reserve whatever time I have remaining. However, I am prepared to yield it back if my colleague is likewise prepared.

Mr. CHAFEE. Mr. President, I have 18 seconds. I merely will say that for 18 years what I am proposing here, worked successfully. I hope we can return to that successful system. My amendment deals with fostering better health care to assure that low-income women have access to the best possible health care.

Mr. HUMPHREY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 34 seconds.

Mr. HUMPHREY. Mr. President, we have just heard the old argument about discriminating against low-income women. We have heard that argument before, and we have decided that notwithstanding that argument, the Government should not be involved, should not use taxpayer funds in any way, directly or tangentially, to promote abortion and facilitate abortion. That is the question before us, the question of whether abortion is a legitimate means of family planning.

Clearly, it is not. Clearly it does not belong in this bill, and clearly we ought to reject the Chafee amendment and the bill and allow the Appropriations Committee, as it has in the past, to fund the legitimate programs without funding programs that enhance abortion.

Mr. ADAMS. Mr. President, I would like to speak in strong support of this amendment to reverse the 1988 regulations promulgated by HHS prohibiting family planning clients from counseling clients about abortion options. The 1988 regulations now before the Supreme Court, are mean-spirited, unethical, and I think, unconstitutional.

We all know that title X funds cannot be used to provide abortions. This is as true today, as it was when title X was first enacted into law 20 years ago. The primary purpose of title X, is to provide family planning services, including information about all legal, medical options regarding an unintended pregnancy.

But the regulations prohibit title X clinics from providing any information—even nondirective, factual information—about abortion.

The HHS regulations are, in effect, a ban on the right to free speech. Not only do the regulations deny medical professionals their right to discuss certain subjects, they force medical professionals into the untenable, and unethical situation of withholding medical information.

The regulations conflict with the professional ethics and guidance of major medical organizations across the country, including the American Medical Association and the American College of Obstetricians and Gynecologists, which insist on a patient's right to full information and to be referred for any necessary medical and social services not provided by title X.

Totalitarian governments restrict a citizen's right to information. America is founded on different principles. Censoring medical advice or failing to give women complete information about their health and their legal options, is antithetical to American principles.

I believe Congress has an obligation to women and to the country to reverse these regulations. Our position must be clear: Censoring information will not be tolerated.

To this end, I support adding language to the law requiring nondirective counseling on all legal options for title X patients.

I urge my colleagues to join with me in supporting this amendment.

Mr. SPECTER. Mr. President, in voting for the Chafee amendment I am concerned about attaching the abortion counseling issue to the bill, because it provides the basis for controversy and the possible veto of this important bill. On balance, I am supporting this Chafee amendment because of the history of the inclusion of such services from 1981 until the 1988 regulations promulgated by the Department of Health and Human Services.

The 1981 guidelines developed by the Department of Health and Human Services allowed title X grantees to offer information and counseling regarding their pregnancies. Individuals requesting information on options for the management of unintended pregnancy were offered nondirective counseling and referral for prenatal care and delivery, infant care, foster care, adoption services, and pregnancy termination.

Regulations promulgated in 1988 reversed this position, however, and prohibited title X clinics from offering information and referral on abortion, even when pregnant women request this information. In addition, these regulations require family planning programs to maintain physical and financial separation from abortion services, and prohibited activities relating to abortion as a method of family planning. Several suits were filed against HHS, as a result of these regulations, and two Federal appeals courts have ruled against the Department. One case is expected to be heard by the Supreme Court during its October term.

The Chafee amendment codifies the 1981 regulations, and emphasizes the provision of prenatal care and delivery services, infant care, foster care, and adoption services. This amendment also allows objective and even-handed counseling. It does not promote abortion, but gives women information regarding the availability of a wide range of services. In my view, it is important the title X services be provided in a nonadvocacy context and that

even-handed, and fair information be provided regarding the options that are available.

The PRESIDING OFFICER. All time has expired.

Mr. CHAFEE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

I further announce that the Senator from New Hampshire [Mr. RUDMAN] is absent due to a death in the family.

The result was announced—yeas 62, nays 36, as follows:

Rollcall Vote No. 252 Leg.]

YEAS—62

Adams	Gorton	Murkowski
Akaka	Graham	Nunn
Baucus	Harkin	Packwood
Bentsen	Hatfield	Pell
Biden	Heinz	Pryor
Bingaman	Hollings	Riegle
Bond	Inouye	Robb
Bradley	Jeffords	Rockefeller
Bryan	Kassebaum	Roth
Bumpers	Kennedy	Sanford
Burdick	Kerrey	Sarbanes
Byrd	Kerry	Sasser
Chafee	Kohl	Shelby
Cohen	Lautenberg	Simon
Cranston	Leahy	Simpson
Daschle	Levin	Specter
Dixon	Lieberman	Stevens
Dodd	Metzenbaum	Thurmond
Fowler	Mikulski	Warner
Glenn	Mitchell	Wirth
Gore	Moynihan	

NAYS—36

Armstrong	Domenici	Kasten
Boren	Durenberger	Lott
Boschwitz	Exon	Lugar
Breaux	Ford	Mack
Burns	Garn	McCain
Coats	Gramm	McClure
Cochran	Grassley	McConnell
Conrad	Hatch	Nickles
D'Amato	Heflin	Pressler
Danforth	Helms	Reid
DeConcini	Humphrey	Symms
Dole	Johnston	Wallop

NOT VOTING—2

Rudman	Wilson
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So the amendment (No. 2762) was agreed to.

Mr. CHAFEE. I move to reconsider the vote.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. BURDICK). The question is on agreeing to the Jeffords amendment, as amended.

The amendment (No. 2761), as amended, was agreed to.

Mr. JEFFORDS. I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, what we would like to do for the betterment of all Senators so that they can know what the schedule is, and what I suggest to the distinguished majority leader and majority floor manager, is call up the President's substitute, have 20 minutes equally divided, and I believe both Senator KENNEDY and I would try to limit that to probably 10 minutes at the most, then have a vote on that, and then work out the time agreements on the other amendments that will occur before the vote on cloture tomorrow.

Mr. MITCHELL. Mr. President, I have indicated to the managers that I believe that procedure would be acceptable and accommodating to the interests of most Senators. That requires an agreement identifying the substance and number of amendments which would be offered this evening and debated this evening. The votes on those amendments would occur tomorrow prior to the cloture vote now scheduled on the bill. That is what the managers have suggested. It appears to me to be the best way to accommodate the interests of all concerned. It will take some time to work out that agreement, in which event that would occur during the debate, the few minutes of debate now on the Hatch amendment.

Accordingly, Mr. President, to permit that to go forward, I now ask unanimous consent that the Senate now consider the Hatch amendment No. 2763; that no amendments to the amendment be in order; that if adopted the Hatch substitute amendment be considered as original text for the purpose of further amendments; that there be 20 minutes of time for debate on the amendment equally divided and controlled in the usual form, at the conclusion of which there be a vote on or in relation to the amendment without any intervening action or debate; that no points of order be deemed waived by this agreement and no motions to recommit be in order.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Mr. President, reserving the right to object, I would like to inquire of the distinguished Senator from Utah if he thought we could do it in less time. Is it possible to have an agreement that we do it in less time?

Mr. HATCH. I think we should keep it at 20 minutes. I think we can do it in less time. We will endeavor to do so.

The PRESIDING OFFICER (Mr. REID). Is there objection? Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I thank my colleagues for their coopera-

tion. I understand the managers and interested Senators will attempt to put together an agreement. That would, if adopted, permit the offering of amendments this evening and debate on them, but the votes would be deferred until tomorrow morning prior to the cloture vote. I thank my colleagues.

AMENDMENT NO. 2763

(Purpose: To provide for a substitute amendment)

The PRESIDING OFFICER. Under the previous order, the clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] for himself and Mr. COATS, proposes an amendment numbered 2763.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Family Planning Amendments Act of 1989".

SEC. 2. STATE FAMILY PLANNING PROGRAMS.

Title X of the Public Health Service Act (42 U.S.C. 300 et seq.) is amended to read as follows:

"TITLE X—STATE FAMILY PLANNING PROGRAMS

"SEC. 1001. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of assisting States to carry out programs under which acceptable and effective family planning methods and services (including natural family planning methods, infertility services, services for adolescents, and adoption services) may be provided, and in connection with which family participation is encouraged, there are authorized to be appropriated \$138,364,000 for fiscal year 1990 and such sums as may be necessary for each of the fiscal years 1991 and 1992.

"SEC. 1002. ALLOTMENTS.

"(a) IN GENERAL.—From the amounts appropriated under section 1001 for any fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to such amounts appropriated as the amounts provided under this title (as such title existed before the date of enactment of the Family Planning Amendments Act of 1989) for fiscal year 1989 by the Secretary to the State and to entities in the State for family planning services bears to the amount provided for fiscal year 1989 to all States and to entities in all States for such services under such title.

"(b) REALLOTMENTS.—To the extent that all funds appropriated under section 1001 for a fiscal year are not otherwise allotted to States because—

"(1) one or more States have not submitted an application or description of activities in accordance with section 1007 for such fiscal year;

"(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(3) some State allotments are offset or repaid under section 1008(b)(2);

such excess amount shall be reallocated among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this subsection.

**"(c) RESERVATIONS FOR INDIANS.—**

**"(1) IN GENERAL.—**If the Secretary—

"(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this title be provided directly by the Secretary to the tribe or organization; and

"(B) determines that the members of the tribe or organization would be better served by means of grants made directly by the Secretary under this title;

the Secretary shall reserve from amounts that would otherwise be allotted to the State under subsection (a) for such fiscal year the amount determined under paragraph (2).

**"(2) DETERMINATION OF AMOUNT.—**The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to the State under subsection (a) an amount equal to the amount that bears the same ratio to the allotment of the State for the fiscal year involved as the total amount provided for fiscal year 1989 by the Secretary to such tribe or tribal organization to carry out this title bears to the total amount provided for such fiscal year by the Secretary to the State and entities (including Indian tribes and tribal organizations) in the State to carry out this title.

**"(3) DISTRIBUTION.—**The amount reserved by the Secretary on the basis of a determination under this subsection shall be made available to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

**"(4) PLAN.—**An Indian tribe or tribal organization shall be eligible for a grant for a fiscal year under this subsection, if it submits to the Secretary a plan for such fiscal year that meets such criteria as the Secretary shall prescribe.

**"(5) DEFINITIONS.—**As used in this section, the terms 'Indian tribe' and 'tribal organization' have the same meaning given those terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act.

**"SEC. 1003. PAYMENT UNDER ALLOTMENTS TO STATES.**

**"(a) IN GENERAL.—**For each fiscal year, the Secretary shall make payments, as provided by section 6503 of title 31, United States Code, to each State from its allotment under section 1002 (other than any amount reserved under section 1002(c)) from amounts appropriated for that fiscal year.

**"(b) AVAILABILITY.—**Any amount paid to a State for a fiscal year and remaining unobligated at the end of that fiscal year shall remain available for the next fiscal year to the State for the purposes for which it was paid.

**"SEC. 1004. USE OF ALLOTMENTS.**

**"(a) PERMISSIBLE USES.—**

**"(1) IN GENERAL.—**A State may, consistent with the provisions of this title, use amounts paid to it under section 1003 as the State may find appropriate for—

"(A) acceptable and effective voluntary family planning methods or services;

"(B) training of family planning personnel;

"(C) developing and making available family planning and population growth information (including educational materials) for all individuals desiring such information (or materials); and

"(D) conducting or supporting research to improve the delivery of family planning services. Amounts provided for the activities referred to in this paragraph may also be used for related planning, administrative, and educational activities.

**"(2) PRIORITY.—**Priority shall be given, in any program in which funds provided under this title are used, to the furnishing of family planning services to individuals from low-income families (as defined by the State) to insure that economic status will not be a deterrent to participation in such program.

**"(b) LIMITATIONS.—**A State shall not use amounts paid to it under section 1003 to—

"(1) provide inpatient services;

"(2) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment; or

"(3) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

**"(c) ADMINISTRATION.—**Of the amounts paid to any State under section 1003 for any fiscal year, not to exceed 10 percent of such amounts shall be used for administering the funds made available under that section. The State will pay from non-Federal sources any remaining costs of administering those funds.

**"SEC. 1005. PROHIBITION ON ABORTION.**

"None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

**"SEC. 1006. VOLUNTARY PARTICIPATION.**

"In any program in which funds provided under this title are used, the acceptance by any individual of family planning services or family planning or population growth information shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other services or assistance from, or participation in, any other program of the entity or individual that provided such service or information.

**"SEC. 1007. APPLICATION AND DESCRIPTION OF ACTIVITIES.**

**"(a) APPLICATION.—**To be eligible to receive an allotment for a fiscal year under section 1002 a State shall submit an application to the Secretary by such date as the Secretary shall require.

**"(b) PUBLIC COMMENT.—**After the expiration of the first fiscal year for which a State receives an allotment under section 1002, no funds shall be allotted under such section to the State for any fiscal year unless the State affords an opportunity for public comment on the proposed use and distribution of funds to be provided under section 1003 for such fiscal year.

**"(c) CONTENTS OF APPLICATION.—**As part of the annual application required under subsection (a), the State shall certify that it—

"(1) agrees to use the funds allotted to it under section 1002 in accordance with the requirements of this title;

"(2) agrees to establish, after providing reasonable notice and opportunity for the submission of comments, reasonable criteria to evaluate the effective performance of entities that receive funds from the allotment of the State under this title;

"(3) agrees to permit and cooperate with Federal investigations undertaken in accordance with section 1008;

"(4) has in effect a system to protect from inappropriate disclosure of client records maintained by the State in connection with a program receiving assistance under this title or by an entity that is receiving pay-

ments from the allotment to the State under this title; and

"(5) has the administrative capability to carry out section 1004, to determine the need for family planning services, and to evaluate the performance of entities that receive assistance from the allotment of the State under this title.

The Secretary shall not prescribe for a State the manner of compliance with the requirements of this subsection.

**"(d) DESCRIPTION OF USE.—**

**"(1) IN GENERAL.—**The State shall, as part of the application submitted under subsection (a), prepare and furnish to the Secretary a description of the intended use of the payments that the State will receive under section 1003 for such fiscal year, including a statement of goals and objectives, information on the types of programs to be supported, geographic areas to be served, and the categories or characteristics of individuals to be serviced and the criteria and method to be used for the distribution of the payments.

**"(2) PUBLICATION.—**The description required by paragraph (1) shall be made public within the States in such manner as to facilitate comment from any person (including any Federal or other public agency) during the development of the description and after its transmittal. The description shall be revised throughout the year as may be necessary to reflect substantial changes in the programs assisted under this title, and any revision shall be subject to the requirements of this paragraph.

**"(e) REQUIREMENTS.—**

**"(1) IN GENERAL.—**Notwithstanding any other provision of this title, the Secretary shall prescribe such requirements as the Secretary determines necessary to assure that payments made to a State under this title are not used in violation of the prohibition contained in section 1005. The State, as part of the application required under subsection (a), shall certify that it will comply with all requirements imposed by the Secretary pursuant to this title to carry out section 1005, and shall describe the procedures it will follow, as required by the Secretary, to assure such compliance on a continuing basis.

**"(2) OTHER INFORMATION.—**In addition to the provisions of subsection (c), the State shall also certify, as part of the application required by subsection (a), that it will furnish, in its annual report to the Secretary or in such other form or at such other times as the Secretary may require, all information that the Secretary determines necessary to ascertain whether funds were spent in accordance with section 1005, or to conduct an investigation, or respond to a complaint, under section 1009(a) (2) or (3), respectively, concerning compliance by the State with section 1005.

**"SEC. 1008. REPORTS.**

**"(a) REQUIREMENT.—**Each State shall prepare and submit to the Secretary annual reports concerning its activities under this title. Subject to section 1007(e), report prepared under this section shall be in such form and contain such information as the State determines to be necessary—

"(1) to determine whether funds were expended in accordance with the provisions of this title;

"(2) to secure a description of the activities under this title;

"(3) to secure a record of—

"(A) the purposes for which funds were spent under this title;

"(B) the recipients of such funds; and  
 "(C) the progress made toward achieving the purposes for which such funds were provided; and

"(4) to determine how the State has met the goals and objectives previously stated. Copies of reports submitted under this section shall be provided, on request, to any interested person (including any public agency).

"(b) ADMINISTRATIVE REQUIREMENTS.—

"(1) ACCOUNTING PROCEDURES.—Each State shall establish fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for Federal funds paid to the State under section 1003.

"(2) REPAYMENTS.—A State shall, after being provided by the Secretary with adequate notice and opportunity for a hearing within the State, repay to the United States amounts found not to have been expended in accordance with the provisions of this title or the certification provided under section 1007. If such amounts are not repaid, the Secretary shall, after providing the State with adequate notice and opportunity for hearing, offset the amounts against the amount of any allotment to which the State is or may become entitled to under section 1002.

"(3) RESPONSE BY SECRETARY.—The Secretary shall respond in an expeditious manner to complaints, of a substantial or serious nature, that a State has failed to use funds in accordance with the requirements of this title or the certification required under section 1007.

"(4) LIMITATION.—The Secretary shall not withhold funds under paragraph (1) from a State for a minor failure to comply with the requirements of this title or the certification provided under section 1007.

"(b) RECORDS.—Each State, and each entity that has received assistance under an allotment made to a State under this title, shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

"(c) UNREASONABLE REQUESTS FOR INFORMATION.—

"(1) IN GENERAL.—In conducting any investigation in a State, the Secretary shall not request any information not readily available to the State or to any entity that has received funds from an allotment made to the State under this title or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

"(2) EXCEPTION.—Paragraph (1) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding or an investigation to determine compliance with section 1005.

"SEC. 1010. NONDISCRIMINATION.

"(a) PROHIBITION.—

"(1) IN GENERAL.—For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, programs and activities that receive Federal financial assistance under this title shall be considered to be

programs and activities receiving Federal financial assistance.

"(2) ON THE BASIS OF GENDER.—No individual shall on the basis of gender be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance under this title. This paragraph shall not be construed to prohibit any conduct or activities permitted under paragraphs (1) through (9) of section 901(a) of the Education Amendments of 1972.

"(b) ENFORCEMENT.—When the Secretary determines that a State, or an entity with respect to a program or activity that has received a payment from an allotment to a State under section 1002, has failed to comply with a provision of law referred to in subsection (a)(1), with subsection (a)(2), or with an applicable regulation (including one prescribed to carry out subsection (a)(2)), the Secretary shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure such compliance, the Secretary may—

"(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

"(2) exercise the powers and functions provided by the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, or title VI of the Civil Rights Act of 1964, as the case may be; or

"(3) take such other action as may be provided by law.

"(c) CIVIL ACTION.—When a matter is referred to the Attorney General pursuant to subsection (b)(1), or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) or in violation of subsection (a)(2), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

"SEC. 1011. CRIMINAL PENALTY FOR FALSE STATEMENTS.

"Whoever—

"(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from the funds allotted to the State under this title, or

"(2) having knowledge of the occurrence of any event affecting the initial or continued right of a person to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized;

shall be fined not more than \$25,000 or imprisoned for not more than 5 years, or both."

SEC. 3. TECHNICAL AMENDMENT.

Section 2(f) of the Public Health Service Act is amended by striking out "1002(c)."

SEC. 4. EFFECTIVE DATE AND TRANSITIONAL PROVISIONS.

(a) EFFECTIVE DATE.—The amendments made by sections 2 and 3 shall become effective on the date of enactment of this Act, or October 1, 1989, whichever occurs later.

(b) TRANSITIONAL PROVISIONS.—

(1) IN GENERAL.—If any State (as defined in section 2(f) of the Public Health Service Act (42 U.S.C. 201(f))) has not, prior to 30 days before the beginning of any calendar quar-

ter in fiscal year 1990, submitted an application under section 1007 of the Public Health Service Act (as amended by section 2) for an allotment for such fiscal year under such section, the Secretary of Health and Human Services may during that quarter, notwithstanding such section 1002(b), provide all or part of the funds allotted to such State to the State or to entities in the State in accordance with title X of the Public Health Service Act as in effect prior to the effective date of section 2.

(2) REDUCTION.—If the Secretary of Health and Human Services provides amounts to a State or to entities in a State under paragraph (1) and the State subsequently files an application under section 1007 of the Public Health Service Act (as amended by section 2) for an allotment for fiscal year 1990 under section 1002(a) of such Act (as amended by Section 1), the allotment shall be reduced by the amounts the Secretary has provided under paragraph (1).

Mr. HATCH. Mr. President, I rise to offer an amendment which would reauthorize title X of the Public Health Service Act into an authority for State family planning programs. This will provide significant improvements in service coordination, delivery, and administration. I offer this amendment on behalf of President Bush as his approach to continue Federal family planning efforts targeted to reach those truly in need.

This amendment consolidates the family planning authority and transfers its administration to the States. The authorization is \$138,364,000. Each State would be ensured the same amount of funding it received in the previous year so there would be no reduction in services.

The innovative approach of this amendment will facilitate the development of the integrated, one-stop shopping approach of health services delivery. This approach is an improved strategy for the provision of health care for women, including family planning services, prenatal and primary health care, and drug abuse and sexually transmitted disease-related services. It is especially significant in meeting the needs of women at risk of giving birth to low birth weight babies. Our efforts in the reduction of infant mortality depend on our ability to reach out to women at risk and provide them accessible care.

Service delivery to low-income women is the basic activity of the family planning grant program. Currently, about 4 million women age 15 to 44 receive family planning services at 4,000 clinic sites nationwide. President Bush's proposal would result in an improved allocation of resources and improved services delivery by providing States and territories with resources and appropriate control of the resources for better program efficiency, responsiveness, and flexibility. This amendment would allow States to meet their local needs and priorities.

And it allows coordination with their other health services.

A State-administered program with all title X services better coordinated with maternal and child health programs will allow States and local communities to better reflect local standards, priorities, and needs. Family planning is critical; however, there are many sensitive issues that surround the provision of family planning services. State and local leaders are best able to work within their communities to assess the need and type of services.

The administration's bill wisely recognizes that the time has come to extend to family planning services the same successful model of local design and flexibility that has already been used in other health programs. At the present time 37 States have experience in administration of the maternal and child health block grant that provides family planning services. We have seen time and again the benefits of State-administered health services.

I would like to speak from the successful experience that the State of Utah has in the administration of its Maternal and Child Health Program. Utah has successfully developed programs aimed at reducing infant mortality through the Baby Your Baby Program and other approaches. Utah health leaders have used the opportunities present to better coordinate services and more effectively meet the health needs of our people.

President Bush, like myself, supports family planning programs. He is a strong supporter of it. Some critics may argue that this legislation will erode family planning, because the Federal Government will not act as a watchdog in monitoring services and setting standards. National standards for family planning services are unnecessary because we already have professional standards for medical care—the level of care is not an issue here. We should be building flexibility into this program by knitting it into our other health care programs. Instead, it stands alone and often isolated from other care provisions. This kind of isolation does not make sense when there are many other risks facing women today, such as syphilis, which is at a 40-year high. Other sexually transmitted diseases, such as pelvic inflammatory disease, can, without detection, lead to infertility, so that a young woman's years of fertility can be over before she thought they ever began. Sexually transmitted diseases, and I am not even including AIDS, can also lead to cancer and to death. Recasting this family planning program makes great sense. And, it continues family planning programs.

In addition, this amendment sets a prudent course that would allow states to set their own standards on issues such as parental notification on when prescription drugs and devices are dis-

tributed to minors. The determination of these matters by the States is recognized as well-founded and constitutional.

The recast Title X Grant Program would retain certain requirements from current law, including the priority for serving low-income women, the prohibition on funding programs where abortion is a method of family planning, and the requirement that acceptance of services be voluntary.

This is a time in our national history in which we are acutely aware that we have many pressing health needs in many and diverse persons. We are also keenly aware of our finite resources in meeting these needs. We should conclude today by committing ourselves to the more effective use of our resources. We all recognize that family planning services cannot stand on their own as if sexually transmitted diseases, drugs and alcohol, low birth weight babies, and sexual abuse did not exist. This is our opportunity to mold family planning services with the other health care services that are available. This is not the time for hiding from the issues behind political expediency. We have a unique opportunity for meeting people's needs.

I urge my colleagues to support the reauthorization of family planning programs as offered through this amendment. It preserves services to low-income women. It maintains Federal support for family planning. And, it addresses many of the sensitive issues in a prudent manner. President Bush deserves our support on proposing this important compromise.

I hope our colleagues will consider voting for it.

I reserve the remainder of my time.

Mr. CHAFEE. Mr. President, will the Senator yield for a very brief question?

Mr. HATCH. I am happy to yield.

I ask unanimous consent that Senator COATS be added as a cosponsor.

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

Mr. CHAFEE. My question is this: If the substitute proposed by the Senator from Utah were adopted, would that nullify the previous amendment which was approved by 63 to 35?

Mr. HATCH. Yes. It would.

Mr. CHAFEE. It would wipe that out?

Mr. HATCH. It would wipe that out, but it would more than resolve the conflicts regarding family planning. It would be much more flexible, would give us a better bang for the dollar, and would consider a number of other programs that are not considered as well in the current bill.

Mr. CHAFEE. I thank the Senator.

Mr. HATCH. I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, I understand the Senator from Hawaii desires 5 minutes of time. I yield him 5

minutes. Then I will speak for 3 or 4 minutes, and be prepared to go to a vote.

The PRESIDING OFFICER. The Senator from Hawaii is recognized for 5 minutes.

Mr. AKAKA. Mr. President, I rise today in strong support of the Family Planning Amendments of 1989, S. 110. As a cosponsor of this bill and its companion measure in the House, I urge my colleagues to vote for cloture and to reauthorize the Title X Family Planning Program.

Title X is the only source of Federal support specifically for family planning services. It provides millions of low-income women with access to comprehensive family planning, basic health screening, and referral information. Title X serves 5 million women annually. However, the current funding level leaves over one-third of eligible women unserved. Many of these are just children themselves—teenagers at risk of unintended pregnancy and of giving birth to low birth-weight infants.

We need to reauthorize this vital program and expand and improve the provision of contraceptive services and related education and counseling. Title X had been unauthorized such fiscal year 1985. Congress has shown its support for this program by continuing to appropriate funds for it each year, but the funding level in constant dollars has been eroding over time.

Mr. President, there are over 66,000 teenage and low-income women at risk of unintended pregnancy in my State of Hawaii. We have the eighth highest teen pregnancy rate in the country, 15 points above the national rate. Yet from fiscal year 1980 to fiscal year 1988, title X funding for the State of Hawaii was cut by 60 percent.

The Hawaii State Department of Health provides subsidized family planning services at 20 separate clinic sites, either directly or through clinic contracts. Title X and State funds are the main supports for these services. In 1985, the State spent an average of \$93 per family planning patient using title X and State moneys. In comparison, the standard cost of public assistance in Hawaii for each dependent mother and baby in that year was about \$5,000 a year—and this figure does not include the cost of food stamps, Medicaid or other social welfare programs.

A 1989 study reported by the Alan Guttmacher Institute calculates that every public dollar spent to provide contraceptive services saves an average of \$4.40 in funds that otherwise would have to be spent for medical care, welfare, and other social services to women who would be eligible by law for such services if they became pregnant.

Title X participating clinics are required to provide a wide range of effective family planning methods related services. These services include natural family planning methods, nondirective counseling services, physical examinations—including cancer detection and laboratory tests—infertility services, services for adolescents, followup exams and referral to and from other social and medical agencies. For many women and teenagers, this is their only affordable and accessible link to health and social services.

Unfortunately, title X has become entangled in the issue of abortion. Family planning clinics have always been prohibited from using title X funds for abortion. The General Accounting Office and the inspector general of the Department of Health and Human Services have both found that all title X clinics were in full compliance with this ban.

Title X helps prevent abortions. According to the study referred to earlier, for every 1,000 women who obtain contraceptives from publicly funded providers, 260 unintended pregnancies are prevented, including 114 abortions.

We should not let this issue or others concerning parental notification and consent, contraceptive research, or school-based health clinics derail or obscure the reauthorization of title X. The benefits are too great to place them in the balance. Title X reduces adolescent pregnancy, infant mortality, and sexually transmitted diseases—including AIDS.

Mr. President, I urge my colleagues to reaffirm our Federal commitment to reproductive health by passing S. 110 without weakening amendments.

I yield the floor.

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. Six minutes.

Mr. KENNEDY. I yield myself 3 minutes. Mr. President, there is the old expression that "If it ain't broken, why fix it." We may have the debate and discussion about what takes place within these various health care centers, and we addressed a particular issue previously, and the Senate spoke in an overwhelming manner on that particular issue. The fact of the matter is, Mr. President, there are 28 States now that receive the funding directly and then develop programs within their particular States. But other States do not. As the head of the program demonstrated, that is because the States themselves did not apply, or they had inferior programs. That was the testimony before our committee.

So any State that wants to do it and has an effective program can already do it. But the other States have not sought to do so, and there has been a judgment by HHS over the period of the Reagan administration and the

Bush administration in awarding competitive grants.

By and large, our committee has not found that there has been trouble in terms of the quality of those programs. And so it is my belief that, since it is not broken, we should not fix it.

Mr. President, there are absolutely no requirements in the block grant program. What are the requirements? The requirement that exists in the current title X is that in order to be targeted to the neediest population in our country, and second, that the neediest individuals will be able to receive those programs free of any cost. And there are additional kinds of requirements in terms of confidentiality, liability, and to ensure that there are going to be qualified medical personnel in those programs and in the kind of issues that Senator CHAFEE and Senator JEFFORDS mentioned earlier.

None of those exist. No requirements in the development of referral services, no requirements for the development of Pap smears or other kinds of maternal health issues, all of which have been developed and evolved over the period of title X.

So, Mr. President, it seems to me that this program has demonstrated and proven itself over a long period of time.

The most critical problem is the failure of adequate funding for the needy people in our society. Those kinds of protections for the neediest people in our society would not exist under the proposed block grant program.

I hope that we will follow what has been the general sense of the discussion and debate here during the course of the day, and that is, this program has worked, is working, and is targeted on a very critical need in our society, and that we should not tamper with it.

I reserve the remainder of my time. Mr. HATCH. Mr. President, I do not intend to keep our colleagues any longer. I want to make a few comments about President Bush. George Bush is against abortion, but he is for family planning. George Bush has a long record of support for family planning.

As a Member of Congress in 1970 when Congress enacted title X, the Federal grant program for family planning, George Bush introduced his own bill providing \$865 million over 5 years. Speaking on family planning issues, while a Member of Congress, he said, "Now is the time to erase the unjustified stigma associated with the phrase of 'population control' and 'family planning.'"

His support for family planning continues, as evidenced by this substitute. Writing to Representative HENRY HYDE to express support regarding population activity programs, the President said, "Let me reaffirm my strong support for family planning

programs which do not condone or encourage abortion."

Later in 1989, in his veto message of the foreign operations appropriation bill, he said, "Let me restate my strong support for international family planning programs. My view is the United States should support such efforts." The President has strongly supported family planning.

This bill shows it is more flexible, and the moneys will go further, and more women will have the assistance of the Government; and in the end, we will all be better off. I encourage our colleagues to vote for this bill.

I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I am prepared to yield the remainder of my time. This will be an up-or-down vote. Those that favor the Hatch amendment will vote aye. Those who support the existing program, as amended by the Senator from Rhode Island, will vote nay.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. The Senators have yielded back their time.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CHAFEE. Is there any suggestion whether there will be further votes after this, Mr. President?

Mr. KENNEDY. If the Senator will yield, it is my understanding, if we get the agreement, from what the leader said there will not be. That is the way I believe it was left.

Mr. CHAFEE. The next question is: Do we have the agreement?

Mr. HATCH. No. We are working on it.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The clerk will call the roll.

The legislative clerk called the role.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Georgia [Mr. FOWLER], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Rhode Island [Mr. PELL] are necessarily absent.

I further announce that if present and voting, the Senator from Rhode Island [Mr. PELL] would vote "nay."

Mr. SIMPSON. I announce that the Senator from Idaho [Mr. SYMMS] and the Senator from California [Mr. WILSON] are necessarily absent.

I further announce that the Senator from New Hampshire [Mr. RUDMAN] is absent due to a death in the family.

I further announce that, if present and voting, the Senator from Idaho [Mr. SYMMS] would vote "yea."

The PRESIDING OFFICER (Mr. BRYAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 34, nays 58, as follows:

[Rollcall Vote No. 253 Leg.]

**YEAS—34**

Armstrong	Garn	McClure
Bond	Gramm	McConnell
Boschwitz	Grassley	Murkowski
Breaux	Hatch	Nickles
Burns	Heflin	Pressler
Coats	Helms	Reid
Cochran	Humphrey	Roth
D'Amato	Kasten	Thurmond
Danforth	Lott	Wallop
Dole	Lugar	Warner
Domenici	Mack	
Exon	McCain	

**NAYS—58**

Adams	Glenn	Mikulski
Akaka	Gore	Mitchell
Baucus	Gorton	Moynihan
Biden	Graham	Nunn
Boren	Harkin	Packwood
Bradley	Hatfield	Pryor
Bryan	Heinz	Riegle
Bumpers	Hollings	Robb
Burdick	Inouye	Rockefeller
Byrd	Jeffords	Sanford
Chafee	Kassebaum	Sarbanes
Cohen	Kennedy	Sasser
Conrad	Kerrey	Shelby
Cranston	Kerry	Simon
Daschle	Kohl	Simpson
DeConcini	Lautenberg	Specter
Dixon	Leahy	Stevens
Dodd	Levin	Wirth
Durenberger	Lieberman	
Ford	Metzenbaum	

**NOT VOTING—8**

Bentsen	Johnston	Symms
Bingaman	Pell	Wilson
Fowler	Rudman	

So the amendment (No. 2763) was rejected.

Mr. HATCH. Mr. President, I call up amendment No. 2784 and ask for its immediate consideration.

**CHANGE OF VOTE**

Mr. DOLE. Will the Senator yield for a unanimous-consent request?

Mr. President, on vote No. 252, the Chafee amendment, I was recorded in the affirmative. I was misinformed on the issue, and I therefore ask unanimous consent to change my vote to be recorded in negative. This has been cleared by the majority leader, and I understand this will not change the outcome of the vote.

The PRESIDING OFFICER. Is there objection? Without objection the request of the Republican leader is agreed to.

(The foregoing tally has been changed to reflect the above order.)

The PRESIDING OFFICER. The Senator from Utah [Mr. HATCH].

**AMENDMENT NO. 2784**

(Purpose: To expand data collection provisions to include evaluations of the effectiveness of contraceptive programs on reducing teenage pregnancies)

Mr. HATCH. Mr. President, I call up amendment No. 2784 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 2784.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 8, line 12, strike out the end quotation marks and the second period.

On page 8, between lines 12 and 13, insert the following new subsection:

"(c) The Secretary may gather and evaluate data on the current methods of reducing teenage pregnancy, including contraceptive methods."

On page 8, line 16, strike out "(d)" and insert in lieu thereof "(e)."

Mr. HATCH. Mr. President, I further ask unanimous consent that no second-degree amendment be in order to this amendment.

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

Mr. HATCH. This amendment will expand data collection provisions to include evaluations of the effectiveness of contraceptive programs on reducing teenage pregnancies.

It is my understanding it is acceptable to the other side.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. This is entirely in accord with section 20 provisions of the legislation. It is information gathering and I have no objection to it and hope it will be accepted.

The PRESIDING OFFICER. Is there further debate? There being no further debate, the question is on agreeing on the amendment of the Senator from Utah.

The amendment (No. 2784) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. KENNEDY. May we have order, Mr. President. We are trying to inform the membership on where we are and what we can expect for the remainder of the evening.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. Mr. President, the floor managers are trying to work out an unanimous-consent agreement so that we might not have any further rollcall votes. This is what I believe we can work out.

There are four amendments that should be allowed to be brought up precloture. We will move the cloture vote back to accommodate them. They are the Nickles amendment, the Armstrong amendment, the Humphrey amendment, and the Pressler amendment, not necessarily in that order.

The Pressler amendment will take 10 minutes equally divided; the Nickles amendment, 30 minutes equally divid-

ed; the Armstrong amendment 30 minutes equally divided; and the Humphrey amendment, 1 hour equally divided.

Then, if cloture is invoked, then there will be a one-half hour, equally divided, for an amendment by the distinguished Senator from North Carolina [Mr. HELMS]. As far as I know—those are all the amendments I know. If we can do all of those and there are no further amendments and we have checked—

Mr. PRESSLER. Will the Senator yield for a moment? Senator MCCAIN informed us he wanted to speak on my amendment so may I have 15 minutes?

Mr. HATCH. Let us say 15 minutes equally divided. If there are no further amendments I suggest we vote at a time certain, at 6:30 tomorrow evening.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, this is the intention of the floor managers that we conveyed I think, to those who have been a part, or have at least informed us prior to the time of the introduction of the cloture motion, as well as during the debate today, to solicit their information.

I would have to, obviously, give the notification to the membership as to the contents of those particular amendments. There are two amendments here where the principal sponsors are not present and we have been unable to identify that.

So this is really a declaration of what we intend to do. If we are unable to work out this agreement, then we will be under the existing cloture provisions that have been announced by the majority leader. I hope we would be able to, and the Senator from Utah hopes we will.

Either we will get to that with sufficient notification or we will be back to where we are at the present times, with the announced cloture vote in the morning as announced by the majority leader. But we appreciate the efforts that have been made by the Senator from Utah to try to at least give notification to the membership. We will do that. And we will try to write this down and hotline it to the Members in the morning, and then if there is going to be objection to it, we are back to where we are at the current time in terms of the cloture motion.

We will make a good faith effort. I am grateful to the Senator from New Hampshire [Mr. HUMPHREY]; the Senator from North Carolina [Mr. HELMS]; and the Senator from Colorado. But we cannot make a definite request this evening because two of the prime sponsors are not here and there is not an adequate description and it is not fair to the membership to ask for a consent agreement without them knowing the particulars of that.

Mr. ARMSTRONG. Mr. President, I wonder if the Senator would yield for a moment?

Mr. HATCH. Could I just correct my earlier statement?

The PRESIDING OFFICER. The Senator from Utah [Mr. HATCH].

Mr. HATCH. If I could just correct my earlier statement, then I would be delighted to yield. The only postcloture amendment I know of is that of Senator HELMS, who has said he will bring an amendment up. But there are a number of other postcloture amendments filed and I suspect any of those can come up between the time of cloture and 6:30 p.m.

I think we have to leave that open. If they are germane, they can bring them up. But I do not know of any others that will be brought up. That is the point I am trying to make. But we would have to leave that gap of time open for anybody who has a postcloture amendment.

I had a number of postcloture amendments that are germane that I will not bring up because I got that last amendment resolved.

The PRESIDING OFFICER. Senator METZENBAUM—

Mr. HATCH. I yield to the distinguished Senator from Colorado first, who had a question.

Mr. ARMSTRONG. Yes, just for a question.

In following the conversation, I was not sure I understood correctly what the Senator from Massachusetts was saying, because if we do not hotline this until tomorrow, if there were then an objection there would be no opportunity to offer the amendments at all because of the cloture vote that has already been ordered.

Mr. HATCH. I was hopeful we could enter into an unanimous-consent agreement tonight. Our side is the only side that appears to have amendments. We have those narrowed down to four precloture amendments, then a cloture vote and then one for sure postcloture amendment by the distinguished Senator from North Carolina and any others that can be brought up during that gap of time between the disposal of the amendment of the Senator from North Carolina and the 6:30 vote.

Mr. METZENBAUM. Will the Senator from Utah tell us what the postcloture amendment is of the Senator from North Carolina?

Mr. HATCH. I have no idea.

Mr. METZENBAUM. I do not see how we can be asked to agree to a postcloture amendment.

Mr. ARMSTRONG. You are not being asked to agree with that.

Mr. METZENBAUM. We are being asked to agree to have it come to the floor.

Mr. HATCH. If it is germane, he would have a right to bring it up postcloture.

Mr. METZENBAUM. It is not germane.

Mr. ARMSTRONG. If the Senator will yield, that was not to be part of the UC, or was it?

Mr. HATCH. It was.

Mr. ARMSTRONG. I beg your pardon.

Mr. HATCH. The Senator from North Carolina will call up a germane amendment. That is what he told me.

Mr. KENNEDY. Has he filed that amendment?

Mr. HATCH. I have no idea. Yes, I think he has.

Mr. KENNEDY. He would be entitled—

Mr. HATCH. He would be entitled to do it anyway.

Mr. KENNEDY. I believe the amendment in the second degree would be in order. But then we would be limited postcloture to one amendment.

Mr. HATCH. The reason we are doing that is to protect his right to definitely bring up a postcloture germane amendment because everybody here knows if one side or the other wanted to prevent any amendment, we possibly could do that. That is the purpose of the UC.

Mr. METZENBAUM. Will my friend from Utah be willing to yield for a question?

Mr. HATCH. Sure.

Mr. METZENBAUM. Can the Senator tell me what the independent counsel amendment is that is to be offered by Senator HUMPHREY? Is that an independent savings and loan counsel?

Mr. HATCH. Yes; counsel in the savings and loans—

Mr. HUMPHREY. I am here if you want me to explain.

Mr. HATCH. Let us have Senator HUMPHREY explain.

Mr. HUMPHREY. If the Senator will yield. This amendment will facilitate appointment of special independent counsel in connection with federally insured deposit institutions wherever, in the judgment of the Attorney General, there is evidence indicating unlawful activity on the part of a Member of Congress.

Mr. METZENBAUM. Is there a copy of the amendment available?

Mr. HUMPHREY. Yes.

Mr. METZENBAUM. I thank the Senator.

Mr. KENNEDY. Mr. President, I want to indicate my deep appreciation and respect for my friend from Utah. The text has not been printed on two of the amendments, at least that we have been able to follow. We cannot be in a position where we can support a consent agreement. I appreciate all his efforts for doing it, but we just cannot do it. I am glad to stay here and consider whatever amendments.

Mr. PRESSLER. Will the Senator yield?

Mr. KENNEDY. I do not see how we can possibly have a consent agreement when we have not seen the text of it. I will not feel responsible in not objecting on behalf of our colleagues here. I have appreciated the effort. We do not have the text of these measures. We just cannot move forward at this time.

Mr. PRESSLER. Will the Senator yield?

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. FORD). The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I have an amendment that will take about 15 minutes. Perhaps I can offer it. I am willing to agree to a time limitation. A vote tomorrow sometime. While I am offering it, perhaps the parties can reach the rest of the agreement. That would save everyone time. I am ready to go.

Mr. LEAHY. Parliamentary inquiry.

Mr. FORD. Was the Senator from South Dakota proposing a question to the managers of the bill?

Mr. PRESSLER. Yes.

Mr. LEAHY. Mr. President, I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. LEAHY. Mr. President, under the rules of the Senate, if we recess this evening to a time certain tomorrow, does the cloture vote come up at a specific time after the Senate comes back in?

The PRESIDING OFFICER. The Senator is correct, but we have a unanimous-consent agreement as it relates to cloture votes on tomorrow.

Mr. LEAHY. What is the agreement, if I might ask the Chair?

The PRESIDING OFFICER. "Ordered further, that on Wednesday morning, September 26, 1990, immediately following the conclusion of morning business, there be a cloture vote on the committee substitute, as modified, to S. 110, to be followed immediately, regardless of the outcome, by a cloture vote on the motion to proceed to the consideration of S. 874, the voter registration bill."

Mr. LEAHY. Mr. President, on either of those bills, if cloture is invoked, then am I correct that any amendments to be voted on after that would have had to be at the desk prior to the cloture vote and would have to be germane?

The PRESIDING OFFICER. They would have to be timely filed and germane.

Mr. LEAHY. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

AMENDMENT NO. 2881

Mr. PRESSLER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER] proposes an amendment numbered 2881.

Mr. PRESSLER. Mr. President, I ask unanimous consent the reading of the amendment be dispensed with.

As a courtesy to the managers of the bill, I will pause, or I will stop, or I will yield, but I am going to try to seek to get a rollcall vote on this amendment ordered for tomorrow.

Mr. LEAHY. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. If I am correct, the amendment is extremely short. I always hate to object when somebody wants to do away with the reading of the amendment. This looks like it is only a paragraph long. I wonder if the Senator will let the clerk read it?

Mr. PRESSLER. Read the amendment.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read as follows:

At the end of the bill add the following new section:

SEC. . REDUCTION OF PAY OF MEMBERS OF CONGRESS.

(a) REDUCTION IN PAY.—For each month during fiscal year 1991 in which, by reason of a furlough or other employment action necessitated by a sequestration order under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902), the total amount of the pay paid to any Federal employee is projected to be less than the monthly equivalent of the annual rate of pay established for such Federal employee pursuant to law, the rate of pay payable to a Member of Congress shall be reduced to the rate of pay established for such Member pursuant to law.

(b) COMPUTATION OF REDUCED PAY.—The rate of pay payable to a Member of Congress for any month referred to in subsection (a) shall be equal to the amount determined by multiplying the rate of pay established for such Member pursuant to law by the percentage reported to Congress for such month under subsection (c)(1)(D).

(c) DETERMINATION OF PERCENTAGE FOR COMPUTATION OF REDUCED PAY.—(1) No later than the first day of each month in fiscal year 1991, the Director of the Office of Management and Budget shall—

(A) determine whether, for a reason described in subsection (a), the total amount of the pay paid to any Federal employee in that month is projected to be less than the monthly equivalent of the annual rate of pay established for such Federal employee pursuant to law;

(B) estimate the average of the percentages that would result by dividing the monthly equivalent of the annual rate of pay established for each such Federal employee pursuant to law into the total amount projected to be paid such Federal employee for such month;

(C) aggregate the percentages determined under subparagraph (B) for Federal employ-

ees for each agency and determine the highest average percentage for any agency; and

(D) transmit to Congress a written report containing the average computed under subparagraph (C).

(2) The Office of Personnel Management may use a statistical sampling method to make the estimates and determinations under paragraph (1).

(3) For purposes of this section, the term "agency" means an Executive agency as defined under section 105 of title 5, United States Code.

(d) APPLICATION TO OTHER FEDERAL LAWS.—For the purpose of administering any provision of law, rule, or regulation which provides premium pay, retirement, life insurance, or any other employee benefit, which requires any deduction or contribution, or which imposed any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this section and shall apply to the first applicable pay period of members of Congress occurring on or after October 1, 1990. If the date of enactment of this section is after October 1, 1990, and the provisions of this section become applicable in the reduction of pay of members of Congress, all reductions which would have occurred if this section had been enacted as provided in subsection (b) and the amount of such reduction shall be recovered for the remaining pay periods for fiscal year 1991.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. There is objection.

Mr. METZENBAUM. Mr. President, I withdraw my objection.

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

Mr. PRESSLER. Mr. President, I shall be very careful to respect the wishes of the leadership on this matter; indeed, they are meeting at this moment.

Let me explain my amendment. This amendment merely puts Members of Congress under the same rules as civil servants.

Earlier this month, civil servants received letters of furlough and many of them in my State of South Dakota met with me and have been very confused by these letters.

If a sequester does occur next week—indeed, we are less than a week away from that—it is my feeling that Members of Congress should be in the same boat as everybody else. It has been my feeling that Congress has exempted itself too often from the rules that are applied to everybody else.

We should reach a budgetary agreement, but I think it would be awful for us to go into a situation where we have a sequester but Members of Congress are exempt. That is very inappropriate.

We will be seeing next week, in October, the laying off of hundreds of thousands of Federal workers who will go without their pay on the days they are on furlough. It is my strongest feeling that the Members of the Senate and the House should be under the same rules as everybody else.

Mr. President, I am concerned about the unwillingness of Congress to share in the burden of cuts mandated by Congress pursuant to the Gramm-Rudman-Hollings Deficit Reduction Act of 1985. These cuts are scheduled to begin next Monday, October 1, the start of fiscal year 1991.

Many constituents, both Federal workers and those who use Federal services, have contacted me. These cuts will have a tremendous impact on all Americans. Yet Congress has been unwilling to share its portion of this burden by taking a reduction in pay similar to that which would be imposed on almost all Federal workers by a budget sequester.

This double standard is outrageous at a time when our budget conferees have failed to present Congress with a budget reduction package prior to the October 1 deadline. How can Congress justify protecting its own interests over those of air traffic controllers, Forest Service, Weather Service employees, and many other hard working, honest, and deserving Federal employees? How do we justify providing few or no benefits to the needy and the poor, the elderly, or the veterans who defended our country in battle? Congress must show more backbone. It must take the initiative to pass a budget prior to the new fiscal year.

My amendment is a step in the right direction. It would prevent Congress from exempting itself from the massive budget cuts. I do not know whether the citizens of our country know that Members of the House and Senate exempted themselves from the Gramm-Rudman-Hollings law, but they will know after October 1 that Congress passed that law, but exempted Members of the Senate and the House.

Mr. President, I shall ask for a rollcall vote on this amendment because I think it is very important that we express ourselves again and again this week on this important issue.

On September 12, I introduced S. 3051 which would cut the pay of Senators and Congressmen by a percentage equal to the largest of either: First, an across-the-board, uniform percentage reduction under Gramm-Rudman-Hollings currently estimated at 32.4 percent or, second, the highest percent-

age pay cut of any civil servant or any Federal employee whose salary is affected by sequestration.

S. 3051 has seven cosponsors, and there would be many more except that we filed it just a few days ago and many Senators have not had time to respond.

So, Mr. President, we must act now. The eyes of the Nation are upon us now more than ever because the livelihood of so many Americans is at stake. Please join me in passing this amendment to send the correct message to Federal workers and the good people of this country that Congress places a priority on resolving the budget impasse and has America's best interests at heart.

In conclusion, Mr. President, I think Senators and Congressmen should be under the same rules for sequestration that apply to everyone else. May I add that I just received a note to add Senator HELMS as a cosponsor, in addition to Senator McCAIN. I am sure many others who have not received this amendment would like to join as cosponsors. And there is another, Senator HUMPHREY.

The point is we want Senators and Congressmen treated the same as other Federal employees under any budget sequester. We do not want Congress to exempt itself from the sequestration which may begin next week.

Mr. President, I would, if I could, yield to the Senator from Arizona.

The PRESIDING OFFICER. The Senator has no time to yield the Senator from Arizona.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. McCAIN. Mr. President, I intend in a few minutes to ask in behalf of my friend from South Dakota unanimous consent that the pending amendment be withdrawn due to procedural reasons, and the Senator from South Dakota and I intend to raise this amendment at the proper time since it conflicts with the germaneness, and in some ways with the unanimous-consent agreement that was made on a previous occasion.

So, Mr. President, I would like to speak for a few minutes before making that request to withdraw the pending amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

The amendment (No. 2881) was withdrawn.

Mr. McCAIN. Mr. President, I still think we are talking about a very important issue here, one which some would interpret as trivial; many others, however, who are in close contact with the American people, believe it is very important.

We are obviously facing a crisis, both as an institution and as a Nation. We are on the verge of, in just a couple of days, if we are not successful in reaching a budget agreement, causing enormous dislocation and significant pain to be inflicted on certain segments of our society, mainly those who are employed by the Federal Government and their families.

All of them are innocent bystanders. All of us are frustrated at the failure of the so-called budget summiters to reach an agreement, a group which seems to shrink in numbers on a weekly basis.

I have often felt that one solution to this problem was to dispatch the budget summiters to Gila Bend, AZ, where they could convene at their leisure. I believe if this were the case we would probably have found some common ground by now. However, since Andrews Air Force Base did not seem to work, perhaps Gila Bend, Arizona, would not either.

I say that only partially in jest, Mr. President, because I am not sure that any of us in this body, and indeed in the legislative branch, are sufficiently aware of the draconian effects of this impending sequester.

Therefore, I am not sure that the proper motivation is present in order to motivate an agreement. But if on the unhappy circumstances that there is not an agreement, then I would suggest it is only fair and equitable for the legislative branch to absorb the same kinds of impending cuts which would be dealt to our Nation's civil servants.

Mr. President, could we have order? I ask the indulgence of my colleagues.

The PRESIDING OFFICER. The majority leader was conducting the conversation. I was reluctant to ask for order.

Mr. McCAIN. I always enjoy the opportunity to listen with interest to the majority leader. And so I understand the President's reluctance to do so. But I would appreciate the indulgence of my colleagues. We are speaking of an issue which is indeed of significant importance.

Mr. President, last Sunday as I was leaving church I was approached by several members of the congregation, and they asked me in not so polite terms, particularly given the fact that it was at the conclusion of the church service, about what are you guys doing there in Washington? What are you guys doing? I hesitated to mention that we are not all of one gender. But the message was clear that the people in my State, and the people that ap-

proached me on that day, are extremely dissatisfied with the fact that we have failed to perform the duties to which they have entrusted us, that we are not running the Government in a sane and sound fashion.

I am still hopeful that a budget agreement will be reached, one which does not lay a disproportionate burden on any segment of our society. At the same time, if we do not, I am in total agreement with my friend from South Dakota that all of us should be prepared to bear an equal share of the burden.

As the President well knows, recently I have been involved in seeking burdensharing in the Persian Gulf on the part of our allies. It seems to me that we should also, as Members of the legislative branch, bear the same burden that so many of our dedicated civil servants are going to have no choice but to bear. Let me point out that they are relatively innocent bystanders, whereas we, Members of both bodies, are not only to blame, but are capable of doing something about it which, unfortunately, we have not done so far.

Mr. President, the men and women who serve our Nation are not only nervous, they are frightened. Many of them are at the lower end of the economic spectrum. They have bills to pay, hospital costs to bear, education costs to consider for their children, car payments, mortgage payments. And they have planned, understandably, on a certain set income coming into their families.

Now they are facing loss of income, furloughs, and frankly, the possibility over time of permanent dislocation from their jobs, which they would be separated from for some period of time, through no fault of their own, through no lack of performance, through no lack of dedication.

I think some may view the amendment of my friend from South Dakota as somewhat trivial or frivolous. But I think we should tell the American people that we are ready to share the pain, ready to share the burden, and we are more than willing to give them our understanding and compassion; that they are not guilty of any crime, of any malfeasance, but they are, unfortunately, the victims of circumstances which are a direct result of the failure of the budget process to function as it was designed.

I know that we could spend many hours describing the budget process and the various things we believe may be repaired. We are at the 11th hour now, the 11th hour and 59th minute, and there are men and women all over this Nation who are facing some very painful, and indeed dislocating, circumstances. I think it is only fair and appropriate that we share that pain with them.

I want to thank my friend from South Dakota for his diligence, for his commitment to working men and women in this country, and I am pleased to be supportive of his amendment. I hope, Mr. President, also, that he will be able to get his amendment up at an appropriate time, and we will get a recorded vote. I believe all of our colleagues will agree with him that this is a very important, albeit symbolic, message to send to the employees of our Government and citizens of our Nation.

So, Mr. President, I thank the Chair for his indulgence. I yield the floor.

Mr. PRESSLER. Mr. President, I want to join my friend from Arizona and commend him on his remarks. Our desire is to get a rollcall vote on this matter tomorrow on some piece of legislation. We have cooperated with the leadership on both sides in withdrawing this amendment tonight, in view of the majority leader's desire.

But we want the Members of Congress to operate on the same playing field with others. We want Members of Congress to participate in the sequester on the same basis as everybody else in our country. Under a sequester, farmers will have certain programs cut. Senior citizens will have certain programs cut. The air traffic controllers will have certain programs cut. All of our country will experience the sequester if the budget agreement is not reached, except Senators and Congressmen. Our amendment puts everybody on the same basis.

There will be public outrage in October when it is discovered by the people that we have exempted ourselves from the very law we are imposing on the rest of the Nation's citizens. So this amendment will be offered again tomorrow. We respect the leadership request that it be withdrawn, which has been done; but it will be back tomorrow, and we will ask the cooperation of the leadership to get a rollcall vote early tomorrow on some appropriate bill.

We are not seeking a lot of time. As I said, we can do this in 15 minutes equally divided, or whatever. This basic principle needs to be applied in the sequester situation. Let us treat Members of Congress the same as we are asking citizens across our country to be treated at this very difficult hour.

Mr. HATCH. Mr. President, I agree with the distinguished Senator from South Dakota and the distinguished Senator from Arizona. I think it is outrageous. If we are going to put other people through furloughs on a sequester, we ought to treat ourselves the same way.

The only problem here is bringing it up on this bill. Everybody knows there is a cloture vote ordered for tomorrow, and it will foreclose perhaps the consideration of some other amendments.

I appreciate the willingness of the distinguished Senators from Arizona and South Dakota to withdraw the amendment from this particular bill, preserving their right to bring it up later, and I will support it.

I hope we can put together a unanimous-consent agreement. There is a lot of unhappiness on this side because of the withdrawal of that amendment, and I believe that there is unhappiness about the amendment of the distinguished Senator from New Hampshire. That amendment would consist of a vote on whether or not we should have an independent counsel with regard to this controversy. It is probably a good amendment.

He is willing to withdraw it, reluctantly, and he is very irritated by that, because he realizes that nobody can get an amendment up if either the amendment of the Senator from North Carolina is brought up and a rollcall vote demanded, or his amendment is brought up.

All the majority has to do is wait until tomorrow morning's vote on cloture, and if they invoke cloture, then these amendments are knocked out anyway. So will the amendment, which happens to relate on the bill of the distinguished Senator from Colorado, Senator ARMSTRONG, the amendment of the distinguished Senator from Oklahoma, Senator NICKLES. There were two of the original four amendments we felt we could put into a unanimous-consent agreement.

I was under the mistaken impression they would have up or down votes on their amendments, precloture. Then we would have the cloture vote. If cloture was invoked, then the distinguished Senator from North Carolina would be able to bring up his amendment postcloture, which is germane, and have a 30-minute time agreement and have a vote on that, and have final passage by 6:30 tomorrow evening. That would resolve it.

If we can do a unanimous-consent agreement on that basis, I am all for doing it. If we cannot, there is some indication if the distinguished Senator from Colorado brings up his amendment now, even now that I have gotten the Senator from South Dakota to withdraw his amendment, the Senator from New Hampshire—

Mr. HUMPHREY. Will the Senator yield? I have not spoken finally on this matter. I do not like the strong-arm tactics being used against this Senator. I do not like being frozen out. I do not like being threatened with reprisals against others who want an opportunity to offer an amendment, unless I withdraw mine. I do not like these kinds of tactics. I do not agree to anything at this point.

Mr. HATCH. This is my understanding. The Senator does not like those tactics but may be willing to withdraw his amendment if we have up or down

votes on the Armstrong and Nickles amendments. I think that is what it comes down to. If we can have an up or down vote on Armstrong, an up or down vote on Nickles, and a vote on Helms, with the right to second degree Helms, which he expressly said to me he would permit, then we have a vote at a time certain at 6:30 tomorrow evening, and this bill would be resolved.

There is some question whether the majority is going to reserve its right to raise second-degree amendments to the Armstrong amendment and the Nickles amendment.

That is where we are. I think I have stated it about as well as it can be stated under the circumstances, and the question is we could have the unanimous-consent agreement, I believe, that would allow for the two amendments up and down, the Helms amendments, to which there could be attached a second-degree amendment, all the time agreements in, and final passage at 6:30. I do not know whether that could be done or not.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

#### AMENDMENT NO. 2882

(Purpose: To protect the health and well-being of young people)

Mr. ARMSTRONG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. ARMSTRONG] proposes an amendment numbered 2882.

Mr. ARMSTRONG. Mr. President, unless Senators wish the amendment to be read, I ask unanimous consent that we dispense with the reading of it. It has been filed and there are copies available.

Mr. KENNEDY. Mr. President, I will have to object. I do not have a copy of the amendment. I have to object.

The PRESIDING OFFICER. Objection is heard.

The clerk will report.

The assistant legislative clerk read as follows:

At the appropriate place, add the following new section:

#### SEC. . NOTIFICATION OF PARENT PRIOR TO ABORTION ON A MINOR.

Section 1001 of the Public Health Service Act (42 U.S.C. 300) is amended by adding at the appropriate place the following new subsection:

“( ) (1) No entity which receives a grant or enters into a contract under this section shall provide an abortion for an unemancipated female under the age of 18 until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified under paragraph (2), except when the attending physician certifies in the minor's medical record that the

abortion was performed due to a medical emergency requiring immediate action.

"(2) Such notice shall—

"(A) Be addressed to the minor's parent or legal guardian at the usual place of abode of such parent or legal guardian and delivered personally to such parent or legal guardian by the physician performing the abortion or an agent of the entity; or

"(B) Be made by certified mail addressed to the minor's parent or legal guardian at the usual place of abode of such parent or legal guardian with return receipt requested and restricted delivery to the addressee, which means postal employees may only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

"(3) This subsection shall not apply to entities in states that have in effect laws requiring that a parent or legal guardian be notified of, or give consent to, an abortion to be performed on the minor child of such parent or legal guardian"

AMENDMENT NO. 2883 TO AMENDMENT NO. 2882

(Purpose: To limit the use of funds for the performance of abortions regardless of whether parental consent is obtained for abortions performed on minors)

Mr. KENNEDY. Mr. President, I send an amendment to the desk in the second degree.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], proposes an amendment numbered 2883 to amendment No. 2882.

On page 1 of the amendment, strike out line 1 and all that follows and insert in lieu thereof the following:

SEC. . PARENTAL CONSENT.

No funds made available under title X of the Public Health Service Act shall be used for the performance of abortions, including the performance of abortions on minors regardless of whether the parents of such minors have been notified.

Mr. ARMSTRONG. Mr. President, I would like to begin by explaining what my amendment does, and then presently I would like to take a moment to discuss the second-degree amendment.

Mr. President, the amendment which I sent to the desk a few minutes ago simply provides that entities which receive title X funding under this bill would require their physicians to provide written notice to a parent of a minor 48 hours prior to her obtaining an abortion. Title X of the Public Health Service Act gives the authority to the Secretary to make grants and enter into contracts with entities to establish and operate family planning projects. Projects which use title X funds are barred by statute from providing abortions. However, the organizations which oversee these projects are not restricted with respect to abortion under the present law. As a matter of fact, they are not required to provide notification to a parent when their daughter is having an abortion.

S. 110, this legislation, would reauthorize title X and would not allow parental involvement in decisions of birth control or abortions. So that is why my amendment is needed.

My amendment is needed because for practically any kind of medical procedure you can imagine, in fact, I do not know one exception to this, although someone may be able to cite it, where you have a minor receiving a surgical procedure, the consent of one or both parents is required. Even giving blood ordinarily, if the person who is making a donation of blood is under 18, in most States you have to have parental consent. In fact, though I do not think it is a matter of law, I am told that it is the custom practically everywhere. I think in 50 States, although again I can be corrected on this, that it is standard practice when a minor child goes to have her ears pierced that it is routine to require the consent of a parent.

At the present time, when these entities which receive funds under title X advise an abortion, if they do, or if for some other reason an organization which is a recipient provides an abortion to a person who seeks such counseling, there is no requirement for parental consent.

Just to put that in perspective, let me restate the proposition because the hour is late and it may be that other Senators are not tracking any better than I am. I find about 9 o'clock at night my brain starts to go to sleep. So I want to say this carefully and accurately and invite the attention of every Senator because this is important.

You have to get parental consent to make a blood donation. You have to get parental consent in order to have your ears pierced. What this amendment says is you ought to at least have parental notification before an abortion is performed on a minor child.

I want to distinguish parental notification from parental consent. My instinct, probably like that of many, many Senators, is to think it would be a tragedy for a minor child to have an abortion without consent of a parent, but my amendment does not require that. It only provides that 48 hours prior to an abortion, if the abortion is to be performed by an entity which receives funding under title X, and only in that case, that you have to give notification to a parent.

It seems to me that this is a well-established principle. Thirty-five States have expressed this interest in protecting the welfare of minors and promoting family integrity by passing parental involvement legislation of one kind or another.

Mr. President, available statistics indicate that the teen pregnancy rate as well as the number of abortions for teens have declined after the enforcement of parental involvement statutes.

In the State of Minnesota between 1980 and 1984 teen births declined by 23 percent, the number of abortions for teens under the age of 18 dropped by 40 percent, and the teen pregnancy rate declined 32 percent. In the 20-month period following the implementation of the Massachusetts parental consent law, teen births declined 5.5 percent, abortions decreased 28 percent and pregnancy among minor girls decreased by 18 percent.

Mr. President, the Supreme Court has recognized the status of minors under the law is unique in many respects. The Court has also recognized the role of family and society in that it requires the constitutional principles be applied with sensitivity and flexibility in a way that takes into account the special needs of parents and children.

There is—and it is well established by custom, practice, tradition, and in law—a recognition of the guiding role of parents in the upbringing of their children. The Supreme Court has held that the Government may validly limit the freedom of children to choose for themselves in making important affirmative choices with potentially serious consequences.

Parents love their children, and the law presumes that they act in the best interest of their children. Of course, there are tragic exceptions to the contrary, but our laws are not and should not be based on such exceptions.

As former Chief Justice Burger put it: "The law's concept of the family rests upon the presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required in making life's difficult decisions, more importantly historically recognized that the natural bonds of affection leave parents to act in the best interest of their children."

Mr. President, the Chief Justice is right, and this amendment is a very narrow commonsense approach to the problem. It is not a sweeping solution at all. For example, this amendment does not say on a nationwide basis that no abortions may be performed without consent. In fact, it does not require anybody's consent.

Nor does it even say, as some might think wise, and I guess I would think so, that no abortions may be performed nationwide without parental notification. All it says, and then even with some exceptions which I will outline in a moment, is that where a title X recipient also performs the abortion, then in that narrowly defined case, in such an event, at least one parent may be notified with some exceptions. Let me mention what the exceptions are.

The exceptions are for those States which have already enacted parental involvement laws, including laws which provide for judicial bypass of

notification and consent requirements. That takes care of 35 States. There are 35 States where this would not apply at all.

The second exception is a waiver provision which provides that the 48-hour notice does not apply in case of medical emergency. So we have a rather carefully and rather narrowly drawn proposal which I would think would appeal to the common sense and to the family experience and the humanity of most, perhaps nearly all, Senators. That is why I am dismayed to note that my colleague from Massachusetts insists upon offering a second-degree amendment. And I say insist upon because he and I discussed it briefly prior to my offering this amendment. So it did not take me entirely by surprise, though when he indicated for the first time maybe 2 minutes before it happened that he was going to offer a second-degree amendment, it was a surprise to me.

I would like to appeal to him to take down the second-degree amendment. His second-degree amendment really does not add anything to the present law. All it does is defeats my amendment. It expresses a hope with which I agree, but it restates the present law. It does not change anything. It is literally a straw man. It is an amendment, the practical effect of which, if you vote for it, is the same as a tabling motion on my amendment.

I have no objection if he wishes to make a tabling motion, but I do object, and I think it is not a good service to the Senate to offer an amendment whose real effect—I do not say intent, because it is not up to me to judge the intent with which another Senator offers an amendment—but the effect of this amendment is simply to confuse the issue. I guess it might offer to some Senator who really would like to vote against my amendment, if there are some Senators who want to do so, a chance to be for something else which sounds good but which is, in fact, without meaning.

I hope the Senator will not persist in this tactic. First, because it basically is just confusing. Second, because in the long run it is not going to get him anywhere. Sooner or later, might not tonight, maybe not tomorrow, but sooner or later—and I would think in the relatively near future—we are going to get a vote on my amendment. Unless the Senator from Massachusetts is disposed to believe that there just will never be any second-degree amendment offer from this side of the aisle, he must recognize that a determined Senator, it might not be the Senator from Colorado, it might be any Senator from this side of the aisle, will sooner or later have a chance to offer a second-degree amendment.

Even now there are ways that we could get around this. We can offer different parliamentary approaches

that would perhaps lead to getting an up or down vote on this. And, if he is unwilling to relent, then maybe we will have to explore some of these ideas.

Mr. President, I am loathe to do that. I would like to approach this in a low key way and I do not see any real reason to try to confuse the issue. So I am just wondering if the Senator from Massachusetts would be willing to withdraw this and if he wishes to offer a tabling motion or let me have an up or down vote or whatever it might be.

Mr. KENNEDY. Mr. President, I hear the Senator from Colorado on this particular issue. I am astounded that the Senator from Colorado would think that I, as the floor manager, was prepared to yield any kind of rights that are permitted by the Senate rules on a matter that is as important as this particular measure. I do not want the record to suggest that somehow the Senator from Colorado was in any way led to believe that if we were going to work out a time agreement that I was going to be denied the possibility of a second-degree amendment. Where that kind of notion came from must have been out of whole air, because it is a procedure that I have entered into on maybe 2 or 3 times that I have been in the U.S. Senate and that has been it.

So I do not want the record to reflect that I led the Senator from Colorado to the belief that we would not give the Senate the right to understand what was really at issue. And, quite frankly, I think it is not the Senator from Massachusetts that is muddying the waters; I think it is the Senator from Colorado.

The Senator from Colorado is quite within his rights to develop an abortion debate here in the U.S. Senate. No one is questioning that he is quite within his right at any particular time that the rules so provide. But that is not what this bill is about. That is not what this bill is about.

Now the Senator from Colorado has very strong views on it. Other members have strong views on it. The Senate can work its will on it. But to think that as the floor manager, when we are dealing with a measure which is of importance and significance to low-income women in this country and where, under the explicit legislative mandate, no abortions, no funding can be used to perform abortions, and then to get on into these other kinds of ancillary issues which are important and on which people have strong views, that is not what this bill is about. That is not what this bill is about. The Senator knows that no title X funds—no money, none, not \$1—can be used for abortions from this bill.

So why we are getting into these other kinds of issues that are related to a general abortion debate, which

this is not, and to think that I would waive those particular rights is not something that I would involve myself in. So I am quite prepared to proceed in whatever way the Senator from Colorado wants to proceed. I would be prepared either to continue the discussion or the debate, or to continue it tomorrow when other members are here for a short period of time prior to the cloture.

I have attempted, after there was a discussion here with the leader, to try and work out a procedure with the Senator. As the Senator remembers, I went to him. I went to him to try and work out a procedure so that he could get consideration. But when you go to a Senator and offer consideration, it does not mean you are going to waive your rights.

So with all respect, I would not be so inclined to withdraw the second-degree amendment for the very clear reason that this bill is not about abortion. There are some in this body who would like to make the debate on abortion. That is not what it is about.

So I would insist that at the appropriate time we have an opportunity for the Senator to express itself in the measure in the second degree. Although, I am quite prepared, if the Senator wanted a reasonable time to debate this on both sides prior to the cloture vote, I would be glad to enter into a time limit and urge that the Senate give consideration to that, as I would have with the amendment of the Senator from Oklahoma, Senator NICKLES, as well.

Mr. ARMSTRONG. Mr. President, I take it the answer to my question is no; that the Senator from Massachusetts is not disposed to withdraw the second-degree amendment. As he put it, he is not disposed to waive his rights. And of course he is entirely within his rights to insist.

I was somewhat surprised to learn that only on 2 or 3 occasions during his long and distinguished career in the Senate had he entered into such agreements because, in fact, as we all know, the way the Senate conducts its business hour after hour, day after day, week after week, and year after year, is Senators voluntarily waive the rights which they possess under the rules. I would guess in the course of a typical week we probably enter into anywhere from 10 to 200 unanimous consent agreements, literally, where Senators by unanimous consent, with 100 Senators agreeing to yield some right that they may have—the right to debate, to offer amendment, the right to do this, that or the other thing—waive their rights so that the body may proceed in a way that seems expeditious.

The notion that somehow it is beyond the pale for the Senator from Massachusetts to waive his right,

when in fact the only way he is exercising this right is just to confuse the situation, did not seem to me to be unusual. Nor, may I say, does it seem a particularly useful exercise of his right. In my mind—it is up to him to decide—but it does not seem to me to be a particularly helpful thing to his cause or to the Senate itself.

To think that by raising an amendment, the purpose of which is up to him to know but the effect of which is obviously just to confuse the issue—that is the real effect of it—that might be a very useful kind of tactic if this was the only time this issue could come up. But this thing can come up every day. It does not even have to come up just once a day. Sooner or later a determined Senator from Colorado, or from New Hampshire, or from Utah, or from South Carolina or from someplace, and not even necessarily a Senator from this side of the aisle, may I point out, is going to offer this amendment or something very much like it as a second-degree amendment. So I am not uncomfortable in saying that sooner or later, probably sooner and later, this amendment will be the subject of a vote.

This is not an extreme measure. It is not a measure which charts a lot of new territory. It really just expresses a policy which, as I pointed out, has long been the policy with respect to blood transfusions and ear piercings and every surgical procedure you ever heard of. Only for abortions, so far as I am advised, is there an exception so that a young minor girl could have an abortion which might end her life, certainly will end the life of the unborn child, and might have many other tragic side effects—only in the case of an abortion does somebody have a desire to say that at least one parent should not be notified, for heaven's sake. We are not asking for consent, we are just asking for notification. But if the Senator from Massachusetts wishes to stand on his rights, of course that is his right. That is what they are, his rights.

But I want to again appeal to him to ask if he would not relent, if he would not be willing to let us have a vote on this matter now and not draw it out. We could have voted on this matter. I only intended to speak on it a few minutes. But some other issues of basic fairness have presented themselves, one of which is the question of whether or not we get a chance to vote on this in a second-degree amendment.

I was not the one who raised the question of whether or not we had been promised that. The Senator wanted to make it clear that he had not led me astray. I never said he did. As a matter of fact, it was the Senator from Utah who gave me that understanding and told the Senate that that is what he thought was likely to

happen. But he did not lead me astray either.

I am a big boy. I have been around here a long time and I know these things do not always pan out, and just because somebody propounds a unanimous-consent agreement does not mean that all 100 Senators are going to agree to it. So I do not feel that I have been betrayed in any sense or that I have been misled.

But I do think this. There is, in this whole debate, an underlying theme of fairness that we need to ask ourselves about because it is becoming a pattern in the Senate. Let me direct the attention of the floor managers and of every Senator to what has exactly happened. First, they call up this bill. Then they lay down a cloture motion and then they lay down the Chafee amendment and nobody can get recognized to offer an amendment because they have the tree filled. They use up practically all the time that is available prior to cloture debating that amendment. So the practical effect is nobody gets to offer an amendment for anything.

Then the Senator from South Dakota gets up to offer his amendment and they talk him out of it on the very sensible grounds that they are not going to let that come to a vote. No beating around the bush about it, it is not a question of the merits of it, we are just not going to do it. You can stand here and talk about it until you are blue in the face, you can talk all night, but tomorrow morning there is going to be a cloture vote. When that cloture vote comes if cloture is invoked, they said to Senator PRESSLER, your amendment is going to fall. He was gracious enough to withdraw his amendment so amendments which are germane and relevant and which have to do with the bill itself, which are not extraneous however worthy they may be, can be considered.

Fine. So I seek recognition, and what is the next thing that happens? The Senator from Massachusetts stands up before I have the opportunity to offer as much as one syllable in support of my amendment other to ask unanimous consent that the reading of it be waived, which request I might note was denied. Before I even get a chance to explain the amendment he is up there with a second-degree amendment.

That is all very clever. That did not take me by surprise. I mentioned a moment ago, I have been here a long time. I have seen that done before. I could have done it. I could have offered a second-degree amendment to the amendment offered by the Senator from Utah [Mr. HATCH]. I could have offered prior to the adoption of the committee amendment an amendment to the text proposed to be stricken. I could have asked by friend from

New Hampshire somewhere to offer an amendment to the text proposed to be stricken, and then offered a second-degree amendment to his amendment.

Even now I could offer a motion to recommit the bill with instructions or I could offer such an amendment and the Senator from New Hampshire could offer an amendment to amend my amendment recommitting the bill with instructions. There are a lot of ways to skin the cat.

I will tell my colleagues something else. I have absolutely no motive to be here now, let alone for a prolonged period of time, but this is not going to end at 6:30 except if Senators want to let it. Because if every Senator is as insistent upon his or her rights as the Senator from Massachusetts wants to be tonight, then even if cloture is invoked tomorrow, there could be a long, long debate.

I am not threatening that because I do not have any motive to have such a long debate. I am not going to filibuster this bill because I am not worried about getting this amendment considered. I do not know whether it is going to get considered tonight. I still hope that the Senator from Massachusetts, who has left the floor, or the Senator from Ohio who is now managing on behalf of the Democrats, will relent and say: Sure, let Armstrong have his vote because he is just stubborn enough that one way or another, sooner or later he is going to get a vote on this issue and we look kind of silly simply stiff-arming him, because Senators are smarter than that. He is going to get a vote so let us let him have it and not drag this thing out.

Mr. President, I do not know that that is going to happen. I hope it is. But I hope the first thing in the morning there is going to be a Republican caucus around here. I am going to ask my Republican colleagues, even those who would otherwise be disposed to vote for cloture on this bill—I am going to ask them to vote for the fairness to the minority and in fairness of my rights—to vote against cloture. My hunch is that absent some of the high jinks that we have seen tonight and earlier in the day, and some of the understandings that somehow went off the rails, that this bill probably would receive a favorable vote on cloture. I am not going to vote to cloture it under any circumstances. I am not for the bill. I make no bones about it. I am not trying to mislead anybody or dissemble.

But I guess that someplace around here there might be a few Senators who would otherwise be disposed to vote for cloture, who will not like this pattern. And it is a pattern.

Mr. President, it is happening day after day: lay down a bill, lay down a motion for cloture, then turn to consideration of another matter while the

cloture motion ripens or come roaring through with a bunch of amendments and fill up the amendment tree and effectively preclude minority Senators from offering their amendments.

Those of us in the minority over here do not like that very much. I say that as a Senator who served both in the majority and minority, and I will remind my friends on the Democratic side of the aisle that during that period of time when my party was in the majority I often spoke up for, publicly and privately, the rights of the Democrats who were then in the minority. I did it a lot of times—many times. Senators will not have to think very hard to remember such occasions.

This is not fair. This stinks. This is rotten. It is a pattern. It is unfair. Not just because this is my amendment. I am going to get this amendment voted on. Do not worry about that. It may not be tonight. It may not be tomorrow. It may be more than once. But I am going to get it voted on. I am not asking for any sympathy on that score. I can find a place to offer this as an amendment or I can find somebody to help me. But I do say this, this pattern of trying to close down the normal processes of the Senate is not right.

Mr. HATCH. Will the Senator yield?

Mr. ARMSTRONG. I do not know whether or not the chairman of the Republican conference is here but, by gosh I am going to ask him for a conference first thing in the morning prior to the cloture vote and I am going to ask that my Republican colleagues consider carefully whether or not this is not a good reason for them to withhold votes in support of cloture.

Mr. HATCH. Will the Senator yield?

Mr. ARMSTRONG. I will be happy to.

Mr. HATCH. I have to say there is no one in the U.S. Senate who is more fair and decent than the distinguished Senator from Colorado and I have a great deal of empathy and sympathy for what he is saying here this evening. I feel this amendment is a perfectly good amendment, it is one that should be voted up or down. I thought that is what we were going to do but I misconstrued, apparently, what was said.

I agree with him—

The PRESIDING OFFICER. I might say to the Senator from Utah, under the procedures and rules of the Senate, he might yield for a question but he may lose his right to the floor if the Senator is going to make a statement.

Mr. ARMSTRONG. Mr. President, I yield my right to the floor.

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

Mr. ARMSTRONG. I thank the Chair.

Mr. HATCH. Mr. President I want to say I have been concerned about this procedure. In my whole time in the Senate, and I am in my third term, I have never seen a time when almost every bill has a cloture motion filed almost simultaneously with the filing of the bill.

I understand the importance of getting the Senate's work done, and I understand the importance of cloture, too. Basically, what that does is forecloses the minority from even having an opportunity to amend.

One of the great things about the Senate is that we have, it seems to me, greater freedoms in the minority than any other legislative body and, I have to say that those on the Democratic side of the floor, when we were in the majority, had those protections as we have them.

I have to say also that there were some cloture motions filed on some of the bills when we were in the majority, but never has there been such a consistent filing of cloture to cut off debate as we have seen during at least this year.

I guess I am in a position to say, because I know the distinguished Senator from Massachusetts and myself have been on the floor, it seems to me, day in and day out for all of this year, for an awful lot of the floor time this year, and on almost every one of those we have had this type of procedure.

I can see the frustrations and the irritations that are cropping up here, and I cannot blame the distinguished Senator from Colorado for feeling this way, nor can I blame anybody else because the distinguished Senator from South Dakota was willing to withdraw his amendment to accommodate the Senate so that we can get to these amendments that do relate to the bill.

As much as the distinguished Senator from Massachusetts says this is not an abortion bill, I might add that the amendment of the distinguished Senator from Colorado is not an abortion amendment either.

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

Mr. HATCH. I will be delighted.

Mr. ARMSTRONG. Will the Senator yield for a question?

Did the Senator hear the Senator from Massachusetts say that there were not any funds in this bill for abortion?

Mr. HATCH. That is what I understood him to say.

Mr. ARMSTRONG. Did you hear the Senator say this was not, therefore, an abortion bill?

Mr. HATCH. That is what I heard the Senator say.

Mr. ARMSTRONG. Bearing that in mind, is the Senator aware there are several, in fact, many recipients of title X funds which perform abortions?

Mr. HATCH. We put into the RECORD some 32, if I recall, different facilities that do abortion on the same premises as they do family planning.

Mr. ARMSTRONG. I was wondering if the Senator was aware that Planned Parenthood of Mammouth County, NJ, does that and Hudson Health Service of New Jersey and Planned Parenthood of New York City and Jefferson Family Planning Services of Philadelphia, and the Women and Children Health Services of Philadelphia; were you aware of it?

Mr. HATCH. I am aware of them.

Mr. ARMSTRONG. Planned Parenthood Association of Pittsburgh; Planned Parenthood Association of Southeastern Pennsylvania; Planned Parenthood Association of Maryland; Dover League for Planned Parenthood, Wilmington, DE; the Women's Health Care Center, Charleston, WV; was the Senator aware that every one of these that I have mentioned receives title X fund and also performs abortions?

Mr. HATCH. I am aware of it.

Mr. ARMSTRONG. Did the Senator know that Planned Parenthood of Memphis, TN, and Nashville receives title X fund and performs abortions?

Mr. HATCH. Yes, sir.

Mr. ARMSTRONG. I wonder if the Senator from Utah was aware that Planned Parenthood of Central Ohio and Mid-Michigan, received funds under title X and also performs abortions.

Mr. HATCH. I am aware of all of those.

Mr. ARMSTRONG. Boulder Valley Clinic of Boulder, CO; Planned Parenthood of Mid-Iowa, Kansas City, and a lot more; was the Senator aware of all those?

Mr. HATCH. Yes.

Mr. ARMSTRONG. I am not surprised the Senator knew that because he is known to be one of the best informed Members of the Senate, but I wanted to be sure that all Senators were aware. And I thank him for yielding for those questions.

Mr. HATCH. I appreciate my colleague for his kind remarks. I do not see any reason to continue the Senate and keep people in this evening. It is apparent we are not going to go anywhere on this bill until the cloture vote tomorrow.

Mr. METZENBAUM. Will the Senator from Utah yield for a question?

Mr. HATCH. I will be happy to yield.

Mr. METZENBAUM. Does the Senator from Ohio know that the Senator from Ohio has an extremely persuasive argument against the position of the Senator from Colorado stating all of the relevant facts that indicate clearly that you cannot use title X funds for the purpose of abortions? The Inspector General has indicated

on many occasions on special examinations that they are not being used; is the Senator from Utah aware of that fact?

Mr. HATCH. I have never seen when the Senator from Ohio did not have some sort of argument on an issue in this body that people should pay attention to, however spurious those arguments may have been.

Mr. METZENBAUM. Is the Senator aware of how persuasive they might be, spurious or not?

Mr. HATCH. I know the Senator from Ohio is persuasive, and I suggest he should be persuasive with me tonight and end this proceeding so we can begin again tomorrow.

Mr. METZENBAUM. That is not a spurious proposal. I join the Senator in that effort.

Mr. HATCH. If we can, I think we are just about ready to go out this evening.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Does the Senator seek recognition?

Mr. HUMPHREY. Yes.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, I commend the Senator from Utah for offering his amendment on parental consent. I join with him in regretting the circumstances that prevent him from getting a vote. But more than that, I regret the whole tenor of this last hour or two.

The Senator from Colorado mentioned a number of agreements that somehow have gone off the rails, as he put it, within the last hour, last 90 minutes. I do not know for sure precisely what derailed the understandings that all of us thought we had such that we would offer amendments and secure votes on them up or down or tabling, as the case may be.

But I did notice a coincidence that might bear on the map. Things were proceeding along just fine. The agreement was riding along smoothly on the rails until this Senator divulged the substance of the amendment which he had intended to offer; namely, an amendment which would facilitate the appointment of an independent counsel to investigate Members of Congress if the Attorney General, in his opinion, thought there was evidence to warrant the appointment of such special counsel to investigate Members of Congress in connection with the savings and loan or the depository facilities, depository institutions scandals. As soon as this Senator

divulged the content, the substance of his amendment, the train went off the track.

What we were presented with next was an ultimatum: That either the Senator from New Hampshire forbore offering his amendment or his colleagues, who likewise had amendments to offer, would be blocked from offering theirs by means of objecting to a unanimous-consent agreement, or other means, no doubt.

That is what I referred to when I used the term earlier "strong arm tactics," and I resent it. It is unfair. But I will predict that it will work to the advantage of this side of the aisle. I think the vote on cloture has now been turned into a vote on fairness. We have not heard the last word on what developed here tonight.

I regret that I am not going to be able to offer the amendment. It is a good amendment. It is an amendment which is urgently needed. It is an amendment which would be broadly supported by the American people who are up in arms at the cost of the savings and loan fiasco and the perceived political shenanigans which was, in part, at least a cause of this fiasco and the expensive bailout which ensues.

I cannot imagine why anyone in this body would be afraid of amending the special counsel law, the independent counsel law, so that it might be applied, again, at the discretion of the Attorney General, but that its application might be just slightly facilitated. Why would any Member of Congress, one side or the other, oppose that amendment? I will leave that to the pundits to speculate about.

It is unfair, Mr. President. And this Senator does not intend just to take it lying down, so to speak. This is going just a little bit too far.

We all know how to play the game of hardball around here, but this goes beyond the bounds of fairness. Senators have not heard the last about this issue.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I just want to go back over some ground that we have plowed once, but I am not sure it took. We attempted to explain what this amendment was about, but there is kind of a persistent murmur in the Chamber that I find a little unsettling. So I just want to be sure every Senator knows what we have been talking about here.

We are not talking about parental consent. We are talking parental notification. One parent. We are not talking about in every case. We are only talking about those cases where the organization which receives title X funds also performs the abortion.

There are not any funds for abortion in this bill. So you may ask, What is the connection? The connection is very simple. If the person who is seeking abortion counseling shows up at the counseling location, which may well be funded by title X, and after having been counseled on what her options are decides that she wishes to have an abortion, then she is referred some place, often to another office of the same agency that did the counseling.

We are not asserting, I do not believe, that funds for title X are being used to perform abortions. Somebody could argue that it amounts to the same thing. But as a technical matter, as a matter of accounting, that is not what is happening. What is happening is that they are being referred.

Do you suppose somebody from Boulder, CO, is being referred to Pueblo? No. Do you think they are being referred across town? In a lot of cases, that is not what happens either. In a lot of cases, what it means is that they are referred from a desk here to an office down the hall, a few steps away.

Somebody might say, well, that is a distinction without a difference. That is the same as if they were providing abortions with title X funds.

Mr. President, technically it is not. But if there is not at least the safety valve in these tragic cases involving minors, young girls, if there is not at least the opportunity for the parents to be notified, not even to give their consent, what it really amounts to is that these impressionable girls, at a time when they are vulnerable, at a time when they are under great pressure, at a time when they are in a lot of cases scared to death, are railroaded into doing something which they may well regret the rest of their lives. And in a lot of cases the referral is just down the hall, not very far—right there in the same building, I am told.

We have already discussed how often this is happening and where it is happening. The list is in the RECORD for anybody who wants to see it.

All we are suggesting is parental notification by certified mail. We are not saying anything very complex. We are not saying anything that is burdensome or onerous. We are not even saying that this is an absolute requirement, but it is a requirement that can be waived in the case of medical necessity. It is a requirement which only applies where the title X recipient is also the abortion provider. It only applies in that handful of States where the State itself, the legislature, has not enacted parental involvement legislation.

Yet the Senator from Massachusetts is reluctant to permit this issue to be voted on. He prefers to have a second-degree amendment. He prefers not to let the Senate vote on the issue itself

but to kind of vote on a strawman that he has erected.

I regret that. It is not going to change the final outcome. In the end, Mr. President, we will get a vote on this sometime—maybe not tonight but sometime. In the end, this will be enacted into law, and maybe a more far-reaching measure will someday be enacted into law. But there is little doubt in my mind, almost none in fact, that parental notification will be enacted by the Chamber as it has been by the legislative bodies of 35 of the 50 States.

Mr. President, the only thing that is in doubt, at least in my mind, is what our parliamentary procedure is. I guess at this point the only option which is really available to me is either to talk about this or go to a vote, or there might be another option or two.

I do not want to foreclose the Senator from Ohio, who I understand has arguments he wants to advance. I would be glad to hear them. What is the desire of the Senator?

Mr. METZENBAUM. The Senator from Ohio has understood from both sides of the aisle it is about time to close it up. I am about to offer a unanimous-consent request to do just that unless the Senator objects.

Mr. ARMSTRONG. Would the UC be to simply recess for the night?

Mr. METZENBAUM. Yes. May I read it, Mr. President?

Mr. ARMSTRONG. Mr. President, before the Senator starts on it, does it involve a lot of other things than this bill?

Mr. METZENBAUM. No. No, I do not believe so. I do not think the Senator from Colorado would have any difficulty.

It does not involve anything in the bill except for the cloture vote tomorrow.

Mr. ARMSTRONG. I am just trying to think aloud. Perhaps the Chair or the Parliamentarian or the manager could assist me. But it appears to me that the practical effect if we do not act on this measure in some way is that it is simply preempted tomorrow. Am I mistaken about that?

Mr. President, while we confer, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ARMSTRONG. Mr. President, I have already said that I do not think this is the final disposition of this issue. I did not think so when I stood up and offered the amendment. I was not taken by surprise when the Sena-

tor from Massachusetts offered his second-degree amendment. I am disappointed that he did so, and I am disappointed that he was unwilling to relent.

But it does not make any difference. In the final analysis, we will get our vote. In the final analysis, we will win this issue because this is not a close call. This is not a question about which people or country I would judge, even people of this Chamber are very closely divided. I would guess this is not going to be a cliffhanger when the vote finally comes. My guess is we are going to win this by a pretty good thumping because parent notification in the final analysis is not a very controversial issue. What I hope will be controversial is the process. It is the pattern of laying down a bill, filing a cloture motion, tying up the floor so people cannot offer amendments, and then when somebody finally gets a chance to offer an amendment, offering a second-degree amendment.

Well, that is all very cute, but in the end it sort of poisons the well. I want to remind all Senators of a point that I made earlier. We do business around here mostly by unanimous consent, mostly by a process in which Senators in turn are yielded the rights to which they are entitled under the rules. That actually turns out to be a pretty good way to do business, because that way things run smoothly and everybody is not so prickly about insisting on their rights that they tie up the whole body.

In this case, Mr. President, we are not able to reach that kind of accommodation; an accommodation which would permit us to vote on this issue, which is an important though narrow issue. It is a very significant issue involving the lives not only of unborn children, but the lives of families and young women under tragic circumstances.

I am not prepared to let this matter go to a vote under the kind of rigid circumstances that are available to me tonight.

So, Mr. President, with the understanding that this is just the first discussion of the issue, not the last, I withdraw my amendment, which I believe under the rule is my right.

The PRESIDING OFFICER. The Senator has the right to withdraw his own amendment. The amendment is withdrawn.

The amendment (No. 2882) was withdrawn.

Mr. GLENN. Mr. President, I rise today to join my colleagues in support of the family planning amendments. I am a cosponsor of S. 110 which amends and reauthorizes for 3 years the family planning project grant authority under title X of the Public Health Service Act. Title X of the Public Health Service Act, family planning, expired on September 30,

1985, and has been extended temporarily. I would like to commend my colleague, Senator KENNEDY, for his efforts in getting this important bill before the full Senate.

I believe that this legislation is vital because family planning has been instrumental in preventing unwanted pregnancies, especially teenage pregnancies. Almost 800,000 unwanted pregnancies—nearly half involving teenagers—are prevented each year by the diligent efforts of the family planning program. If it were not for this program there would be an estimated 400,000 additional unwanted pregnancies ending in abortion and an estimated 275,000 additional births annually. These additional births would add to the already high welfare rolls and impose unnecessary hardships on countless families and individuals.

By reauthorizing this program, Congress can assist 5 million low-income women and teenagers who are often unable to afford the services of private practitioners. From a budgetary standpoint, family planning saves taxpayers dollars; for each \$1 invested in the program, we save approximately \$3 in welfare costs.

Some have opposed this legislation because they believe that title X funds are used to perform abortions. In fact, the legislation specifically prohibits title X funds to be used for this purpose.

Title X program authority has not been extended since 1985. Instead of relying on continuing resolutions and appropriations acts to extend funding for essential family planning programs, I urge my colleagues to join me in supporting this bill.

Mr. METZENBAUM. Mr. President, I rise in support of S. 110, the Family Planning Amendments of 1989. I wish to commend Senator KENNEDY for his outstanding leadership on this bill. He deserves great credit for his perseverance and dedication to the cause of providing quality health care to the poor and uninsured.

The Family Planning Amendments of 1989 reauthorize title X of the Public Health Service Act, one of the most important Federal programs in existence. This program saves lives by providing quality health care, and also by allowing young women to control their futures. There is no greater problem facing this country than trying to break the cycle of poverty and despair that traps unwed and teenage mothers and their children. Title X helps the almost 5 million women who receive services under its auspices to break this vicious cycle. It gives young women from poor backgrounds a chance to finish school and make a life for themselves.

I am pleased to be an original cosponsor of this 3-year authorization measure. The bill increases the au-

thorized funding levels for basic family planning services, improves the training of family planning clinic personnel, broadens education programs to include self breast examinations, and continues the authority for relevant research and studies. In addition, S. 110 authorizes a new initiative within the National Institute of Child Health and Human Development to promote the development, marketing, and evaluation of new contraceptive devices, drugs, and methods.

Yet, despite the enormous importance of the title X program and the vast benefits it brings for relatively modest cost, we all know that it will be difficult to have this reauthorization bill passed and signed into law. The reauthorization of this critical program has been held up for years because some of my colleagues insist on offering misguided antiabortion amendments even though S. 110 continues the longstanding statutory mandate that no title X funds may be used to pay for or provide abortions.

These misguided amendments, among other things, bar the use of family planning funds to pay for counseling on or referring for abortion. In other words a family planning counselor at a title X clinic would not be allowed to advise patients or fully discuss the complete range of medical options at the appropriate time. Such an amendment is unfair to poor women, who if able to afford private health care would certainly be advised of all their medical options. It is also fundamentally inconsistent with sound medical practice that requires full disclosure of the health risks associated with medical procedures.

Mr. President, I believe that the majority of Americans, no matter what their position on the abortion issue, support family planning and related health services for all women who require it and especially for those who also can't afford it. I, therefore, urge my colleagues to save the abortion issue for another day and bill and to vote in favor of S. 110.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. It takes amendment No. 2883 off the table, also.

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

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

#### MORNING BUSINESS

Mr. METZENBAUM. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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

#### OLDER WORKERS BENEFIT PROTECTION ACT

##### WAIVER TIME LIMITS

Mr. HATCH. Mr. President, I wonder if I might ask my friend from Ohio to clarify my understanding of the time period provision of title 2 of the S. 1511 substitute, which deals with waivers. Under that title, individuals are given specified periods of time in which to consider whether to accept a waiver offer. Are those time periods, the periods before an individual accepts the offer, are they unalterable?

Mr. METZENBAUM. I would be glad to answer that question. Section 201 of the substitute provides that an individual employee entering into a waiver of rights or claims be given a period of at least 21 days—or 45 days if the waiver is requested in connection with a group termination program—within which to consider the agreement. Of course, an employee may determine that he or she does not wish to wait the full 21 or 45 days, and may desire to enter into the agreement prior to that time. A shorter period of time is permissible as long as the employee's decision to accept such shorter period of time is knowing and voluntary.

Mr. HATCH. I thank the Senator from Ohio for that clarification. That conforms with my understanding of the provision as well.

##### LONG-TERM DISABILITY

Would the distinguished Senator answer a question regarding the incorporation of the equal employment opportunity guidelines in this bill?

Mr. METZENBAUM. I would be happy to answer the Senator's question.

Mr. HATCH. As I understand the substitute bill before us, it incorporates the Equal Employment Opportunity Commission [EEOC] guidelines 1625.10 into the law so that, for example, compliance with the EEOC safe harbor or cost-justification guidelines for long-term disability plans would remain permissible. Thus, long-term disability benefits may be terminated in accordance with the cost-justification rule or the safe harbor rule set forth in the EEOC guideline. Similarly, coordination with government-provided benefits as specified by the EEOC guideline also would remain permissible. Is that the Senator's understanding of this bill?

Mr. METZENBAUM. The distinguished Senator is correct.

#### THE SAVINGS AND LOAN SCANDAL

Mr. KERREY. Mr. President, I rise to call the attention of my colleagues to an excellent opinion piece printed in today's Washington Post.

The author of the article is Warren Buffett, chairman of Berkshire Hathaway, a holding company headquartered in Omaha. Mr. Buffett has established himself as one of America's more refreshingly candid business leaders. In this morning's essay he advocates a proposal to improve our Nation's depositor insurance system. He also proposes that we improve our use of the English language by describing the savings loan crisis as an insurance problem instead of a bailout.

There are two insights in Mr. Buffett's article, which should be noted.

First, Mr. Buffett shows us how we can simultaneously improve the performance of the private and public sectors by allocating responsibilities intelligently. He calls for a new system of Federal depositor insurance in which the private sector would analyze and assess the financial risk of each lending institution, and the Federal Government would provide the lion's share of the insurance, with a small share of the risk being held by well-secured private insurers.

This proposal is based upon a correct and almost nondebatable point: government cannot assess financial risk although we are constantly asked to do so. Government employees are not—and never will be—prepared to either make this evaluation or to insulate those assessments from political pressure. As Buffett notes: "even if the regulators could write rules that would expertly gauge the risk or loss (which I doubt they can do), political realities would prevent their implementation. What is needed is a system that combines the ability of private insurers to evaluate risk with the ability of government to bear it."

This insight is an important refinement on the meat-cleaver approach to privatization and deregulation that is often recommended as a prudent course. The record of the 1980's is fairly clear: The administration confused deregulation with desupervision. There are areas of our lives which should be deregulated. However it has been tragic that in a rush to deregulate, we have some times desupervised. This is not unique to the savings and loan industry; the scandal at HUD provides an equally compelling example.

The ruling philosophy has been that government can do nothing well, and that government and its functions should therefore be abandoned or sold off to private interests, often at bargain basement prices. As we have belatedly learned in the savings loan crisis—and many others besides—

drunken sprees of privatization, de-regulation and desupervision lead to painful hangovers.

There is a responsible way to allocate financial governance between the private and public sectors, but it requires an admission that the public sector can do some things well—an admission we have not heard much lately. In particular, the public sector is especially well suited to pool society-wide risk and act as a watchdog competitor with the private sector, rather than a sole provider of services.

The other point worth noting relates to Mr. Buffett's closing observation: "Recently, taxpayers have learned the hard way that there are more banks than bankers," and that this mismatch is a fertile source of "financial folly." Mr. President, I submit that what holds for our financial institutions also holds for our public institutions. In the savings and loan scandal, and in other areas, we are paying the high price of political folly, because we have been left with more government than public servants. By this I mean that the zeal to slash government over the past decade has often eliminated regulators and public protectors without removing the dangers of fraud or physical harm which made those personnel necessary.

A good example can be found in the business section of today's Washington Post. The Post article discusses the Treasury Department's inquiry into why and how the shutdown of Denver's Silverado Banking, Savings and Loan was delayed 2 months—until just after the 1988 Presidential election. The article notes that, 3 months after it was disclosed that officials in Washington ordered the delay, none of the officials in question has yet to be contacted or questioned by the Treasury Department's investigators. The article doesn't speculate on the causes of this investigatory lapse, and Treasury isn't talking. But perhaps we can charitably chalk it up to the cuts in regulatory and investigatory staff during the 1980's. Maybe they've simply been too shorthanded to get to it.

Here are some examples: For 3 years, 1983-85, the Office of Management and Budget [OMB] resisted repeated attempts by the Federal Home Loan Bank Board to increase the number of examiners watching over the Nation's thrifts. In fact, the number of fulltime examining positions authorized by OMB fell from 891 in fiscal year 1983 to 860 in fiscal year 1985. Further, the Joint Economic Committee recently reported, October 19, 1989, that at the time of the record thrift failures, overall thrift examination staff fell from 1,385 to 1,337 between 1981 and 1985.

Mr. President, Mr. Buffett reminds us that we should have the public sector do what it does best, we should

let the private sector do what it does best, and we should entrust neither to those who hold in low regard the institutions they seek to govern. I ask that both Washington Post articles be inserted into the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

DEPOSITORS' INSURANCE: A LITTLE HELP FOR THE FEDS

(By Warren E. Buffett)

You've heard a lot about the "savings and loan bailout"—but that is inaccurate language. It's not the thrifts who have been bailed out with taxpayer money. They have, in fact, failed by the hundreds. Rather it's their depositors who have been rescued, thanks to insurance the government wrote and is now paying.

Fuzzy language impedes sound analysis. It's true that weak laws, lax regulation and political mischief bear major responsibility for the thrift debacle. However, a seriously flawed insurance operation contributed as well. If massive bailouts of depositors are to be avoided in the future, we have to start thinking as private insurers might and indeed bring them into the picture.

In particular, the government's insurance program needs to be overhauled to incorporate the first law of insurance underwriting: rates must be based on risk. To date we've allowed the incompetent, the crook and the optimist to exploit federal insurance at rates identical to those paid by prudent and able managers. If we continue that practice, we're asking for more troubles.

Any remedy must deal with certain special characteristics of deposit insurance. First, it is essential to our financial system: the question is not whether we have it, but what form it takes. Second, the size of our bank and thrift deposits—a colossal \$4 trillion—demands that government be the main supplier of insurance.

But we should also understand that government is not well-equipped to judge the risk of insuring one institution versus another. Even if the regulators could write rules that would expertly gauge the risk of loss (which I doubt they can do), political realities would prevent their implementation.

What is needed is a system that combines the ability of private insurers to evaluate risk with the ability of government to bear it. Co-insurance arrangements, varying by size of bank, would appear to be the direction to go.

For example, our largest banks and thrifts—say, those with \$10 billion or more of deposits—might be required to purchase pro-rata insurance covering 3 percent of their deposits from private insurers, with the remaining 97 percent to come from the Federal Deposit Insurance Corp. The government would be paid the same rate per dollar of insurance as the rate charged by the private insurers. If losses occurred, they would be shared in that same proportion: 3 percent for the private insurer, 97 percent for the FDIC.

The arrangements for smaller banks would need to take into account the possible reluctance of private insurers to put time and energy into relatively small transactions. Therefore, banks with deposits of, say \$500 million to \$1 billion might be required to buy 10 percent of their coverage from private insurers, with the rest to come from the FDIC.

At our smallest banks and thrifts—say, those with less than \$500 million of deposits—the FDIC would be the sole insurer, charging a fixed rate of perhaps 0.2 percent of deposits, which is approximately the rate the FDIC has proposed that all banks pay next year.

There would remain the problem of larger institutions that could not, because of their perceived weaknesses, obtain private insurance. They would be placed in an "assigned risk" plan and pay the FDIC a high rate—say, 0.4 percent initially, rising gradually to 0.6 percent within a few years. That rate would be burdensome but not confiscatory: well-run banks currently earn 1.5 percent to 2 percent pre-tax on deposits while paying 0.12 percent for FDIC insurance. In any case, a 0.6 percent rate would give its victims a powerful incentive to clean up their act so that they could meet the standards of private insurers and obtain lower rates.

A private insurer can quickly adjust rates to new circumstances—and bankers would be well aware of that. Indeed, insurers dealing with higher-risk institutions might write policies covering only six months. Renewal rates would act as a scorecard on performance.

Private insurers could, in general, attack problems with a flexibility and speed that elude government. For example, they could attach conditions to policies that would restrict brokered deposits or high-risk loans. In some cases they would detect moral risks that government could not see. The very fact that private insurers rejected a particular risk would be an early warning signal that could help the government avoid billions in losses.

For this system to work, private insurers themselves would have to meet some tough standards: a minimum of \$500 million of net worth, say, and a limit on the liabilities they could pile on each dollar of their net worth. The secretary of the Treasury should also have the right to disqualify an insurer at his discretion. When losses occur, the FDIC should manage the salvage operation.

Weaker banks will howl over this proposal. Though they regard it as sound practice to require that weak borrowers pay higher interest rates than strong borrowers, they will protest that differentiated insurance rates will make their already tough economics even tougher. Precisely. If an insurance structure doesn't produce pain, it won't produce change.

Society should wish for deposits to flow from the weak to the strong and from the ill-managed to the well-managed. Under the proposed system, banks and thrifts that operate with inadequate capital, impaired judgment or dubious integrity will find their growth inhibited by the higher costs they must bear. Some will seek mergers with institutions that incur lower insurance costs because they are better managed. That's just fine: our goal should be the restoration and preservation of a sound banking system, not the preservation of specific banks.

Overall, I would expect slightly more revenue to be realized by the FDIC from this private-public partnership than from the present system operating at the proposed 1991 rates. Competition among insurers, however, will prevent a ballooning of revenues. In addition, bankers will change their behavior in ways that will cut their rates, which is exactly what we want them to do.

Recently, taxpayers have learned the hard way that there are more banks than bankers. Financial folly will always be with us, but a well-designed insurance system can

significantly reduce the costs it inflicts upon society.

**"SLOW START" TO PROBE OF DELAY ON SILVERADO**  
(By Kathleen Day)

In June, federal officials launched an investigation into who ordered a delay in the closing of Silverado Banking, Savings and Loan, the failed Denver thrift where President Bush's son Neil was a director. They wanted to know why the government waited until after the 1988 presidential election to shut it down.

Three months later, key individuals involved in the decision to delay the closing say they have not yet been contacted by federal officials conducting the inquiry.

The investigation by the Treasury Department began June 29, two weeks after a former thrift field supervisor testified under oath that officials in Washington ordered him to wait two months—until after the November election—before shutting down Silverado. So far, the former supervisor said yesterday, except for reporters, no one has asked him a question about his testimony.

"I haven't been contacted," said Kermit Mowbray, former president of the Federal Home Loan Bank of Topeka, Kan., and the government's chief regional thrift supervisor for a four-state region that included Colorado.

Other key officials in the Topeka office also have not been questioned, according to government sources familiar with the investigation. As far as the Topeka office is concerned, the investigation "has gotten off to a slow start," said one person familiar with the inquiry.

A spokesman for the Treasury, which last year took over responsibility for supervising thrifts, would not comment yesterday on why Mowbray or others have not been contacted or questioned by the agency. She would only say the investigation is continuing.

In the meantime, officials involved in the decision who are still in the government have been ordered not to discuss the case publicly as long as the government considers the investigation to be alive.

Key people who in 1988 were in the Washington headquarters of the Office of Thrift Supervision, then called the Federal Home Loan Bank Board, have already said they don't recall how the decision was made to delay the closing of Silverado, whose failure is expected to cost taxpayers more than \$1 billion. Among those who have said publicly that they don't recall are M. Danny Wall, the nation's chief regulator from mid-1987 until December 1989; Stuart Root, chief of the thrift deposit insurance fund under Wall; and Karl Hoyle and Mary Crendon, top officials at the agency at the time.

Mowbray said that in July 1988 he informally told Washington officials that Silverado's health had deteriorated to the point where the government soon would have to take it over.

In September, his office formally requested that the thrift be seized by the federal government. Officials in Washington didn't respond to the request until mid-October, when they accepted the recommendation but asked the Topeka office to delay the closing for two months.

Accordingly to government sources, a government memorandum and publicly available information, former government thrift official Jay Earle made the telephone call requesting the delay because the government did not have the manpower to act ear-

lier. The call followed up on an Oct. 20, 1988, memo he had written to formally notify the Topeka regulators that Washington intended to close Silverado.

Earle could not be reached for comment. Early made the call to Topeka regulator Lou Roy, who then passed the information along to other Topeka officials, who then passed it along to Mowbray. Treasury officials have refused to allow Roy to discuss the matter.

Mowbray said that there is no significance to the fact that it took until Nov. 9—20 days after Earle's memo was faxed to the Topeka bank and one day after the election—before he signed the letter that set in motion the plans needed for the government physically to walk through Silverado's doors and take control.

"As far as I am concerned, it was happenstance," Mowbray said.

Still unanswered, however, is how officials in Washington made the decision to delay the closing. Mowbray and others insist that no political pressure was ever put on them from Washington or anywhere else to delay the closing.

The thrift regulatory system, in general, tolerated political activities that would not be allowed elsewhere.

For example, Mowbray once solicited campaign contributions from his 11 other regional thrift regulators around the country for former senator David Karnes, a Republican from Nebraska. Mowbray defends the action as appropriate. Regulators of commercial banks would be reprimanded for such an action, according to government spokesmen.

#### THE ISLAND OF KAHOO LAWE

Mr. INOUE. Mr. President, I applaud the proposal of the junior Senator from Hawaii regarding the return of the Island of Kahoolawe to the State of Hawaii.

As chairman of the Senate Appropriations Subcommittee on Defense, I received a letter from Senator AKAKA requesting the inclusion of his proposal in the fiscal year 1991 Department of Defense appropriations bill.

I believe that it is well thought out, and strikes the best possible balance between the obligation of the United States to return the Island in a habitable condition and, in light of budgetary constraints, to meet the need to carefully measure and reduce the costs associated with its return.

Some of my colleagues may not be aware that Kahoolawe is the smallest island of the Hawaiian Island chain. In 1953, Kahoolawe was placed under the U.S. Navy's jurisdiction by Executive Order 10436, which was issued by President Dwight Eisenhower.

Once the Island is no longer of use to the Navy, the Order requires the Navy to "render such area, or such portion thereof, reasonably safe for human habitation, without cost to the Territory."

As you will note by the use of the word "Territory," the Navy has maintained possession of Kahoolawe for 36 years—6 years longer than Hawaii has been the 50th State of the Union.

During these years, Kahoolawe has been an integral part of the Navy's military training. Nonetheless, since 1982, Australia, New Zealand, Japan, and Great Britain have declined to bomb the Island during joint military exercises.

Only Canada and the United States continue to participate in shelling exercises. Concurrently, efforts are underway to prevent further erosion of the Island caused by a lack of vegetation, which in turn is due to the foraging of a federal goat population and exacerbated by the continued shelling.

In 1981, Kahoolawe was placed on the National Register of Historical Places because it is the only island in Hawaii where the remains of the total prehistoric and historical system are known to be preserved.

Continued bombing of the island threatens the preservation of these historic artifacts and sites. In my judgment, we can and must find an alternative site for the U.S. Navy to continue its training exercises to ensure the military readiness of our Armed Forces.

Over the years, the people of Hawaii have united in their overwhelming support for the return of Kahoolawe. The spiritual and traditional heritage of this island go to the very essence of the Native Hawaiian people.

They have spoken on many occasions through their elected State and county representatives. Resolutions have been passed repeatedly by the Hawaii State Senate and House of Representatives, demanding that the President return the island to its people.

The County Council of Maui, which encompasses Kahoolawe, has also sent resolutions, in conjunction with letters from the mayor of Maui, urging the island's return.

In addition, I have spoken to Governor Waihee of the State of Hawaii who also places a very high priority on securing the return of the island.

As the senior Senator of the State of Hawaii, I intend to heed the steadfast call of the people of Hawaii. I am committed to the return of Kahoolawe.

We have provided the U.S. Navy with a target practice site for 36 years. We have paid our dues and done our part at a substantial cost.

Senator AKAKA's proposal provides the best possible compromise to a difficult situation.

It will establish a Commission comprised of appointees from both the Department of the Navy and the State of Hawaii, including a representative of the Native Hawaiian people.

It will be their responsibility to study the terms and conditions for the return of the island, including the cost of cleanup and a time frame for the return.

They will recommend to the Congress an interpretation and specific application of the portion of President Eisenhower's Executive order, requiring the return of the island in a "reasonably safe condition for human habitation."

The cost of cleanup for purposes of rendering the Island safe for the construction of homes or other types of buildings is estimated to exceed \$4 billion, and would, I believe, prohibit the return.

However, a lesser degree of habitation which would reserve the Island for parks and recreation, historic landmark visits, and for education and research-related activities, for example, in certain parts of the Island, would be less costly.

The Commission will be required to balance the needs, sensitivities, and constraints of all of the parties. To ensure that the rights of all parties are preserved.

I support Senator AKAKA's proposal to prohibit any bombing or further degradation of Kahoolawe for the duration of the Commission's study.

As chairman of the Senate Appropriations Subcommittee on Defense, I support the Akaka proposal, and will incorporate it into the fiscal year 1991 Department of Defense appropriations bill.

Let there be no doubt, I intend to use every resource available to me to return the Island of Kahoolawe to the people of Hawaii. I shall also do my best to ensure that our Armed Forces have appropriate training facilities elsewhere to maintain our Nation's military readiness.

I commend the junior Senator for his innovative proposal which is sensitive to the call of Hawaii's people, and is in accord with our Nation's fiscal constraints and security interests.

In the great words of President Abraham Lincoln, "Let us have faith that right makes might, and in that faith, let us to the end, dare to do our duty as we understand it."

Senator AKAKA and I have a duty to the people of Hawaii—a duty we believe to be right and just. We will accomplish it.

**U.S. FOREIGN SERVICE OUR  
"FORGOTTEN SENTINELS"—  
FLOOR STATEMENT BY CLAI-  
BORNE PELL**

Mr. PELL. Mr. President, an editorial in the New York Times reminds us that brave men and women are serving as American diplomats in Iraq and Kuwait, and that their service deserves recognition in the same spirit as that expressed by President Bush about our military men and women now serving in the Persian Gulf region.

More civilian officers of our Foreign Service have been killed in the line of

duty than all the generals and admirals that have died in combat since World War II. In the past 35 years some 90 American career diplomats have been killed, most of them as victims of terrorism.

The Americans now serving in Iraq and Kuwait are as much in the front lines as our soldiers in the desert. As the New York Times put it, their courage also calls for a salute.

I ask that the editorial "Forgotten Sentinels" from the September 25, 1990, New York Times be printed in the RECORD at this point.

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

**FORGOTTEN SENTINELS**

President Bush has inadvertently slighted the U.S. Foreign Service. In his Sept. 11 speech to Congress, Mr. Bush spoke generously and at length about "our brave service men and women" in the Persian Gulf. But he failed even to mention the brave men and women serving as diplomats in Baghdad and Kuwait, the hazardous cockpits of the conflict. It does not belittle the sacrifices of uniformed Americans to note that Foreign Service officers are in more immediate peril.

More of these civilian officers have been killed in the line of duty than all the generals and admirals who have died in combat since World War II. The names of these diplomats are honored on plaques in the State Department lobby. In 1955 there were 75 names. Since then, 90 more career diplomats have been killed, most victims of terrorism.

Americans treat the Foreign Service shabbily. Congress routinely slashes State Department budgets, since diplomacy has no domestic constituency. Salaries are kept low and training programs starved of funds by legislators. Presidents treat ambassadorial posts as choice booty for chums and contributors.

Perversely, career diplomats go unrecognized and unrewarded even as their skills are required for new problems, from narcotics and pollution to vanishing rain forests. Neglect of the Foreign Service is ignominious in normal times, but incomprehensible in crisis. American diplomats in Kuwait are captives in a combat zone; embassy defenders rely on a swimming pool for drinking water. Their courage calls for a salute; at the first opportunity, Mr. Bush should make full amends.

**TERRY ANDERSON**

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,019th day that Terry Anderson has been held captive in Beirut.

**ON THE ANNIVERSARY OF HUR-  
RICANE HUGO, CHARLESTON  
SAYS THANKS TO AMERICA**

Mr. HOLLINGS. Mr. President, during this past weekend, South Carolinians observed the first anniversary of Hurricane Hugo. The occasion was equal parts solemn remembrance and upbeat celebration. The fact is that South Carolina has bounced back stronger and faster than anyone

dreamed possible this time last year. Then again, this time last year, perhaps we didn't anticipate the tremendous, sustained outpouring of assistance from Americans the length and breadth of this Nation—assistance in the form of cash, labor, food, clothing, building materials, you name it. We will never forget it, and I cannot begin to express South Carolinians' sense of wonder and gratitude at the generosity of their fellow Americans.

Mr. President, no one has played a more vital and indispensable role in this rebound than Mayor Joseph P. Riley of Charleston. His leadership has been magnificent. What's more, in recent days, Mayor Riley has done South Carolina yet one more service by publishing in USA Today a full-page thank-you message to the people of the United States. The message is eloquent and straight from the heart.

Mr. President, so that the mayor's "Thank You, America" message can gain a wider circulation, I ask unanimous consent that it be printed in the RECORD in its entirety.

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

[Advertisement from USA Today, Sept. 21, 1990]

**THANK YOU, AMERICA.**

A year ago, Charleston was struck by Hurricane Hugo, the worst natural disaster in our state's history. It was, for this beautiful city, one of our darkest days.

Today we celebrate a remarkable recovery that many have called almost miraculous. We wish to thank you, the citizens of America, for your help and generosity.

Beginning just hours after the eye of this fierce hurricane passed over our church steeples, help started pouring in from all over America. You sent your hard-earned money, food, building supplies and clothes. Many of you came as volunteers to help us rebuild this city and our nearby communities.

Your help came from America's biggest cities and rural crossroads. You helped us get on our feet, you lifted our spirits and helped bring us together.

Today, thanks to you and to the extraordinary courage and diligence of the people of our community, Charleston is back. We're going strong, and visitors once again are enjoying our treasured historic sites, beautiful architecture and unspoiled beaches. Our restaurants and hotels are again bustling. And the outlook for business has never been more positive.

We are proud that not only did Charlestonians rebuild this year, but built for the future as well. In May, on schedule, we completed a magnificent ten-acre Waterfront Park along our harbor.

Our annual internationally known celebration of the arts, Spoleto Festival U.S.A., enjoyed its most successful season ever.

Over the past year we have experienced much. Some of it was painful. A lot of it has been wonderful. But nothing we have experienced has been more remarkable than the American people's outpouring of generosity. You have our deepest gratitude.

Come visit us. You will see a restored city that withstood Revolutionary War battles

200 years ago and withstood nature's most ravaging storm. And when you visit us, you will take pride in what is great about America, for your generosity helped bring us back. Thanks to you, Charleston has recovered and is going strong.

JOSEPH P. RILEY, Jr.,  
Mayor, Charleston, South Carolina.

**ASSOCIATION OF JUNIOR LEAGUES INTERNATIONAL, INC.'S RESOLUTION ON REAUTHORIZATION OF THE NATIONAL ENDOWMENT OF THE ARTS**

Mr. BRYAN. Mr. President, Senator HARRY REID and I submit the following Association of Junior Leagues International, Inc. Resolution concerning the reauthorization of the National Endowment for the Arts. The Association's 267 member Junior Leagues in the United States have a longstanding commitment to advancing art education and cultural development for all people in this country. It is in this spirit that the delegates at the association's 68th annual conference passed the following resolution:

Whereas, the National Endowment for the Arts, a federal agency, has enabled the arts in America to flourish and thrive since its inception in 1965 by promoting creative expression through the arts and by providing financial support to over 85,000 grant recipients across the nation. And, furthermore, its existence has stimulated growth and additional financial support of the arts in all states and U.S. territories through legislative appropriations which match or exceed National Endowment allocations and through corporate and private matching funds, and,

Whereas, the National Endowment's impact has successfully broadened accessibility of arts to all citizens, has significantly influenced the standards of artistic quality, has greatly increased the production of the arts in America, . . . the foundation of that progress based on artistic merit and artistic freedom as guaranteed by the first amendment of the United States Constitution, and,

Whereas, reauthorization of this agency by the President and the United States Congress is mandated in its enabling legislation at five-year intervals, and that process shall be completed in 1990, and;

Whereas, the reauthorization process inherently commands that proponents voice their support and defend its continuation and perpetuation, and;

Whereas, member Junior Leagues of the Association have traditionally and continuously demonstrated their belief in the value and importance of the arts in society through commitments of time, energy, and funds towards thousands of Junior League cultural arts projects and advocacy efforts, and;

Whereas, the cultural legacy of many Junior League-initiated projects still thrives, in part, due to National Endowment support and funding, and;

Whereas, individual Junior Leagues continue to be instrumental in advancing arts education for youth and cultural development in their respective communities as evidenced by 334 current cultural arts projects representing a financial commitment of nearly 1.5 million dollars, and;

Whereas, the delegate body of the Association of Junior Leagues International has, from time to time, adopted public stands on specific and timely issues through the resolution process and has in turn directed its President to communicate the viewpoint of the delegate body to appropriate authorities; therefore, be it

Resolved, That the Association of Junior Leagues International direct its president to issue a statement to President George Bush and to both Houses of the Congress of the United States endorsing reauthorization of the National Endowment of the Arts.

**THE DISTINGUISHED FLYING CROSS TRIBUTE TO 1ST LT. VERNON L. BINGHAM**

Mr. GARN. Mr. President, in times of war, heroes emerge, and their deeds are praised, but proper recognition must sometimes yield to the demands of the battlefield. On April 23, 1944, Vernon L. Bingham received the Distinguished Flying Cross for his outstanding achievement during an aerial flight. Although he received a medal and a copy of the orders, it was not until August 7, 1990 that he was officially presented with his citation, 45 years after World War II drew to a close. The time has come to properly honor the courage and valor displayed 46 years ago.

Lieutenant Bingham served as first lieutenant in the Air Corps, 415th Bombardment Squadron, 98th Bombardment Group of the U.S. Army. He is honored for extraordinary achievement while participating in aerial flight in the Mediterranean Theatre of Operations as a navigator of a B-24 type aircraft. At this time, I believe it is appropriate to recognize his achievement and quote directly from the orders which recognized him as a Distinguished Flying Cross recipient:

On 12 February 1944, Lieutenant Bingham participated in an important bombing mission against a vital enemy rail junction in Italy. Despite severe weather conditions which forced other aircraft in his formation to turn back, Lieutenant Bingham, through superior navigation, continued on, located and bombed the objective, sharing in the great damage inflicted on the enemy by a highly successful bombardment. Just over the target, enemy anti-aircraft fire destroyed two (2) engines, seriously damaging his plane. Unable to gain altitude, with the plane only able to turn in one (1) direction, Lieutenant Bingham assumed the responsibility of bringing his crippled plane through adverse weather and unfamiliar territory surrounded by towering mountain peaks back to home base, and, by his superior leadership and technical skill, brought both plane and crew through for a safe landing at a friendly base. By his courage, personal example, and devotion to duty, as shown throughout over fifty (50) successful combat missions against the enemy, Lieutenant Bingham has reflected great credit upon himself and the Armed Forces of the United States of America.

When I discovered the oversight of the Air Force in getting Mr. Bingham his Distinguished Flying Cross cita-

tion, I wanted to quickly remedy the situation. I must confess, he will be surprised by the citation because he never asked for assistance.

While it is always a privilege for me to recognize those who have served our country, it is a special honor to recognize the efforts to Vernon L. Bingham today for a couple of reasons. Though he now resides in Denver, CO, his residence at appointment was Salt Lake City, UT. Vernon is not only a former citizen of Utah, however, he also made the wise decision to marry my sister, Mildred. I extend warmest congratulations to a valued member of my family.

**COMPREHENSIVE MEDICAL DEVICE IMPROVEMENT ACT OF 1990**

Mr. DODD. Mr. President, on Wednesday, September 26, 1990, the Senate Committee on Labor and Human Resources will hold an executive session for the purpose of marking up S. 3006, the Comprehensive Medical Device Improvement Act of 1990.

At that time, I will be offering an amendment in the nature of a substitute to the bill which Senator KENNEDY and I introduced, along with Senators HATCH, COATS, and DURENBERGER, on Saturday, August 4, 1990.

For the past 7 weeks, I have worked with Senator KENNEDY and the other cosponsors of the legislation to strengthen, fine-tune, and perfect the introduced bill so that the Committee on Labor and Human Resources can report truly comprehensive legislative to the full Senate which will improve the regulatory scheme for medical devices and will ensure continued public access to safe, effective, high quality medical devices.

I wish to commend my good friend, the distinguished chairman of the Labor and Human Resources Committee, Senator KENNEDY, for his leadership on this issue. I would further commend the chairman and his staff for their outstanding work in assisting in the development of this substitute bill. I also wish to recognize the efforts of Senators HATCH, COATS, and DURENBERGER and their fine staffs who made a significant contribution toward improving the legislation.

I sincerely believe that the substitute bill represents consensus legislation that should receive wide, bipartisan support in the Senate. In light of the strong interest in the House of Representatives in passing medical device legislation this year, I am optimistic that a comprehensive medical device bill will be enacted before the 101st Congress adjourns.

I ask unanimous consent that the text of my amendment be printed in the RECORD.

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

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Medical Device Improvement Act of 1990".

#### SEC. 2. REFERENCES TO THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

#### SEC. 3. REVIEW OF SAFETY AND EFFECTIVENESS INFORMATION.

(a) REVIEW.—Section 510(k) (21 U.S.C. 360(k)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting "(1)" after the subsection designation; and

(3) by adding at the end the following new paragraph:

"(2)(A) The requirements of subparagraph (B) shall apply to a person who submits a notification in accordance with paragraph (1) for a device that the person claims is substantially equivalent to a marketed device—

"(i) that was introduced or delivered for introduction into interstate commerce for commercial distribution before the date of enactment of this paragraph;

"(ii) that is classified as a class III device in accordance with subsections (b) through (d) of section 513; and

"(iii) for which no final regulation requiring premarket approval has been promulgated in accordance with section 515(b).

"(B) A person described in subparagraph (A) shall—

"(i) prior to the submission of a notification in accordance with paragraph (1), conduct a reasonable search for, and review of, published and unpublished data available to the person concerning the safety and effectiveness of the marketed device and the device for which the notification is submitted, including all adverse safety and effectiveness data concerning the devices, except for data that has been submitted to the Secretary in accordance with section 519 of this Act and section 803 of title 21, Code of Federal Regulations; and

"(ii) include in the notification a certification that the search and review was conducted and a citation to and summary of the data resulting from the search.

"(C) The Secretary may require the submission of any data described in the summary required by paragraph (B)(ii)."

#### SEC. 4. CLASSIFICATION OF DEVICES.

(a) CLASSIFICATION.—Section 513 (21 U.S.C. 360c) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A)(ii), by striking "or to establish a performance standard" and inserting "or to establish an additional control or controls, as described in subparagraph (B)(i).";

(B) by amending subparagraph (B) to read as follows:

"(B) CLASS II, ADDITIONAL CONTROLS.—A device—

"(i) that cannot be classified as a class I device because general controls are insufficient to provide reasonable assurance of the safety and effectiveness of the device;

"(ii) for which there is sufficient information to establish an additional control or controls to provide the assurance, including—

"(I) promulgating a performance standard;

"(II) developing and disseminating a guideline, including a guideline for the submission of clinical data in a premarket notification submission in accordance with section 510(k);

"(III) requiring the use of postmarket surveillance as appropriate in accordance with section 522; and

"(IV) making a recommendation or taking other appropriate action considered necessary by the Secretary to provide reasonable assurance of the safety and effectiveness of the device; and

"(iii) for which it is necessary to establish an additional control or controls to provide reasonable assurance of the safety and effectiveness of the device;

except that for a device that is purported or represented to be for a use in supporting or sustaining human life, sufficient information must exist for the Secretary to identify and describe the provision of a performance standard to provide such assurance."; and

(C) in subparagraph (C)(i)(II), by striking "establishment of a performance standard" and inserting "establishment of an additional control, as described in subparagraph (B)(ii)."; and

(2) in subsection (f)—

(A) in paragraph (1), by inserting "the Secretary by order determines that" after "unless"; and

(B) in paragraph (2), by striking "The" and inserting "The Secretary may initiate the reclassification of a device classified in class III under paragraph (1), or a".

(b) CONFORMING AMENDMENT.—Section 513(h)(1) is amended by inserting after "510" the following: "(except for a guideline for the submission of clinical data in a premarket notification submission in accordance with section 510(k))".

#### SEC. 5. REVISION OF CLASSIFICATION FOR CERTAIN CLASS III DEVICES.

(a) REVISION OF CLASSIFICATION.—Section 513 (21 U.S.C. 360c) (as amended by section 4(b) of this Act) is further amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection:

#### "Revision of Classification

"(h)(1) The requirements established by order in accordance with paragraph (2) shall apply with respect to a device—

"(A) that was introduced or delivered for introduction into interstate commerce for commercial distribution before the date of enactment of this subsection;

"(B) that is classified as a class III device; and

"(C) for which no final regulation requiring premarket approval has been promulgated in accordance with section 515(b).

"(2) Not later than 36 months after the date of enactment of this subsection, the Secretary—

"(A) shall by order require manufacturers of devices described in paragraph (1) to submit to the Secretary a citation to and summary of all published and unpublished data reasonably available to the manufacturer concerning the safety and effectiveness of the device, including any adverse safety and effectiveness data, except for information that has been submitted to the Secretary under section 519 of this Act and

section 803 of title 21, Code of Federal Regulations; and

"(B) may require a manufacturer to submit any data described in the summary.

"(3) After the issuance of an order in accordance with paragraph (2)(A), but not later than 24 months after the issuance of the order, the Secretary shall publish in the Federal Register for each device covered by the order a notice of proposed rulemaking proposing to change the classification of the device to class II or to class I or to continue the classification of the device in class III.

"(4) In determining whether to revise the classification of a device or to continue the classification of the device in class III, the Secretary shall apply the criteria in section 513(a) to the information available when the device was initially classified and any new information made available since initial classification.

"(5) After considering any comments submitted in response to the notice of proposed rulemaking, the Secretary shall issue a regulation changing the classification of the device or continuing the classification in class III. The Secretary shall publish in the Federal Register findings on the matters referred to in paragraph (4), a discussion of the comments received in response to the notice of the proposed rulemaking, and the response of the Secretary to the comments. The Secretary shall not publish the regulation before the expiration of 90 days from the date of publication of the notice of proposed rulemaking relating to the regulation.

"(6) A regulation issued in accordance with paragraph (5) is subject to judicial review in accordance with section 517."

"(7) Not later than 12 months after the effective date of any regulation issued in accordance with paragraph (5), the Secretary shall establish a schedule for the issuance of a regulation in accordance with section 515(b) requiring submission of a premarket approval application for each device that has been continued in class III."

#### SEC. 6. ESTABLISHMENT OF PERFORMANCE STANDARDS.

(a) PROCEDURE.—Section 514 (21 U.S.C. 360d) is amended—

(1) in subsection (a), by striking "The Secretary may" and inserting "If the Secretary determines that a performance standard is necessary to provide reasonable assurance of the safety and effectiveness of a class II device, the Secretary shall";

(2) by striking subsections (b) through (f);

(3) by redesignating subsection (g) as subsection (b);

(4) in subsection (b) (as redesignated), by striking paragraphs (1) and (2) and inserting the following new paragraphs:

"(1)(A) The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a device.

"(B) A notice of proposed rulemaking for the establishment or amendment of a performance standard for a device shall—

"(i) set forth a finding with supporting justification that the performance standard is appropriate and necessary to provide reasonable assurance of the safety and effectiveness of the device;

"(ii) set forth proposed findings with respect to the risk of illness or injury that the performance standard is intended to reduce or eliminate;

"(iii) invite interested persons to submit to the Secretary within 30 days of the publication of the notice, requests for changes in

the classification of the device based on new information relevant to the classification; and

"(iv) invite interested persons to submit an existing performance standard for the device, including a draft or proposed performance standard, for consideration by the Secretary.

"(C) A notice of proposed rulemaking for the revocation of a performance standard shall set forth a finding with supporting justification that the performance standard is no longer necessary to provide reasonable assurance of the safety and effectiveness of a device.

"(D) The Secretary shall provide for a comment period of no fewer than 60 days.

"(2) If, after publication of a notice in accordance with paragraph (1), the Secretary receives a request for a change in the classification of the device, the Secretary shall, within 60 days of the publication of the notice, consult with a classification panel described in the second sentence of section 513(e)."

(b) CONFORMING AMENDMENTS.—

(1) Section 514(b) (as redesignated by subsection (a)(3)) is amended—

(A) in paragraph (3)(A), by striking "paragraph (2)" and inserting "paragraph (1)"; and

(B) in paragraph (4)(A), by striking "paragraphs (2) and (3)(B)" and inserting "paragraphs (1), (2), and (3)(B)".

(2) Section 517(a)(3) (21 U.S.C. 360g(a)(3)) is amended by striking "514(b)(2) or".

(3) Section 520(i) (21 U.S.C. 360j(i)) is amended by striking "514(g)(5)(B)" and inserting "514(b)(5)(B)".

SEC. 7. SUSPENSION OF APPROVAL OF APPLICATION.

Section 515(e) (21 U.S.C. 360e(e)) is amended by adding at the end the following new paragraph:

"(3)(A) The Secretary may by order temporarily suspend the approval of an application approved under this section if the Secretary determines that there is a reasonable probability that the continued distribution of a device under the application would cause serious, adverse health consequences or death.

"(B) No less than 10 days prior to the issuance of a suspension order under subparagraph (A), the Secretary shall issue a notice that the Secretary shall provide the holder of the application for the device with an opportunity for an informal hearing to determine whether to issue the order.

"(C) No less than 10 days after the hearing described in subparagraph (B), the Secretary shall issue a suspension order or determine that the order should not be issued.

"(D) No less than 20 days after the issuance of the suspension order, the Secretary shall issue a notice initiating the process of withdrawal of approval of the application, as described in paragraphs (1) and (2). If the Secretary does not issue the notice within the specified time frame, the suspension order shall be deemed to be vacated."

SEC. 8. JUDICIAL REVIEW.

Section 517(a) (21 U.S.C. 360g(a)) is amended—

(1) by striking "or" at the end of paragraph (6); and

(2) by inserting after paragraph (7) the following new paragraphs:

"(8) the issuance of a regulation under section 513(h), or

"(9) the issuance of an order under section 513(f)(1) or an order effectuating the classification required under 520(l)(1)(D)."

SEC. 9. EMERGENCY RECALL AUTHORITY.

Section 518 (21 U.S.C. 360h) is amended by adding at the end the following new subsection:

"Emergency Recall Authority

"(e)(1) If the Secretary finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, the Secretary shall issue a recall order. The order shall require the appropriate party or parties (including the manufacturers, importers, distributors, or retailers of the device) to immediately cease any distribution of the device and, thereafter, recall the device from commercial distribution.

"(2)(A) The order issued under paragraph (1) shall include recall of devices from hospitals and other health care institutions, unless the Secretary determines that the risk of recalling the device from the facilities presents a greater health risk than not recalling the device from use.

"(B) For devices subject to an order issued under paragraph (1), and in lieu of including individuals within the recall order, the Secretary shall order a notification under subsection (a) regarding the risks associated with the continued use of the device to individuals or, when appropriate, the health professionals who prescribed the device for the use of the individuals.

"(3) Not later than 10 days after the issuance of a recall order, the Secretary shall provide the party or parties to whom the order is directed with the opportunity for an informal hearing to determine whether the order shall be affirmed or vacated.

"(4) If, after providing an opportunity for an informal hearing, the Secretary determines that the recall order was properly issued, the order shall remain in effect. The order shall specify a timetable in which the device recall will occur, and shall require periodic reports to the Secretary describing the progress of the recall effort.

"(5) If, after providing an opportunity for an informal hearing, the Secretary determines that inadequate grounds exist to support the order issued under paragraph (1), the Secretary shall vacate the order.

"(6) A party to whom the recall order is issued shall—

"(i) remedy the causes that resulted in the issuance of the order;

"(ii) complete the recall in accordance with the order; and

"(iii) submit a report to the Secretary demonstrating compliance with the order.

"(7) After fulfilling the requirements of paragraph (6), a party to whom the recall order is issued may petition the Secretary to vacate the order. The petition shall state the basis for vacating the order.

"(8) The Secretary shall respond to the petition described in paragraph (7) not later than 30 days after the receipt of the petition. If the Secretary finds that the party to whom the recall order was issued has fulfilled the requirements of paragraph (6) and that the device may be distributed in interstate commerce, the Secretary shall vacate the order.

"(9) The remedy provided by this subsection shall be in addition to those provided by subsections (a), (b), and (c)."

SEC. 10. USER REPORTS.

(a) REQUIREMENT.—Section 519 (21 U.S.C. 360i) is amended—

(1) in subsection (a)(3), by inserting before the semicolon the following: "and shall require distributors who submit the reports to submit copies of the reports to the manufac-

turer of the device for which the report was made";

(2) by adding at the end the following new subsections:

"Inclusion of Distributors

"(c) Not later than 1 year after the date of the enactment of this subsection, the Secretary shall amend the regulations promulgated under this section to require distributors of medical devices to establish and maintain records and make reports under this section. In amending the regulations, the Secretary may exempt classes of distributors from whom reports are not necessary for the protection of the public health.

"Certification

"(d) Each manufacturer, importer, and distributor required to make reports under subsection (a) shall submit to the Secretary annually a statement certifying that the manufacturer, importer, or distributor—

"(1) did not file any report; or

"(2) did file a certain number of the reports.

"User Reports

"(e)(1) As used in this subsection:

"(A) The terms 'facility' and 'medical device user facility' mean a hospital, nursing home, or ambulatory surgical facility.

"(B) The terms 'serious illness' and 'serious injury' mean illness or injury, respectively, that is unanticipated and—

"(i) is life threatening;

"(ii) results in permanent impairment of a body function or permanent damage to a body structure; or

"(iii) necessitates immediate medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

"(2) If a medical device user facility becomes aware of information that reasonably suggests that a medical device has caused or contributed to the death of a patient of the facility, the facility shall, as soon as practicable but not later than 15 working days after becoming aware of the information, report the information to the Secretary and, if the identity of the manufacturer is known, to the manufacturer of the device.

"(3) If a medical device user facility becomes aware of information that reasonably suggests that a medical device has caused or contributed to a serious illness or serious injury to a patient of the facility, the facility shall, as soon as practicable, but not later than 15 working days after becoming aware of the information, report the information to the manufacturer of the device. If the facility is unable to determine the identity of the manufacturer of the device, the facility shall send a report of the information to the Secretary.

"(4) For purposes of paragraphs (2) and (3), a medical device user facility shall be treated as having received or otherwise become aware of information with respect to a medical device of the facility when appropriate medical personnel employed by or otherwise affiliated with the facility receive or otherwise become aware of information with respect to the device in the course of the duties of the individual.

"(5)(A) Except as provided in subparagraph (B), the Secretary may not disclose the identity of a facility that makes a report in accordance with paragraph (2) or (3)—

"(i) except in connection with an action brought to enforce section 301(q);

"(ii) except in connection with a communication to a manufacturer of a device that is

the subject of a report in accordance with paragraph (2) or (3); or

"(iii) unless required to be disclosed in accordance with subsection (a).

"(B) This paragraph shall not authorize the Secretary to withhold the identity of a facility making a report in accordance with paragraph (2), or any information in the report, from duly authorized committees and subcommittees of Congress.

"(6)(A) No report made in accordance with paragraph (2) or (3) by a person described in subparagraph (B) shall be admitted into evidence in any civil action involving private parties unless the person had knowledge of the falsity of the information contained in the report.

"(B) As used in subparagraph (A), the term 'person' means—

"(i) a medical device user facility;

"(ii) one of the appropriate medical personnel employed by or otherwise affiliated with the facility; or

"(iii) a physician who is not required to make a report in accordance with paragraph (2) or (3).

"(7) The obligation of a medical device user facility to make a report in accordance with paragraph (2) or (3) shall not affect the obligation of the manufacturer of the device who receives the information to file a report concerning the device as required under subsection (a).

#### "User Education

"(f)(1) During the 1-year period beginning on the date of enactment of this subsection, the Secretary may award grants to eligible entities to establish public education programs for hospitals, ambulatory surgical facilities, and nursing homes concerning the user reporting requirements set forth in subsection (e).

"(2) In awarding grants in accordance with paragraph (1), the Secretary shall give priority to entities to submit proposals that demonstrate—

"(A) a need for user education among hospitals, ambulatory surgical facilities, and nursing homes regarding a generic category of medical device; and

"(B) the ability to adequately perform the proposed educational program.

"(3) In order to receive a grant in accordance with paragraph (1), an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may by regulation require. At a minimum, the application shall contain—

"(A) a description of the proposed public education program;

"(B) the qualifications and experience of the entity to carry out the program; and

"(C) the need for user education among persons to be served by the entity regarding a generic category of medical device.

"(4) The Secretary shall by regulation specify the qualifications for an entity to receive a grant in accordance with paragraph (1).

"(5) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for each of fiscal years 1991 through 1993."

(b) REGULATIONS.—The Secretary of Health and Human Services shall promulgate regulations to implement section 519(e) of the Federal Food, Drug, and Cosmetic Act, as added by the amendment made by subsection (a), not later than 12 months after the date of enactment of this Act. In promulgating the regulations, the Secretary shall minimize the administrative burdens on medical device user facilities consistent

with the need to assure adequate information.

(c) REPORT TO CONGRESS.—Not later than 36 months after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress a report that contains an evaluation of the requirements of section 519(e) of the Federal Food, Drug, and Cosmetic Act. In preparing the report, the Secretary shall consult with individuals and organizations with an interest in health care and consumer issues. At a minimum, the report shall contain—

(1) an evaluation of the safety benefits of the requirements;

(2) an evaluation of the burdens placed on the Food and Drug Administration and on medical device user facilities by the requirements;

(3) an evaluation of the cost-effectiveness of the requirements; and

(4) recommendations for legislative reform.

(d) EFFECTIVE DATE.—Section 519(e) of the Federal Food, Drug, and Cosmetic Act shall become effective on the earlier of—

(1) the effective date of regulations promulgated in accordance with subsection (b); or

(2) the date that is 12 months after the date of enactment of this Act.

#### SEC. 11. REPORTS OF REMOVALS AND CORRECTIVE ACTIONS.

Section 519 (21 U.S.C. 360i) (as amended by section 10 of this Act) is further amended by adding at the end the following new subsection:

##### "Reports of Removals and Corrective Actions

"(g)(1)(A) Except as provided in paragraph (2), the Secretary shall by regulation require a manufacturer, importer, or distributor of a device to report promptly to the Secretary any removal or corrective action of a device undertaken by the manufacturer, importer, or distributor of a device if the removal or corrective action was undertaken to—

"(i) eliminate a significant risk to health caused by the device; or

"(ii) remedy a violation of this Act caused by the device which may present a risk to health.

"(B) A manufacturer, importer, or distributor of a device who undertakes a corrective action or removal of a device that is not required to be reported under subparagraph (A) shall keep a record of the corrective action or removal.

"(2) No report of the corrective action or removal of a device may be required under paragraph (1) if a report of the corrective action or removal is required under this Act, or the corrective action or removal was initiated at the request of the Secretary, and a report has been submitted to the agency.

"(3) For purposes of paragraphs (1) and (2), the terms 'corrective action' and 'removal' do not include routine servicing."

#### SEC. 12. USE OF PREMARKET APPROVAL DATA.

Section 520 (21 U.S.C. 360j) is amended—

(1) in subsection (c)—

(A) by striking "and may not be used"; and

(B) by inserting "or class I, except in accordance with subsection (h)," after "from class III to class II";

(2) in subsection (h)(3), by striking "Any" and inserting "Except as provided in paragraph (4), any"; and

(3) by adding at the end the following new paragraph:

"(4)(A) Any information contained in an application for premarket approval filed with the Secretary pursuant to section 515(c), including clinical and preclinical tests or studies, but excluding descriptions of methods of manufacture and product composition, that demonstrates the safety and effectiveness of a device shall be available one year after the original application for the fourth device of a kind has been approved by the Secretary, for use by the Secretary in approving devices, or determining whether a product development protocol has been completed, under section 515, establishing a performance standard under section 514, and reclassifying devices under subsections (e) and (f) of section 513, and subsection (1)(2). The Secretary shall deem devices that incorporate the same technologies, have the same principles of operation, and are intended for the same use or uses to be within a kind of device.

"(B) The Secretary, contemporaneously with the approval of the fourth device of a kind, shall publish a notice in the Federal Register identifying the four devices of a kind that have been approved under section 515 and the date on which the data contained in premarket approval applications for the devices will be available to the Secretary for use, as described in subparagraph (A). For each device described in subparagraph (D)(i)(I), the Secretary shall publish a notice in the Federal Register setting forth the date, which shall be not earlier than 1 year from the date of notice, that data identified in subparagraph (A) shall be available for the use of the Secretary.

"(C) The detailed summaries of information respecting the safety and effectiveness of devices required by paragraph (1)(A) shall be available for use by the Secretary in approving devices, or determining whether a product development protocol has been completed, under section 515, establishing a performance standard under section 514, and reclassifying devices under subsections (e) and (f) of section 513, and subsection (1)(2).

"(D)(i) This paragraph shall become effective—

"(I) upon the date of the enactment of the paragraph, for devices approved under section 515, where four devices of a kind were approved on or before December 31, 1987; and

"(II) 24 months after the date of the enactment of the paragraph, for devices not included within the scope of subclause (I) that are subject to a premarket approval requirement under section 515.

"(ii) For each device described in subparagraph (D)(i)(II) for which the original application for a fourth device of a kind is approved by the Secretary before the 24-month delayed effective date described in subparagraph (D)(i)(II), the 24-month delayed effective date shall be deemed to be the approval date for the fourth device of a kind.

"(E) The approval date of a device, for purposes of this paragraph, shall be the date of the letter of the Secretary to the applicant approving a device under section 515, and permitting the applicant to commercially distribute the device."

#### SEC. 13. TRACEABILITY.

Section 520(j) (21 U.S.C. 360j(j)) is amended to read as follows:

##### "Traceability Requirements

"(j)(1) The Secretary shall, not later than 1 year after the date of enactment of this subsection, determine which devices should

be subject to a requirement of labeling, or coding, or identification by any other means, that is necessary to ensure that the device may be traced from the place of manufacture of the device or initial distribution to the ultimate user of the device, from among devices that—

“(A) are permanent implants;  
“(B) are purported or represented to be for use in supporting or sustaining human life; or

“(C) present a potential unreasonable risk of illness or injury.

“(2) Not later than 2 years after the date of enactment of this subsection, the Secretary shall by regulation require the manufacturers, importers, and distributors of the devices that are described in paragraph (1) to establish the means by which the devices will be traced to the ultimate user.”

**SEC. 14. REVISION OF CLASSIFICATION FOR DEVICES REGULATED AS NEW DRUGS OR ANTIBIOTIC DRUGS.**

(a) **IN GENERAL.**—Section 520(l)(2) (21 U.S.C. 360j(l)(2)) is amended—

(1) by inserting “(A)” after the paragraph designation; and

(2) in subparagraph (A) (as designated by paragraph (1)), by striking “The” and inserting “The Secretary may initiate the reclassification of a device classified in class III under paragraph (1), or a”; and

(3) by adding at the end the following new subparagraph:

“(B)(i) Not later than 90 days after the date of enactment of this subparagraph, the Secretary shall publish a notice in the Federal Register with respect to devices that are subject to regulation pursuant to this subsection. The notice shall state whether each device shall remain in class III or be reviewed for classification into class I or II. The notice shall also require the manufacturer of a device that the Secretary intends to classify into class I or II to submit to the Secretary a description of and citation to any adverse safety and effectiveness information not submitted under section 519(a) of this Act and section 803 of title 21, Code of Federal Regulations. The Secretary may require a manufacturer to submit the adverse safety and effectiveness information for which a description and citation were submitted to the Secretary.

“(ii) After the issuance of the notice under clause (i), and following consultation with appropriate advisory panels in accordance with subsections (b) through (d) of section 513, but before the expiration of the 1-year period beginning on the date of enactment of this subparagraph, the Secretary shall publish a proposed regulation in the Federal Register classifying each device into class I or II, or providing that each device shall remain in class III. The data furnished by manufacturers in accordance with clause (i), in combination with the advice and recommendation of appropriate advisory panels shall, for purposes of this Act, serve as a basis for satisfying the criteria set forth in subclause (I) or (II) of section 513(a)(1)(C)(ii), and shall serve as a basis for the proposed regulation required under this subparagraph.

“(iii) Following a review of comments received on the proposed regulation issued in accordance with clause (ii), and before the expiration of the 1-year period referred to in clause (ii), the Secretary shall promulgate a final regulation prescribing the classification of all devices regulated under this subsection on the date of enactment of this subparagraph. No regulation issued under this subparagraph requiring a device to

remain in cl'sq's III or classifying the device as class I or II may take effect before the expiration of 90 days from the date of the publication of the regulation in the Federal Register.

“(iv) The Secretary may by notice in the Federal Register extend the 1-year period prescribed by clauses (ii) and (iii) for a device for an additional period not to exceed 1 year.

“(v) Notwithstanding any other provision of this subsection, the Secretary shall not retain any daily wear nonhydrophilic plastic contact lens in class III unless the Secretary finds that it meets the criteria set forth in subclause (I) or (II) of section 513(a)(1)(C)(ii). The finding, and the grounds for the finding, shall be published in the Federal Register. If during the 1-year period beginning on the date of enactment of this subparagraph, the Secretary has not made the finding and issued the notice required by this clause, the Secretary shall issue an order placing the lens in class II.

“(vi) Actions taken under this subparagraph shall not interfere with any pending reclassification action. Any device for which a reclassification petition was pending on January 1, 1989, shall not be included in the list published under clause (i).”

(b) **CONFORMING AMENDMENT.**—Section 520(l)(1) is amended—

(1) by inserting “on the initiative of the Secretary or” after “Secretary”; and

(2) by striking “paragraph (2)” and inserting “paragraph (2)(A)”.

**SEC. 15. SUBSTANTIAL EQUIVALENCE.**

Section 520 (21 U.S.C. 360j) is amended by adding at the end the following new subsection:

“Substantial Equivalence

“(m)(1) For purposes of determinations of substantial equivalence under this subchapter—

“(A) The term ‘different technological characteristics’ means, with respect to a device being compared to a predicate device, that there is a significant change in the materials, design, energy source, or other features of the device from those of the predicate device.

“(B) The term ‘substantially equivalent’ or ‘substantial equivalence’ means, with respect to a device being compared to a predicate device, that the device has the same intended use as the predicate device and—

“(i) has the same technological features as the predicate device; or

“(ii) has different technological features and the evidence submitted that the device is substantially equivalent to the predicate device contains information, including clinical data, if required, that demonstrates that the device is as safe and effective as a marketed device.

“(2) A device may not be found to be substantially equivalent to a predicate device that has been removed from the market at the initiative of the Secretary or that has been determined to be misbranded or adulterated by a judicial order.

“(3) The Secretary shall promulgate regulations under which a manufacturer seeking a determination of substantial equivalence may be required to prepare a summary of any clinical data required (including information respecting any adverse effects of the device on health) if the Secretary determines that clinical data must be submitted in accordance with paragraph (1)(B)(ii), and establishing a standard format for the summary. The Secretary shall make the summary available to the public within 30 days of

the issuance of a determination of substantial equivalence.”

**SEC. 16. HUMANITARIAN DEVICE EXEMPTION.**

Section 520 (21 U.S.C. 360j) (as amended by section 15 of this Act) is further amended by adding at the end the following new subsection:

“Humanitarian Devices

“(n)(1) It is the purpose of this subsection to encourage the discovery of devices intended to benefit patients in the treatment or diagnosis of rare diseases or conditions, to the extent consistent with the protection of the public health and safety and with ethical standards.

“(2) As used in this subsection, the term ‘rare disease or condition’ means any disease or condition that affects fewer than 8,000 persons in the United States. Determinations under the previous sentence with respect to any device shall be made on the basis of the facts and circumstances as of the date of submission of an application under paragraph (3).

“(3) Not later than 8 months after the date of enactment of this subsection, the Secretary shall promulgate regulations prescribing procedures and conditions under which persons may on application be granted an exemption for devices from the effectiveness requirements of section 502, 514, 515, 516, 519, or 706, or subsection (e) or (f) of this section, to permit the use of the devices by physicians in the treatment of patients afflicted by a rare disease or condition.

“(4) In promulgating regulations under paragraph (3), the Secretary may prescribe procedures and conditions under which an exemption may be granted for a device if—

“(A) the device is likely to provide a significant benefit to a patient in the treatment or diagnosis of a disease or condition, or a significant benefit to the patient in quality of life;

“(B) the device is used—

“(i) in the treatment or diagnosis of a rare disease or condition and cannot reasonably be expected to be available; or

“(ii) the patient population affected by the disease or condition is not sufficient to conduct clinical trials of the effectiveness of the device; and

“(C) the Secretary determines that the probable benefit to health from the use of the device outweighs the risk of injury or illness from the use and the probable risks and benefits of currently available devices or alternative forms of treatment.

“(5) Devices granted an exemption under this subsection shall only be used—

“(A) in facilities that have established, in accordance with regulations of the Secretary, a local institutional review committee to supervise clinical testing of devices in the facilities; and

“(B) if, prior to the use of a device, an institutional review committee approves the use in the treatment or diagnosis of a specific rare disease or condition.”

**SEC. 17. POSTMARKET SURVEILLANCE.**

The Act is amended by inserting after section 521 (21 U.S.C. 360k) the following new section:

**“SEC. 522. POSTMARKET SURVEILLANCE.**

“(a) **IN GENERAL.**—

“(1) **REQUIRED SURVEILLANCE.**—The Secretary shall require a manufacturer to conduct postmarket surveillance for any device that—

"(A) is a permanent implant the failure of which may cause serious, adverse health consequences or death;

"(B) is intended for a use in supporting or sustaining human life; or

"(C) presents potential for serious risk to human health.

"(2) DISCRETIONARY SURVEILLANCE.—The Secretary may require a manufacturer to conduct postmarket surveillance for a device if the Secretary determines that postmarket surveillance of the device is necessary to protect the public health or to evaluate the safety or effectiveness of the device.

"(b) REGULATIONS.—The Secretary shall issue regulations implementing the requirements of this section within 1 year of the effective date of this section.

"(c) SURVEILLANCE PERIOD.—The Secretary may determine the period of surveillance required in order to complete the collection of useful data or other information necessary to protect the public health or to evaluate the safety or effectiveness of the device. In no event may a surveillance period be imposed in accordance with this section without a termination date.

"(d) CONTRACTS.—

"(1) IN GENERAL.—The manufacturer of a device for which postmarket surveillance is required in accordance with subsection (a) shall contract with a qualified academic medical center, or a representative number of qualified academic medical centers in representative locations, to provide for any monitoring of clinical experience that may be required in accordance with this section.

"(2) LACK OF QUALIFIED ACADEMIC MEDICAL CENTER.—If no academic medical center has the qualifications and experience to conduct adequate monitoring of clinical experience in accordance with this section, a manufacturer shall contract with a qualified medical center or with a representative number of qualified medical centers in representative locations to provide the monitoring.

"(3) NUMBER AND IDENTITY.—The manufacturer shall determine, and obtain the approval of the Secretary regarding, the number and identity of the center or centers that will perform surveillance in accordance with this section and the manner of surveillance.

"(e) APPLICATION.—This section shall apply only to devices that are first distributed in interstate commerce after the date of enactment of this section."

#### SEC. 18. ESTABLISHMENT OF THE OFFICE OF INTERNATIONAL RELATIONS.

Section 801 (21 U.S.C. 381) is amended by adding at the end the following new subsection:

"(f)(1) The Secretary may enter into agreements with foreign governments, which agreements specify that devices of either country that are manufactured in accordance with rules and regulations for device manufacture under this Act are suitable for commercial distribution.

"(2) In entering into the agreements described in paragraph (1), the Secretary shall encourage the mutual recognition of—

"(A) good manufacturing practice regulations promulgated under section 520(f)(1)(A); and

"(B) other rules, regulations, and testing protocols as the Secretary determines to be appropriate.

"(3) The Secretary shall establish an Office of International Relations that shall plan and initiate programs for the recognition of devices in accordance with paragraph (1).

"(4) The Secretary may issue regulations to carry out this subsection.

"(5) Not later than 2 years after the date of enactment of this subsection, the Secretary shall prepare and submit to the appropriate committees of Congress a report on the activities of the Office of International Relations."

#### SEC. 19. DEFINITIONS.

Section 201 (21 U.S.C. 321) is amended—

(1) in subsection (g)(1)(D), by striking " ; but does not include devices or their components, parts, or accessories"; and

(2) in the language following paragraph (3) of subsection (h), by striking "principal" and inserting "primary".

#### SEC. 20. REVIEW OF MARKET APPLICATIONS FOR ARTICLES COMPRISING COMBINATIONS OF DRUGS, DEVICES, AND BIOLOGICS.

Section 503 (21 U.S.C. 353) is amended—

(1) by striking the section heading and inserting the following:

"EXEMPTIONS AND CONSIDERATION FOR CERTAIN DRUGS, DEVICES, AND BIOLOGICAL PRODUCTS"; and

(2) by adding at the end the following new subsection:

"(f)(1) The Secretary shall designate a component of the Food and Drug Administration to regulate products that constitute a combination of a drug, device, or biological product. If the Secretary determines that the primary mode of action of the combination article is that of—

"(A) a drug (other than a biological product), the persons charged with premarket review of drugs shall have primary jurisdiction;

"(B) a device, the persons charged with premarket review of devices shall have primary jurisdiction; or

"(C) a biological product, the persons charged with premarket review of biological products shall have primary jurisdiction.

"(2) Nothing in this subsection shall prevent the Secretary from using any agency resources of the Food and Drug Administration necessary to ensure adequate review of the safety, effectiveness, or substantial equivalence of an article, if the Secretary employs a single market clearance mechanism.

"(3) The Secretary shall promulgate regulations to implement market approval procedures in accordance with paragraphs (1) and (2) not later than 1 year after the date of enactment of this subsection.

"(4) As used in this subsection:

"(A) The term 'biological product' has the meaning given the term in section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)).

"(B) The term 'market clearance' includes—

"(i) approval of an application under section 505, 507, 515, or 520(g);

"(ii) a finding of substantial equivalence under this subchapter; and

"(iii) approval of a product or establishment license under subsection (a) or (d) of section 351 of the Public Health Service Act (42 U.S.C. 262)."

#### THE CLOTURE VOTE ON S. 1224

Mr. WARNER. Mr. President, the Senate has been debating a bill sponsored by Senator BRYAN and others (S. 1224) that would substantially increase the corporate average fuel economy [CAFE] requirements for cars and light trucks sold in the United

States. The bill would increase fuel economy levels for the new car fleet to almost 40 miles per gallon by the year 2001.

In the face of rising gasoline prices and the events occurring in the international arena, I believe a prudent and responsible course of action is to require moderate, achievable improvements in vehicle fuel economy. More fuel efficient vehicles are a priority and fuel economy standards should be increased periodically unless it can be demonstrated that safety would be jeopardized or that such increases would limit the variety of vehicles available to consumers for their particular needs.

I voted not to invoke cloture on S. 1224 because of the bill's impact on the issue of safety. The CAFE law was passed in 1975 in response to the oil price shocks of the 1970's. To meet those mileage requirements, automakers developed new engines and transmissions, new electronic control systems, and other innovations. But the main thing they did was downsize, that is reduce the size and weight of the average car. Auto safety has not suffered during this process because of offsetting improvements like airbags, new brake systems and better body structures. The CAFE increases now being considered would seriously compromise safety. That is because the only way to achieve this standard would be to reduce the weight of the average car.

Most experts believe small cars are less safe than larger cars. Information from the insurance Institute for Highway Safety indicates that vehicle size has a major influence on safety. On September 14, 1990 the Secretary of Transportation, Mr. Skinner, released a report concerning the relationship of car size to fatalities and injuries in single vehicle crashes. The report, entitled "Effect on Car Size on Fatality and Injury Risk in Single-Vehicle Crashes," covers two technical studies conducted by the Department's National Highway Traffic Safety Administration. The studies examined single car rollover and single car nonrollover crashes from 1970 to 1982, when most of the downsizing occurred. This came at a time when, in response to market conditions and to comply with CAFE standards, manufacturers reduced the average weight by 1,000 pounds and the average size by 10 inches in wheelbase length, and 2 to 3 inches in track width.

The studies show that occupant fatalities were up 1,300 per year over the levels they would have been without downsizing, and moderate to serious injuries to occupants rose by 6,300 per year over the 12-year period. Single car rollovers increased by almost 50 percent, which accounted for most of the increase in fatalities. Single car

nonrollovers accounted for little change in occupant fatalities, but did show an increase in moderate to serious injuries.

Mr. President, these studies do not suggest that today's smaller cars are unsafe, but instead they help to illustrate that larger cars provide a greater safety margin to occupants. The CAFE increases would curtail the choice of new vehicles available to American consumers. Manufacturers would be forced to dramatically scale back or eliminate the production of large and midsize cars and trucks which would adversely effect those with large families, those in car pools, and those who desire the security of large cars.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

An in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, treaties, and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE

At 2:55 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 535. An act to increase civil monetary penalties based on the effect of inflation; and

S. 2075. An act to authorize grants to improve the capability of Indian tribal governments to regulate environmental quality.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4739. An act to authorize appropriations for fiscal year 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 2724. A bill to extend and improve arts and humanities programs, museum services,

and arts and artifacts indemnification, and for other purposes (Rept. No. 101-472).

By Mr. PELL, from the Committee on Foreign Relations, without amendment:

S. 2575. A bill to urge the Secretary of State to negotiate a ban on mineral resource activities in Antarctica, and for other purposes.

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BURDICK, from the Committee on Environment and Public Works:

The following-named officer to be a member of the Mississippi River Commission, under the provisions of section 2 of an Act of Congress, approved 28 June 1879 (21 Stat. 37) (33 U.S.C. 642):

To be a member of the Mississippi River Commission Brig. Gen. Paul Y. Chinen, 575-34-7377, U.S. Army.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. NUNN, from the Committee on Armed Services:

George Tryon Harding IV, of Ohio, to be a member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring May 1, 1995;

Clarence S. Avery, of California, to be a member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 1995; and

Gopal Sivaraj Pal, of Virginia, to be a member of the Board of Regents of the Uniformed Services University of the Health Sciences for a term expiring June 20, 1995.

(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. RIEGLE (for himself, Mr. DODD, Mr. SHELBY, Mr. D'AMATO, and Mr. WIRTH):

S. 3103. A bill to reform Federal deposit insurance, protect insurance funds, and improve supervision and regulation of and disclosure relating to federally insured depository institutions; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ARMSTRONG:

S. 3104. A bill for the relief of Sonanong Poonpipat (Latch); to the Committee on the Judiciary.

By Mr. BUMPERS:

S. 3105. A bill to strengthen the protections afforded to units of the National Park System and certain other nationally significant historic and natural places, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. COATS:

S. 3106. A bill to provide for improvements with respect to medicare spousal protection and impoverishment benefits; to the Committee on Finance.

By Mr. GRAHAM:

S. 3107. A bill to authorize the Secretary of Education to make a grant to Stetson University for the construction of library facilities; to the Committee on Labor and Human Resources.

By Mr. DIXON (for himself and Mr. SIMON):

S. 3108. A bill to designate the facility of the United States Postal Service located at 100 South John F. Kennedy Drive, Carpentersville, Illinois, as the "Robert McClory Post Office"; placed on the calendar.

By Mr. PRESSLER (for himself and Mr. BURNS):

S. 3109. A bill entitled the "Corps of Engineers Mitigation Act; to the Committee on Environment and Public Works.

By Mr. PELL (for himself and Mr. CHAFFEE):

S.J. Res. 370. A joint resolution to express the sense of the Congress with regard to eradicating world hunger in the 1990s; to the Committee on Foreign Relations.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. MOYNIHAN (for himself, Mr. DOLE, and Mr. D'AMATO):

S. Res. 327. A resolution to recognize and commend the establishment of the Eisenhower Center for the Conservation of Human Resources at Columbia University; to the Committee on the Judiciary.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. RIEGLE (for himself, Mr. DODD, Mr. SHELBY, Mr. D'AMATO, and Mr. WIRTH):

S. 3103. A bill to reform Federal deposit insurance, protect the deposit insurance funds, and improve supervision and regulation of and disclosure relating to federally insured depository institutions; to the Committee on Banking, Housing, and Urban Affairs.

#### COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1990

Mr. RIEGLE. Mr. President, I rise to introduce the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1990.

#### BACKGROUND

Since April of this year, the Senate Banking Committee has held more than a dozen hearings on reform of the Federal deposit insurance system. The committee has taken some 40 hours of testimony from 39 expert witnesses, including government officials, financial services industry representatives from both the United States and other countries, independent analysts, and academics. The message of those hearings is clear. Federal Reserve Board Chairman Alan Greenspan

summed it up for the committee in three words: "Reform is required."

The last 5 years have been disastrous for our Federal deposit insurance system. The old insurance fund for savings and loans—the FSLIC—failed and had to be rescued by the taxpayers at a cost of hundreds of billions of dollars. The insurance fund for banks now stands at roughly half of its required reserve level and falling. In testimony before the Banking Committee on September 11, 1990, Comptroller General Charles Bowsher delivered a clear warning.

Not since its birth during the Great Depression has the federal system of deposit insurance for commercial banks faced such a period of danger and uncertainty as it does today. Issues arising from our audit of the Bank Insurance Fund's 1989 financial statements \* \* \* cause us both apprehension and concern for the safety and soundness of the Fund in the 1990's.

The Director of the Congressional Budget Office, Robert Reischauer, echoed the same theme in testimony before the committee on September 12, and warned that deterioration of the bank insurance fund could accelerate if a recession occurs:

The uncertain economic outlook, exacerbated by declines in real estate values and sharp increases in oil prices, raises concerns that spending from the fund could be greater during the next few years than we have estimated. \* \* \* Generally, a weaker economy would increase the likelihood of bank failures by reducing the value of bank assets, increasing loan defaults, and placing additional pressure on bank earnings.

Serious, comprehensive reform of the Federal deposit insurance system is required to protect the taxpayers, the financial system, the economy, and our Nation's banks and thrifts.

The American people know reform is required. A recent Harris Poll found that 72 percent of the American people believe the most important step that can be taken to prevent another savings and loan crisis from occurring is to rewrite the laws to make it tougher for such a crisis to occur.

America's banks and thrifts also know reform is required. They cannot afford to pay ever-rising premiums for deposit insurance and remain competitive either at home or abroad. But they know those premiums will keep rising until Congress and the administration enact reforms that contain the risk to the Federal deposit insurance system.

The administration and Congress also know reform is required. Since August 1989, the administration has been working on proposals for financial modernization and reform of the deposit insurance system. Those proposals are due February 9, 1991. In the House of Representatives, Chairman GONZALEZ has recently stated his own principles for deposit insurance reform and scheduled hearings on the topic for the House Banking Committee this

month. And here in the Senate, as noted, the Banking Committee has held thirteen hearings on deposit insurance reform since last April. Throughout that period, the staff of the Banking Committee, at my direction, has been at work on this bill.

I welcome the efforts of the administration. I welcome the efforts of Chairman GONZALEZ, Congressman ANNUNZIO, and other Members of the House. And I welcome the efforts of my colleagues in the Senate, Senators DIXON, DODD, GRAHAM, and ROTH, all of whom I know have introduced deposit insurance reform measures of their own. I know Senator WIRTH has been working on some related legislation, and I welcome his efforts as well. Deposit insurance reform is a complex issue and we will need a vigorous and creative debate to make sure the job gets done right.

#### ONLY A STARTING POINT

My proposal is only a starting point for debate, not an ending point. No part of it is cast on stone and I am not ruling out any alternative approach or additional reform. The reason I am putting this bill on the table now is to frame some important reform alternatives for further debate and indicate the high priority I assign to reform our deposit insurance system in the next Congress. This issue is important and complicated. It will not go away. It is time to put specific reform alternatives on the table for a hard look. That is what I am seeking to do today.

But this bill is very much a work in progress. I look forward to working with my colleagues in the Congress and with the administration, in a spirit of bipartisan cooperation, to make further progress in the months ahead.

#### URGENT NEED TO ADDRESS OTHER ISSUES

Let me also say at the outset that while the proposal I am presenting today focuses solely on deposit insurance reform, I hope and expect that whatever legislation ultimately results will not only reform our deposit insurance system but also help modernize our financial services industry and our system of bank and thrift regulation. No amount of deposit insurance reform can make banks and thrifts profitable if they cannot compete effectively with other financial service providers at home and abroad. We must also consider whether banks should be allowed to engage in increased interstate banking, along the lines of the bills introduced by Senator DODD and Congressman SCHUMER, and whether banks should be allowed increased product diversification.

And we need to consider seriously the idea of consolidating regulation of our banks and thrifts, possibly into a single—fully independent—regulator, separate and distinct from the deposit insurer. Somehow, we must rationalize and simplify our now Byzantine regulatory system and the burdens it im-

poses on the institutions it supervises. Just recently, on September 10, the Banking Committee witnessed the spectacle of the Comptroller of the Currency, representatives of the Federal Reserve Board, and the FDIC arguing and unable to reach agreement, after more than a year of deliberation, on a basic capital standard. Such inter-agency squabbling is clearly unacceptable.

#### PROBLEMS OF CURRENT SYSTEM

Before turning to the details of the bill, let me briefly outline some of the major problems it seeks to address.

Testimony before the Banking Committee showed clearly that our current system of deposit insurance is badly flawed. Stanford University Prof. Ken Scott told the committee that,

[W]hat you can ask of a deposit insurance system is that, at the very minimum, it not magnify the problem because of the way in which it distorts incentives and the way in which it is administered.

The current system fails on both counts. Both in the way it distorts incentives and in the way it is administered, the system magnifies weaknesses in our banks and thrifts and increases the cost of deposit insurance to the insured institutions, the deposit insurance funds, and the taxpayers.

#### 1. DISTORTED INCENTIVES

A sound system of deposit insurance should give all parties—depositors, insured institutions, and regulators—incentives to act in ways that minimize insurance costs. But the system we have now falls short of that objective in two key aspects.

First, our current deposit insurance system fails to give depositors correct incentives. Federally insured deposits are an investment product just like Government bonds and shares of stock. As SEC Chairman Richard Breiden put it:

We have to look at the pricing of this product. Deposit insurance is a product that is produced by the American taxpayers at considerable cost, and we should not be giving it away at below cost to produce it.

Of course, up to a point we accept incorrect pricing of insured deposits because we want small depositors to have confidence their funds are safe and because we want and need stability in our financial system. Depositors with a few thousand dollars in the bank shouldn't have to be constantly on guard against the possibility the bank is going to fail. Indeed, protecting small depositors was one of the original purposes of our deposit insurance system. But if you give the same protection to depositors with hundreds of thousands or even tens of millions of dollars to deposit, what you get is a system in which deposits flow to whichever institutions offer the highest rates. And those are usually the weakest institutions—the institutions whose deposits become Governmental

liabilities when they fail. So when you charge large depositors too little for deposit insurance, the cost of deposit insurance for society as a whole goes up.

Second, the premiums our insured banks and thrifts must pay for deposit insurance take no account of whether the institution paying the premium represents a high risk or a low risk to the deposit insurance fund. If you are an individual at high risk of having an auto accident, you have to pay more for your auto insurance. If you are a business at high risk of industrial accidents, you have to pay more for your liability insurance. But if you are a bank or thrift at high risk of suffering major loan losses, you pay the same for deposit insurance as every other bank or thrift. As Bert Ely put it at the Banking Committee's May 12 hearing:

The drunk drivers of the banking and thrift world pay no more for their deposit insurance than do their sober siblings.

#### 2. ADMINISTRATION

Many witnesses before the committee noted that the Government is incurring excessive deposit insurance liabilities because of the way our system of deposit insurance is administered. Two problems deserve special mention.

First, regulators have too often delayed taking action against a weak institution in the false hope that it would recover. Lowell Bryan was only one of many witnesses to note that "the cost of forbearance is very, very high." Jim Barth, formerly Chief Economist to the Federal Home Loan Bank Board, now a professor at Auburn University, noted that once banks and thrifts become undercapitalized, the risk of loss begins to shift from the institution to the deposit insurance system. Professor Barth testified that:

To contain this risk shifting behavior arising when capital is depleted, somebody must impose discipline by attempting to measure capital correctly and then, if it declines, by intervening in a timely and cost effective manner. This intervention will necessarily take the form of requiring that more capital be injected or control of the institution be taken away from the current owners.

If you want strong medicine to work, you have to administer it before the patient dies. But the current system has not always given regulators sufficient incentive to take prompt corrective action when an institution gets into trouble. Professor Scott's testimony addressed the reasons why this has occurred. He testified:

[A] policy of delay and forbearance will always be more appealing than a policy of prompt closure upon economic insolvency. If the closure decision is a discretionary, subjective judgment by the regulators, they are vulnerable to pressure and they will often yield to it. So to the extent that any reform proposal relies on agency judgment and discretion, I think it is in trouble. The more objective the judgment and the more

mandatory and automatic the prescribed action, the better off taxpayers will be.

Many witnesses also faulted administration of the current deposit insurance system for indiscriminate application of the so-called too-big-to-fail doctrine. "Failure," Barclay's Deputy Chairman Peter Leslie told the committee on June 13, "is a vital part of market discipline." Chase Manhattan Bank CEO Thomas Labreque agreed. On April 3, he told the committee that:

We must eliminate the \* \* \* "too big to fail" policy under which the very largest banks are given de facto 100 percent protection of all deposits. Such a policy is inconsistent with the original intent of deposit insurance and is unfair to smaller banks, but big bankers neither want it nor need it.

And on July 12, Federal Reserve Board Chairman Alan Greenspan warned in testimony before the committee that "no bank should assume that its scale insulates it from market discipline."

Notwithstanding widespread agreement that the too-big-to-fail policy effectively destroys market discipline, the FDIC has routinely ignored the \$100,000 limit on deposit insurance and seen to it that virtually all depositors receive 100 cents on the dollar, regardless of how many hundreds of thousands or millions they may have on deposit. In testimony before the Senate Banking Committee on August 11, 1988, FDIC Chairman Seidman stated that "99 percent of all the deposits that we handle in failed banks are fully protected, not only up to \$100,000, but fully protected."

#### GOALS

A successful deposit insurance reform package, whether it is the one I am introducing today, or any other package, will have to include many specific reforms, but it should also embrace a combination of approaches to reform.

Banks and thrifts, regulators, and depositors will all have to make adjustments when our deposit insurance system is reformed. No one of these groups should bear the brunt of reform.

I think deposit insurance reform should accomplish five things.

First, market discipline must be enhanced for banks and thrifts and large depositors. Owners of banks and thrifts should be encouraged to put more capital at risk so they will be less inclined to take excessive risks at taxpayers expense. Parent corporations and affiliates should be a source of strength to insured banks and thrifts. Regulators should be encouraged to develop and implement risk-based deposit insurance premiums. Large depositors should face enough risk to keep them from chasing high rates without regard to safety.

Second, regulators should take prompt corrective action when the

capital of a bank or thrift begins to deteriorate unacceptably. If the institution cannot recapitalize, regulators should seek to arrest its deterioration and sell or close it at no cost to the deposit insurance fund. To facilitate effective regulatory monitoring and action, every insured bank and thrift should receive an onsite examination at least once a year. Accounting principles must be reformed to give regulators, investors, and the public more accurate and timely information on the economic condition of insured banks and thrifts.

Third, abuses of deposit insurance must end. State legislatures and regulators should not be able to leverage Federal deposit insurance for the benefit of their local tax bases. Depositors should not be able to use devices such as joint and trust accounts to evade the \$100,000 limit. Deposit brokerage must be carefully restricted.

Fourth, too-big-to-fail must be curtailed. No institution should be beyond the discipline of the market. The FDIC's role should be carefully confined to resolving failures of insured banks and thrifts at least cost to the insurance funds. In the United States, as in other countries, the central banks, not the deposit insurer, should determine whether a particular failing institution is so large as to require special measures to protect the stability of the financial system.

Finally, we need better information from banks and thrifts and their regulators. The quality of available data on America's banks and thrifts is unacceptable. In order for regulatory reforms to work, in order for market reforms to work, in order for congressional oversight to work, we need better quality and more timely financial disclosures from banks and thrifts themselves, and more extensive and timely analyses of industry performance from their regulators.

#### HIGHLIGHTS

Let me now turn more specifically to the bill I am introducing today and begin by highlighting eight of the bill's most important features:

It requires regulators to examine banks and thrifts annually and take prompt corrective action to recapitalize, sell, or close weak institutions before they become liabilities to the deposit insurance fund.

It requires regulators to strengthen capital standards to provide an adequate margin of safety for the deposit insurance fund.

It sets goals for reform of the accounting principles that apply to insured banks and thrifts and establishes a process for working toward those goals.

It curtails the ability of State-chartered commercial banks to engage in risky activities at the expense of the Federal deposit insurance system.

It ends the policy of too-big-to-fail whereby the FDIC has been paying off uninsured depositors at failed institutions by requiring the FDIC to resolve failed institutions by whatever resolution strategy costs the deposit insurance funds least and prohibiting the FDIC from taking actions that have the effect of protecting uninsured depositors.

It authorizes the FDIC to implement a system of risk-based or capital-based deposit insurance premiums.

It limits the scope of deposit insurance by restricting deposit brokerage and other deposits by intermediaries, limiting passthrough deposit insurance, and limiting deposit insurance to \$100,000 per individual per institution.

It makes the owners of banks and thrifts stand behind those institutions by clarifying the enforceability of capital maintenance agreements; strengthening existing requirements for affiliated banks and thrifts to be responsible for the losses any of them cause the deposit insurance funds; and establishing limited cross-guarantee liability for nondepository institution affiliates of banks and thrifts.

It gives the financial markets, the regulators, and the general public better information about the financial condition of financial institutions by imposing new reporting and disclosure obligations on financial institutions and their regulators.

The bill recognizes the need for appropriate transition periods for implementation of these reforms.

Let me now discuss these components in turn.

#### 1. REQUIREMENT FOR PROMPT CORRECTIVE ACTION TO RECAPITALIZE OR RESOLVE WEAK INSTITUTIONS

##### A. IN GENERAL

The bill requires regulators to take prompt corrective action to recapitalize or resolve weak institutions. The goal of this prompt corrective action requirement—albeit a goal that probably cannot be realized in all cases—is to resolve trouble institutions at no cost to the deposit insurance funds. To make this goal realistic, the bill, when fully implemented, will require strengthened capital levels; annual onsite examinations of all insured banks and thrifts; and improvements in accounting principles that will yield more accurate financial statements and reports of condition.

##### B. ANNUAL EXAMINATION REQUIREMENT

The bill requires every federally insured bank and thrift to receive an onsite examination at least once annually. Currently, many commercial banks go years between examinations. That situation must change.

Federal Reserve Board Chairman Alan Greenspan endorsed a requirement for annual onsite examinations in his testimony before the Banking Committee on July 12:

Where it is not already the practice, full in-bank supervisory reviews—focusing on asset portfolios and off-balance sheet commitments—should occur at least annually, and the results of such examinations should be used to evaluate the adequacy of the bank's capital.

Clearly, not all of the banking regulatory agencies currently have adequate staff to conduct annual onsite examinations. But that should not be an insuperable obstacle to implementing such a requirement. This bill would authorize the banking regulatory agencies to contract with private-sector firms for examination service. Such private-sector firms would, of course, be bound by strong conflict-of-interest and privacy restrictions.

##### C. PROMPT CORRECTIVE ACTION REQUIREMENT

The bill would require regulators to impose increasingly stringent restrictions on the activities and operations of troubled banks and thrifts as the capital of those institutions falls below required levels. One set of restrictions will come into force when an institution's capital falls below the regular minimum capital standards. If the institution's capital level continues to deteriorate and falls below a lower, critical capital level—set by the regulators, as I will explain in a moment—the regulators will have to sell or close the institution or take an alternative measure equally protective of the deposit insurance fund.

To understand how this part of the bill will work in practice, it helps to imagine a bank or thrift—for purposes of illustration, let's say a bank—whose capital is initially adequate, but deteriorating.

##### (1) LEVEL ONE: MINIMUM CAPITAL REQUIREMENT

The first set of restrictions will come into force when the bank's capital falls below the minimum capital levels established by the regulators. These will not be the same minimum capital levels in force today, but new, stronger minimums—as I will discuss in a moment.

When the bank's capital falls below the minimum level, it will have to do the following three things:

Stop paying dividends. The institution would be prohibited from paying dividends. This restriction will protect the deposit insurance funds by ensuring that weak institutions do not deplete their capital for the benefit of their shareholders.

Limit its asset growth. The bank's asset growth will be restricted to an amount equal to net interest credited on deposits. And all growth will have to be fully capitalized.

File a capital restoration plan. The bank will have to file a capital restoration plan within 30 days after it falls out of compliance with capital standards. The plan will have to specify how the institution will attain compliance with capital standards, specify

what activities the bank will engage in, and be acceptable to its regulator. If the bank is part of a holding company structure, its parent will have to guarantee compliance with the plan. This will press the parent to decide promptly whether to recapitalize the institution, sell it, or stand behind it until it recovers.

If the bank does not submit and implement a capital restoration plan, its regulator would have to require it to recapitalize through sale of stock unless such a sale is inconsistent with the goal of protecting the deposit insurance fund against loss. The regulator could restrict the bank's transactions with affiliates; restrict the bank's activities; limit the interest rates the bank pays for deposits; require election of a new board of directors; or dismiss any member of the institution's board of directors, its chief executive officer, or its chief financial officer. In addition, institutions that fail to submit or materially violate their capital restoration plans will be prohibited from paying bonuses or granting salary increases to their executive officers.

##### (2) LEVEL TWO: CRITICAL CAPITAL LEVEL

If the bank's capital level continues to deteriorate, it will eventually fall below the second key level, which I call the critical capital level. I will explain in a moment how that critical capital level will be set.

When the bank's capital position falls below the critical capital level, three sets of additional restrictions will come into play.

Restrictions on activities and operations. The bank will become subject to a broad range of stringent restrictions on its activities and operations. Large and potentially abusive transactions will be prohibited, except with specific regulatory approval. These restrictions will prevent the institution from engaging in activities that could lead to further deterioration in the institution's capital position.

Subordinated debt payments prohibited. The institution would be prohibited from making any payments of interest or principal on subordinated debt. By definition, subordinated debt holders have agreed to stand in line behind the deposit insurance funds. This provision will help protect the deposit insurance funds' place in line. Because existing subordinated debt holders may have different expectations, however, I would exempt holders of subordinated debt outstanding as of October 25, 1990, and not extended or otherwise renegotiated after that date.

Conservatorship or equally protective action. Within 30 days after the bank falls below the critical capital level, its primary regulator would have to appoint a conservator or receiver or take an alternate action more likely to

protect the deposit insurance fund from loss and document why that alternative is superior to appointment of a conservator or receiver. The regulator would have to periodically review the effectiveness of any such alternative action.

### (3) SETTING THE MINIMUM AND CRITICAL CAPITAL LEVELS

My bill does not specify the minimum and critical capital levels numerically. Instead, it requires the Federal banking agencies to specify these levels and provides a mandate on how to set them. The nature of that mandate is this: capital levels—both the minimum capital level and the critical capital level—should be set so as to make the prompt corrective action mechanism I have just outlined a realistic way to prevent losses to the deposit insurance funds.

### D. ACCOUNTING REFORM

The bill specifies two goals for the accounting principles applicable to insured banks and thrifts and establishes a process that will generate reformed principles that will satisfy those goals. First, accounting principles for insured banks and thrifts should result in financial statements and reports that accurately reflect—at market value, to the extent feasible—the economic condition of those institutions. Second, accounting principles should facilitate both effective supervision of banks and thrifts generally and prompt corrective action to resolve troubled institutions. Again, the idea is to make the prompt corrective action mechanism I have outlined a realistic way to prevent losses to the deposit insurance funds.

Several witnesses before the Banking Committee have endorsed the concept of mark-to-market, or market-value accounting. SEC Chairman Breeden testified on September 10 that:

As we enter the decade of the 1990s we should consider a fundamental shift in the goal we set for accounting standards for financial institutions. . . . Determining the value of an institution's assets and not recording their original cost should increasingly be the goal toward which we should work. The nation's experience with the crisis in the savings and loan industry as well as with many of the largest bank failures demonstrates the inherent and very substantial dangers of a reporting system for financial institutions that is premised on historic cost accounting principles.

The goals set forth in this bill are consistent with the spirit of Chairman Breeden's statement. But I want to emphasize that the bill would not require banks and thrifts to adopt mark-to-market accounting—it only requires movement in the direction of market-value accounting to the extent feasible. And I don't want to underestimate the extent of the feasibility problem: banks and thrifts hold large volumes of illiquid assets that do not lend themselves easily to market valuation.

Nevertheless, I tend to agree with Chairman Breeden's assertion that "there are certainly, if we put our minds to it, ways in which we could develop techniques for valuing even illiquid assets for which there is no readily quoted market value available."

This bill would begin a concentrated search for such techniques. It would direct the SEC, in conjunction with the Federal banking agencies, to facilitate development of accounting principles that meet the goals I have described. These accounting principles would have to be at least as conservative as generally accepted accounting principles. The bill would also authorize the Federal banking agencies to adopt accounting principles that are more conservative than generally accepted accounting principles as appropriate to facilitate effective supervision of banks and thrifts generally and, specifically, to help meet the goal of the prompt corrective action mechanism: resolution of troubled institutions at no cost to the deposit insurance funds.

### E. INTERNAL AUDIT REQUIREMENT

The bank regulatory agencies should have a strong incentive to minimize losses to the deposit insurance fund. Under the prompt corrective action requirement I have outlined, something will have gone wrong when a loss to the deposit insurance fund occurs. To help the regulators and Congress understand where breakdowns in the system occur, my bill would require—whenever the failure of a bank or thrift results in a loss to one of the deposit insurance funds—an internal investigation by the inspector general of the failed institution's primary regulator. Those reports would be available for review by Congress and the General Accounting Office. Recognizing that implementation of this requirement would be impractical given the currently large numbers of bank and thrift failures, the bill includes a generous transition rule for this requirement.

### F. EXPANDED FDIC CONSERVATORSHIP AUTHORITY

In addition, the bill would give the FDIC independent authority to appoint conservators and receivers for banks and thrifts. This provision will enable the FDIC to protect the deposit insurance fund even when the failing institution's primary regulator will not.

This expansion of FDIC authority is a significant departure from existing law and practice—under which the FDIC must wait for an institution's primary regulator to institute conservatorship. But current practice in this area derives from the days before deposit insurance. With failed institutions generating losses to the deposit insurance funds of 30 cents on the dollar, the time to update our procedures is long past.

### G. RELATED ISSUES

Let me touch briefly on some of the arguments surrounding these features of the bill, and especially the prompt corrective active requirement.

Is it too harsh? Some may say it is unreasonable to strengthen capital standards and expect weak institutions to be able to recapitalize, especially when the economy may well be headed into recession. I think the first answer to such statements is clear and it is this: when you try to avoid the pain in the short run, it only hurts worse later on. That is the undeniable and unforgettable lesson of the thrift crisis. But a couple of other points are also relevant here. First, note that raising new capita is not the only way to achieve higher capital levels. Institutions can also raise their capital levels by selling assets, or retaining earnings.

Second, the bill requires strengthened capital standards only to the extent needed to protect the deposit insurance funds. More aggressive supervision and prompt corrective action by regulators will also help protect the deposit insurance funds and so can offset the need for greater capital to some degree.

Is it unfair? Others may say it is unfair, even unconstitutional, for regulators to sell or close institutions that are not yet insolvent. Again, requiring regulators to take prompt corrective action will be painful to the owners of weak banks and thrifts. But that pain has to be weighed against the pain the taxpayers will feel if weak institutions are allowed to get weaker and become liabilities. Here is what SEC Chairman Richard Breeden had to say on the subject when he testified before the Banking Committee on September 10:

I am not a fan of forbearance, and I'm not a fan of using public credit to extend the time of institutions that can't raise capital anywhere in the world. If no investor anywhere in the world has confidence that a given set of management knows how to handle its problems, then I don't know the American public ought to be asked to put their credit at risk to support that institution.

Again, the thrift crisis has a lesson to offer: We gave the owners of weak thrifts a chance. Many weak and insolvent thrifts were allowed to remain in operation for years. We avoided pain in the short term. But in the end, the pain to the taxpayers has been immense. And the owners—except some high-fliers who benefited through fraud—have lost everything just the same.

Is it unconstitutional? The argument that a prompt corrective action requirement such as I have outlined is unconstitutional does not withstand close scrutiny. And I will put into the record an analysis by the law firm of Davis Polk & Wardwell that concludes as much.

Is it feasible? Still others may say that requiring regulators to take prompt corrective action will not work because history has shown that regulators will try to find ways to avoid short-term costs. Bert Ely, for example, told the Banking Committee on May 17 that "Congress will find it extremely difficult to enact closure rules that [it] can force regulators to follow, for regulators resist mightily any effort to constrain their actions and limit their powers."

I think this underestimates our regulators. They are as capable as anybody else of learning the lessons of history, and I am confident they will work in good faith to carry out whatever reforms Congress ultimately adopts. But I agree we should not put all of our eggs in one basket. That is why prompt corrective action is only one of the elements of the bill.

#### H. BROAD SUPPORT

Finally, let me note that the Banking Committee has learned through its hearings on deposit insurance reform that there is ample support for the general idea of requiring prompt corrective action to recapitalize, sell, or close weak institutions. Secretary Brady has endorsed the general concept. On July 25, he told the Banking Committee that "early closure—if you could nip an incipient disaster in the bud—makes good sense and we are trying to figure out how you might do that." Federal Reserve Board Chairman Alan Greenspan has endorsed the concept more specifically. He testified on July 12 that:

[F]orced mergers, divestitures, and, when necessary, conservatorships should occur while there is still positive, albeit low, capital in the bank to limit reorganization or liquidation costs. Existing stockholders should be given adequate time to correct deteriorating positions, including providing new capital. But Congress should specifically provide the bank regulators with the clear authority and, therefore, explicit support to act well before technical insolvency to minimize the ultimate resolution costs.

SEC Chairman Richard Breeden also indicated support for the general concept when he testified on July 19 that "the regulator of a bank \* \* \* should have early intervention authority to step in instantaneously when \* \* \* [the bank's] capital position is threatened, falling below a mandated level."

Robert Reischauer, Director of the Congressional Budget Office, also endorsed the concept in his testimony before the Banking Committee on September 12. Mr. Reischauer stated:

[B]oth the FDIC and Congress can affect significantly the losses that will have to be covered by the Bank Insurance Fund. The fund only incurs losses if institutions are closed after the real value of their assets is less than their liabilities. If systems are in place to monitor closely the financial conditions of banks, and to trigger closure or mandatory disciplinary actions before sig-

nificant losses occur, the fund's liabilities will be minimized.

Robert Eisenbeis, Professor of Banking at the University of North Carolina at Chapel Hill, was even more emphatic in his testimony the same day:

Chairman Seidman suggested that it might be necessary to keep insolvent or weakly-capitalized thrift institutions open instead of reorganizing them due to the lack of sufficient funds in the FDIC or the insurance fund, to resolve these cases. I would urge you strongly to resist that temptation. Such forbearance—I know people are not pleased with the use of that word—is why we got into trouble with the S&L industry. \* \* \* I think the point can't be emphasized enough that we don't lose a dime if we close institutions before their net worth goes to zero. The fact that you see these losses appearing in the FDIC funds means that they didn't close those institutions on time.

And George Kaufman, professor of economics and finance at Loyola University of Chicago, and a member of the Shadow Financial Regulatory Committee, told us on May 22 that such a requirement:

Deals directly with the two most costly features of the existing deposit insurance structure, too little private capital in banking and the potential for continued operation when banks are insolvent, and would impose the least cost on either the banking system or the taxpayers.

#### 2. RISKY ACTIVITIES CURTAILED

One of the clearest lessons of the thrift crisis is that States should not be allowed to leverage Federal deposit insurance for the benefit of their local tax bases. SEC Chairman Richard Breeden made this point emphatically on July 19, when he told the committee that:

[T]he entity providing the insurance has not only the right but has the duty to limit the risks that anybody that is going to be insured may undertake. And while the states may choose to authorize a bank to run a casino, I think it should be the prerogative of the FDIC to decline to insure it.

Bert Ely made the same point when he testified on May 17:

He who takes the risk should regulate. And so I think that, since the Federal Treasury is bearing the risk of failure, the Federal Government has to be preeminent in the regulation.

Congress has already addressed this problem in the thrift industry. Last year, in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Congress severely curtailed the powers of State-chartered thrifts—effectively limiting State-chartered thrifts to activities permissible for federally chartered thrifts, with limited exceptions. Such action was desperately needed: losses from State-chartered thrifts account for a hugely disproportionate share of the cost of the Federal Government of resolving failed thrifts. Indeed, California and Texas thrift failures alone accounted for 54 percent of FSLIC losses in 1987 and 70 percent in 1988.

We cannot allow this problem to repeat itself in the commercial banking industry. Fortunately, as of yet, State-chartered banks have not presented the Federal deposit insurance system with the same kind of risk that State-chartered thrifts did. But the potential for problems is very real. Indeed, even as the committee was conducting its hearings on deposit insurance reform this spring, Delaware enacted legislation permitting Delaware-chartered banks to underwrite all types of insurance.

This bill would generally prohibit State banks and their subsidiaries from engaging as principal in any activity impermissible for national banks unless three conditions are satisfied. First, the State bank must fully comply with applicable capital standards. Second, the FDIC must not have found that the activity in question would pose a significant risk to the deposit insurance fund. Finally, the institution's primary Federal regulator must have previously ruled that the activity would pose no significant risk to the deposit insurance fund.

In addition, the bill would give the FDIC power to restrict national bank activities that pose a significant risk to the deposit insurance fund.

#### 3. TOO-BIG-TO-FAIL POLICY CURTAILED

One of the most roundly criticized aspects of our current deposit insurance system is the so-called too-big-to-fail policy. Small banks, understandably, feel competitively disadvantaged by it because the policy tends to be applied primarily for the benefit of depositors at larger banks and thrifts. Large banks argue it is unnecessary and perceive it as an obstacle to financial modernization. Many members of the public view it as a policy that favors large investors while driving up costs to the taxpayer.

The term too-big-to-fail has at least two different meanings. Different elements of the bill are responsive to each sense of the term.

##### A. MAKING DEPOSITORS WHOLE

Most commonly, the term too-big-to-fail is used to describe a policy whereby all depositors are made whole when a financial institution fails. My bill will effectively eliminate this kind of too-big-to-fail policy.

The FDIC has several different strategies at its disposal for resolving failed banks and thrifts. The most basic resolution strategy is liquidation. The FDIC can simply mail out checks to all depositors and proceed to sell the assets of the failed institution. But the FDIC regularly uses resolution techniques other than liquidation. In effect, the FDIC pays acquiring institutions to assume all of the deposit liabilities of the failed banks or thrifts. So, for example, if a bank with \$1 billion in deposit liabilities fails, the institution acquiring its deposits will re-

ceive approximately \$1 billion in cash and the obligation to honor the failed institution's liabilities to its depositors—without regard to whether the failed institution's deposit liabilities consisted of lots of small deposits under \$100,000 or a few multimillion dollar deposits. In effect, the FDIC protects all deposits, regardless of size.

The FDIC has argued that paying off all depositors, regardless of size, is often the cheapest resolution strategy at its disposal. In many cases, however, the FDIC may be inappropriately viewing its options as all or nothing—either transfer all the deposits to an acquirer or liquidate the institution. In reality, there are intermediate options: the FDIC could, for example, allow acquirers to assume only account balances under \$100,000, forcing larger depositors to stand in line with other creditors.

The bill would require the FDIC to choose, in every case, the resolution strategy that costs the deposit insurance fund the least, and to document the analysis underlying that choice. And it would prohibit the FDIC from taking actions that have the effect of protecting uninsured depositors. Rigorously applied, these requirements should eliminate the practice of paying off uninsured depositors. Of course, in determining the least-cost approach to resolving a failed institution, the FDIC will have to consider the health and viability of the resulting institution.

#### B. DEALING WITH UNACCEPTABLY LARGE FAILURES

Sometimes, "too-big-to-fail" describes a policy of using Federal assistance to keep institutions open whose collapse might injure the payments system or the entire financial system. The classic illustration of this kind of too-big-to-fail policy is the Continental Illinois rescue.

Many commentators argue that too-big-to-fail in this sense can never be eliminated. The central banks of foreign countries, they say, would never permit the failure of major financial institutions in those countries. Accordingly, they reason, our own central bank would never permit the failure of a truly major financial institution in this country.

There are good reasons to be skeptical about that line of argument. For one thing, the large financial institutions in most foreign countries are far larger, relative to their markets, than the largest financial institutions in this country. Nevertheless, the argument clearly has at least a kernel of truth: Nobody wants to limit the Federal Government's ability to stave off a collapse of America's financial system. But why should the FDIC decide which institutions are too big to fail? In other countries, the central bank would make such a determination. And in our country, too, it is the

Federal Reserve Board, not the FDIC, that has the greatest expertise in dealing with macroeconomic policy and systemic risk.

This bill attacks this sense of too-big-to-fail in two ways. First, its prompt corrective action provisions will require recapitalization or resolution of all troubled institutions—large and small—before they become drains on the deposit insurance fund. Prompt corrective action requirements will eliminate the opportunity for unfair treatment of large institutions.

Second, the bill would take away the FDIC's ability to pay off uninsured deposits for the sake of preserving stability in the financial system. The FDIC would focus more narrowly on the task of insuring deposits at America's banks and thrifts, subject to the terms and conditions specified by law. When a large institution fails, the FDIC could do no more than pay off the insured deposits.

The bill would leave the Federal Reserve Board with the ability to take whatever action is needed to protect the financial system and the payments system. But no institution should draw comfort from this fact. The Federal Reserve Board has never shown much inclination to provide 100 percent assurances. Again, I am mindful of Chairman Greenspan's words before the Banking Committee on July 12: "no bank should assume that its scale insulates it from market discipline."

#### 4. CHANGES IN DEPOSIT INSURANCE PREMIUM PRICING

My bill would make several important changes in the laws that govern the premiums banks and thrifts pay for deposit insurance coverage.

##### A. RISK-BASED PREMIUMS AUTHORIZED

The bill would authorize the FDIC to assess risk-based deposit insurance premiums. Recognizing that considerable disagreement exists over how a risk-based system could be constructed and whether it would be effective, it would not require the FDIC to implement such a system. Nevertheless, it would expressly authorize the FDIC to differentiate among banks and thrifts on the basis of the risks they pose to the deposit insurance funds, and to charge different premiums to reflect those risks.

Here again, let me say that my mind is open to going further in this area. I know my colleague, Senator Dixon, has done considerable work in this area and I am interested in drawing on his expertise.

##### B. CAPITAL-BASED PREMIUMS AUTHORIZED

The bill also authorizes the FDIC to divide banks and thrifts into categories based upon their levels of capitalization and to impose lower deposit insurance premiums on institutions that exceed their capital requirements. This is a crude form of risk-based pricing, insofar as well-capitalized institu-

tions have a low probability of failing. But the real purpose of authorizing such a pricing scheme is to give banks and thrifts an incentive to hold more capital.

The capital-based pricing and risk-based pricing schemes authorized by this bill are designed to be fully complementary with one another.

##### C. FDIC DISCRETION TO SET PREMIUMS

The provisions of current law that limit the deposit insurance premiums the FDIC can assess on insured depository institutions clearly require reform. Initially, I had planned to address this issue and related issues in the context of the broad-based deposit insurance reform proposal I am outlining today. Recent revelations concerning the condition of the Bank Insurance Fund, however, brought me to the conclusion that this particular reform should not wait until next year for legislative action.

Consequently, I have already introduced this reform as a separate, free-standing piece of legislation, now pending in the Senate as S. 3045. I am optimistic that S. 3045 will be enacted before Congress adjourns this year.

##### D. ASSESSMENT OF FOREIGN DEPOSITS

In any effort to reform our Federal deposit insurance system, one of the key issues will be the assessment base on which deposit insurance premiums are levied, and, specifically, the question whether to assess premiums on foreign deposits.

This bill does not address the assessment base issue directly. To a considerable extent, however, the bill does address the issue indirectly, through its reforms in the too-big-to-fail area. By requiring the FDIC to resolve institutions at least cost to the deposit insurance fund, and by prohibiting the FDIC from taking actions to protect uninsured depositors after 1994, this bill would effectively prohibit the FDIC from protecting foreign deposits.

##### 5. RESTRICTIONS ON THE SCOPE OF DEPOSIT INSURANCE COVERAGE

One of the primary problems with our deposit insurance system is that it covers too much. Ostensibly, deposits are insured to \$100,000, but in reality that limit is almost meaningless because existing laws, regulations, and regulatory policies allow abuses of the limit. As a result, we now have essentially unlimited coverage for virtually all depositors at virtually all institutions. Some of these abuses of the \$100,000 limit are well known:

##### Brokered deposits;

The ability to keep multiple accounts up to \$100,000, even at one institution;

##### Pass-through deposit insurance.

My bill will curtail these abuses through a variety of measures.

**A. LICENSING AND REGISTRATION REQUIRED FOR DEPOSIT BROKERS AND AGENTS.**

Deposit brokerage is a simple idea that can have dangerous consequences for the deposit insurance system. Generally speaking, what a deposit broker does is collect money from investors and invest it in insured certificates of deposit. Some investors prefer to make deposits through brokers because brokers can often locate a better rate than the investor could find on his or her own.

There are legitimate uses for brokered deposits. Federal Reserve Chairman Alan Greenspan noted this in his testimony before the Banking Committee on July 12:

[T]here are certain characteristics of brokered deposits which have advantages, namely, that they do improve the liquidity of the system. They do facilitate to a considerable extent the marshalling of depository funds. Nonetheless, they do potentially create significant risks. . . . [R]ather than abolish them, I think one should focus on those aspects of brokered deposits which are positive and try . . . to keep that aspect of the system in place without exposing ourselves to the abuses which have clearly existed in recent years.

Nevertheless, brokered deposits have been enormously abused, and are widely believed to have contributed significantly to the problems of the thrift industry. Former Justice Department prosecutor Bruce Maffeo gave the Committee a graphic description of the dangers of brokered deposits for weak banks and thrifts this past August 1. Mr. Maffeo said:

[B]rokered money was literally the financial equivalent of crack. You saw small savings and loan institutions and small banks all of a sudden pumped up on steroids with a \$10 million asset, which was nothing more than an accumulation of brokered money that they had to pay back the principal on . . . and in some cases they were hung out to dry for as long as 20 years with interest payments that were extortionate by any other measures. So they had that rock in their knapsack just going out of the gate.

And, in a similar vein, Gerald Corrigan, President of the New York Federal Reserve Bank, called abuse of deposit brokerage arrangements "the worst single abuse of the deposit insurance system" when he testified before the committee on April 3.

Recognizing the dangers of brokered deposits, Congress curtailed their use by undercapitalized institutions in last year's savings and loan legislation—the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [FIRREA].

The bill would continue the restrictions on brokered deposits Congress enacted last year. But it would go farther. It would require the FDIC to license and register individuals and entities in the business of making deposits at insured institutions on behalf of third parties—including not only traditional deposit brokerages, but also entities we might call "deposit agents"

such as mutual funds and pension funds. Subject to certain narrow restrictions, it would forbid banks and thrifts from accepting deposits on behalf of third parties from unlicensed individuals and entities. And it would authorize the FDIC to regulate all aspects of deposit brokerage and deposits by intermediaries that involve risk to the deposit insurance funds. Thus, the FDIC could: First, prohibit institutions or classes of institutions from accepting deposits on behalf of third parties; second, establish terms or conditions under which institutions may accept such deposits; third, establish terms and conditions under which brokers or agents may accept funds for deposit in insured institutions from third parties; and fourth, impose appropriate reporting requirements on deposit brokers or agents. The FDIC could revoke or suspend the license of any deposit broker or intermediary that fails to comply with its regulations.

Some may feel FDIC regulation of deposit brokerage activities is unnecessary because mutual funds are already heavily regulated and because pension funds face heavy legal obligations as fiduciaries of their beneficiaries. I am not unsympathetic to that viewpoint. But the interests of the FDIC diverge from the existing regulatory system for mutual funds, and the duty of a fiduciary to seek maximum advantage for beneficiaries may fly squarely in the face of the FDIC's need to protect insured banks and thrifts. Moreover, I do not envision this regulatory scheme as especially burdensome. On the contrary, I envision a system in which licenses would be given out expeditiously, even presumptively, with a minimum of paperwork and delay, and revoked or suspended only for cause.

**B. PASS-THROUGH DEPOSIT LIMITED**

One of the thorniest problems in deposit insurance today is the question of pass-through deposit insurance coverage. Currently, entities such as mutual funds and pension funds can make deposits of millions, or even tens or hundreds of millions of dollars, all of it fully insured on the theory that deposit insurance is "passed through" to individual investors, none of whom have more than a \$100,000 interest in the deposit.

The mutual funds and pension funds that make such deposits are sophisticated investors, fully capable of determining from available information whether a bank or thrift is reasonably sound or a basket case. Moreover, the availability of pass-through coverage makes a mockery of any ostensible limit on deposit insurance coverage. A \$100,000 limit on deposit insurance coverage cannot accomplish much if investors with millions to invest can evade the limit by the simple device of putting their millions in money

market funds which, in turn, purchase insured certificates of deposit.

My bill would not ban pass-through deposit insurance altogether. In particular, it would perpetuate one form of pass-through deposit insurance that I know will be of concern to many citizens who now enjoy pass-through deposit insurance protection for their retirement savings. Many tax-deferred retirement plans invest in bank investment contracts and insured certificates of deposit, and many of the people who participate in such plans believe such investments are the safest way to save for retirement.

As a factual matter, that belief is not accurate. U.S. Government securities are just as safe as federally insured deposits. Both enjoy the full faith and credit of the U.S. Government. And any retirement fund that offers its participants the opportunity to invest in insured deposits could choose instead to offer its participants an equally safe investment in U.S. Government securities.

Nevertheless, an outright prohibition on pass-through deposit insurance could cause needless anxiety to millions of Americans who are not sophisticated investors. Therefore, although the bill would generally prohibit pass-through deposit insurance coverage, as currently drafted it would contain an exception for deposits made by certain tax-deferred retirement plans. I want to make clear, however, that I am concerned that this exception may be too broad to adequately protect the deposit insurance fund. My mind is open on this point and I want to consider the issue further in the months ahead.

**C. MULTIPLE ACCOUNTS LIMITED**

One widespread abuse of the current deposit insurance system that has attracted a lot of criticism is the practice of evading the \$100,000 limit by having more than one account at a single institution. Theoretically, current law requires all of an individual's accounts at a given institution to be added together for purposes of calculating the insurance fund's liabilities. But a loophole in current law allows individuals to avoid this summing up by holding accounts in different capacities. Thus, for example, you can deposit \$100,000 in your own name, then \$100,000 in an account you hold jointly with your spouse, then another \$100,000 in an account you hold jointly with your kids, and so forth.

The bill will eliminate this abuse completely by repealing the language in current law that gives rise to it. It will not forbid individuals from having multiple accounts at insured depository institutions, but it will ensure that no individual receives more than \$100,000 in total insurance coverage on accounts at any one depository institution.

## D. TWO ADDITIONAL IDEAS

Let me also take this occasion to raise two reform possibilities that I have not included in the bill at this time, but which I think have enough merit to warrant discussion.

**Coinsurance:** Compared to deposit insurance systems in other countries, the U.S. system is unusual in that it requires the deposit insurance fund to bear 100 percent of any loss that depositors would otherwise suffer when a bank or thrift fails. According to testimony before the Banking Committee earlier this year, depositors in the United Kingdom are insured to only 75 percent of their account balance, up to a ceiling of £20,000. Depositors in Japan are insured to ¥10 million, and only as to principal. If an insured institution falls in Japan, its depositors bear all of the risk with respect to any interest that has accrued in their accounts.

But under the system of deposit insurance currently in place in the United States, however, depositors essentially bear no risk at all.

I have given a lot of thought to the question whether that situation makes sense. The version of the bill I am putting forward now would perpetuate the status quo in this area—no coinsurance.

But at the same time, let me suggest a possible reform in this area that I think has considerable merit and invite reactions to it. The gist of the idea would be to impose a small coinsurance requirement—basically, and amount of risk that would be significant only to the most aggressive rate-chasers. It might work something like this: If you had an account at an insured bank or thrift, and that institution failed, your account—assuming the account balance is less than \$100,000—would be insured up to the amount of the account balance, minus an amount equal to, say 90 days' worth of interest on the account.

To show how that might work, let me use a specific example. Suppose you put \$80,000 in the bank a year or two ago, and, at 6-percent interest, you now have a balance of \$87,000. If your bank were to fail, your account would be insured up to \$87,000 minus \$1,305—90 days' interest on \$87,000 at 6 percent—or \$85,695. In other words, in the worst case you might lose as much as 1,305 dollars' worth of interest. Your principal would not be touched.

Strong advocates of depositor discipline may wonder why even bother with such a small penalty. The same depositor in the British system could lose as much as \$21,750. But the point of this requirement—unlike the coinsurance requirements of other countries—would not be to punish average depositors. The point would be to make those depositors who make bank deposits for investment purposes—as

opposed to using bank accounts for transaction purposes or simply as safe places to store money—think twice before buying a large certificate of deposit at a weak financial institution. For example, to an investor with \$100,000 who is choosing between buying a 1-year CD at 10 percent from a very weak bank or thrift or a 1-year CD at 8.5 percent from a strong one, that 90-day interest penalty would probably steer the deposit toward the stronger institution. A coinsurance feature like this could prove very helpful in channelling rate-sensitive, or "hot", money away from weak institutions and toward stronger institutions.

Again, however, this coinsurance feature is not part of the bill I am outlining. For the present, it is just a possible reform under consideration, and I invite reactions to it.

Strictly enforcing the \$100,000 limit: My bill significantly tightens the \$100,000 limit—notably, by imposing restrictions on multiple accounts at a single institution, restricting pass-through deposit insurance, and curtailing too-big-to-fail. But it does not entail strict enforcement of the \$100,000 limit in the sense of limiting all depositors to a total of \$100,000 in insured deposits. It will still be possible for an individual to make multiple deposits of up to \$100,000, provided that each deposit is made at a different bank or thrift. In addition, the bill would not prevent individuals who wish to deposit more than \$100,000 in any one federally-insured institutions from doing so. But such excess deposits would not be guaranteed by the U.S. Government. If the institution holding such excess deposits fails, the owners of those accounts will bear the same risk of loss as other creditors. I note, however, that if the prompt corrective action requirements of the bill are effective, that risk should be substantially less than it is today.

Why not strictly enforce the \$100,000 limit? Why not say that you can only have \$100,000 in insured deposits, no matter how many institutions you bank or save with?

Let me address those questions for a moment. There is much to say in favor of strictly enforcing the \$100,000 limit. But I am not sure that such a strict enforcement policy can be implemented at a reasonable cost and without putting the Federal Government in the business of monitoring the bank balances of all Americans. It doesn't seem fair to the overwhelming majority of Americans, who have only a few thousand dollars in the bank, to subject them to extensive monitoring of their bank balances for the sole purpose of getting at the small number whose deposits do exceed \$100,000.

Still, I want to indicate on this point, too, that my mind is still open. If a cost-effective and unintrusive way of implementing such a requirement can

be devised, I may well support it. I have instructed the Banking Committee staff to continue to work on this question.

## 6. SOURCE OF STRENGTH

Several recent court decisions have called into question the ability of Federal bank regulators to enforce commitments by parent corporations to maintain the capital of their insured bank and thrift subsidiaries.

Testimony before the Banking Committee indicates that such capital maintenance agreements have been an important regulatory tool in the past. Larry Connell, former Chairman of the National Credit Union Administration and a member of the Shadow Financial Regulatory Committee, addressed the subject in his testimony on May 17:

Should a company that controls a bank or thrift be free to let that institution fail without making an effort to assist it? \* \* \* [T]he Federal Reserve Board has attempted to impose a source of strength doctrine from the very beginning of holding companies. \* \* \* The Office of Thrift Supervision \* \* \* had open-ended contractual net worth maintenance agreements for many years. More recently, these have been modified to prenuptial type agreements where the institutions could be sold if the net worth fell below a certain level. \* \* \* I think they've been effective. And I believe it would be valuable as one of the \* \* \* tools for the regulatory agencies to have in their quiver to require net worth maintenance agreements on a limited basis, prenuptial type.

The bill would clarify that such commitments are enforceable. In addition, it would extend cross-guarantee liability to the affiliates of insured banks and thrifts. The extent of the cross-guaranty liability would depend on whether the affiliate in question is itself an insured bank or thrift. My bill would make insured banks and thrifts fully liable for any loss incurred by the FDIC in connection with the failure of affiliated insured banks and thrifts. But it would limit the liability of non-depository institution affiliates to 5 percent of the assets of the insured bank or thrift that failed.

## 7. ENHANCED DISCLOSURE OBLIGATIONS FOR DEPOSITORY INSTITUTIONS AND THEIR REGULATORS

The last major cluster of reforms in this package addresses the need for more, better, and more timely information from our insured banks and thrifts and their regulators. Lack of solid information is not just a frustration to Congress. We cannot expect regulators to do their jobs well if they do not have accurate information on the condition of institutions they supervise. We cannot expect depositors, shareholders, and creditors to invest prudently if they cannot distinguish strong institutions from weak institutions. And we cannot expect the American people to have confidence in their

financial system if they do not believe they are receiving accurate information on its condition.

#### A. DISCLOSURE BY DEPOSITORY INSTITUTIONS

The bill requires banks and thrifts to provide more specific information in their quarterly reports so that the financial condition of insured banks and thrifts can be better assessed and monitored. In particular, the bill would impose four new quarterly disclosure requirements: First, major shareholders; second, disaggregated reports of assets; third, nonbanking activities; and fourth, market value estimates of assets, liabilities, and net worth (in accordance with regulations prescribed by their regulators). The first three requirements would take effect 6 months after enactment; these simply require more regular and systematic disclosure of information already available to the regulators. The market value disclosure requirement would take effect by January 1, 1993.

The bill also requires uninsured banks and thrifts to disclose their uninsured status to depositors.

#### B. DISCLOSURE BY THE REGULATORY AGENCIES

The bill also requires each of the regulatory agencies to report annually on: First, the volume of anticipated bank and thrift failures over the next 3 years; second, the involvement of insured banks and thrifts in nontraditional activities; third, the capital levels of insured banks and thrifts; and fourth, enforcement actions and subsequent compliance. The bill clarifies the authority of the General Accounting Office and the Congressional Budget Office to obtain CAMEL ratings of banks and thrifts and lists of problem banks and thrifts.

#### C. DISCLOSURE BY THE INSURANCE FUNDS

The bill requires more accurate and detailed disclosure to the Congress and the public on the condition of the deposit insurance funds. It requires annual reports on bank and thrift failures during the previous 12 months and projections of problem institutions 3 years into the future.

#### CONCLUSION

The deposit insurance reform package I have outlined is, as I said at the outset, a work in progress. There will be more progress to come.

In some areas, this bill may go too far. In others, it may not go far enough. There may be conceptual difficulties with some aspects. There may be technical problems with some aspects. A number of provisions will need appropriate transition periods. But let me repeat: No part of this bill is cast in stone. And my mind is not closed to any additional or alternative reform. I have specifically noted three additional reform measures that I think warrant further discussion. I am completely open to others as well.

I welcome the views of my colleagues in both Houses and on both sides of

the aisle. I welcome the views of the administration. And I welcome the views of America's banks and thrifts, their depositors, and the public. Working together, we can and will craft a comprehensive deposit insurance reform package that restores safety and soundness to America's deposit insurance system and protects America's taxpayers.

Mr. President, I ask unanimous consent that the full text of this bill be reprinted in the RECORD. I also ask unanimous consent to include some related explanatory and background materials in the RECORD—including, specifically, a summary of the bill, an outline of its key provisions, some questions and answers on important features of the bill, a selection of related excerpts from the Banking Committee's deposit insurance hearing record, and a legal opinion relating to one of the key features of the bill.

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

S. 3103

*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 "Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1990".

#### (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Strengthening capital standards and controlling interest-rate risk.
- Sec. 3. Accounting reform.
- Sec. 4. Prompt corrective action.
- Sec. 5. Annual examinations.
- Sec. 6. Capital-maintenance commitments.
- Sec. 7. Restricting risky bank activities.
- Sec. 8. Deposits by brokers and other intermediaries.
- Sec. 9. Least-cost resolution.
- Sec. 10. Cross-guarantee liability.
- Sec. 11. Risk-based assessments; incentives to have greater capital.
- Sec. 12. Multiple accounts; pass-through insurance coverage.
- Sec. 13. Granting deposit insurance.
- Sec. 14. Disclosure.

#### SEC. 2. STRENGTHENING CAPITAL STANDARDS AND CONTROLLING INTEREST-RATE RISK.

(a) IN GENERAL.—Each appropriate Federal banking agency shall do the following to strengthen its capital standards for insured depository institutions:

(1) STRENGTHENING CAPITAL STANDARDS GENERALLY.—Require enough capital to facilitate prompt corrective action to prevent loss to the Bank Insurance Fund and Savings Association Insurance Fund, consistent with section 35 of the Federal Deposit Insurance Act (as added by section 4 of this Act).

(2) IMPROVING RISK-BASED STANDARDS AND CONTROLLING INTEREST-RATE RISK.—Improve risk-based capital standards to ensure that such standards take adequate account of—

- (A) the risks posed by—
  - (i) nontraditional activities, and
  - (ii) activities more risky than conventional commercial lending, including real-estate development lending with a high loan-to-value ratio, financing highly leveraged

transactions, nonrecourse lending without adequate guarantees, interest-reserve lending, and equity investment; and

(B) interest-rate risk.

(b) DEADLINE FOR REGULATIONS OR GUIDELINES.—Each appropriate Federal banking agency shall publish in the Federal Register final regulations or guidelines to implement subsection (a) not later than 1 year after the date of enactment of this Act.

(c) DEFINITIONS.—For purposes of this section, the terms "appropriate Federal banking agency" and "insured depository institution" have the meaning given to those terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

#### SEC. 3. ACCOUNTING REFORM.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(o) ACCOUNTING REFORM.—

"(1) OBJECTIVES.—The Congress declares that accounting principles applicable to insured depository institutions should—

"(A) result in financial statements and reports of condition that accurately reflect (at market value, to the extent feasible) the economic condition of those institutions; and

"(B) facilitate effective supervision of insured depository institutions, and prompt corrective action to resolve troubled institutions' problems at no cost to the Bank Insurance Fund or Savings Association Insurance Fund.

"(2) IMPROVING ACCOUNTING PRINCIPLES APPLICABLE TO INSURED DEPOSITORY INSTITUTIONS.—The Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall facilitate the development of accounting principles for insured depository institutions that meet the objectives set forth in paragraph (1).

"(3) STRINGENCY.—

"(A) GAAP AS MINIMUM.—Accounting principles applicable to insured depository institutions shall be no less conservative than generally accepted accounting principles.

"(B) GREATER CONSERVATISM AUTHORIZED.—The appropriate Federal banking agencies may prescribe accounting principles more conservative than generally accepted accounting principles as appropriate to facilitate effective supervision of insured depository institutions and prompt corrective action to resolve troubled institutions' problems at no cost to the Bank Insurance Fund or Savings Association Insurance Fund."

#### SEC. 4. PROMPT CORRECTIVE ACTION.

(a) SYSTEM OF PROMPT CORRECTIVE ACTION.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 35. PROMPT CORRECTIVE ACTION.

"(a) PROBLEMS TO BE RESOLVED AT NO COST TO INSURANCE FUNDS.—

"(1) PURPOSE.—The purpose of this section is to ensure that the problems of insured depository institutions are, with only rare exceptions, resolved at no cost to the Bank Insurance Fund or Savings Association Insurance Fund.

"(2) PROMPT CORRECTIVE ACTION REQUIRED.—Each appropriate Federal banking agency shall carry out the purpose of this section by taking prompt corrective action to resolve the problems of insured depository institutions.

"(b) DEFINITIONS RELATING TO CAPITAL COMPLIANCE.—For purposes of this section:

"(1) UNDERCAPITALIZED.—An insured depository institution is undercapitalized if it is not in compliance with all currently applicable capital standards prescribed by the appropriate Federal banking agency.

"(2) SATISFYING CAPITAL STANDARDS.—An insured depository institution satisfies capital standards only if it is in compliance with all currently applicable capital standards prescribed by the appropriate Federal banking agency.

"(c) PROVISIONS APPLICABLE TO ALL UNDERCAPITALIZED INSTITUTIONS.—

"(1) CAPITAL DISTRIBUTIONS RESTRICTED.—  
 "(A) IN GENERAL.—An insured depository institution shall make no capital distribution if, after making the distribution, the institution would be undercapitalized.

"(B) CAPITAL DISTRIBUTION DEFINED.—For purposes of subparagraph (A), the term 'capital distribution' means any of the following:

"(i) A dividend paid or other distribution in cash or in kind made with respect to any shares of any insured depository institution, except a dividend consisting only of shares of the institution.

"(ii) A payment made by an insured depository institution to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an affiliated company's acquisition of such shares.

"(iii) A transaction that the appropriate Federal banking agency determines to be in substance the distribution of capital.

"(2) CAPITAL RESTORATION PLAN REQUIRED.—  
 "(A) IN GENERAL.—Any undercapitalized insured depository institution shall submit a capital restoration plan to the appropriate Federal banking agency within the time allowed by the agency under subparagraph (D).

"(B) CONTENTS OF PLAN.—The capital restoration plan shall—

"(i) specify how the insured depository institution will satisfy capital standards, without increasing the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed;

"(ii) specify the types and levels of activities in which the institution will engage;

"(iii) specify how the institution will comply with paragraph (3);

"(iv) contain such other information as the appropriate Federal banking agency may require;

"(v) be based on realistic assumptions, and be feasible; and

"(vi) be acceptable to the appropriate Federal banking agency.

"(C) HOLDING COMPANY GUARANTEE.—The appropriate Federal banking agency shall not accept a capital restoration plan unless each company having control of the insured depository institution guarantees the institution's compliance with the plan until the institution has satisfied capital standards (based on a daily average of the institution's capital and assets) for each of 12 consecutive months, and provides appropriate assurances of performance.

"(D) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The appropriate Federal banking agency shall by regulation establish deadlines that—

"(i) provide insured depository institutions with reasonable time to submit capital restoration plans, and generally require an institution to submit a plan not later than 30 days after the institution ceases to satisfy capital standards; and

"(ii) require the agency to act on capital restoration plans expeditiously and general-

ly not later than 30 days after the plan is submitted.

"(3) GROWTH RESTRICTED.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any undercapitalized insured depository institution shall not increase its total assets.

"(B) LIMITED GROWTH EXCEPTION.—If the appropriate Federal banking agency has accepted an insured depository institution's capital restoration plan, the agency may permit the institution to increase its total assets by an amount not exceeding the amount of net interest credited to the institution's deposit liabilities.

"(C) ANY GROWTH MUST BE FULLY CAPITALIZED.—An insured depository institution shall not increase its total assets under subparagraph (B) unless—

"(i) any increase in total assets is accompanied by an increase in tangible shareholders' equity in an amount not less than the increase in total assets multiplied by the percentage amount of the currently applicable capital standards; and

"(ii) the institution's ratio of capital to assets increases at a rate sufficient to enable the institution to satisfy capital standards within a reasonable time.

"(4) DISCRETIONARY SAFEGUARDS.—The appropriate Federal banking agency may, with respect to any undercapitalized insured depository institution, take 1 or more of the actions described in subsection (d)(2) if the agency determines that such actions are necessary to carry out the purpose of this section.

"(d) PROVISIONS APPLICABLE TO UNDERCAPITALIZED INSTITUTIONS THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

"(1) IN GENERAL.—If any undercapitalized insured depository institution fails to submit an acceptable capital restoration plan within the time allowed by the appropriate Federal banking agency under subsection (c)(2)(D) or fails in any material respect to implement a plan accepted by the agency, the following provisions shall apply:

"(A) The agency shall carry out the purpose of this section by taking 1 or more of the actions described in paragraph (2) of this subsection.

"(B) In complying with subparagraph (A), the agency shall take the action described in paragraph (2)(A)(i) (relating to requiring the sale of shares or obligations) unless the agency determines that such action would not further the purpose of this section.

"(C) The agency may take one or more of the actions described in subsection (g)(2) to carry out the purpose of this section.

"(2) SPECIFIC ACTIONS AUTHORIZED.—The actions described in this paragraph are the following:

"(A) REQUIRING SALE OF SHARES OR OBLIGATIONS.—

"(i) Requiring the institution to sell enough shares or obligations of the institution so that the institution will satisfy capital standards after the sale.

"(ii) Further requiring that instruments sold under clause (i) be voting shares.

"(B) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

"(i) Prohibiting the institution from using the exemption contained in section 23A(d)(1) of the Federal Reserve Act.

"(ii) Further restricting the institution's transactions with affiliates.

"(C) RESTRICTING ACTIVITIES.—Restricting the institution's activities.

"(D) RESTRICTING INTEREST RATES PAID.—Restricting the interest rates the institution pays on deposits.

"(E) REQUIRING NEW ELECTION OF DIRECTORS.—Ordering a new election for the institution's board of directors.

"(F) DISMISSING DIRECTORS AND CHIEF OFFICIALS.—Dismissing from office 1 or more of the following persons if that person had held office for more than 180 days when the institution ceased to satisfy capital standards:

"(i) Any member of the institution's board of directors.

"(ii) The chief executive officer.

"(iii) The chief financial officer.

Dismissal under this subparagraph shall not be construed as removal under section 8.

"(e) EXECUTIVE OFFICERS' COMPENSATION RESTRICTED IF UNDERCAPITALIZED INSTITUTION FAILS TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLAN.—

"(1) FAILING TO SUBMIT TIMELY PLAN.—If any undercapitalized insured depository institution fails to submit an acceptable capital-restoration plan within the time allowed by the appropriate Federal banking agency under subsection (c)(2)(D), the institution shall not, until the institution has submitted and the appropriate Federal banking agency has accepted a plan, do any of the following:

"(A) Pay any bonus to any executive officer.

"(B) Provide compensation to any executive officer at a rate exceeding that officer's average rate of compensation during the 12 calendar months preceding the calendar month in which the institution ceased to comply with capital standards.

"(2) MATERIALLY FAILING TO IMPLEMENT PLAN.—If any undercapitalized insured depository institution fails in any material respect to implement a capital-restoration plan accepted by the appropriate Federal banking agency, the institution shall not take any action described in subparagraph (A) or (B) of paragraph (1) of this subsection without the prior written approval of the appropriate Federal banking agency.

"(3) DEFINITIONS.—For purposes of this subsection:

"(A) EXECUTIVE OFFICER.—The term 'executive officer' has the same meaning as in section 22(h) of the Federal Reserve Act.

"(B) COMPENSATION.—The term 'compensation' means any payment of money or provision of any other thing of value in connection with employment.

"(f) PROVISIONS APPLICABLE TO INSTITUTIONS WITH CAPITAL BELOW CRITICAL LEVEL.—

"(1) AGENCY TO SPECIFY CRITICAL CAPITAL LEVEL.—

"(A) IN GENERAL.—Each appropriate Federal banking agency shall by regulation specify a capital level for purposes of this subsection, which may be referred to as the 'critical capital level'.

"(B) CRITERION FOR SPECIFYING CRITICAL CAPITAL LEVEL.—The critical capital level shall be high enough so that the problems of insured depository institutions can, with only rare exceptions, be resolved at no cost to the Bank Insurance Fund or Savings Association Insurance Fund by carrying out this subsection when the institution's capital falls below that level.

"(C) FDIC'S CONCURRENCE REQUIRED.—The appropriate Federal banking agency shall not, without the concurrence of the Corporation, specify a critical capital level that is less stringent than the critical capital level specified by the Corporation for State non-member insured banks.

"(2) PAYMENTS ON SUBORDINATED DEBT PROHIBITED.—

"(A) IN GENERAL.—An insured depository institution shall make no payment of principal or interest on the institution's subordinated debt unless, after making the payment, the institution would have capital equaling or exceeding the critical level specified under paragraph (1).

"(B) LIMITED EXEMPTION FOR CERTAIN SUBORDINATED DEBT.—Until October 25, 1995, subparagraph (A) shall not apply with respect to any subordinated debt that is outstanding on October 25, 1990, and that is not extended or otherwise renegotiated after October 25, 1990.

"(C) SUBORDINATED DEBT DEFINED.—For purposes of this paragraph, the term 'subordinated debt' means debt subordinated to the claims of depositors or general creditors.

"(3) ACTIVITIES RESTRICTED.—If any insured depository institution's capital does not equal or exceed the critical capital level specified under paragraph (1), the institution shall comply with restrictions prescribed by the appropriate Federal banking agency under subsection (g).

"(4) CONSERVATORSHIP OR OTHER ACTION REQUIRED.—

"(A) IN GENERAL.—The appropriate Federal banking agency shall, not later than 30 days after the institution's capital ceases to equal or exceed the critical capital level specified under paragraph (1)—

"(i) appoint a conservator or receiver for the institution; or

"(ii) take such other action as the agency determines would better achieve the purpose of this section, after documenting why such action is more likely than the appointment of a conservator or receiver to protect the interests of the Bank Insurance Fund or Savings Association Insurance Fund.

"(B) REVIEW OF OTHER ACTION.—If the appropriate Federal banking agency does not appoint a conservator or receiver for the institution, the agency shall review its action under subparagraph (A)(ii) not less often than every 90 days, determine whether that action should be modified to better achieve the purpose of this section, and make any appropriate modifications.

"(g) RESTRICTING ACTIVITIES OF INSTITUTIONS WITH CAPITAL BELOW CRITICAL LEVEL.—

"(1) IN GENERAL.—To carry out the purpose of this section, each appropriate Federal banking agency shall, by regulation or order, restrict the activities of any insured depository institution that does not have capital equaling or exceeding the critical capital level specified under subsection (f)(1).

"(2) SPECIFIC RESTRICTIONS.—Except to the extent that the agency determines that other restrictions will better achieve the purpose of this section, the restrictions prescribed under paragraph (1) shall prohibit an insured depository institution that does not have capital equaling or exceeding the critical capital level specified under subsection (f)(1) from doing any of the following without the agency's prior written approval:

"(A) Enter into any material transaction other than in the usual course of business.

"(B) Enter into any highly leveraged transaction.

"(C) Make or agree to make—

"(i) any nonrecourse loan other than a loan on which the principal and interest are fully guaranteed by the United States or an agency of the United States; or

"(ii) any interest-reserve loan.

"(D) Originate, fund, invest in, or buy (or commit itself to originate, fund, invest in, or

buy) any investment, security, or other asset (or any group of such assets sold or pledged to, purchased from, or exchanged with the same person) in an amount exceeding the lesser of—

"(i) 10 percent of the institution's capital; or

"(ii) \$500,000.

"(E) Sell, pledge, modify, or exchange any loan, participation, investment, or security (except for loans sold in the secondary market in the usual course of business) in an amount exceeding the lesser of—

"(i) 10 percent of the institution's capital; or

"(ii) \$500,000.

"(F) Enter into any lease or contract for the purchase of real property or of any interest in real property.

"(G) Amend the institution's charter or bylaws.

"(H) Make any material change in accounting methods.

"(I) Pay interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds.

"(J) Accept or renew liabilities on terms that would increase the institution's exposure to interest-rate risk.

"(K) Make any disbursement to any 1 entity exceeding the lesser of—

"(i) 10 percent of the institution's capital; or

"(ii) \$500,000.

"(L) Engage in any 'covered transaction', as defined in section 23A(b) of the Federal Reserve Act.

"(M) Pay or agree to pay any bonus to any employee or agent who receives annual compensation exceeding \$60,000.

"(N) Increase the annual compensation of any employee or agent (including any compensation paid with respect to the termination of that person's employment) who receives annual compensation exceeding \$60,000 by an amount that exceeds by more than 5 percentage points the percentage increase during the preceding 12 months in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

"(O) Indemnify or agree to indemnify any officer, director, employee, or agent.

"(P) Settle any claim, judgment, or award exceeding the lesser of—

"(i) 10 percent of the institution's capital; or

"(ii) \$500,000.

"(3) EXCEPTIONS.—

"(A) LIQUID ASSETS.—Subparagraphs (D), (E), and (K) of paragraph (2) shall not apply with respect to the purchase or sale of liquid assets.

"(B) BINDING COMMITMENTS.—Paragraph (2) shall not apply with respect to transactions pursuant to legally binding commitments that—

"(i) were entered into while the insured depository institution's capital equaled or exceeded the critical capital level specified under subsection (f)(1); and

"(ii) were not entered into to evade paragraph (2).

"(C) CONSERVATORS AND RECEIVERS.—This subsection shall not apply with respect to any insured depository institution for which a conservator or receiver has been appointed.

"(4) APPROVAL NEED NOT BE TRANSACTION-SPECIFIC.—For purposes of paragraph (2), the term 'prior written approval' includes approval granted by regulation or order under this subsection.

"(5) ADJUSTMENT FOR INFLATION.—The dollar amounts referred to in paragraph (2)

shall be periodically adjusted to reflect increases after December 31, 1992, in the Consumer Price Index for Urban Wage Earners and Clerical Workers.

"(h) MONITORING UNDERCAPITALIZED INSTITUTIONS.—Each appropriate Federal banking agency shall—

"(1) closely monitor the condition of any undercapitalized insured depository institution;

"(2) closely monitor compliance with capital-restoration plans and restrictions imposed under this section; and

"(3) periodically review the plan and restrictions applicable to any undercapitalized insured depository institution to determine whether the plan and restrictions are carrying out the purpose of this section.

"(i) REVIEW REQUIRED WHEN INSURANCE FUND INCURS LOSS.—

"(1) IN GENERAL.—If the Bank Insurance Fund or Savings Association Insurance Fund incurs a loss with respect to an insured depository institution on or after July 1, 1992, the inspector general of the appropriate Federal banking agency shall—

"(A) make a written report to that agency reviewing the agency's supervision of the institution (including the agency's implementation of this section), which shall—

"(i) ascertain why the agency failed to resolve the institution's problems at no cost to the Bank Insurance Fund or Savings Association Insurance Fund, and

"(ii) set forth any recommendations for reform; and

"(B) provide a copy of the report to—

"(i) the Comptroller General of the United States, and

"(ii) the Corporation (if the agency is not the Corporation).

"(2) LOSS INCURRED.—For purposes of this subsection, the Bank Insurance Fund or Savings Association Insurance Fund incurs a loss with respect to an insured depository institution—

"(A) if the Corporation provides any assistance under section 13(c) with respect to that institution, and it is not substantially certain that the assistance will be fully repaid not later than 12 months after the date on which the Corporation initiated the assistance; or

"(B) if the Corporation is appointed receiver of the institution, and it is or becomes apparent that the outlays of the Bank Insurance Fund or Savings Association Insurance Fund with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

"(3) DEADLINE FOR REPORT.—The inspector general of the appropriate Federal banking agency shall comply with paragraph (1) expeditiously, and in any event as follows:

"(A) If the institution is described in paragraph (2)(A), during the 12-month period beginning on the date on which the Corporation initiates assistance under section 13(c).

"(B) If the institution is described in paragraph (2)(B), during the 12-month period beginning on the date on which it becomes apparent that the outlays of the Bank Insurance Fund or Savings Association Insurance Fund with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

"(4) PUBLIC DISCLOSURE REQUIRED.—The appropriate Federal banking agency shall disclose the report upon request under section 552 of title 5, United States Code, without excising—

"(A) any portion under section 552(b)(5); or

"(B) any information about the insured depository institution under paragraph (4) or (8) of section 552(b).

"(5) GAO REVIEW.—The General Accounting Office shall from time to time—

"(A) review reports made under paragraph (1) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section); and

"(B) audit 1 or more of those reports.

"(6) TRANSITION RULE.—During the period beginning on July 1, 1992 and ending on June 30, 1995, paragraph (1) does not require action by the inspector general of the appropriate Federal banking agency unless the loss incurred by the Corporation with respect to an insured depository institution—

"(A) with respect to which the Corporation initiates assistance under section 13(c) during the period in question, or

"(B) for which the Corporation was appointed receiver during the period in question, exceeds the applicable percentage of the institution's total assets at that time set forth in the following table:

For the following period:	The applicable percentage is:
July 1, 1992–June 30, 1993.	5 percent
July 1, 1993–June 30, 1994.	3 percent
July 1, 1994–June 30, 1995.	1 percent

"(j) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of the appropriate Federal banking agency or a State to take action in addition to (but not in derogation of) that required under this section.

"(k) TRANSITION RULES FOR SAVINGS ASSOCIATIONS.—

"(1) RTC'S ROLE DOES NOT DIMINISH CARE REQUIRED OF OTS.—

"(A) IN GENERAL.—In implementing this section, the Director of the Office of Thrift Supervision shall exercise the same care as if the Savings Association Insurance Fund (rather than the Resolution Trust Corporation) bore the cost of resolving the problems of insured savings associations described in clauses (i) and (ii)(II) of section 21A(b)(3)(A) of the Federal Home Loan Bank Act.

"(B) REPORTS.—Subparagraph (A) does not require reports under subsection (i).

"(2) NEW CAPITAL PLAN NOT REQUIRED FOR CERTAIN SAVINGS ASSOCIATIONS.—Subsection (d) and paragraphs (2) and (3) of subsection (c) shall not apply before July 1, 1994, with respect to any insured savings association if—

"(A) before the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1990—

"(i) the savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act; and

"(ii) the Director of the Office of Thrift Supervision had accepted that plan;

"(B) the plan remains in effect; and

"(C) the savings association remains in compliance with the plan."

(b) DEADLINE FOR REGULATIONS.—The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision shall each, after notice and opportunity for comment, promulgate final regulations under section 35 of the Federal De-

posit Insurance Act (as added by subsection (a) of this section) not later than 240 days after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1990, and those regulations shall take effect not later than 270 days after that date of enactment.

(c) CONSERVATORSHIP AND RECEIVERSHIP AUTHORITY.—

(1) ADDITIONAL GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER FOR STATE BANKS.—Section 11(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(5)) is amended by adding at the end the following new subparagraphs:

"(I) With respect to an insured depository institution not in compliance with all currently applicable capital standards prescribed by the appropriate Federal banking agency—

"(i) inability to achieve such compliance by selling shares or obligations of the institution, or failure to achieve such compliance when required to do so under subsection (c)(4) or (d)(2)(A) of section 35;

"(ii) failure to submit a capital-restoration plan acceptable to that agency within the time prescribed under section 35(c)(2)(D); or

"(iii) material failure to implement a capital-restoration plan submitted and accepted under section 35(c)(2).

"(J) Failure to have capital that equals or exceeds the critical capital level specified by the appropriate Federal banking agency under section 35(f)(1)."

(2) ADDITIONAL GROUNDS FOR APPOINTING CONSERVATOR FOR NATIONAL BANKS.—Section 203(a) of the Bank Conservation Act (12 U.S.C. 203(a)) is amended—

(A) by striking "or" at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting a period; and

(C) by adding at the end the following new paragraphs:

"(9) in the case of a bank not in compliance with all currently applicable capital standards prescribed by the Comptroller—

"(i) the bank is unable to achieve such compliance by selling shares or obligations of the bank, or fails to achieve such compliance when required to do so under subsection (c)(4) or (d)(2)(A) of section 35 of the Federal Deposit Insurance Act,

"(ii) the bank fails to submit a capital-restoration plan acceptable to the Comptroller within the time prescribed under section 35(c)(2)(D), or

"(iii) the bank materially fails to implement a capital-restoration plan submitted and accepted under section 35(c)(2); or

"(10) the bank fails to have capital that equals or exceeds the critical capital level specified by the Comptroller under section 35(f)(1) of the Federal Deposit Insurance Act."

(3) ADDITIONAL GROUNDS FOR APPOINTING RECEIVER FOR NATIONAL BANKS.—The Comptroller of the Currency may, after due examination of a national bank's affairs, appoint a receiver if—

(A) in the case of a national bank not in compliance with all currently applicable capital standards prescribed by the Comptroller—

(i) the bank is unable to achieve such compliance by selling shares or obligations of the bank, or fails to achieve such compliance when required to do so under subsection (c)(4) or (d)(2)(A) of section 35 of the Federal Deposit Insurance Act,

(ii) the bank fails to submit a capital-restoration plan acceptable to the Comptroller within the time prescribed under section 35(c)(2)(D), or

(iii) the bank materially fails to implement a capital-restoration plan submitted and accepted under section 35(c)(2); or

(B) the bank fails to have capital that equals or exceeds the critical capital level specified by the Comptroller under section 35(f)(1) of the Federal Deposit Insurance Act.

(4) ADDITIONAL GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER FOR FEDERAL SAVINGS ASSOCIATIONS.—Section 5(d)(2)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(2)(A)) is amended—

(A) by striking "or" at the end of clause (vii);

(B) by striking the period at the end of clause (viii) and inserting a semicolon; and

(C) by adding at the end the following new clauses:

"(ix) with respect to an association not in compliance with all currently applicable capital standards prescribed by the Director—

"(I) inability to achieve such compliance by selling shares or obligations of the association, or failure to achieve such compliance when required to do so under subsection (c)(4) or (d)(2)(A) of section 35 of the Federal Deposit Insurance Act,

"(II) failure to submit a capital-restoration plan acceptable to the Director within the time prescribed under section 35(c)(2)(D), or

"(III) material failure to implement a capital-restoration plan submitted and accepted under section 35(c)(2); or

"(10) failure to have capital that equals or exceeds the critical capital level specified by the Director under section 35(f)(1) of the Federal Deposit Insurance Act."

(5) ADDITIONAL PROVISIONS RELATING TO APPOINTMENT OF CONSERVATOR OR RECEIVER.—Section 11(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)) is amended by adding at the end the following new paragraphs:

"(10) APPROPRIATE FEDERAL BANKING AGENCY MAY APPOINT CORPORATION AS CONSERVATOR OR RECEIVER FOR INSURED STATE DEPOSITORY INSTITUTION TO EFFECTUATE SECTION 35.—

"(A) IN GENERAL.—The appropriate Federal banking agency may appoint the Corporation as sole conservator or receiver of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

"(i) 1 or more of the grounds specified in subparagraphs (I) and (J) of paragraph (5) exist with respect to that institution; and

"(ii) the appointment is necessary to carry out the purpose of section 35.

"(B) NONDELEGATION.—The appropriate Federal banking agency shall not delegate any action under this subsection.

"(11) CORPORATION MAY APPOINT ITSELF AS CONSERVATOR OR RECEIVER FOR INSURED DEPOSITORY INSTITUTION TO PREVENT LOSS TO DEPOSIT INSURANCE FUND.—

"(A) IN GENERAL.—The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency (if that agency is not the Corporation) and the appropriate State supervisor (if any), if the Board of Directors determines that—

"(i) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

"(ii) the appointment is necessary to reduce—

"(I) the risk that the affected deposit insurance fund would incur a loss with respect to the insured depository institution, or

"(II) any loss that the affected deposit insurance fund is expected to incur with respect to that institution.

"(B) NONDELEGATION.—The Board of Directors shall not delegate any action under this subsection.

"(12) DIRECTORS NOT LIABLE FOR CONSENTING TO APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for consenting in good faith to the appointment of the Corporation or Resolution Trust Corporation as conservator or receiver for that institution."

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect 270 days after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1990, except that paragraphs (11) and (12) of section 11(c) of the Federal Deposit Insurance Act (as added by subsection (c)(5) of this section) shall take effect on that date of enactment.

#### SEC. 5. ANNUAL EXAMINATIONS.

(a) IN GENERAL.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended—

(1) by redesignating subsection (e) as subsection (d); and

(2) by adding at the end the following new subsection:

"(e) EXAMINATION OF ALL INSURED DEPOSITORY INSTITUTIONS.—

"(1) ANNUAL EXAMINATIONS REQUIRED.—Each appropriate Federal banking agency shall, at least once during every 12-month period, conduct an on-site examination of each insured depository institution for which that agency is the appropriate Federal banking agency. The agency may conduct that examination directly or through a private contractor.

"(2) EXEMPTION FOR INSTITUTIONS IN CONSERVATORSHIP OR RECEIVERSHIP.—Paragraph (1) shall not apply with respect to any insured depository institution for which a conservator or receiver has been appointed.

"(3) USE OF PRIVATE CONTRACTORS.—

"(A) IN GENERAL.—The appropriate Federal banking agencies may retain private contractors as necessary to examine insured depository institutions.

"(B) RULES APPLICABLE TO PRIVATE CONTRACTORS.—

"(i) CONFLICTS OF INTEREST; CONFIDENTIALITY.—Each appropriate Federal banking agency shall prescribe regulations—

"(I) to prevent conflicts of interest involving private contractors or their officers or employees; and

"(II) to ensure that private contractors and their officers and employees refrain from any improper disclosure of confidential information obtained in performing functions under subparagraph (A).

"(ii) CRIMINAL PENALTIES FOR MISCONDUCT.—Sections 212, 213, 655, 1905, and 1906 of title 18, United States Code shall apply with respect to officers and employees of private contractors, insofar as those persons perform functions under subparagraph (A), in the same manner and to the same extent as if those persons were examiners employed by the United States to examine insured banks."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect immediately, except that section 10(e)(1) of the Federal Deposit Insurance Act (as added

by subsection (a)) shall take effect 1 year after the date of enactment of this Act.

(c) TRANSITION RULE.—Notwithstanding section 10(e)(1) of the Federal Deposit Insurance Act, during the period beginning 1 year after the date of enactment of this Act and ending on December 31, 1993, the appropriate Federal banking agency is not required to conduct an on-site examination of an insured depository institution more often than once during every 18-month period unless—

(1) the institution, when most recently examined, received a composite CAMEL rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System; or

(2) one or more persons acquired control of the institution during the preceding 12-month period.

#### SEC. 6. CAPITAL-MAINTENANCE COMMITMENTS.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(p) COMMITMENTS TO MAINTAIN THE CAPITAL OF INSURED DEPOSITORY INSTITUTIONS.—

"(1) IN GENERAL.—Any commitment to maintain the capital of an insured depository institution, made to the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Corporation, the Director of the Office of Thrift Supervision, or their predecessors, may be enforced under this Act.

"(2) OTHER AUTHORITY NOT AFFECTED.—The authority granted by paragraph (1) is in addition to any other authority of the agencies specified in that paragraph."

#### SEC. 7. RESTRICTING RISKY BANK ACTIVITIES.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding after section 23 the following new section:

##### "SEC. 24. BANK ACTIVITIES.

"(a) FDIC MAY RESTRICT RISKY ACTIVITIES OF BANKS.—The Corporation may, by regulation or order, restrict any activity of insured banks that poses a significant risk to the affected deposit insurance fund.

"(b) SAFEGUARDS ON EXERCISE OF STATE-AUTHORIZED POWERS EXCEEDING THE POWERS OF A NATIONAL BANK.—An insured State bank shall not engage as principal in any activity not permissible for a national bank unless—

"(1) the State bank is in compliance with the fully phased-in capital standards prescribed by the appropriate Federal banking agency;

"(2) the Corporation has not, by regulation or order, determined that engaging in that activity would pose a significant risk to the affected deposit insurance fund; or

"(3) the appropriate Federal banking agency has, by order, determined that the State bank's proposed conduct of the activity—

"(A) would pose no significant risk to the affected deposit insurance fund; and

"(B) would be consistent with the purposes of this Act.

"(c) SUBSIDIARIES OF INSURED STATE BANKS.—A subsidiary of an insured State bank shall not engage as principal in any activity not permissible for a subsidiary of a national bank unless—

"(1) the State bank is in compliance with all currently applicable capital standards prescribed by the appropriate Federal banking agency;

"(2) the Corporation has not, by regulation or order, determined that engaging in that activity in a subsidiary of an insured bank would pose a significant risk to the affected deposit insurance fund; or

"(3) the appropriate Federal banking agency has, by order, determined that the State bank's proposed conduct of the activity through the subsidiary—

"(A) would pose no significant risk to the affected deposit insurance fund; and

"(B) would be consistent with the purposes of this Act.

"(d) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of the Corporation, the appropriate Federal banking agency, or a State to impose more stringent restrictions.

"(e) EFFECTIVE DATE.—This section shall take effect upon the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1990, except that subsections (b) and (c) shall take effect one year after that date of enactment."

#### SEC. 8. DEPOSITS BY BROKERS AND OTHER INTERMEDIARIES.

(a) IN GENERAL.—Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f) is amended to read as follows:

##### "SEC. 29. DEPOSITS BY INTERMEDIARIES.

"(a) DEPOSITS MAY NOT BE ACCEPTED FROM UNLICENSED INTERMEDIARIES.—An insured depository institution shall not accept deposits, directly or indirectly, from or through any intermediary (other than the intermediary's own funds) unless the intermediary is licensed under this section.

"(b) CERTAIN DEPOSITORY INSTITUTIONS INELIGIBLE TO ACCEPT DEPOSITS FROM ANY INTERMEDIARY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an insured depository institution shall not accept deposits, directly or indirectly, from or through any intermediary (other than the intermediary's own funds) unless the institution—

"(A) is in compliance with all currently applicable capital standards prescribed by the appropriate Federal banking agency; and

"(B) does not pay or offer to pay rates of interest for such deposits that significantly exceed rates paid or offered by the institution on deposits not made by or through intermediaries.

"(2) EXEMPTIONS.—The Corporation may, by order, exempt an insured depository institution from paragraph (1) if the Corporation determines that the institution's acceptance of deposits from or through intermediaries—

"(A) would be safe and sound; and

"(B) in the case of an institution for which the Corporation or the Resolution Trust Corporation is conservator, would be—

"(i) necessary so that the institution can meet its depositors' demands or pay its other obligations in the usual course of business; or

"(ii) consistent with the conservator's fiduciary duty to minimize the institution's losses.

##### "(c) LICENSING INTERMEDIARIES.—

"(1) REGULATIONS REQUIRED.—The Corporation shall prescribe regulations that do all of the following:

"(A) Establish a system for licensing intermediaries.

"(B) Require each applicant for a license to provide evidence satisfactory to the Corporation that the applicant can comply with this section and with regulations prescribed by the Corporation under this section.

"(C) Require a licensee to affirm in writing, under penalty of perjury, and as a condition of licensure, that the licensee—

"(i) will use the license only to make or facilitate the making of deposits on behalf of beneficial owners, and will ensure that no beneficial owner of deposits made by or through the licensee has a noncontingent, vested interest in such deposits that exceed \$100,000; and

"(ii) will, upon request of the Corporation or any institution at which the licensee makes 1 or more deposits as intermediary, provide by the close of business on the following business day a list of—

"(I) the beneficial owners of the deposits made at that institution,

"(II) the beneficial owners' taxpayer identification or employer identification numbers, and

"(III) the beneficial owners' respective shares of the deposits.

"(D) Authorize the Corporation to revoke an intermediary's license—

"(i) if the intermediary fails to comply with this section or with regulations prescribed by the Corporation under this section; or

"(ii) for other good cause.

"(2) VERIFICATION SYSTEM REQUIRED.—The Corporation shall establish a system to enable insured depository institutions, current and prospective customers of an intermediary, and other persons to ascertain immediately, by telephone, whether the intermediary is licensed under this section.

"(d) REGULATION AUTHORIZED.—The Corporation may, by regulation or order, do any 1 or more of the following:

"(1) Prohibit any insured depository institution or any class of insured depository institutions from accepting deposits from or through any intermediary.

"(2) Establish the terms under which insured depository institutions, or any such institution or class of institutions, may accept deposits from or through intermediaries.

"(3) Establish the terms under which intermediaries may accept funds for deposit at insured depository institutions.

"(4) Require intermediaries to make such reports and other disclosures as may be appropriate to implement this section, protect the deposit insurance funds, and protect any insured depository institution from fraud or loss.

"(5) Require intermediaries to provide appropriate assurances that they will comply with this section and with regulations prescribed by the Corporation under this section.

"(6) Require intermediaries to pay such fees as will defray the costs of implementing this section.

"(e) INTERMEDIARY DEFINED.—

"(1) IN GENERAL.—For purposes of this section, and except as provided in paragraph (2), the term 'intermediary' means—

"(A) any person engaged in the business of making or facilitating the making of deposits at insured depository institutions on behalf of other persons;

"(B) any person engaged in the business of making deposits at insured depository institutions for the purpose of selling interests in those deposits;

"(C) any agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan; or

"(D) any trustee or custodian of a pension or profit-sharing plan who makes or facilitates the making of deposits at insured depository institutions on behalf of plan participants.

"(2) EXCLUSIONS.—The term 'intermediary' excludes the following:

"(A) A trust department of an insured depository institution, if the trust in question places funds at insured depository institutions only as an incident to its other activities.

"(B) The trustee of a testamentary account.

"(C) The trustee of an irrevocable trust (other than a trust described in paragraph (1)(C)), as long as the trust in question places funds at insured depository institutions only as an incident to its other activities.

"(D) An agent or nominee—

"(i) who is not engaged in the business of placing funds with insured depository institutions;

"(ii) who receives no remuneration, directly or indirectly, from the insured depository institution for placing funds on behalf of other persons; and

"(iii) whose aggregate deposits as agent or nominee do not exceed such dollar amounts as the Corporation may by regulation prescribe.

"(E) An individual who makes deposits on behalf of members of his or her immediate family.

"(F) An employee of a licensed intermediary acting within the scope of his or her employment.

"(3) INCLUSION OF DEPOSITORY INSTITUTIONS ENGAGING IN CERTAIN ACTIVITIES.—Notwithstanding paragraph (2), the term 'intermediary' includes any insured depository institution, and any employee of any insured depository institution, which engages, directly or indirectly, in soliciting deposits by offering rates of interest on such deposits that are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market area."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to all deposits accepted after the end of the 240-day period beginning on the date of enactment of this Act.

(c) DEADLINE FOR REGULATIONS.—The Corporation shall promulgate final regulations under section 29(c)(1) of the Federal Deposit Insurance Act (as added by subsection (a) of this section) not later than 180 days after the date of enactment of this Act, and those regulations shall take effect not later than 240 days after the date of enactment.

SEC. 9. LEAST-COST RESOLUTION.

Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by adding at the end the following new subsection:

"(1) LEAST-COST RESOLUTION REQUIRED.—

"(1) IN GENERAL.—The Corporation shall not do or bind itself to do, directly or indirectly, any of the following with respect to any insured depository institution except to satisfy the Corporation's obligations to that institution's insured depositors at the least possible long-term cost to the affected deposit insurance fund (and then only insofar as necessary to satisfy those obligations):

"(A) Take any action under subsection (f)(1), (i)(3), (m), or (n) of section 11.

"(B) Take any action under subsection (c).

"(C) Expend any money from the Bank Insurance Fund or Savings Association Insurance Fund other than to pay for examination, supervision, and administration.

"(D) Assume or guarantee any liability.

"(2) DETERMINING LEAST COSTLY APPROACH.—In determining how to satisfy the

Corporation's obligations to an institution's insured depositors at the least possible long-term cost to the affected deposit insurance fund, the Corporation shall comply with the following provisions:

"(A) PRESENT-VALUE ANALYSIS; DOCUMENTATION REQUIRED.—The Corporation shall—

"(i) evaluate alternatives on a present-value basis, using a realistic discount rate;

"(ii) document that evaluation; and

"(iii) retain the documentation for not less than 5 years.

"(B) FOREGONE TAX REVENUES.—Federal tax revenues that the Government would forego as the result of a proposed transaction, to the extent reasonably ascertainable, shall be treated as if they were revenues foregone by the affected deposit insurance fund.

"(C) ECONOMIC CONDITIONS AND FINANCIAL STABILITY.—The Corporation shall not consider how the transaction would affect economic conditions or financial stability except insofar as such effects would result in quantifiable costs to the affected deposit insurance fund.

"(3) CATEGORICAL RULE TO BE IMPLEMENTED.—

"(A) IN GENERAL.—Effective December 31, 1994, or at such earlier time as the Corporation determines to be appropriate, the Corporation shall not do or bind itself to do, directly or indirectly, anything described in any subparagraph of paragraph (1) with respect to any insured depository institution that would have the effect of preventing loss to—

"(i) depositors on the uninsured portion of deposits; or

"(ii) creditors other than depositors.

"(B) DEADLINE FOR REGULATIONS.—The Corporation shall promulgate regulations to implement subparagraph (A) not later than December 31, 1991, and such regulations shall take effect not later than December 31, 1993.

"(4) GAO AUDIT.—The General Accounting Office shall annually audit the Corporation's compliance with this subsection.

"(5) RULE OF CONSTRUCTION.—No provision of law shall be construed as permitting the Corporation to do anything prohibited by paragraph (1), (2), or (3) unless the provision expressly amends this subsection."

SEC. 10. CROSS-GUARANTEE LIABILITY.

(a) IN GENERAL.—Section 5(e) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)) is amended—

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

"(e) LIABILITY OF AFFILIATES FOR LOSSES TO CORPORATION.—";

(2) by amending paragraph (1)(A) to read as follows:

"(1) IN GENERAL.—

"(A) LIABILITY ESTABLISHED.—Any affiliate of an insured depository shall be liable for any loss incurred by the Corporation, or any loss which the Corporation reasonably anticipates incurring, after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1990 in connection with—

"(i) the default of that insured depository institution; or

"(ii) any assistance provided by the Corporation to that insured depository institution in danger of default.";

(3) by redesignating subparagraphs (B) and (C) of paragraph (1) as subparagraphs (C) and (D), respectively and inserting the following after subparagraph (A):

"(B) LIMIT ON LIABILITY.—The aggregate liability of all affiliates of an insured depository

tory institution, other than insured depository institutions and subsidiaries of insured depository institutions, shall not exceed 5 percent of the assets of the insured depository institution at the time of the default or assistance described in subparagraph (A).";

(4) in paragraph (2)(C)(ii)(III), by striking "other general or"; and

(5) in paragraph (2)(C)(ii), by striking subparagraph (IV).

(b) CONFORMING AMENDMENTS.—

(1) in subparagraph (C) of paragraph (1), as redesignated, by striking "insured depository institution" and inserting "affiliate";

(2) in subparagraph (D) of paragraph (1), as redesignated, by striking "insured depository institution" and inserting "affiliate", and by striking "institution" and inserting "affiliate";

(3) in paragraph (2)(A)(ii), by striking "commonly controlled insured depository institution" and inserting "affiliate" and by striking "commonly controlled depository institution's" and inserting "affiliate's";

(4) in paragraph (2)(A)(iii), by striking "commonly controlled depository institution" and inserting "affiliate";

(5) in paragraph (2)(B)(i), by striking "insured depository institution" and inserting "affiliate", and by striking "commonly controlled" and inserting "affiliated";

(6) in paragraph (2)(B)(ii), by striking "insured depository institution" and inserting "affiliate", by striking "institution's" and inserting "affiliate's", and by striking "commonly controlled" and inserting "affiliated";

(7) in paragraph (2)(C), by striking "insured depository institution" and inserting "affiliate";

(8) in paragraph (2)(C)(i), by striking "liabilities of the depository institution" and inserting "liabilities of the affiliate";

(9) in paragraph (2)(C)(i)(II), by striking "of the depository institution";

(10) in paragraph (2)(D)(i), by striking "such commonly controlled depository institutions" and inserting "affiliates", and by striking "such commonly controlled depository institution" and inserting "affiliate";

(11) in paragraph (2)(D)(ii), by striking "commonly controlled depository institutions" and inserting "affiliates", and by striking "commonly controlled depository institution" each place it appears and inserting "affiliate";

(12) in paragraph (3)(B), by striking "commonly controlled depository institutions" where it appears in clauses (ii) and (iii) and inserting "affiliates";

(13) in paragraph (4), by striking "insured depository institution" each place it appears and inserting "affiliate", by striking "institution's" and inserting "affiliate's", and by redesignating clauses (i) and (ii) as subparagraphs (A) and (B);

(14) in paragraph (5), by striking the catchline and inserting "(5) EXEMPTIONS.—";

(15) in paragraph (5)(A), by striking "insured depository institution" and inserting "affiliate";

(16) in paragraph (5)(B), by striking "all other insured depository institution affiliates of such depository institution" and inserting "all affiliates", and by striking "regard to" and inserting "using the exemption contained in";

(17) in paragraph (7), by striking "depository institution shall not be treated as commonly controlled" and inserting "affiliate shall have no liability";

(18) in paragraph (7)(A), by striking "1 depository institution controls another" and inserting "control was acquired";

(19) in paragraph (7)(B), by striking "the controlling bank and all other insured depository institution affiliates of such controlling bank" and inserting "all insured depository institution affiliates" and by striking "regard to" and inserting "using the exemption contained in";

(20) in paragraph (8), by striking "depository institution" and inserting "affiliate" and by striking "insured depository institution which is an affiliate of each such depository institution" and inserting "affiliated insured depository institution"; and

(21) by striking paragraph (9).

SEC. 11. RISK-BASED ASSESSMENTS; INCENTIVES TO HAVE GREATER CAPITAL.

Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended by redesignating paragraph (9) as paragraph (11), and by inserting after paragraph (8) the following new paragraphs:

"(9) RISK-BASED ASSESSMENTS.—

"(A) IN GENERAL.—The Board of Directors may, by regulation, establish a risk-based assessment system for insured depository institutions.

"(B) RISK-BASED ASSESSMENT SYSTEM DEFINED.—For purposes of this paragraph, the term 'risk-based assessment system' means a system relating insured depository institutions' assessment rates to the risk those institutions pose to the affected deposit insurance fund.

"(C) PRIVATE REINSURANCE AUTHORIZED.—In carrying out this paragraph, the Corporation may obtain private reinsurance covering not more than 10 percent of any loss the Corporation incurs with respect to an insured depository institution, and base that institution's assessment rates (in whole or in part) on the cost of that reinsurance.

"(D) SYSTEM FOR EACH FUND MAY BE ESTABLISHED SEPARATELY.—The Board of Directors may establish separate risk-based assessment systems for Bank Insurance Fund members and Savings Association Insurance Fund members.

"(10) INCENTIVES TO HAVE GREATER CAPITAL.—

"(A) IN GENERAL.—The Board of Directors may, by regulation, establish a capital-based assessment system for insured depository institutions.

"(B) CAPITAL-BASED ASSESSMENT SYSTEM DEFINED.—For purposes of this paragraph, the term 'capital-based assessment system' means a system relating insured depository institutions' assessment rates to those institutions' capital.

"(C) SYSTEM FOR EACH FUND MAY BE ESTABLISHED SEPARATELY.—The Board of Directors may establish separate capital-based assessment systems for Bank Insurance Fund members and Savings Association Insurance Fund members.

"(D) RELATION TO RISK-BASED ASSESSMENT SYSTEM.—A capital-based assessment system may be part of, or in addition to, any risk-based assessment system established under paragraph (9)."

SEC. 12. MULTIPLE ACCOUNTS; PASS-THROUGH INSURANCE COVERAGE.

(a) DEFINITION OF INSURED DEPOSIT.—Section 3(m) of the Federal Deposit Insurance Act (12 U.S.C. 1813(m)) is amended—

(1) by amending paragraph (1) to read as follows:

"(m)(1) Subject to paragraph (2) of this subsection, the term 'insured deposit' means the net amount due to any depositor, as determined under section 11(a)(1). For the purpose of clarifying and defining the insurance coverage under this subsection and subsection (i) of section 7, the Corporation

is authorized to define, with such classifications and exceptions as it may prescribe, terms used in those subsections, in subsection (p) of section 3, and in subsections (a) and (i) of section 11, and the extent of the insurance coverage resulting therefrom"; and

(2) by adding at the end the following new paragraph:

"(3) PASS-THROUGH INSURANCE RESTRICTED TO INTERESTS IN TAX-QUALIFIED RETIREMENT PLANS.—Deposits may not be insured on a pro-rata or pass-through basis, except for—

"(A) the interests of individual participants in a plan meeting the requirements of section 401(a) of the Internal Revenue Code of 1986 that includes a trust exempt from tax under section 501(a); and

"(B) individual retirement arrangements, as described in the Internal Revenue Code of 1986."

(b) INSURED AMOUNT PAYABLE.—Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amended to read as follows:

"(a)(1)(A) The Corporation shall insure the deposits of all insured depository institutions as provided in this Act.

"(B) All deposits shall be registered under the taxpayer identification or employer identification numbers of 1 or more persons.

"(C) The maximum amount of any depositor's insured deposit at any insured depository institution shall be \$100,000.

"(D) In determining the amount due to any depositor for deposits in an insured depository institution, the following provisions shall apply:

"(i) The Corporation shall—

"(I) aggregate the amounts of all deposits in the institution registered under the depositor's taxpayer identification or employer identification number and allocated to the depositor under clause (iii); and

"(II) deduct any offsets.

"(ii) The amount due to the depositor is the lesser of—

"(I) the amount calculated under clause (i); or

"(II) \$100,000.

"(iii) For purposes of clause (i)—

"(I) deposits registered under the taxpayer identification or employer identification number of 1 person shall be allocated to that person; and

"(II) deposits registered under the taxpayer identification or employer identification numbers of more than 1 person shall be allocated equally among those persons, except to the extent that the Corporation has provided otherwise by regulation. In no case shall the Corporation allocate to those persons a total amount exceeding the amount of the deposits."

(c) CONFORMING AMENDMENTS.—

(1) Section 7(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(i)) is amended by striking "Except with respect to trust funds which are owned by a depositor referred to in paragraph (2) of section 11(a) of this Act, trust" and inserting "Trust".

(2) Section 11(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(2)) is amended to read as follows:

"(2) [Repealed]."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1992, except that such amendments shall not apply prior the stated maturity of any time deposit made prior to September 25, 1990.

## SEC. 13. GRANTING DEPOSIT INSURANCE.

Section 4 of the Federal Deposit Insurance Act (12 U.S.C. 1814) is amended—

(1) by amending subsection (b) to read as follows:

“(b) CERTIFICATION BY OTHER BANKING AGENCIES.—Every national bank which is authorized to commence or resume the business of banking, and which is engaged in the business of receiving deposits other than trust funds as herein defined, and every noninsured national nonmember bank which becomes a member of the Federal Reserve System, and every noninsured State bank which is converted into a national member bank or which becomes a member of the Federal Reserve System, and which is engaged in the business of receiving deposits other than trust funds as herein defined, shall be an insured depository institution upon—

“(1) application to the Corporation; and  
“(2) receipt by the Corporation of a certificate which is issued to the Corporation by the Comptroller of the Currency in the case of a national member bank which is authorized to commence or resume the business of banking or a State bank which is converted into a national member bank, or by the Board of Governors of the Federal Reserve System in the case of a national nonmember bank or a State bank which becomes a member of the Federal Reserve System, and which meets the requirements of subsection (d), unless insurance is denied by the Board of Directors.”;

(2) by redesignating subsections (c) and (d) as subsections (i) and (j), respectively; and

(3) by inserting after subsection (b) the following new subsections:

“(c) INTERIM NATIONAL BANKING ASSOCIATIONS.—In the case of any interim national bank that is chartered by the Comptroller of the Currency and will not open for business, such bank shall be an insured depository institution upon the issuance of such bank's charter by the Comptroller.

“(d) CERTIFICATE REQUIREMENTS.—Any certificate issued to the Corporation under subsection (b) shall state that the bank is authorized to transact the business of banking in the case of a national member bank, or is a member of the Federal Reserve System in the case of a State bank which is converted into a national member bank, or a national nonmember bank or a State bank which becomes a member of the Federal Reserve System, and that consideration has been given to the factors enumerated in section 6 of this Act.

“(e) REVIEW REQUIREMENTS.—In reviewing any certificate and application referred to in subsection (b), the Board of Directors shall consider the factors described in paragraphs (1), (2), (3), (4), (5), and (7) of section 6 of this Act in determining whether to deny insurance.

“(f) NOTICE OF DENIAL OF APPLICATION.—If the Board of Directors, after giving due deference to the determination of the Comptroller of the Currency or the Board of Governors of the Federal Reserve System, as appropriate, with respect to such factors, does not concur in the determination of the Comptroller or the Board of Governors, as appropriate, the Board of Directors shall promptly notify the Comptroller or the Board of Governors, as appropriate, that insurance has been denied, giving specific reasons in writing for the Corporation's determination with reference to the factors described in paragraphs (1), (2), (3), (4), (5), and (7) of section 6, and no insurance shall be granted.

“(g) VOTING REQUIREMENTS.—The authority of the Board of Directors to make any determination to deny insurance under this subsection may not be delegated by the Board of Directors and any such determination may be made only upon a vote of not less than 3 members of the Board of Directors.

“(h) CONTINUATION OF INSURANCE UPON BECOMING A MEMBER BANK.—In the case of an insured bank which is admitted to membership in the Federal Reserve System or an insured State bank which is converted into a national member bank, such application and certificate shall not be required, and the bank shall continue as an insured bank.”.

## SEC. 14. DISCLOSURE.

(a) REPORTS OF FINANCIAL CONDITION BY INSURED DEPOSITORY INSTITUTIONS.—

(1) IN GENERAL.—Section 7(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(3)) is amended—

(A) by striking “(3)” and inserting the following:

“(3) QUARTERLY REPORTS.—

“(A) IN GENERAL.—”; and

(B) by inserting after subparagraph (A) the following:

“(B) ADDITIONAL INFORMATION.—In accordance with regulations prescribed by the appropriate Federal banking agency, the report of condition required by subparagraph (A) shall, in the case of banks with total assets of more than \$1,000,000,000 also contain—

“(i) estimates of the aggregate market value of assets and liabilities and the resulting estimated net worth, and supporting data and assumptions used in preparing the estimates; and

“(ii) disaggregated reports of assets, including participation in highly-leveraged transactions, holdings of noninvestment grade securities, commercial and industrial loans by sector, and other assets as specified by the appropriate Federal banking agency.

“(C) REPORT ON SECURITIES HOLDERS AND NONBANKING ACTIVITIES.—At the same time as it submits the report required by subparagraph (A), each depository institution shall submit to the appropriate Federal banking agency a report containing—

“(i) the names of the holders of more than 5 percent of the insured institution's equity securities and the maximum amount of securities held by each such holder during the preceding quarter; and

“(ii) a description of activities conducted by the institution and its subsidiaries that are not permitted for national banks or for bank holding companies, with data on the magnitude of the activity.

“(D) PUBLIC ACCESS TO REPORTS.—Each appropriate Federal banking agency shall make reports required pursuant to this subsection available to the public upon request pursuant to section 552 of title 5, United States Code. The provisions of paragraphs (4) and (8) of section 552(b) of such title shall not apply to any such request. For the purpose of this subparagraph, beginning 75 days after the reporting date for such reports, section 552(b)(6)(A) of such title shall apply with respect to statistical information contained in those reports by substituting ‘five’ for ‘ten’ and section 552(b)(6)(B) shall not apply.”.

(2) EFFECTIVE DATES.—

(A) QUARTERLY REPORTS.—Except as provided in subparagraph (B), the appropriate Federal banking agency shall promulgate final regulations requiring insured depository institutions to submit quarterly reports containing the information described in the

amendments made by paragraph (1) beginning not later than January 1, 1993.

(B) MARKET VALUE ESTIMATE.—Reports containing the market value estimates required by section 7(a)(3)(B)(i) of the Federal Deposit Insurance Act, as amended by paragraph (1), shall be submitted beginning not later than January 1, 1993. If all of the appropriate Federal banking agencies determine that compliance by that date is not feasible, those reports shall be submitted beginning not later than January 1, 1994.

(b) REPORTS BY FEDERAL BANKING AGENCIES.—

(1) IN GENERAL.—Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) is amended by—

(A) redesignating subsections (b) through (g) as subsections (c) through (h); and

(B) inserting after subsection (a) the following new subsection:

“(b) REPORTS TO CONGRESS.—

“(1) IN GENERAL.—Each appropriate Federal banking agency shall submit an annual report to the Congress which shall contain—

“(A) estimates of the number and aggregate assets of insured depository institutions likely to fail during each of the 3 years following submission of the report and of the costs to the Bank Insurance Fund and Savings Association Insurance Fund as a result of such failures, and supporting data and assumptions used in preparing the estimates;

“(B) a report on the conduct by insured depository institutions and their subsidiaries of activities not permitted for national banks or for bank holding companies, by State or Federal charter status;

“(C) a report on the number and assets of insured depository institutions that, under uniform definitions established by the appropriate Federal banking agencies, are insolvent, approaching insolvency, weakly capitalized, adequately capitalized, and strongly capitalized; and

“(D) a list of all cease-and-desist orders, supervisory agreements, and capital restoration plans entered into in the previous 12 months, and the extent of compliance with outstanding orders, agreements, and plans.

“(2) METHOD OF FILING.—Reports required by this subsection shall be submitted to the Congress in accordance with the requirements of subsection (a)(2) and shall be made available to the public.”.

(2) EFFECTIVE DATE.—The reports required pursuant to the amendments made by paragraph (1) shall be filed annually not later than March 1 of the following year.

(c) INSURANCE FUND REPORTS.—Section 17(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1827(a)(1)) is amended by—

(1) striking “and” at the end of subparagraph (E);

(2) striking the period at the end of subparagraph (F), and inserting a semicolon in lieu thereof; and

(3) inserting after subparagraph (F) the following:

“(G) information pertaining to failed depository institutions, including—

“(i) the name and total assets of each insured depository institution that failed during the 12-month period preceding submission of the report, including those that received assistance under section 13(c), and the actual or estimated cost of resolution or assistance to each such depository institution;

“(ii) for each failed institution, the location by State, the State or Federal charter

status, and Federal Reserve System membership status;

"(iii) a breakdown of the number and aggregate assets of all failed institutions by region, State or Federal charter status, and Federal Reserve System membership status;

"(iv) a report of concentrations of liabilities and assets of failed institutions, including a breakdown by State or Federal charter status;

"(H) the number and aggregate assets of depository institutions on the problem bank list or any other list which identifies institutions which may fail or require assistance or resolution within the foreseeable future, by State or Federal charter status and Federal Reserve System membership status, at the time of submission of the report;

"(I) an estimate of the number and aggregate assets of banks that are likely to be included on the problem bank list or other list described in subparagraph (H) in each of the 3 years following submission of the report, by State or Federal charter status and Federal Reserve System membership status, and supporting data and assumptions used in preparing the estimate; and

"(J) the estimated resolution and assistance costs which are likely to be expended in each of the 3 years following submission of the report, including an explanation of all data and assumptions used in developing estimates required by this paragraph."

(d) CONFIDENTIAL ACCESS TO INFORMATION BY GAO AND CBO; GAO REVIEWS AND REPORTS.—

(1) IN GENERAL.—The Federal Deposit Insurance Act is amended by adding at the end the following:

"SEC. 36. CONFIDENTIAL ACCESS TO CERTAIN INFORMATION.

"Each Federal banking agency shall make available to the Comptroller General and the Congressional Budget Office, upon request from the Comptroller General or the Director of the Congressional Budget Office, the following information:

"(1) the agency's internal rating system and each institution's rating; and

"(2) a list, identifying individual insured institutions, of those institutions which the agency believes may fail within the foreseeable future or which the agency believes may require assistance or resolution.

Information provided to the Comptroller General or the Director pursuant to this subsection shall not be disclosed except in summary form or in other analytical reports in which the identity of a specific institution or other person is not revealed."

(2) REVIEWS AND REPORTS.—Section 17(f) of the Federal Deposit Insurance Act (12 U.S.C. 1827(f)) is amended

(A) by inserting "(1)" after "(f)"; and

(B) by adding at the end the following:

"(2) The Comptroller General shall review the oversight by the Federal banking agencies to determine whether reports of condition under section 7(a) require information to reasonably reflect the condition of depository institutions. The Comptroller General shall include in each report under paragraph (1) the results of such review and any recommendations to improve the reports so that—

"(A) the information required reasonably reflects the condition of depository institutions; and

"(B) the information provided facilitates regulatory actions, including early intervention.

"(3) Each report under paragraph (1) shall also contain—

"(A) an audit of the failure estimates contained in the most recent reports under subparagraphs (I) and (J) of subsection (a)(1); and

"(B) an audit of the failure estimates contained in the most recent reports under subsection (b)(1)."

(e) DISCLOSURE BY UNINSURED DEPOSITORY INSTITUTIONS.—Section 28(h) of the Federal Deposit Insurance Act (12 U.S.C. 1831e(h)) is amended to read as follows:

"(h) DISCLOSURE BY UNINSURED DEPOSITORY INSTITUTION.—

"(1) IN GENERAL.—Any depository institution the deposits of which are not insured by the Corporation under this Act shall disclose clearly and conspicuously that the depository institution's deposits are 'not federally insured'—

"(A) on each signature card, passbook, and instrument evidencing a deposit;

"(B) in periodic statements of account; and

"(C) in all advertising.

"(2) EXCEPTION FOR INSTITUTIONS NOT ACCEPTING RETAIL DEPOSITS.—Paragraph (1) shall not apply with respect to advertising by any depository institution that, within the United States, does not accept initial deposits of less than \$100,000 from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

"(3) MANNER AND CONTENT OF DISCLOSURE.—The Corporation may, by regulation or order, prescribe the manner and content of the disclosure under paragraph (1).

"(4) ENFORCEMENT.—Compliance with the requirements of this subsection, and any regulation prescribed or order issued under this subsection, shall be enforced under section 8 in the same manner and to the same extent as if the depository institution were an insured State nonmember bank."

(f) ACCOUNTING GUIDANCE.—

(1) DISCLOSURE GUIDELINES.—The Securities and Exchange Commission, in consultation with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision, shall facilitate the development of disclosure guidelines under generally accepted accounting principles applicable to insured depository institutions for the purposes of—

(A) accurately reflecting (at market value, to the extent feasible) the economic condition of those institutions in financial statements and reports of condition; and

(B) facilitating effective supervision of insured depository institutions, and prompt corrective action to resolve troubled institutions' problems at no cost to the Bank Insurance Fund or Savings Association Insurance Fund.

(2) INTERPRETIVE GUIDANCE.—The Securities and Exchange Commission, in consultation with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision, shall facilitate the development of guidelines used in interpreting existing accounting standards under generally accepted accounting principles for depository institutions in a manner consistent with the purposes of—

(A) requiring earlier disclosure of problem loans; and

(B) preventing delay in recognizing losses and reporting inadequate loss reserves that may result in loss to the Bank Insurance

Fund or the Savings Association Insurance Fund.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1990

SUMMARY

A. Preliminary Points

1. This is a work in progress: Constructive criticism is welcome. No part of the proposal is cast in stone. No alternative or additional reform has been ruled out.

2. Other reforms are also needed: Whatever legislation ultimately results should not only reform our deposit insurance system but also make significant strides toward modernizing our financial services industry and our system of bank and thrift regulation. No amount of deposit insurance reform can make banks and thrifts profitable if they cannot compete effectively with other financial service providers at home and abroad. We should also consider seriously the idea of consolidating regulation of our depository institutions, possibly into a single—fully independent—regulator, separate and distinct from the deposit insurer.

B. Highlights of the Proposal

Requires regulators to examine banks and thrifts annually and take prompt corrective action to recapitalize or resolve weak institutions before they become liabilities to the deposit insurance fund.

Requires stronger capital standards—the new standards must be strong enough to provide an adequate margin of safety to the deposit insurance fund.

Sets goals for reform of accounting principles that apply to insured depository institutions and establishes a process for working toward those goals.

Curbs risk-taking by State-chartered commercial banks at the expense of the Federal deposit insurance system.

Ends the FDIC policy of too-big-to-fail by requiring the FDIC to resolve failed institutions by means of whatever resolution strategy costs the deposit insurance funds least and prohibiting the FDIC from taking actions that have the effect of protecting uninsured depositors.

Authorizes the FDIC to implement a system of risk-based or capital-based deposit insurance premiums, and to use private reinsurance as a basis for setting risk-based premiums.

Limits the scope of the Federal Government's deposit insurance liabilities by restricting deposit brokerage and other deposits by intermediaries, limiting pass-through deposit insurance, and limiting deposit insurance to \$100,000 per individual per institution.

Makes the owners of depository institutions stand behind those institutions by clarifying the enforceability of capital maintenance agreements; requiring affiliated depository institutions to be responsible for losses they cause the FDIC; and establishing limited cross-guarantee liability for non-depository institution affiliates of banks and thrifts.

Gives the financial markets, the regulators, and the general public better information about the condition of financial institutions and the banking and thrift industries generally by imposing new reporting and disclosure obligations on financial institutions and their regulators.

The proposal provides appropriate transition rules for the implementation of these reforms.

### C. Detailed Outline of Proposal

#### 1. Prompt Corrective Action Requirement

a. In General: The proposal requires regulators to take prompt corrective action to recapitalize or resolve weak institutions. The goal of this prompt corrective action requirement—albeit a goal that probably cannot be realized in all cases—is to resolve troubled institutions at no cost to the deposit insurance funds. To make this goal realistic, the proposal requires strengthened capital levels; annual on-site examinations of all insured depository institutions; and improvements in accounting principles that will yield more accurate financial statements and reports of condition.

b. Annual Examination Requirement: The proposal requires every Federally insured depository institution to receive an on-site examination at least once annually. Such a requirement has been endorsed by Federal Reserve Chairman Alan Greenspan, among others, in his July 12 testimony before the Committee. Because not all of the banking regulatory agencies currently have adequate staff to conduct annual on-site examinations, the proposal authorizes the banking regulatory agencies to contract with private-sector firms for examination service. Such private-sector firms would be bound by appropriate conflict-of-interest and confidentiality restrictions.

c. Prompt Corrective Action Requirement: The proposal would require regulators to impose increasingly stringent restrictions on the activities and operations of troubled depository institutions as the capital of those institutions falls below required levels. One set of restrictions will come into force when an institution's capital falls below the minimum capital standards established by regulation or regulatory guideline. These will not be currently applicable minimum standards, but strengthened standards, as further described below. If the institution's capital level continues to deteriorate and falls below a lower, "critical capital level," the regulators will have to sell or close the institution or take an alternative measure equally protective of the deposit insurance fund.

To understand how this part of the proposal will work in practice, it helps to imagine, say, a bank whose capital is initially adequate, but deteriorating.

(1) Level One: Minimum Capital Level: The first set of restrictions will come into force when the bank's capital falls below the minimum capital levels established by the regulators. These will not be the same minimum capital levels in force today, but new, stronger minimum levels, discussed further below.

When the bank's capital falls below the minimum level, it will have to do the following three things:

(a) Stop paying dividends: The bank will be prohibited from paying dividends. This restriction protects the deposit insurance funds by ensuring that weak institutions do not deplete their capital for the benefit of their shareholders.

(b) Limit its asset growth: Asset growth will be restricted to an amount equal to net interest credited on deposits. All growth will have to be fully capitalized.

(c) File a capital restoration plan: The bank will have to file a capital restoration plan with 30 days after it falls out of compliance with capital standards. The plan will have to (i) specify how the institution will attain compliance with capital standards, (ii) specify what activities the bank will engage in, and (iii) be acceptable to its regulator. If the bank is part of a holding com-

pany structure, its parent will have to guarantee compliance with the plan. This will press the parent company to decide promptly whether to recapitalize the bank, sell it, or stand behind it until it recovers.

If the bank does not submit and implement a capital restoration plan, its regulator would have to require it to recapitalize through sale of stock unless such a sale would not further the goal of protecting the deposit insurance fund against loss. In addition, the regulator could also restrict the bank's transactions with affiliates; restrict the bank's activities; limit the interest rates the bank pays for deposits; require election of a new board of directors, its chief executive officer, or its chief financial officer. In addition, institutions that fail to submit or materially violate their capital restoration plans will be prohibited from paying bonuses or granting salary increases to their executive officers.

(2) Level Two: Critical Capital Level: If the bank's capital level continues to deteriorate, it will eventually fall below a second key level—the "critical capital level." How that level will be set is discussed further below.

When the banks' capital position falls below the critical capital level, three sets of additional restrictions will come into play.

(a) Restrictions on activities and operations: The bank will become subject to a broad range of stringent restrictions on its activities and operations. These restrictions will require regulatory scrutiny of large or potentially abusive transactions.

(b) Subordinated debt payments prohibited: The institution will be prohibited from making any payments of interest or principal on subordinated debt. Subordinated debt holders should not stand in line ahead of the deposit insurance funds and the taxpayers when it comes to dealing with troubled institutions. Because existing subordinated debt holders may have different expectations, however, the proposal would exempt holders of subordinated debt outstanding as of October 25, 1990 and not extended or otherwise renegotiated after that date.

(c) Conservatorship or equally protective action: Within 30 days after the bank falls below the critical capital level, its primary regulator must either appoint a conservator or receiver or take an alternate action more likely to protect the deposit insurance fund from loss and document why that alternative is superior to appointment of a conservator or receiver.

(3) Setting the Minimum and Critical Capital Levels: The proposal does not specify the minimum and critical capital levels numerically. Instead, it requires the Federal banking agencies to specify these levels and provides a mandate on how to set them. The nature of that mandate is this: capital levels—both the minimum capital level and the critical capital level—should be set so as to make the prompt corrective action mechanism outlined above successful in preventing losses to the deposit insurance funds. This represents a different approach to capital requirements than Congress adopted in FIRREA—a functional standard of capital adequacy instead of a numerical standard.

d. Accounting Reform: The proposal specifies two goals for the accounting principles applicable to insured depository institutions and establishes a process to generate reformed principles that satisfy those goals. The first goal of accounting reform is that accounting principles for insured depository institutions should result in financial state-

ments and reports that accurately reflect—at market value, to the extent feasible—the economic condition of those institutions. The second goal is that the accounting principles should facilitate both effective supervision of depository institutions generally and prompt corrective action to resolve troubled institutions. Again, the idea is to make the prompt corrective action mechanism a realistic way of preventing losses to the deposit insurance funds.

Several witnesses before the Banking Committee have endorsed the concept of mark-to-market, or market value accounting, notably SEC Chairman Breeden in his September 10 appearance. The goals set forth in this proposal are consistent with the spirit of Chairman Breeden's statement. But the proposal would not require depository institutions to adopt mark-to-market accounting—it only requires movement in the direction of market-value accounting to the extent feasible. The feasibility problem is significant: depository institutions hold large volumes of illiquid assets that are not readily susceptible to market-value accounting.

The proposal would kick off a concentrated effort to find ways to more accurately value the illiquid portions of depository institution portfolios. The proposal would direct the SEC, in conjunction with the Federal banking agencies, to facilitate the development of accounting principles to meet these goals. The reformed accounting principles would have to be at least as conservative as generally accepted accounting principles. The proposal would also authorize the Federal banking agencies to adopt accounting principles more conservative than generally accepted accounting principles as appropriate to facilitate effective supervision of depository institutions generally and, specifically, to help meet the goal of the prompt corrective action mechanism—resolution of troubled institutions at no cost to the deposit insurance funds.

e. Internal Audit Requirement: To help the regulators and Congress understand where breakdowns in the system occur, the proposal would require an internal investigation by the inspector general of the failed institution's primary regulator whenever a failure results in a loss to one of the deposit insurance funds. Those reports would be available for review by Congress and the General Accounting Office. To provide time for reforms such as the prompt corrective action requirement to take effect, the proposal includes a generous transition rule for this requirement. This requirement also would have the effect of giving primary regulators greater incentive to act in the interests of the deposit insurance fund.

f. Expanded FDIC Conservatorship Authority: The proposal would give the FDIC independent authority to appoint conservators for depository institutions when necessary to protect the deposit insurance funds. This provision will enable the FDIC to protect the deposit insurance funds even when the failing institution's primary regulator will not.

g. Broad Support: The general concept of requiring prompt corrective action to recapitalize or resolve failing institutions has been endorsed by numerous witnesses before the Banking Committee. These witnesses include Treasury Secretary Brady, Federal Reserve Chairman Greenspan, SEC Chairman Breeden, Comptroller General Bowsher, CBO Director Reischauer, and several academic experts.

## 2. Risky Activities Curtailed

The thrift crisis illustrates the danger of allowing States to leverage Federal deposit insurance for the benefit of their local tax bases. Congress has already addressed this problem in the thrift context. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 generally limited State-chartered thrifts to activities permissible for federally chartered thrifts, with limited exceptions. As of yet, State-chartered banks have not presented the Federal deposit insurance system with the same kind of risk that State-chartered thrifts occasioned. But the potential for problems is real, as demonstrated by Delaware's recent enactment of legislation permitting Delaware-chartered banks to engage in general insurance underwriting activities.

This proposal would generally prohibit State banks and their subsidiaries from engaging in any activity impermissible for national banks unless three conditions are satisfied. First, the State bank must fully comply with applicable capital standards established by its primary regulator (currently, capital standards for State-chartered banks are set by the FDIC or the Federal Reserve Board, depending on whether the bank is a Federal Reserve member). Second, the appropriate Federal banking agency must have previously ruled that the activity would pose no significant risk to the deposit insurance fund. Finally, the FDIC must not have found that the activity in question would pose such a risk to the funds.

## 3. Too-big-to-fail Curtailed

The term "too-big-to-fail" has at least two different meanings. Different elements of the proposal respond to each sense of the term.

a. *Making Depositors Whole:* Most commonly, the term "too-big-to-fail" is used to describe a policy whereby all depositors are made whole when a financial institution fails. The proposal would eliminate too-big-to-fail in this sense by requiring the FDIC to choose, in all cases, the resolution strategy that imposes the least cost on the deposit insurance fund, and to document the analysis underlying that choice. In addition, the proposal would prohibit the FDIC from taking any action—after December 31, 1994—that would have the effect of protecting uninsured depositors of a depository institution. Rigorously applied, these provisions should eliminate the practice of making uninsured depositors whole.

Although the FDIC claims that least-cost resolution is its current practice, this proposal would force the FDIC to perform its least cost analysis on a present-value basis, and to document its analysis. The GAO, in turn, would audit these analyses.

b. *Dealing With Unacceptably Large Failures:* Sometimes, the term "too-big-to-fail" is used to describe a policy of using Federal assistance to keep institutions open whose collapse might harm the entire financial system. The Continental Illinois rescue is the classic illustration of this.

Although the Federal government's ability to stave off a collapse of the payments system or the financial system should not be constrained, there is no clear reason why the deposit insurer should be charged with the task of taking such protective action. In other countries, it would be the responsibility of the central bank.

This proposal would make the situation in the United States more nearly parallel to that in other countries. It would leave the Federal Reserve Board with the ability to take appropriate action to prevent a col-

lapse of the financial system. But it would take such discretion away from the FDIC. The FDIC's job would be refocused on the narrower task of insuring deposits at America's depository institutions, subject to the terms and conditions specified by law.

## 4. Changes in Deposit Insurance Premium Pricing

This proposal would make several changes in the provisions of current law that govern the prices depository institutions pay for deposit insurance coverage.

a. *Risk-based Premiums Authorized:* The proposal would authorize the FDIC to institute risk-based deposit insurance premiums. Recognizing that considerable disagreement exists over how a risk-based system could be constructed and whether it would be effective, it would not require the FDIC to implement such a system. Nevertheless, it would expressly authorize the FDIC to divide depository institutions into risk-based categories and to impose different premiums on members of the different categories. The proposal further authorizes the FDIC to use private reinsurance as a basis for setting risk-based premiums.

b. *Capital-based Premiums Authorized:* The proposal also authorizes the FDIC to divide depository institutions into categories based upon their levels of capitalization and to impose lower deposit insurance premiums on institutions that exceed their capital requirements. This is a crude form of risk-based pricing, insofar as well-capitalized institutions have a low probability of failing. But the real purpose of authorizing such a pricing scheme is to give depository institutions an incentive to hold more capital.

The capital-based pricing and risk-based pricing schemes authorized by this proposal are designed to be fully complementary with one another.

c. *Assessment of Foreign Deposits:* This bill does not address the assessment base issue directly. To a considerable extent, however, the bill does address the issue indirectly, through its reforms in the too-big-to-fail area. By requiring the FDIC to resolve institutions at least cost to the deposit insurance fund, and by barring the FDIC from taking actions to protect uninsured depositors after 1994, this bill would effectively prohibit the FDIC from protecting foreign deposits.

## 5. Restrictions on the Scope of Deposit Insurance Coverage

a. *Licensing Deposit Brokers and Intermediaries:* In FIRREA, Congress prohibited the use of brokered deposits by undercapitalized institutions. This proposal would go farther by requiring the FDIC to license and register individuals and entities in the business of making deposits at insured institutions on behalf of third parties—including not only traditional deposit brokers, but other deposit intermediaries such as mutual funds and pension funds. It would generally forbid depository institutions from accepting deposits on behalf of third parties from unlicensed deposit intermediaries.

The FDIC would be given authority to regulate all aspects of deposit brokerage that involve risk to the deposit insurance funds, including power to (1) prohibit institutions or classes of institutions from accepting deposits on behalf of third parties; (2) establish the rules under which deposit brokers and intermediaries and depository institutions may accept such deposits; and (3) impose appropriate reporting requirements on deposit brokers or agents. The FDIC could also revoke or suspend the li-

cense of any deposit broker or intermediary that fails to comply with its regulations.

b. *Restrictions on Pass-through Deposit Insurance:* Currently, entities such as mutual funds and pension funds can make deposits of millions, or even hundreds of millions of dollars, all of it fully insured on the theory that deposit insurance is "passed through" to individual investors, none of whom have more than a \$100,000 interest in the deposit. This proposal would restrict pass-through deposit insurance to certain tax-advantaged retirement funds. While a complete ban on pass-through deposit insurance might be preferable from a theoretical standpoint, the exception for tax-advantaged retirement funds should avoid needless anxiety over the safety of retirement savings.

c. *Multiple Accounts Limited:* The proposal would eliminate the existing loophole in the deposit insurance scheme that allows individuals to have multiple fully insured \$100,000 accounts at a single insured depository institution. For purposes of calculating compliance with the \$100,000 limit, current law aggregates only accounts held "in the same right and capacity." That language permits an individual to hold \$100,000 in his or her own name, another \$100,000 jointly with his or her spouse, another \$100,000 in trust for a child, and so forth. This proposal would eliminate that abuse by repealing the right and capacity language of current law. It will not forbid individuals from having multiple accounts at insured depository institutions, but it will ensure that no individual receives more than \$100,000 in total insurance coverage on accounts at any one depository institution.

## 6. Source of Strength

The bill would remove any doubt about Federal regulators' authority to enforce commitments by parent corporations to maintain the capital of their insured depository institution subsidiaries. It would also extend cross-guarantee liability to the subsidiaries and affiliates of insured depository institutions. Insured depository institutions and their subsidiaries would be fully liable for any loss incurred by the FDIC in connection with the failure of affiliated insured depository institutions. The liability of non-depository institution affiliates would be limited to five percent of the assets of the failed insured depository institution.

## 7. Enhanced Disclosure Obligations

a. *Disclosure by Depository Institutions:* The proposal requires depository institutions to provide more specific information in their quarterly reports so that the financial condition of insured depository institutions can be better assessed and monitored. In particular, the proposal would impose four new quarterly disclosure requirements: (1) major shareholders; (2) disaggregated reports of assets; (3) non-banking activities; and (4) market value estimates of assets, liabilities and net worth (in accordance with regulations prescribed by their regulators). The first three requirements would take effect 6 months after enactment; these simply require more regular and systematic disclosure of information already available to the regulators. The market value disclosure requirement would take effect by January 1, 1993.

The proposal also requires uninsured depository institutions to disclose their uninsured status to depositors.

b. *Disclosure by the Regulatory Agencies:* The proposal also requires each of the regulatory agencies to make an annual report on

(1) likely failures of depository institutions over the next 3 years, (2) involvement of insured depository institutions in non-traditional activities; (3) capital levels of insured depository institutions; and (4) enforcement actions and subsequent compliance. The proposal clarifies the authority of the GAO and CBO to obtain CAMEL ratings of depository institutions and problem bank lists.

c. Disclosure by the Insurance Funds: The proposal requires more accurate and detailed disclosures to the Congress and the public on the condition of the deposit insurance funds. It requires annual reports on depository institution failures during the previous 12 months and projections of problem institutions three years into the future.

#### COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1990

##### KEY PROVISIONS IN OUTLINE

1. Prompt Corrective Action: The heart of the proposed bill is a requirement for regulators to resolve the problems of federally insured depository institutions promptly—so that they do not become liabilities to the deposit insurance funds and the taxpayers. The bill provides for a graduated series of restrictions that culminates in selling or closing the institution before it becomes insolvent.

The key components of the prompt corrective action requirement are as follows:

If an institution falls below required capital levels, the institution:

Cannot pay dividends.

Must file a capital-restoration plan.

Will have its asset growth limited. An institution cannot grow unless it has an acceptable capital-restoration plan. If it has such a plan, regulators can allow limited growth (up to net interest credited). All growth must be fully capitalized.

If the institution is part of a holding company structure, the parent company must guarantee the institution's compliance with the plan. This will press the parent to decide promptly whether to recapitalize the institution, sell it, or stand behind it until it recovers.

If the institution fails to submit and implement a plan, regulators must act to resolve the institution's problems by taking one or more of the following steps:

Require the institution to recapitalize by selling stock or other securities. Such a recapitalization requirement would be the norm, but regulators could dispense with it if it would serve no useful purpose.

Restrict the institution's transactions with affiliates.

Restrict its activities.

Limit the interest rates it pays for deposits.

Require a new election for the institution's board of directors.

Dismiss its CEO, CFO, or directors.

In addition, an institution failing to submit and implement a plan could not pay bonuses or grant pay raises to its top officials.

If the institution's capital deteriorates further, additional safeguards take effect:

Stringent activity restrictions apply to the institution—requiring regulatory scrutiny of large or potentially abusive transactions.

The institution cannot make payments on its subordinated debt (although interest could continue to accrue). This prevents capital needed to protect the FDIC from being given to creditors who, by definition, have agreed to stand in line behind the FDIC. Subordinated debt outstanding on

October 25, 1990, would be exempt from this rule until October 25, 1995.

Within 30 days, regulators must either (1) appoint a conservator or receiver or (2) take alternative action that will better protect the deposit insurance fund. If regulators adopt the second approach, they must document why it is superior to conservatorship or receivership, and must frequently review its effectiveness. These provisions take effect when an institution's capital falls below a certain level set in the regulators' rule. That level must be set high enough so that resolutions can "in nearly all cases" be effected at no cost to the deposit insurance fund.

2. Strengthening Capital Standards: The proposed bill requires the regulators to:

Strengthen capital standards to make sure they provide an adequate margin of safety to the deposit insurance fund.

Improve the risk based standards: to make sure they deal adequately with the risks of risky or nontraditional activities (current bank standards generally do not deal with risks greater than those of an ordinary commercial loan); and to control interest-rate risk.

3. Restrictions on Risky Bank Activities:

a. State-Authorized Powers.

The proposed bill would curtail the States' ability to exploit Federal deposit insurance by permitting State banks to engage in risky activities. Risky State-authorized powers were a major cause of FSLIC's downfall. Although such powers are not the norm among commercial banks, the potential for them exists.

Specifically, the bill prohibits State banks and their subsidiaries from engaging as principal in any activity impermissible for national banks unless three conditions are met:

The State bank must fully comply with the capital standards set by its primary Federal regulator (the FDIC or Federal Reserve).

The bank's primary Federal regulator must have ruled that the activity would pose no significant risk to the deposit insurance fund.

The FDIC must not have found that the proposed activity would pose a significant risk to the deposit insurance fund.

b. Risky National Bank Activities.

The FDIC could also restrict national bank activities that pose a significant risk to the deposit insurance fund.

4. Brokered Deposits and Other Deposits Through Intermediaries: The proposed bill strengthens and expands FIRREA's restrictions on brokered deposits, which prohibited troubled institutions from accepting brokered deposits without FDIC approval:

While FIRREA covered only deposit brokers and money desks, the bill will also cover other entities that make large deposits in an agency capacity (e.g., mutual funds and pension funds) and receive \$100,000 in deposit insurance coverage for each investor.

The bill also subjects deposit brokers and agents to FDIC licensing and regulation. The FDIC can suspend or revoke the licenses of those who abuse the system or otherwise violate the rules. But such penalties would not affect the insurance coverage of deposits the broker made while licensed.

5. Too Big to Fail: To curb the practice of treating banks as too-big-to-fail, the proposed bill would require the FDIC to resolve failed institutions using the resolution method least costly for the deposit insurance fund, and to document that the

method chosen was cheaper than the alternatives. The bill reinforces that rule by prohibiting the FDIC—after December 31, 1994—from taking any action that would have the effect of protecting depository institutions' uninsured depositors and other creditors.

6. Deposit Insurance Premiums: The proposed bill contains two important provisions relating to premiums:

a. Assessment Rates: Current law specifies the premiums that the FDIC may impose, requiring the FDIC to make specific findings in order to increase the premiums and limiting how much premiums may increase in any given year. The proposed bill eliminates these restrictions, and requires the FDIC to set premiums so as to achieve the targeted reserve level (\$1.25 in reserves for each \$100 in insured deposits) within a reasonable time.

b. Risk-based Premiums: The bill would permit, but not require, the FDIC to implement a system of risk-based premiums. The proposal authorizes the FDIC to use private reinsurance as a basis for setting risk-based premiums.

The FDIC would be encouraged to charge lower premiums to well-capitalized institutions than to poorly capitalized institutions.

7. Source of Strength:

a. Capital-Maintenance Commitments: The parent companies of federally insured depository institutions sometimes make commitments to maintain those institutions' capital—and thus prevent the institutions from becoming a liability to the deposit insurance fund. The proposed bill would remove any doubt about whether those commitments are enforceable.

b. Cross-Guarantee: FIRREA generally made federally insured depository institutions liable to the FDIC for losses caused by affiliated depository institutions. But this liability can be avoided by transferring assets to subsidiaries or nondepository affiliates. The bill would extend cross-guarantee liability to subsidiaries and affiliates. Subsidiaries' liability would be unlimited, as is already the case with their parent banks. But affiliates' liability would be limited to 5% of the failed institution's assets at the time of failure.

8. Annual Examinations: The proposed bill requires every federally insured depository institution to receive an on-site examination at least once annually. Many commercial banks currently to 2-3 years between examinations. The bill authorizes Federal regulators to retain private contractors to perform such examinations, subject to appropriate confidentiality and conflict-of-interest restrictions.

9. Other Noteworthy Provisions:

The proposed bill would also:

Direct the SEC to facilitate the development of accounting principles that more accurately reflect the real condition of insured depository institutions (including market-value principles, to the extent feasible). Authorize the banking regulators to apply more conservative accounting principles to facilitate effective supervision and prompt corrective action.

Require better disclosure: by depository institutions about their financial condition; by regulators about the health of the institutions they regulate; and by the FDIC about the condition and prospects of the deposit insurance funds.

Require GAO auditing to ensure effective implementation of the prompt corrective action requirement and monitor the accuracy of regulatory disclosures.

Establish a uniform set of rules governing the extension of insurance coverage by the FDIC to the deposits of banks and thrifts. Currently, the FDIC has discretion over whether to insure thrifts, but no discretion over whether to insure national banks.

Obligate uninsured depository institutions to disclose their uninsured status to consumers.

COMPREHENSIVE DEPOSIT INSURANCE REFORM  
AND TAXPAYER PROTECTION ACT OF 1990

QUESTIONS AND ANSWERS

Why do we have a deposit insurance system in the first place?

The Federal deposit insurance system was created in the 1930s in response to a large number of bank runs in the late 1920s and 1930s. Bank runs are a real problem for depository institutions. Because depositors, especially small depositors, have very little way of knowing how healthy a bank or thrift may be, they have every incentive to take their money out at the first rumor of trouble—even if there is no truth to it. Moreover, they have every reason to take their money out fast, because they worry that, if they wait, there won't be any money left. A run can put even a healthy bank or thrift out of business.

The idea behind Federal deposit insurance is to take away the reason to run. If depositors know the Federal government will always redeem their deposits, they don't have to worry about the strength of their bank or thrift. By and large, the theory seems to work in practice. Before the system was created, bank panics were a recurring event in American history. Since the system was created, they have virtually disappeared.

Why do we need deposit insurance reform?

The last five years have been disastrous for the Federal deposit insurance system. The old insurance fund for savings and loans—the FSLIC—failed and had to be rescued by the taxpayers at a cost of hundreds of billions of dollars. The insurance fund for banks is now at roughly half of its required reserve level and falling.

Earlier this year, Professor Ken Scott of Stanford University suggested to the Banking Committee that "[w]hat you can ask of a deposit insurance system is that, at the very minimum, it not magnify the problem because of the way in which it distorts incentives and in the way in which it is administered."

Our system of Federal deposit insurance fails the Scott test. In the judgment of numerous experts who testified before the Committee, our current system magnifies the problem both because of the way it distorts incentives and because of the way in which it is administered.

We can't afford another bailout of the Federal deposit insurance system. But in the course of thirteen days of Banking Committee hearings on financial modernization and deposit insurance, numerous witnesses advised the Committee that further bailouts will be needed unless we reform the system now.

Specifically, what's wrong with the current system?

The witnesses who have appeared before the Banking Committee have cited numerous problems with the system. But a few particular aspects of the system came in for especially severe criticism. These aspects included:

**Forbearance:** Almost everybody now recognizes that we could have managed the thrift crisis at lower cost if we had stepped

in and closed insolvent institutions when they failed, instead of giving them months and even years to try to "grow out" of their problems. Many experts testified that a primary cause of such forbearance is the fact that regulators lack adequate incentives to take prompt corrective action when an institution gets into trouble. Ken Scott stated this argument well when he said that "[a] policy of delay and forbearance will always be more appealing than a policy of prompt closure upon economic insolvency. If the closure decision is a discretionary, subjective judgment by the regulators, they are vulnerable to pressure and they will often yield to it."

**Brokered deposits:** Although many experts believe that there are appropriate uses of brokered deposits, there is a virtual consensus that brokered deposits were a primary cause of the savings and loan collapse. Gerald Corrigan, President of the Federal Reserve Bank of New York said that in his judgment "[t]he worst single abuse of the deposit insurance system has been the abuse of the brokered deposit system arrangements." Bruce Maffeo, a former Justice Department prosecutor, called brokered deposits "the financial equivalent of crack."

**Too-big-to-fail:** Although some experts believe that the Federal government will always need the discretion to step in and rescue very large financial institutions when their collapse might jeopardize the stability of the financial system as a whole, virtually every witness felt that the government has gone too far in implementing a too-big-to-fail policy. Thomas Labrecque, CEO of Chase Manhattan Bank, told the Committee that "[w]e must eliminate the . . . so-called "too big to fail" policy under which the very largest banks are given de facto 100 percent protection of all deposits. Such a policy is inconsistent with the original intent of deposit insurance and is unfair to smaller banks, but big bankers neither want it nor need it."

**Multiple accounts:** Many experts criticized the current system for allowing depositors to keep an unlimited number of fully insured accounts at different financial institutions and for allowing depositors to avoid the \$100,000 limit at a given institution by using such devices as joint accounts. Thus, Jane Uebelhoer of the community group ACORN, said "[t]he important point is attempting to protect against people attempting to play the system to win big at taxpayers' expense."

**Incorrect pricing of insurance premiums:** Under the current system all banks pay a uniform price for their deposit insurance coverage. Thrifts pay a uniform price, too—although different from banks. Bert Ely diagnosed the problem well when he said that "[t]oday, the drunk drivers of the banking and thrift world pay no more for their deposit insurance than do their sober siblings." And Ulrich Cartellieri of Deutsche Bank was one of many experts who proposed that "a more market-oriented and, therefore, superior solution could be developed by introducing risk-related deposit insurance premiums."

**State powers:** Many witnesses testified that abuse of State investment powers contributed significantly to the problems of the savings and loan insurance fund. Losses in California and Texas alone—two of the states that most significantly deregulated thrift investment powers in the early 1980s—accounted for 70% of the cost to the savings and loan insurance fund in 1988. Although the evidence suggests the states are

doing a significantly better job of regulating their commercial banks, there is still reason for concern. For example, even as the Banking Committee's hearings were in progress, the State of Delaware enacted legislation permitting its commercial banks to engage in insurance underwriting. Many witnesses suggested the need for tighter Federal controls on State powers. Larry Connell, former Chairman of the National Credit Union Administration, testified that "the Federal insurance coverage is a federal issue and certainly the Federal insurance agency should have veto power or some way to control the risk by State, by state-chartered institutions. They shouldn't have a free ride on the federal system." Bert Ely put it even more simply: "He who takes the risks should regulate. And so I think that, since the Federal Treasury is bearing the risk of failure, the Federal government has to be preeminent in the regulation."

So what does this proposal do about the forbearance problem?

The proposal would sharply curtail the ability of regulators to let a weak institution slide. Under the proposed bill, regulators would have to take prompt corrective action to stabilize a troubled institution and get it either recapitalized, sold, or closed, before it becomes a liability to the taxpayers. The goal of the proposal would be to get the institution recapitalized, sold, or closed before it becomes a liability to its deposit insurance fund. Robert Eisenbeis, Professor of Banking at the University of North Carolina at Chapel Hill backed this proposal emphatically in his testimony before the Senate Banking Committee on the condition of the Bank Insurance Fund, September 12. Professor Eisenbeis said, "I think the point can't be emphasized enough that we don't lose a dime if we close institutions before their net worth goes to zero. The fact that you see these losses appearing in the FDIC fund means that they didn't close those institutions in time." Others who have endorsed this concept in testimony before the Committee include Alan Greenspan, Richard Breeden, Robert Reischauer, and George Kaufman.

How does this "prompt corrective action" requirement work?

Suppose you are a failing financial institution. You started out with a good capital position, but it's deteriorating. When your capital declines below the minimum required level, three things will happen to you. First, you will be prohibited from paying dividends. Second, your asset growth will be sharply restricted—to an amount equal to the interest you credit on your deposits. Third, you will have to file a capital restoration plan that explains how you plan to restore your capital to required levels. If you fail to file the plan, or if you materially violate the plan, a number of very tough additional restrictions will come into force.

Now suppose you have filed your plan, and it is acceptable to your regulator, but your capital continues to deteriorate. At some point, it will decline below the "critical capital level." This is a level of capital that the regulators will have to specify. The proposal requires them to specify a level such that they can resolve the problems of institutions whose capital falls below the level at no cost to the deposit insurance fund in virtually all cases.

When your capital falls below the critical capital level, you will be prohibited from making principal and interest payments on any subordinated debt you may have outstanding. You will also become subject to a

range of very tough restrictions on your activities and operations. And, finally and most importantly, within 30 days, your primary regulator will have to appoint a conservator or receiver for you, or take some other action that is more likely to protect the deposit insurance fund from loss.

Can a prompt corrective action requirement be effective without higher capital?

Probably not. The prompt corrective action system depends on regulators detecting deterioration at a depository institution and stepping in to fix the problem before the institution becomes insolvent. Current capital levels are low enough that, in a lot of cases, the institution is already insolvent or nearly insolvent before regulators even become aware that it is undercapitalized.

That's why the proposal would require the regulators to establish new, minimum capital levels that are high enough to make realistic the goal of preventing losses to the deposit insurance fund. This represents a new legislative approach to capital standards—a functional standard of capital adequacy, not a numerical standard.

How do you expect institutions to raise additional capital when the economy is weakening and capital is already in short supply? Aren't you changing the rules of the game at exactly the wrong time?

There are several answers to this. First, note that raising new capital is not the only way to achieve higher capital levels. Institutions can also raise their capital levels by selling assets, or retaining earnings. Second, the proposal requires strengthened capital standards only to the extent needed to protect the deposit insurance funds. More aggressive supervision and prompt corrective action by regulators will also help protect the deposit insurance funds and so can offset the need for greater capital to some degree. Finally, while it is true that we would be better off today if we had raised capital levels several years ago, the risks to the deposit insurance funds of attempting to weather an economic downturn without raising capital would be very high.

What about mark-to-market accounting? Don't you need that too?

Regulators will need better and more timely information on the condition of the institutions they supervise if they are ever going to realize the goal of preventing troubled institutions from becoming liabilities to the deposit insurance system. But that doesn't necessarily mean we should move all the way to market-value accounting right away.

To help develop better and more timely information, the proposal establishes two goals for reform of accounting principles applicable to insured depository institutions. First, those principles should result in financial statements and reports that accurately reflect—at market value, to the extent feasible—the economic condition of those institutions. Second, they should facilitate both effective supervision of depository institutions generally and prompt corrective action to resolve troubled institutions in particular. The proposal charges the SEC, in consultation with the Federal banking agencies, with responsibility for developing the reformed account principles.

This is not, however, a requirement for depository institutions to immediately adopt mark-to-market accounting. The goal is to move in the direction of market value accounting over time, and only to the extent feasible. Because there is no current consensus as to how many of the illiquid assets that depository institutions hold should be

valued, any effort to force immediate adoption of market-value accounting would probably encounter significant technical problems.

What does the proposal do about too-big-to-fail?

The proposal would effectively eliminate too-big-to-fail through a multi-faceted approach to the problem. First, note that the proposal's prompt corrective action requirements eliminate the problem of inequitable treatment for large and small institutions. All institutions will have to be either recapitalized, sold, or closed before they become costs to the deposit insurance funds. Second, the bill requires the FDIC, in closing failed institutions, to choose the resolution strategy that costs the deposit insurance fund least. Third, the bill prohibits the FDIC from taking any action to resolve a troubled institution that has the effect of protecting uninsured depositors. The bill would leave intact the ability of the Federal Reserve Board to intervene as a safety net of last resort to protect the stability of the financial system.

Does the proposal do anything about brokered deposits?

Absolutely. The proposal would eliminate abuse of the deposit insurance system by deposit brokerage. The proposal requires the FDIC to license and regulate deposit brokers and other deposit intermediaries such as mutual funds and pension funds. The FDIC will be empowered to revoke or suspend such licenses whenever abuses occur. The FDIC will also be able to prohibit any institution or class of institutions from accepting deposits through brokers or agents, and to regulate the terms on which brokers and other deposit intermediaries can accept funds for deposit in insured depository institutions.

Is more red tape really a good solution to the deposit brokerage problem?

It is true that mutual funds are already heavily regulated and that pension funds face heavy legal obligations as fiduciaries of their beneficiaries. But the interests of FDIC diverge from the existing regulatory system for mutual funds, and the duty of a fiduciary to stem maximum advantage for beneficiaries may fly squarely in the face of the FDIC's need to protect the deposit insurance fund. Moreover, the regulatory scheme proposed need not be especially burdensome. On the contrary, the proposal envisions a system in which license would be given out expeditiously, if not presumptively, with a minimum of paperwork and delay, and revoked or suspended only for cause.

What about risky activities by State-chartered institutions?

The proposal would restrict the ability of State legislatures and bank regulators to leverage Federal deposit insurance for the benefit of their local tax bases. It does that by generally prohibiting State banks from engaging as principal in any activity not permissible for national banks except where (1) the State bank is in full compliance with all applicable capital standards; (2) the FDIC has determined that the activity in question poses no significant risk to the deposit insurance fund. In addition, the institution's primary regulator would have to determine that the State bank's proposed activity would pose no significant risk to the deposit insurance fund. These restrictions are similar in significant respects to restrictions imposed on State-chartered thrift institutions as part of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

What does this plan do about the \$100,000 limit?

The proposal legislation leaves the basic \$100,000 limit intact. Although the idea of lowering the \$100,000 limit has received considerable attention from the press, most of the testimony before the Committee was quite negative on this proposal. Thus, Bert Ely testified on May 17 that "[r]educing deposit insurance coverage from the present \$100,000 limit will have almost no disciplinary effect. Congress will spill political blood unnecessarily in a totally futile exercise if it lowers the \$100,000 deposit insurance limit." And Jane Uebelhoefer of ACORN said that "reducing the level from \$100,000 to \$50,000 is probably a matter of indifference."

Does the proposal limit deposit insurance to \$100,000 per depositor?

No, it does not. Although Chairman Riegle remains interested in this idea, he is not convinced that a way has been found to impose and enforce such a requirement without converting the FDIC into an enormous data-processing agency like the IRS or the Social Security Administration and without requiring the FDIC to continuously monitor the bank balances of all depositors. Senator Riegle is continuing to explore this idea and welcomes specific proposals as to how it might be implemented.

The proposal does close several of the existing loopholes in the \$100,000 limit. Under the proposal, for example, it would no longer be possible for wealthy depositors to keep hundreds of thousands or even millions of dollars at a single institution by using joint accounts or trust accounts. Every account would have to be registered to one and only one taxpayer identification or employer identification number. Also, the proposal includes new restrictions on pass-through deposit insurance that will make it much harder to get around the \$100,000 limit by using intermediaries to make deposits.

The one loophole that would remain in the \$100,000 limit is this: a depositor could still have essentially limitless amounts of insured deposits, provided that no more than \$100,000 is deposited at any one institution. Effectively, the proposal would limit deposit insurance to \$100,000 per depositor per insured institution.

Why does the proposal leave that loophole open?

It's not an easy loophole to close. When you start to look at what it would take to close the loophole from a technical perspective, it is hard to find a way to do it that would not be either enormously expensive or very intrusive on individual privacy. Given the very small number of individuals with more than \$100,000 to deposit, it may well be that the benefits of making the \$100,000 limit airtight simply are not worth the costs. But the idea is still under active consideration.

What does the proposal do about risk-based premiums?

The proposal would authorize the FDIC to implement a system of risk-based deposit insurance premiums. In deference to the fact that some disagreement exists over the appropriate means of pricing such premiums, the bill does not require implementation of risk-based premiums, but merely gives the FDIC discretion.

What does the proposal do about assessing foreign deposits?

The proposal would leave the existing deposit insurance assessment base unchanged. Through its limitations on too-big-to-fail,

however, the bill would effectively prevent the FDIC from extending deposit insurance coverage to most foreign deposits after 1994. The fact that the bill does not address the assessment base issue directly does not reflect any determination on Senator Riegle's part to the effect that the existing assessment base should be maintained. The question is still under consideration and will clearly have to be addressed and decided one way or the other in the course of legislative action on deposit insurance reform.

What else does the proposal do?

The proposal contains numerous individual reforms. Some other noteworthy reforms include:

Enhancing the ability of Federal regulators to enforce capital maintenance agreements against the parent corporations of banks and thrifts.

Requiring annual, on-site examinations of every insured depository institution.

Expanded reporting requirements for banks and thrifts and for the Federal bank regulatory agencies.

How does this bill differ from S. 3045—the BIF premium bill?

S. 3045 is a narrowly-focused bill intended to provide an interim solution to a very specific and immediate problem: the protential cash shortfall of the Bank Insurance Fund. S. 3045 does nothing, however, to address the underlying problems of the deposit insurance system that have caused so much difficulty for both the thrift and bank insurance funds in the past several years. This proposal, by contrast, is addressed to those underlying issues.

Is this the final word from Senator Riegle on deposit insurance reform?

Not at all. Senator Riegle recognizes that there are numerous potentially meritorious approaches to deposit insurance reform. His intention in advancing this proposal is merely to put something concrete on the table as a basis for discussion. He also recognizes that other deposit insurance reform proposals will be forthcoming from his colleagues and from the Administration. He welcomes those proposals and will review them with an entirely open mind. No provision of his own proposal is cast in stone. He looks forward to working with his colleagues in the Senate and the House and with the Administration to move comprehensive deposit insurance reform through to final enactment in the next Congress.

[Excerpts from the Senate Banking Committee Record]

DEPOSIT INSURANCE REFORM<sup>1</sup>  
BROKERED DEPOSITS

Senator BRYAN. Do you have a concept such as brokered deposits where in effect vast funds are infused into the financial system and packaged in hundred thousand dollar increments in this country which, as you know, is our limit?

Mr. LESLIE. Not up to now.

Senator BRYAN. Mr. Cartellieri.

Mr. CARTELLIERI. Nor do we.

Mr. KUSUKAWA. In Japan, no we haven't got that sort of a brokered sort of deposit.

[O]ne of the lessons from the thrift crisis is their ability to gather deposits through brokered deposits and increase the size of the institution and the funds they had

<sup>1</sup>Excerpts selected for import, focus, and representativeness. These selections are not and are not intended to be exhaustive of relevant testimony before the Banking Committee.

available very rapidly without additional capital and quite frankly without additional management. Then to take those funds out and invest them in want turned out to be very risky matters is certainly a lesson America has to learn and look at. I concur there ought to be regulation. (Vallandingham; 4/24/90, p. 67)

[T]he worst single abuse of the deposit insurance system has been the abuse of the brokered deposit system arrangements, and I think if we could fix that by finding a workable way to limit the \$100,000 formally insured deposit to each individual or each taxpaying entity, that that would be a step in the right direction. (Corrigan; 5/3/90, p. 24)

[T]here are certain characteristics of brokered deposits which have advantages, namely, that they do improve the liquidity of the system. They do facilitate to a considerable extent the marshalling of depository funds. Nonetheless, they do potentially create significant risks, and what I am saying is, rather than abolish them, I think one should focus on those aspects of brokered deposits which are positive and try to find the means legislatively to keep that aspect of the system in place without exposing ourselves to the abuses which have clearly existed in recent years. (Greenspan; 7/12/90, p. 53-54)

[B]rokered money was literally the financial equivalent of crack. You saw small savings and loan institutions and small banks all of a sudden pumped up on steroids with a \$10 million asset, which was nothing more than an accumulation of brokered money that they had to pay back the principal on . . . and in some cases they were hung out to dry for as long as 20 years with interest payments that were extortionate by any other measure. So they had that rock in their knapsack just going out of the gate. (Maffeo; 8/1/90, p. 97)

CAPITAL

Broader activities for banking organizations ought to be linked to strong capital requirements, preferably risk-based. We learned all too painfully from the thrift crisis that a crucial protection for the taxpayer is requiring firms to have a substantial amount of their own money at risk to absorb losses. (Brady; 7/25/90, p. 24)

[T]he ideal that you can have broad powers and no capital by the owners and the executives of the business does not make any sense at all. (Brady; 7/25/90, p. 65)

First, higher capital would strengthen the incentives of bank owners and managers to evaluate more prudently the risks and benefits of portfolio choices because more of their money would be at risk. Second, higher capital levels would create a larger buffer between the mistakes of bank owners and managers and the need to draw on the deposit insurance fund. And, third, requiring capital imposes on bank managers and additional market test: they must convince investors that the expected returns justify the commitment of risk capital. (Greenspan; 7/12/90, p. 17)

[T]he most promising approach to reform both bank capital and supervisory policies.

Both would be designed to reduce the value of the insurance subsidy. Neither would rule out either concurrent or subsequent additions to deposit insurance reform. In fact, higher capital, by reducing the need for and thereby the value of deposit insurance, would make subsequent reform easier. (Greenspan; 7/12/90, p. 16)

Adequate capital is a very important safeguard for insurance deposits. A key problem with the present system we think has been a failure to enforce meaningful capital standards and to deal promptly with problem institutions. (Whipple; 4/24/90, p. 10)

[T]here is a consensus that . . . capital must be adequate to provide an incentive for an insured depository institution not to engage in excessively risky activities. This is the major lesson from the thrift crisis. As capital declines, the risk of loss is clearly shifted from the owners to the depositors, and if insured to the insurer, and if exclusively a federal insurer to the taxpayer. (Barth; 5/22/90, p. 14)

The effectiveness of a regulatory system based on regulation of the operating companies—the banks, the broker dealers in the public markets—would depend on, among other things, the existence of adequate serious capital and accounting rules in each regulated entity. Capital provides a cushion in the event of financial difficulties of the subsidiary, but also a cushion as to the impact of financial problems in any parent holding company or other affiliate. This capital cushion is essential to enable regulators to take action before capital is completely depleted and before a deposit insurance or SIPC fund must step in to make up the difference. (Breedon; 7/19, p. 26-27)

COINSURANCE

Senator SHELBY. And in the UK, for example, if I had a saving account in your bank, in Barclays Bank, and I had \$100,000, would it be totally insured, partially insured or insured to how much?

Mr. LESLIE. It would be insured to, I think it's to 20,000 pounds . . . Up to 75 percent with a maximum of 20,000 . . .

Senator SHELBY. And it would insure 75 percent of your deposit in case the bank failed?

Mr. LESLIE. Yes, indeed, and only for personal individuals. (6/13/90, p. 58-59)

Senator SHELBY. What about Japan, how does it work?

Mr. KUSUKAWA. Well, the limitation of the insurance is 10 million yen. That is about \$70,000, and it covers only the principal, not the interest accrued. . . .

Senator SHELBY. Let's give a case example. Let's say I had \$100,000 or the equivalent of \$100,000 in yen, however it translates today, in your bank.

Mr. KUSUKAWA. Yes.

Senator SHELBY. How much of that would be insured in case your bank went under?

Mr. KUSUKAWA. If we went bankrupt, you will get only \$70,000 back. (6/13/90, p. 60-61)

Attempting to discipline large depositors through some sort of coinsurance program also will have little disciplining effect. Coinsurance is premised on the idea that the too-big-to-fail policy should be abandoned. (Ely; 5/17/90, p. 14)

## EXAMINATIONS

Where it is not already the practice, full in-bank supervisory reviews—focusing on asset portfolios and off-balance sheet commitments—should occur at least annually, and the results of such examinations should be used to evaluate the adequacy of the bank's capital. (Greenspan; 7/12, p. 18)

## INSURING ON A PER DEPOSITOR BASIS

[T]he worst single abuse of the deposit insurance system has been the abuse of the broker deposit system arrangements, and I think if we could fix that by finding a workable way to limit the \$100,000 formally insured deposit to each individual or each tax-paying entity, that that would be a step in the right direction. (Corrigan; 5/3/90, p. 24)

Chairman RIEGLE. Chairman Greenspan, in your presentation here, you indicate that perhaps we ought to go to a system where an individual citizen could have only one insured deposit of \$100,000. Am I correct in thinking that might be one approach that you—

Chairman GREENSPAN. That is certainly one approach which we believe should be evaluated. It has a number of difficulties with it, but it does clearly require some evaluation because it would be, in my sense and the sense of my colleagues, a significant reform.

Chairman RIEGLE. But perhaps a useful reform.

Chairman GREENSPAN. I think it would be a useful reform, but let's remember that it's a technically difficult thing to implement. (7/12/90, p. 29)

Senator DIXON. What do you think about one account? That is to say, limiting it? If we do not change the number, limiting it to one \$100,000 account per person?

Secretary BRADY. If you were going to start any place, that would be the place to start. (7/25/90, p. 46-47)

## INTERSTATE BRANCHING

It is our view that the removal of all barriers to interstate banking, which is directly related to the formation of a stable deposit base, would both enhance profit opportunities significantly as well as improve the safety and soundness of the system. (Chis-olm; 6/20/90, p. 21-22)

We share the concerns expressed by Chairman Greenspan that the interstate branching rules, for example, contained in the banking laws ought to be repealed. That they force activity across State lines to be conducted in a higher cost form of organization, and that institutions ought to have the flexibility to branch across State lines as well as to acquire separate banks across State lines. (Breedon; 7/19/90, p. 31)

"I think [repeal of the McFadden Act] is important and it is time to move in that direction. (Breedon; 7/19/90, p. 66)

The McFadden Act forces state member and national banks to deliver interstate services only through separately capitalized bank holding company subsidiaries, where permitted by state law, rather than through branches. Such a system reduces the ability of many small banks to diversify geographically and raises costs for all banking organizations that operate in more than one state, a curious requirement as we search for ways to make banks more competitive and more

profitable. The McFadden Act ought to be amended to permit interstate branching by banks. (Greenspan; 7/12/90, p. 25)

[I]nterstate branching permits banks to diversify and avoid being too closely tied to the vicissitudes of local economies. (Brady; 7/25/90, p. 25)

## MARKET DISCIPLINE

On the issue of deposit insurance, we think there is a need to instill greater market discipline. While there is certainly a need to protect small depositors who in the end really don't have the expertise or the resources to assess market risk factors, it may not be appropriate to fully extend such protection to sophisticated or large investors. (Whipple; 4/24/90, p. 9)

## MARKET-VALUE ACCOUNTING

I believe that market value accounting is a very important management tool to manage a financial institution. The good institutions do it today. It's not difficult to market value a mortgage portfolio. We've made great progress in developing markets for consumer loans, commercial loans. (Connell; 5/17/90, p. 7)

I think that, as a regulatory tool and a management tool, that market value accounting, as my statement indicates, is a very valuable tool and should be implemented. (Connell; 5/17/90, p. 8)

[T]here is one reform which has been suggested from time to time that I suggest ought to go to the top of your agenda and that is simply the discipline that comes from marking to market. Regulatory accounting from my point of view has turned out to be phony accounting. There is nothing like marking to market which at least imports some discipline into the system and lets the air out of the balloon slowly. But to carry assets on the books for years and years and years at inflated value and then let the whole system collapse at once simply makes no sense at all. (Silver; 4/24/90, p. 50)

We have a great concern that mark to market would dry up credit to small business because quite frankly we don't think there is much of a market for those loans. (Vallandingham; 4/24/90, p. 82)

[W]hat concealed the disastrous problems in the thrift industries in the 1970s was not manipulation of GAAP per se, but rather was the unwillingness to recognize current economic value. (Breedon; 9/10/90, p. 99)

As we enter the decade of the 1990s we should consider a fundamental shift in the goal we set for accounting standards for financial institutions. . . . Determining the value of an institution's assets and not recording their original cost should increasingly be the goal toward which we should work. The nation's experience with the crisis in the savings and loan industry as well as with many of the largest bank failures demonstrates the inherent and very substantial dangers of a reporting system for financial institutions that is premised on historic cost accounting principles. (Breedon; 9/10/90, p. 129-130)

When a financial institution becomes insolvent the loss to the insurance fund and ultimately the taxpayers is measured based

solely on the market value of its assets and liabilities, and historical costs are irrelevant in that process. (Breedon; 9/10/90, p. 130)

[I]n some cases, market value cannot be precisely measured where you have illiquid instruments such as longer term commercial notes, for example, and it may be difficult to precisely value those instruments. On the other hand, it has been appropriately noted that the best possible estimate of a relevant concept is better than a precise measure of an irrelevant one. And there are certainly, if we put our minds to it, ways in which we could develop techniques for valuing even illiquid assets for which there is no readily quoted market value available. (Breedon; 9/10/90, p. 130-131)

My own personal belief is that our accounting system should seek to reflect economic value and not psychology. (Breedon; 9/10/90, p. 132)

## NARROW BANKING

Narrow banking will not eliminate financial risk to the economy. It will merely shift much of this risk to non-bank firms. (Ely; 5/17/90, p. 15)

In order to reduce risks to the deposit insurance funds and to prevent banks from unfairly subsidizing their securities affiliates and other non-banking activities, it is necessary, we believe, to enhance previously proposed firewalls with the strongest safeguard that has been put forth—the "narrow" or "safe" bank. Under this proposal, banks affiliated with securities firms would be entitled to federal deposit insurance only if their portfolios were limited to safe, highly liquid investments. When combined with necessary firewalls, the narrow bank would provide a comprehensive approach to deposit insurance reform. (Silver; 4/24/90, p. 25)

I guess my own view is that the narrow bank is really a case of the tail wagging the dog. In order to protect the deposit insurance system, we are really completely mangle the structure of the banking industry, which I think is a mistake. It's extremely difficult for banks to earn enough money to cover their cost of capital. If you restrict their assets to Treasury securities and other kinds of very safe things, they are going to have to pay very low interest rates on consumer deposits, and its true they would be absolutely safe, but my guess is banks would lose substantial funds, for example, to money market funds or a money market fund with slightly longer maturity. I'm not sure what we would have accomplished except to provide deposit insurance for institutions that no longer need it. An institution that invests only in extremely safe assets really doesn't need deposit insurance. It's the equivalent of a money market fund. (Friedman; 4/26/90, p. 61-62)

I find the narrow bank a concept [that is] intuitively appealing until you look at it in detail, and then it becomes less appealing. As it was originally conceived many years ago . . . it would be a core bank with only safe investments. Well, if that is the case, then this bank cannot earn enough to attract deposits against the other institutions that were holding what I guess you could call non-safe assets. You would have disintermediation and the core banks would be

very small, and then you run into the same problem of what do you do with the other institutions when they get into trouble. (Kaufman; 5/22/90, p 81-82)

[T]he merits of the narrow bank approach are that it is a means by which we can eliminate loan losses. We have had aggregate loan losses in the banks—putting aside what has happened in the S&Ls—we have had aggregate loan losses in the commercial banks in the United States in the last five years of \$81 billion. That is a lot of money. We could have capitalized \$1 trillion in lending if we had had that much extra capital.

[Litan's] approach eliminates the risk of future loan losses. Unfortunately, the down side is . . . that it eliminates loan losses by eliminating loans. It says the only thing a bank can do is buy T bills. Well, that means that for the corner restaurant or the corner hardware store that in fact would like a \$50,000 working-capital loan, they cannot get it from the bank anymore because they first have to go to Salomon Brothers and get securitized so the bank can buy the security. (Breedon; 7/19/90, p. 64-65)

#### PASS-THROUGH DEPOSIT INSURANCE

The effect of pass-through insurance is to extend deposit insurance to large institutional investors, institutional investors which aren't deemed to require the protection of large portions of the securities laws. No one believes that large investors should be protected by deposit insurance, but that's the effect of what's going on. (Friedman; 4/26/90, p. 21)

I think [the BIC market is] a danger to the deposit insurance system because it represents in effect—potentially represents a wholesale version of brokered deposits \* \* \*. [W]hat it allows a bank to do is gain market share by paying higher rates. It doesn't need a Merrill Lynch distribution system to distribute brokered deposits to individuals because these securities are issued in denominations of hundreds of millions of dollars and allow a bank to grow extremely quickly and put the risks on the deposit insurance system. (Friedman; 4/26/90, p. 30-31)

#### PRICING REFORMS

[W]e could follow a different approach, which I happen to think is worth at least some consideration. That is, to let individuals decide for themselves how much deposit insurance they want. Some people need \$10,000 in deposit insurance. Some people might need \$150,000 in insurance. If we priced deposit insurance at its real cost and at its real value rather than at a subsidized price, we could let people decide how much they wanted to buy the same way you and I decide whether we want to buy \$100,000 in life insurance or \$1 million in life insurance. So I think we have to look at the pricing of this product. The deposit insurance is a product that is produced by the American taxpayers at considerable cost, and we should not be giving it away at below cost to produce it. (Breedon; 7/19/90, p. 49-50)

#### PRIVATE DEPOSIT INSURANCE

In my opinion, there is only one way to reform Federal deposit insurance. And that is to replace \* \* \* federal deposit insurance with 100 percent cross-guarantees. Very simply, the 100 percent cross-guarantee concept is a self-insurance mechanism for the banking system \* \* \*. One hundred percent cross-guarantees will use the enormous

earning power and equity capital base of the entire banking system, if necessary, to protect bank liabilities. (Ely; 5/17/90; p. 15-16)

If one's objective is to protect the deposit insurance fund, then once there is no fund there's no need to regulate to protect the fund. But it seems to me there's even more reasons to regulate to protect depositors. And I really don't believe personally that the absence of deposit insurance is going to result in more conservative management of financial institutions. And if that is not the case, which I think plainly it is not, then the risks that we're trying to regulate to protect the deposit fund will be there except the risks will be transferred to depositors instead of the insurance fund. (Friedman; 4/26/90, p. 67)

[O]ne important difference [between the U.S. and other countries] is that the deposit insurance fund itself [in other countries] is run and administered by the banks themselves or a kind of self-regulatory organization within the banking system. So again, in de jure terms, there is less of a linkage, if anything, between that insurance system and the full faith and credit of the government of the country in question. But yet, as I say, it seems to work pretty much the same way anyway. (Corrigan; 5/3/90, p. 36)

So what I would like to do is rather than have the government in the background entirely trying to assess risk and determine which institutions are solvent or insolvent is have the private sector do more of that, impose market discipline on the government, and to me that could be done through a system of co-insurance whereby the private sector with some capital at risk would indeed assess the riskiness of institutions and price that risk. (Barth; 5/22/90, p. 60-61)

#### PROMPT CORRECTIVE ACTION

[R]egulator, community and the political process often delay the closure of insolvent institutions. This, of course, greatly increases the insolvency losses of these failures. (Ely; 5/17/90, p. 14)

Early closure of failing banks and thrifts is another highly-touted reform proposal. However, Congress will find it extremely difficult to enact closure rules that they can force regulators to follow, for regulators resist mightily any effort to constrain their actions and limit their powers. (Ely; 5/17/90, p. 14-15)

[A] policy of delay and forbearance will always be more appealing than a policy of prompt closure upon economic insolvency. If the closure decision is discretionary, subjective judgment by the regulators, they are vulnerable to pressure and they will often yield to it. So to the extent that any reform proposal relies on agency judgment and discretion, I think it is in trouble.

The more objective the judgment and the more mandatory and automatic the prescribed action, the better off taxpayers will be. (Scott; 5/17/90, p. 26-27)

[I]n judging proposals or packages, I would urge the Committee to keep applying two criteria; One, how well does it eliminate the present distorting subsidy to risk-taking? And, two, how little does it depend on bureaucratic discretion in the adminis-

tration of the scheme and of the closure of insolvent institutions? (Scott; 5/17/90, p. 30)

What you can ask of a deposit insurance system is that, at the very minimum, it not magnify the problem because of the way in which it distorts incentives and in the way in which it is administered. (Scott; 5/17/90, p. 30)

To contain this risk-shifting behavior [arising when capital is depleted], somebody must impose discipline by attempting to measure capital correctly and then, if it declines, by intervening in a timely and cost-effective manner. This intervention will necessarily take the form of requiring that more capital be injected or control of the institution be taken away from the current owners. (Barth; 5/22/90, p. 14)

Early intervention in capital maintenance is my personal \* \* \* preferred solution. It deals directly with the two most costly features of the existing deposit insurance structure, too little private capital in banking and the potential for continued operation when banks are insolvent, and would impose the least cost on either the banking system or the taxpayers. (Kaufman; 5/22/90, p. 44-45)

If the institution were reorganized in time—before its economic net worth is depleted—no losses will be borne by uninsured depositors or the deposit insurance agency. Losses to these groups would occur only from fraud, exceptionally abrupt declines in the prices of many financial assets concurrently or inadequate monitoring.

This scheme has many important advantages: One, there would be minimum losses to uninsured depositors and the deposit insurance agency. Two, because losses would be minimized, deposit insurance premiums could be reduced substantially. Three, also because losses would be minimum, deposit insurance becomes effectively redundant and is maintained only to cover cases of fraud and inadequate monitoring. Four, because uninsured depositors are aware the losses will be minimized, the incentive to run is greatly reduced. Thus the good aspects of federal deposit insurance in preventing systemic runs is preserved. Fifth, unless the demand for banking services is insufficient, the near insolvent banking facility is likely to maintain its franchise value and remain in existence under new management. Sixth, a long and clear paper trail of regulatory warnings will be established as an institution declines through the tranches that will reduce the judicial uncertainty if the reorganization were challenged in the courts. (Kaufman; 5/22/90, p. 48-49)

It is sometimes argued that an early intervention scheme involves confiscation or expropriation of private capital. This is untrue. If the shareholders prefer not to recapitalize their institution when it breaches the reorganization tranche, they will receive the net proceeds from the subsequent sale or liquidation. Moreover, the plan may be made voluntary in return for deposit insurance. (Kaufman; 5/22/90, p. 49-50)

[T]o make this approach effective, Congress must insist that any plan adopted explicitly include both performance tranches and mandatory recapitalization before a

bank's capital is fully depleted. (Kaufman; 5/22/90, p. 50)

[I]t is quite evident \* \* \* that the cost of forbearance is very, very high and that is why I said in my statement that early intervention is not effective unless it is made mandatory. So we have to get agreement from the regulators and from Congress that we will not be swayed by pleas \* \* \* and that if a bank's capital is used up, it is closed. (Bryan; 5/22/90, p. 65 66)

The power to set capital standards \* \* \* is not enough. In addition, the regulator of a bank or broker/dealer's subsidiary of a holding company should have early intervention authority to step in instantaneously when a regulated entity's capital position is threatened, falling below a mandated level. At all times, the line regulator of such a company should have the subsidiaries. (Breedon; 7/19/90, p. 27)

If credible capital-raising commitments are not forthcoming, and if those commitments are not promptly met, the authorities should explore such responses as lowered dividends, slower asset growth or perhaps even asset contraction, restrictions on the use of insured brokered deposits, if any, and the divestiture of affiliates with the resources used to recapitalize the bank.

What is important is that the supervisory responses occur promptly and firmly and that they be anticipated by the bank. This progressive discipline or prompt corrective action of a bank with inadequate capital builds on our current bank supervisory procedures and is designed to simulate market pressures from risk-taking. (Greenspan; 7/12/90, p. 19)

[F]orced mergers, divestitures, and, when necessary, conservatorships should occur while there are still positive, albeit low, capital in the bank to limit reorganization or liquidation costs. Existing stockholders should be given adequate time to correct deteriorating positions, including providing new capital. But Congress should specifically provide the bank regulators with the clear authority and, therefore, explicit support to act well before technical insolvency to minimize the ultimate resolution costs. (Greenspan; 7/12/90, p. 20)

[E]arly closure, if you could nip an incipient disaster in the bud, that makes good sense and we are trying to figure out how you might do that. (Brady; 7/25/90, p. 67)

Chairman Seidman suggested that it might be necessary to keep insolvent or weakly-capitalized thrift institutions open instead of reorganizing them due to the lack of sufficient funds in the FDIC, or the insurance fund, to resolve these cases. I would urge you strongly to resist that temptation. Such forbearance—I know people are not pleased with the use of that word—is why we got into trouble with the S&L industry \* \* \* I think the point can't be emphasized enough that we don't lose a dime if we close institutions before their net worth goes to zero. The fact that you see these losses appearing in the FDIC fund means that they didn't close those institutions on time. (Eisenbeis; 9/12/90, p. 95)

Senator HEINZ. At this point in time, do you know of any additional authority that we should confer upon the regulators? \* \* \* My question was related to unsound practices and losses incurred by the fund, as opposed to problems of the fund.

Mr. BOWSER. Well, I think it goes back to the ability to take action on the banks prior to what we would call GAAP insolvency \* \* \* We're looking at that, so we might give you some recommendations in that area. In other words, allow the regulator to act a little faster than they can today. (9/11/90, p. 61)

[B]oth the FDIC and Congress can affect significantly the losses that will have to be covered by the Bank Insurance Fund. The fund only incurs losses if institutions are closed after the real value of their assets is less than their liabilities. If systems are in place to monitor closely the financial condition of banks, and to trigger closure or mandatory disciplinary actions before significant losses occur, the fund's liabilities will be minimized. (Reischauer; 9/12/90, p. 27)

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I am not a fan of forbearance, and I'm not a fan of using public credit to extend the time of institutions that can't raise capital anywhere in the world. If no investor anywhere in the world has confidence that a given set of management knows how to handle its problems, then I don't know the American public ought to be asked to put their credit at risk to support that institution. (Breedon; 9/10/90, p. 141-42)

#### REDUCING THE \$100,000 LIMIT

[R]educing deposit insurance coverage from the present \$100,000 limit will have almost no disciplinary effect. Congress will spill political blood unnecessarily in a totally futile exercise if it lowers the \$100,000 deposit insurance limit. (Ely; 5/17/90, p. 14).

I personally believe that it is important that the core deposits, the core savings of people be insured, that people ought not to be required to make investment judgments for their life savings. It's something that just can't be done efficiently. It would lead to I think radically restructuring the banking system because it would lead to a major flight to quality and it would be a terrible problem for smaller banks. So an adequate level—and I think personally \$100,000 is not a bad level—is very important. (Friedman; 4/26/90, p. 31)

Senator DIXON. Well, first I would like to ask you \* \* \* do think that has any redeeming feature—reducing it from \$100,000 to \$50,000? Or from \$100,000 to \$40,000? Is there any value in that?

Ms. MILLER. There is a little value in it in that it at least starts to grapple with the question \* \* \* In addition to the reduction,

you would have to somehow figure out a system to insure that. You would probably have to do it by household—not allow a broker-depositor to manipulate it. (Miller; 4/18/90, p. 43)

I think that reducing the level from \$100,000 to \$50,000 is probably a matter of indifference. The important point is attempting to protect against people attempting to play the system to win big at taxpayers' expense. (Uebelhoefer; 4/18/90, p. 44)

Chairman RIEGLE. You're convinced, are you, that the \$100,000 figure is the right figure?

Mr. LABREQUE. I am convinced and I think that the institutions that I represent, that it is an appropriate figure. People can always debate whether some historical number is better. But we think it is an acceptable number, and it's an appropriate number. (4/3/90, p. 58)

Chairman RIEGLE. Do any of you think that the insurance limit ought to be lowered from the \$100,000?

Mr. BARTH. For me I would not advocate that right now. It seems to me over time what will happen is that the limit will be eroded away by increases in prices. \* \* \*

Mr. BRYAN. I am not in favor of it \* \* \* I don't think the place to get market force is within what I call the core bank. I think that depositors are depositors and they are not investors and that you can't expect them to act as investors. \* \* \*

Mr. KAUFMAN. From a purely economic grounds, I would favor it, but I think it would be very difficult to do, as you people know better than I do, and under our proposal, with early intervention since losses would be minimized, insurance effectively is redundant. (5/22/90; p. 52-53)

Senator DIXON. Do you think we ought to reduce the insured amount or do you think the insured amount is all right if we limit it to one account per customer?

Chairman GREENSPAN. Well, Senator, as I said in my prepared text, if we were starting from scratch on the deposit insurance system, I would choose a number less than that. I don't think we need that much. But I would certainly agree with Bill Seidman that what is accomplished by moving it from \$100,000 down is not very much. In other words, I wouldn't make too much of a big deal of that because I don't think it matters as far as the systemic problems we have. (7/13/90, p. 40)

Frankly, I cannot see at this particular point in time a rush to lower that amount of insurance at a time when we have a question of confidence not only in our banks but obviously in our thrifts. (Brady; 7/25/90, p. 45-46)

#### RISK-BASED PREMIUMS

I should like to submit, Mr. Chairman, that a more market-oriented and, therefore, superior solution could be developed by introducing risk-related deposit insurance premiums based on regular audits and based on ratings of the asset and liability quality of a bank, combined with regular publicity like that exercised regularly by the rating agencies these days. (Cartillieri; 6/13/90, p. 28)

Should Congress adopt risk-based deposit insurance premiums? I'm very much in favor of risk-based deposit insurance premiums as a market discipline and as a regulatory tool. . . . [W]hen we first began at NCUA to reveal the ratings to the board of directors of examinations and then let them know what was going to happen as a consequence of those ratings, we found excellent response from the directors putting pressure on management to reduce risk. I think when you couple that with a cost, a dollar cost, that you get management and directors' attention. And it doesn't have to be perfect. I happen to think the Camel rating is a good start. And so I'm very much in favor of risk-based premiums. (Connell; 5/17/90, p. 10)

[T]here are three major specific flaws with Federal deposit insurance. First, banks and thrifts are charged flat rate insurance premiums no matter how soundly or unwisely they are managed. Today, the drunk drivers of the banking and thrift world pay no more for their deposit insurance than do their sober siblings. (Ely; 5/17/90, p. 13-14)

The deposit insurance premium is a flat rate across all institutions fixed by statute. That means that it ignores the riskiness of the loans and investments of each institution, the degree of imbalance in maturities between their assets and their liabilities, differences in the amount of capital or in the capability of management. The high-risk institution pays the same premium rate as the low-risk institution. What that does is create a constant bias throughout our financial system—both banks and S&Ls—to take greater risks than they otherwise would for the greater potential returns. (Scott; 5/17/90, p. 23)

[T]he problem with either risk-based insurance premiums or risk-based capital is this: How do you assess the risk for the non-traded portion of the institution's asset portfolio? If you do not have secondary trading markets, there is no objective way to do that. (Scott; 5/17/90, p. 61)

Mr. SILVER. [I]t is virtually impossible to put the deposit insurance system on a sound actuarial basis as a private insurance company. The cost, the premiums would be absolutely prohibitive. So that if one recognizes that—

Senator SHELBY. Why, though? Because on an actuarial basis you would assume the risk in the premium, would you not?

Mr. SILVER. Huge risks require huge premiums, making the whole thing not work. (4/24/90, p. 67-68)

I don't think I am a great fan of risk-based deposit insurance premiums. In principle, it sounds great, and I have thought about it a lot, and I . . . (Corrigan; 5/3/90, p. 36-)

I am a skeptic on risk-based deposit insurance for the following reasons. You have to underwrite credit at the source, and it's very difficult for an outsider, given the complexity of credit risk, to be able to do that before the fact. I don't know how you would set a mechanism in place that would actually work for setting the insurance premiums that would be effective. . . . I despair of finding the private capital available to un-

derwrite the kind of risks that banks ordinarily take, even well capitalized banks, and I think you might find the cost of a true market system prohibitive and it might lead to a greater credit crunch than the ones we have been talking about today. (Bryan; 5/22/90, p. 62)

#### RISK-TAKING BEHAVIOR

What you can ask of a deposit insurance system is that, at the very minimum, it not magnify the problem because of the way in which it distorts incentives and in the way in which it is administered. (Scott; 5/17/90, p. 30)

The small depositor should have a secure place for his or her savings. The government support appropriately creates confidence for such depositors that they will get their money back at par when they need it. Similarly, the use by banks of federally-insured and therefore federally-subsidized deposits to make retail loans to consumers who might not otherwise have access to credit at favorable rates serves a worthy public purpose. But what about underwriting and dealing in securities, speculative foreign exchange transactions, commodities trading? These activities are being performed competently and efficiently in the private sector without government support or taxpayer liability. (Downey; 4/3/90/ p. 17)

#### SCOPE OF COVERAGE

It seems to me that if we're going to stay with a deposit insurance system, however, it may be changed, that we ought to define from A to Z what that deposit insurance covers. (Riegle; 5/17/90, p. 38)

#### SOURCE OF STRENGTH

In the U.K., the banks are expected to stand behind their subsidiaries, and bank controllers—by which the law means shareholders who are able to exercise influence on the management of the bank—are expected to stand behind their banks. (Leslie; 6/13/90, p. 16)

Should a company that controls a bank or thrift be free to let that institution fail without making an effort to assist it? From an historical standpoint, the Federal Reserve Board has attempted to impose a source of strength doctrine from the very beginning of holding companies. In the early days, by denying applications for the acquisition of a bank because the holding company itself was weak, later on by imposing an extensive examination process. And most recently, by administrative actions and court proceedings.

Just this week, they lost a case involving the source of strength doctrine. The Office of Thrift Supervision, on the other hand, had open-ended contractual net worth maintenance agreements for many years. More recently, these have been modified to prenuptial type agreements where the institutions could be sold if the net worth fell below a certain level.

I think they've been effective. And in fact, the institution I'm working with right now has been required to put several hundred millions of dollars the holding company has into the institution and is going through a court process, a bankruptcy process where it will be required to put additional monies.

And I believe it would be valuable as one of the extra tools, one of the additional tools, for the regulatory agencies to have in their quiver to require net worth maintenance agreements on a limited basis prenup-

tial type. And they should also be structured to withstand bankruptcy, either through a preference or some other specific provision. (Connell; 5/17/90, p. 8-9)

#### STATE POWERS

It seems to me that if we're going to stay with a deposit insurance system, however, it may be changed, that we ought to define from A to Z what that deposit insurance covers. And we ought not to allow other units of government to take a ride on that Federal deposit insurance in terms of deciding to do whatever they may want to do in add-on activities. (Riegle; 5/17/90, p. 38)

[L]et me say the Federal insurance coverage is a Federal issue and certainly the Federal insurance agency should have veto power or some way to control the risk by State-chartered institutions. They shouldn't have a free ride on the Federal system. (Connell; 5/17/90, pp. 38-39)

He who takes the risk should regulate. And so I think that, since the Federal Treasury is bearing the risk of failure, the Federal Government has to be preeminent in the regulation. (Ely; 5/17/90, pp. 40-41)

No one in their wildest dreams had any idea that States would authorize banks to underwrite life insurance at the time. And now the States, in what I think can only be described as a cynical drive to increase their local tax base, are considering authorizing a new kind of animal—banks-that-underwrite-and-sell-life-insurance—that's hyphenated. It is the Federal deposit umbrella that protects the citizens of those States from the consequences of that action, actions which are motivated not by bank regulatory reasons but by the desire to increase the local tax base. (Friedman; 4/26/90, pp. 20-21)

[T]he entity providing the insurance has not only the right but has the duty to limit the risks that any that is going to be insured may undertake. And while the States may choose to authorize a bank to run a casino, I think it should be the prerogative of the FDIC to decline to insure it; and that they should have the authority to say that activities that go beyond what are allowed for Federal institutions and which they believe are unduly risky have to, at a minimum, be conducted in a holding company subsidiary somewhere where it is not under the deposit insurance umbrella. (Breedon; 7/19/90, pp. 41-42)

#### TOO BIG TO FAIL

I don't believe in "too big to fail" and we certainly don't run our operations on the assumption that Barclays has any special protection. Indeed, we will go further and say that anyone who did manage their business on that basis is not fit and proper. Failing is a vital part of market discipline. (Leslie; 6/13/90, p. 15)

I personally don't believe that you have to go through the enormous cost of liquidating a large institution to achieve the discipline that's necessary. (Connell; 5/17/90, p. 11)

Attempting to discipline large depositors through some sort of coinsurance program also will have little disciplining effect. Coinsurance is premised on the idea that the too-big-to-fail policy should be abandoned.

However, attempting to get rid of too-big-to-fail will be destabilizing to the financial system. It actually will increase deposit insurance losses, and it will greatly harm the domestic and international competitiveness of American domiciled banks because other industrialized nations will not abandon their too big to fail policies. (Ely; 5/17/90, p. 14)

Community banks should be extended the same 100 percent protection enjoyed by major banks in the context of a broader assessment base, but only so long as depositors at our Nation's largest financial institutions are not at risk. IBAA supports a "sunset" provision terminating the 100 percent coverage when such coverage has been terminated for depositors at large financial institutions. (Vallandigham; 4/24/90; pp. 16-17)

As an American taxpayer and a banker, I would favor a world accord that said that we would allow our big banks to fail worldwide but I'm not sure that that's possible. Until that's possible, I think that America is faced with the possibility of a megabank failure at which time that bank will be made whole. As long as we have that situation in America and I think it will be here for some time to come, then we have to look at the whole scope, both domestically as well as foreign. (Vallandigham; 4/24/90, p. 74)

We must eliminate the notion of so-called "too big to fail" policy under which the very largest banks are given de facto 100 percent protection of all deposits. Such a policy is inconsistent with the original intent of deposit insurance and is unfair to smaller banks, but big bankers neither want it nor need it. (Labreque; 4/3/90, p. 26)

We should allow insurance only on deposits up to \$100,000. The original law was designed to protect the core deposits of the average American, not multiple \$100,000 deposits of huge institutions. This approach would return the system to its original purpose, to protect the average American. It would introduce an element of discipline to a system that has become unnecessarily costly and burdensome, and it would reduce insurance costs to U.S. banks making them more competitive with foreign and nonbank competitors. And most importantly, it would reduce the contingent liability that U.S. taxpayers would be forced to pay if the system went awry. (Labreque; 4/3/90, p. 26)

Chairman RIEGLE. Now let me be sure I understand one thing because I don't want there to be confusion on this. You're saying that any individual could have one deposit of up to \$100,000 insured, or they could have multiple deposits as long as they were different institutions?

Mr. LABREQUE. No, no. In the failed institutions, you can only insure up to \$100,000 per person. But, that person, you, as an individual, can have a deposit in the 1st National Bank of Shelby, North Carolina and a deposit in Citibank and up to 100,000 both would be insured.

Chairman RIEGLE. Yes. And so you're envisioning that a person could have multiple units of \$100,000 spread across any number of banks—or insured depository institutions? Is that right?

Mr. LABREQUE. We're talking about—  
Chairman RIEGLE. You're not talking about just one?

Mr. LABREQUE. Correct.

Chairman RIEGLE. Mr. Downey, do you have any thoughts on this at the moment that you want to share with us?

Mr. DOWNEY. Well, that's kind of scary. I think, because, that really calls for no change except a hoped-for theory that regulators will stop insuring deposits when they get to \$100,000. (4/3/90, p. 53-54)

[N]o bank should assume that its scale insulates it from market discipline. (Green-span; 7/12/90, p. 21)

DAVIS POLK & WARDWELL,  
Washington, DC, January 31, 1990.

#### MEMORANDUM: EARLY INTERVENTION

The thrift crisis with its multi-billion dollar taxpayer bailout has appropriately focused attention on raising bank and thrift capital standards. The Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System (the "FRB") and the Federal Deposit Insurance Corporation (the "FDIC") are implementing revised capital standards for banks and bank holding companies, and the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") requires the Director of the Office of Thrift Supervision ("OTS") to formulate capital standards for thrifts that are at least as strict as those for national banks. § 301, CR at 128-129.<sup>1</sup>

In order to enforce adequately these heightened capital standards we believe that it will be necessary for regulators to intervene in troubled institutions substantially earlier than has been the case in the past. For, as the literature on bank failures proves, capital levels consistently turn out to be one of the best indicators of future trouble. See Brumbaugh, Carron & Litan, *Cleaning Up the Depository Institutions' Mess*, Brookings Papers on Economic Activity 275 (1989). Such early intervention should include (but not be limited to) regulations defining the conditions under which regulators may place substantially undercapitalized, although still technically solvent, institutions into conservatorship or receivership. Both commentators and regulators have suggested the need for this form of early intervention. *Cleaning Up the Depository Institutions' Mess* at 275-276; FDIC, *Deposit Insurance in the 1990's* 235 (1989).

In January 1989 the Federal Home Loan Bank Board ("FHLBB"), in conjunction with its then-pending proposal to raise thrift capital standards, sought comment on "whether the final capital regulation should contain specific provisions defining a particular level of regulatory capital as an 'unsafe and unsound condition to transact business' for purposes of triggering the [FHLBB's] statutory authority to appoint a conservator or receiver for the institution." 54 Fed. Reg. 826 (January 10, 1989).<sup>2</sup> The

<sup>1</sup> Unless otherwise noted, citations to FIRREA indicate the relevant section of the act as adopted, including the page number on which the section may be found in the Conference Report dated August 4, 1989 ("CR"). Citations to the U.S. Code indicate where the FIRREA sections will be codified. Note, however, that not all sections of FIRREA indicate where they will be codified.

<sup>2</sup> The FHLBB proposed setting the capital floor at 1.5 percent of total assets, to be held in the form of core equity capital, defined substantially in accordance with generally accepted accounting principles.

FHLBB sought comment on its statutory authority to promulgate such a bright-line rule and on whether such a rule would violate either the Takings Clause or the Due Process Clause of the Fifth Amendment to the Constitution. Many of the savings associations commenting on the proposed rule questioned both the FHLBB's authority under the Home Owner's Loan Act of 1933 ("HOLA") to promulgate such a regulation and the constitutionality of the proposed regulation.

Statutory language adopted as part of FIRREA clearly contemplates early intervention when insured depository institutions are substantially undercapitalized. Thus, in our view, OCC, OTS, the FDIC and state regulators should give serious consideration to promulgating regulations which provide that failure to maintain capital at a certain minimum level would create, by definition, an unsafe and unsound condition to transact business and, consequently, trigger the appropriate regulator's authority to place the insured institution in a conservatorship or receivership.<sup>3</sup>

In our view, such a regulation would not violate either the Takings Clause or the Due Process Clause.

#### I. STATUTORY AUTHORITY FOR EARLY INTERVENTION

##### A. National Banks

In the case of national banks, OCC may not appoint a receiver unless the national bank is insolvent. 12 U.S.C. § 191 (1988). Insolvency, however, is not defined in the National Bank Act and OCC has considerable discretion in determining the standard for measuring insolvency. *Adams v. Nagle*, 303, U.S. 532 (1938); *In re Conservatorship of Wellsville National Bank*, 407 F.2d 233 (3d Cir.), cert. denied, 396 U.S. 832 (1969). In fact, last November OCC promulgated a regulation that allows it to find a national bank insolvent at a significantly earlier stage than in the past. 54 Fed. Reg. 48,851 (November 28, 1989).<sup>4</sup>

Moreover, OCC may appoint a conservator even before a national bank reaches "insolvency". Section 802 of FIRREA, to be codified at 12 U.S.C. § 203(a), specifically defines an "unsafe and unsound condition" to include "substantially insufficient capital." CR at 274-275. In our view Section 802 provides clear statutory authority for OCC to issue a regulation stating that any time a national bank's capital falls below a pre-set floor, the bank may be placed in a conservatorship.<sup>5</sup> FIRREA limits OCC's choice of a

<sup>3</sup> Discussion of what that level of capital should be is beyond the scope of this memorandum.

<sup>4</sup> OCC uses two standards to measure insolvency, a liquidity standard and a net worth standard. Under the liquidity standard a national bank is insolvent if it cannot meet its obligations as they become due. Under the net worth standard, a national bank is insolvent if its liabilities exceed its assets. OCC declares a national bank insolvent under the net worth standard when its primary capital is depleted. Under the new rule, the OCC will no longer include the bank's allowance for loan and lease losses in the calculation of primary capital. 54 Fed. Reg. at 48,852.

<sup>5</sup> Unlike OTS with respect to savings associations and the FDIC with respect to state-chartered banks, OCC apparently does not have the authority to place a substantially undercapitalized national bank into a receivership. *Compare* § 802, CR at 274-275 with § 301, CR at 115-116; § 212, CR at 44-45. The reason for this is not clear.

A conservator, as opposed to a receiver, may not liquidate a depository institution, § 212, CR at 47; 12 U.S.C. § 1821(d)(2)(E), but it may operate the institution, sell it, or merge it with another insured depository institution. § 212, CR at 48; 12 U.S.C. § 1821(d)(2)(G).

capital floor to one that amounts to "substantially insufficient capital." Any reasonable interpretation of the "substantially insufficient capital" language, however, would be reviewed under the very deferential *Chevron* standard if it were attacked in court. *Chevron v. NRDC*, 467 U.S. 837, 842-845 (1984).

#### B. Federal Savings Associations

With the passage of FIRREA, OTS acquired clear authority to appoint either a conservator or receiver when a federal savings association is operating with "substantially insufficient capital." § 301, CR at 115-116.

Indeed, even before FIRREA's enactment, the FHLBB occasionally put thrifts teetering on the brink of insolvency into receivership, based on the theory that such thrifts were in an unsafe and unsound condition to transact business. See, e.g., *Telegraph Savings and Loan Ass'n v. Schilling*, 703 F.2d 1019 (7th Cir. 1983); *Washington Federal Savings and Loan Ass'n v. FHLBB*, 526 F. Supp. 343 (N.D. Ohio 1981).

As discussed above with regard to OCC, any reasonable early intervention rule promulgated by OTS would be reviewable under the *Chevron* deference standard if it were attacked in court.

#### C. State-Chartered Banks and Savings Associations

There are three statutory paths pursuant to which the FDIC (or, if applicable, the Resolution Trust Corporation (the "RTC")) can be appointed receiver or conservator of state-chartered banks and thrifts.<sup>6</sup>

Pursuant to the first path, the relevant state agency, acting under state law requirements for appointing a receiver or a conservator, appoints the FDIC. § 212, CR at 43-44; 12 U.S.C. § 1821(c)(3). Thus, in the case of state appointment under this alternative, the question of whether a receiver or a conservator can be appointed before the depository institution reaches insolvency will turn on applicable state law.

Pursuant to the second statutory path, the FDIC appoints itself receiver or conservator of the state bank or thrift. This second statutory path, however, is available only if the applicable state agency has appointed a receiver or conservator who has been in office for 15 consecutive days; if any insured depositor is unable to withdraw funds; and, if certain other conditions exist. § 212, CR at 44-45; 12 U.S.C. § 1821(c)(4) (A) & (B). Relevant for present purposes is that among these other conditions is one which states that operating with "substantially insufficient capital" amounts to an unsafe and unsound condition. § 212, CR at 45-46; 12 U.S.C. § 1821(c)(5). But, even pursuant to this second path, the FDIC must wait until the relevant state authority has intervened. Thus, once again, the permissibility of early intervention will turn on state law.

Pursuant to the third statutory path, federal—not state—law determines the permissibility of early intervention, but this third path is available only with respect to state-chartered thrifts. OTS has the power to appoint a receiver or conservator of any state-chartered thrift if that institution is operating with substantially insufficient capital. § 301, CR at 116. For an appointment pursuant to this third path, however, OTS must have written notice from the applicable

state agency stating that it agrees that the institution is operating with substantially insufficient capital. § 301, CR at 116. After OTS requests such written notice, the state official has 30 days to respond. After the 30-day period, if OTS has determined that the thrift is operating with substantially insufficient capital and has responded in writing to the state's written reasons, if any, for withholding approval, then OTS may proceed without state approval. *Id.* Thus, with a 30-day time lag, OTS may intervene over the objection of the relevant state authority.

In our view, limiting the availability of this third statutory path to cases involving state-chartered thrifts creates an unnecessary gap in the power of the FDIC. Under certain circumstances the FDIC could be powerless, without the cooperation of state regulators, to interfere with the operations of a substantially undercapitalized state-chartered bank. In the absence of authority to override the state banking agency, the FDIC's only recourse is to terminate the bank's insurance under section 8(a) of the Federal Deposit Insurance Act, a process that may take months and that ultimately results in continued insurance of existing deposits for at least six months following termination. § 926, CR at 325-326; 12 U.S.C. § 1818(a). We believe that the Federal Deposit Insurance Act should be amended to include a provision allowing the FDIC to override state banking authorities when a state-chartered bank is substantially undercapitalized.

#### II. CONSTITUTIONALITY OF EARLY INTERVENTION

Notwithstanding the large number of comments to the contrary on the FHLBB's early intervention proposal, mostly from lawyers representing savings associations, we believe that the Takings Clause of the Fifth Amendment, which prohibits the federal government from taking private property from public use without just compensation, would not invalidate the FHLBB's, or any similar, proposal.<sup>7</sup>

In our view, a court reviewing an early intervention rule is likely to hold that the shareholders have waived any right to make a takings claim. In *Fahey v. Mallonee*, 332 U.S. 245 (1947), the Supreme Court held that a then-existing provision of HOLA, which authorized the FHLBB to prescribe by regulation the conditions under which a conservator could be appointed for a federal savings association, was not an unconstitutional delegation of legislative power. *Id.* at 248-254. Significantly, in *Fahey* the FHLBB appointed the conservator on the grounds that the association was being operated in an unsafe and unlawful manner, not because it was insolvent. *Id.* at 247, 254.<sup>8</sup> The

<sup>7</sup> Since 1942 the Securities and Exchange Commission (the "SEC") has required that brokers and dealers meet prescribed net capital requirements. Loss, *Fundamentals of Securities Regulation* 638 (1988); 17 C.F.R. § 240.15c3-1. Violation of the SEC's net capital rule, which has been described as "one of the most important weapons in the [SEC's] arsenal to protect investors," *Blaise D'Antoni & Associates, Inc. v. SEC*, 289 F.2d 277 (5th Cir.), cert. denied, 368 U.S. 899 (1961), gives the SEC the authority to revoke a broker's license even if the broker is not insolvent. *In re Baitkin & Co.*, 38 S.E.C. 436 (1958). To our knowledge, there has never been any claim that the SEC's net capital rule violates the Takings Clause, and we note that the arguments of the savings association lobby, if taken seriously, would also implicate the constitutionality of this longstanding SEC rule.

<sup>8</sup> The opinion of the three-judge district court explicitly found that the association was "entirely sol-

*Fahey* Court relied on an "elementary rule of constitutional law that one may not 'retain the benefits of the Act while attacking the constitutionality of one of its important conditions.'" *Id.* at 255 (quoting *United States v. San Francisco*, 310 U.S. 16, 29 (1940)). The Court reasoned that the power to appoint a conservator or receiver was crucial to HOLA and inseparable from those provisions of HOLA that created the federal savings association. 332 U.S. at 255. Thus,

"[I]t would be intolerable that Congress should endow an association with the right to conduct a public banking business on certain limitations and that the Court at the behest of those who took advantage from the privilege should remove the limitations intended for public protection. It would be difficult to imagine a more appropriate situation in which to apply the doctrine that one who utilizes an Act to gain advantages of corporate existence is estopped from questioning the validity of its vital conditions." *Id.* at 256.

On grounds similar to those at the heart of *Fahey*, the Third Circuit Court of Appeals rejected a takings claim made by the shareholders of a national bank placed in conservatorship. *In re Conservatorship of Wellsville National Bank*, 407 F.2d 223, 225, 227 (3d Cir.), cert. denied, 396 U.S. 832 (1969). In *Wellsville* the Court of Appeals ruled that the shareholders, by failing to deny that the bank was insolvent before the District Court, had waived any objection to the Comptroller's decision to close the bank. *Id.* at 228. The Court of Appeals went on to reject as "without substance" the shareholders' contention that the Comptroller's action amounted to a taking, *id.*, commenting that shareholders of a national bank hold their shares subject to the conditions and burdens imposed by the National Bank Act. *Id.*<sup>9</sup>

The waiver rationale of *Fahey* and *Wellsville* definitively resolves the constitutionality of any early intervention rule.<sup>10</sup> By taking advantage of federal deposit insurance, shareholders accept the regulatory conditions attached to the insurance and cannot be heard to complain when the insurer takes action to protect depositors, creditors and the integrity of the insurance fund. The protection offered by federal deposit insurance is substantial, especially for smaller, retail or less strongly capitalized banks. It effectively eliminates the risk of depositor runs, allows such banks and thrifts to operate with significantly lower levels of capital, and reduces their cost of funds. Absent deposit insurance, undercapitalized banks and thrifts would be subject to depositor runs and likely failure, assuming they were able to do business at all. Thus, in our view, any remaining shareholder property interest in a substantially undercapita-

vent." *Mallonee v. Fahey*, 68 F. Supp. 418, 419 (1946).

<sup>9</sup> One could argue that the waiver rationale set forth in *Fahey* and *Wellsville* applies only to federal savings associations and national banks since both courts relied, at least in part, on the fact that the relevant federal statute both created and conditioned the shareholders' property interest in the affected depository institution. Such an argument, however, fails because it does not adequately account for the extent to which state-chartered institutions consent to the conditions set by Congress and the FDIC when they accept (and benefit from) federal deposit insurance.

<sup>10</sup> We note that this dispositive argument was neither raised nor discussed in the FHLBB early intervention proposal or the comments thereon.

<sup>6</sup> Until August 9, 1992, the receiver appointed pursuant to the second and third paths must be the RTC; after that date it must be the FDIC. § 212, CR at 45; § 1821(c)(6)(b).

lized institution exists only by dint of the protection offered by that institution's silent partner—the FDIC. Any claim by shareholders that they have a constitutional right to continue to operate a substantially undercapitalized institution boils down to nothing more than a claim that they have a constitutionally protected right to an implicit government subsidy.

The waiver rationale of *Fahey* and *Wells-ville* controls even if the early intervention power of federal regulators had been newly created by FIRREA. As the Supreme Court has noted, "[t]hose who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendment to achieve the legislative end." *FHA v. The Darlington, Inc.*, 358 U.S. 84, 91 (1958) (rejecting the claim of a federally insured mortgagor that recent amendments to the federal housing statute violated the Contracts Clause); *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 227 (1986) (rejecting the claims of employers that recent amendments to ERISA violated the Takings Clause). Banking is a heavily regulated industry and, in light of competitive changes and the multi-billion dollar taxpayer bailout, regulatory change—not preservation of the *status quo*—should be the reasonable expectation of shareholders. Any argument that shareholders could reasonably expect that the grounds for early intervention would remain unchanged should be, in light of recent developments, treated with the disbelief it deserves.

Given the strength of the waiver rationale, it is unlikely that a court would ever consider the takings claim on its merits. Even if a court did consider the takings claim, we believe that it would rule against the shareholders for substantially the same reasons that support the waiver rationale.

Since *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), the Supreme Court has relied on "ad hoc, factual inquiries into the circumstances of each particular case." *Connolly*, 475 U.S. at 225; see also *Rucklehaus v. Monsanto Co.*, 467 U.S. 986, 1005 (1984); *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979). To aid its ad hoc factual inquiry the Court places "particular significance" on three factors: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation interferes with reasonable investment-backed expectations; and (3) the character of the government action. *Penn Central*, 438 U.S. at 124; *Connolly*, 475 U.S. at 225. These factors are not prongs of a doctrinal test, each one of which must be considered or satisfied. Instead, they are part of a balancing test and one of them may assume more importance than the others depending on the facts of the case. Indeed, the Court has noted that "in some circumstances one of these factors by itself may be dispositive." *Kaiser Aetna*, 444 U.S. at 178; see also *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982).

As an alternative to the *Penn Central* factors, the Court sometimes applies the bright-line rule that any physical occupation is taking "without regard to other factors that a court might ordinarily examine." *Loretto*, 458 U.S. at 433; see also *Andrus v. Allard*, 444 U.S. 51, 65-66 (1979). In our view, the shareholders' strongest argument is that early intervention is more akin to a physical occupation than it is to regulatory interference with the use of property generally evaluated under the *Penn Central* factors. The shareholders could buttress this argument by pointing out that early inter-

vention may destroy the entire value of their investment and prevent them from making any economically viable use of it, cf. *Penn Central*, 438 U.S. at 136 (regulation did not interfere with the investors' "primary expectation" concerning the property), and that assuming control of the institution in anticipation of merger or liquidation destroys one of the most fundamental attributes of ownership—the right to exclude others from using the property. *Nollan v. California Coastal Commission*, 483 U.S. 825, 831 (1987); *Loretto*, 458 U.S. 419 at 433; *Kaiser Aetna*, 444 U.S. 164 at 176.

The shareholder's physical occupation argument, however, is substantially weakened by several factors. Any takings claim by the shareholders rests on the assumption that the insured institution is not economically insolvent because it has a positive net worth under the regulatory rules of bank accounting. Given the uncertainties surrounding bank and thrift accounting rules, including the absence of any mark-to-market requirement (or conceivably any way to ensure the reliability of such a requirement), failure to satisfy a minimum capital level is probably the most reliable sign that an insured institution is economically insolvent (or very close to it). See *Cleaning Up the Depository Institutions' Mess* at 275-276. Any property interest the shareholders may turn out to have is protected by present law, which provides that the shareholders will receive any net proceeds resulting from a sale or liquidation. See, e.g., 12 U.S.C. § 197(b) (1982) (national banks in receivership); 12 C.F.R. § 389c.11(a)(10) (formerly § 569c.11(a)(10) 54 Fed. Reg. 42799-802 (Oct. 18, 1989)) (federal savings associations in receivership). Thus, we believe that the Supreme Court (or any other court) is unlikely to apply the physical occupation rule to early intervention.<sup>11</sup>

To the extent a court reaches the takings claim, we believe that the court is more likely to apply some variant of the *Penn Central* factors.<sup>12</sup> In our view, even under

<sup>11</sup> Moreover, all of the physical occupation cases involve traditional public servitudes or easements on real estate. *Loretto*, 458 U.S. at 419 (city claimed right to place a cable TV box in apartment building); *Kaiser Aetna*, 444 U.S. at 175 (imposition of a navigational servitude requiring public access to a pond); *Nollan*, 483 U.S. at 825 (city tried to impose an easement as a condition of gaining a building permit). None involves a heavily regulated modern industry such as banking. The Supreme Court has long implicitly recognized the constitutionally unique nature of the banking industry. For example, at the turn of the century, an economically conservative Supreme Court protected private property with a vengeance. Minimum wage laws, maximum hour laws, and child labor laws were all found to be unconstitutional restraints on private property rights. Yet the same Court upheld, against constitutional attack, two state laws requiring state-chartered banks to make payments into deposit insurance funds. *Noble State Bank v. Haskell*, 219 U.S. 104 (1911); *Assaria State Bank v. Dolley*, 219 U.S. 121 (1911). See also *Fuentes v. Shevin*, 407 U.S. 67, 91-92 (1972).

<sup>12</sup> We use the word "variant" deliberately. The results of the ad hoc *Penn Central* inquiry are inherently unpredictable and with recent changes in the Court's composition, it has become even more difficult to apply the *Penn Central* factors with confidence. *Penn Central* was a 5-4 decision and two members of the majority have since left the Court. By giving some factors more weight the new majority could significantly change takings doctrine without expressly changing the test. Cf. *Nollan v. California Coastal Commission*, 483 U.S. 825, 834 (1987). In our view, this uncertainty makes it even more likely that a lower court would rely on the waiver rationale.

the *Penn Central* factors, the shareholders will lose. Although the economic impact of early intervention could be severe, it is important to recognize (as noted above) that failure to satisfy a minimum capital requirement is probably the most reliable sign of impending instability or insolvency. Moreover, to the extent that the institution turns out to have been solvent, present law ensures that the shareholders will receive the net proceeds resulting from any sale or liquidation. Finally, the shareholders' constitutional claim is also substantially weakened by the fact that their property interest in an undercapitalized institution more than likely continues to exist only by dint of the protection offered by federal deposit insurance.

The second *Penn Central* factor—reasonable investment-backed expectations—weighs heavily against the shareholders. After FIRREA, shareholders have no reasonable expectation of retaining any property interest in a substantially undercapitalized bank.

The final *Penn Central* factor, the nature of the government action, also weighs heavily against the shareholders. When attempting to determine the nature of the government's action, the Court examines whether the government has permanently appropriated assets for its own use or whether the action is incident to a public program that adjusts the benefits and burdens of economic life for the protection of the public good. See, e.g., *Armstrong v. United States*, 364 U.S. 40, 49 (1960); *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 485 (1987); *Agins v. Tiburon*, 447 U.S. 255, 260 (1980). For the past fifty years federal deposit insurance has played a crucial role in adjusting the benefits and burdens of economic life for the protection of the public good. Early intervention should be viewed as an incident to that program. Having reaped the benefits of federal deposit insurance, shareholders should be required to endure its accompanying burdens.

Finally, we believe there is no force to the argument that the Due Process Clause of the Fifth Amendment requires notice and a hearing before a regulator may close a troubled but still solvent institution. It is well-established that procedural due process is satisfied by post-deprivation hearings. See *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Fahey v. Mallonee*, 332 U.S. 245 (1974); *Haralson v. Ben Milam Savings & Loan Assn.* 837 F. 2d 1123 (1987); *Gregory v. Mitchell*, 459 F. Supp. 1162 (D. Ala. 1978) (dictum); *In re Franklin National Bank*, 381 F. Supp. 1390 (E.D.N.Y.). In *Fahey*, the savings association was not insolvent, yet the Court upheld the FHLBB's regulation providing for a hearing after the appointment of the conservator. As the *Fahey* Court noted,

"[t]his is a drastic procedure. But the delicate nature of the institution and the impossibility of preserving credit during an investigation has made it an almost invariable custom to apply supervisory authority in this manner. It is a heavy responsibility to be exercised with disinterestedness and restraint, but in the light of the history and customs of banking, we cannot say it is unconstitutional." 332 U.S. at 253-254.

More recently, in *Federal Deposit Insurance Corporation v. Mallen*, 486 U.S. 230 (1988) the Court unanimously held that provisions for a hearing following the suspension of an indicted bank officer were justified by the FDIC's need to act promptly to protect the interest of depositors and to maintain public confidence in the banking system.

In addition, the "substantially insufficient capital" language of FIRREA puts shareholders on notice that they may lose their investment if they do not maintain sufficient capital. If regulations are issued establishing a bright-line minimum capital rule, this provides further advance notice of the regulator's intent to intervene under a predetermined set of conditions. Significantly, FIRREA provides for prompt judicial review when a conservator or receiver is appointed on the grounds, of "substantially insufficient capital." In sum, we believe that under present law substantially undercapitalized institutions have adequate notice that they may be closed should their capital fall below a pre-determined minimum level.

EDWARD J. KELLY III.  
MARGARET E. TAHYAR.

Mr. DODD. Mr. President, I am pleased to become an original cosponsor of the Deposit Insurance Reform and Taxpayer Protection Act of 1990. I commend Chairman RIEGLE and his staff for the prodigious amount of work and thought that have gone into the development of this legislation. It will provide the committee and the country with an excellent starting point for reforming Federal deposit insurance to assure that the system continues to guarantee depositors protection for their savings without creating incentives for the unscrupulous to gamble with the public's money, as happened in the savings and loan industry.

There continues to be a number of actions we need to take to resolve the S&L Mess—we must assure the FDIC an adequate supply of funds so that it can resolve failing and failed S & L's at the lowest cost to the taxpayer; we must make sure that the resolution trust corporation disposes of the assets it acquires from failed S & L's in the most cost-effective way; we must make sure that the Justice Department has the necessary tools and will to prosecute S & L crooks; and we must adopt the legislation Senator BOND and I have proposed to create a national commission on the savings and loan industry to give the public a full accounting of the combination of private actions and legislative and regulatory decisions that produced this fiasco.

At the same time, it is vital that we take the lessons we learn from the S & L disaster and use them to enact legislation that will assure a strong and competitive financial services system that meets the needs of depositors and businesses without placing the deposit insurance system in jeopardy. I believe the bill I am joining Senator RIEGLE and others in introducing today represents a very thoughtful starting point for consideration of deposit insurance reform.

While many scholars of deposit insurance, particularly economists, have pointed out that the \$100,000 deposit insurance guarantee afforded depositors gives thrifts and banks an incentive to gamble with the public's money and have recommended radical

changes in the nature and amount of this guarantee, I think such an analysis fails to appreciate the vital role deposit insurance played in stabilizing a banking system that had collapsed in the late 1920's and in avoiding depositor runs for almost 50 years since then. It also fails to appreciate the key role in the debacle played by other actions. While deposit insurance did enable unscrupulous and incompetent S&L operators to raise huge sums of money that they then gambled with, this disaster would not have occurred if thrifts had not been permitted to operate without capital, so none of their own money was at risk; and if there had not been fewer cops, regulators, on the beat at a time when thrifts had been given new powers by both the Federal and State governments that made the thrift charter a far more attractive one.

It was this combination of events, among others, that led to the fiasco, and corrective legislation must reflect an understanding of these events in order to devise a solution that does not err in the other direction. I believe this bill meets that test. Let me explain its benefits as I see them.

First, I believe it takes an appropriately cautious approach with respect to the \$100,000 depositor insurance guarantee. It limits deposit insurance to \$100,000 per individual per institution, which will reduce the insurance fund's exposure at any individual financial institution without limiting the ability of people to get insurance protection. It also would prohibit the regulators, in failure situations, from paying off uninsured depositors, those with over \$100,000 in an account.

I think this is the proper area to tinker with deposit insurance. The proper place to bring private market incentives into the system is not with the mom and pop depositors but with sophisticated depositors and investors. This category would include people with deposits over \$100,000, as well as those who own an institution's subordinated debt—the bill would prohibit institutions whose capital is deteriorating from making payments on its subordinated debt. In this way, I believe we will be able to benefit from some private market discipline without exposing the average depositor's funds.

There is one narrow, but important, deposit insurance issue that the bill touches on, but does not resolve fully. That is the issue of BICS, or bank investment contracts. These are multi-million dollar deposits that by their terms are far riskier than certificates of deposit but have been granted full \$100,000 per investor pass-through deposit insurance by the regulators. One of the riskier aspects lies in the fact that investors may put very little money or a great deal of money into them during a window period, while

the bank's commitment to pay a specific return remains fixed. Obviously in times of volatile interest rates, such contracts can be very dangerous. In fact, one insurer lost close to \$1 billion on an analogous insurance product. I believe BICS poses a serious threat to the deposit insurance funds, one that requires our legislative attention.

Second, the bill focuses on the key issue of stronger capital requirements. It requires the Federal banking agencies to set capital levels to prevent losses to the deposit insurance funds. Strong capital is the first line of defense and Fed Chairman Alan Greenspan and others have testified before the Banking Committee on the need to add more capital to the system.

Third, the bill addresses the vital issue of strengthening the regulatory system for depository institutions that do not meet the capital standards. This bill contains a thoughtful series of steps for dealing with institutions that fail to meet the capital standards. When an institution first falls below the required capital level, it would not be permitted to pay dividends, would have limits placed on its asset growth, and would be required to file a capital restoration plan.

If the capital continues to deteriorate, restrictions would be placed on activities and operations, subordinated debt payments would be prohibited and the Government would intervene to protect the deposit insurance fund from loss. Had such a system been in place in the early 1980's, we would not be facing a \$500 billion problem today. Such a system will help us avoid such a problem in the future.

Fourth, the bill contains restrictions on State-authorized activities for depository institutions. This is a prickly area because of our long tradition of a dual banking system, with some activities authorized by Federal authorities and some by States. Historically, the States have authorized a number of useful innovations in the banking system. However, we clearly must be far more careful in continuing a system that separates who authorizes bank activities, in this case the States, from who pays for the consequences of any failures, here the Federal Government through deposit insurance. Data from the S&L debacle show that a huge percentage of the losses were incurred by State-chartered thrifts that misused State-authorized powers that were broader than those permitted to Federal thrifts. Clearly we must never permit that to happen again. At the same time, it is important to seek to strike a balance here that will permit us to take advantage of the States as laboratories without exposing the deposit insurance funds to undue risk.

That this is not a problem restricted to thrifts alone is clear from the

recent controversy surrounding a Delaware law that would have authorized banks—either through a separate department or division of the bank itself, or through a subsidiary of the bank—to underwrite and sell insurance anywhere in the Nation. While the Fed has put a stop to this particular law, it represents the potential danger that continues to exist until the Congress and the President act to define the rules of the road in this important area.

The bill takes a cautious step toward restricting such activities. Clearly, this section of the bill will require careful consideration as we try to balance a large number of competing concerns.

The bill also touches on a similar problem with respect to risky national bank activities, which raises a question as to the wisdom, if not the legality, of a decision by the comptroller of the currency that permits national banks located in a place with a population not exceeding 5,000 to sell insurance anywhere in the country. The provision in the National Bank Act was designed to assure insurance availability in isolation areas, not to be used as a subterfuge to sell insurance nationwide. Such abuses must be ended, and I am hopeful that we will solve this problem in this legislation.

While the bill contains many other provisions, I would just like to mention a couple of them. First, the bill would direct the Securities and Exchange Commission to facilitate the development of accounting principles that better reflect the actual condition of depository institutions. Today, generally accepted accounting principles utilize an historical basis to value assets. Unfortunately, as we discovered in the S&L crisis, sometimes those assets deteriorate in value over time so that traditional GAAP accounting fails to reflect the true value of the assets. If we are to assure that the new capital standards are meaningful, we must move as far as we can to an accounting system that reflects the present value of assets.

Finally, the bill would authorize the FDIC to institute a system F risk-based premiums that would require depository institutions that engage in riskier activities to pay higher premiums. Such a system would apply traditional insurance principles to deposit insurance, a difficult but long overdue action to take.

Overall, I think Chairman RIEGLE's bill provides an excellent starting point for reforming and strengthening our system to make sure that deposit insurance continues to provide the invaluable function of discouraging bank runs without exposing the public's funds to achieve that goal.

However, deposit insurance reform cannot be our only legislative change if we are both, to protect deposit insurance, and enable our financial serv-

ices providers to offer the products consumers want domestically and have the strength to compete internationally. One of the reasons our banks are in some trouble today, is because other financial services competitors have availed themselves of modern technology to take away some of what used to be the banks' best business. The commercial paper filed, whereby securities firms finance short term lending for corporations, is an example of how the banks competitors have taken away a lucrative and safe market from the banks. If banks are to continue to perform their important role as financial intermediaries, then we are going to have to permit them to diversify their activities. The question is, what set of rules can we establish to assure they do so without placing an undue risk on the taxpayers? Early in this Congress I introduced the safe bank approach, long championed by Bob Litan of the Brookings Institution, which I believe would permit the necessary diversification without increasing risk by requiring banks that wish to engage in new activities to put their depositors' funds into short term, highly liquid and safe investments and to fund the new activities out of independently raised, uninsured capital. I think this is one good way to modernize our laws. Many other thoughtful proposals are also on the table. I just want to reinforce the point that any successful reform of deposit insurance must also address modernization of our financial services industry.

Finally, I think it is also important for the Congress to address the issue of interstate banking. The regional interstate banking compacts have been a success and now it is time to permit full interstate banking. I have introduced legislation to permit it. It is good for banks, it is good for their customers, and it will be good for us competitively in the global economy. Given the likely controversial nature of financial modernization legislation, I hope the banking committee will consider, and move, this legislation separately early in the next Congress.

Mr. President, I am pleased that our Banking Committee Chairman, Senator RIEGLE, has put such a thoughtful proposal on the table and I am looking forward to working with him and other Members of the Senate—as well as with the administration—to perfect this proposal and to move it rapidly in the next Congress to assure the public a financial services industry for the 21st century that will be strong and internationally competitive with little or no risk to the taxpayers.

By Mr. ARMSTRONG:

S. 3104. A bill for the relief of Sonanoug Poonpipat (Latch); to the Committee on the Judiciary.

RELIEF OF SONANOUG POONPIPAT (LATCH)

● Mr. ARMSTRONG. Mr. President, I rise today to introduce a private relief bill that will correct a problem created by a loophole in our immigration law. This bill, companion legislation to a bill introduced in the House by Congressman HANK BROWN, would grant immediate relative status to the widow of a U.S. citizen killed abroad.

In 1986 Mr. William P. Latch, an NBC reporter from Durango, CO, was killed while on assignment in Thailand. He left behind a Thai wife, Sonanoug Poonpipat Latch, and two minor children with dual citizenship. Unfortunately, Mr. Latch had not petitioned for citizenship for his wife before his death. Had he done so, it would have been a routine process to grant his wife U.S. citizenship. Now, however, she cannot be granted permanent resident status because she has no immediate relative to petition on her behalf. Mrs. Latch is caught in an immigration limbo called deferred action status. She is permitted to live in the United States but is prevented from working and her residency can be terminated at any time by the Immigration and Naturalization Service.

Mrs. Latch and her children have been living in the United States for 4 years. Both of her children are in school, doing well and have fully assimilated into American culture. Permanent residency status for Mrs. Latch would be the last step in an immigration odyssey that has spanned 4 years. Her only desire is to be a productive member of her community and have the peace of mind that comes from knowing she cannot be forced to be returned to Thailand. This legislation will, at long last, give Mrs. Latch and her family the full measure of protection and security our immigration laws afford, and I urge its compassionate and favorable consideration. ●

By Mr. BUMPERS:

S. 3105. A bill to strengthen the protections afforded to units of the National Park System and certain other nationally significant historic and natural places, and for other purposes; to the Committee on Energy and Natural Resources.

NATIONAL HERITAGE CONSERVATION ACT

● Mr. BUMPERS. Mr. President, I am today introducing a proposed National Heritage Conservation Act to strengthen the protection of natural and historic places of national significance.

Two years ago the Congress moved in a critical situation to save from commercial development historic portions of the Manassas National Battlefield. The 11th-hour rescue of Manassas was an extraordinary event but the plight of Manassas is not unique. The fact is that many Civil War battlefields and national parks, many na-

tional historic and national landmarks are under increasing pressure from development in many forms.

It is encouraging to see a growing awareness of the need to act aggressively to save these precious resources. Only this summer announcement was made of the magnificent gift to the Nation of more than 100,000 acres of wildlife refuges and historic areas by the Richard King Mellon Foundation. This gift includes critical Civil War sites like the Cornfield, a tract on the Antietam National Battlefield in Maryland, which was the scene of the bloodiest day of fighting of the War. It also includes an important ranch property in New Mexico with 100 Indian and Spanish archeological sites, as well as lands adjacent to Rocky Mountain National Park purchased to protect elk migration.

The Mellon Foundation gift dramatizes both the urgent need and the opportunities for private sector involvement in heritage protection. I hope other foundations—which rarely engage in this kind of preservation—will follow the lead of the Mellon Foundation.

Clearly, in today's fiscal climate, the Federal Government cannot afford to buy off developers and save every threatened national resource. We can, however, do a much better job of planning to protect these resources than we do now. We can work more closely with business interests, with the environmental community and with concerned citizens to achieve the goal of preserving our heritage.

The legislation I am introducing today would provide a national strategy for protecting natural and historic places. It would apply to nationally significant heritage resources defined as units of the National Park System, including affiliated areas, national historic landmarks, national natural landmarks and sites nominated by the Secretary of the Interior.

The legislation would direct the Secretary to prepare a biennial report documenting the condition of each unit of the National Park System. No such report is currently prepared. The report would include a listing of internal and external threats to the unit and a description of plans to protect the unit. It would also direct the Secretary to maintain a list of national historic landmarks and national natural landmarks that are endangered. Although the Secretary has prepared an annual report on endangered landmarks the bill would codify the procedures and criteria for such listings.

The legislation would create a new program administered by the National Park Service to encourage the protection of units of the National Park System through voluntary cooperative planning with State and local governments and the private sector.

The Service would be directed to draw up a list of units to participate in the planning process. The bill would authorize the Service to make planning grants to encourage public and private groups to participate in preparing strategies. The Service would review draft strategies and approve those that contain binding commitments for actions which, if implemented, would reduce or remove threats. For approved strategies, the proposal would authorize Federal grant funds for plan implementation.

For those landmarks identified as endangered, the bill would direct the National Park Service to seek to enter into voluntary agreements with landmark owners to provide for the long term protection of the site. It authorizes planning grants to private owners, local governments and State governments to enable them to help formulate an agreement. The National Park Service is authorized to make grants to implement an agreement which has been approved by affected parties. As with a heritage protection strategy, the legislation would require that all Federal agency actions be consistent with the conservation agreement.

The bill would establish a new standard for Federal agency activities that have the potential to harm a nationally significant heritage resource. Federal agencies would be prevented from approving activities that would use land from any protected site. In addition, agencies would be allowed to approve or assist activities that would adversely affect a site only if they find that there are no feasible and prudent alternatives to the action and that all possible planning to minimize the harm will be undertaken.

The legislation would also amend the National Historic Preservation Act to provide that, where Federal agencies, States and the Advisory Council on Historic Preservation cannot reach an agreement on plans to avoid or mitigate harm to a historic property listed on or eligible for listing on the National Register of Historic Places, the agency may not proceed unless it finds that it is not feasible and prudent to implement the recommendations of the Council.

The legislation would authorize \$25 million each year for the preparation and funding of heritage protection strategies and landmark conservation agreements.

Mr. President, I am introducing the National Heritage Conservation Act at this stage in the 101st Congress to provide for the widest possible consideration of its provisions and its potential for achieving results. The Public Lands Subcommittee will actively solicit comments and suggestions on this proposal over the next few months with a view to legislative action next year, which marks not only the 25th anniversary of the National Historic

Preservation Act of 1966 but also the 75th Anniversary of the National Park System.

In the meantime, I hope that Congress will complete action this year on legislation I have sponsored to create a Civil War Sites Advisory Commission. The Commission will assess threats to Civil War sites of historic significance and recommend strategies for preserving these sites. The National Heritage Conservation Act could provide a means for acting on the Commission's recommendations in the future.

Mr. President, I ask unanimous consent that the text of the proposed National Heritage Conservation Act be printed in the RECORD.

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

S. 3105

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "National Heritage Conservation Act".

#### SEC. 2. FINDINGS.

The Congress finds that—

(1) The Nation's heritage of natural and historic places embrace unique, superlative, and nationally significant resources, constitute a major source of pride, inspiration, and enjoyment for the people of the United States, and have gained international recognition and acclaim.

(2) The Congress has repeatedly expressed its intentions, in both generic and specific statutes and by other means, that units of the National Park System and other natural and historic places should be accorded the highest degree of protection.

(3) Many nationally significant heritage resources are being degraded or threatened with degradation leading to the loss of tangible links to the natural and cultural history of the Nation.

(4) Units of the National Park System, national historic and natural landmarks, and sites listed on the National Register of Historic Places, are an irreplaceable national heritage whose preservation is in the public interest and essential to provide future generations of Americans with the rich legacy of cultural and natural resources which are so much a part of the Nation's history and character.

(5) No comprehensive program exists for the gathering of data, the identification, analysis, and documentation of trends and the identification of problems regarding the condition of units of the National Park System and other nationally significant heritage resources, or for preventing the loss or degradation of these irreplaceable cultural and natural assets.

#### SEC. 3. PURPOSE AND POLICY.

(a) PURPOSE AND POLICY.—In furtherance of the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1,2-4), the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et. seq.), the National Historic Preservation Act (94 Stat. 2987; 16 U.S.C. 470 et. seq.), the Act of August 18, 1970 (84 Stat. 825; 16 U.S.C. 1a-1 through 1a-7), and such other legislation establishing units of the National Park System, it is the purpose of this Act, and shall continue to be national policy, to provide for a highest degree of

protection and preservation of the Nation's heritage of natural and historic places for the benefit of present and future generations.

(b) **SPECIFIC PURPOSE.**—In furtherance of that purpose and policy, it is the specific purpose of this Act to provide for the development of comprehensive management programs, and planning and decisionmaking processes which will—

(1) identify damage, threats, and problems affecting, or which may adversely affect, nationally significant heritage sites, and

(2) provide for the implementation of actions which will maximize the protection and preservation of these resources for the benefit of present and future generations.

#### SEC. 4. STATE OF THE NATIONAL PARKS REPORTS.

(a) **REPORT.**—The furtherance of the provisions of section 3 of this Act, the Secretary shall undertake a continuing program of data collection, research, monitoring, analysis and documentation as to conditions, factors and forces which are adversely affecting, or threatening to adversely affect, units of the National Park System. The Secretary shall prepare a biennial "State of the National Parks" report. Such report shall fully document the condition of the national parks including appropriate baseline information and documentation of problems related to their degradation and solutions to such problems. The first report shall be issued no later than January 1, 1993 by the Secretary to the Speaker of the United States House of Representatives and to the President of the United States Senate for referral to and consideration by the appropriate legislative committees of the House and Senate. Successive reports shall update previous submissions. Each report shall be printed as a House document.

(b) **CONTENTS.**—The report shall include, but need not be limited to, a brief description, for each individual unit of the National Park System, of each of the following:

(1) The past, current, and projected condition of the unit.

(2) All factors and forces, ranked in order of priority, emanating from both inside and outside the unit, which adversely affect or threaten to adversely affect the unit. The report shall include an analysis of the nature and severity of actual or threatened impacts from such factors or forces, including a description of the source of those factors or forces, the probability of their continuation or increase, and the resources of the unit which have been or may be adversely affected.

(3) Ongoing and planned protection and management actions, including specific research programs with regard to paragraphs (1) and (2) of this paragraph.

(4) The accomplishments and results of the actions undertaken in accordance with paragraph (3).

(c) **PUBLIC INVOLVEMENT.**—In the preparation of the "State of the Parks" report, the Secretary shall take appropriate steps to solicit public involvement.

#### SEC. 5. PREPARATION OF LIST OF ENDANGERED PLACES

(a) **PREPARATION.**—The Secretary is directed to maintain a complete and current list of all national landmarks which meet the criteria of subsection (b). The Secretary shall transmit a copy of such list to the Speaker of the United States House of Representatives and to the President of the United States Senate for referral to and consideration by the appropriate legislative committees of the House and Senate. Such report shall be transmitted by the Secretary

at the beginning of each fiscal year beginning with fiscal year 1992.

(b) **CRITERIA FOR LISTING.**—Within 1 year of the effective date of this Act, the Secretary shall promulgate criteria for designating a national landmark as endangered. Such criteria shall provide for the designation of a national landmark that faces any known or reasonably foreseeable damage or threat that may cause the landmark to lose those qualities for which the site was designated. Such damage or threat includes, but is not limited to—

(1) actions or failures to act that may result in the deterioration, destruction or alteration of all or part of the site; and

(2) the introduction of visual or audible elements that are inconsistent with the interpretation or public enjoyment of the site. In developing these criteria, the Secretary shall consult with affected Federal agencies, businesses, organizations and individuals as well as seek and consider public comments.

(c) **PROCEDURES FOR LISTING.**—The Secretary shall list those sites which meet the criteria established pursuant to subsection (b) following a review of such information as the Secretary deems necessary. No site shall be listed until the Secretary has—

(1) consulted with the Governor of the State (or States) and chief elected official of the local government (or governments) in which the site is located; and

(2) provided a reasonable opportunity for public comment.

Such consultation and opportunity to comment prior to designation may be waived by the Secretary in emergency situations where delay would frustrate the purposes of this Act. In such cases, consultation and opportunity to comment shall take place at the earliest possible opportunity following listing.

(d) **PETITION FOR LISTING.**—Upon the request of the owner of the national landmark or the appropriate local or State government, the Secretary shall undertake a review of a site to determine whether it meets the criteria of subsection (b). The Secretary shall make such determination no later than 30 days following the receipt of a petition. Upon determining that a site meets such criteria, the Secretary shall place it on the list of endangered places.

(e) **REGULATIONS.**—The Secretary shall promulgate regulations for the implementation of this section within 1 year of the date of enactment of this Act.

#### SEC. 6. HERITAGE PROTECTION STRATEGIES.

(a) **DESCRIPTION.**—The Secretary shall initiate a program to prepare heritage protection strategies for units of the National Park System. The purpose of preparing a strategy shall be to develop specific programs of cooperation among the Service, other Federal agencies, State and local governments and the private sector that will address factors and forces which adversely affect or threaten to adversely affect units of the National Parks System as documented in the state of the parks report—

(1) that relate wholly or in part from conditions outside the boundaries of a unit, or

(2) whose resolution is dependent in whole or part on the actions or policies of governmental agencies or persons other than the National Park Service.

(b) **PREPARATION.**—A heritage protection strategy shall be prepared by the Secretary in consultation with such public and private parties as the Secretary deems necessary and appropriate for the strategy's preparation and implementation. Within 180 days

of the publication of the initial state of the parks report, the Secretary shall publish a listing of not fewer than 20 units where the National Park Service shall initiate the preparation of a heritage protection strategy. Thereafter, the Secretary shall revise and republish such list in conjunction with the issuance of the state of the parks report.

(c) **GRANTS.**—The Secretary is authorized to make grants to local governments and State governments for the purposes of assisting in the preparation of a strategy described in subsection (a). Such grants shall not exceed \$50,000 in any fiscal year to any local government or \$250,000 to any State government.

(d) **CONTENTS.**—A heritage protection strategy shall include each of the following:

(1) A description of the nature of known threats to the national park unit.

(2) A definition of an area in which grant assistance, cooperative plans and other techniques to avoid or substantially mitigate the effects of non-Federal activities on the park unit and any other natural or cultural resources within the area will be applied.

(3) A detailed description of such plans and techniques as may be necessary or appropriate to prevent any adverse effect to the unit.

(4) Specific programs of private, local, state and Federal actions, including but not limited to, zoning and property acquisition, including easement acquisition, that will implement such plans and techniques.

(e) **APPROVAL.**—The Secretary shall not approve any strategy unless the Secretary finds it is consistent with subsection (d) and makes each of the following findings:

(1) A finding that the strategy has been developed with adequate opportunity, including public hearings, for public involvement in the preparation and review of the strategy, and public comments were received and considered in the strategy or revision as presented to the Secretary.

(2) A finding that any State and local government (or governments) or Federal agencies identified in the strategy as necessary for implementing its provisions have the necessary authority to implement the strategy and has taken such actions, or upon approval of the strategy will take such actions, including the adoption of laws, ordinances resolutions or regulations, to demonstrate their intention to use such authority to implement the strategy.

(3) A finding that the strategy, if implemented, would remove some or all of those threats identified in the state of the national parks report.

(f) **GRANTS TO STATE AND LOCAL GOVERNMENTS.**—The Secretary is authorized to provide grants to such State and local governments to facilitate the implementation of the strategy including grants for the acquisition of full or partial interests in property, the construction of public facilities, and the preparation and construction of such services and facilities as will enhance the public's appreciation of the park unit and any other natural, historic, or recreational resources within the area in which the strategy will be implemented. Such grants shall be conditioned on the Secretary's receipt of specific commitments for State or local actions, including but not limited to zoning and property acquisition, including easement acquisition, that will assist in the implementation of an approved heritage protection strategy. The Secretary shall suspend the provision of grants where the Sec-

retary has withdrawn approval of the strategy pursuant to subsection (g).

(g) REVIEW.—The Secretary shall conduct a regular review of approved strategies for the purpose of ensuring that the strategy continues to meet the requirements of subsections (d) and (e). Where the Secretary finds that a strategy or its implementation no longer meets these requirements, the Secretary shall withdraw his or her approval of the strategy or portions thereof. Such a withdrawal shall occur only after consultation with the affected local and State governments.

(h) GRANT CONDITIONS.—Grants under this section shall be made only upon application of the recipient State or local government and shall come from funds specifically appropriated for this purpose as authorized by this Act. In addition, such funds shall be in addition to any other Federal financial assistance for any other program, and shall be subject to such terms and conditions as the Secretary deems necessary to carry out the purposes of this section. No grant shall be made after the date 5 years from the date of the Secretary's approval of the plan.

(i) CONSISTENCY OF FEDERAL ACTIVITIES WITH HERITAGE PROTECTION STRATEGIES.—Each Federal agency conducting or supporting undertakings that may affect units of the National Park System for which the Secretary has approved a strategy pursuant to this section shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with the strategy.

#### SEC. 7. NATIONAL LANDMARK CONSERVATION AGREEMENTS.

(a) AGREEMENTS.—For each national landmark identified as endangered pursuant to section 5, the Secretary shall seek to enter a binding written agreement with—

- (1) the owner of the national landmark, or
- (2) the local government (or in the case of a site located within multiple jurisdiction, such governments) within which the national landmark is located, or
- (3) in the case of a landmark owned or controlled by an agency of the Federal government, such agency, or
- (4) a combination of such owners, governments and agencies as the Secretary considers appropriate,

that provides for the long-term conservation of the site. Such an agreement shall specify a detailed plan of action to preserve those characteristics of the national landmark that qualified it for such designation.

(b) PLANNING GRANTS.—The Secretary is authorized to make grants for the purpose of assisting owners and local governments in the preparation of an Agreement described in subsection (a). Such grants shall not exceed \$50,000 in any fiscal year to any individual or local government.

(c) CONSERVATION GRANTS.—Upon the execution of an agreement the Secretary may provide grants to owners and local governments to facilitate the implementation of the Agreement including grants for the acquisition of full or partial interests in property, the rehabilitation of properties and the preparation and construction of such services and facilities as will enhance the public's appreciation of the national landmark. Such grants shall be conditioned on the Secretary's receipt of specific commitments, including but not limited to zoning and property acquisition or donation, including easement acquisition and donation, including easement acquisition and donation, that will assist in the implementation of a Landmark Conservation agreement.

(d) GRANT CONDITIONS.—Grants under this section shall be made only upon application of the recipient local government or owner and shall come from funds specifically appropriated for this purpose as authorized by this Act. In addition, such funds shall be in addition to any other Federal financial assistance for any other program, and shall be subject to such terms and conditions as the Secretary deems necessary to carry out the purposes of this section.

(e) CONSISTENCY OF FEDERAL ACTIVITIES WITH LANDMARK CONSERVATION AGREEMENTS.—Each Federal agency conducting or supporting undertakings that may affect a national landmark for which the Secretary has executed a conservation agreement pursuant to this section shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with the agreement.

#### SEC. 8. PROTECTION FROM ADVERSE FEDERAL ACTIONS.

(a) POLICY.—The head of any Federal agency shall not approve any Federal or federally assisted undertaking unless the agency head makes each of the following determinations:

(1) A determination that the undertaking does not require the use of any land from a nationally significant heritage resource (as defined in subsection (b)).

(2) A determination that the undertaking does not adversely affect a nationally significant heritage resource or that the undertaking will be approved notwithstanding the effect because—

- (A) there are no prudent and feasible alternatives to the undertaking, including not proceeding with the undertaking, and
- (B) the undertaking includes all possible planning to minimize harm to the nationally significant heritage resource.

(b) NATIONALLY SIGNIFICANT HERITAGE RESOURCES.—For the purpose of this Act, nationally significant heritage resources are each of the following—

- (A) the units of the National Park System,
- (B) those places designated as National Historic Landmarks,
- (C) those places designated as National Natural Landmarks, and
- (D) any resource, upon application of the Governor of the State or the chief elected official of the local government concerned, found by the Secretary to be worthy of maximum Federal efforts to conserve and enhance for the education, appreciation, and inspiration of present and future generations.

The Secretary shall promulgate standards and procedures for considering applications pursuant to this paragraph. The Secretary shall publish a listing of nationally significant heritage resources not less often than January 1 of each year.

(c) PROCEDURES.—The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking that may adversely affect a nationally significant heritage resource shall, prior to issuing a license, approving the expenditures of funds, or granting other such approval, sanction or assistance—

- (1) promptly notify the appropriate State and local governmental officials, and interested members of the public of the action at the time it is planning the action, preparing an environmental assessment regarding the action, preparing an evaluation pursuant to the National Environmental Policy Act of 1969, and if required, preparing an environmental impact statement for the action, and

(2) provide the Secretary, the Advisory Council on Historic Preservation, and the Council on Environmental Quality a reasonable opportunity to comment on the undertaking and the finding made pursuant to subsection (a) of the section.

The requirements of this subsection shall be carried out in accordance with procedures established by regulation by the Federal agency responsible for undertaking or approving the Federal action. These procedures shall utilize the procedures developed by such agency pursuant to the National Environmental Policy Act, the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, the Council on Environmental Quality, or any combination of these as the agency deems appropriate, and such other applicable laws as may serve to advance the purpose of this section.

(d) EXEMPTIONS FOR NATIONAL SECURITY AND DISASTERS.—The provisions of this section shall not apply to any undertaking or class of undertakings—

(1) that is carried out by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any state that are uniquely military in nature where the President determines that it is in the paramount interest of the United States to permit such undertaking, or

(2) that takes place in an area the President has declared to be a major disaster area under the Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and where the head of the agency determines that the undertaking—

(A) is necessary to prevent the recurrence of such a disaster and to reduce the potential loss of human life, or

(B) involves an emergency situation which does not allow compliance with this section.

(e) PREVENTION OF HARM IN ANTICIPATION OF AN APPLICATION FOR FEDERAL ASSISTANCE.—The head of any Federal agency shall not grant a loan, loan guarantee, permit, license, or other assistance in the improvement of property to an applicant who, at any time prior to the making of the application, engaged in activity on that property that affected adversely a nationally significant heritage resource or property subject to the provisions of section 106 of the National Historic Preservation Act, or, being in a position to prevent it, allowed such activity to occur, unless such agency head, in consultation with the Secretary and the Advisory Council on Historic Preservation, determines that circumstances justify extending the requested Federal assistance despite the adverse effect created or permitted by the applicant.

#### SEC. 9. FEDERAL ACTIONS THAT AFFECT NATIONAL REGISTER PROPERTIES.

Section 110(f) of the National Historic Preservation Act of 1966 is amended to read as follows: "(f) With respect to any undertaking subject to the provisions of section 106 which adversely affects any historic property for which the agency has not entered into an agreement with the Council and the appropriate State Historic Preservation Officer, the head of the responsible Federal agency may approve such undertaking only if the agency head determines that implementing the recommendations contained in the comments of the Council made pursuant to section 106 is not feasible and prudent."

#### SEC. 10. DEFINITIONS.

As used in this title:

(1) The term "adverse effect" or "adversely affect" means for the purposes of this Act, any factor, force or action that may damage, diminish, degrade, impair, destroy or otherwise harm.

(2) The term "appropriate committees" means those committees of both the House and the Senate which have primary jurisdiction for the activities of the National Park Service or for the appropriation of funds for the National Park Service.

(3) The term "Federal or federally assisted undertaking" means any Federal, federally assisted or federally licensed project, activity, or program or the approval, sanction, assistance, or support of any non-Federal action, activity or program.

(4) The term "National Historic Landmark" means a property so designated by the Secretary of the Interior or determined eligible for such designation pursuant to the authority of the Act of August 21, 1935.

(5) The term "national landmark" means any National Historic Landmark or any National Natural Landmark.

(6) The term "National Natural Landmark" means a property so designated by the Secretary of the Interior pursuant to authority of the Act of August 21, 1935 and as further authorized by this Act.

(7) The term "National Park System" has the meaning provided by section 2 of the Act of August 8, 1953 (16

(8) The term "National Register of Historic Places" means places so designated pursuant to the National Historic Preservation Act.

(9) The term "nationally significant heritage resource" or "nationally significant heritage resources" means any place meeting the definition of section 8(b) of this Act including—

(A) any of those resources that comprise a national significant heritage resource, or

(B) any of those qualities and values for which a site is designated as a nationally significant heritage resource.

(10) The term "owner" means for the purposes of this Act, the single ownership entity or, in the case of multiple owners of a single property or the owners of multiple properties, any one of such owners.

(11) the terms "resource" and "resources" includes—

(A) in the case of natural resources, the geology, flora and fauna, and paleontological remains which are principally of indigenous origin, including their related ecosystems, watersheds, viewsheds, terrestrial and aquatic habitats of plant and animal species, and topographic or geologic features, and

(B) in the case of cultural resources, the historic and prehistoric districts, sites, buildings, structures, landscapes, objects, associated artifacts, records and remains, and related historical contexts, natural settings or geographic features which are historically associated with and significant to an understanding of the cultural resource.

(12) The term "Secretary" means the Secretary of the Interior acting through the Director of the National Park Service except where specific reference is made to the Secretary of the Interior.

(13) The term "use of land" means for the purposes of this Act,—

(A) any physical alteration of land (including improvements thereon) within the boundaries of a nationally significant heritage resource, or

(B) any substantial indirect impacts on such land, such that the utility or enjoyment of the land in terms of its environmental, ecologi-

cal, or historical significance is substantially impaired.

#### SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated not more than \$25,000,000 in each of the five fiscal years following enactment of this Act for the purposes of this Act. Of this amount, \$15,000,000 shall be available for the purposes of section 6 of this Act and \$10,000,000 for purposes of section 7 of this Act. Such sums shall remain available until appropriated and such sums as may be appropriated shall remain available until expended.

#### SEC. 12. EFFECTIVE DATES.

The provisions of sections 8 and 9 of this Act shall be effective for any Federal or federally assisted undertaking for which Federal approval has not been granted prior to the date of enactment of this Act or for any new or revised element of such undertakings proposed following such date.●

By Mr. COATS:

S. 3106. A bill to provide for improvements with respect to Medicare spousal protection and impoverishment benefits; to the Committee on Finance.

#### SPOUSAL IMPOVERISHMENT IMPROVEMENT ACT

● Mr. COATS. Mr. President, I am pleased to introduce a bill that will make two important improvements in the Medicare Spousal Impoverishment Benefits Act.

Before I describe these changes I would like to take a moment to explain the background. It was my intention, and I trust my colleagues would agree with me, that the spousal impoverishment legislation would protect individuals who were institutionalized before September 30, 1989. It certainly was not my understanding that the law would require individuals who were in a nursing home before September 30, 1989, to be taken out of that home for 30 days in order to be eligible for spousal impoverishment coverage. However, the language in the statute is ambiguous and our seniors are suffering from this ambiguity.

The devastating personal impact of this confusion was brought to my attention 7 months ago through letters that I received from my constituents. I contacted the Health Care Finance Administration immediately and was led to believe that the law would be interpreted correctly and individuals that were institutionalized before September 30, 1989, would be eligible for spousal impoverishment coverage. However, on September 5, 1990, Secretary Sullivan's official response contradicted what I was told earlier in the year. It stated that while the general effective date of the new law was September 30, 1989, the resource rules only became effective for persons who were admitted to an institution for a continuous period on or after that date. Consequently, the Health Care and Finance Administration could only require application of the new resource rules to all institutionalized persons if the law were changed.

My legislation will correct this misunderstanding by making it clear that the spousal impoverishment law covers those individuals that entered the nursing home before September 30, 1989.

In addition, this bill will extend spousal impoverishment protection to more States who have opted to participate in home health care, or waived services programs, including the State of Indiana. Currently, the only States that have opted to protect their seniors from spousal impoverishment in home health care are Kansas, Louisiana, and Hawaii. These States have not experienced a dramatic increase in the use of home care waived services. Consequently, there has not been a substantial increase in costs. My bill would make it mandatory for 209B States to cover individuals in waived services under the Spousal Impoverishment Act, in the hope that their programs will serve as an example to every State, encouraging them to offer spousal impoverishment for all of the elderly.

Every State needs to do its part to bring an end to the bureaucratic abuse of our elderly. The elderly have worked hard all their lives to earn a secure retirement. But now they are being threatened, not only by the high cost of long-term care but, by the misinterpretation of the Spousal Impoverishment Act. Almost 3 million elderly Americans need home care or nursing home care. Of these elderly citizens, 1.3 million reside in nursing homes. Another 1.6 million are struggling to survive in their own homes, in their children's homes, or in other community settings.

We need to continue to keep our families together, not force them to be apart. Many elderly Hoosiers want the opportunity to keep their spouses in their own home but they cannot afford to do so. These struggling seniors need to be protected against the loss of their assets if they opt for nursing home care. It isn't fair to offer an ailing elderly man or woman the option of staying with their spouse in the home without protecting the assets of the healthy spouse. They deserve the same protection we give to a couple where the ailing spouse is in a nursing facility. It is wrong to encourage the break up of families because we are too busy counting costs.

Members of this Congress have demonstrated a strong commitment to protect our elderly. I encourage my colleagues to support this effort to expand the number of States that protect the elderly against impoverishment in their search for nursing and home health care—and to continue programs which encourage the protection of the families. I ask unanimous consent to have the text of the bill printed in the RECORD.

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

S. 3106

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Spousal Impoverishment Improvement Act".

SEC. 2. TO ENSURE THE PROVISION OF SPOUSAL PROTECTION BENEFITS FOR CERTAIN INDIVIDUALS.

(a) IN GENERAL.—Section 303(g)(1)(B) of the Medicare Catastrophic Coverage Act of 1988 is amended to read as follows:

"(B) Section 1924 of the Social Security Act (as inserted by subsection (a)) shall only apply to individuals institutionalized for continuous periods of institutionalization beginning before, on or after September 30, 1989, and ending on or after September 30, 1989, except that subsections (b) and (d) of such section (and so much of subsection (e) of such section as relates to such other subsections) shall apply as of such date to individuals institutionalized on or after such date."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective as if included in the provisions of the Medicare Catastrophic Coverage Act of 1988.

SEC. 3. MANDATORY APPLICATION OF SPOUSAL PROTECTION RULES IN 209(b) STATES TO INDIVIDUALS WHO ARE LIKELY TO RECEIVE HOME AND COMMUNITY-BASED WAIVERS.

(a) IN GENERAL.—Section 1924(h)(1)(A) of the Social Security Act (42 U.S.C. 1396r-5(h)(1)(A)) is amended by striking "(at the option of the State)" and inserting "(at the option of the State, except with respect to those States exercising the option to apply under section 1902(f) a more restrictive eligibility standard than that for benefits under title XVI which States shall have no such option)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to payments for calendar quarters beginning on or after January 1, 1991.

By Mr. GRAHAM:

S. 3107. A bill to authorize the Secretary of Education to make a grant to Stetson University for the construction of library facilities; to the Committee on Labor and Human Resources.

CONSTRUCTION OF LIBRARY FACILITIES AT STETSON UNIVERSITY

● Mr. GRAHAM. Mr. President, today I am introducing legislation to help expand a Federal depository library at Stetson University, located in Deland, FL.

This bill authorizes \$8 million in matching funds to construct a major addition to the main library at Stetson. Companion legislation in the House of Representatives, H.R. 5522, was introduced by Representative SHAW.

Having received a senatorial designation in November 1887, Stetson is the oldest depository in the State of Florida for publications of the U.S. Government.

The university, a private institution, has made a substantial commitment to serve the general public as a government documents resource. In addition, many of the other 36 Federal depositories in Florida rely on the extensive early collection housed at Stetson.

The bill I am introducing today will enhance the accessibility of these documents, which number over 200,000 and span more than a century of our Government's history.

Mr. President, in recognition of the important public information role Federal depositories play and the necessity that citizens be able to access the information contained in depositories, I urge my colleagues' full consideration and support of this legislation. ●

By Mr. DIXON (for himself and Mr. SIMON):

S. 3108. A bill to designate the facility of the United States Postal Service located at 100 South John F. Kennedy Drive, Carpentersville, Illinois, as the "Robert McClory Post Office"; placed on the calendar.

ROBERT MCCLORY POST OFFICE

Mr. DIXON. Mr. President, I rise today to introduce a bill with my colleague, Senator SIMON, in honor of the late Congressman Robert McClory.

Bob McClory was a very dear friend of mine, and he proudly served the people of Illinois for over 30 years.

He began his career in 1950 when he was elected to the House of Representatives in the Illinois General Assembly, where he served during the 67th Congress. In 1952, Bob began 8 years of distinguished service in the Illinois State senate.

In 1962, he was elected to the 88th Congress in the U.S. House of Representatives, and served for nine consecutive Congresses after that until his retirement in 1983.

Bob was an outstanding public servant and he always went out of his way to be kind to me. I will never forget that. I know that many current Members of Congress served with Bob, and his death in 1988 was truly a sad day for all of us.

To commemorate our former colleague, this bill would name the new post office in Carpentersville, IL the "Robert McClory Post Office." I ask my colleagues to join me in honoring our old friend.

Thank you, Mr. President.

By Mr. PRESSLER (for himself and Mr. BURNS):

S. 3109. A bill entitled the "Corps of Engineers Mitigation Act"; to the Committee on Environment and Public Works.

CORPS OF ENGINEERS MITIGATION ACT

Mr. PRESSLER. Mr. President, on behalf of myself and Senator BURNS, today I am introducing legislation which would allow an impacted State

or tribe to make a written request to the Secretary of the Army for corrective Missouri River water management action.

This legislation requires the Secretary of the Army to make operation changes within 5 days of the written request if he determines that the environmental and economic impacts to the State or tribe outweigh any potential adverse impacts arising from the implementation of the preventive or mitigative action requested.

This legislation also authorizes a \$100 million general appropriation to be used for mitigating impacts in the Missouri River Basin States when Corps of Engineers water management policy causes damage.

The Missouri River is depended on for a multitude of uses. These include: rural water system intakes for pipelines which carry water to thousands of city and rural residents; irrigation system intakes; recreation; and navigation.

The U.S. Army Corps of Engineers is responsible for managing Missouri River water flows for power generation and downstream navigation. Years of drought and questionable corps water management policy have caused the water levels in some Missouri River reservoirs to drop to all-time lows. This, in turn has deprived many of the water they need. Rural water systems, irrigators, recreationists, and navigation interests have all suffered.

Mr. President, it seems that the Corps of Engineers is accountable to no one for its water management policy on the Missouri River. This situation desperately needs to be changed.

Missouri River water users must have assurances in the future that corps water management policy will be fair. The Corps of Engineers must be held accountable in the future for its water management actions.

By Mr. PELL (for himself and Mr. CHAFEE):

S.J. Res. 370. Joint resolution to express the sense of the Congress with regard to eradicating world hunger in the 1990's; to the Committee on Foreign Relations.

ERADICATING WORLD HUNGER

● Mr. PELL. Mr. President, today Senator CHAFEE and I are introducing legislation to lend focus to the United States' efforts to combat the problem of world hunger.

The depth and magnitude of the world hunger are well known, but for too long the world has dealt with this problem on a stop-gap, ad hoc basis. While millions of people suffer every day in silence, the international community rarely reacts unless there are unusually compelling circumstances such as drought, famine, or war. Our

intentions may indeed be correct, but the tragedy lies in the fact that we can and should be doing more on a daily basis.

The United States needs an overarching strategy to deal with the hunger problem. Many of our programs to combat world hunger are promising, but in my view we lack the foundation from which to coordinate the world's efforts.

That is why we are introducing the "Overcoming World Hunger in the 1990s Resolution." This legislation outlines a concrete set of goals and principles from which the United States and the international community can mount a serious drive to eradicate world hunger in the next decade.

The joint resolution draws upon the findings of three international declarations on the hunger problem that have been put forth during the last year and a half. The thrust of what the declarations proclaim is that we have the means to reduce hunger significantly if we focus on certain areas.

A major component of this legislation is the November 1989 Bellagio declaration. At that time, hunger experts from 14 countries met in Bellagio, Italy, to analyze the hunger problem and to offer achievable goals to meet it.

In my own State of Rhode Island, the Brown University Alan Shawn Feinstein World Hunger Program has been an active participant in the battle against hunger, and it played a key role in developing the Bellagio initiative. They, and the other thousands of groups and individuals dedicated to the eradication of hunger, deserve our full support. Indeed, we are in their debt, and we must act promptly and responsibly to see that their efforts have not been in vain.

Mr. President, enacting this legislation would send the world a message that we are serious about addressing the hunger problem during the next 10 years. I urge my colleagues to support the "Overcoming World Hunger in the 1990s Resolution," and I ask unanimous consent that the entire text of the joint resolution be printed in the RECORD at this point.

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

S.J. RES. 370

Whereas during the last decade, progress in overcoming hunger has been grossly inadequate, with deteriorating conditions in Africa, Latin America, and South Asia;

Whereas nearly one billion people live in poverty with insufficient resources to obtain the food they need;

Whereas one child in six is born underweight and one child in three is underweight by age five;

Whereas millions of people suffer anemia, goiter, and impaired sight from diets deficient in iodine, iron, and vitamin A;

Whereas positive developments have occurred in understanding the nature of

hunger, in providing emergency aid, in combatting childhood and nutritional diseases, leading many international development groups to conclude that it is possible to eradicate a significant measure of world hunger by the year 2000 using methods already proven to reduce hunger;

Whereas the World Food Council, of which the United States is a member, issued in its Cairo Declaration of May 1989 a call to achieve an elimination of starvation and death by famine; a substantial reduction of malnutrition and mortality among youth; a reduction in chronic hunger; and the elimination of major nutritional disease in the 1990's;

Whereas the Task Force on Child Survival issued a March 1990 call for reducing malnutrition among children under five; eliminating iodine deficiency disorders; and eliminating vitamin A deficiency and its consequences, including blindness;

Whereas representatives from 14 countries meeting in Bellagio, Italy in November 1989 concluded that it is possible to eliminate deaths from famine; end hunger in 50% of the poorest households worldwide; cut malnutrition by 50% for mothers and small children; eradicate iodine and vitamin A deficiencies; at the same time prevent additional hunger arising from environmental degradation, rapid population growth, and economic inequity; and

Whereas the United States has led the international community in responding to the tragedy of world hunger: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That it is the sense of the Congress that the United States should—

(1) work with other nations, agencies, and private voluntary organizations to overcome hunger in the 1990's by supporting efforts to—

(A) eliminate deaths from famine through a strengthened commitment to humanitarian food aid, the expansion of famine prevention systems, and efforts to provide safe passage of food in areas of armed conflict;

(B) reduce by 50 percent chronic hunger among the world's poorest people through careful targeting of food aid and through other measures;

(C) decrease by 50 percent malnutrition among women and children through efforts to enhance child survival, including immunization, treating diarrheal diseases, and other methods, and through efforts to reduce nutritional anemia in women;

(D) eradicate major nutritional deficiency diseases by providing vitamin A to prevent blindness and death in the crucial ages between one and four years, and by providing iodine to prevent goiter and cretinism.●

ADDITIONAL COSPONSORS

S. 11

At the request of Mr. CRANSTON, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 11, a bill to provide for the protection of the public lands in the California desert.

S. 273

At the request of Mr. HEINZ, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 273, a bill to amend title 39, United States Code, to designate as

nonmailable matter solicitations of donations which could reasonably be misconstrued as a bill, invoice, or statement of account due, solicitations for the purchase of products or services which are provided either free of charge or at a lower price by the Federal Government connection or endorsement, unless such matter contains an appropriate, conspicuous disclaimer, and for other purposes.

S. 370

At the request of Mr. CHAFEE, the name of the Senator from Hawaii [Mr. AKAKA] was added as cosponsor of S. 370, a bill to amend the Land and Water Conservation Fund Act and the National Historic Preservation Act, to establish the American Heritage Trust, for purposes of enhancing the protection of the Nation's natural, historical, cultural, and outdoor recreational heritage, and for other purposes.

S. 730

At the request of Mr. COATS, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Louisiana [Mr. BREAU], the Senator from Mississippi [Mr. COCHRAN], and the Senator from New York [Mr. MOYNIHAN] were added as cosponsors of S. 730, a bill to request the President to award gold medals on behalf of Congress to Frank Capra, James M. Stewart, and Fred Zinnemann, and to provide for the production of bronze duplicates of such medals for sale to the public.

S. 731

At the request of Mr. COATS, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Rhode Island [Mr. PELL], the Senator from Washington [Mr. ADAMS], and the Senator from Hawaii [Mr. INUYE] were added as cosponsors of S. 731, a bill to request the President to award a gold medal on behalf of Congress to Robert Wise and to provide for the production of bronze duplicates of such medal for sale to the public.

S. 1942

At the request of Mr. ROCKEFELLER, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 1942, a bill to provide for home and community care as optional statewide service, and for other purposes.

S. 1981

At the request of Mr. HOLLINGS, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 1981, a bill to permit the Bell Telephone Companies to conduct research on, design, and manufacture telecommunications equipment and for other purposes.

S. 2025

At the request of Mr. HEINZ, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 2025, a bill to amend the

Internal Revenue Code of 1986 to make permanent certain expiring tax provisions.

S. 2111

At the request of Mr. SIMON, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 2111, a bill designating the month of May as "Asian/Pacific American Heritage Month."

The names of the Senator from South Carolina [Mr. THURMOND] and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of S. 2111, supra.

S. 2465

At the request of Mr. GRASSLEY, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 2465, a bill to provide a new civil cause of action in Federal law for acts of international terrorism that provides extraterritorial jurisdiction over terrorist acts abroad against U.S. nationals.

S. 2591

At the request of Mr. BAUCUS, the names of the Senator from Louisiana [Mr. BREAU], the Senator from Florida [Mr. MACK], the Senator from Kentucky [Mr. McCONNELL], and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of S. 2591, a bill to amend title XVIII of the Social Security Act to provide relief from certain regulations relating to physicians' services.

S. 2598

At the request of Mr. GRAMM, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 2598, to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to make grants—in conjunction with the Secretary of Defense—for the establishment of research centers at qualifying medical schools to carry out medical research in areas of interest to the Department of Veterans Affairs.

S. 2602

At the request of Mr. METZENBAUM, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 2602, a bill to amend the Public Health Service Act to provide assistance for biomedical and health services research, treatment programs and for other purposes relating to Alzheimer's disease and related disorders.

S. 2713

At the request of Mr. GORTON, the name of the Senator from Idaho [Mr. McCLURE] was added as a cosponsor of S. 2713, a bill to preserve ancient forests, to assure a sustainable and predictable supply of timber harvest, and to enhance recreational opportunities in the national forests.

S. 2724

At the request of Mr. PELL, the names of Senator from Kansas [Mrs. KASSEBAUM], the Senator from Utah [Mr. HATCH], and the Senator from

New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 2724, a bill to extend and improve arts and humanities programs, museum services, and arts and artifacts indemnification, and for other purposes.

S. 2729

At the request of Mr. CHAFEE, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 2729, a bill to amend the Coastal Barrier Resources Act, and for other purposes.

S. 2762

At the request of Mr. HATFIELD, the names of the Senator from Alabama [Mr. HEFLIN], and the Senator from Wyoming [Mr. WALLOP] were added as cosponsors of S. 2762, a bill to facilitate the implementation of national forest land and resource management plans and for other purposes.

S. 2801

At the request of Mr. DOLE, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 2801, a bill to direct the Secretary of Health and Human Services to phase in the update to the area wage index used to determine the amount of payment made to a hospital under part A of the Medicare program for the operating costs of inpatient hospital services for inpatient discharges occurring during fiscal year 1991, and for other purposes.

S. 2813

At the request of Mr. GRAHAM, the names of the Senator from Arkansas [Mr. BUMPERS], the Senator from Delaware [Mr. ROTH], the Senator from North Carolina [Mr. HELMS], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 2813, a bill to authorize the minting of commemorative coins to support the training of American athletes participating in the 1992 Olympic Games.

S. 2925

At the request of Mr. DIXON, the names of the Senator from Arizona [Mr. DECONCINI], the Senator from Utah [Mr. HATCH], the Senator from Alabama [Mr. HEFLIN], the Senator from Hawaii [Mr. INOUE], the Senator from Maine [Mr. MITCHELL], the Senator from Nevada [Mr. REID], and the Senator from California [Mr. WILSON] were added as cosponsors of S. 2925, a bill to authorize the minting and issuance of coins in commemoration of the quincentenary of the discovery of America and to authorize the payment of the proceeds of the sale of such coins to the Christopher Columbus Quincentenary Scholarship Foundation for the purpose of establishing a scholarship program, and for other purposes.

S. 2954

At the request of Mr. DODD, the names of the Senator from Vermont [Mr. JEFFORDS], the Senator from Kentucky [Mr. FORD], the Senator

from New Jersey [Mr. LAUTENBERG], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Massachusetts [Mr. KERRY], the Senator from Nebraska [Mr. EXON], the Senator from Michigan [Mr. RIEGLE], the Senator from Colorado [Mr. WIRTH], the Senator from Oregon [Mr. HATFIELD], and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 2954, a bill to place restrictions on United States assistance to El Salvador.

S. 3021

At the request of Mr. DOLE, the names of the Senator from Wyoming [Mr. SIMPSON], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of S. 3021, a bill to establish national voter registration procedures for Presidential and congressional elections, and for other purposes.

S. 3022

At the request of Mr. BRADLEY, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Wisconsin [Mr. KOHL], the Senator from Alaska [Mr. STEVENS], and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of S. 3022, a bill to provide for the establishment of a Children's Vaccine Initiative, and for other purposes.

S. 3051

At the request of Mr. PRESSLER, the names of the Senator from Iowa [Mr. GRASSLEY], the Senator from Arizona [Mr. DECONCINI], and the Senator from Maine [Mr. COHEN] were added as cosponsors of S. 3051, a bill to reduce the pay of Members of Congress corresponding to the percentage reduction of the pay of Federal employees who are furloughed or otherwise have a reduction of pay resulting from a sequestration order.

S. 3059

At the request of Mr. DECONCINI, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 3059, a bill to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges.

S. 3068

At the request of Mr. SYMMS, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 3068, a bill to establish the Office of Take Pride in America, and for other purposes.

S. 3069

At the request of Mr. JEFFORDS, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 3069, a bill to provide a method of locating private and Government research on environmental issues by geographic location.

S. 3091

At the request of Mr. THURMOND, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 3091, a bill to amend the Act incorporating the American Legion as to redefine eligibility for membership therein.

## SENATE JOINT RESOLUTION 18

At the request of Mr. THURMOND, the name of the Senator from Arizona [Mr. McCAIN] was added as a cosponsor of Senate Joint Resolution 18, a joint resolution to authorize the National Committee of American Airmen Rescued by General Mihailovich to erect a monument to Gen. Draza Mihailovich in Washington, District of Columbia, or its environs, in recognition of the role he played in saving the lives of more than 500 United States airmen in Yugoslavia during World War II.

## SENATE JOINT RESOLUTION 263

At the request of Mr. HELMS, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of Senate Joint Resolution 263, a joint resolution to designate October 11, 1990, as "National Society of the Daughters of the American Revolution Centennial Day."

## SENATE JOINT RESOLUTION 291

At the request of Mr. HATCH, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of Senate Joint Resolution 291, a joint resolution designating the week of October 14, 1990, as "National Standards Week."

## SENATE JOINT RESOLUTION 295

At the request of Mr. DANFORTH, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of Senate Joint Resolution 295, a joint resolution proposing an amendment to the Constitution of the United States to prohibit the Supreme Court or any inferior court of the United States from ordering the laying or increasing of taxes.

## SENATE JOINT RESOLUTION 314

At the request of Mr. HEINZ, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Hawaii [Mr. AKAKA], the Senator from Wyoming [Mr. SIMPSON], the Senator from Indiana [Mr. COATS], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Kansas [Mr. DOLE], the Senator from California [Mr. WILSON], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Utah [Mr. HATCH], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Ohio [Mr. METZENBAUM], the Senator from North Dakota [Mr. BURDICK], the Senator from Michigan [Mr. RIEGLE], the Senator from Tennessee [Mr. GORE], the Senator from Maryland [Ms. MIKULSKI], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of Senate Joint Resolution 314, a joint resolu-

tion to commemorate the 50th anniversary of the National Federation of the Blind.

## SENATE JOINT RESOLUTION 349

At the request of Mr. DECONCINI, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Joint Resolution 349, a joint resolution designating October 1990, as "Italian-American Heritage and Culture Month."

## SENATE JOINT RESOLUTION 352

At the request of Mr. SIMON, the names of the Senator from Nebraska [Mr. EXON], the Senator from Alabama [Mr. HEFLIN], and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of Senate Joint Resolution 352, a joint resolution designating the month of September 1991, as "National Growth Month."

## SENATE JOINT RESOLUTION 364

At the request of Mr. REID, the names of the Senator from Indiana [Mr. LUGAR], the Senator from New Jersey [Mr. BRADLEY], the Senator from North Dakota [Mr. BURDICK], the Senator from Hawaii [Mr. AKAKA], the Senator from North Dakota [Mr. CONRAD], the Senator from South Dakota [Mr. DASCHLE], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Connecticut [Mr. DODD], the Senator from Arizona [Mr. DECONCINI], the Senator from Alabama [Mr. HEFLIN], and the Senator from Georgia [Mr. NUNN] were added as cosponsors of Senate Joint Resolution 364, a joint resolution to designate the third week of February 1991, as "National Parents and Teachers Association Week."

## SENATE CONCURRENT RESOLUTION 146

At the request of Mr. MOYNIHAN, the name of the Senator from Washington [Mr. ADAMS] was added as a cosponsor of Senate Concurrent Resolution 146, a concurrent resolution expressing the sense of the Congress that the United States should pay its outstanding debt to the United Nations.

SENATE RESOLUTION 327—COM-  
MENDING THE ESTABLISH-  
MENT OF THE EISENHOWER  
CENTER FOR THE CONSERVA-  
TION OF HUMAN RESOURCES  
AT COLUMBIA UNIVERSITY

Mr. MOYNIHAN (for himself, Mr. DOLE, and Mr. D'AMATO) submitted the following resolution; which was referred to the Committee on the Judiciary:

## S. RES. 327

Whereas the Conservation of Human Resources Project at Columbia University is now in its fifth decade;

Whereas General Dwight David Eisenhower, as president of Columbia University from 1948 to 1953, invigorated the Conservation Project with energy and direction;

Whereas the Conservation Project was established to examine economic transformations from the viewpoint of human re-

sources and to analyze responses by educational, training, and employer institutions to such transformations;

Whereas the Conservation Project has published some 250 books and reports on human resources; and

Whereas in recognition of Dwight David Eisenhower's service to his country and to Columbia University, the Conservation of Human Resources Project has been renamed the Eisenhower Center for the Conservation of Human Resources; Now, therefore, be it

Resolved, That, in this centennial year of Dwight David Eisenhower's birth, the newly rechristened Eisenhower Center for the Conservation of Human Resources at Columbia University has the full and enthusiastic support of the United States Senate.

● Mr. MOYNIHAN, Mr. President, I rise to introduce legislation to add the support of the Senate to the newly rechristened Eisenhower Center for the Conservation of Human Resources at New York University.

The center was first known as the Conservation of Human Resources Project. When Gen. Dwight Eisenhower became president of Columbia in 1948, he invigorated the conservation project, as it was known, and set it on the course that resulted in the publication of over 250 books and reports. The conservation project has studied the effect of economic transformations on human resources, particularly the responses of educational, training, and employer institutions to these transformations, and made valuable contributions.

In the centennial of President Eisenhower's birth, Columbia has renamed the conservation project in honor of his contributions to it. Known from now on as the Eisenhower Center for the Conservation of Human Resources, it will continue this strong record of working to improve the Nation's human resources, as President Eisenhower saw that it could and should do.

This resolution expresses the support of the Senate for the newly changed name and the good work the Eisenhower Center will continue to do as it enters this new phase in its development.●

## AMENDMENTS SUBMITTED

FAMILY PLANNING  
AMENDMENTS

## JEFFORDS AMENDMENT NO. 2761

Mr. JEFFORDS proposed an amendment to the bill (S. 110) to revise and extend the programs of assistance under title X of the Public Health Service Act; as follows:

At the appropriate place, insert the following new section:

SEC. . PREGNANCY INFORMATION AND COUNSELING.

In the projects authorized under this Act, or an amendment made by this Act, the Secretary of Health and Human Services shall ensure that pregnant women are offered information and counseling concerning all legal and medical options under such projects regarding their pregnancies.

CHAFEE (AND OTHERS)  
AMENDMENT NO. 2762

Mr. CHAFEE (for himself, Mr. PACKWOOD and Mr. WIRTH) proposed an amendment to amendment No. 2761 proposed by Mr. JEFFORDS to the bill S. 110, supra, as follows:

On page 1 of the amendment, strike out line 3 and all that follows and insert in lieu thereof the following:

SEC. . PREGNANCY INFORMATION AND COUNSELING.

In the projects authorized under this Act, or an amendment made by this Act, the Secretary of Health and Human Services shall ensure that pregnant women are offered information and counseling concerning all legal and medical options under such projects regarding their pregnancies. Women requesting such information regarding the options for the management of an unintended pregnancy shall be provided with non-directive counseling, and referral on request, concerning alternative courses of action that shall include—

- (1) prenatal care and delivery;
- (2) infant care, foster care, or adoption services; and
- (3) pregnancy termination.

HATCH AMENDMENTS NOS. 2763  
THROUGH 2767

(Ordered to lie on the table.)

Mr. HATCH submitted five amendments intended to be proposed by him to the bill S. 110, supra, as follows:

AMENDMENT No. 2763

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Family Planning Amendments Act of 1989".

SEC. 2. STATE FAMILY PLANNING PROGRAMS.

Title X of the Public Health Service Act (42 U.S.C. 300 et seq.) is amended to read as follows:

"TITLE X—STATE FAMILY PLANNING PROGRAMS

"SEC. 1001. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of assisting States to carry out programs under which acceptable and effective family planning methods and services (including natural family planning methods, infertility services, services for adolescents, and adoption services) may be provided, and in connection with which family participation is encouraged, there are authorized to be appropriated \$138,364,000 for fiscal year 1990 and such sums as may be necessary for each of the fiscal years 1991 and 1992.

"SEC. 1002. ALLOTMENTS.

"(a) IN GENERAL.—From the amounts appropriated under section 1001 for any fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to such amounts appropriated as the amounts provided under this title (as such title existed before the date of enactment of the Family

Planning Amendments Act of 1989) for fiscal year 1989 by the Secretary to the State and to entities in the State for family planning services bears to the amount provided for fiscal year 1989 to all States and to entities in all States for such services under such title.

"(b) REALLOTMENTS.—To the extent that all funds appropriated under section 1001 for a fiscal year are not otherwise allotted to States because—

"(1) one or more States have not submitted an application or description of activities in accordance with section 1007 for such fiscal year;

"(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(3) some State allotments are offset or repaid under section 1008(b)(2);

such excess amount shall be reallocated among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this subsection.

"(c) RESERVATIONS FOR INDIANS.—

"(1) IN GENERAL.—If the Secretary—

"(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this title be provided directly by the Secretary to the tribe or organization; and

"(B) determines that the members of the tribe or organization would be better served by means of grants made directly by the Secretary under this title;

the Secretary shall reserve from amounts that would otherwise be allotted to the State under subsection (a) for such fiscal year the amount determined under paragraph (2).

"(2) DETERMINATION OF AMOUNT.—The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to the State under subsection (a) an amount equal to the amount that bears the same ratio to the allotment of the State for the fiscal year involved as the total amount provided for fiscal year 1989 by the Secretary to such tribe or tribal organization to carry out this title bears to the total amount provided for such fiscal year by the Secretary to the State and entities (including Indian tribes and tribal organizations) in the State to carry out this title.

"(3) DISTRIBUTION.—The amount reserved by the Secretary on the basis of a determination under this subsection shall be made available to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

"(4) PLAN.—An Indian tribe or tribal organization shall be eligible for a grant for a fiscal year under this subsection, if it submits to the Secretary a plan for such fiscal year that meets such criteria as the Secretary shall prescribe.

"(5) DEFINITIONS.—As used in this section, the terms 'Indian tribe' and 'tribal organization' have the same meaning given those terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act.

"SEC. 1003. PAYMENT UNDER ALLOTMENTS TO STATES.

"(a) IN GENERAL.—For each fiscal year, the Secretary shall make payments, as provided by section 6503 of title 31, United States Code, to each State from its allotment under section 1002 (other than any amount reserved under section 1002(c)) from amounts appropriated for that fiscal year.

"(b) AVAILABILITY.—Any amount paid to a State for a fiscal year and remaining unobli-

gated at the end of that fiscal year shall remain available for the next fiscal year to the State for the purposes for which it was paid

"SEC. 1004. USE OF ALLOTMENTS.

"(a) PERMISSIBLE USES.—

"(1) IN GENERAL.—A State may, consistent with the provisions of this title, use amounts paid to it under section 1003 as the State may find appropriate for—

"(A) acceptable and effective voluntary family planning methods or services;

"(B) training of family planning personnel;

"(C) developing and making available family planning and population growth information (including educational materials) for all individuals desiring such information (or materials); and

"(D) conducting or supporting research to improve the delivery of family planning services. Amounts provided for the activities referred to in this paragraph may also be used for related planning, administrative, and educational activities.

"(2) PRIORITY.—Priority shall be given, in any program in which funds provided under this title are used, to the furnishing of family planning services to individuals from low-income families (as defined by the State) to insure that economic status will not be a deterrent to participation in such program.

"(b) LIMITATIONS.—A State shall not use amounts paid to it under section 1003 to—

"(1) provide inpatient services;

"(2) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment; or

"(3) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(c) ADMINISTRATION.—Of the amounts paid to any State under section 1003 for any fiscal year, not to exceed 10 percent of such amounts shall be used for administering the funds made available under that section. The State will pay from non-Federal sources any remaining costs of administering those funds.

"SEC. 1005. PROHIBITION ON ABORTION.

"None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

"SEC. 1006. VOLUNTARY PARTICIPATION.

"In any program in which funds provided under this title are used, the acceptance by any individual of family planning services or family planning or population growth information shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other services or assistance from, or participation in, any other program of the entity or individual that provided such service or information.

"SEC. 1007. APPLICATION AND DESCRIPTION OF ACTIVITIES.

"(a) APPLICATION.—To be eligible to receive an allotment for a fiscal year under section 1002 a State shall submit an application to the Secretary by such date as the Secretary shall require.

"(b) PUBLIC COMMENT.—After the expiration of the first fiscal year for which a State receives an allotment under section 1002, no funds shall be allotted under such section to the State for any fiscal year unless the State affords an opportunity for public comment on the proposed use and distribution

of funds to be provided under section 1003 for such fiscal year.

"(c) CONTENTS OF APPLICATION.—As part of the annual application required under subsection (a), the State shall certify that it—

"(1) agrees to use the funds allotted to it under section 1002 in accordance with the requirements of this title;

"(2) agrees to establish, after providing reasonable notice and opportunity for the submission of comments, reasonable criteria to evaluate the effective performance of entities that receive funds from the allotment of the State under this title;

"(3) agrees to permit and cooperate with Federal investigations undertaken in accordance with section 1008;

"(4) has in effect a system to protect from inappropriate disclosure of client records maintained by the State in connection with a program receiving assistance under this title or by an entity that is receiving payments from the allotment to the State under this title; and

"(5) has the administrative capability to carry out section 1004, to determine the need for family planning services, and to evaluate the performance of entities that receive assistance from the allotment of the State under this title.

The Secretary shall not prescribe for a State the manner of compliance with the requirements of this subsection.

"(d) DESCRIPTION OF USE.—

"(1) IN GENERAL.—The State shall, as part of the application submitted under subsection (a), prepared and furnish to the Secretary a description of the intended use of the payments that the State will receive under section 1003 for such fiscal year, including a statement of goals and objectives, information on the types of programs to be supported, geographic areas to be served, and the categories or characteristics of individuals to be served and the criteria and method to be used for the distribution of the payments.

"(2) PUBLICATION.—The description required by paragraph (1) shall be made public within the States in such manner as to facilitate comment from any person (including any Federal or other public agency) during the development of the description and after its transmittal. The description shall be revised throughout the year as may be necessary to reflect substantial changes in the programs assisted under this title, and any revision shall be subject to the requirements of this paragraph.

"(e) REQUIREMENTS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary shall prescribe such requirements as the Secretary determines necessary to assure that payments made to a State under this title are not used in violation of the prohibition contained in section 1005. The State, as part of the application required under subsection (a), shall certify that it will comply with all requirements imposed by the Secretary pursuant to this title to carry out section 1005, and shall describe the procedures it will follow, as required by the Secretary, to assure such compliance on a continuing basis.

"(2) OTHER INFORMATION.—In addition to the provisions of subsection (c), the State shall also certify, as part of the application required by subsection (a), that it will furnish, in its annual report to the Secretary or in such other form or at such other times as the Secretary may require, all information that the Secretary determines necessary to ascertain whether funds were spent in ac-

cordance with section 1005, or to conduct an investigation, or respond to a complaint, under section 1009(a) (2) or (3), respectively, concerning compliance by the State with section 1005.

"SEC. 1008. REPORTS.

"(a) REQUIREMENT.—Each State shall prepare and submit to the Secretary annual reports concerning its activities under this title. Subject to section 1007(e), report prepared under this section shall be in such form and contain such information as the State determines to be necessary—

"(1) to determine whether funds were expended in accordance with the provisions of this title;

"(2) to secure a description of the activities under this title;

"(3) to secure a record of—

"(A) the purposes for which funds were spent under this title;

"(B) the recipients of such funds; and

"(C) the progress made toward achieving the purposes for which such funds were provided; and

"(4) to determine how the State has met the goals and objectives previously stated.

Copies of reports submitted under this section shall be provided, on request, to any interested person (including any public agency).

"(b) ADMINISTRATIVE REQUIREMENTS.—

"(1) ACCOUNTING PROCEDURES.—Each State shall establish fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement and accounting for Federal funds paid to the State under section 1003.

"(2) REPAYMENTS.—A State shall, after being provided by the Secretary with adequate notice and opportunity for a hearing within the State, repay to the United States amounts found not to have been expended in accordance with the provisions of this title or the certification provided under section 1007. If such amounts are not repaid, the Secretary shall, after providing the State with adequate notice and opportunity for hearing, offset the amounts against the amount of any allotment to which the State is or may become entitled to under section 1002.

"(3) RESPONSE BY SECRETARY.—The Secretary shall respond in an expeditious manner to complaints, of a substantial or serious nature, that a State has failed to use funds in accordance with the requirements of this title or the certification required under section 1007.

"(4) LIMITATION.—The Secretary shall not withhold funds under paragraph (1) from a State for a minor failure to comply with the requirements of this title or the certification provided under section 1007.

"(b) RECORDS.—Each State, and each entity that has received assistance under an allotment made to a State under this title, shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

"(c) UNREASONABLE REQUESTS FOR INFORMATION.—

"(1) IN GENERAL.—In conducting any investigation in a State, the Secretary shall not request any information not readily available to the State or to any entity that has received funds from an allotment made to the State under this title or make an unreasonable request for information to be com-

plied, collected, or transmitted in any form not readily available.

"(2) EXCEPTION.—Paragraph (1) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding or an investigation to determine compliance with section 1005.

"SEC. 1010. NONDISCRIMINATION.

"(a) PROHIBITION.—

"(1) IN GENERAL.—For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, programs and activities that receive Federal financial assistance under this title shall be considered to be programs and activities receiving Federal financial assistance.

"(2) ON THE BASIS OF GENDER.—No individual shall on the basis of gender be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance under this title. This paragraph shall not be construed to prohibit any conduct or activities permitted under paragraphs (1) through (9) of section 901(a) of the Education Amendments of 1972.

"(b) ENFORCEMENT.—When the Secretary determines that a State, or an entity with respect to a program or activity that has received a payment from an allotment to a State under section 1002, has failed to comply with a provision of law referred to in subsection (a)(1), with subsection (a)(2), or with an applicable regulation (including one prescribed to carry out subsection (a)(2)), the Secretary shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure such compliance, the Secretary may—

"(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

"(2) exercise the powers and functions provided by the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, or title VI of the Civil Rights Act of 1964, as the case may be; or

"(3) take such other action as may be provided by law.

"(c) CIVIL ACTION.—When a matter is referred to the Attorney General pursuant to subsection (b)(1), or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) or in violation of subsection (a)(2), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

"SEC. 1011. CRIMINAL PENALTY FOR FALSE STATEMENTS.

"Whoever—

"(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from the funds allotted to the State under this title, or

"(2) having knowledge of the occurrence of any event affecting the initial or contin-

ued right of a person to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized; shall be fined not more than \$25,000 or imprisoned for not more than 5 years, or both."

#### SEC. 3. TECHNICAL AMENDMENT.

Section 2(f) of the Public Health Service Act is amended by striking out "1002(c)."

#### SEC. 4. EFFECTIVE DATE AND TRANSITIONAL PROVISIONS.

(a) **EFFECTIVE DATE.**—The amendments made by section 2 and 3 shall become effective on the date of enactment of this Act, or October 1, 1989, whichever occurs later.

#### (b) TRANSITIONAL PROVISIONS.—

(1) **IN GENERAL.**—If any State (as defined in section 2(f) of the Public Health Service Act (42 U.S.C. 201(f))) has not, prior to 30 days before the beginning of any calendar quarter in fiscal year 1990, submitted an application under section 1007 of the Public Health Service Act (as amended by section 2) for an allotment for such fiscal year under such section, the Secretary of Health and Human Services may during that quarter, notwithstanding such section 1002(b), provide all or part of the funds allotted to such State to the State or to entities in the State in accordance with title X of the Public Health Service Act as in effect prior to the effective date of section 2.

(2) **REDUCTION.**—If the Secretary of Health and Human Services provides amounts to a State or to entities in a State under paragraph (1) and the State subsequently files an application under section 1007 of the Public Health Service Act (as amended by section 2) for an allotment for fiscal year 1990 under section 1002(a) of such Act (as amended by Section 1), the allotment shall be reduced by the amounts the Secretary has provided under paragraph (1).

#### AMENDMENT No. 2764

On page 10, line 8, strike out the end quotation marks and the second period.

On page 10, between lines 8 and 9, insert the following new subsection:

"(d) The Secretary shall require that all entities awarded grants or contracts for services under this section provide breast and other reproductive cancer screening services to all eligible individuals requiring such services."

#### AMENDMENT No. 2765

On page 15, line 6, strike out the end quotation marks and the second period.

On page 15, between lines 6 and 7, insert the following new subsection:

"(c) The Secretary may gather and evaluate data on the current methods of reducing teenage pregnancy, including contraceptive methods."

#### AMENDMENT No. 2766

On page 10, between lines 4 and 5, insert the following new subsection:

"(c) In awarding grants and contracts under this section, the Secretary shall give priority to those entities that provide prenatal care services.

On page 10, line 5, strike out "(c)" and insert in lieu thereof "(d)".

#### AMENDMENT No. 2767

On page 19, between lines 3 and 4, insert the following new section:

#### SEC. 12. MATCHING REQUIREMENT.

Title X (as amended by section 8(a) and 9) is further amended by adding at the end thereof the following new section:

#### "SEC. 1012. MATCHING REQUIREMENT.

Section 1006 (42 U.S.C. 300A-4(a)) is amended to read as follows:

"(a) Grants and contracts made under this title shall be made in accordance with such regulations as the Secretary may promulgate. The amount of any grant made under any section of this title shall be determined by the Secretary, except that no grant under any such section for any program or project shall be for more than 75 percent of the total cost of the grant or project beginning after September 30, 1989."

On page 19, line 4, strike out "12" and insert in lieu thereof "13".

#### HELMS AMENDMENTS NOS. 2768 THROUGH 2778

(Ordered to lie on the table)

Mr. HELMS submitted eleven amendments intended to be proposed by him to the bill S. 110, supra, as follows:

#### AMENDMENT No. 2768

Insert the following new section:

"(a) Notwithstanding any other provision of this title or any other law, no State agency or other entity may be denied assistance under this title because the provisions of any State law governing the provision of family planning services and supplies to unemancipated minors within the State are more restrictive than the requirements established by this title for the provision of family planning services and supplies to unemancipated minors."

#### AMENDMENT No. 2769

Add the following new subsection:

"(a) No contraceptive methods or services may be offered or provided by an entity assisted under this title to an unemancipated minor unless the entity has in effect and complies with procedures under which the parents or guardian of the minor will receive written notice prior to the receipt by the minor of the methods or services that the minor received such methods or services; Provided that: The term "unemancipated minor" means an individual who is age 18 or under and who is not, with respect to factors other than age, fully emancipated under State law."

#### AMENDMENT No. 2770

Add the following new subsection:

"(a) Any entity receiving funds under this title, shall not refer for abortion any unemancipated minor in a program under this title, unless such entity has received the prior written consent to such referral of the parent or legal guardian of such minor; Provided that: The term "unemancipated minor" means an individual who is age 18 or under and who is not, with respect to factors other than age, fully emancipated under State law."

#### AMENDMENT No. 2771

Between line 9 and line 10 on page 13 insert the following:

None of the funds authorized under this Act, or an amendment made by this Act shall be obligated or expended if the Secretary of Health and Human Services, using existing power, has not promulgated regulations prohibiting funds from being used to

provide the following on the premises of any elementary or secondary school: contraceptive drugs or devices, prescriptions for contraceptive drugs or devices, transportation for contraceptive drugs or devices, referrals for contraceptive drugs or devices, transportation to aid in obtaining an abortion, counseling to encourage an individual to obtain an abortion, or referrals for obtaining an abortion.

#### AMENDMENT No. 2772

At the appropriate place, add the following:

Sec. . No funds authorized under this Act or an amendment made by this Act shall be made available unless the Secretary has promulgated regulations requiring that the recipient of such funds considers the financial resources of the parents or guardians of an unemancipated minor and the discretionary income of such minor in determining whether such minor is a person from a low-income family for purposes of section 1006(c) of the Public Health Services Act.

#### AMENDMENT No. 2773

At the appropriate place, add the following:

Sec. . None of the funds authorized by this Act or an amendment made by this Act, shall be used to provide contraceptive drugs or devices, or prescriptions for such drugs or devices, to an unemancipated minor without the prior written consent of such minor's parent or guardian. The term "unemancipated minor" means an unmarried individual who is 17 years of age or under and is a dependent as defined in section 152(a) of the Internal Revenue Code of 1954.

#### AMENDMENT No. 2774

Insert the following new section:

(a) **ADOPTION SERVICES.**—Section 1001(a) (42 U.S.C. 300(a)) is amended by adding at the end thereof the following new sentence: "Such projects may also offer adoption services, except that any adoption services provided under this subsection shall be nondiscriminatory as to race, color, religion, or national origin."

On page 9, line 21, insert "(b) Authorization of Appropriations.—" before "Section".

#### AMENDMENT No. 2775

Insert the following new section:

#### SEC. 12. NEEDLES AND SYRINGES.

Title X (as amended by section 8(a) and 9) is further amended by adding the end thereof the following new section:

#### "SEC. 1012. NEEDLES AND SYRINGES.

"(a) **IN GENERAL.**—All grantees who receive funds under this title shall assure the Secretary that such grantees will only utilize single use syringes.

"(b) **DEFINITION.**—As used in this section the term "single-use syringe" means a syringe that is approved by the Food and Drug Administration and is incapable of being used more than one time."

On page 19, line 4, strike out "12" and insert in lieu thereof "13".

#### AMENDMENT No. 2776

Insert the following new section:

**PROMOTION OF ABSTINENCE AND MONOGAMY.**  
Section 1006(c) (42 U.S.C. 300a-4(c)) is amended—

(1) in paragraph (1), by striking out "and" at the end thereof;

(2) in paragraph (2), by striking out the period; and

(3) by adding at the end thereof the following new paragraph:

"(3) services provided to minors under such program or project promote abstinence as the best reproductive health choice and mutually faithful monogamy as the best reproductive health strategy."

On page 14, line 6, strike out "8" and insert in lieu thereof "9".

On page 15, line 12, strike out "9" and insert in lieu thereof "10".

On page 15, line 13, strike out "8(a)" and insert in lieu thereof "9(a)".

On page 15, line 20, strike out "10" and insert in lieu thereof "11".

On page 18, line 20, strike out "11" and insert in lieu thereof "12".

On page 19, line 4, strike out "12" and insert in lieu thereof "13".

#### AMENDMENT No. 2777

Insert the following new section:

##### NOTIFICATION OF PARTNERS.

Title X (as amended by section 9(a)) is further amended by adding at the end thereof the following new section:

##### "SEC. 1012. NOTIFICATION OF PARTNERS.

"All grantees who receive assistance under this title shall assure the Secretary that such grantees will notify the sexual partners of any individuals served by such grantees who are infected with the etiologic agent for acquired immune deficiency syndrome."

On page 19, line 4, strike out "12" and insert in lieu thereof "13".

#### AMENDMENT No. 2778

Insert the following new section:

##### OBJECTIVE OF PROGRAMS.

Title X (as amended by section 8(a) and 9) is further amended by adding at the end thereof the following new section:

##### "SEC. 1012. OBJECTIVE OF PROGRAMS.

"The objective of the family planning programs funded under this title shall be the reduction of abortions."

On page 19, line 4, strike out "12" and insert in lieu thereof "13".

#### JEFFORDS AMENDMENT NO. 2779

(Ordered to lie on the table.)

Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 110, supra, as follows:

At the appropriate place, insert the following new section:

##### SEC. . PREGNANCY INFORMATION AND COUNSELING.

In the projects authorized under this Act, or an amendment made by this Act, the Secretary of Health and Human Services shall ensure that pregnant women are offered information and counseling concerning all legal and medical options under such projects regarding their pregnancies.

#### ARMSTRONG AMENDMENTS NOS. 2780 AND 2781

(Ordered to lie on the table.)

Mr. ARMSTRONG submitted two amendments intended to be proposed by him to the bill S. 110, supra, as follows:

#### AMENDMENT No. 2780

At the appropriate place, insert the following new section:

##### SEC. . SENSE OF THE SENATE.

It is the Sense of the Senate of the United States that family planning services funded by the Federal government shall be provided in such a way as to respect the integrity of families.

#### AMENDMENT No. 2781

At the appropriate place, insert the following new section:

##### SEC. . NOTIFICATION OF PARENT PRIOR TO ABORTION ON A MINOR.

Section 1001 of the Public Health Service Act (42 USC 300) is amended by adding at the appropriate place the following new subsection:

"(1) No entity which receives a grant or enters into a contract under this section shall provide an abortion for an unemancipated female under the age of 18 until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified under paragraph (2), except when the attending physician certifies in the minor's medical record that the abortion was performed due to a medical emergency requiring immediate action.

"(2) Such notice shall—

"(A) Be addressed to the minor's parent or legal guardian at the usual place of abode of such parent or legal guardian and delivered personally to such parent or legal guardian by the physician performing the abortion or an agent of the entity; or

"(B) Be made by certified mail addressed to the minor's parent or legal guardian at the usual place of abode of such parent or legal guardian with return receipt requested and restricted delivery to the addressee, which means postal employees may only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

"(3) This subsection shall not apply to entities in states that have in effect laws requiring that a parent or legal guardian be notified of, or give consent to, an abortion to be performed on the minor child of such parent or legal guardian."

#### HATCH AMENDMENTS NOS. 2782 THROUGH 2785

(Ordered to lie on the table.)

Mr. HATCH submitted four amendments intended to be proposed by him to the bill S. 110, supra, as follows:

#### AMENDMENT No. 2782

On page 3, between lines 7 and 8, insert the following new subsection:

"(c) In awarding grants and contracts under this section, the Secretary shall give priority to those entities that provide prenatal care services.

On page 3, line 8, strike out "(c)" and insert in lieu thereof "(d)".

#### AMENDMENT No. 2783

On page 12, between lines 14 and 15, insert the following new section:

##### SEC. 12. MATCHING REQUIREMENT.

Title X (as amended by section 8(a) and 9) is further amended by adding at the end thereof the following new section:

##### "SEC. 1012. MATCHING REQUIREMENT.

Section 1006 (42 U.S.C. 300A-4(a)) is amended to read as follows:

"(a) Grants and contracts made under this title shall be made in accordance with such regulations as the Secretary may promul-

gate. The amount of any grant made under any section of this title shall be determined by the Secretary, except that no grant under any such section for any program or project shall be for more than 75 percent of the total cost of the grant or project beginning after September 30, 1990."

On page 12, line 15, strike out "12" and insert in lieu thereof "13".

#### AMENDMENT No. 2784

On page 8, line 12, strike out the end quotation marks and the second period.

On page 8, between lines 12 and 13, insert the following new subsection:

"(c) The Secretary may gather and evaluate data on the current methods of reducing teenage pregnancy, including contraceptive methods."

On page 8, line 16, strike out "(d)" and insert in lieu of "(e)".

#### AMENDMENT No. 2785

On page 8, after line 25, insert the following new subsection:

"The Secretary shall require that all entities awarded grants or contracts for services under this section provide breast and other reproductive cancer screening services to all eligible individuals requiring such services."

#### KENNEDY AMENDMENTS NOS. 2786 THROUGH 2790

(Ordered to lie on the table.)

Mr. KENNEDY submitted five amendments intended to be proposed by him to the bill S. 110, supra, as follows:

#### AMENDMENT No. 2786

On page 2 of the Committee amendment, line 25, strike out "Such" and all that follows through line 4 on page 3, and insert in lieu thereof the following: "Such projects shall offer adoption referral services and shall inform all clients considering termination of pregnancy of the option of adoption, except that any adoption referral service provided under this section shall be nondiscriminatory as to race, color, religion, and national origin.;" and

#### AMENDMENT No. 2787

At the end of the amendment add that following new section:

##### SEC. . PROHIBITION AGAINST PURCHASE AND USE OF HUMAN FETAL TISSUE.

(a) IN GENERAL.—It shall be unlawful for any entity that receives assistance under title X of the Public Health Service Act to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration.

(b) INFORMED CONSENT OF DONOR.—

(1) IN GENERAL.—In research carried out under title X of the Public Health Service Act, human fetal tissue may be used only if the woman providing the tissue makes a statement, in writing and signed by the woman, declaring that—

(A) the woman donates the fetal tissue for use in such research;

(B) the donation is made without any restriction regarding the identity of individuals who may be the recipient of transplantations of the tissue;

(C) the woman has not been informed of the identity of any such individuals; and

(D) in the case of tissue provided pursuant to an induced abortion, the decision to make the donation is made separately and independently of the decision to undergo the

abortion and no funds made available under title X are used for such abortion.

(2) **ADDITIONAL STATEMENT.**—In research carried out under title X of the Public Health Service Act, human fetal tissue obtained pursuant to an induced abortion may be used only if—

(A) in addition to and separate from the statement made pursuant to paragraph (1), the woman involved makes a statement, in writing and signed by the woman, declaring that the decision of the woman to undergo an abortion is not made in order to provide fetal tissue for research purposes;

(B) the statement required in subparagraph (A) is made before the abortion is performed; and

(C) no funds made available under title X are used for the performance of such abortion.

(3) **AVAILABILITY OF STATEMENTS FOR AUDIT.**—In research carried out under title X of the Public Health Service Act, human fetal tissue may be used only if the individual with the principal responsibility for conducting the research involved provides assurances satisfactory to the Secretary that, with respect to any statement required in paragraph (1) or (2) to be made regarding the tissue to be used in the research, the statement is available for audit by the Secretary and other appropriate Federal and State officials."

(c) **DEFINITIONS.**—For purposes of this section:

(1) **HUMAN FETAL TISSUE.**—The term "human fetal tissue" means tissue or cells obtained from a dead human embryo or fetus after a spontaneous or induced abortion, or after a stillbirth.

(2) **VALUABLE CONSIDERATION.**—The term "valuable consideration" does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.

#### AMENDMENT No. 2788

At the end of the amendment, add the following new section:

#### SEC. . LOCAL APPROVAL OF SCHOOL-BASED CLINICS.

Notwithstanding any other provision of this Act, or an amendment made by this Act, no project to be located in a public school may be approved under title X or title XX of the Public Health Services Act unless such project is endorsed by the local public school board after consultation with parents in the affected school.

#### AMENDMENT No. 2789

At the end of the amendment add the following new section:

#### SEC. . ENCOURAGEMENT OF PARENTAL INVOLVEMENT.

Notwithstanding any other provision of title X and title XX of the Public Health Service Act, unemancipated minors that receive family planning services from projects that receive assistance under such titles shall be encouraged to consult with their parents with respect to such services. Nothing in this Act, or the Public Health Service Act, shall be interpreted to preclude adolescents from receiving confidential family planning services.

#### AMENDMENT No. 2790

At the end of the amendment add the following new section:

#### SEC. . PROHIBITION ON ABORTIFACIENT USES.

Notwithstanding any other provision of law, no assistance made available under title X of the Public Health Service Act may be used to conduct research concerning abortifacient uses of any drug or for the development of any drug to be used to induce an abortion. Nothing in the preceding sentence shall be construed to prohibit the use of such assistance for research concerning the contraceptive uses of any drug or for the development of any drug for purposes of contraception or for other medical purposes other than abortion.

#### BOSCHWITZ AMENDMENTS NOS. 2791 THROUGH 2795

(Ordered to lie on the table.)

Mr. BOSCHWITZ submitted five amendments intended to be proposed by him to the bill S. 110, supra, as follows:

#### AMENDMENT No. 2791

On page 3, between lines 13 and 14, insert the following: "(d) Of the amounts appropriated under subsection (c), the Secretary shall make available \$10,000,000 in each of the fiscal year 1991 through 1995, for the making of grants and contracts to public or nonprofit private entities and individuals to promote education programs concerning the risk of sexually transmitted diseases and prevention and treatment services for such diseases."

#### AMENDMENT No. 2792

On page 4, line 3, strike out all through line 11 and insert the following: "personnel (including obstetric-gynecologic nurse practitioners), training for educators and counselors (including language training to enhance educational and counseling services for non-English speaking individuals, training in the recognition of chemical dependency and treatment referral, and training in the recognition of sexual abuse), and training of other personnel, to carry out the family planning service programs described in section 1001 and the information and education programs described in section 1005.

"(b) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose making grants and contracts under this section, there are authorized to be appropriated \$5,000,000 for each of the fiscal years 1991 through 1995."

"(c) The Secretary shall provide grants and contracts only to those public and private entities that provide the service listed in lines 4-8 of this amendment."

#### AMENDMENT No. 2793

At the end of the bill, insert the following: "The Secretary shall make grants and enter into contracts authorized by this bill only with those public and private nonprofit entities that provide—

"(1) health services related to pregnancy to women, including family planning services, prenatal care, perinatal care, postpartum care, immunizations, nutrition services, laboratory and pharmaceutical services, and treatment for health conditions that may complicate pregnancy; and

"(2) preventive health services for infants and children, including well-baby care, physical examinations, testing for various diseases or disorders, nutrition services, and referrals for medical treatments, including dental care and treatments with respect to vision and hearing."

#### AMENDMENT No. 2794

In lieu of the language proposed to be inserted, insert the following:

#### SECTION 1. SHORT TITLE; REFERENCE.

(a) **SHORT TITLE.**—This Act may be cited as the "Family Planning Services Act of 1990".

(b) **REFERENCE.**—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

#### SEC. 2. FINDINGS.

Congress finds that—

(1) family planning services still are not utilized by all individuals in the United States desiring such services;

(2) new and improved contraceptive devices, drugs, and methods are needed in order to ensure optimum safety and choice for each individual desiring to use such devices, drugs, and methods;

(3) the high incidence of teenage pregnancies and sexually transmitted diseases has made it essential that the public receive information to prevent such pregnancies and diseases, as recommended by the Surgeon General of the United States; and

(4) the high rate of infant mortality in the United States has made it essential for family planning services to include comprehensive prenatal, perinatal, and post partum care to assist pregnant women who might not otherwise receive such care.

#### SEC. 3. PROJECT GRANTS AND CONTRACTS.

Section 1001 (42 U.S.C. 300) is amended—

(1) in subsection (a), by adding at the end thereof the following new sentence: "Such projects shall also offer adoption referral services, except that any adoption referral service provided under this subsection shall be nondiscriminatory as to race, color, religion, and national origin."; and

(2) by striking out subsections (c) and (d) and inserting in lieu thereof the following new subsections:

"(c) For the purpose of making grants and contracts under this section, there are authorized to be appropriated \$171,000,000 for fiscal year 1991, \$180,000,000 for fiscal year 1992, and \$189,000,000 for fiscal year 1993, and \$198,500,000 for fiscal year 1994, and \$208,500,000 for fiscal year 1995."

"(d) Of the amounts appropriated under subsection (c), the Secretary shall make available \$10,000,000 in each of the fiscal years 1991 through 1995 for the making of grants and contracts to public or nonprofit private entities and individuals to promote education programs concerning the risk of sexually transmitted diseases and prevention and treatment services for such diseases (including HIV disease)."

#### SEC. 4. REPEAL OF FORMULA GRANTS.

(a) **REPEAL.**—Section 1002 (42 U.S.C. 300a) is repealed.

(b) **CONFORMING AMENDMENT.**—Section 1006(c) (42 U.S.C. 300a-4(c)) is amended by striking out "or 1002".

#### SEC. 5. TRAINING AND TECHNICAL ASSISTANCE GRANTS AND CONTRACTS.

Section 1003 (24 U.S.C. 300a-1) is amended to read as follows:

#### "SEC. 1003. TRAINING GRANTS AND CONTRACTS.

"(a) **AUTHORIZATION.**—The Secretary may make grants to public or nonprofit private entities and may enter into contracts with public or private entities and individuals to provide technical assistance, clinical training for personnel (including obstetric-gyne-

cologic nurse practitioners), training for educators and counselors (including language training to enhance educational and counseling services for non-English speaking individuals, training in the recognition of chemical dependency and treatment referral, and training in the recognition of sexual abuse), and training of other personnel, to carry out the family planning service programs described in section 1001 and the information and education programs described in section 1005.

"(b) PRIORITY.—In making grants under this section the Secretary shall give priority to those public or nonprofit private entities that provide services of the type described in subsection (a).

"(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants and contracts under this section, there are authorized to be appropriated \$5,000,000 for each of the fiscal years 1991 through 1995."

#### SEC. 6. VOLUNTARY PARTICIPATION.

Section 1007 (24 U.S.C. 300a-5) is amended to read as follows:

##### "SEC. 1007. VOLUNTARY PARTICIPATION.

"In any program in which funds authorized under this bill are used, the acceptance by any individual of family planning services or family planning or population growth information shall be voluntary and shall not be prerequisite to eligibility for or receipt of any other services or assistance from, or participation in, any other program of the entity or individual that provided such service or information."

#### SEC. 7. DATA COLLECTION.

(a) IN GENERAL.—Title X (42 U.S.C. 300 et seq.) is amended by adding at the end thereof the following new section:

##### "SEC. 1010. DATA COLLECTION.

"(a) COLLECTION OF DATA.—The Secretary shall collect on an annual basis data concerning—

"(1) the number of low-income and marginal-income individuals, and the number of adolescents, at risk of unintended pregnancies;

"(2) the sources of funding available for family planning services in the United States;

"(3) the number of individuals who receive family planning services from entities that receive grants and contracts under section 1001 and the age, gender, race, and family income of such individuals; and

"(4) the types of family planning services chosen by individuals who receive services from entities which receive grants and contracts under section 1001.

"(b) GRANTS AND CONTRACTS.—The Secretary may make grants to public and nonprofit private entities and enter into contracts with public and private entities and individuals for the collection of data under this section. The Secretary shall make available to the public data and information collected under this section."

(b) TECHNICAL AMENDMENT.—Section 1009 (42 U.S.C. 300a-6a) is amended by adding at the end thereof the following new subsection:

"(d) Each plan prepared under this section shall be based upon data collected under section 1010."

#### SEC. 8. BREAST EXAMINATIONS.

Title X (as amended by section 7(a) of this Act) is further amended by adding at the end thereof the following new section:

##### "SEC. 1011. BREAST EXAMINATIONS.

"All grantees who receive assistance under this title shall provide education to patients concerning self breast examinations."

#### SEC. 9. STUDY OF PARENTAL CONSENT FOR FAMILY PLANNING.

Section 301 (42 U.S.C. 241) is amended by adding at the end thereof the following new subsection:

"(e)(1) The Secretary shall make available \$1,800,000 during the fiscal years 1991 through 1993 for the selection of a single State in which to establish a research project meeting the requirements of paragraph (2), to determine the impact of family planning services in a State that has in effect a law prohibiting the use of public funds for the provision of family planning services to an unmarried minor without the prior written consent of the parent or guardian of the minor.

"(2)(A) Notwithstanding any other provision of this Act, the Secretary may, for any fiscal year, make grants to or enter into contracts with public agencies in a State described in paragraph (1) for the provision of family planning services. Activities conducted by public agencies in the State under such grants and contracts shall be carried out in accordance with the State law described in paragraph (1).

"(B) A public agency in a State described in paragraph (4) that desires to receive a grant or contract under this subsection shall submit an application to the Secretary in accordance with such requirements as the Secretary may prescribe.

"(C) An application submitted under subparagraph (B) shall contain assurances satisfactory to the Secretary that—

"(i) prior to April 1, 1981, there was enacted in the State a law described in paragraph (1);

"(ii) for the fiscal year for which the application is submitted, such law will not be applied to family planning services provided by private agencies;

"(iii) if a public agency of the State makes a grant to, or enters into a contract with, a private agency for the provision of family planning services, and such grant or contract is funded in whole or in part from amounts received by that agency under this subsection, the State shall ensure that such private agency meets the same requirements for eligibility for assistance under title X as the Secretary may prescribe for all private agencies assisted under title X;

"(iv) Federal funds made available under this subsection to public agencies in the State will be used to supplement and increase the level of public funds expended for family planning services within the State, and will in no case be used to supplant such public funds; and

"(v) the State shall submit to the Secretary annual reports in such form as the Secretary shall require in order to assess the effectiveness of the financial assistance provided under this subsection within the State.

"(3) This subsection shall not be construed to authorize the Secretary to make grants to, or enter into contracts with, a private entity in which the research project under this subsection is conducted unless that private entity complies with the requirements established under title X for a private entity outside of the State that applies for grants and contracts under this subsection.

"(4)(A) Not later than 3 years after the date of enactment of this subsection, the Comptroller General of the United States shall prepare and submit to Congress a report that—

"(i) evaluates the effect of requiring the parent or guardian of an unmarried minor to give written consent prior to the provi-

sion of family planning service to such minor on the reduction of the rate of unintended adolescent pregnancies in the State in which the research project is conducted under this subsection; and

"(ii) compares the rate of unintended adolescent pregnancies in that State with the rates of such pregnancies in other States.

"(B) The Secretary, in consultation with the Comptroller General of the United States, shall provide for the collection of data to assist the Comptroller General in preparing the report required under this paragraph."

#### SEC. 10. CONDUCT OF RESEARCH ACTIVITIES.

Section 1004 (42 U.S.C. 300a-2) is amended—

(1) by inserting "(a)" before "The";

(2) in paragraph (2)—

(A) by inserting "evaluation" after "development"; and

(B) by inserting before the period the following: "and research to improve the clinical management and direct delivery of family planning services"; and

(3) by adding at the end thereof the following new subsections:

"(b) To enhance the ongoing work of the National Institutes of Health under section 301 and under subsection (a) in applied contraceptive research and evaluation, and specifically to promote the development, evaluation, and bringing to the marketplace, of new and improved contraceptive devices, drugs, and methods, the Secretary may conduct, and make grants to public and nonprofit private entities and enter into contracts with public and private entities and individuals for the conduct of—

"(1) applied research into the development of new or improved contraceptive devices, drugs, and methods; and

"(2) evaluations of the acceptance, convenience, safety, efficacy, and cost of contraceptive devices, drugs, and methods.

"(c) For the purpose of making grants and entering into contracts under subsection (b), there are authorized to be appropriated \$10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995. Amounts appropriated under this subsection shall be in addition to amounts allocated under section 301(a) for the National Institute of Child Health and Human Development.

"(d) As used in this section, the term 'contraceptive' includes methods which act to prevent fertilization or to prevent the implantation of the fertilized human ovum, blastocyst or embryo in the uterus. Such term does not include any drug, device or method which has, as one of its known effects, the termination of pregnancy after implantation of the fertilized human ovum, blastocyst, or embryo in the uterus, and the Institute may not support research on any such drug, device or method."

#### SEC. 11. PRENATAL CARE.

"In making grants and contracts authorized by this bill, the Secretary shall give priority to those public and private nonprofit entities that provide—

"(1) health services related to pregnancy to women, including family planning services, prenatal care, prenatal care, postpartum care, immunizations, nutrition services, laboratory and pharmaceutical services, and treatment for health conditions that may complicate pregnancy; and

"(2) preventive health services for infants and children, including well-baby care, physical examinations, testing for various diseases or disorders, nutrition services, and

referrals for medical treatments, including dental care and treatments with respect to vision and hearing.”

**SEC. 12. AUTHORIZATION OF APPROPRIATIONS FOR ADOLESCENT FAMILY LIFE PROGRAM.**

Subsection (a) of section 2010 (42 U.S.C. 300z-9) is amended to read as follows:

“(a) For the purpose of carrying out this title, there are authorized to be appropriated \$15,000,000 for each of the fiscal years 1991 through 1995.”

**AMENDMENT No. 2795**

In lieu of the language proposed to be inserted, insert the following:

**SECTION 1. SHORT TITLE; REFERENCE.**

(a) **SHORT TITLE.**—This Act may be cited as the “Family Planning Amendments of 1990”.

(b) **REFERENCE.**—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

**SEC. 2. FINDINGS.**

Congress finds that—

(1) family planning services still are not utilized by all individuals in the United States desiring such services;

(2) new and improved contraceptive devices, drugs, and methods are needed in order to ensure optimum safety and choice for each individual desiring to use such devices, drugs, and methods; and

(3) the high incidence of teenage pregnancies and sexually transmitted diseases has made it essential that the public receive information to prevent such pregnancies and diseases, as recommended by the Surgeon General of the United States.

**SEC. 3. PROJECT GRANTS AND CONTRACTS.**

Section 1001 (42 U.S.C. 300) is amended—

(1) in subsection (a), by adding at the end thereof the following new sentence: “Such projects shall also offer adoption referral services, except that any adoption referral service provided under this subsection shall be nondiscriminatory as to race, color, religion, and national origin.”; and

(2) by striking out subsections (c) and (d) and inserting in lieu thereof the following new subsection:

“(c) For the purpose of making grants and contracts under this section, there are authorized to be appropriated \$171,000,000 for fiscal year 1991, \$180,000,000 for fiscal year 1992 and \$189,000,000 for fiscal year 1993, and \$198,500,000 for fiscal year 1994, and \$208,500,000 for fiscal year 1995.”

**SEC. 4. REPEAL OF FORMULA GRANTS.**

(a) **REPEAL.**—Section 1002 (42 U.S.C. 300a) is repealed.

(b) **CONFORMING AMENDMENT.**—Section 1006(c) (42 U.S.C. 300a-4(c)) is amended by striking out “or 1002”.

**SEC. 5. TRAINING AND TECHNICAL ASSISTANCE GRANTS AND CONTRACTS.**

Section 1003 (24 U.S.C. 300a-1) is amended to read as follows:

**“SEC. 1003. TRAINING GRANTS AND CONTRACTS.**

“(a) **AUTHORIZATION.**—The Secretary may make grants to public or nonprofit private entities and may enter into contracts with public or private entities and individuals to provide technical assistance, clinical training for personnel (including obstetric-gynecologic nurse practitioners), training for educators and counselors, and training of other personnel, to carry out the family planning service programs described in sec-

tion 1001 and the information and education programs described in section 1005.

“(b) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of making grants and contracts under this section, there are authorized to be appropriated \$5,000,000 for each of the fiscal years 1991 through 1995.”

**SEC. 6. CONDUCT OF RESEARCH ACTIVITIES.**

Section 1004 (42 U.S.C. 300a-2) is amended—

(1) by inserting “(a)” before “The”;

(2) in paragraph (2)—

(A) by inserting “and evaluation” after “development”; and

(B) by inserting before the period the following: “and research to improve the clinical management and direct delivery of family planning services”; and

(3) by adding at the end thereof the following new subsections:

“(b) To enhance the ongoing work of the National Institutes of Health under section 301 and under subsection (a) in applied contraceptive research and evaluation, and specifically to promote the development, evaluation, and bringing to the marketplace, of new and improved contraceptive devices, drugs, and methods, the Secretary may conduct, and make grants to public and nonprofit private entities and enter into contracts with public and private entities and individuals for the conduct of—

“(1) applied research into the development of new or improved contraceptive devices, drugs, and methods; and

“(2) evaluations of the acceptance, convenience, safety, efficacy, and cost of contraceptive devices, drugs, and methods.

“(c) For the purpose of making grants and entering into contracts under subsection (b), there are authorized to be appropriated \$10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995. Amounts appropriated under this subsection shall be in addition to amounts allocated under section 301(a) for the National Institute of Child Health and Human Development.

“(d) As used in this section, the term ‘contraceptive’ includes methods which act to prevent fertilization or to prevent the implantation of the fertilized human ovum, blastocyst or embryo in the uterus. Such term does not include any drug, device or method which has, as one of its known effects, the termination of pregnancy after implantation of the fertilized human ovum, blastocyst, or embryo in the uterus, and the Institute may not support research on any such drug, device or method.”

**SEC. 7. DATA COLLECTION.**

(a) **IN GENERAL.**—Title X (42 U.S.C. 300 et seq.) is amended by adding at the end thereof the following new section:

“SEC. 1010. DATA COLLECTION.

“(a) **COLLECTION OF DATA.**—The Secretary shall collect on an annual basis data concerning—

“(1) the number of low-income and marginal-income individuals, and the number of adolescents, at risk of unintended pregnancies;

“(2) the sources of funding available for family planning services in the United States;

“(3) the number of individuals who receive family planning services from entities that receive grants and contracts under section 1001 and the age, gender, race, and family income of such individuals; and

“(4) the types of family planning services chosen by individuals who receive services from entities which receive grants and contracts under section 1001.

“(b) **GRANTS AND CONTRACTS.**—The Secretary may make grants to public and nonprofit private entities and enter into contracts with public and private entities and individuals for the collection of data under this section. The Secretary shall make available to the public data and information collected under this section.”

(b) **TECHNICAL AMENDMENT.**—Section 1009 (42 U.S.C. 300a-6a) is amended by adding at the end thereof the following new subsection:

“(d) Each plan prepared under this section shall be based upon data collected under section 1010.”

**SEC. 8. BREAST EXAMINATIONS.**

Title X (as amended by section 7(a) of this Act) is further amended by adding at the end thereof the following new section:

**“SEC. 1011. BREAST EXAMINATIONS.**

“All grantees who receive assistance under this title shall provide education to patients concerning self breast examinations.”

**SEC. 9. STUDY OF PARENTAL CONSENT FOR FAMILY PLANNING.**

Section 301 (42 U.S.C. 241) is amended by adding at the end thereof the following new subsection:

“(e)(1) The Secretary shall make available \$1,800,000 during the fiscal years 1991 through 1993 for the selection of a single State in which to establish a research project meeting the requirements of paragraph (2), to determine the impact of family planning services in a State that has in effect a law prohibiting the use of public funds for the provision of family planning services to an unmarried minor without the prior written consent of the parent or guardian of the minor.

“(2)(A) Notwithstanding any other provision of this Act, the Secretary may, for any fiscal year, make grants to or enter into contracts with public agencies in a State described in paragraph (1) for the provision of family planning services. Activities conducted by public agencies in the State under such grants and contracts shall be carried out in accordance with the State law described in paragraph (1).

“(B) A public agency in a State described in paragraph (4) that desires to receive a grant or contract under this subsection shall submit an application to the Secretary in accordance with such requirements as the Secretary may prescribe.

“(C) An application submitted under subparagraph (B) shall contain assurance satisfactory to the Secretary that—

“(i) prior to April 1, 1981, there was enacted in the State a law described in paragraph (1);

“(ii) for the fiscal year for which the application is submitted, such law will not be applied to family planning services provided by private agencies;

“(iii) if a public agency of the State makes a grant to, or enters into a contract with, a private agency for the provision of family planning services, and such grant or contract is funded in whole or in part from amounts received by that agency under this subsection, the State shall ensure that such private agency meets the same requirements for eligibility for assistance under title X as the Secretary may prescribe for all private agencies assisted under title X;

“(iv) Federal funds made available under this subsection to public agencies in the State will be used to supplement and increase the level of public funds expended for family planning services within the

State, and will in no case be used to supplant such public funds; and

"(v) the State shall submit to the Secretary annual reports in such form as the Secretary shall require in order to assess the effectiveness of the financial assistance provided under this subsection within the State.

"(3) This subsection shall not be construed to authorize the Secretary to make grants to, or enter into contracts with, a private entity in which the research project under this subsection is conducted unless that private entity complies with the requirements established under title X for a private entity outside of the State that applies for grants and contracts under this subsection.

"(4)(A) Not later than 3 years after the date of enactment of this subsection, the Comptroller General of the United States shall prepare and submit to Congress a report that—

"(i) evaluates the effect of requiring the parent or guardian of an unmarried minor to give written consent prior to the provision of family planning service to such minor on the reduction of the rate of unintended adolescent pregnancies in the State in which the research project is conducted under this subsection; and

"(ii) compares the rate of unintended adolescent pregnancies in that State with rates of such pregnancies on other States.

"(B) The Secretary, in consultation with the Comptroller General of the United States, shall provide for the collection of data to assist the Comptroller General in preparing the report required under this paragraph."

**SEC. 10. AUTHORIZATION OF APPROPRIATIONS FOR ADOLESCENT FAMILY LIFE PROGRAM.**

Subsection (a) of section 2010 (42 U.S.C. 300z-9) is amended to read as follows:

"(a) For the purpose of carrying out this title, there are authorized to be appropriated \$9,529,000 for each of the fiscal years 1991 through 1995."

**SEC. 11. EFFECTIVE DATE.**

This Act and the amendments made by this Act shall become effective on the date of enactment of this Act.

**ARMSTRONG AMENDMENT NO. 2796**

(Ordered to lie on the table.)

Mr. ARMSTRONG submitted an amendment intended to be proposed by him to the bill S. 110, supra, as follows:

On page 3, line 13, of the committee substitute as modified, after "fiscal year 1995.", add the following:

"Provided, however, that no funds authorized to be appropriated by this Act may go to any entity receiving funding under this Act unless such entity certifies to the Secretary that it will not provide an abortion for an unemancipated female under the age of 18 until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified by this subsection, except in instances where an attending physician certifies in such minor's medical record that the abortion was performed due to a medical emergency requiring immediate attention.

"Provided further, That such entity certifies to the Secretary, as a condition of receiving funds authorized to be appropriated by this Act, that such notice shall be addressed to the minor's parent or legal guard-

ian at the usual place of abode of such parent or legal guardian and delivered personally to such parent or legal guardian by the physician performing the abortion or an agent of the entity; or be made by certified mail addressed to the minor's parent or legal guardian at the usual place of abode of such parent or legal guardian with return receipt requested and restricted delivery to the addressee, which means postal employees may only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing."

**NICKLES AMENDMENTS NOS. 2797 THROUGH 2801**

(Ordered to lie on the table.)

Mr. NICKLES submitted five amendments intended to be proposed by him to the bill S. 110, supra, as follows:

**AMENDMENT No. 2797**

At the appropriate place in the bill add the following:

SEC. (a). Effective 90 days after the date of enactment, a public or nonprofit private entity shall be ineligible to receive a grant or enter into a contract under section 1001 (42 U.S.C. 300) for a period of three years if such entity makes a contribution or expenditure in connection with legislation affecting the availability of abortion as a method of family planning.

(b) For purposes of this section, the terms "contribution", "expenditure" and "legislation" shall have the same meaning as defined in 2 U.S.C. 261.

**AMENDMENT No. 2798**

On page 19, between lines 3 and 4, insert the following new section:

**SEC. 12. NONDISCRIMINATION BY THE SECRETARY.**

Title X (as amended by section 8(a) and 9) is further amended by adding at the end thereof the following new section:

**SEC. 1012. NONDISCRIMINATION BY THE SECRETARY.**

"No individual or entity shall, on the ground of sex, race, religion, age, national origin or handicap be excluded from receipt of or participation in any grant or contract entered into pursuant to this title."

On page 19, line 4, strike out "12" and insert in lieu thereof "13".

**AMENDMENT No. 2799**

On page 19, between lines 3 and 4, insert the following new section:

**SEC. 12. WHISTLEBLOWER PROTECTION.**

Title X (as amended by section 8(a) and 9) is further amended by adding at the end thereof the following new section:

**SEC. 1012. WHISTLEBLOWER PROTECTION.**

"(a) IN GENERAL.—It shall be unlawful for any individual or entity that receives assistance under this title to discharge or in any other manner discriminate against an employee because such employee has filed a complaint or made a formal allegation to the Secretary regarding the misuse of Federal funds by the employing grantee, or caused to be instituted any proceeding under or related to this title, or testified in such a proceeding.

"(b) PROCEEDINGS.—

"(1) TIME FOR MAKING OF ALLEGATIONS.—Any allegation that a grantee under this Act has violated subsection (a) shall be made to

the Secretary not later than 60 days of the alleged retaliatory action.

"(2) EXAMINER.—The Secretary shall appoint an examiner to investigate the allegation, who shall provide the grantee an opportunity to present any evidence that the examiner considers relevant and submit a recommendation concerning such to the Secretary.

"(3) DECISION.—The Secretary shall either adopt, reject, or modify the recommendation submitted under paragraph (2). If the Secretary concludes that the grantee has violated subsection (a), the Secretary shall state its findings and take such affirmative action necessary to effectuate the purposes of this section including reinstatement of the aggrieved employee with or without backpay."

On page 19, line 4, strike out "12" and insert in lieu thereof "13".

**AMENDMENT No. 2800**

On page 9, between lines 20 and 21, insert the following new subsection:

(a) ADOPTION SERVICES.—Section 1001(a) (42 U.S.C. 300(a)) is amended by adding at the end thereof the following new sentence: "Such projects may also offer adoption services, except that any adoption services provided under this subsection shall be nondiscriminatory as to race, color, religion, or national origin."

On page 9, line 21, insert: "(b) AUTHORIZATION OF APPROPRIATIONS.—" before "Section".

**AMENDMENT No. 2801**

On page 19, between lines 3 and 4, insert the following new section:

**SEC. 12. NONDISCRIMINATION BY GRANTEES.**

Title X (as amended by section 8(a) and 9) is further amended by adding at the end thereof the following new section:

**"SEC. 1012. NONDISCRIMINATION BY GRANTEES.**

"(a) IN GENERAL.—

"(1) APPLICABLE ACTS.—For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendment of 1972, or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, programs and activities funded in whole or in part with funds provided under this title shall be considered to be programs or activities receiving Federal assistance.

"(2) RELIGION.—No individual on the ground of sex or religion shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this title.

"(b) ACTION BY SECRETARY.—Whenever the Secretary finds that a grantee or an individual with whom the Secretary has entered into a contract under this title has failed to comply with a provision of law referred to in subsection (a) (1) or (2) or with an applicable regulation, the Secretary shall exercise the powers and functions provided for under title VI of the Civil Rights Act of 1964, or the Age Discrimination Act of 1973, as may be applicable, and to take such other action as may be provided by law."

On page 19, line 4, strike out "12" and insert in lieu thereof "13".

## MOTOR FUEL EFFICIENCY ACT

## BRYAN AMENDMENTS NOS. 2802 THROUGH 2866

(Ordered to lie on the table.)

Mr. BRYAN submitted 65 amendments intended to be proposed by him to the bill (S. 1224) to amend the Motor Vehicle Information and Cost Savings Act to require new standards for corporate average fuel economy, and for other purposes; as follows:

## AMENDMENT No. 2802

In lieu of the matter proposed to be inserted, insert the following:

Strike all on page 32, line 21, through page 34, line 16, of the bill.

## AMENDMENT No. 2803

In lieu of the matter proposed to be inserted, insert the following:

Sec. . (a) Section 502(k)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(k)(1)) is amended by striking "the Secretary" each place it appears and inserting in lieu thereof "the National Academy of Sciences at the request of the Secretary".

(b) Section 502(k)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(k)(1)) is amended by striking "after model year 1981 and before model year 1986" and inserting in lieu thereof "after model year 1995 and before model year 2001".

(c) Section 502(k)(3) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(k)(3)) is amended by striking "after model year 1985" and inserting in lieu thereof "after model year 1995 and before year 2001".

## AMENDMENT No. 2804

In lieu of the matter proposed to be inserted, insert the following:

Sec. . (a) Section 502(k)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(k)(1)) is amended by striking "the Secretary" each place it appears and inserting in lieu thereof "the National Academy of Sciences at the request of the Secretary".

(b) Section 502(k)(1) and (3) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(k)(1) and (3)) is amended by striking "after model year 1981 and before model year 1986" each place it appears and inserting in lieu thereof "after model year 1995 and before model year 2001".

## AMENDMENT No. 2805

In lieu of the matter proposed to be inserted, insert the following:

Sec. . Any modifications by the Secretary of Transportation to any average fuel economy standard established for model years 1995 through 2000 shall not reduce such standard below a standard equal to a 10-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988, and any modifications by the Secretary to any average fuel economy standard established for model years 2001 and thereafter shall not reduce such standard below a standard equal to a 30-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988.

## AMENDMENT No. 2806

In lieu of the matter proposed to be inserted, insert the following:

Sec. . Any modifications by the Secretary of Transportation to any average fuel economy standard established for model years 1995 through 2000 shall not reduce such standard below a standard equal to a 10-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988, and any modifications by the Secretary to any average fuel economy standard established for model years 2001 and thereafter shall not reduce such standard below a standard equal to a 30-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988.

## AMENDMENT No. 2807

In lieu of the matter proposed to be inserted, insert the following:

Sec. . Any modifications by the Secretary of Transportation to any average fuel economy standard established for model years 1995 through 2000 shall not reduce such standard below a standard equal to a 10-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988, and any modifications by the Secretary to any average fuel economy standard established for model years 2001 and thereafter shall not reduce such standard below a standard equal to a 30-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988.

## AMENDMENT No. 2808

In lieu of the matter proposed to be inserted, insert the following:

Sec. . Any modifications by the Secretary of Transportation to any average fuel economy standard established for model years 1995 through 2000 shall not reduce such standard below a standard equal to a 10-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988, and any modifications by the Secretary to any average fuel economy standard established for model years 2001 and thereafter shall not reduce such standard below a standard equal to a 30-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988.

## AMENDMENT No. 2809

In lieu of the matter proposed to be inserted, insert the following:

Sec. . Any modifications by the Secretary of Transportation to any average fuel economy standard established for model years 1995 through 2000 shall not reduce such standard below a standard equal to a 10-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988, and any modifications by the Secretary to any average fuel economy standard established for model years 2001 and thereafter shall not reduce such standard below a standard equal to a 30-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988.

## AMENDMENT No. 2810

In lieu of the matter proposed to be inserted, insert the following:

Sec. . Any modifications by the Secretary of Transportation to any average fuel economy standard established for model years 1995 through 2000 shall not reduce such standard below a standard equal to a 10-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988, and any modifications by the Secretary to any average fuel economy standard established for model years 2001 and thereafter shall not reduce such standard below a standard equal to a 30-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988.

## AMENDMENT No. 2811

In lieu of the matter proposed to be inserted, insert the following:

Sec. . Any modifications by the Secretary of Transportation to any average fuel economy standard established for model years 1995 through 2000 shall not reduce such standard below a standard equal to a 10-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988, and any modifications by the Secretary to any average fuel economy standard established for model years 2001 and thereafter shall not reduce such standard below a standard equal to a 30-percent increase over the average fuel economy achieved by the manufacturer involved for the applicable type (or class) of vehicles for model year 1988.

## AMENDMENT No. 2812

In lieu of the matter proposed to be inserted, insert the following:

## MAXIMUM INCREASE IN AVERAGE FUEL ECONOMY ATTRIBUTABLE TO CERTAIN AUTOMOBILES

Sec. . Section 513 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013) by adding at the end the following new subsection:

## "(1) MAXIMUM INCREASE.—

"(1) For each of the model years 1993 through 2008, for each category of automobiles the maximum increase attributable to dual energy automobiles and natural gas dual energy automobiles shall be 1.5 miles per gallon.

"(2) For purposes of applying paragraph (1), the EPA Administrator shall compute the increase in a manufacturer's average fuel economy attributable to dual energy automobiles and natural gas dual energy automobiles by subtracting from the manufacturer's average fuel economy calculated under subsection (e) the number equal to what the manufacturer's average fuel economy would be if it were calculated by the formula in section 503(a)(1) and (2) by including as the denominator for each model type of dual energy automobile or natural gas dual energy automobile the fuel economy when such automobiles are operated on gasoline or diesel fuel. If the increase attributable to dual energy automobiles and natural gas dual energy automobiles for any model year described in paragraph (1) is more than 1.5 miles per gallon, the limitation in paragraph (1) shall apply."











automobiles and natural gas dual energy automobiles by subtracting from the manufacturer's average fuel economy calculated under subsection (e) the number equal to what the manufacturer's average fuel economy would be if it were calculated by the formula in section 503(a)(1) and (2) by including as the denominator for each model type of dual energy automobile or natural gas dual energy automobile the fuel economy when such automobiles are operated on gasoline or diesel fuel. If the increase attributable to dual energy automobiles and natural gas dual energy automobiles for any model year described in paragraph (1) is more than 1.5 miles per gallon, the limitation in paragraph (1) shall apply."

#### AMENDMENT No. 2846

In lieu of the matter proposed to be inserted, insert the following:

##### MAXIMUM INCREASE IN AVERAGE FUEL ECONOMY ATTRIBUTABLE TO CERTAIN AUTOMOBILES

Sec. . Section 513 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013) by adding at the end the following new subsection:

###### "(i) MAXIMUM INCREASE.—

"(1) For each of the model years 1993 through 2008, for each category of automobiles the maximum increase attributable to dual energy automobiles and natural gas dual energy automobiles shall be 1.5 miles per gallon.

"(2) For purposes of applying paragraph (1), the EPA Administrator shall compute the increase in a manufacturer's average fuel economy attributable to dual energy automobiles and natural gas dual energy automobiles by subtracting from the manufacturer's average fuel economy calculated under subsection (e) the number equal to what the manufacturer's average fuel economy would be if it were calculated by the formula in section 503(a)(1) and (2) by including as the denominator for each model type of dual energy automobile or natural gas dual energy automobile the fuel economy when such automobiles are operated on gasoline or diesel fuel. If the increase attributable to dual energy automobiles and natural gas dual energy automobiles for any model year described in paragraph (1) is more than 1.5 miles per gallon, the limitation in paragraph (1) shall apply."

#### AMENDMENT No. 2847

In lieu of the matter proposed to be inserted, insert the following:

##### MAXIMUM INCREASE IN AVERAGE FUEL ECONOMY ATTRIBUTABLE TO CERTAIN AUTOMOBILES

Sec. . Section 513 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013) by adding at the end the following new subsection:

###### "(i) MAXIMUM INCREASE.—

"(1) For each of the model years 1993 through 2008, for each category of automobiles the maximum increase attributable to dual energy automobiles and natural gas dual energy automobiles shall be 1.5 miles per gallon.

"(2) For purposes of applying paragraph (1), the EPA Administrator shall compute the increase in a manufacturer's average fuel economy attributable to dual energy automobiles and natural gas dual energy automobiles by subtracting from the manufacturer's average fuel economy calculated under subsection (e) the number equal to what the manufacturer's average fuel economy would be if it were calculated by the formula in section 503(a)(1) and (2) by in-

cluding as the denominator for each model type of dual energy automobile or natural gas dual energy automobile the fuel economy when such automobiles are operated on gasoline or diesel fuel. If the increase attributable to dual energy automobiles and natural gas dual energy automobiles for any model year described in paragraph (1) is more than 1.5 miles per gallon, the limitation in paragraph (1) shall apply."

#### AMENDMENT No. 2848

In lieu of the matter proposed to be inserted, insert the following:

##### MAXIMUM INCREASE IN AVERAGE FUEL ECONOMY ATTRIBUTABLE TO CERTAIN AUTOMOBILES

Sec. . Section 513 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013) by adding at the end the following new subsection:

###### "(i) MAXIMUM INCREASE.—

"(1) For each of the model years 1993 through 2008, for each category of automobiles the maximum increase attributable to dual energy automobiles and natural gas dual energy automobiles shall be 1.5 miles per gallon.

"(2) For purposes of applying paragraph (1), the EPA Administrator shall compute the increase in a manufacturer's average fuel economy attributable to dual energy automobiles and natural gas dual energy automobiles by subtracting from the manufacturer's average fuel economy calculated under subsection (e) the number equal to what the manufacturer's average fuel economy would be if it were calculated by the formula in section 503(a)(1) and (2) by including as the denominator for each model type of dual energy automobile or natural gas dual energy automobile the fuel economy when such automobiles are operated on gasoline or diesel fuel. If the increase attributable to dual energy automobiles and natural gas dual energy automobiles for any model year described in paragraph (1) is more than 1.5 miles per gallon, the limitation in paragraph (1) shall apply."

#### AMENDMENT No. 2849

In lieu of the matter proposed to be inserted, insert the following:

##### MAXIMUM INCREASE IN AVERAGE FUEL ECONOMY ATTRIBUTABLE TO CERTAIN AUTOMOBILES

Sec. . Section 513 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013) by adding at the end the following new subsection:

###### "(i) MAXIMUM INCREASE.—

"(1) For each of the model years 1993 through 2008, for each category of automobiles the maximum increase attributable to dual energy automobiles and natural gas dual energy automobiles shall be 1.5 miles per gallon.

"(2) For purposes of applying paragraph (1), the EPA Administrator shall compute the increase in a manufacturer's average fuel economy attributable to dual energy automobiles and natural gas dual energy automobiles by subtracting from the manufacturer's average fuel economy calculated under subsection (e) the number equal to what the manufacturer's average fuel economy would be if it were calculated by the formula in section 503(a)(1) and (2) by including as the denominator for each model type of dual energy automobile or natural gas dual energy automobile the fuel economy when such automobiles are operated on gasoline or diesel fuel. If the increase attributable to dual energy automobiles and natural gas dual energy automobiles for any

model year described in paragraph (1) is more than 1.5 miles per gallon, the limitation in paragraph (1) shall apply."

#### AMENDMENT No. 2850

In lieu of the matter proposed to be inserted, insert the following:

##### MAXIMUM INCREASE IN AVERAGE FUEL ECONOMY ATTRIBUTABLE TO CERTAIN AUTOMOBILES

Sec. . Section 513 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013) by adding at the end the following new subsection:

###### "(i) MAXIMUM INCREASE.—

"(1) For each of the model years 1993 through 2008, for each category of automobiles the maximum increase attributable to dual energy automobiles and natural gas dual energy automobiles shall be 1.5 miles per gallon.

"(2) For purposes of applying paragraph (1), the EPA Administrator shall compute the increase in a manufacturer's average fuel economy attributable to dual energy automobiles and natural gas dual energy automobiles by subtracting from the manufacturer's average fuel economy calculated under subsection (e) the number equal to what the manufacturer's average fuel economy would be if it were calculated by the formula in section 503(a)(1) and (2) by including as the denominator for each model type of dual energy automobile or natural gas dual energy automobile the fuel economy when such automobiles are operated on gasoline or diesel fuel. If the increase attributable to dual energy automobiles and natural gas dual energy automobiles for any model year described in paragraph (1) is more than 1.5 miles per gallon, the limitation in paragraph (1) shall apply."

#### AMENDMENT No. 2851

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

#### AMENDMENT No. 2852

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

#### AMENDMENT No. 2853

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

#### AMENDMENT No. 2854

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile in-

dustry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2855

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2856

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2857

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2858

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2859

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2860

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2861

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2862

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2863

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2864

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2865

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

AMENDMENT No. 2866

In lieu of the matter proposed to be inserted, insert the following:

Sec. . The National Academy of Sciences may, at the request of the Secretary, study the effect of corporate average fuel economy requirements on jobs, the automobile industry, safety, or emissions. Any such report shall be submitted to Congress for its consideration.

RIEGLE AMENDMENTS NOS. 2867 THROUGH 2874

(Ordered to lie on the table.)

Mr. RIEGLE submitted eight amendments intended to be proposed by him to amendment No. 2734 intended to be proposed by him to the bill S. 1224, supra, as follows:

AMENDMENT No. 2867

At the end of the pending amendment, insert the following:

"SEC. . Notwithstanding any other provision of this Act, "(a) Section 513(f), (15 U.S.C. 2013(f)), is amended by—

(1) in paragraph (1), striking all and inserting in lieu thereof the following:

"(1) Subsections (a), (b), (c) and (d) shall apply only to automobiles manufactured after model year 1992;

(2) in paragraph (2)(A), striking the matter following the phrase "subsections (b) and (d)" through the end of that sentence; and

(3) striking the entirety of paragraph (2)(B).

"(b) Section 513(h)(1)(C)(iii), (15 U.S.C. 2013(h)(1)(C)(iii)), is amended by striking the material following the word "period" through the word "applies".

EXPLANATION.—Consistent with the Danforth amendment passed last night, this second degree amendment would encourage the development of alternative fueled automobiles by eliminating the restriction in current law that limits the availability of the incentive to the year 2008. The amendment would also eliminate, as unnecessary, the authority granted in current law to the Secretary of Transportation to decide whether to extend the availability of the incentive from the year 2004 to 2008.

AMENDMENT No. 2868

At the end of the pending amendment, insert the following:

"(c) Notwithstanding any other provision of this Act, in Title II, Section 241, insert the following new subsection:

"(c) On or before December 1, 1991, the Secretary shall prepare and submit to Congress and the President a comprehensive report quantifying in miles-per-gallon the effect on fuel economy of the final rules required by this section. Notwithstanding any other provision of law, the Secretary shall reduce each manufacturer's applicable fuel economy standard established pursuant to Sections 514 and 515 of Title V of the Motor Vehicle Information and Cost Savings Act in an amount equal to the amount determined by the Secretary to be the effect of the final rules required by this section. The reductions in fuel economy regulations required by this subsection shall be promulgated prior to the first model year in which the standards established pursuant to Section 514 and 515 would take effect.

EXPLANATION.—This amendment would ensure that the new fuel economy standards will be adjusted downward to take into account the new side impact standards required by Title II as added last night.

AMENDMENT No. 2869

At the end of the pending amendment, insert the following:

"(c) Notwithstanding any other provision of this Act, in Title II, Section 242, insert the following new subsection:

"(d) The study required by this section shall quantify in miles-per-gallon the effect on fuel economy of the all improvements in crashworthiness which are available to manufacturers. In the event that the Secretary promulgates the final rule under subsection (b), the Secretary shall also reduce each manufacturer's applicable fuel economy standard established pursuant to Sections 514 and 515 of Title V of the Motor Vehicle Information and Cost Savings Act in an amount equal to the amount determined by the Secretary to be the maximum effect of the crashworthiness improvements available to manufacturers. The reductions in fuel economy regulations required by this subsection shall be promulgated prior to the first model year in which the standards established pursuant to Sections 514 and 515 would take effect.

EXPLANATION.—This amendment would ensure that the new fuel economy standards will be adjusted downward to take into account the crashworthiness improvements identified by the study called for by Title II as added last night.

## AMENDMENT No. 2870

At the end of the pending amendment, insert the following:

"(c) Notwithstanding any other provision of this Act, in Title II, Section 264, insert the following new subsection:

"(d) In promulgating the revised standards required by this section, the Secretary shall quantify in miles-per-gallon the effect on fuel economy of the final rules required by this section. Notwithstanding any other provision of law, the Secretary shall reduce each manufacturer's applicable fuel economy standard established pursuant to Sections 514, 515, or both, as appropriate, of Title V of the Motor Vehicle Information and Cost Savings Act in an amount equal to the amount determined by the Secretary to be the effect of the final rules required by this section. The reductions in fuel economy regulations required by this subsection shall be promulgated prior to the first model year in which the standards established pursuant to Sections 514 and 515 would take effect.

**EXPLANATION.**—This amendment would ensure that the new fuel economy standards will be adjusted downward to take into account the new multipurpose passenger vehicle safety standards required by Title II as added last night.

## AMENDMENT No. 2871

At the end of the pending amendment, insert the following:

"(c) Notwithstanding any other provision of this Act, in Title II, Section 265, insert the following new subsection:

"(c) In promulgating the standard required by this Section, the Secretary shall quantify in miles-per-gallon the effect on fuel economy of the final rule required by this section. Notwithstanding any other provision of law, the Secretary shall reduce each manufacturer's applicable fuel economy standard established pursuant to Sections 514 and 515 of Title V of the Motor Vehicle Information and Cost Savings Act in an amount equal to the amount determined by the Secretary to be the effect of the final rule required by this section. The reductions in fuel economy regulations required by this subsection shall be promulgated prior to the first model year in which the standards established pursuant to Sections 514 and 515 would take effect.

**EXPLANATION.**—This amendment would ensure that the new fuel economy standards will be adjusted downward to take into account the new rear seat belt standards required by Title II as added last night.

## AMENDMENT No. 2872

At the end of the pending amendment, insert the following:

"(c) Notwithstanding any other provision of this Act, in Title II, Section 274, insert the following new subsection:

"(c) In promulgating the revised bumper standard required by this section, the Secretary shall quantify in miles-per-gallon the effect on fuel economy of the final rule required by this section. Notwithstanding any other provision of law, the Secretary shall reduce each manufacturer's applicable fuel economy standard established pursuant to Sections 514 and 515 of Title V of the Motor Vehicle Information and Cost Savings Act in an amount equal to the amount determined by the Secretary to be the effect of the final rule required by this section. The reductions in fuel economy regulations required by this subsection shall be promulgated prior to the first model year in which

the standards established pursuant to Sections 514 and 515 would take effect.

**EXPLANATION.**—This amendment would ensure that the new fuel economy standards will be adjusted downward to take into account the new bumper standards required by Title II as added last night.

## AMENDMENT No. 2873

At the end of the pending amendment, insert the following:

"(c) Notwithstanding any other provision of this Act, in Title II, Section 276, insert the following new subsection:

"(c) In promulgating the head impact standard required by this section, the Secretary shall quantify in miles-per-gallon the effect on fuel economy of the final rule required by this section. Notwithstanding any other provision of law, the Secretary shall reduce each manufacturer's applicable fuel economy standard established pursuant to Sections 514 and 515 of Title V of the Motor Vehicle Information and Cost Savings Act in an amount equal to the amount determined by the Secretary to be the effect of the final rule required by this section. The reductions in fuel economy regulations required by this subsection shall be promulgated prior to the first model year in which the standards established pursuant to Sections 514 and 515 would take effect.

**EXPLANATION.**—This amendment would ensure that the new fuel economy standards will be adjusted downward to take into account the new head impact standards required by Title II as added last night.

## AMENDMENT No. 2874

At the end of the pending amendment, insert the following:

"(c) Notwithstanding any other provision of this Act, in Title II, Section 277, insert the following new subsection:

"(b) In promulgating the standard required by this Section, the Secretary shall quantify in miles-per-gallon the effect on fuel economy of the final rule required by this section. Notwithstanding any other provision of law, the Secretary shall reduce each manufacturer's applicable fuel economy standard established pursuant to Sections 514 and 515 of Title V of the Motor Vehicle Information and Cost Savings Act in an amount equal to the amount determined by the Secretary to be the effect of the final rule required by this section. The reductions in fuel economy regulations required by this subsection shall be promulgated prior to the first model year in which the standards established pursuant to Sections 514 and 515 would take effect.

**EXPLANATION.**—This amendment would ensure that the new fuel economy standards will be adjusted downward to take into account the new pedestrian safety standards required by Title II as added last night.

## RIEGLE AMENDMENT NO. 2875

(Ordered to lie on the table.)

Mr. RIEGLE submitted an amendment intended to be proposed by him to amendment No. 2672 intended to be proposed by Mr. LOTT to the bill S. 1224, supra, as follows:

On page 25, beginning with line 2, strike out all through the period on line 5 and insert in lieu thereof the following:

"Sec. 516. (a) The Secretary may modify any average fuel economy standard established under this Act for model years 1995

and thereafter in accordance with this section."

On page 26, line 1, beginning with the comma, strike out all through "1988" on line 5.

On page 27, beginning with line 8, strike out all through line 9 and insert in lieu thereof the following: "carbon dioxide emissions, the economic impact of such reduction, and the availability and cost of reduction in carbon dioxide emissions from other sources; and".

On page 27, between lines 22 and 23, insert the following:

(c) Section 502(a)(4) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(a)(4)) is amended by deleting "any subsequent model year" and inserting in lieu thereof "any subsequent model year up to and including 1994".

(d) Section 502(e) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(e)) is amended—

(1) by deleting "and" after the comma in clause (3);

(2) by deleting the period at the end of clause (4) and inserting in lieu thereof a comma and the word "and"; and

(3) by inserting immediately after clause (4) the following new clause:

"(5) any negative effect on automobile safety that may be associated with any proposed level of the average fuel economy standards."

## JEFFORDS AMENDMENT NO. 2876

(Ordered to lie on the table.)

Mr. JEFFORDS submitted an amendment intended to be proposed by him to amendment No. 2752 intended to be proposed to the bill S. 1224, supra, as follows:

Paragraphs a, b, and c are rewritten as follows:

"(a) Notwithstanding any other law, in calculating the fuel economy of a dual energy vehicle, the calculation shall presume that the percentage of alcohol fuel used does not exceed an amount representing the percentage of alcohol used compared to total gasoline sold for motor vehicle use.

"(b) Alternative fuels shall be made available by fuel providers as specified by the Administrator in any area in which clean-fuel vehicles or clean-fuel fleet vehicles are available."

## JEFFORDS AMENDMENT NO. 2877

(Ordered to lie on the table.)

Mr. JEFFORDS submitted an amendment intended to be proposed by him to amendment No. 2753 intended to be proposed to the bill S. 1224, supra, as follows:

Paragraph c(2) is rewritten as follows:

"c(2)(a) Notwithstanding any other law, in calculating the fuel economy of a dual energy vehicle, the calculation shall presume that the percentage of alcohol fuel used does not exceed an amount representing the percentage of alcohol used compared to total gasoline sold for motor vehicle use.

"(b) Alternative fuels shall be made available by fuel providers as specified by the Administrator in any area in which clean-fuel vehicles or clean-fuel fleet vehicles are available."

## JEFFORDS AMENDMENT NO. 2878

(Ordered to lie on the table.)

Mr. JEFFORDS submitted an amendment intended to be proposed by him to an amendment intended to be proposed to the bill S. 1224, supra, as follows:

At the end of the amendment add the following:

"Notwithstanding any other law, in calculating the fuel economy of a dual energy vehicle, the calculation shall presume that the percentage of alcohol fuel used does not exceed an amount representing the percentage of alcohol used compared to total gasoline sold for motor vehicle use."

## FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT

## PRESSLER AMENDMENT NO. 2879

(Ordered referred to the Committee on Commerce, Science, and Transportation.)

Mr. PRESSLER submitted an amendment intended to be proposed by him to the bill (S. 3094) to authorize certain programs of the Federal Aviation Administration, to require the Secretary of Transportation to implement a National Noise Policy, to authorize airport passenger facility charges as an exception to the general prohibition of State taxation of air commerce, and to repeal certain regulations pertaining to airport operating slots, as follows:

At the appropriate place, please insert the following new section:

(a) DEFINITION OF ELIGIBLE POINT.—Section 419(a) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1389(a)) is amended to read as follows:

"(a) ELIGIBLE POINT DEFINED.—

"(1) GENERAL RULE.—For purposes of this section, the term 'eligible point' means any point in the United States—

"(A) Which was defined as an eligible point under this section as in effect before October 1, 1988;

"(B) which received scheduled air transportation at any time after January 1, 1990; and

"(C) which is not listed in the Department of Transportation Orders 89-9-37 and 89-12-52 as being a point no longer eligible for compensation under this section.

"(2) LIMITATION OF USE OF PER PASSENGER SUBSIDY.—The Secretary may not determine that a point described in paragraph (1) is not an eligible point on the basis of the per passenger subsidy at the point or on any other basis not specifically set forth in this section."

(b) FUNDING.—

(1) IN GENERAL.—Section 419 of such Act is amended by redesignating subsection (l), and any reference thereto, as subsection (m) and by inserting after subsection (k) the following new subsection:

"(1) FUNDING—

"(1) CONTRACT AUTHORITY.—The Secretary is authorized to enter into agreements and to incur obligations from the Airport and Airway Trust Fund for the payment of compensation under this section. Approval by the Secretary of such an agreement shall be deemed a contractual obligation of the

United States for payment of the Federal share of such compensation.

"(2) AMOUNTS AVAILABLE.—There shall be available to the Secretary from the Airport and Airway Trust Fund to incur obligations under this section \$38,600,000 per fiscal year for each of fiscal years 1992, 1993, 1994, 1995, 1996, 1997, and 1998. Such amounts shall remain available until expended."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect October 1, 1991.

(c) CONFORMING AMENDMENTS.—Section 333 of Public Law 100-457 and section 325(a) of Public Law 101-164 are repealed.

Mr. PRESSLER. Mr. President, this morning I read with great interest the CONGRESSIONAL RECORD proceedings of Monday that a bill reauthorizing the Federal Aviation Administration had been introduced in the Senate. I was very disappointed to note that this reauthorization bill does not include the Essential Air Service Program. Therefore, today I am submitting an amendment to include reauthorization of the EAS Program in the Federal Aviation Administration reauthorization bill (S. 3094), and am urging my colleagues to join me in cosponsoring this measure so important to rural America. This amendment would ensure the future of air service to smaller cities.

Similar EAS language passed the House of Representative in its FAA reauthorization bill. The purpose of my amendment is to ensure that the EAS Program is included in the final version of the Senate bill.

Just as its name implies, the Essential Air Service Program is essential to the growth and development of smaller cities. Dependable air service often is a smaller community's most important link to the outside world. It is a vital element in every State's economic development program and is necessary for industrial expansion.

In fact, in my State of South Dakota, the essential air service is one of the keys to economic development. Without it we cannot continue air service to many of our smaller cities. I was very disappointed that the bill introduced did not include this. It is Senator FORB's bill which I believe was introduced yesterday.

My amendment would restore this essential air program. It is essential to the growth of our smaller cities and towns in South Dakota. Dependable air service often is a smaller community's most important link to the outside world. It is a vital element in every State's economic development program. And it is necessary for industrial expansion.

The amendment I am introducing requires that essential air service subsidies be paid from the aviation trust fund. It sets an obligation ceiling of \$38.6 million per year starting in fiscal year 1992. This would provide a reliable method for funding air service to small communities and rural areas through fiscal year 1998.

The Essential Air Service Program is the lifeblood of a number of airports in smaller States like my home State of South Dakota. Essential air service supports the South Dakota cities of Brookings, Mitchell, Huron, Watertown, Aberdeen, Yankton, and Pierre.

Yankton, in particular, is a good example of the importance of the Essential Air Service Program to a small community. In December 1989, Yankton's essential air service carrier declared bankruptcy and discontinued all services to and from Yankton. For 6 months, the entire city was without air service. We worked with the city of Yankton to successfully locate a new essential air service carrier, Great Lakes Aviation, which is now providing fine service to that community. Without it, their economic development program and basic transportation needs would have suffered greatly. None of this would have been possible without the EAS Program. Small cities around the country depend on it.

Essential air service is not limited to a few States. The EAS Program provides funding for small airports in 39 States across the Nation.

As we move forward with our transportation policy into the 21st century, we must not leave behind smaller cities and rural areas. These smaller cities and their airports play an integral role in our overall transportation policy. My amendment would provide smaller cities the opportunity to fulfill that role, and I urge its adoption.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for a period of 2 minutes.

Mr. EXON. Mr. President, I listened with great interest to the remarks by my friend and colleague from South Dakota on the Essential Air Service Program. As the author of the extension piece of legislation I am delighted to hear my colleague from the Commerce Committee stand up. Essential air service is absolutely critical, and we appeal to the administration to follow the intent of the legislation and follow through on the essential air service that the Senator from South Dakota has so rightfully suggested.

I thank him for his remarks.

## MARKET REFORM ACT

DODD (AND OTHERS)  
AMENDMENT NO. 2880

Mr. DODD (for himself, Mr. HEINZ, Mr. RIEGLE, and Mr. GARN) proposed an amendment to the bill (H.R. 3657) to amend the Securities Exchange Act of 1934 to provide additional authorities to the Securities and Exchange Commission to prevent disruptions to the Nation's securities markets, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:  
SECTION 1. SHORT TITLE.

This Act may be cited as the "Market Reform Act of 1990".

SEC. 2. EMERGENCY AUTHORITY; TRADING HALTS.

Section 12(k) of the Securities Exchange Act of 1934 (15 U.S.C. 781(k)) is amended to read as follows:

"(k) TRADING SUSPENSIONS; EMERGENCY AUTHORITY.—

"(1) TRADING SUSPENSIONS.—If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—

"(A) summarily to suspend trading in any security (other than an exempted security) for a period not exceeding 10 business days, and

"(B) summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding 90 calendar days.

The action described in subparagraph (B) shall not take effect unless the Commission notifies the President of its decision and the President notifies the Commission that the President does not disapprove of such decision.

"(2) EMERGENCY ORDERS.—(A) The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under this title, as the Commission determines is necessary in the public interest and for the protection of investors—

"(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities); or

"(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities).

"(B) An order of the Commission under this paragraph (2) shall continue in effect for the period specified by the Commission, and may be extended, except that in no event shall the Commission's action continue in effect for more than 10 business days, including extensions. In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code, or with the provisions of section 19(c) of this title.

"(3) TERMINATION OF EMERGENCY ACTIONS BY PRESIDENT.—The President may direct that action taken by the Commission under paragraph (1)(B) or paragraph (2) of this subsection shall not continue in effect.

"(4) COMPLIANCE WITH ORDERS.—No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside as provided in paragraph (5) of this subsection or has ceased to be effective upon direction of the President as provided in paragraph (3).

"(5) LIMITATIONS ON REVIEW OF ORDERS.—An order of the Commission pursuant to this subsection shall be subject to review only as provided in section 25(a) of this title. Review shall be based on an examination of all the information before the Commission at the time such order was issued. The reviewing court shall not enter a stay, writ of

mandamus, or similar relief unless the court finds, after notice and hearing before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(6) DEFINITION OF EMERGENCY.—For purposes of this subsection, the term 'emergency' means a major market disturbance characterized by or constituting—

"(A) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets, or

"(B) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of securities, or a substantial threat thereof."

SEC. 3. LARGE TRADER REPORTING.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(h) LARGE TRADER REPORTING.—

"(1) IDENTIFICATION REQUIREMENTS FOR LARGE TRADERS.—For the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value or exercise value and for the purpose of otherwise assisting the Commission in the enforcement of this title, each large trader shall—

"(A) provide such information to the Commission as the Commission may by rule or regulation prescribe as necessary or appropriate, identifying such large trader and all accounts in or through which such large trader effects such transactions; and

"(B) identify, in accordance with such rules or regulations as the Commission may prescribe as necessary or appropriate, to any registered broker or dealer by or through whom such large trader directly or indirectly effects securities transactions, such large trader and all accounts directly or indirectly maintained with such broker or dealer by such large trader in or through which such transactions are effected.

"(2) RECORDKEEPING AND REPORTING REQUIREMENTS FOR BROKERS AND DEALERS.—Every registered broker or dealer shall make and keep for prescribed periods such records as the Commission by rule or regulation prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, with respect to securities transactions that equal or exceed the reporting activity level effected directly or indirectly by or through such registered broker or dealer of or for any person that such broker or dealer knows is a large trader, or any person that such broker or dealer has reason to know is a large trader on the basis of transactions in securities effected by or through such broker or dealer. Such records shall be available for reporting to the Commission, or any self-regulatory organization that the Commission shall designate to receive such reports, on the morning of the day following the day the transactions were effected, and shall be reported to the Commission or a self-regulatory organization designated by the Commission immediately upon request by the Commission or such a self-regulatory organization. Such records and reports shall be in a format and transmitted in a manner prescribed by the Commission (including, but not limited to, machine readable form).

"(3) AGGREGATION RULES.—The Commission may prescribe rules or regulations governing the manner in which transactions and accounts shall be aggregated for the purpose

of this subsection, including aggregation on the basis of common ownership or control.

"(4) EXAMINATION OF BROKER AND DEALER RECORDS.—All records required to be made and kept by registered brokers and dealers pursuant to this subsection with respect to transactions effected by large traders are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

"(5) FACTORS TO BE CONSIDERED IN COMMISSION ACTIONS.—In exercising its authority under this subsection, the Commission shall take into account—

"(A) existing reporting systems; and  
"(B) the costs associated with maintaining information with respect to transactions effected by large traders and reporting such information to the Commission or self-regulatory organizations; and

"(C) the relationship between the United States and international securities markets.

"(6) EXEMPTIONS.—The Commission, by rule, regulation, or order, consistent with the purposes of this title, may exempt any person or class of persons or any transaction or class of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection, and the rules and regulations thereunder.

"(7) AUTHORITY OF COMMISSION TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be kept or reported under this subsection. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'large trader' means every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level;

"(B) the term 'publicly traded security' means any equity security (including an option on individual equity securities, and an option on a group or index of such securities) listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated interdealer quotation system;

"(C) the term 'identifying activity level' means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time in-

terval during which such transactions shall be aggregated;

"(D) the term 'reporting activity level' means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated; and

"(E) the term 'person' has the meaning given in section 3(a)(9) of this title and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank."

#### SEC. 4. RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following:

"(h) RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.—

"(1) OBLIGATIONS TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—Every person who is (A) a registered broker or dealer, or (B) a registered municipal securities dealer for which the Commission is the appropriate regulatory agency, shall obtain such information and make and keep such records as the Commission by rule prescribes concerning the registered person's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and the customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person, including its net capital, its liquidity, or its ability to conduct or finance its operations. The Commission, by rule, may require summary reports of such information to be filed with the Commission no more frequently than quarterly.

"(2) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—If, as a result of adverse market conditions or based on reports provided to the Commission pursuant to paragraph (1) of this subsection or other available information, the Commission reasonably concludes that it has concerns regarding the financial or operational condition of (A) any registered broker or dealer, or (B) any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, the Commission may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

"(3) SPECIAL PROVISIONS WITH RESPECT TO ASSOCIATED PERSONS SUBJECT TO FEDERAL BANKING AGENCY REGULATION.—

"(A) COOPERATION IN IMPLEMENTATION.—In developing and implementing reporting requirements pursuant to paragraph (1) of this subsection with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Commission shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Commission under this subsection that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. The Commission shall, at the request of the Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

"(B) USE OF BANKING AGENCY REPORTS.—A registered broker, dealer, or municipal securities dealer shall be in compliance with any recordkeeping or reporting requirement adopted pursuant to paragraph (1) of this subsection concerning an associated person that is subject to examination by or reporting requirements of a Federal banking agency if such broker, dealer, or municipal securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 8 of the Bank Holding Company Act of 1956. The Commission may, however, by rule adopted pursuant to paragraph (1), require any broker, dealer, or municipal securities dealer filing such reports with the Commission to obtain, maintain, or report supplemental information if the Commission makes an explicit finding that such supplemental information is necessary to inform the Commission regarding potential risks to such broker, dealer, or municipal securities dealer. Prior to requiring any such supplemental information, the Commission shall first request the Federal banking agency to expand its reporting requirements to include such information.

"(C) PROCEDURE FOR REQUIRING ADDITIONAL INFORMATION.—Prior to making a request pursuant to paragraph (2) of this subsection for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the Commission shall—

"(i) notify such agency of the information required with respect to such associated person; and

"(ii) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the Commission determines that any delay resulting from such consultation would be inconsistent with ensuring the financial and operational condition of the broker, dealer, municipal securities dealer, government securities broker, or government securities dealer or the stability or integrity of the securities markets.

"(D) EXCLUSION FOR EXAMINATION REPORTS.—Nothing in this subsection shall be construed to permit the Commission to require any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to

obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained therein.

"(E) CONFIDENTIALITY OF INFORMATION PROVIDED.—No information provided to or obtained by the Commission from any Federal banking agency pursuant to a request by the Commission under subparagraph (C) of this paragraph regarding any associated person which is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

"(F) NOTICE TO BANKING AGENCIES CONCERNING FINANCIAL AND OPERATIONAL CONDITION CONCERNS.—The Commission shall notify the Federal banking agency of any concerns of the Commission regarding significant financial or operational risks resulting from the activities of any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

"(G) DEFINITION.—For purposes of this paragraph, the term 'Federal banking agency' shall have the same meaning as the term 'appropriate Federal bank agency' in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(4) EXEMPTIONS.—The Commission by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Commission shall provide in such rule or order, from the provisions of this subsection, and the rules thereunder. In granting such exemptions, the Commission shall consider, among other factors—

"(A) whether information of the type required under this subsection is available from a supervisory agency (as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(6))), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

"(B) the primary business of any associated person;

"(C) the nature and extent of domestic or foreign regulation of the associated person's activities;

"(D) the nature and extent of the registered person's securities activities; and

"(E) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

"(5) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection, or any information supplied to the Commission by any domestic or foreign regulatory

agency that relates to the financial or operational condition of any associated person of a registered broker, dealer, government securities broker, government securities dealer, or municipal securities dealer. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraph (B) or (C) of paragraph (3) of this subsection as confidential information for purposes of section 24(b)(2) of this title."

(b) CONFORMING AMENDMENT.—Section 15C(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(b)) is amended—

(1) by redesignating paragraphs (2) through (5) as paragraphs (3) through (6), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.—

"(A) OBLIGATIONS TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—Every person who is registered as a government securities broker or government securities dealer under this section shall obtain such information and make and keep such records as the Secretary by rule prescribes concerning the registered person's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person, including its capital, its liquidity, or its ability to conduct or finance its operations. The Secretary, by rule, may require summary reports of such information to be filed with the registered person's appropriate regulatory agency no more frequently than quarterly.

"(B) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—If, as a result of adverse market conditions or based on reports provided pursuant to subparagraph (A) of this paragraph or other available information, the appropriate regulatory agency reasonably concludes that it has concerns regarding the financial or operational condition of any government securities broker or government securities dealer registered under this section, such agency may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The appropriate regulatory agency, in requiring reports pursuant to this subparagraph, shall specify the information required, the period for which it is required, the time and date

on which the information must be furnished, and whether the information is to be furnished directly to the appropriate regulatory agency or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

"(C) SPECIAL PROVISIONS WITH RESPECT TO ASSOCIATED PERSONS SUBJECT TO FEDERAL BANKING AGENCY REGULATION.—

"(i) COOPERATION IN IMPLEMENTATION.—In developing and implementing reporting requirements pursuant to subparagraph (A) of this paragraph with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Secretary shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Secretary under this paragraph that has been published for comment, the Secretary shall respond in writing to such written comment before adopting the proposed rule. The Secretary shall, at the request of a Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

"(ii) USE OF BANKING AGENCY REPORTS.—A registered government securities broker or government securities dealer shall be in compliance with any recordkeeping or reporting requirement adopted pursuant to subparagraph (A) of this paragraph concerning an associated person that is subject to examination by or reporting requirements of a Federal banking agency if such government securities broker or government securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 8 of the Bank Holding Company Act of 1956. The Secretary may, however, by rule adopted pursuant to subparagraph (A), require any registered government securities broker or government securities dealer filing such reports with the appropriate regulatory agency to obtain, maintain, or report supplemental information if the Secretary makes an explicit finding, based on information provided by the appropriate regulatory agency, that such supplemental information is necessary to inform the appropriate regulatory agency regarding potential risks to such government securities broker or government securities dealer. Prior to requiring any such supplemental information, the Secretary shall first request the Federal banking agency to expand its reporting requirements to include such information.

"(iii) PROCEDURE FOR REQUIRING ADDITIONAL INFORMATION.—Prior to making a request pursuant to subparagraph (B) of this paragraph for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the appropriate regulatory agency shall—

"(I) notify such banking agency of the information required with respect to such associated person; and

"(II) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the appropriate regulatory agency determines that any delay resulting from such consultation would be inconsis-

ent with ensuring the financial and operational condition of the government securities broker or government securities dealer or the stability or integrity of the securities markets.

"(iv) EXCLUSION FOR EXAMINATION REPORTS.—Nothing in this subparagraph shall be construed to permit the Secretary or an appropriate regulatory agency to require any registered government securities broker or government securities dealer to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained therein.

"(v) CONFIDENTIALITY OF INFORMATION PROVIDED.—No information provided to or obtained by an appropriate regulatory agency from any Federal banking agency pursuant to a request under clause (iii) of this subparagraph regarding any associated person which is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this clause shall authorize the Secretary or any appropriate regulatory agency to withhold information from Congress, or prevent the Secretary or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

"(vi) NOTICE TO BANKING AGENCIES CONCERNING FINANCIAL AND OPERATIONAL CONDITION CONCERNS.—The Secretary or appropriate regulatory agency shall notify the Federal banking agency of any concerns of the Secretary or the appropriate regulatory agency regarding significant financial or operational risks resulting from the activities of any government securities broker or government securities dealer to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

"(vii) DEFINITION.—For purposes of this subparagraph, the term 'Federal banking agency' shall have the same meaning as the term 'appropriate Federal banking agency' in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(D) EXEMPTIONS.—The Secretary by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Secretary shall provide in such rule or order, from the provisions of this paragraph, and the rules thereunder. In granting such exemptions, the Secretary shall consider, among other factors—

"(i) whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(6))), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

"(ii) the primary business of any associated person;

"(iii) the nature and extent of domestic or foreign regulation of the associated person's activities;

"(iv) the nature and extent of the registered person's securities transactions; and

"(v) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets

devoted to, and revenues derived from, activities in the United States securities markets.

"(E) CONFORMITY WITH REQUIREMENTS UNDER SECTION 17(h).—In exercising authority pursuant to subparagraph (A) of this paragraph concerning information with respect to associated persons of government securities brokers and government securities dealers who are also associated persons of registered brokers or dealers reporting to the Commission pursuant to section 17(h) of this title, the requirements relating to such associated persons shall conform, to the greatest extent practicable, to the requirements under section 17(h).

"(F) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Secretary and any appropriate regulatory agency shall not be compelled to disclose any information required to be reported under this paragraph, or any information supplied to the Secretary or any appropriate regulatory agency by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a registered government securities broker or a government securities dealer. Nothing in this paragraph shall authorize the Secretary or any appropriate regulatory agency to withhold information from Congress, or prevent the Secretary or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552."

#### SEC. 5. COORDINATED CLEARING.

(a) AUTHORITY TO FACILITATE COORDINATED CLEARING MECHANISMS.—Section 17A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended to read as follows:

"(2)(A) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this title—

"(i) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempt securities); and

"(ii) to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options;

in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection.

"(B) The Commission shall use its authority under this title to assure equal regulation under this title of registered clearing agencies and registered transfer agents. In carrying out its responsibilities set forth in subparagraph (A)(ii) of this paragraph, the Commission shall coordinate with the Commodity Futures Trading Commission and consult with the Board of Governors of the Federal Reserve System."

(b) TRANSFER AND PLEDGE OF SECURITIES.—Section 17A of the Securities Exchange Act

of 1934 (15 U.S.C. 78q-1) is amended by adding at the end the following:

"(f)(1) Notwithstanding any provision of State law, except as provided in paragraph (3), if the Commission makes each of the findings described in paragraph (2)(A), the Commission may adopt rules concerning—

"(A) the transfer of certificated or uncertificated securities (other than government securities issued pursuant to chapter 31 of title 31, United States Code, or securities otherwise processed within a book-entry system operated by the Federal Reserve banks pursuant to a Federal book-entry regulation) or limited interests (including security interests) therein; and

"(B) rights and obligations of purchasers, sellers, owners, lenders, borrowers, and financial intermediaries (including brokers, dealers, banks, and clearing agencies) involved in or affected by such transfers, and the rights of third parties whose interests in such securities devolve from such transfers.

"(2)(A) The findings described in this paragraph are findings by the Commission that—

"(i) such rule is necessary or appropriate for the protection of investors or in the public interest and is reasonably designed to promote the prompt, accurate, and safe clearance and settlement of securities transactions;

"(ii) in the absence of a uniform rule, the safe and efficient operation of the national system for clearance and settlement of securities transactions will be, or is, substantially impeded; and

"(iii) to the extent such rule will impair or diminish, directly or indirectly, rights of persons specified in paragraph (1)(B) under State law concerning transfers of securities (or limited interests therein), the benefits of such rule outweigh such impairment or diminution of rights.

"(B) In making the findings described in subparagraph (A), the Commission shall give consideration to the recommendations of the Advisory Committee established under paragraph (4), and it shall consult with and consider the views of the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. If the Secretary of the Treasury objects, in writing, to any proposed rule of the Commission on the basis of the Secretary's view on the issues described in clauses (i), (ii), and (iii) of subparagraph (A), the Commission shall consider all feasible alternatives to the proposed rule, and it shall not adopt any such rule unless the Commission makes an explicit finding that the rule is the most practicable method for achieving safe and efficient operation of the national clearance and settlement system.

"(3) Any State may, prior to the expiration of 2 years after the Commission adopts a rule under this subsection, enact a statute that specifically refers to this subsection and the specific rule thereunder and establishes, prospectively from the date of enactment of the State statute, a provision that differs from that applicable under the Commission's rule.

"(4)(A) Within 90 days after the date of enactment of this subsection, the Commission shall (and at such times thereafter as the Commission may determine, the Commission may), after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, establish an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.). The Advisory Committee shall be directed to consider and report to the Com-

mission on such matters as the Commission, after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, determines, including the areas, if any, in which State commercial laws and related Federal laws concerning the transfer of certificated or uncertificated securities, limited interests (including security interests) in such securities, or the creation or perfection of security interests in such securities do not provide the necessary certainty, uniformity, and clarity for purchasers, sellers, owners, lenders, borrowers, and financial intermediaries concerning their respective rights and obligations.

"(B) The Advisory Committee shall consist of 15 members, of which—

"(i) 11 shall be designated by the Commission in accordance with the Federal Advisory Committee Act; and

"(ii) 2 each shall be designated by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury.

"(C) The Advisory Committee shall conduct its activities in accordance with the Federal Advisory Committee Act. Within 6 months of its designation, or such longer time as the Commission may designate, the Advisory Committee shall issue a report to the Commission, and shall cause copies of that report to be delivered to the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System."

#### SEC. 6. LIMITATION ON PRACTICES WHICH RESULT IN VOLATILITY.

(a) IN GENERAL.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end thereof the following new subsection:

"(h) LIMITATIONS ON PRACTICES THAT AFFECT MARKET VOLATILITY.—It shall be unlawful for any person, by the use of the mails or any means or instrumentality of interstate commerce or of any facility of any national securities exchange, to use or employ any act or practice in connection with the purchase or sale of any equity security in contravention of such rules or regulations as the Commission may adopt, consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets—

"(1) to prescribe means reasonably designed to prevent manipulation of price levels of the equity securities market or a substantial segment thereof; and

"(2) to prohibit or constrain, during periods of extraordinary market volatility, any trading practice in connection with the purchase or sale of equity securities that the Commission determines (A) has previously contributed significantly to extraordinary levels of volatility that have threatened the maintenance of fair and orderly markets; and (B) is reasonably certain to engender such levels of volatility if not prohibited or constrained.

In adopting rules under paragraph (2), the Commission shall, consistent with the purposes of this subsection, minimize the impact on the normal operations of the market and a natural person's freedom to buy or sell any equity security."

(b) CONFORMING AMENDMENT.—Section 25(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78y(b)(1)) is amended by inserting "9(h)(2)," after "section 6,"

SEC. 7. NOTIFICATION OF SEC CONCERNING RISKS TO SECURITIES SUBSIDIARY.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 35. COORDINATION OF RISK ANALYSIS BETWEEN SEC AND FEDERAL BANKING AGENCIES.

"Any appropriate Federal banking agency shall notify the Securities and Exchange Commission of any concerns of the agency regarding significant financial or operational risks to any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency (as defined in section 3 of the Securities Exchange Act of 1934), resulting from the activities of any insured depository institution, any depository institution holding company, or any affiliate of any such institution or company if such broker, dealer, municipal securities dealer, government securities broker, or government securities dealer is an affiliate of any such institution, company, or affiliate."

SEC. 8. REPORTS TO CONGRESS.

(a) INTERMARKET COORDINATION.—The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission, shall report to the Congress not later than May 31, 1991, and annually thereafter until May 31, 1995, on the following:

(1) the efforts their respective agencies have made relating to the coordination of regulatory activities to ensure the integrity and competitiveness of United States financial markets;

(2) the efforts their respective agencies have made to formulate coordinated mechanisms across marketplaces to protect the payments and market systems during market emergencies;

(3) the views of their respective agencies with respect to the adequacy of margin levels and use of leverage by market participants; and

(4) such other issues and concerns relating to the soundness, stability, and integrity of domestic and international capital markets as may be appropriate.

The agencies shall cooperate in the development of their reports, and prior to submitting its report to Congress, each agency shall provide copies to the other agencies.

(b) CLEARANCE AND SETTLEMENT.—The Securities and Exchange Commission, in consultation with the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System, and other relevant regulatory authorities, shall examine progress toward establishing linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options, and shall submit to the Committees on Energy and Commerce and Agriculture of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Agriculture, Nutrition, and Forestry of the Senate, not later than 2 years from the date of enactment of this section, a report detailing and evaluating such progress.

FAMILY PLANNING AMENDMENTS

PRESSLER AMENDMENT NO. 2881

Mr. PRESSLER proposed an amendment to the bill S. 110, supra, as follows:

At the end of the bill add the following new section:

SEC. . REDUCTION OF PAY OF MEMBERS OF CONGRESS.

(a) REDUCTION IN PAY.—For each month during fiscal year 1991 in which, by reason of a furlough or other employment action necessitated by a sequestration order under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902), the total amount of the pay paid to any Federal employee is projected to be less than the monthly equivalent of the annual rate of pay established for such Federal employee pursuant to law, the rate of pay payable to a Member of Congress shall be reduced to the rate of pay established for such Member pursuant to law.

(b) COMPUTATION OF REDUCED PAY.—The rate of pay payable to a Member of Congress for any month referred to in subsection (a) shall be equal to the amount determined by multiplying the rate of pay established for such Member pursuant to law by the percentage reported to Congress for such month under subsection (c)(1)(D).

(c) DETERMINATION OF PERCENTAGE FOR COMPUTATION OF REDUCED PAY.—(1) No later than the first day of each month in fiscal year 1991, the Director of the Office of Management and Budget shall—

(A) determine whether, for a reason described in subsection (a), the total amount of the pay paid to any Federal employee in that month is projected to be less than the monthly equivalent of the annual rate of pay established for such Federal employee pursuant to law;

(B) estimate the average of the percentages that would result by dividing the monthly equivalent of the annual rate of pay established for each such Federal employee pursuant to law into the total amount projected to be paid such Federal employee for such month;

(C) aggregate the percentages determined under subparagraph (B) for Federal employees for each agency and determine the highest average percentage for any agency; and

(D) transmit to Congress a written report containing the average computed under subparagraph (C).

(2) The Office of Personnel Management may use a statistical sampling method to make the estimates and determinations under paragraph (1).

(3) For purposes of this section, the term "agency" means an Executive agency as defined under section 105 of title 5, United States Code.

(d) APPLICATION TO OTHER FEDERAL LAWS.—For the purpose of administering any provision of law, rule, or regulation which provides premium pay, retirement, life insurance, or any other employee benefit, which requires any deduction or contribution, or which imposed any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this section and shall apply to

the first applicable pay period of members of Congress occurring on or after October 1, 1990. If the date of enactment of this section is after October 1, 1990, and the provisions of this section become applicable in the reduction of pay of members of Congress, all reductions which would have occurred if this section has been enacted as provided in subsection (b) and the amount of such reduction shall be recovered for the remaining pay periods for fiscal year 1991.

ARMSTRONG AMENDMENT NO. 2882

Mr. ARMSTRONG proposed an amendment to the bill S. 110, supra; as follows:

At the appropriate place, add the following new section:

SEC. . NOTIFICATION OF PARENT PRIOR TO ABORTION ON A MINOR.

Section 1001 of the Public Health Service Act (42 USC 300) is amended by adding at the appropriate place the following new subsection:

"( ) (1) No entity which receives a grant or enters into a contract under this section shall provide an abortion for an unemancipated female under the age of 18 until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified under paragraph (2), except when the attending physician certifies in the minor's medical record that the abortion was performed due to a medical emergency requiring immediate action.

"(2) Such notice shall—

"(A) Be addressed to the minor's parent or legal guardian at the usual place of abode of such parent or legal guardian and delivered personally to such parent or legal guardian by the physician performing the abortion or an agent of the entity; or

"(B) Be made by certified mail addressed to the minor's parent or legal guardian at the usual place of abode of such parent or legal guardian with return receipt requested and restricted delivery to the addressee, which means postal employees may only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

"(3) This subsection shall not apply to entities in states that have in effect laws requiring that a parent or legal guardian be notified of, or give consent to, an abortion to be performed on the minor child of such parent or legal guardian."

KENNEDY AMENDMENT NO. 2883

Mr. KENNEDY proposed an amendment to amendment No. 2882 proposed by Mr. ARMSTRONG to the bill S. 110, supra, as follows:

On page 1 of the amendment, strike out line 1 and all that follows and insert in lieu thereof the following:

SEC. . PARENTAL CONSENT.

No funds made available under title X of the Public Health Service Act shall be used for the performance of abortions, including the performance of abortions on minors regardless of whether the parents of such minors have been notified.

## NOTICES OF HEARINGS

## COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources.

The hearing will take place Friday, September 28, 1990, at 11 a.m. in room SD-366 of the Senate Dirksen Office Building in Washington, DC.

The purpose of the hearing is to receive testimony from Branko Terzic, nominee for Commissioner of the Federal Energy Regulatory Commission.

For further information, please contact Rebecca Murphy at (202) 224-7562.

## AUTHORITY FOR COMMITTEES TO MEET

## PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. EXON. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Tuesday, September 25, 1990, to hold hearings on Abuses In Federal Student Aid Programs—Part 3.

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

## SELECT COMMITTEE ON INTELLIGENCE

Mr. EXON. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, September 25, 1990, at 2 p.m. to hold an open confirmation hearing for the inspector general of the CIA.

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

## COMMITTEE ON ARMED SERVICES

Mr. EXON. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in closed session during the session of the Senate on Tuesday, September 25, 1990, at 2 p.m. to mark up certain legislative measures related to Operation Desert Shield, including S. 3025, S. 3026, as well as original bills.

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

## SUBCOMMITTEE ON ENERGY REGULATION AND CONSERVATION

Mr. EXON. Mr. President, I ask unanimous consent that the Subcommittee on Energy Regulation and Conservation of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate 9:30 a.m., Tuesday, September 25, 1990, for a hearing to receive testimony on S. 3085, legislation to limit the jurisdiction of the Federal Energy Regulatory Commission over local distribution company wholesalers of natural gas for ultimate consumption as a fuel in motor vehicles.

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

## SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. EXON. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on September 25, 1990, beginning at 10 a.m., in 485 Russell Senate Office Building, to consider for report to the Senate H.R. 5063, the Ft. McDowell Indian Water Settlement; S. 3084, the Fallon Paiute-Shoshone Water Rights Settlement Act; S. 2870, the Ft. Hall Indian Water Rights Act of 1990; S. 2895, the Seneca Nation Settlement Act of 1990 and S. 381, a bill to provide Federal Recognition of the Mowa Band of Choctaw Indians to be followed immediately by an oversight hearing on a proposal to establish Wounded Knee Memorial and Historic Site.

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

## COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. EXON. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate on Tuesday, September 25, 1990, at 10 a.m. to conduct an oversight hearing on the condition of the thrift industry.

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

## ADDITIONAL STATEMENTS

## THE SAN LUIS STATIONS OF THE CROSS

● Mr. WIRTH. Mr. President, like many of my colleagues in the Senate I spent a portion of the August recess in my home State. One of the places I saw, and one of the places I like to visit when I am in Colorado is the historic San Luis Valley.

This valley, and the town of San Luis—one of our country's oldest communities—represent a very unique cultural and historic location. Most of the residents in this part of Colorado are Catholic and have long-established family histories that go back to a time before the founding of the United States.

In addition to its history, the San Luis Valley is also a very scenic area. It is surrounded by snow-capped peaks and large tracts of ranch land and small farms.

Most compelling, however, is the spiritual environment of the San Luis Valley. The people who live in San Luis have weathered tough economic times in a rural and somewhat isolated part of the Rocky Mountain region—but they have never abandoned the community or their religion. And today, they are actually building on the strength of their history and reli-

gious traditions to attract visitors from around the world.

Earlier this year, a Stations of the Cross shrine was unveiled in the San Luis Valley. This shrine is a unique and inspiring example of the strength of community spirit, and I believe the people of San Luis should be commended for their work in bringing it about.

A good and dear friend of mine, Father Pat Valdez, the pastor of the Sangre de Cristo Catholic Church, has been instrumental in this community effort. He is a quiet and unassuming man, not given to boasting or bringing attention to himself. Nevertheless, his quiet leadership has been a gift to the San Luis Valley. The Stations of the Cross shrine will bring pilgrims from all over the world, and Father Valdez's effort to bring spiritual and material prosperity to his community should not go unnoticed.

I have visited this shrine, Mr. President, and hope that the Members of the Senate, their families and constituents will come to visit San Luis and enjoy this special place. I would also like to insert for the RECORD, a copy of an article which recently appeared in the Denver Post on this very subject.

The article follows:

"STATIONS OF THE CROSS" TO MARK INSPIRED REVIVAL OF TINY TOWN

(By Patrick O'Driscoll)

SAN LUIS.—On a wind-whipped hillside crawling with camera-toting pilgrims, the oldest town in Colorado yesterday dedicated an unusual religious shrine.

As singers chanted traditional Spanish hymns, hundreds of worshippers trudged up a 1.4-mile path on a volcanic mesa above this southern Colorado village. Along the dirt-and-gravel trail, Roman Catholic clergy blessed powerful bronze sculptures that portray the suffering and death of Jesus Christ—the traditional Catholic "Stations of the Cross."

The shrine stands for both spiritual and economic revival in a tiny adobe town (pop. 800) known as one of Colorado's poorest. Although built principally to inspire San Luis residents, 85 percent of whom are Catholics, and most of them Hispanic, the outdoor display is expected to boost local tourism by attracting pilgrims and sightseers.

"The shire is first for us," said the Rev. Patrick Valdez, the tireless pastor of Sangre de Cristo Catholic Church and the driving force behind the project. "But it is definitely going to be a shire in the full sense of the word. There will be pilgrims . . . and the town is getting prepared for that."

The town's economic self-help ventures that now include an art center, art galleries, restaurants and a new bed-and-breakfast established in the old convent that once housed the church's nuns. On the horizon may be a pilgrims' hostel, a factory for handmade furniture, and organic farming in the surrounding fields.

"It is a dream come true, a wonderful dream," the Most Rev. Arthur Tafoya, bishop of the Diocese of Pueblo, told Valdez's jam-packed church just before leading the procession up the hill. "As we walk up this path up the mesa, we will marvel at . . .

the beauty and magnificence of a people grounded in God."

With their gold-embroidered vestments flapping in the hard wind, Tafoya and retired Pueblo Bishop Charles Buswell stopped at each station to recall its religious meaning and to thank the families who paid for them.

Beyond the bishops, a half-mile line of more than 1,200 people—grandparents with canes, toddlers and teens, a tattooed biker, even a woman in a wheelchair—climbed the switchback trail.

Hiking with them was San Luis native-son artist Humberto Maestas, who is still at work on five more sculptures—each two-thirds life-size—to complete the 14-statue shrine, joined the hike to the top.

"I think people were real pessimistic at first. I think they thought this was going to be just another project that was going to slip through their fingers," Maestas said. "Now they see hopes for their own future."

On the church grounds, a fiesta went into the evening and continues today, with music, dancing, food and booths displaying some of the handiwork and crafts with which local artisans hope to carve a new economic niche for San Luis.

The relentless winds played their own part in the weekend's activities.

On Friday night, nearly 200 souls braved biting cold to march by candlelight up the way of the cross. Each began the walk with a lit candle, flickering orange inside paper sacks used as makeshift windbreakers. By the time they reached the hilltop, only a handful were still burning.

Bracing herself against the constant wind, church member Mary Jo Manzanera pronounced it "perfect weather for the Stations of the Cross—after what Christ went through." ●

#### GATT RUSH TO JUDGMENT

● Mr. HEINZ. Mr. President, Harry Lamar, president of Monticello Associates and a long time trade expert, had an exceptionally thoughtful letter printed in the *Journal of Commerce* that suggests an important but thus far heretical idea—that we ought to be more concerned with the substance of the Uruguay round than with its conclusion.

Mr. Lamar was addressing specifically a recent editorial, but his comments contain an important message for all of us. As the Uruguay round negotiations approach the self-imposed deadline of early December, we will be witnessing the increasingly shrill voices of economists and administration officials telling us the world trading system—and perhaps even life as we know it today—will collapse if the talks do not have a successful conclusion. In the private sector, such notable figures as former U.S. Trade Representatives Robert Strauss and Bill Brock have formed a coalition of dignitaries to lobby for the Uruguay round result—even though it does not yet exist, and it is impossible to predict what it might contain.

In other words, Mr. President, the conventional wisdom train is beginning to roll, and all "right-thinking" politicians are being told they better

get on board. Mr. Lamar, whose long experience gives him the right to raise above the conventional wisdom, has done something the opinion makers in the media and the administration have not done—he has talked to real people out there in the real economy to find out what they are thinking.

And he has found the same thing I have found—that our manufacturing sector, as well as our farmers and a growing number of service sectors, are increasingly nervous about the Uruguay round because they see a growing likelihood that it cannot possibly produce results that will help them.

With respect to manufacturing in particular, which is the sector I have followed most closely, what we are seeing is increasingly vocal demands by countries that dump and subsidize for major weakening of our unfair trade practice laws so they can increase their illegal penetration of our markets. In return for these concessions, as well as surrendering our market to foreign textiles, we will obtain promises of better rules in areas like investment, intellectual property, and services, but not cultural services like movies and television, where we have an advantage. It is no wonder that with a prospective deal like that, United States industry is quickly losing its enthusiasm for the Uruguay round.

The national media, who are even greater cheerleaders for the Uruguay round, regardless of its results, than the administration, don't like to consider the possibility that Americans might oppose the round. They will be even less happy with the idea that someone might question whether it is really good for us. Mr. Lamar, while retaining his optimism about the trading system, points out quite logically that in considering a round, we ought not be surprised if Americans view it from the standpoint of whether it helps them, rather than from the standpoint of macroeconomic principles, and the sad fact is that a growing number of Americans are finding it very difficult to understand how this one is going to help them. To that, Mr. Lamar offers the rather radical suggestion that perhaps our negotiators should be more concerned with a satisfactory outcome than an arbitrary 1990 deadline.

I agree with that. The world will not come to an end if the Uruguay round is not completed in 1990, but our role in the global economy could well change significantly if we accept a bad deal. This is a case where more people should listen to Mr. Lamar. I ask that the letter in question be printed at this point in the *RECORD*.

The letter follows:

UNITED STATES SHOULDN'T RUSH TO  
CONCLUDE GATT

The editorial, "Selling GATT," (Sept. 16) sets up a dangerous scenario for GATT and

for future international cooperation in trade. The editorial spoke well when it recognized that no GATT agreement is likely to be approved by the Congress "unless its connection with U.S. economic welfare is clear."

You bemoan the lack of interest in the trade negotiations in the Congress and within the business community. Giving a higher profile to issues doesn't solve the problem. Hyping a "successful conclusion" to the negotiations is not what's needed. What is needed is a more encouraging texture to talks with our trading partners. Certainly, there is a need for more substance in the text of agreements that will demonstrably benefit U.S. economic interests.

If you would check with U.S. manufacturers, you would find, not apathy about the negotiations but concerns that the agreement will not meet the economic, and yes, market-access (is anybody out there listening?) needs of U.S. producers.

For example, how many newly developing countries are actually going to sign these agreements on rules on the treatment of foreign investment, protection of intellectual property, etc., and obligate themselves to carry out their provisions? Have our negotiators once again gotten themselves into the role of "demandeur" on every major negotiating area?

If so, we face the likelihood that the European Community, Japan and the six European Free Trade Association nations will lie back and say, "Our current internal adjustment and/or domestic political problems don't permit us to agree with your proposal." Or developing countries will simply say that the obligations are too great a burden for them.

The most important ingredient in any effort to "sell the Uruguay Round results," as your editorial points out, is "offering tangible benefits to producers of tangible products." So far, both the substance of the proposed agreements and the willingness of enough of our trading partners to negotiate suggest little likelihood that the Uruguay Round ending in 1990 could offer enough tangible benefits to producers of tangible products in the United States.

For U.S. producing interests, successful negotiations mean increased foreign market access for U.S. industries able to compete. If the current negotiations cannot achieve that goal, maybe the negotiators should drop the end of 1990 deadline. The world won't come to an end if agreements are not in place to be initiated and implemented during 1991. This is particularly true if the agreements are "framework-type" arrangements, or if they involve few serious signatories and are conditionally non-discriminatory because so few countries are signatories.

A postponement of the target date won't end international trade cooperation either. With changes in Eastern Europe, perhaps it's time to make another attempt at a structural change in GATT, such as creating an international trade organization. That would include a revised general agreement on international trade rules containing a new set of obligations covering tariff and non-tariff measures and trade controls, rather than separate codes.

As we prepare to enter the 21st century, a renewed pledge of non-discrimination in trade relations would be more in keeping with broad international markets than our present countenance of exceptions and special arrangements.

There is a real danger that in hyping the need to reach agreement this year with

little regard to the substance and postulating a demise of international cooperation if we fail, the warning may become a self-fulfilling prophecy.

It has often been said that the more recent rounds of trade negotiations have been aimed at problems of the decades preceding them. Perhaps we need to pause and consider how the dynamic economic and political shifts of the past three years can be woven into our efforts at international trade cooperation in the years ahead.

HARRY LAMAR,

President, Monticello Associates.

WASHINGTON. ●

#### BETHEL AFRICAN METHODIST EPISCOPAL CHURCH CELEBRATES ANNIVERSARY

● Mr. LAUTENBERG. Mr. President, I rise to pay tribute to the Bethel African Methodist Episcopal Church in Pennsauken, NJ, which will celebrate its 160th anniversary in November.

The congregation has undergone many changes since the 1800's. During the Civil War, Pennsauken, formerly Jordantown, cooperated with the underground railroad to bring slaves to freedom. Originally, services were held in a school. The present building was erected in 1926 and the Bethel is the oldest house of worship in the township.

Mr. President, I am pleased to honor the spiritual efforts of the Bethel African Methodist Church. I extend my warmest wishes to the Reverend James E. Jenerette, pastor; the Reverend John H. Johnson, presiding elder; and the Right Reverend Frank C. Cummings, Jr., bishop; and the Bethel congregation as they celebrate Bethel's 160th anniversary. ●

#### FOREIGN LANGUAGE NEEDS

● Mr. SIMON. Mr. President, recently, Lt. Col. Peter W. Kozumplik spoke at the annual conference of the NATO Bureau of International Language Coordination in Ottawa.

A good portion of the discussion there was the need for greater language skills for the on-site verification provisions of the arms control agreements.

We tend to think of foreign language instruction as something that is necessary for cultural enrichment or that is necessary for foreign trade. Both of these things are true.

But greater skill in foreign languages is also necessary for military reasons. My guess is that right now, all the Armed Forces wish they had more people who were proficient in Arabic because of the sudden needs that the Iraq invasion has called up.

We cannot know what the needs may be in the future.

Lt. Col. Peter W. Kozumplik, U.S. Army, gave a talk to the NATO group assembled that I ask to insert in the RECORD at the end of my remarks.

Early in his remarks, he says:

Looking first at the civil sector, the lack of foreign language instruction in our secondary schools makes our job in the Defense Department that much harder. Our universities aren't much better. Indeed, the median speaking proficiency for fourth and fifth-year students reading Russian in our universities is only at the STANAG 1+ level.

That suggests that our civilian educational programs are tied directly to our military needs.

He points out that the needs from the military have expanded.

He comments:

Working closely with the OSIA, we have learned (or, in some cases, relearned) several important lessons that we would like to share with you. First and foremost among these lessons is the fact that a new requirement has emerged. In addition to our traditional products of listener/transcribers, interrogators, teachers, and attaches, we now have a clear requirement to produce interpreter/translators with a greater degree of language capability. Furthermore, whereas all of our previous products normally used their language capability directly to convey their own thoughts, the new products will have the very different requirement of using their language capability to convey the thoughts of others. We also have the challenge of producing this higher order of language capability in times far shorter than we formerly thought possible.

We have also found that the ideal treaty support linguist would:

Have near-native fluency in such treaty language.

Be an accomplished consecutive translator.

Even though not a technician himself, have some detailed understanding concerning the procedures and equipment addressed by the treaty. He should also have some knowledge about the procedures and devices necessary to destroy or disarm the items covered by the treaty.

I commend Lieutenant Colonel Kozumplik for his leadership, and I urge my colleagues who are interested in both education and defense to take a good look at this.

The remarks of Lieutenant Colonel Kozumplik follow:

#### LANGUAGE INSTRUCTION FOR ARMS CONTROL INSPECTIONS: THE U.S. EXPERIENCE

(Presented by Lt. Col. Peter Kozumplik, Director, DLT Washington)

A major area of concern to all of us today is how to deal with the language instruction that will be required for arms control treaty inspections. Our experience with the bilateral U.S.-Soviet Treaty on the Elimination of Intermediate-Range Nuclear Forces has given us some experience that we would like to share with you. However, please bear in mind that our experience to date is a much smaller edition of what the United States will undertake with the START treaty and what we all will have to undertake when the CFR Treaty is signed.

I will focus today only on the problems of training the inspection team "interpreters" rather than on the language needs of the technical inspection personnel. But, to set things into context, I must sketch the capability of the U.S. foreign language community.

#### THE U.S. FOREIGN LANGUAGE COMMUNITY

Looking first at the civil sector, the lack of foreign language instruction in our secondary schools makes our job in the Defense Department that much harder. Our universities aren't much better. Indeed, the median speaking proficiency for fourth- and fifth-year students reading Russian in our universities is only at the STANAG 1+ level.

The lack of a basic foundation of foreign language instruction in the civil education system forms the basis for instruction done within the Defense Foreign Language Program. Here, our requirements for language personnel are concentrated within the intelligence community and are generally filled by enlisted personnel rather than officers. Within the Defense Department, we have about 14,000 linguist billets—about two-thirds of which are within the signals intelligence community where only the passive skills of listening and reading are required. Personnel trained for and filling these positions rarely have the opportunity to travel within the target country to hone the active speaking skills.

To support this community, the Defense Language Institute Foreign Language Center (DLIFLC) graduates about 4,000 students annually but very few personnel ever receive training beyond a basic acquisition course that graduates them with STANAG 1+2 proficiency. Particularly in Russian, very few of our linguists have had either the requirement or the opportunity to use their speaking ability in face-to-face encounters.

Celebrating its 50th birthday next year, the DLIFLC supports the military language community with eight schools in Monterey staffed almost with native-speaking instructors that each in 24 discrete languages and dialects. The Institute also operates a contract program in Washington that covers the remaining 47 low-density languages and dialects in which the Defense Department has requirements. Two and a half schools in Monterey and part of the Washington program are devoted to Russian instruction but, as I've already noted, this is focused at basic language acquisition.

Our emphasis in teaching has traditionally reflected the emphasis wanted by the bulk of our client community. Therefore, our instruction has typically focused at the passive listening and reading skills and at using language capability independently rather than having to interpret for somebody else.

This, then, is the basis from which we had to work in supporting treaty inspections and, to provide the very high level of capability to meet the new requirements, we had to build virtually from scratch.

#### THE INITIAL EFFORTS

The U.S. arms control inspection effort began in December 1987 with the signature of the bilateral U.S.-Soviet Treaty on the Elimination of Intermediate-Range Nuclear Weapons (INF Treaty). The Joint Chiefs of Staff created an INF Task Force and this organization decided that each ten-man inspection team could require two capable enlisted interpreters. This generated a total requirement for 68 enlisted linguists for inspection duties.

Due to uncertainties concerning the length of time that it would take to ratify the INF Treaty (and because enough candidates were available who had graduated from the DLIFLC's 47-week Russian basic course), the JCS INF Task Force initially decided that the linguists would receive one week of intensive language instruction. This

would focus on treaty-specific terminologies and usages and would be taught in Washington, D.C during the first week of February 1988.

The military services identified candidates for assignment to inspection duties and the DLIFLC conducted telephonic oral proficiency assessments of some 114 of them during January 1988. Since the candidates were deployed worldwide, this effort involved installing special rotary telephone lines, each terminating with two headsets and a tape recorder. Candidates then called in from their duty stations during preset hours and each was assessed by two qualified testers. Although their listening and reading proficiencies undoubtedly were higher, the median speaking proficiency of the candidates tested was at the STANAG 1+ level.

At the same time, the DLIFLC quickly obtained copies of the treaty texts and inspection protocols in both Russian and English and used these during January 1988 to develop the special one-week course. Due to lack of other experience, this course focused on scenarios that we ourselves deemed most likely to be encountered in transiting the Soviet Union, in socializing with Russian escort personnel, and in conducting the inspections themselves. The course development effort included special texts and audio tapes, flash cards and reference texts, reprinted inspection protocols in both languages, and both written and oral tests. Of some interest, special English-Russian/Russian-English glossaries of treaty-specific terminology were also developed and published.

Since the INF Task Force had directed the course to be taught in Washington, D.C., the DLIFLC made the necessary arrangement—ranging from cyrillic typing elements through Russian maps of the Soviet Union to classrooms, lodging, and vehicles—to conduct the course during the first week of February 1988. Materials, one officer, one noncommissioned officer, and 25 very experienced Russian instructors were then shipped to Washington. These instructors were mostly department chairpersons or mentor instructors and their deployment required the DLIFLC to defer for a week the programmed commencement of a 90-student basic Russian course.

A total of 68 students enrolled for first course iteration in February 1988. They were stratified by speaking ability into ten classes, each with two instructors dedicated to each class. The remaining four instructors simultaneously worked to modify course materials as required by the widely-varied student capabilities. Of those initially enrolled, 48 students completed the week-long course.

#### SUSTAINMENT

With its formation in late January 1988, the On-Site Inspection Agency (OSIA) replaced the JCS INF Task Force. The new organization is headed by a very competent linguist, Brigadier General Roland Lajoie, a former Defense Attache to Paris, Commander of the Military Liaison Mission in Berlin, and Military Attache to Moscow. To assist him in refining language requirements, the DLIFLC provided Major John Eschrich, associate dean of one of the Russian Schools in Monterey, to serve temporarily as the OSIA's first language training advisor.

Under this leadership, the OSIA took advantage of the six-month delay between signature and ratification of the INF Treaty to improve its language capabilities dramati-

cally. Steps taken between February 1988 and June 1988 included:

Providing two additional weeks of language instruction at Monterey for some 26 of the weakest graduates of the special one-week course. This additional instruction focused on upgrading the students' general language proficiency.

Providing three additional weeks of instruction by the Foreign Language Training Center, Europe, for 18 graduates of the special one-week course who had returned to their units in Europe pending Treaty ratification. This instruction also focused on upgrading general language proficiency.

Enrolling some 44 additional students in a two-week variant of the special one-week course. Taught in Monterey, this course was identical to that taught in Washington but it was preceded by a week of refresher instruction that concentrated on general language proficiency.

Establishing a continuous language maintenance and enhancement program for the linguists assigned to the OSIA headquarters in Washington. This program was established by DLI Washington using its contract language training devices.

Establishing a position for a full-time language training coordinator in the OSIA headquarters and filling it by hiring Ms. Irene Nehonov, a former DLIFLC Russian department chair.

As a result of these initiatives as well as the original instruction, the OSIA has about 100 interpreters with STANAG 2/3 speaking proficiency when the INF Treaty's base-line inspections commenced in July 1988.

To develop a replacement "pipeline," the OSIA also provided funding and directed the DLIFLC to develop a 27-week intermediate Russian course specifically aimed at treaty inspection requirements. Developed between September 1988 and March 1989, this course aims to take candidates with solid STANAG level 2 proficiency in all three tested skills (the USA does not test writing proficiency) and bring them to STANAG level 2+ /3 skills by graduation.

Four annual iterations with ten students each were programmed for the new special intermediate course and instruction began in March 1989. However, although the course was integrated and complete when fielded, it has frequently been modified since as the OSIA has provided additional regular feedback as it gained experience in conducting actual inspections. Since inception, six iterations of the course have commenced, with a total initial enrollment of 43 enlisted students. A total of 37 of these students have graduated or are still in training.

#### NEW REQUIREMENTS

Although a solid language training program was developed to support the INF during the 13 years of its duration, we face much greater language requirements to be imposed by other treaties that likely will result from the ongoing talks about chemical weapons elimination, strategic arms reduction (START), nuclear testing (NTT), conventional forces in Europe (CFE), "open skies," etc. We anticipate that Treaties resulting from these talks will require capability in languages other than Russian and, indeed, in languages other than European in order to meet probable inspection protocols.

To begin meeting these additional requirements (particularly those that will be imposed by ratification of a START Treaty), we have been directed and funded to increase enrollment in the special intermediate Russian course by 30 more students in

July 1990, by 40 more students in August 1990, and by 70 more students in August 1990. We have also obtained the Russian and English Joint Draft Texts of the START Treaty and the Russian and English Joint Working Papers of the START Inspection Protocols to assist us in modifying the special intermediate course yet again to accommodate the new procedures and terms that this treaty will require.

#### LESSONS LEARNED

Working closely with the OSIA, we have learned (or, in some cases, relearned) several important lessons that we would like to share with you. First and foremost among these lessons is the fact that a new requirement has emerged. In addition to our traditional products of listener/transcribers, interrogators, teachers, and attaches, we now have a clear requirement to produce interpreter/translators with a greater degree of language capability. Furthermore, whereas all of our previous products normally used their language capability directly to convey their own thoughts, the new products will have the very different requirement of using their language capability to convey the thoughts of others. We also have the challenge of producing this higher order of language capability in times far shorter than we formerly thought possible.

We have also found that the ideal treaty support linguist would:

Have near-native fluency in each treaty language.

Be an accomplished consecutive translator.

Even though not a technician himself, have some detailed understanding concerning the procedures and equipment addressed by the treaty. He should also have some knowledge about the procedures and devices necessary to destroy or disarm the items covered by the treaty.

Be mature and outgoing, able to interact comfortably and well with others. This implies essential understanding of cultural differences.

Be self-confident and able to function well under stress.

Be proficient in both the legal language of a treaty and the common language of the people involved.

Needless to say, these ideal individuals are rare—particularly in the quantities required. Indeed, the OSIA quickly learned that we needed to look beyond mere language capability. An individual's whole personality—his maturity, sense of responsibility, ability to deal with austere conditions, etc.—was even more important than his language capability. As a result, the OSIA now interviews and approves of each candidate nominated by his Service before he is enrolled in the special intermediate course.

Within the narrower field of language capability, we confirmed once again that competent listening and reading proficiency do not necessarily equate to competent speaking proficiency and that high speaking proficiency does not necessarily mean that the speaker can interact with others or accurately convey the thoughts behind what the other party actually said. Furthermore, as any translator knows, only when you have no idea at all regarding what is going on will you translate the actual words used.

We have additionally noted that, since all trained to date have been graduates of our 47-week Russian basic course, we needed to add more emphasis on speaking skills throughout that course without increasing its length or decreasing the results that we

have been achieving in the listening and speaking skills.

We also found that the instructors who teach the course need wide and varied experience. As a result, we are now using an admixture of experienced instructors, recent emigres from the Soviet Union, and people who have actually served on inspection missions with the OSIA. As an example, the officer in charge of the course and several of his key noncommissioned officers have been detailed to the OSIA for inspection tours to ensure comprehensive understanding of what is really required.

With regard to pedagogy, we have found structured out-of-class situational exercises—for example, having the students perform escort duties at the base exchange (general store) and local airport and to host both formal and informal lunches—to be very effective.

Finally—and perhaps most importantly, we originally developed the special intermediate course with a heavy emphasis on treaty-specific requirements. However, experience has taught us to decrease the treaty-specific quotient and increase the time and effort devoted to enhancing general language proficiency.

#### CONCLUSIONS

The new arms control era that is about to burst upon us—"turning swords into ploughshares" as my German colleague noted yesterday—offers radically new avenues to achieve national security. Indeed, I submit that we are on the threshold of a change in the strategic environment even more fundamental than that which occurred in 1945. Instead of clobbering our enemies—a very traditional military mission—we now will be afforded the opportunity of inspecting him to ensure that he cannot clobber us.

This is a whole new way to employ military force. But it requires language capability beyond what we have ever required in the past unless we are to surrender the initiative completely to the other side. Acquiring this high language proficiency and the requisite interpreting skills (skills that must be based firmly on cultural awareness) takes time—lots of time.

Our experience with INF Treaty inspections has confirmed once again that last-minute fixes make very poor long-term solutions. The success of future treaties, the success of the whole new international relationships that will be built upon them, and, indeed, our very national and collective security, depend directly on the measures that we take now. ●

#### THE JOINT TAX COMMITTEE AND THE FACILITY OF STATIC ANALYSIS

● Mr. KASTEN. Mr. President, a study issued by the Institute for Policy Innovation today exposes a serious bias against growth-oriented policies on the part of the Congressional Joint Committee on Taxation that could jeopardize the economic success of a budget summit agreement.

According to this report, "Prejudicing the Policymaking Process: The Importance of Economic and Budgetary Forecasts," any budget summit agreement is likely to fail because Government forecasts used to estimate the effects of spending reductions and tax

increases are based on static, rather than dynamic, economic forecasts.

This study proves, beyond a shadow of a doubt, that the accountants at the Joint Committee on Taxation are living in a fantasy world of static analysis. These green-eyeshade, bean counters locked away in the bowels of the Longworth House Office Building have absolutely no clue about what goes on in the real economy.

Real people pay the taxes. Real people react to incentives and disincentives. For example, if you impose a 10-percent tax on the purchase of red cars, most people will stop buying red cars and start buying cars of another color. The Federal Government would not raise very much revenue from this new tax.

But under the Joint Tax Committee's static revenue methods, it is assumed that people will continue purchasing red cars, despite the tax, thus raising tax revenue for the Federal Treasury.

I think we can apply this simple example to other kinds of tax policies. For example, the Joint Tax Committee estimated that the 1978 capital gains tax cuts would lose \$2 billion a year. Instead, capital gains revenue increased from \$8.5 billion in 1978 to \$10.6 billion in 1979—a \$2.1 billion increase. Capital gains revenues continued to increase through 1986 because the tax cuts stimulated realizations and investment.

This study proves what people out in the country already know: tax cuts increase economic activity—and tax increases reduce economic activity. Taxes and growth incentives do matter.

A budget summit that includes a tax increase will not reduce the budget deficit. We have had five budget summit agreements in the past that have raised taxes, and budget deficits actually increased. The only 2 years in which the deficit declined—1984 and 1987—were not preceded by a budget summit.

Because Republican negotiators have accepted the Joint Tax Committee's flawed estimates showing capital gains to be a revenue loser, they have been forced to raise even more taxes to make up for the shortfall.

I think this study exposes a serious bias against growth-oriented tax policies on the part of the Joint Tax Committee. It is clear that they aren't the nonpartisan group that they claim to be. I think this study seriously undermines the Joint Tax Committee's credibility.

I ask that a summary of the IPI study be included in the RECORD.

The summary follows:

#### EXECUTIVE SUMMARY

Forecasting receives little attention in the policymaking process. Increasingly, though, the laws that govern our lives and guide our economic destiny depend upon this esoteric

discipline about which we know or care so little. Because of its increasing importance, government economic and budgetary forecasting merits closer scrutiny. While forecasting is not a precise science, reasonable estimates can be made of how a policy change will affect individuals and the economy and, consequently, the federal budget. However, these estimates are only as reliable as the methods used to produce them.

Government forecasting is flawed because it relies upon static analysis to produce revenue and spending estimates of proposed changes in policy. Static forecasts ignore the behavioral effects policy changes will have on individuals, businesses, and the economy. Static forecasts are risky guides for policymakers. Empirical evidence shows that estimates which ignore the impact of tax policy and government spending programs on people's behavior can:

Lead to the creation of spending programs that would be rejected (or structured differently) if more realistic cost estimates were available.

Lead to the adoption of tax proposals that produce less than expected revenues (or even lose revenue) when economic growth is taken into account.

Lead to rejection of policy alternatives that are predicted to increase the deficit when, in fact, they lower it because of positive behavioral effects.

The government has not always relied on static forecasts. Dynamic forecasts—which incorporate anticipated behavioral responses to policy changes—were used in 1963 to evaluate the likely effects of President Kennedy's proposed reduction in personal income tax rates. Even though these forecasts were generally on the mark, dynamics forecasts since then have been largely ignored.

The budget summit agreements enacted in the 1980's illustrate the shortcomings of static analysis. These agreements contained tax increases and spending "cuts" that were forecast to reduce the deficit. Not only did these agreements fail to achieve their forecasted deficit reduction goals, but the level of the deficit actually increased. Empirical evidence reveals two general trends:

A static estimate of a tax increase will overestimate the actual tax revenue received and lead to a larger-than-expected budget deficit.

A static estimate of a spending "cut" (or of a new spending program) will overestimate the actual savings (or costs) and lead to a larger-than-expected budget deficit.

Case studies described in this report illustrate how tax and spending policy changes cause people to adjust their behavior which, in turn, affects the budget outcome. On the revenue side, static forecasts always overestimate the revenue gain from tax increases and the revenue loss from tax decreases. For example:

Capital gains tax cuts lower the cost of capital, increase economic growth, and reduce the deficit.

Eliminating the Social Security retirement earnings test (a tax on the earnings of elderly workers) would increase work effort. High payroll and income taxes would offset higher benefit payments and decrease the deficit.

Almost 70 percent of the long-run static revenue gain expected from arising the top tax rate from 28 to 33 percent would never materialize. Taking into account the effect of the resulting lower growth on payroll, corporate, and other federal taxes, the federal government would lose revenue within

four years and the deficit would increase above forecasted levels.

On the spending side of the budget, static analysis chronically underestimates the costs of federal spending programs. Costs often greatly exceed static projections in entitlement, government guarantee, and insurance programs. For example:

Medicare costs were double what the Congress had anticipated within the first eight years of the program. Most recently, cost overruns of between 50 and 80 percent appeared within the first eight months of the Medicare Catastrophic Coverage Act.

The cost of new spending programs—particularly entitlement programs that pay benefits to those with certain characteristics—will be higher than expected if behavioral considerations are ignored.

Artificially low premiums for government guarantee programs such as deposit, flood, and pension benefit insurance allow individuals and businesses to take actions they would not if they had to bear the full cost of their decisions. When claims must be honored, unanticipated expenditures often dramatically increase the predicted deficit.

If the Congress and the Administration base a deficit reduction agreement upon static forecasts, past evidence and dynamic analyses suggests that once again they will fail to achieve the deficit reduction they expect. Policymakers, who ultimately bear the burden of mistakes caused by faulty estimation methods, should insist that the forecasts provided them are free of known bias and errors. They would be well-served to demand periodic appraisals detailing the accuracy of past government forecasts and the adoption of a more realistic, systematic framework for future estimates.

#### THE IMPORTANCE OF FORECASTING

To the average person, forecasting is a mysterious activity best left in the classroom or to financial experts. It appears to have little relevancy to everyday life or to policy decisions made in Washington. Increasingly, though, the laws and regulations that govern our lives and guide our economic destiny are a product of this esoteric discipline about which we know or care so little.

One need not look far into the workings of government to see the importance of economic and budgetary forecasts. For example, before taxes can be cut or raised, Congress must know what will happen to revenues. Before a new program initiative can be put in place, policymakers must have some idea of what it will cost.

In the era of Gramm-Rudman-Hollings, forecasting plays an even larger role. For the last several years, any new tax or spending initiative has been subjected to one additional criteria besides need and merit—its effect on the budget deficit. Any policy proposal that increases the deficit will be severely scrutinized and, unless judged truly compelling, will have a difficult time becoming law.<sup>1</sup>

<sup>1</sup> One recent example was the report of the bipartisan Pepper Commission on health care. The Pepper Commission recommended changes that would cost, by Commission estimates, \$68 billion. The plan was immediately labeled a "non-starter," and the Commission was widely criticized, for not tackling the problem of how to raise the money to pay for the new spending. U.S. Bipartisan Commission on Comprehensive Health Care, "Recommendations to the Congress: Access to Health Care and Long-term Care for All Americans," Washington, DC, March 2, 1990, p. 21.

By now, most Americans are aware that the size of the deficit keeps growing. Under a bipartisan agreement reached in April 1989, the deficit for 1990 was forecasted to be \$99 billion. The most recent projections, however, expect the 1990 shortfall to be on the order of \$161 billion (excluding the cost of the savings and loan bailout). Furthermore, forecasts of deficits over the next five years are two to three times higher than they were eight months ago.<sup>2</sup> Part of the official explanation of why the deficit has mushroomed is because federal revenues are coming in slower than predicted while spending is higher than expected. To the extent that expectations were unrealistic to start with, government forecasts have contributed to higher than expected deficits.

Because of its increasing importance, government economic and budgetary forecasting merits closer scrutiny. While forecasting is not a precise science, reasonable estimates can be made of how a policy change will affect individuals and the economy and, consequently, federal spending and revenues. Like any theory put into practice, however, forecasting is only as good as the methods used. If the methods are flawed, the results will be flawed as well. Unfortunately, federal government forecasting methods are flawed, and policymakers are often victims of inaccurate and misleading information.

This study examines government forecasting. The first section offers a historical look at forecasting practices, explains how current forecasting models are constructed, and highlights the differences between two forecasting methods. The second and third sections examine the track record of government forecasts regarding specific policy changes. On the revenue side, the study looks at taxing capital gains, the Social Security retirement earnings test, the revenue mix resulting from the 1986 Tax Reform Act, and raising marginal income tax rates. On the spending side, it looks at entitlement programs and government guarantee programs. The final section discusses the implications of current forecasting practices and offers recommendations for improving the information upon which policy decisions are made. Two appendices explore the implications for distributional analysis and for the tax changes of the 1980's.<sup>3</sup>

#### STATE OF OUR BANKING INDUSTRIES

● Mr. McCAIN. Mr. President, last week, the Comptroller General, Mr. Bowsher, testified before the Banking Committee about the state of our banking industries. He did so at Congress' direction under the Financial Institutions Reform, Recovery, and Enforcement Act [FIRREA], and we would do well to take his words to heart, for his conclusions are chilling. They are, in fact, a clarion call to Congress and the administration to act now to avoid creating yet another

costly financial bailout for the beleaguered taxpayers of this country.

Let me quote the first paragraph of Mr. Bowsher's statement which I believe embodies a warning which we quite literally cannot afford to ignore.

Not since its birth during the Great Depression has the federal system of deposit insurance for commercial banks faced such a period of danger and uncertainty as it does today. Issues arising from our audit of the Bank Insurance Fund's 1989 financial statements, the report on which is being issued today, cause us both apprehension and concern for the safety and soundness of the Fund in the 1990's.

"Apprehension and concern", Mr. President—an understatement, I am sure. In fact, if history is any indicator, this warning may be only the tip of the iceberg and may not fully reveal the behemoth that lies barely below the surface.

The fact that the fund's ratio to insured deposits is the lowest in its entire history and the fact that there are at least 35 large banks that are likely to fail in the next year are indicative that we have failed to rise to the two greatest issues that have faced Congress since the 1930's: The vulnerability of our insurance deposit system and our archaic banking laws—much as we failed to address the very real questions about the viability of the S&L industry before it collapsed.

Much has been written about the need to limit deposit insurance. I think we should limit it soon, or the taxpayers of this country are going to need insurance against deposit insurance. It seems ridiculous to me that we insure any and all of the deposits of wealthy people savvy enough to divide their millions into bundles of \$100,000 or less. As I see it, deposit insurance is a good idea to ensure consumer confidence in our financial system. It has mutated into a Government guarantee for the rich, for canny money managers, and risk-taking, high-flying managers of financial institutions, however. Let's figure out how to go back to making sure that average savers are adequately protected, and letting the more sophisticated well-heeled investors take their own chances without the taxpayer picking up the tab if the bank fails. Let us limit deposit insurance to \$100,000 per saver, rather than \$100,000 per account.

It is also important to preserve the depositors' confidence in banks. If we let the banks sink into the same tainted barrel as the thrifts, American consumers aren't going to trust any savings institutions.

The issue of updating antiquated banking laws is more difficult to resolve than reforming deposit insurance. Yet, modernization is essential to getting our banks back into profitable businesses. It is widely recognized that our commercial banks are the old fashioned wallflowers of the world fi-

<sup>2</sup> Winters, Philip D., "The Budget for FY 1990: Action During 1989 and 1990," Congressional Research Service Issue Brief, Washington, DC, June 27, 1990, Table 1 and Executive Office of the President, Office of Management and Budget, "Mid-session Review of the Budget," Washington, DC, July 16, 1990, Table 7. About \$35 billion of the \$62 billion increase in the deficit is due to technical re-estimates, \$25 billion on the revenue side and \$10 billion on the spending side.

nancial community. It used to be that American banks were dominant forces in world economic markets. Today, American banks are not even among the leaders. Even at home foreign banks are growing nearly three times faster than our own banks. The Japanese banks have a quarter share of the California market, for example, and they could soon control a significant portion of the total United States commercial loan market. There is no reason why foreign banks should be more profitable, more trusted, more accessible, or more dynamic than U.S. banks.

And there is another good reason to help banks be profitable: Ensuring that borrowers and homebuyers have adequate access to capital. The credit crunch is bad enough now. It obviously would be much worse if the banks end up in the same shape the S&L's are in now. The impact on jobs and economic growth could be very, very negative.

Every lobbyist in the country and every vested interest gets palpitations just thinking about reviewing our banking laws or changing the laws that govern how our banks will conduct themselves in the 1990's. The turf battles start before the debate does. Turf battles at this late date are like fighting over a sandbar when the tide is coming in, however. We would be better off thinking about how to stay afloat.

While it may be too late to save the taxpayers the \$150 billion it will cost to clean up after the S&L fiasco, is probably not too late to cut the cost of saving the banking industry. I wonder if we will.

It is easy for politicians, Mr. President, to blame the thrift crisis on crooks and bandits, or the other political party, or on other branches of government. I submit that the thrift crisis is only a small, costly part of the enormous, expensive problem. The reality is that Congress stalled for over 30 years while the thrift industry burned. We are very familiar now with the history of the crisis: The Kennedy Commission in 1962; dilly dallying by President Johnson and the House Banking Committee in 1966 and 1967; another administration report in 1972 and another House Banking Committee study in 1975; and a Carter task force in 1979 followed by a lack of attention in Congress in 1989 and 1982. We are also well aware of the large role played by State legislatures in the early 1980's as well, especially in California, Texas, and Florida.

We cannot afford to repeat a process of studies, task forces, recommendations, hearings, and commissions, while the bank insurance fund bleeds to death, the taxpayer gets handed another extraordinary bill, and we sit in indecision and cowardice on Capitol Hill.

Mr. President, the Banking Committees of Congress and the President must get together during the next several months, and, laying partisanship and special interests aside, develop a sweeping plan that will tackle both deposit insurance, the solvency of the banking insurance fund, and the reforms needed to make U.S. banks become competitive enough to once again assume their role in the world economy.

As Oscar Wilde once said: "Experience is the simple name we give our mistakes." The question is, how much more experience do we need before we can tackle the reforming of our banking laws?●

#### CONSULTANTS IN WEAPONS PROCUREMENT

● Mr. PRYOR. Mr. President, today I am releasing a General Accounting Office investigation that shows the widespread use of private defense consultants in three of the Pentagon's newest and largest procurement programs. The GAO looked specifically at the Army's new tank killer missile, called the FOG-M; the Navy and Marine's new tilt rotor aircraft; the V-22 Osprey; and the Air Force's rail-based MX missile.

It seems that behind every Government action, there is an army of expensive private consultants, many of whom have just left sensitive jobs in Government. This has led to volumes of consultant horror stories, far too many of which are at the Pentagon. The abuses range from excessive and improper use of consultants, to conflicts of interest and insider trading, and on to fraud and corruption, as has been found in the recent ill wind investigation.

Unfortunately, the GAO's latest look at the so-called shadow government of consultants found bad business as usual.

GAO not only looked at how the Government uses consultants but also at how huge prime contractors for Pentagon programs use consultants.

Mr. President, I would like to review some of the GAO's findings, beginning first with consultants used directly by the Pentagon.

First, the GAO found excessive use of consultants, leading to higher costs and duplication. Specifically, between 1983 and 1989, the Army's FOG-M missile program signed 5 large contracts worth \$9 million with consultants, the Navy's V-22 Osprey Program spent \$18 million on 31 consultant contracts, and during 1987 and 1988 alone, the MX missile program spent \$100 million on contracts that involved extensive consultant work.

Second, the GAO found that sensitive Government functions were given to consultants. The V-22 Program was the most egregious in this area. Ac-

cording to GAO, consultants were "involved in virtually all aspects of logistics planning and analysis of the V-22 Program." They were also involved in preparing full scale development specifications and aircraft design criteria. Finally, V-22 consultants work directly for the Navy program director, doing a variety of sensitive activities, including monitoring other contractors.

The Army had outside consultants performing sensitive cost estimation work, as well as a host of other work.

And in the Air Force MX missile office, consultants were feeding material to congressional witnesses, performing cost estimates, and evaluating other contractor's work.

Third, it was found that consultants were hired despite potential conflicts of interest. The Army, Navy and Air Force trusted the consultants to self-certify that they have no associations that represented a conflict of interest. That does not work because dishonest consultants will not volunteer their guilt.

The result in this case was that three consultants had possible conflicts. One FOG-M cost estimator consultant later worked for a contractor for similar services and two MX missile consultants worked for the Government and for MX contractors.

Oddly enough, in two cases the Pentagon knew about these problems and still let them proceed.

A fourth major finding by the GAO was that the military services are often hiding the use of consultants. GAO found that, whether intentional or not, many consultant contracts were not reported as required by law. This undercuts our efforts to control and monitor consultant use.

Mr. President, as I mentioned, the GAO also reviewed the use of consultants by prime contractors, including the Hughes Aircraft Co., Bell Helicopter Textron, the Boeing Co., and Rockwell International.

The contractor's use of consultants was widespread. These contractors hired 18 marketing consultants and 40 technical consultants. Of these consultants, those involved in marketing are of greatest concern. Marketing consultants are hired guns who often claim to be able to grease the wheels of Government for a contractor.

The GAO report stated that, "a large majority of these consultants are former military officers or Government officials."

For instance, Bell Helicopter Textron hired a former Navy admiral to, among other things, "confer with U.S. Government officials" on the V-22 Osprey; Boeing hired a former Marine Corps officer and a Navy officer to work on V-22 marketing efforts; and the Hughes Corp. gave a 3-year contract to a former congressional staff

person to help market the FOG-M missile.

GAO also found that one consultant was in violation of the so-called revolving door laws that require former military staff to report employment with defense contractors.

Mr. President, taken separately, each of the GAO findings in this report is cause for concern. Taken together, they paint a very grim picture indeed of the system by which the Pentagon procures hardware for the national defense.

Unfortunately, the GAO reports that the Army and the Air Force perceive no great problem with their current practice and do not intend to limit the use of consultants or to change their ways. The Navy has at least acknowledged some of the problems and have made an effort to cut back.

All of this tells us that Congress needs to continue to scrutinize the military's consultant use practices and to come up with new ways to hold their feet to the fire.

Mr. President, I ask that the executive summary of the GAO report be reprinted in the RECORD following my statement.

The summary follows:

#### EXECUTIVE SUMMARY

##### PURPOSE

As part of its ongoing efforts to assess the government's use of consulting services, GAO reviewed three Department of Defense (DOD) weapon systems to determine

how DOD used consulting services in acquiring these systems;

how the systems' contractors used consultants; and

whether consultants worked for both the government and defense contractors on these systems, and if so, whether any conflicts of interest existed.

GAO also examined how well DOD identified and reported its use of consulting services.

This report responds to questions raised by the Chairmen, House Committee on Armed Services, and the Subcommittee on Federal Services, Post Office and Civil Service, Senate Committee on Governmental Affairs.

##### BACKGROUND

DOD uses the term "contracted advisory and assistance services" to describe consulting services, which include individual experts and consultants, studies and analyses, management support services, and engineering and technical services. By law, DOD is required to establish an accounting mechanism to track these services and to provide, as part of the defense budget, data on proposed expenditures. DOD estimates that it spends about \$1.6 billion annually on such services.

Rules governing organizational conflicts of interest are contained in the Federal Acquisition Regulation. It defines such a conflict as existing when, because of the nature of the work to be performed, a contractor could gain an unfair competitive advantage or might provide biased advice unless appropriate safeguards concerning future activities are included in its contract. In addition, in December 1989, in response to the re-

quirements of the Department of Defense Appropriations Act of 1989, the Office of Federal Procurement Policy issued a policy letter providing further guidance on contractor conflicts of interest.

##### RESULTS IN BRIEF

Consulting services played an important role in the three weapon systems GAO studied—The Army's Fiber Optic Guided Missile, the Navy's V-22 tiltrotor aircraft, and the Air Force's Peacekeeper Rail Garrison missile basing system. DOD used such services in developing system specifications, preparing cost estimates, and reviewing requests for proposals.

Defense contractors for these systems used consultants to obtain a variety of services, ranging from advice on government business to technical assistance in preparing bids for defense contracts.

GAO did not find, based on its review of contract documentation, any basis to conclude that conflicts of interest existed in the three instances it identified where consultants worked for both the government and a defense contractor on matters related to the same weapon system. GAO's review, although limited to three specific systems, does highlight key principles to guide the government's approach to addressing conflict-of-interest concerns, among them (1) the need for government awareness of consultant employment relationships in order to make informed judgments about potential conflicts and (2) the use of appropriate contract clauses to avoid or mitigate identified conflicts.

GAO also found that DOD did not accurately identify or report its use of consulting services, due to difficulties in interpreting the definitions of these services or other internal control weaknesses. Without improvements in these areas, DOD and the Congress will continue to lack accurate information on how much DOD is relying on consulting services to develop its weapon systems.

##### PRINCIPAL FINDINGS

###### *DOD's Use of Consulting Services*

From 1984 to 1989, the Army obligated at least \$9 million in consulting services for the Fiber Optic Guided Missile to support cost estimates, acquisition strategy development, and reviews of draft requests for proposals. For the V-22, the Navy obligated \$18 million between 1983 and 1989 to define aircraft requirements, develop logistics support specifications, and track cost schedules. During fiscal years 1987 and 1988, the Air Force contracted for similar services to support the Peacekeeper Rail Garrison. GAO could not calculate the amounts obligated for consulting services under the Air Force contracts because in a number of cases, these services were combined with other services in the same contracts and not separately identified.

###### *Contractor Use of Consultants*

Information GAO obtained from 6 defense contractors showed that 3 retained a total of 18 consultants for the weapon systems GAO reviewed, generally to provide advice on dealing with DOD. Four of the 6 contractors also reported using an additional 40 companies or individuals to obtain more technical services, such as reviewing bids or system requirements.

###### *Conflict-of-Interest Issues*

Of the three instances where consulting firms worked both for DOD and a contractor, one firm that provided cost-estimating services to the Army Missile Command for

the Fiber Optic Guided Missile system was later employed by a defense contractor for similar types of services. In the other two cases, the Air Force contracted with consulting firms to obtain services for the Peacekeeper Rail Garrison; these firms also worked for a defense contractor on matters related to the system.

GAO's review of the contracts and the products prepared by the consulting firms, such as briefing materials and summaries of hearings and public meetings, did not provide any basis to conclude that the firms acquired an unfair competitive advantage or were unable to provide impartial advice. However, in one case the contractor did not comply with the conflict-of-interest provisions contained in its contracts with the government. For example, the contractor did not submit required written certifications stipulating that it had no financial or other interests that could represent a conflict.

Moreover, in two of the cases, the government was aware of the consulting firms' proposed work and therefore was in a position to judge that no conflicts of interest existed.

##### *Reporting Weaknesses*

GAO identified one Fiber Optic Guided Missile contract and seven Rail Garrison contracts that should have been classified, in whole or in part, as advisory and assistance services but were not so designated by the respective Army and Air Force commands managing those systems. Individual commands also had differing interpretations of what constitutes advisory and assistance services. For example, the Naval Air Systems Command considered such services to include logistics support services, but the Air Force Ballistic Systems Division did not.

GAO found other errors in the military services' identification of these services and their budget submissions to the Congress, such as omissions of data and failure to record obligations for these services in the accounting systems as required.

Several factors contributed to DOD's failure to provide accurate data on its use of consulting services, including difficulties in interpreting consulting services definitions, inadequate procedures and controls to identify and report these services, and, more generally, a lack of oversight by DOD and the military services.

##### RECOMMENDATIONS

GAO makes a number of recommendations to the Secretary of Defense to improve DOD's identification and reporting of consulting services. (See pp. 47 and 48.)

##### AGENCY AND CONTRACTOR COMMENTS

In commenting on a draft of this report, DOD agreed with GAO's findings and recommendations, and advised that it has begun action to strengthen its management and reporting on contracted advisory and assistance services. DOD's planned efforts include providing clear guidance on management and use of these services and establishing a database capability to report and track them. DOD believes that its initiative, when fully implemented, will satisfy GAO's recommendations.

The principal defense contractors and consulting firms that commented on the report agreed with the information presented on their respective firms.●

**JOSEPH D. WILLIAMS, WINNER OF SCIENCE TECHNOLOGY MEDAL**

● Mr. LAUTENBERG. Mr. President, I rise to honor a distinguished New Jerseyan, Joe Williams, the chairman and chief executive officer of Warner Lambert Co.

I am proud to inform my colleagues that this outstanding businessman has recently been awarded the Science Technology Medal by the Research and Development Council of New Jersey.

I want to congratulate and extend my very best wishes to Joe. He is a most worthy recipient of this honor.

Recently, the Sunday Star Ledger ran an article on Joe Williams as "Jerseyan of the Week." I ask that this article be printed in the RECORD.

The article follows:

[From the Sunday, Star-Ledger, Sept. 23, 1990]

**AWARD WINNER LED WARNER-LAMBERT TO THE TOP**

(By Charles Q. Finley)

Joseph D. Williams, 63, possesses a seemingly bottomless wellspring of energy.

"I find challenges exciting rather than stressful," said Williams, the chairman and chief executive officer of Warner-Lambert Co. in Morris Plains, who has been awarded the Science and Technology Medal by the Research and Development Council of New Jersey.

"When people come into a CEO's office, it's almost a sure bet they're bringing in problems. That's just fine with me.

"I'm in my office at 7 a.m. and don't head home until 6 p.m. However, when I do go home, I go home," Williams said.

"But I don't want to give the impression I think I can handle everything myself. I believe in hiring the finest talent available, then giving employees a lot of leeway with adequate supervision.

"You must be able to offer constructive criticism, while showing respect. And I never forget a "thank you" for a job well done."

The council's award selection committee stated Williams "elevated Warner-Lambert to the upper strata of premier discovery pharmaceutical companies, bringing forth remarkable new products that are of great benefit to the world."

Committee Chairman Dr. Stanley Bergen Jr., who is the president of the University of Medicine and Dentistry of New Jersey, said, "Joe Williams" leadership has been primarily responsible for Warner-Lambert's rise in the past five years to one of the pre-eminent pharmaceutical research organizations in the world."

Williams, a resident of Bernardville, joined Parke-Davis as a salesman in 1950 shortly after graduating from the University of Nebraska with a bachelor's degree in pharmacy.

The firm merged with Warner-Lambert in 1970. He became president of Warner-Lambert in 1979, then board chairman and chief executive officer in 1985.

Under his leadership, the firm invested heavily in research. Its sales were in excess of \$4 billion last year.

Williams has received honorary doctorates from four universities and four colleges. The Remington Honor Medal from the

American Pharmaceutical Association, the profession's highest award, also has been bestowed upon him.

He is a director of American Telephone and Telegraph Co., Exxon Corp. and J.C. Penney. He is chairman of the United Negro College Fund (UNCF) and is development chairman for the Liberty Science Center, the state's science museum under construction in Jersey City.

He is a member of the boards of Columbia University and Project Hope. He is a former president of the International Federation of Pharmaceutical Manufacturers Association.

He also serves as a member of the Warner-Lambert Executive Committee, as well as the company's board of directors.

Williams is enthusiastic about today's well-educated young people.

"They're bright, very bright, and computer literate, but they must be kept motivated to achieve. However, those who have been unable to obtain a good education aren't in a position to compete.

"They need our help. That's why I've taken such an interest in the United Negro College Fund.

"Many black students are able to attend these schools because the tuitions are low. I consider support of these institutions of higher learning a top national priority.

"Poverty, drugs and family troubles have created a deteriorating environment for black youth. UNCF is attacking the deplorable situation at the higher education level, but reaching the grammar and high school students with a better education, and doing something about the social problems, is very complex and represents one of the most pressing crises in the nation today."

UNCF provides money to historically black colleges and universities.

Williams said America remains the land of opportunity.

"Of course, I'm concerned about the Middle East, and the crime and drugs in the streets, and can offer no solutions for any of them. But I visit foreign countries often, and I always return with a deeper sense of what a truly wonderful country this is.

"In our free enterprise system, anyone with an education, and the desire to work, can be successful."

Williams plays golf, but admittedly "not that well." He has a collection of antique cars, including a Rolls-Royce Silver Cloud.

"I like working on them. And I enjoy the attention I attract driving them around town."

He and his wife, Millie, an attorney, have two children—Daniel, a loan officer with a major corporation, and Terri, who is studying to be a registered nurse.

Williams' father, Huston, operated a pharmacy in Nebraska. But it was not until after he joined the Navy during World War II that he made his career decision.

"It is so long ago that I served aboard a submarine, it seems it was in another life. But that experience matured me, and it was then I decided definitely to enter the pharmaceutical profession."

Williams lives in a spacious home with fireplaces on a 10-acre wooded site.

"It's a great place to live, but it does have a drawback. The deer eat all our flowers." ●

**BUDGET SCOREKEEPING REPORT**

● Mr. SASSER. Mr. President, I hereby submit to the Senate the latest budget scorekeeping report for fiscal year 1990, prepared by the Congress-

sional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report was prepared consistent with standard scorekeeping conventions. This report serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

This report shows that current level spending is under the budget resolution by \$3.3 billion in budget authority, and over the budget resolution by \$4.2 billion in outlays. Current level is under the revenue floor by \$5.2 billion.

The current estimate of the deficit for purposes of calculating the maximum deficit amount under section 311 (a) of the Budget Act is \$114.8 billion, \$14.8 billion above the maximum deficit amount for 1990 of \$100 billion.

The report follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, September 24, 1990.  
Hon. JIM SASSER,  
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN. The attached report shows the effects of Congressional action on the budget for fiscal year 1990 and is current through September 20, 1990. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the 1990 Concurrent Resolution on the Budget (H. Con. Res. 106). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Since my last report, dated September 17, 1990, there has been no action that affects the current level of spending or revenues.

Sincerely,

ROBERT D. REISCHAUER,  
Director.

**THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, 101ST CONG. 2D SESS., AS OF SEPT. 20, 1990**

[In billions of dollars]

	Current level <sup>1</sup>	Budget resolution H. Con. Res. 106	Current level +/- resolution
Budget authority.....	1,326.1	1,329.4	-3.3
Outlays.....	1,169.4	1,165.2	4.2
Revenues.....	1,060.3	1,065.5	-5.2
Debt subject to limit.....	3,142.6	* 3,122.7	-19.9
Direct loan obligations.....	19.1	19.3	-2
Guaranteed loan commitments.....	115.1	107.3	7.8
Deficit.....	114.8	* 100.0	* 14.8

<sup>1</sup> The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval and is consistent with the technical and economic assumptions of H. Con. Res. 106. In addition, estimates are included of the direct spending effects for all entitlement or other mandatory programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions. In accordance with Sec. 102(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act (101 Stat. 762) the current level deficit amount compared to the maximum deficit amount does not include asset sales.

<sup>2</sup> The public debt limit has been increased temporarily to \$3,195 billion through Oct. 2, 1990 by Public Law 101-350.

<sup>3</sup> Maximum deficit amount (MDA) in accordance with section 3(7)(e) of the Congressional Budget Act, as amended.

<sup>4</sup> Current level plus/minus MDA.

THE CURRENT LEVEL REPORT, 101ST CONGR. 2D SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1990 AS OF CLOSE OF BUSINESS SEPT. 20, 1990

[In millions of dollars]

	Budget authority	Outlays	Revenues
<b>I. Enacted in previous sessions:</b>			
Revenues			1,068,600
Permanent appropriations and trust funds	954,969	791,109	
Other legislation	635,362	638,737	566
Offsetting receipts	-233,985	-233,985	
Total enacted in previous sessions	1,356,347	1,195,862	1,069,166
<b>II. Enacted this session:</b>			
Disaster emergency supplemental appropriations (P.L. 101-302)	2,293	666	
An act making technical amendments to title 5, U.S. Code (P.L. 101-303)		-1	
Amtrak Reauthorization and Improvement Act (P.L. 101-322)	-10		-10
Oil Pollution Act (P.L. 101-380)			-1
Customs and Trade Act (P.L. 101-382)		7	-4
Total enacted this session	12,283	672	-15
<b>III. Continuing resolution authority</b>			
<b>IV. Conference agreements ratified by both Houses</b>			
<b>V. Entitlement authority and other mandatory adjustments required to conform with current law estimates in budget resolution:</b>			
Salaries of judges	-8	1	
Payment to judicial officers' retirement fund	-4	-4	
Judicial survivors' annuities fund	-3	-3	
Fees and expenses of witnesses	-5		
Justice assistance	-4		
Fisherman's guaranty fund		1	
Administration of territories	-1		
Firefighting adjustments	-1,057	-192	
Federal unemployment benefits (FUBA)	5		
Advances to unemployment trust fund	(48)	(48)	
Special benefits	-24		
Black Lung disability trust fund	52	31	
Vaccine improvement program trust fund	7	7	
Federal payments to railroad retirement	1	1	
Retirement pay and medical benefits	-4		
Supplemental security income program	263	263	
Special benefits, disabled coal miners	21		
Grants to States for Medicaid	-907		
Payments to health care trust funds	(325)	(325)	
Family support payments to States	84	84	
Payments to States for AFDC work programs	15	15	
Payments to States for foster care	-83		
Health professions student loan insurance fund	-25	-7	
Guaranteed student loans	-175		
College housing and academic facilities loans	-3	-3	
Rehabilitation services	-79		
Payments to widows and heirs	( <sup>1</sup> )	( <sup>1</sup> )	
Reimbursement to the rural electrification fund	111	111	
Dairy indemnity program	( <sup>1</sup> )	( <sup>1</sup> )	
Conservation reserve program	720		
Special milk program	-2		
Food stamp program	-2,000		
Child nutrition programs	-74		
Federal crop insurance corporation fund	( <sup>1</sup> )		
Agriculture credit insurance fund	342		
Rural housing insurance fund	( <sup>1</sup> )		
Rural communication development fund	( <sup>1</sup> )		
Payments to the farm credit system financial assistance corporation	-2		
Coast Guard retired pay	-17		
Payment to civil service retirement	(84)	(84)	
Government payments for annuitants	-3	-2	
Readjustment benefits	-62		
Compensation	258	208	
Pensions	-62		
Burial benefits	-4		
Loan guaranty revolving fund	-7		
Disaster relief	-1,100	-883	
Total entitlement authority	-3,834	-371	

THE CURRENT LEVEL REPORT, 101ST CONGR. 2D SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1990 AS OF CLOSE OF BUSINESS SEPT. 20, 1990—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
<b>VI. Adjustment for economic and technical assumptions</b>			
	-28,685	-26,763	-8,900
Total current level as of September 20, 1990	1,326,110	1,169,400	1,060,251
1990 budget resolution H. Con. Res. 106	1,329,400	1,165,200	1,065,500
Amount remaining:			
Over budget resolution		4,200	
Under budget resolution	3,290		5,249

<sup>1</sup> Less than 500,000.  
Notes.—Numbers may not add due to rounding. Amounts shown in parenthesis are interfund transactions that do not add to totals.

**TRIBUTE TO SENIOR CHIEF GEORGE FRANKLIN LAMBERT**

● Mr. GARN. Mr. President, at this time, I would like to recognize the untiring efforts and service of Senior Chief George Franklin Lambert, a member of our local Naval Reserve.

Senior Chief Lambert has devoted the last 4½ years of his life to the efforts of making the Utah Vietnam Veterans' Memorial a reality. Since the memorial's inception in 1985, Chief Lambert has served as the chairman of the site selection and physical completion committee. This critical position required his close cooperation with the Utah State Office of Engineers, in order to designate the most appropriate location for the memorial on the Utah State Capitol grounds. I might mention, the Utah Vietnam Veterans' Memorial was the first memorial to be placed on the Utah State Capitol grounds in over 90 years.

Chief Lambert was responsible for developing and coordinating the memorial's architectural landscaping. He also oversaw the general construction and had to satisfy all of the State Officials and interested parties. Chief Lambert coordinated all of his efforts with the sculptor, Mr. Clyde Ross Morgan of Sedona, AZ. In other words, Senior Chief Lambert single-handedly carried out many exhausting tasks to bring about the fulfillment of many Utah Vietnam veterans' dreams, culminating with the memorial's dedication on October 15, 1989.

I wish to commend Senior Chief Lambert for his untiring efforts to see the Utah Vietnam Veterans' Memorial completed, from conception to dedication. On behalf of the citizens of Utah, our Utah Vietnam veterans, and especially those young Utahns whose ultimate sacrifice will now always be remembered, I salute Senior Chief George Franklin Lambert for his dedicated service to the State of Utah.●

**DEFENSE AUTHORIZATION BILL—H.R. 4739**

The PRESIDING OFFICER. Under the previous order, all after the enacting clause of H.R. 4739 is stricken, and the text of S. 2884, as amended, is substituted in lieu thereof. The bill is deemed read a third time, and passed, as amended, the motion to insist on the Senate amendment and to request a conference with the House are agreed to.

Under the previous order, the Chair also has authority to appoint conferees.

**BILL RETURNED TO CALENDAR—S. 1224**

Mr. METZENBAUM. Mr. President, I ask unanimous consent that S. 1224 be returned to the calendar.

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

**BILL PLACED ON CALENDAR—S. 3108**

Mr. METZENBAUM. Mr. President, I ask unanimous consent that S. 3108, introduced earlier today by Senator DIXON, be placed on the calendar.

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

**REMOVAL OF INJUNCTION OF SECRECY**

Mr. METZENBAUM. As in executive session,

I ask unanimous consent that the injunction of secrecy be removed from the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, with Annex, and a Protocol, Treaty Document No. 101-21, transmitted to the Senate today by the President; and ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

*To the Senate of the United States:*  
I transmit herewith, for the advice and consent of the Senate to ratification, the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, with Annex, and the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, with Annexes, done at Noumea, New Caledonia, on November 24, 1986. The report of the Department of State in respect of the Convention and Protocol is attached for the information of the Senate. I also transmit to the

Senate, for its information, the Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region.

The Convention for the Protection of the Natural Resources and Environment of the South Pacific Region will create general legal obligations designed to protect the marine environment of the region from a variety of sources of marine pollution. In so doing, the Convention provides new environmental protection for American Samoa, Guam and the Northern Mariana Islands, as well as for the Convention area generally.

The Convention and its Protocols on dumping and pollution emergencies entered into force on August 22, 1990. Ten countries have ratified or acceded to the Convention. These are: France, Australia, New Zealand, Papua New Guinea, Solomon Islands, Fiji, the Marshall Islands, the Federated States of Micronesia, Western Samoa, and the Cook Islands. Expedient U.S. ratification of the Convention and Protocol would demonstrate not only our commitment to the protection of the marine environment of the South Pacific but our continuing political commitment to the region as well. It would also allow the United States to participate fully at the first meeting of Parties, which will likely establish the financial and institutional arrangements for implementing the Convention.

I recommend that the Senate give early and favorable consideration to the Convention and Protocol and give its advice and consent to ratification,

subject to the two understandings described in the accompanying report of the Secretary of State.

GEORGE BUSH.

THE WHITE HOUSE, September 25, 1990.

Mr. METZENBAUM. All of the previous consents that the Senator has made had previously been cleared with the minority leader.

ORDERS FOR TOMORROW

Mr. METZENBAUM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m. Wednesday, September 26; that following the prayer, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business, not to extend beyond 10 a.m.; and that during morning business, Senators BRADLEY, LAUTENBERG, and MIKULSKI be recognized for up to 15 minutes each; and that there then be 5 minutes limitation for morning business; that at 10 a.m., the Senate resume consideration of S. 110.

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

CLOTURE VOTES TO BEGIN AT 5:30 P.M.

Mr. METZENBAUM. Mr. President, I further ask unanimous consent that the cloture votes ordered to begin at the close of morning business tomorrow be delayed to begin at 5:30 p.m.

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

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. METZENBAUM. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess, under the previous order, until 9 a.m., Wednesday, September 26, 1990.

There being no objection, the Senate, at 10:40 p.m., recessed until tomorrow, Wednesday, September 26, 1990, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate September 25, 1990:

DEPARTMENT OF JUSTICE

MARVIN COLLINS, OF TEXAS, TO BE U.S. ATTORNEY FOR THE NORTHERN DISTRICT OF TEXAS FOR THE TERM OF 4 YEARS. (REAPPOINTMENT)

DEPARTMENT OF LABOR

ELSIE V. VARTANIAN, OF NEW HAMPSHIRE, TO BE DIRECTOR OF THE WOMEN'S BUREAU, DEPARTMENT OF LABOR, VICE JILL HOUGHTON EMERY, RESIGNED.

WITHDRAWAL

Executive message, transmitted by the President to the Senate on September 25, 1990, withdrawing from further Senate consideration the following nomination:

DEPARTMENT OF LABOR

KAREN L. GILLMOR OF OHIO, TO BE DIRECTOR OF THE WOMEN'S BUREAU, DEPARTMENT OF LABOR, VICE JILL HOUGHTON EMERY, RESIGNED, WHICH WAS SENT TO THE SENATE ON MARCH 20, 1990. CA H25SE0.REC