SENATE—*Tuesday, November 2, 1993*

The Senate met at 10 a.m., and was called to order by the Honorable HARRIS WOFFORD, a Senator from the State of Pennsylvania.

PRAYER

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

Let us pray:

Let us observe a moment of silence for Kevin Jenkins and his healing. He is a son of one of the staff people in the reporters' office.

Eternal God, Lord of Heaven and Earth, ruler of the nations, at this difficult time in the Senate we pray for a special dispensation of divine grace, wisdom, and love.

Give to each Senator and staff member involved special insight and guide them in thought and speech and decision.

Let Thy will be done here as it is in Heaven.

In the name of the Lord. 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, November 2, 1993.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

Mr. WOFFORD thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. MITCHELL. Mr. President and Members of the Senate, momentarily the Senate will vote on my motion to instruct the Sergeant at Arms to request the presence of absent Senators. Immediately following that vote, or approximately 20 minutes from now, the Senate will resume debate on the Ethics Committee resolution regarding Senator PACKWOOD. That debate will continue throughout the day except for the period from 12:30 p.m. until 2:15 p.m., at which time the Senate will stand in recess to accommodate the respective party conferences.

It is my hope and intention that the Senate will complete action on the Ethics Committee resolution today. Therefore, I intend that the Senate will remain in session continuously until that matter is resolved.

Immediately upon disposition of that resolution, by agreement entered last evening, there will be 1 hour for debate on a motion to invoke cloture or end a filibuster with respect to five pending nominations. There will then follow a vote on cloture. If cloture is obtained, there will then be a period for debate of 90 minutes. Following that, there will be a vote on each of the five nominees.

So it is possible that there will be a substantial number of votes today, including votes on or relating to the Ethics Committee resolution, on cloture, on the filibuster with respect to the pending nominations, and then, if cloture is invoked, on each of the five nominations themselves.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

VOTE

The ACTING PRESIDENT pro tempore. Under the previous order, the pending question is the motion to instruct the Sergeant at Arms to request the presence of absent Senators.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY], is necessarily absent.

I also announce that the Senator from Illinois [Ms. MOSELEY-BRAUN], is absent because of illness in the family.

The result was announced—yeas 97, nays 1, as follows:

[Rollcall Vote No. 345 Leg.]

YEAS—97

Akaka	Bryan	Coverdell
Baucus	Bumpers	Craig
Bennett	Burns	D'Amato
Biden	Byrd	Danforth
Bingaman	Campbell	Daschle
Bond	Chafee	DeConcini
Boren	Coats	Dodd
Boxer	Cochran	Dole
Breaux	Cohen	Domenici
Brown	Conrad	Dorgan
Durenberger	Kempthorne	Pell
Exon	Kennedy	Pressler
Faircloth	Kerrey	Pryor
Feingold	Kerry	Reid
Feinstein	Kohl	Riegle
Ford	Lautenberg	Robb
Glenn	Leahy	Rockefeller
Gorton	Levin	Roth
Graham	Lieberman	Sarbanes
Gramm	Lott	Sasser
Grassley	Lugar	Shelby
Gregg	Mack	Simon
Harkin	Mathews	Simpson
Hatch	McConnell	Smith
Hatfield	Metzenbaum	Specter
Heflin	Mikulski	Stevens
Helms	Mitchell	Thurmond
Hollings	Moynihan	Wallop
Hutchison	Murkowski	Warner
Inouye	Murray	Wellstone
Jeffords	Nickles	Wofford
Johnston	Nunn	
Kassebaum	Packwood	

NAYS—1

McCain

NOT VOTING—2

Bradley Moseley-Braun

So the motion was agreed to.

ISSUANCE OF A SUBPOENA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of Senate Resolution 153, which the clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 153) to comply with the issuance of a subpoena.

The Senate resumed consideration of the resolution.

Mr. METZENBAUM addressed the Chair.

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

Mr. METZENBAUM. Mr. President, I rise to speak to the subject in a little bit different aspect than that which was discussed yesterday. Yesterday, we heard some very eloquent presentations having to do with the legal aspects of the question of whether or not the Senate should proceed forward on this matter of a subpoena. The arguments were good, they were eloquent, they were intelligent, and they addressed themselves to that issue.

I did not hear a single word concerning the basic charges that have been leveled against the Senator from Oregon, except for the comments of the very distinguished and able Senator from Washington. And that is what is concerning me. I am concerned that while this matter moves forward, if the Senate gives its approval on the question of the subpoena in order to get more information, that the basic charges against the Senator from Oregon, which were filed by approximately 20 women, more or less, will be

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in abeyance, that nothing will be occurring.

Frankly, I think that if it goes to the district court and then it goes to the court of appeals and then it goes to the Supreme Court, it will be 2 or 3 years at least before the matter is really resolved.

The Senator from Washington said:

A vote for the resolution sends a message to citizens throughout our Nation that sexual misconduct in the Senate will be investigated to the fullest possible extent. A vote against this resolution sends a clear message also to every woman in this country that if you are harassed, keep quiet, say nothing, the cards are stacked against you ever winning. Procedures, rules and other issues will obscure the allegations being investigated.

I have tremendous respect for my distinguished colleague from Washington. But I do not really see it that way, because as I see it—I am not saying anybody should vote for or against the motion. I think that is a decision each of us will have to make on his or her own. But what concerns me is that if this matter is in the courts for 2 or 3 years and the Ethics Committee is not moving forward during that period, then indeed those 20 women, or whatever the number is, who have filed the charges will be very upset, as will many other people throughout the country.

So my real question to address to the chairman and ranking member of the Ethics Committee is that you had a lot of evidence brought to you by live witnesses, witnesses who testified before you, as I understand it. I do not know how you got your evidence. It was my understanding that a number of women testified; that you also had certain information from the diaries going up to 1988. But the fact is that the actual testimony of those women, what has appeared in published reports—and I know nothing more than that, to make a prima facie case before the Ethics Committee. My concern is that this matter is going to be put on the back burner awaiting a decision by the court.

I wonder whether the chairman of the Ethics Committee, for whom I have tremendous respect, and who I think has done a tremendous job under very difficult circumstances, and I say the same for the ranking member—I wonder whether or not we can be assured that this matter will go forward pending decisions of the court, or whether we may have to assume that it is just going to be delayed until all of the court procedures have been resolved.

Mr. BRYAN. Let me try to respond to my friend from Ohio by saying, first, we strongly believe that there is evidence in the diary from 1989 to 1993, the only portions that are requested. Again, to refresh the Senator's memory, the staff has reviewed each of the pages of the diary, some 5,000 pages, from 1969 to 1989, up to that point on October 17 which was the subject of our discussion yesterday, at which point an impasse was reached.

So, first, let me respond by saying that we believe that there is other relevant information to the sexual misconduct allegations contained in the diary, and that comes as a consequence of what the committee staff knows based upon its investigation to date.

Second, with respect to the assurance that the Senator requests as to the action that the committee would take, I can give no assurance as to what course of action. That is something that the committee itself would have to decide based upon the situation that it confronts at the time.

I think the vice chairman and I are hopeful, and the entire committee is hopeful, that the Senate will support the position we have taken. We do not know what position, if any, might be taken by Senator PACKWOOD and his counsel in court. We do know that, under the circumstances, our counsel would clearly request an expedited consideration of any matter pending.

Mr. METZENBAUM. Although the committee has not acted on the question of whether to go forward or not to go forward, certainly it would appear—and I know nothing at all about the facts, but I have read something like 20 women having testified, and I am aware of the fact that the committee staff has been able to investigate the diaries through 1988.

My question is: Is it not reasonable to expect that there is sufficient evidence there from which at least a preliminary conclusion could be reached so that—I believe that dragging this matter through the courts—and I am not opposed, and I understand why you want the subpoena, and I am not addressing myself to that question. I do know that if this matter drags out 1, 2, or 3 years—and I think 3 years is probably closer to an accurate figure than 1—and nothing is done by the Ethics Committee, I believe it will not reflect well on the U.S. Senate. I think that it will indicate we got ourselves embroiled in a legal battle rather than dealing with the facts of the case.

Mr. BRYAN. That, of course, is a decision largely in the hands of Senator PACKWOOD and his counsel. It is a course of action they are entitled to take under the law. Obviously, the committee is very sensitive to having this matter considered as expeditiously as possible, to be disposed of so that witnesses who have come before the committee have an opportunity to be heard and ultimately the issues be resolved.

My response would only be that, No. 1, if the committee is denied access to the material from 1989 to 1993, it is incomplete. In other words, the allegations are, under the primary charges, sexual misconduct, the alleged intimidation of witnesses, and the use of staff in furtherance of that intimidation. It is only allegations. Obviously, with respect to the intimidation allegations, those arise, if they are there at all—and no judgment or conclusion has been made by any of us as to the qualitative evidence that may be available on those—those arrive, if at all, during the 1992–93 timeframe, the very period covered by the diary entries that we seek to gain.

I note that the vice chairman is on the floor. Let me yield to him, with the Senator's permission.

Mr. MCCONNELL. I say to my friend from Ohio, the committee is acutely aware of the issue that you raised this morning, and it is our hope to complete this case at the earliest possible time. I think that is the best way.

Mr. METZENBAUM. Are the chairman and the ranking member impliedly indicating that, by reason of their inability to obtain all of the information in the diary from 1989 on, there will be a delay in dealing with the basic issues that have been brought to the committee by the women?

Mr. MCCONNELL. I do not know how far afield the debate will go. It is our hope today to focus on the issue of subpoenas and to move forward, and it is difficult, frankly, to respond to a hypothetical. All I can tell the Senator from Ohio is we are acutely aware of the point he raised this morning. All members of the committee are aware of that argument, that concern, and it is the goal of the committee, I think without exception, to finish this case at the earliest possible time. All we are asking from the Senate today is to support the process which is now before us.

Mr. METZENBAUM. I understand the responses of both the chairman of the committee and the ranking member.

Mr. BRYAN. Let me, if I might, just amplify the response of the distinguished Senator from Kentucky. The issue before the Senate is, Shall the Ethics Committee, having come across evidence which it believes raises the possibility of other violations, be denied access to that information? That is really the issue.

Mr. METZENBAUM. I understand.

Mr. BRYAN. Every right, every legal advantage which Senator PACKWOOD is entitled to under the law, all of these issues can be raised in a Federal court. That is his right. Nobody denies that. But this is a very narrow issue we are dealing with, I say with great respect to my friend.

Mr. METZENBAUM. I am not addressing myself to that narrow issue.

Ms. MIKULSKI. Mr. President, if the Senator will yield, perhaps I can help the Senator.

First of all, I thank the Senator for raising what I think is a bona fide issue. The question is timeliness and moving on the charges relating to sexual misconduct and the intimidation of witnesses. The Senator's concern that the cause related to the issues relating to sexual misconduct is languishing,

moving on a back burner, I think are bona fide concerns.

What the Senator from Ohio should understand is the process that we have been undertaking. We have in a meticulous and often tedious way been working through this case throughout the entire process. The Senator should know that the PACKWOOD lawyers have engaged in dilatory and stonewalling tactics. That is why it has taken the committee, ready to move in a robust and honorable way, to October to get here.

Now, in the midst of the deposition and knowing what our timeframe was, I say to the distinguished Senator from Ohio, we have concluded the depositions with the women. We are now in the process of getting a deposition from Senator PACKWOOD. In the course of that deposition, out came the information about the diaries. It had been our hope to be able to move in an expeditious way subsequent to the conclusion of the deposition.

Where we now find ourselves as a committee is, No. 1, a diary; No. 2, a diary that Senator PACKWOOD has made available up until 1989. The information from 1989 through 1992, we believe, has information related to two issues, one the original issue that brought the PACKWOOD case to the Ethics Committee and possibly—and I want to underline "possibly"—new material.

Therefore, we need the subpoena to move ahead. And then we will need to evaluate whether there will be other ways of moving this. But I want the Senator to know, No. 1, we would have finished this a lot earlier if we had the cooperation of the PACKWOOD attorneys; No. 2, the deposition on Senator PACKWOOD could not be completed because it was interrupted for this. Because the deposition has not been completed, we cannot evaluate, then, what would be a subsequent way of most effectively dealing with this.

I do thank the Senator for raising the issues and concerns to ensure that the women who are involved in this do also get a fair deal, that while we are very much concerned about the rights of Senator PACKWOOD, I thank the Senator for being concerned about the rights of the women.

Mr. METZENBAUM. I thank the Senator from Maryland, my friend.

I want to say for myself that if the Ethics Committee is in a position to proceed forward on the basis of the evidence which is already available and in hand and if it awaits additional information pending resolution of this question that is before us here concerning the subpoena, I would think that that would not necessarily be in the public's best interest.

I am concerned that interminable delay while this matter proceeds through the courts—I am not suggesting we should vote against the subpoena by reason of that fact, but I am saying if the committee has sufficient evidence to proceed forward, that they ought to give consideration to doing so, while, at the same time, assuming they get the authority from the Senate, while, at the same time, proceeding through the courts to get additional information.

I think that would serve the public interest and, I would say with some emphasis, the interest of the women who filed this complaint, as well as all women and others who have a strong interest in this case.

I yield the floor.

Mrs. BOXER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. BOXER. Thank you very much, Mr. President.

I, too, appreciate the Senator from Ohio standing up to whom I assume he thinks speaks for the aggrieved women.

But I have to say to the Senator that we have heard from the chairman of the Ethics Committee that there may well be relevant information pertaining to sexual harassment in these documents and diaries that Senator PACKWOOD and his attorneys are refusing to turn over.

We do not know that, but correct me if I am wrong, Mr. Chairman of the Ethics Committee, is it not so that it is possible that there is information in these diaries that the chairman is seeking to get that would, in fact, relate to the original charges that are before him?

Mr. BRYAN. The Senator from California is correct.

Mrs. BOXER. I would say to my friend from Ohio, these women want justice. And there are over 20 of these women, some of whom have carried this burden around for a heck of a long time. And if it means that we have to wait a little longer to possibly get some new information so that the Ethics Committee knows everything that they need to know, I think it is important that we support these women by supporting the Ethics Committee.

Mr. President, I stayed here through every speech last night and sometimes I felt like I was in a law school class. And I never went to law school, so I could be wrong on that.

But I heard about hypothetical this, and hypothetical that. And there are women—as Senator MURRAY pointed out, because I think, as she usually does, she brought us back to reality last night—that are waiting for this work to get done. And there are those of us in this Chamber who are waiting for the Ethics Committee to get its work done, but to do it in the most thorough way, because it is very, very serious.

It is important to note that the Senator made these diaries available in the first place. And, again, I am not a lawyer, but, as I understand it, in a court of law, if someone makes documents available to defend himself or herself, then the other side deserves the right to see those documents. I think that is also fairness and common sense.

We would not be here today if Senator PACKWOOD and his attorneys would continue to live up to the initial agreement. And I think that is important to understand.

So I believe there are four compelling reasons to support the Ethics Committee.

First, their actions are entirely proper under the Senate rules that we abide by here. The rules of the Senate say:

> It shall be the duty of the Select Committee—on Ethics—to * * * investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct and violations of rules and regulations of the Senate.

In carrying out this duty, the committee is also clearly authorized under the rules "to require by subpoena * * * the production of such correspondence, books, papers and documents * * * as it deems advisable."

In title II, United States Code, section 288(d), the committee is authorized by law to enforce its subpoena for documents and to do so by reporting a resolution such as the Senate is debating today.

Clearly, Mr. President, the Ethics Committee has followed the letter as well as the spirit of the law in taking steps to issue and enforce the subpoena in question.

Now, if Senators do not like the law, if Senators think there ought to be another way to deal with these issues, then I think that is a very reasonable issue to debate. But it is an issue and a question for another day and another time. And I am very willing to agree that there may well be merit in looking at it another day.

A second reason why the Senate should approve the Ethics Committee resolution is that support for the subpoena and the authority to enforce it is clearly bipartisan, painfully so. This has to be a horrible situation for those Republican members to have to deal with this, and yet they are unanimous. And for us to walk away from that, I think is clearly wrong. They say they need this information and we should believe them.

Third, Mr. President, I believe the Senate should support this resolution because it is a reasonable request of the panel which was created in 1964 to handle matters concerning the conduct of Senators. Again, it is the sole process that we have. The Ethics Committee is doing its duty.

And, finally, if we do not support the committee in its efforts to complete this investigation, we will be sending a message that we are incapable of policing ourselves. We will be sending a message that the Senate is willing to

turn its back on possible—"possible," underlined—criminal violations. We must not do this. We must keep faith with the American people and demonstrate that Senators will be held accountable for their conduct.

We must not be intimidated into inaction. Intimidation to me is the lowest form of behavior. Let us not be threatened into turning away from the ethics process. The integrity of this institution must prevail, not threats and intimidations.

As the New York Times editorial of October 28 states:

If the Senate has any honor, it will not tolerate further evasions or intimidations * * * Its Ethics Committee deserves the full Senate's support.

And an L.A. Times editorial of October 30 says:

* * * Quick and decisive Senate action is essential.

So in closing, Mr. President, as long as the Ethics Committee has the responsibility we have given it, we must allow the Ethics Committee to do its job. It is not pretty, it is not pleasant. But the Ethics Committee tells us in the strongest bipartisan way that they need this information. I say we should support them to a person.

I yield the floor.

Mr. PACKWOOD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, again I do not want to get into argument over who struck John, what was the agreement between the counsel, was there a waiver.

Mr. WALLOP. Mr. President, will the Senator yield for one moment, please?

Mr. PACKWOOD. Yes.

Mr. WALLOP. Mr. President, I have been troubled by several of the last few discourses on this floor. It is my hope that we are not presuming the conclusion of the Ethics Committee of the search for the information to which it feels itself entitled. I do not feel that it is a known fact. I do not feel that the committee can say either that there was a conclusion about the original charges of harassment of women, or especially about the so-called charges that may be criminal.

I am taking the liberty of my friend's time on the floor to say that I have no way yet of knowing how I am going to vote on this issue before us. I have no way yet of knowing if the issue before us is going to be exactly the same as it is now presented. But I have every way of knowing, and so should every Member on this floor, that the committee has yet to do its work and yet to reach its conclusions.

It has reached a conclusion that it seeks a subpoena. We do not know that women have been abused. We have seen that reported in the papers, and maybe it is true and maybe it is not. But it is absolutely the entitlement of the Senator from Oregon, or any other Senator who sits in this Chamber and serves in this Senate, to presume their innocence until such time as a conclusion has been reached by this committee.

I heard last night some things which I thought were very troubling. I heard that no committee member has seen what is contained in these diaries. We see reported in the paper this morning, in the Oregonian, attributed to committee sources, Senate sources—and there is only one Senate source that knows what is in these diaries—details of what theoretically may or may not be a criminal charge. We are entitled to know that the committee will protect its information before ceding it—yielding it up.

It strikes me as strange that this Senate, somehow or another, is having the thoughts of criminal activity tossed around when no preliminary inquiry has been launched by that committee, no majority vote has been taken. Surely we can be patient long enough to know what the committee's conclusion is before rendering judgment.

The issue before us is much more narrow than that. The issue before us is: Shall we authorize this committee to issue a subpoena?

Last evening on the floor the Senator from South Dakota said that the sole reason that the committee existed was to protect the reputation of the Senate. I tell you, as having been its chairman, that is not the sole reason that the committee exists. The committee has the fundamental obligation, and it was exercised frequently during my tenure there and others' tenure as chairman, to protect as well the reputation of Senators. We have no business leaking. We have no business assuming. And yet many of the conversations on this floor are about assumptions.

I say that our obligation, and the committee's obligation, is to protect the reputation of Senators because anybody who has served on that committee knows of the enormous volume of frivolous charges that come floating through, some of which are extraordinarily serious and some of which in public are damaging in the extreme and some of which, once reaching the public, can never be expunged from a person's record.

There was a time when the Senator from Wyoming took the side against his own party in the middle of a campaign to defend the reputation of a Senator who had been unlawfully charged, and frivolously charged. The committee's fundamental obligation is twofold, not onefold. The committee's fundamental obligation is to protect the reputation of the Senate and to protect the reputation of Senators. And we all do it a disservice if we prejudge its conclusions or leak any information about it.

I hope that what we are about debating is whether or not a subpoena in such broad terms should be issued. I hope we are not about debating what others in the country may be thinking about what has yet to be concluded, and which has no right to have been concluded because all the information is not present. Indeed, that is what the whole issue of the subpoena is about.

As I said before, I have no idea how I am going to vote on this thing. The arguments are compelling on both sides right at the moment. It is no less painful for each Senator than it has been for the committee. But it is painful to hear a conversation on this floor assume that some judgment has been rendered, because it has not been.

It is not the obligation of the committee to protect its reputation in front of the press. Its reputation is developed by how well or poorly it finally does its job—ultimately. The pain of being on it is not to be relieved as a matter of relief from pain for being on the committee. The pain of being on it is to be relieved by doing its job, rendering its conclusions, and asking the Senate for its ultimate support. And I hope that is what we are about.

I thank my friend from Oregon. I am sorry to interrupt him.

Several Senators addressed the Chair.

Mrs. KASSEBAUM. I wonder if the Senator from Oregon would allow me just to follow the Senator from Wyoming just for a moment?

Mr. PACKWOOD. Absolutely.

Mrs. KASSEBAUM. Mr. President, I rise to make a few comments regarding those offered by the Senator from Wyoming. I, too, was disturbed last night by some comments made by the Senator from Washington. I would like to read a couple in particular that I would question.

The Senator from Washington said:

I believe that Members of this body must demonstrate to the people of this Nation that we will not abdicate our responsibility to discipline ourselves.

I think each and every one of us takes that responsibility seriously. This is not a question of abdicating that responsibility. I think it really is a question of asking some thoughtful questions that need to be asked. Many of us might wish that it did not take this long, or in this public a forum, but that is also part of the process that is important.

I think, also, it is a mistake to assume in this debate, in this particular debate, that the message of this vote today, and I quote,

* * * goes beyond the support of the Ethics Committee request. A vote for the resolution sends a message to citizens throughout our Nation that sexual misconduct in this Senate will be investigated to the fullest possible extent.

I would just suggest to my colleague from the State of Washington, that is not what this debate at this particular moment is about. It is really about

whether the subpoena as such is one that is going beyond an initial scope of inquiry of the Senate Ethics Committee and whether the questions that are being asked are ones that are important to be asked.

I have a great deal of respect for the Ethics Committee. I once served on it myself. And I have enormous respect and support for the work of the Ethics Committee. But I think it is very important for us not to send a message out on and beyond the Senate Chamber that this is, somehow, a reflection of whether we support or do not support sexual misconduct.

This is really more about our own thoughts of the work of the Ethics Committee; our support for that work but our willingness to ask probing questions. And I believe we will, each of us, find the right answers.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I thank the Chair. Let me say again, I want to start out by saying I do not want to get into an argument about who struck John. I thought one of the best statements we had last night was by Senator HEFLIN, Judge Heflin, former chief justice of the Alabama Supreme Court, when he said these arguments about privacy and constitutional rights are ill-decided here. Those are issues for the courts. And I think we could argue until we are blue in the face on the floor of the Senate and we can cite cases and they can cite cases about how the court will come out, and we will never know until the court comes out. So I want to pass over that for the moment, as to what was the agreement between counsels and who did what.

But before I continue on I would like to ask a question of Senator SPECTER, if I could, who I think is probably our most experienced trial attorney. If I might ask him one question.

Would you tell me what the normal process is in a normal cause—whatever that may be—when somebody is subpoenaed to produce relevant documents?

Mr. SPECTER. Mr. President, the process is that the party subject to the subpoena turns over all documents which are called for in the subpoena as the recipient of the subpoena understands it; and compliance, full compliance requires that all documents be turned over. The judgment is that of the recipient, and the recipient is subject to penalties under perjury because the recipient, under court process, appears in response to the subpoena, takes an oath that those are all of the documents called for, and submits the documents of the subpoenaed party.

Mr. PACKWOOD. Does that mean, therefore, that the person subpoenaed makes the decision as to relevancy, what he or she thinks is relevant to the subpoena?

Mr. SPECTER. It does. The person receiving the subpoena makes the decision as to relevancy and the scope as called for in the subpoena is subject to the interpretation of the person receiving the subpoena. But that is subject to penalty for perjury if the responses before the subpoenaed parties are not truthful.

Mr. PACKWOOD. I thank very much our colleague from Pennsylvania. I want to ask the Chair or the Vice Chair, if I might, prior to the issue of the diaries, we submitted over a thousand pages of documents to the committee; is that right?

Mr. BRYAN. Senator, let me inquire of counsel.

Mr. PACKWOOD. I believe it is 1,036.

Mr. BRYAN. I am informed by our counsel it was a substantial amount of information. He has no reason to disagree it may have been a thousand. I want to be careful not to make a misstatement.

Mr. PACKWOOD. For purposes of my question, it does not matter if it was 500 or 1,000. It was a lot of pages. Who determined the relevancy of those pages?

Mr. BRYAN. Senator, in responding, if you are talking about the document request dated on the 29th of March——

Mr. PACKWOOD. No; I mean the thousand that have already been submitted.

Mr. BRYAN. Those were submitted, I presume, some of those were made available before the document request, some after the document request. The Senator from Oregon made a determination as to what was relevant.

Mr. PACKWOOD. As we looked through all of the documents we had, my lawyers and I said this is relevant, this is not, this is relevant, this is not. Actually the only quarrel we had with the committee was not over relevancy, it was whether some documents were attorney-client privilege. We submitted those to Judge Starr.

I do not think in the documents we produced there was any argument about relevancy, nor did the Ethics Committee go into all the documents we had to see if what we produced was relevant; is that correct?

Mr. BRYAN. I cannot respond to that. I can say you produced documents that you and presumably your counsel made a determination were relevant. They were provided. There was a good bit of difficulty in some ways. We went to Judge Starr to make determinations.

The Senator correctly reported we resolved that in favor of the committee and the committee accepted that. We had a right to challenge it. What became an issue is whether the Senator from Oregon——

Mr. PACKWOOD. I understand. All I am saying is in the 1,036 pages of documents we produced, the committee took our word those were the relevant documents. They did not say we demand to see if you produced the correct documents.

Mr. BRYAN. That is correct.

Mr. PACKWOOD. If I can address myself to Senator MCCONNELL and his statement yesterday:

> . . . I want to point out the bitter irony, that if Senator PACKWOOD's attorneys had responded properly to the committee's earlier requests, simply by producing those diary entries relating directly to the allegations before us, it is inconceivable that we would be in the position we find ourselves in today, arguing before the Senate and the entire world over a committee subpoena of complete diaries. In other words, if the committee's request had been complied with, then the committee would have gotten what it wanted and the rest of the diaries would have remained undisturbed in Senator PACKWOOD's safekeeping forever and ever. None of the subpoena of the diaries in toto, the media circus, the floor fight would have occurred.

Do I interpret that statement to mean that had we complied with the diaries that, as you say we wish we had, they would have been treated like the other thousand pages we put in and the committee would have accepted our definition of relevancy and not asked for more?

Mr. MCCONNELL. It is my view, and I sought to express it yesterday, that had that occurred at that time——

Mr. PACKWOOD. Right.

Mr. MCCONNELL. All of this would have been avoided. I suppose I could not guarantee it, but that is certainly my view, that it would have been avoided.

Mr. PACKWOOD. Now, if I might address the chairman. In response to a question from Mr. COHEN yesterday—Mr. COHEN said:

> Well, that is the original question I asked you. If in fact Senator PACKWOOD said I have a diary, 8,200 pages long, and I am giving you 30 pages of relevant information of the 8,200, would that have been satisfactory to the committee, or would the committee then insist, no, we want all 8,200 pages? That is really what the issue is, I think, for many members.
>
> Mr. BRYAN. Certainly, at that early stage, before the new information came to our attention, we would have been content to have had the information the Senator identified.
>
> Mr. COHEN. At that point, had he simply said I have a diary with 30 pages of relevant information, the committee would have accepted his definition of what is relevant and not insisted upon a full examination of the 8,200 pages?
>
> Mr. BRYAN. I think it is fair to say * * * that.
>
> Is that correct?

Mr. BRYAN. That is, but I think it is important, Senator, to indicate that that would have been a time earlier if the Senator had voluntarily produced his diary pursuant to the document request, much in the context of Senator MCCONNELL's response earlier, I believe that that would have satisfied it. The situation became much different when

the Senator refused to provide that information. Thereafter, during the course of his examination, the committee became aware that there was relevant information. I think at that point I would say with respect to the Senator the situation was very different. Having once failed to provide information that is clearly relevant, relevant by the Senator's own testimony, at that point I do not believe that the committee was in a position to accept the Senator's view of what was right.

Mr. PACKWOOD. I understand that. If the chairman might continue. At the initial—I mean your response is correct. At the initial time you asked it, had we provided it, the committee would not have pursued it any more than they pursued the thousand pages?

Mr. BRYAN. To some extent, the Senator's question is speculative, but I believe that is likely the case.

Mr. PACKWOOD. Right. And in that case we would have produced the information that was relevant to the charges and the committee would not have seen the particular entry that has been the cause of the so-called incident, or the other of the—OK.

Now, we met last night, and the agreement of the meeting was that we would not tell the press about the meeting and we would not discuss the meeting but we were free to discuss it on the floor, is that correct?

Mr. BRYAN. That is correct.

Mr. PACKWOOD. Right. Now, last night we met, and I had indicated on the floor yesterday I did not know exactly what it was that this incident was they were talking about. I had a suspicion, based upon stories in the newspaper, that related to Steve Saunders offering my wife a job. That is the only suspicion I had. It turns out the committee had found on the same page references to Lester Pollack and Ron Crawford offering a job, although my attorney indicates that when Mr. Baird talked with him about this issue no issue was mentioned except the Saunders issue. And, in addition, last night the committee indicated they were interested in a job offer from a man named Tim Lee.

Now, Mr. Chairman, do I accurately reflect that as of last night?

Mr. BRYAN. Certainly those indications which the Senator has just made, that was certainly part of the conversation that was held last night.

I just simply say to the Senator and my colleagues, since I have not seen either of those two entries, the information that I have had and which I have shared here is based upon both the chief counsel, Mr. Baird, and another member of our staff who have seen those.

So you are asking me to state what may be in those diary pages. I am not able to do that. I can indicate that that was the substance of the conversation, and the committee staff did indicate that there were several matters included——

Mr. PACKWOOD. But you relied upon what the counsel told you, I assume.

Mr. BRYAN. That is correct.

Mr. PACKWOOD. Now, did the counsel say last night that this—counting all of these four people now, not just the Saunders incident—this was the only other incident, if we count the four as an incident, that the committee had, they had nothing else at the moment that they were searching for other than the original charges, of course.

Mr. BRYAN. With the Senator's indulgence.

As I am informed, those were the areas that were discussed. Those were the areas that were of concern to our counsel. And also whether those incidents would indicate or reveal any kind of pattern——

Mr. PACKWOOD. That is correct.

Mr. BRYAN. During the course——

Mr. PACKWOOD. Job offers to my wife.

Mr. BRYAN. Which—you know, going beyond what was initially observed.

Mr. PACKWOOD. I understand that.

Mr. BRYAN. And also the possibility of any interrelationship between that and the other issues which are before the Senate.

Mr. PACKWOOD. I understand that. I wish to make sure of your counsel's answer. The only thing they had seen in the diary were these job offers to Georgie, which ticked off—my wife. Pardon me, my former wife Georgie —which had ticked off a problem in their mind. They had not seen anything that related to campaign violations or something of that nature. At least as they told us last night, this was the issue. Is that correct?

Mr. BRYAN. I recall no discussion last night of any campaign issue.

Mr. PACKWOOD. All right.

Mr. BRYAN. That was not discussed last night, Senator.

Mr. PACKWOOD. No. But I specifically asked last night, is this the troubling issue, and were there any others, and I was told, no, this is the issue.

Mr. BRYAN. Well, you say this is the issue. There were several things that were commented on that relate to what the Senator has just——

Mr. PACKWOOD. I understand.

Mr. BRYAN. I want to be very careful that the Senator, who is a very skillful questioner, does not lock me into a position, because I have not seen that information, that would preclude me from responding at a later time if I do see the information.

Mr. PACKWOOD. I understand. I am not trying to cabin you in as to——

Mr. BRYAN. There was no discussion about campaign violations.

Mr. PACKWOOD. No discussion about other issues. The issue was employment opportunities for my wife and whether there were some quid pro quo on legislation or anything like that.

Mr. BRYAN. That is correct, as they relate to your official activities as a Senator.

Mr. PACKWOOD. I thank the Chair. Now, as I say, this was the first time I had discovered this. The staff indicated—realizing that the committee has not seen any of this, the staff indicated this was the only other troubling incident. And I am using this incident in the broadest sense of the word, anything that might have related to an employment offer to my wife. And I said, if that is the situation, would the committee consider adding this—they do not have to charge me, but we would respond to this charge, realizing there are no others that they now know about. They have got the allegations, the early charges, they have this that they have seen but nothing else—would the committee consider that, if I would respond to these charges also, with all of the relevant information that would be in the diaries as to these charges, in addition to the misconduct, sexual misconduct charges, would the committee consider that and let us provide the diary information for the only evidence that they had of things that concerned them? Now, did the committee say, Mr. Chairman, it would consider that?

Mr. BRYAN. The committee did say that. I specifically indicated that we would carefully consider any proposal.

Mr. PACKWOOD. Now, also, did I ask if my counsel and I could personally appear before the committee and argue our position?

Mr. BRYAN. That was requested. It was the view of Senator MCCONNELL and myself—and we have had a number of those requests. We believed that the appropriate course of action was to treat you the same as others who have requested to come, namely, those who are complainants and their attorneys, and we declined that. But Senator MCCONNELL and I did agree to meet with you, and we did in fact do so.

Mr. PACKWOOD. But as with many other procedural matters where we have asked to appear before the committee, we were turned down again, to appear, not on the substance.

Mr. BRYAN. Let me ask Senator MCCONNELL to respond if he would.

Mr. MCCONNELL. Let me just elaborate what the chairman has said. It was the feeling of my chairman and myself if we—I do not know how many other lawyers are involved in this.

Mr. BRYAN. Dozens.

Mr. MCCONNELL. Dozens. Dozens of lawyers involved with complaining parties, and we felt if we went down this path, there would be simply no way to fail to meet with all the lawyers, and that is all we would be doing.

Mr. PACKWOOD. Although in this case your lawyers are your committee staff who you meet with every day and talk with every day.

Now, last night as we were discussing this, chief counsel Baird, when my counsel said, "Senator, you have nothing to lose by this," made the statement—correct me if I am wrong, Mr. Chairman —well, the committee would lose its right to determine relevancy.

Mr. BRYAN. That is correct. That was the response. In other words, our view of your proposal is that the committee would lose its ability to determine relevancy and, in effect, that was the determination that was to be left to you.

Mr. PACKWOOD. That is correct. And by that he meant if you could not see all of the diaries, you could not determine relevancy.

Mr. BRYAN. The essence of the response by counsel, as I recall, is it is the proper function of the committee to determine relevance after looking at all of the information, and the committee, at least in the view of our counsel—a view which I share and I believe the vice chairman does as well—is that the committee could not, in effect, delegate that—or "abdicate" would probably be a better word—could not abdicate that decision to you and your counsel, that we would have to make that judgment.

Mr. PACKWOOD. In other words, you would not follow the same process that you had followed in the production of the thousand pages we produced where we determined the relevancy and gave to you and you said that is fine.

Mr. BRYAN. That is correct, because—let me just say that I think we crossed the Rubicon on that issue a long time ago. Senator MCCONNELL has addressed that issue, as have I. But once the information was determined in the diary to be relevant—your statement during the deposition—then that indicated, Senator, that you had failed to produce relevant information to the committee in response to those document production——

Mr. PACKWOOD. That is a different position.

Mr. BRYAN. If the Senator——

Mr. PACKWOOD. Now we are back to the issue of waiver again and did I waive my constitutional rights.

Mr. BRYAN. No, that is not an issue of waiver alone. It is certainly that, but it certainly indicates to the committee a question of whether or not the Senator from Oregon is going to be forthcoming because, at that point, the Senator did not provide that information even though the standard of relevance at that time was with respect to the three primary charges.

Mr. PACKWOOD. I understand what you are saying. Exactly. All I am saying is that up until this time we had been allowed to determine the standard of relevancy. Senator SPECTER says that is the normal way that relevancy is determined when you are subpoenaed. But at that stage, although I had asked you later, we have sort of negotiated—not negotiated—we sort of orally suggested the offer, you said for us to put it in writing.

I wish to emphasize to the Senate there were no other bits of evidence other than the sexual misconduct and this allegation that I illegally or unethically attempted to provide jobs for my wife. They had seen nothing else. They had no need for any other information to satisfy their knowledge as to what either they had charged or what they had seen. So with that, we sent the letter this morning:

DEAR SENATORS BRYAN and MCCONNELL: We would like to make the following proposal for a procedure to resolve the current situation involving the Committee's legitimate needs for information and Senator Packwood's rights of privacy in a manner which:

(i) recognizes the Committee's need to conduct a thorough investigation of the subject matter described in its February 4, 1993 statement as well as the matter referred to by the Chairman and Senator McConnell in conversations with us on November 1, and

(ii) protects the privacy interests of Senator Packwood and others who might be mentioned in the diaries.

Our compromise proposal to reconcile these two goals is one that the courts have used in this very situation dealing with private personal diaries:

1. As for the diary entries relating to the current preliminary inquiry—

These are the sexual charges—

—we have repeatedly assured the committee that we want them to have the information in the diaries bearing on the ethics charges so that we can promptly move to conclude those proceedings. We will review the diaries subject to the subpoena and select all entries which are relevant to the matters described in your February 4, 1993 statement. We will then immediately submit the diaries in their entirety to the Honorable Kenneth W. Starr, former Solicitor General and U.S. Court of Appeals judge who has been selected by the Committee to act as hearing examiner in this case. He would make an independent review of the diaries to ensure that all diary entries relevant to the pending preliminary inquiry as set forth in the February 4, 1993 statement have been identified. Judge Starr will then provide a copy of all such relevant entries to the Committee staff and return the diaries to Senator Packwood.

2. You have identified a matter reflected in a diary relating to helping Mrs. Packwood find employment and questions about linkage with official duties. We propose that we follow the same procedure noted in paragraph 1 involving Judge Starr to ensure that the Committee receives all diary information relevant to that matter.

"Judge Starr's responsibilities would be limited to making the decisions in connection with the items set forth in paragraphs 1"—the sexual charges—"and 2"—the employment for my wife's charges.

We believe this proposal strikes a reasonable balance between committee interests and responsibilities to investigate the matter identified in the February 4 statement and the additional matter which was described to us and referred to on the Senate floor today, as well as privacy interests raised by Senator Packwood's private personal diaries.

. . . by producing the diary entry . . . would preserve, and would not waive, any applicable Constitutional rights.

As Senator Packwood stated in our conversation earlier this evening, he . . . would like to meet with the full Committee to discuss this proposal.

I say that was turned town. Here is the import of this letter.

The only information that is now in the possession of the committee that even involved alleged wrongdoings are those relating to the preliminary charges, and those relating to whether or not I illegally or unethically attempted to get employment for my wife.

It is all within their possession or knowledge. We are willing to provide every scintilla of information that is relevant to those charges. What we object to is giving the entire diary to the committee and letting them go through it to see if they can find other charges of which they have no knowledge of which no one has complained of which not a single member of the staff has seen and say let us run these through and find everything we can conceivably find.

That is not fair. I wager not a single Member of this body if the committee says we have the right to go through every letter we have ever written, every phone call we have ever made, they could find allegedly something.

Now here in my mind is where the Senate is. Can the committee get everything it needs to satisfy every conceivable interest it has as to any possible violation that is now in their possession or in their mind?

And the answer is "yes." We will give it to you and go through the Judge Starr process. Let him have it all, pick out the relevant materials. We will not argue with him. Give it to the committee. If the committee says "no"—and we asked, they turned it down. I do not know why. I did not get to appear, get to argue. They turned it down, this request.

They have to have been turning it down on one of two arguments: First, we have the right, not just you, Senator PACKWOOD, but anybody who is charged with anything to go through all their materials to see if we can find anything else. It either has to be on that—Senator BIDEN and Senator COHEN attempted to raise this issue yesterday. Senator BIDEN said what is the opinion upon which the subpoena rested. Is it that the Packwood case is unique in which case perhaps we decide it on the uniqueness? Or is the committee saying they have the right ab initio, from the start, when there is a complaint, "Who killed Cock Robin?" somebody writes, and the committee says "Well, you may or may not have it. We want to see if you illegally violated campaign laws, if you illegally violated the gifts laws, or if you practiced law on the weekends. Give us your documents."

It has to be that or unique to this case. What is unique to this case is the argument as to what was the agreement between the counsel that there is a disagreement on, whether or not we waived any constitutional rights. And as Judge Heflin said, Senator HEFLIN, that is an argument for the courts. The Senate can solve both problems if it wants to without pushing this case to the outer limits of a constitutional test that, as Senator METZENBAUM said, may take 2, 3, or 4 years before the courts. I do not want to go to court. I do not want to pay for another several hundred thousand dollars. I do not want the taxpayers to pay several hundred thousand dollars, or a million. I do not want to have to pay several hundred thousand dollars or a million to test this in the course.

I would like this to be over with. But this Senate can get the answer and this committee can get the answer to every conceivable charge or thought that they have about any violations I may have committed without having access to all of the diaries unless they want to make—we can make the waiver argument and that can go to court. We can argue that until we are blue in the face up to the Supreme Court and through appeals.

But the Senate does not have to provoke a constitutional argument to get everything that is needed to resolve this case unless the Senate is going to say," Forget the privacy arguments, forget the waiver arguments. That is not really the principle we are trying to establish. What we are trying to establish is the principle that the Ethics Committee or any other committee has the right to as soon as any charges are filed to ask for everything that is in your possession and if under our rules as the Ethics Committee says we see something because we have forced you to give up the documents, then we will charge you with that, too."

So I would hope the Senate would be responsive. I wished I could have argued this before the committee with our counsel in person. That would be responsive to the argument I am making. Do you want to push this to a constitutional test in court? I would hope not. I would hope you would not. Or do you want to solve the problem that is before the committee which was the sexual misconduct charges, and, apparently, did I try to unethically or illegally try to get my wife employment?

We may hear more debate on this. I thought we made an honest effort to solve everybody's problem. We solved Senator METZENBAUM's problem of getting this case over quickly.

I ask unanimous consent that the letter that my committee counsel sent be placed in the RECORD.

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

ARNOLD & PORTER,
Washington, DC, November 1, 1993.

Hon. RICHARD H. BRYAN,
Russell Senate Office Building,
Washington, DC.

Hon. MITCH MCCONNELL,
Russell Senate Office Building,
Washington, DC.

DEAR SENATORS BRYAN AND MCCONNELL: We would like to make the following proposal for a procedure to resolve the current situation involving the Committee's legitimate needs for information and Senator Packwood's rights of privacy in a manner which:

(i) recognizes the Committee's need to conduct a thorough investigation of the subject matter described in its February 4, 1993 statement, as well as the matter referred to by the Chairman and Senator McConnell in conversations with us on November 1, and

(ii) protects the privacy interests of Senator Packwood and others who might be mentioned in the diaries.

Our compromise proposal to reconcile these two goals is one that the courts have used in this very situation dealing with private personal diaries:

1. As for the diary entries relating to the current preliminary inquiry, we have repeatedly assured the Committee that we want them to have the information in the diaries bearing on the ethics charges so that we can promptly move to conclude those proceedings. We will review the diaries subject to the subpoena and select all entries which are relevant to the matters described in your February 4, 1993 statement. We will then immediately submit the diaries in their entirety to the Honorable Kenneth W. Starr, former Solicitor General and U.S. Court of Appeals judge who has been selected by the Committee to act as hearing examiner in this case. He would make an independent review of the diaries to ensure that all diary entries relevant to the pending preliminary inquiry as set forth in the February 4, 1993 statement have been identified.[1] Judge Starr will then provide a copy of all such relevant entries to the Committee staff and return the diaries to Senator Packwood.

2. You have identified a matter reflected in a diary relating to helping Ms. Packwood find employment and questions about linkage with official duties. We propose that we follow the same procedures noted in paragraph 1 involving Judge Starr to ensure that the Committee receives all diary information relevant to that matter.

Judge Starr's responsibilities would be limited to making the decisions in connection with the items set forth in paragraphs 1 and 2.

We believe this proposal strikes a reasonable balance between Committee interests and responsibilities to investigate the matters identified in the February 4 statement and the additional matter which was described to us and referred to on the Senate Floor today, as well as the privacy interests raised by Senator Packwood's private personal dairies.

Of course, by producing the diary entries, Senator Packwood would preserve, and would not waive, any applicable Constitutional rights.

As Senator Packwood stated in our conversation earlier this evening, he and we would like to meet with the full Committee to discuss this proposal.

Sincerely,

JAMES F. FITZPATRICK,
DANIEL A. REZNECK,
Attorneys for Senator
Bob Packwood.

[1] Entries which are privileged or which relate to Senator Packwood's family matters have been redacted from the diaries. Judge Starr will be free to review these redactions as well to make sure they are justified.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mrs. BOXER). The Senator from Kentucky.

Mr. MCCONNELL. Madam President, I say to the Senator from Oregon with regard to the committee decision, I think it can best be summed up by saying that the committee reached the conclusion that to grant the Senator's request would be to set up a double standard.

I have never been a prosecutor, I say to the Senator from Pennsylvania. I would not want to get into a legal argument with him on any issue at any time. We are all familiar with his skills as a lawyer.

But the committee in the view I think of all of the committee in this situation is analogous to a grand jury. It is an investigative body, charged with duties of investigation for allegations of misconduct. This includes the duty to investigate for or allegations of violations of law as well as misconduct that does not rise to that level.

The Supreme Court has defined the term "reasonable" as it applies to the scope of a grand jury subpoena, and in which we believe this is an analogous situation. In a case I referred to last night, the respondents in United States versus R. Enterprises, a 1991 Supreme Court decision, the respondents argued that the prosecution was required to make a preliminary showing of relevance or admissibility before it could subpoena the requested materials.

In other words, the argument that Senator SPECTER made that the person whose documents were being subpoenaed could determine what was relevant.

That was the argument, as I understand, the respondents made in this case. The respondents argued that the prosecution was required to make a preliminary showing of relevance or admissibility before it could subpoena the requested materials.

The Supreme Court ruled that there was no requirement that a grand jury subpoena be shown to seek only relevant and admissible evidence, because the grand jury can rest merely on suspicion of the law that has been violated or even to find assurance that it is not.

A prerequisite of relevance would be contrary to the grand jury's basic mission, the Court said in the 1991 case. The Court ruled that a grand jury subpoena is presumed to be reasonable, and that the burden of showing that a grand jury subpoena is unreasonable rests on the subpoenaed party which must show that there is no reasonable possibility that the category of the material sought will produce information

relevant to the general subject of the investigation.

If Senator PACKWOOD were being investigated by a grand jury, not us, and if he were subpoenaed to produce his personal diaries, he would have no choice but to produce the diaries or to prove to a court in an action by the prosecution to enforce the subpoena that there was no reasonable possibility that his diaries contained information relevant to the general subject of the grand jury's investigation. His position is no different here.

The committee has reason to believe that the requested diaries contain information relevant to its current inquiry as well as other information suggesting possible areas of misconduct.

Sam Dash, who many of us remember from the Watergate days, last week in an appearance on MacNeil-Lehrer, I believe with Senator PACKWOOD's counsel, said with reference to this issue:

In a normal criminal case, if there was evidence such as these diaries and there was relevant evidence going to the charge, you could subpoena the diaries; or in a criminal case, unlike the Senate, they can get a search warrant on probable cause, and you can seize the entire diary. The law is very clear on that.

During the Senate Watergate committee hearings, we seized many documents like diaries. We subpoenaed them; there were challenges at the time, and we always won on those challenges. The Senate has broader subpoena powers than the court has even, because the Senate is engaged in an investigation where it is often called a grand inquest. It, just like the grand jury, does not have to—

It is hard to read this——

—does not have to have even probable cause to believe there is any particular evidence in documents which it thinks is relevant.

He goes on.

The point is, I say to the Senator from Oregon, the reason the committee felt that it was inappropriate to make that agreement is because we were not convinced that that was not an agreement that could not be made for any regular citizen. Any regular citizen before the grand jury would not have the option. We felt, based on cases that we have been given and advice we have received, any regular citizen would not have had that opportunity. And that is the reason the committee, I think it is safe to say, rejected the request of last evening.

Mr. PACKWOOD. If I might respond, and then I will yield the floor. We are getting into the murky waters now that Senator HEFLIN talked about. We could start quoting Supreme Court cases. I will quote from the same case Senator MCCONNELL just quoted from.

Grand juries are not licensed to engage in an arbitrary fishing expedition. After all, a subpoena recipient cannot put his whole life before the court in order to show that there is no crime to be investigated.

This was a situation involving pornographic video cassettes. They were business records, and the court finally upheld the subpoena. These were not personal, private diaries.

I might read a few quotes, if we are going to go to cases. Once more, I say to the Senate, before going to cases, we can all cite cases on all sides of this issue, and they will never be determinative or dispositive until you go to court, and the court will decide them. I am saying that this Senate can decide the issues before it, without having to approach this argument of whether or not the committee counsel or my counsel are right on the arguments of privacy and the relevance of the subpoena.

Judge Learned Hand:

The real evil aimed at by the fourth amendment is the search itself, that invasion of a man's privacy which consists of rummaging through his effects to secure evidence against him.

Judge Friendly:

As Judge Hand observed, the vice lies in the unlimited right to search. The reason we shrink from allowing a personal diary to be the object of a search is that the entire diary must be read to discover whether there are incriminating entries.

The leading treatise by Wayne Lafave on search and seizure:

It is not fanciful to suggest that private papers of that particular type, i.e. diaries, are absolutely protected by the fourth amendment from seizure.

Justice Burger—this is in the Nixon case, so bear in mind what the situation was in the Nixon case. We think of the Nixon tapes and Alexander Butterfield, and we think of the tape going on in the Oval Office.

The Supreme Court has instructed the archivist to give back to President Nixon his private diary dictation, which was dictated at the end of the day.

Testimony in the case showed that President Nixon, like myself, dictated these diaries, rather than writing them by hand.

Justice Burger said:

Truly private papers or communications, such as a personal diary or family correspondence, lie at the very core of the first and fourth amendments.

Justice Rehnquist said, although dissenting:

The Dictabelts of the President's personal recollections, dictated in diary form at the end of the day, are private and are to be returned.

Justice Marshall said:

Diaries and personal letters that record only the author's personal thoughts lie at the heart of our sense of privacy.

Justice Friendly:

We shrink from allowing a personal diary to be the object of a search.

Justice Brandeis:

The makers of the Constitution sought to protect Americans in their beliefs, thoughts, emotions and sensations. They conferred as against the Government the right to be let alone, the most comprehensive of rights, and a right most valued by civilization.

Justice White:

Purely private matters such as diaries, whether or not of historical interest, are to be delivered back to Mr. Nixon.

I will read from the American Civil Liberties Union letter:

DEAR CHAIRMAN BRYAN: On behalf of the American Civil Liberties Union, we are writing to express our deep concern over the Select Committee on Ethics' subpoena requiring Senator Packwood to disclose all diaries, journals, or other documents, materials and recordings describing the Senator's daily activities.

We believe that the subpoena infringes on the Senator's constitutional right to privacy by being overly broad and exceeding the scope of the committee's investigation.

In the course of its investigation into sexual harassment charges against Senator Packwood, it is our position that the committee is only entitled to receive such personal material that is relevant to the investigation. In this context, it is especially important to underscore that private, personal diaries, even those dictated in the course of official duties, enjoy a very high level of legal protection. Courts have shown an extreme reluctance to require the production of personal diaries, particularly when the material is both private and irrelevant.

And they cite Nixon versus Administrator of the General Services Administration.

We recognize that a congressional committee has the power to conduct an investigation and compel the production of records and other information in appropriate circumstances. However, this power must be exercised in accordance with the Constitution, including the fourth amendment principle that an individual's private papers are protected from unreasonable searches and seizures.

Moreover, in determining what is reasonable, the Supreme Court has repeatedly held that Congress cannot use its subpoena power to view material relating to private affairs that go beyond the scope and purpose of the particular inquiry. In a civil case, a judge could review documents for relevancy and make a determination as to what material should be shared with the requesting parties.

A congressional investigation differs from a civil court in that the committee members act as judge, jury, and prosecutor. In this instance, the committee may choose to appoint a neutral examiner to review the entire diary and make a determination of relevancy.

We urge this committee to recognize and adhere to the requirements of reasonableness and specificity that flow from the fourth amendment by narrowing the scope of the subpoena to cover only those matters pertinent to the investigation of the committee.

I say again, "matters pertinent," and they admit that the sexual charges and one issue they have seen about employment are pertinent. This Senate can resolve this issue without provoking a court contest, in which the ACLU can join our side, and there will be constitutional scholars on both sides, or we can spend several years in court. I do not want to bear the expense or take the time to do that. We can provide for this Senate every shred of information they need, that is relevant to every charge or thought of a charge that is in their possession.

I thank the Chair.

Mr. BRYAN. Madam President, I ask unanimous consent that the letter which the Senator has read from be made available to each Member of the Senate.

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

Mr. BRYAN. I will respond to the Senator's comments at a later point. I know Senator MIKULSKI has been waiting for recognition.

Ms. MIKULSKI. Madam President, I wonder if the distinguished Senator from Oregon will yield for a question?

Mr. PACKWOOD. I will try to.

Ms. MIKULSKI. I wonder if the distinguished Senator from Oregon could share with the full U.S. Senate why he continues to refuse to honor the original agreement in which we requested the diaries in the first place.

Mr. PACKWOOD. I will respond in just a moment if you will just allow my counsel to get the memorandum he is looking for.

Ms. MIKULSKI. I wish the Senator to know while the counsel is pursuing that my question.

Mr. PACKWOOD. Pardon me.

Ms. MIKULSKI. My question to the Senator is in no way to prejudge the matters before us. But we are talking about a procedure. We are talking about how there is a way to avoid the enforcement of a vote on this, in which we can ask the courts to decide about these disputed items, one of which would be either for the Senator to comply with the subpoena or to comply with the agreement that the Senator followed when they brought 5,000 pages, 20 years, of the Senator's diaries.

Mr. PACKWOOD. Again, I do not see any profit in engaging in a discussion as to what was the agreement. There is a disagreement as to what was the agreement. That issue will come up if we ever have to go to court as to what was agreed.

All I am saying is that the Senate can resolve this and can resolve it with every bit of information that the committee wants without having to argue about what was the agreement.

Ms. MIKULSKI. I find it shocking that you would allow your attorneys on a day-by-day basis to bring, as you have indicated you have kept the diary of hopes, dreams, aspirations, comments about the car repairman who irritated you, as well as meetings you might have had on the tax bill that you so ably brought before this Senate floor. How then could your lawyers have brought these documents, 5,000 pages, 20 years, without you understanding that there was an agreement?

When your attorneys advised you that the Ethics Committee wanted to see the diaries and this would be the procedure that occurred, did not they advise you there was an agreement? How could you agree that 5,000 pages, 20 years of your personally documented life story be read by the Senate counsel without there being in your mind and in your lawyer's mind an agreement, and why then the agreement that you have in your mind and your lawyer's mind not be honored now for the remaining few years and the remaining 2,000 or 3,000 pages?

Mr. PACKWOOD. I will respond as follows, because I am not going to say anything here that would compromise any of our rights if we have to go to court. If we do not have to go to court, the Senate is satisfied to get the information relevant to the charges. All I am saying is there a difference of opinion between the counsel as to what the agreement is.

I will say to the Senator from Maryland that she has heard only one side of the argument. You never talked to my attorneys, have you? You heard only the attorneys for the committee side of the agreement, is not that right?

Ms. MIKULSKI. The Senator is correct, but right now we are on the U.S. Senate floor debating the enforcement of the subpoena.

I do not want in any way to inhibit the Senator's rights if, in fact, we do go to court. However, I must say to the Senator from Oregon I do not believe my question has been answered. When the Senator agreed through his counsel that the Senate counsel could review these first 5,000 pages and these first 20 years, what was in his mind that made that OK then that is not now OK?

Mr. PACKWOOD. Does the Senator from Maryland concede that there could conceivably be a difference of opinion as to what the agreement was?

Ms. MIKULSKI. We are not here to argue about that right now. I am asking you a question. What was it about what you agreed upon that we could review those first 5,000 pages and those first 20 years that was OK with you and OK with your counsel for us to do that then but it is not now OK to do it now?

Mr. PACKWOOD. I will say again, now we are getting into the argument of waiver and the fourth amendment and whether that is a perpetual waiver or whether the Supreme Court says the waiver document must be continuing until revoked. Judge Heflin talked about this last night. That is not a decision to be made on the Senate floor as whether or not we waive the right. That is an argument to be made in court if we say that.

Ms. MIKULSKI. I say to the Senator when you asked for a private meeting with the Ethics Committee, this is your meeting with the Ethics Committee. This is your meeting with all six of us. We are trying to engage in these conversations.

I would not ask you to do this privately. I am asking you in a public meeting. I do not think that we have privacy, secret meetings. Now I am asking you, and I repeated myself on several occasions. In pursuing this, I do not want to take the Senate's time.

But the Senator from Wyoming very wisely said not to preclude rights or prejudge, but he talked about the accountability to the Senate and that we have an accountability to all parties concerned. I would add a third line of accountability, and that is accountability to the American people.

While we are all taking law school 101, the fourth amendment 202, and the rights of privacy 404, in plain English the American people who are holding us accountable would wonder why was the system and procedure for reviewing documents OK on one day for 5,000 pages and 20 years and is not OK the following day for the last 4 years and the last 3,000 pages.

I thank the Senator for yielding.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I thank the Chair.

Madam President, will the Senator from Oregon yield for a question?

Mr. SPECTER. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SPECTER. Is the Senator who first seeks recognition entitled to be recognized first?

The PRESIDING OFFICER. As I understand it, it is the first Senator who said "Madam President," and I heard that to be the Senator from Massachusetts.

The Senator from Massachusetts.

Mr. KERRY. Madam President, I thank the Chair.

Will the distinguished Senator from Oregon yield for a question? Would he answer a question?

I would like to follow up, if I may, just on this offer, because I think a lot of Senators are still wrestling—and I understand that—with the question of what is fair, where we have to go here, and the question of relevancy, and the question of due process here I think is central to our being able to resolve that.

I think there are some distinctions in the cases that were read and the situation we find ourselves in. But there is a difference between asking for a diary when you do not know any of the contents and you are at the initial stages of discovery and we say we want the diary as part of the subpoena, and the situation we find ourselves in now where by admission of the Senator from Oregon and by the process created we all know that it is relevant now.

So we are not at the initial stage of discovery where we are just probing a diary saying it might have something. We are at a stage where everyone hopes it does have something.

The Senator himself used it to refresh his recollection and to in fact make points in the course of the deposition that sustained what he was saying could happen.

So the diary, I understand, has some relevancy.

But my question goes to this deal or offer that has been made by the Senator. The Senator has several times said, "We will make all the materials available. We will give you everything that is relevant, and this individual, the independent individual, can take a look at it and he can read everything to check that we have given all that is relevant."

I would like to understand it because none of us was privy to those conversations. We have not even seen the letter yet.

Let me ask the Senator from Oregon. Is the Senator from Oregon prepared to give to Judge Starr the entire diary in the period in question unredacted so that the judge can see every single page, item for item, and determine whether or not the committee has what is in the judge's view deemed to be relevant to the investigation?

Mr. PACKWOOD. What was the last part of your statement?

Mr. KERRY. My question to the Senator from Oregon is, Is the Senator from Oregon—the Senator has said several times he will give everything over. My question to the Senator from Oregon is, Is he prepared to turn over the diary in unredacted form for the period that is in question between 1989 through 1993 so that Judge Starr may review each line, each page in its entirety, to determine that, in fact, all relevant material has been turned over and that indeed the committee has what is relevant to the investigation?

Mr. PACKWOOD. The answer is yes, if Judge Starr is to look for the relevant material, material about the sex charges or new charges—those are the relevant things—and turn it over to the committee, and that is the limit of what Judge Starr is to do.

Mr. KERRY. So, in effect, the Senator is saying that if Judge Starr were to discover evidence in the diary of any other violation of the law, ethics, or any other potential criminal offense or anything, that Judge Starr would have to ignore that?

Mr. DOLE. You yielded for a question, not interrogation.

Mr. PACKWOOD. I did not hear the last question.

Are you suggesting that these be given to Judge Starr just as they be given to the committee, even though there is no charge or no nothing; that anything he finds would be like giving it to the committee? Anything they find they can then charge me with?

Mr. KERRY. I am not suggesting anything. I am simply trying to understand precisely what the Senator is offering. I want to understand, if Judge Starr is going to have the capacity to look at every single page in this relevant time period that has not been yet viewed by the committee itself, will the judge be subjected to any redactions whatsoever?

Mr. PACKWOOD. No.

Mr. KERRY. It would not be?

Mr. PACKWOOD. That is correct.

Mr. KERRY. The second question is, Is it the intention of the Senator from Oregon that Judge Starr, in reviewing this, if he were to find evidence of an offense outside of the intimidation of witnesses or sexual harassment, or now outside of what the Senator has defined as the issue involving his wife, if something were to be found outside of that, is it the Senator's intent that the agreement with the Senate should be that the judge would have to ignore that and the Ethics Committee would have to ignore that?

Mr. PACKWOOD. Do you mean to say would we let Judge Starr go on the same kind of fishing expedition that the committee wants to go on? That anything he finds unrelated to anything that anybody knows or charges, he can then do what with—turn it over to the Ethics Committee?

Mr. KERRY. It is hard for me to contemplate that turning this over—the Senator read the case of the Supreme Court in which there was a reference to this, or read at the end of his statement that the neutral party—Judge Starr is certainly a neutral party. No one I think has accused him of being on a fishing expedition. If he is the only person to see this in the entirety, then it would seem to me that the needs of the Senate would be well satisfied and the Senator's rights would, indeed, be well protected in terms of the consent, of leaking, and other problems. It is my sense, in talking to the committee, that might be appropriate.

But if it is the Senator's intent to limit this neutral party from his capacities—whoever it might be—should they find something else, I would think that that would be difficult. That seems to be the Senator's intent, to limit it. Is that accurate?

Mr. PACKWOOD. I heard the question. I think you heard my answer.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Madam President, I wanted to comment. I heard some of my colleagues come to me and say you failed to recognize people on this side of the aisle last night and this morning. I would hope we have fair recognition if a Senator is on his feet asking recognition, if he may be on this side of the aisle, that he would be recognized by the Chair.

The PRESIDING OFFICER. The Chair would like to inform the Republican leader that the Chair would be fair and that the Senator from Oregon was on his feet and had the time for about 30 minutes of the time that this Senator was sitting in the chair.

Mr. GRAMM. That is irrelevant.

Mr. DOLE. That does not make any difference, how much time the Senator from Oregon had. It makes no difference how much time he had. It is a question of recognition.

The PRESIDING OFFICER. I would say to the Senator, I followed the rule of hearing the first person and calling on that person. I would be delighted to call on the Senator from Pennsylvania.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

AMENDMENT NO. 1093

(Purpose: To offer a substitute)

Mr. SPECTER. Madam President, I send to the desk a substitute for the text of the resolution, on behalf of Senator DANFORTH and myself, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

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

Mr. SPECTER. Madam President, I suggest a quorum is present.

The PRESIDING OFFICER. The order is for the clerk to report the amendment.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] for himself and Mr. DANFORTH, proposes an amendment numbered 1093.

Mr. SPECTER. Madam President, parliamentary inquiry.

Several Senators addressed the Chair.

Mr. SPECTER. Is it not true that on the floor of this body at this moment a quorum is present? Parliamentary inquiry? Are we entitled to proceed or not, Madam President, with a quorum being present?

The PRESIDING OFFICER. The regular order is for the amendment to be read. It takes unanimous consent to terminate its reading.

The clerk will read the amendment.

The bill clerk continued with the reading of the amendment as follows:

Strike all after the resolving clause, and insert the following: "That Senator Bob Packwood is hereby directed to turn over to Independent Examiner Kenneth Starr such documents as are referred to in the subpoena to Senator Bob Packwood from the Select Committee on Ethics. These documents shall be examined by Independent Examiner Kenneth Starr, who will then turn over to the Select Committee on Ethics all materials which are relevant to the charges of misconduct regarding Senator Bob Packwood currently before the Select Committee on Ethics. Independent Examiner Kenneth Starr shall also turn over to the Select Committee on Ethics all materials referring to the incident cited in the statement of Senator Richard Bryan, dated October 28, 1993, which Senator Bryan alleges may constitute a criminal violation.".

Mr. SPECTER. Madam President, parliamentary inquiry.

The PRESIDING OFFICER. State the parliamentary inquiry.

Mr. SPECTER. Is it not a fact that there is a quorum present on the face of it, of those who are on the Senate floor at this moment?

The PRESIDING OFFICER. The Chair has no authority under these circumstances to note the presence of a quorum.

Mr. SPECTER. Madam President, parliamentary inquiry. Can the Chair count and see that there is a quorum present on the floor at this moment?

The PRESIDING OFFICER. Under the Senate precedents the only circumstance when the Chair is authorized to count a quorum is after cloture has been invoked.

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, this substitute amendment is being filed on behalf of Senator DANFORTH and myself in order to reach all of the critical issues which we think are pending before this body at this time. At the top of the list are the allegations which are currently pending before this committee relating to charges of sexual misconduct against Senator PACKWOOD, which we all agree are of the highest priority for a prompt, thorough investigation, getting at all the facts.

Second only to that charge is the charge against Senator PACKWOOD that all the facts relating to possible intimidation of any witnesses would be brought before the Senate so that we can determine whether there is a basis for action by the Senate on that second charge.

And third, after those two charges, is the charge that Senator PACKWOOD has inappropriately used his Senate staff.

Those are among the charges which are pending. There has been a statement about possible criminal misconduct and, as that has been defined on the Senate floor, I believe that Senator PACKWOOD has made a mistake, contrary to his interests, when he characterizes it as an allegation of illegality or unethical practices, trying to find a job for his wife.

On the basis what has been said on this floor, that issue does not rise to the level of an allegation. But this substitute resolution would call for full disclosure of all materials relating to the incidents cited in the statement of Senator RICHARD BRYAN dated October 28, 1993, which Senator BRYAN alleges may constitute a criminal violation.

This substitute resolution calls for the disclosure of all those materials, even though it does not conform to the usual rules of the Senate Ethics Committee which call for a statement of charge, the nature of the violation, and the pertinent evidence, a summary of that related thereto, so that we may come to a speedy resolution of this matter and the process may go forward, as the Senator from Ohio [Mr. METZENBAUM] has called for, and so that we may go forward as the Senator from Washington [Mrs. MURRAY] has reminded us of the victims who are waiting, so we may go forward with that charge, as the Senator from California [Mrs. BOXER]—now presiding—has called for going forward.

When the Senator from California [Mrs. BOXER] made her statement on the floor this morning, as I heard her comments, she said that there may be relevant information on sexual misconduct which Senator PACKWOOD is not turning over.

The thrust of this substitute resolution is to take that decision out of the hands of Senator PACKWOOD and put that decision into the hands of the independent examiner, former Solicitor General and former Judge Kenneth Starr, so that there would be no doubt that all of the materials in the diary, unmasked and unexpurgated, be turned over to Judge Starr.

On the issue of the possible criminal charges we have had disclosed on the floor of this Senate, the chairman's statement, the Senator from Nevada [Mr. BRYAN], that as to those matters of which he is informed by counsel, he has—and I wrote this down as closely as I could and have not had time to get it out of the CONGRESSIONAL RECORD this morning—"formed no judgment on where that matter may lead." And he admits that it may lead nowhere.

The vice chairman, the Senator from Kentucky [Mr. MCCONNELL], has stated that the information on misconduct relating to that matter is inconclusive at best.

The Senator from Maryland [Ms. MIKULSKI] has said the standard is probable cause.

It is plain from what has been said on this floor that there has been no statement of probable cause, which essentially means more likely than not or more probable than not. But this substitute resolution seeks to put before the Ethics Committee, through Judge Starr, all of the material which is related to the statement by Senator BRYAN dated October 28, 1993, which Senator BRYAN alleges may constitute a criminal violation.

In seeking to move in this direction, we are essentially following the line of inquiry which was articulated yesterday by Senator BIDEN, looking for what is relevant, and the line of inquiry articulated yesterday by Senator JOHNSTON. I have had occasion to be able to find Senator JOHNSTON's statement, which appears at page 26972 of the RECORD, which states the following:

> Mr. JOHNSTON. I know that rule 7 says that, but I think it contemplates throughout the law that you are entitled notice and relevance to a charge. That is my concern.

At this juncture, before proceeding to further discussion of the issue, I would like to ask the chairman of the Ethics Committee, Senator BRYAN, picking up on the line of questioning by the Senator from Maine [Mr. COHEN] yesterday, in which Senator COHEN had raised the question of whether Senator PACKWOOD had turned over all the information, that would have ended it, and I believe the chairman said that would have ended it. But then the chairman said the situation is now different. Again, I have not been able to go through the CONGRESSIONAL RECORD. I see the chairman nodding in agreement.

I ask the chairman if that is an accurate statement as to what he said yesterday?

Mr. BRYAN. That is an accurate statement, Senator.

Mr. SPECTER. The substitute resolution would accommodate all of the concerns expressed by the chairman yesterday; that is, it would meet point A as to whether Senator PACKWOOD had turned over all relevant information in the first subpoena and it would do so in a way which would not rely upon Senator PACKWOOD because the chairman has said in his discussion today that Senator PACKWOOD has crossed the Rubicon. So there is an issue as to whether he will be forthcoming.

Senator MURRAY yesterday raised the question as to whether all of the materials from the diaries concerning sexual misconduct would be forthcoming. Senator BOXER raised the same question today.

So as to point one on the issue of misconduct, on the issue as to sexual misconduct and intimidation and use of Senate staff, all of it goes through Judge Starr. And then as to the second issue—responding to what the chairman said to Senator COHEN that the situation is now different—the substitute subpoena reaches that by giving to the hearing examiner, who will turn over to the Ethics Committee, all of the information on the alleged criminal violation, which the chairman has again this morning said was the totality of what else the committee is looking for at this moment.

My question to the chairman is: Why not support the substitute resolution?

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER (Mr. BREAUX). The majority leader.

Mr. MITCHELL. I ask the Senator to yield to permit me to make a brief statement.

Mr. SPECTER. I do, Mr. President, if I do not lose my right to the floor, just as I do not lose my right to the floor in the colloquy with the chairman.

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

Mr. MITCHELL. Mr. President, the parliamentary inquiry by the Senator from Pennsylvania regarding recognition by the Chair and the statement made by the Republican leader, whether intentionally or not, created the impression that the Chair has been partisan and unfair in recognition of Senators.

A quick check by the clerk indicates that up until this moment an almost exactly equal number of Senators from each side has been recognized during this debate, not counting duplications of the chairman, ranking member, and Senator PACKWOOD. There should be no implication or the suggestion that the Chair has been partisan in its recognition of Senators. The facts are directly to the contrary.

Mr. DOLE. Will the leader yield?

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. DOLE. Will the Senator yield?

Mr. SPECTER. I will yield for the colloquy but that I do not lose my right to the floor.

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

Mr. DOLE. I will have the Record reflect that it is not a question of equal, it is who is standing and asking for recognition—maybe six on that side or six on this side. Complaints came to me that, in this case, the Presiding Officer, on three straight occasions, ignored this side and recognized colleagues on the other side.

We want to be fair. We hope it is fair, and we will continue to monitor the situation.

Mr. MITCHELL. Mr. President, if that is true, it must equally be true that the Chair on previous occasions must have recognized a larger number on that side because the totals are the same.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. DASCHLE. Will the Senator from Pennsylvania yield for a question?

Mr. SPECTER. No, I will not, Mr. President. As important as the inquiry from the Senator from Maine [Mr. MITCHELL] is, I do not think it warrants an interruption on a critical question as to the pending issue before the Senate. But having been raised, let me say that I sought recognition consistently yesterday afternoon without securing it and, in my opinion, I thought I was the first. I do not say that by way of impugning the Chair until the Senator from Maine raises the issue.

This morning I sought recognition when the chairman was on the floor, and he said—and I think the RECORD will show—that he saw the Senator from Maryland [Ms. MIKULSKI], on the floor. Before she said anything, I was seeking recognition. And then I sought recognition—I just got an affirmative nod from my colleague on my right—and I sought recognition again before the Senator from Massachusetts achieved recognition. That is why I made the parliamentary inquiry.

Before the Senator from Maine raised the issue, this Senator did not say anything about any favoritism by the Chair. I made a parliamentary inquiry. I thought that would be sufficient. But I do think that this issue is not one to take up our time, with all due respect to the Senator from Maine, in the middle of an important examination of a very important issue.

Mr. MITCHELL. Mr. President, the parliamentary inquiry by the Senator from Pennsylvania was followed by a statement by the Republican leader. That is when the issue was raised. I responded to that.

Mr. SPECTER. Mr. President, parliamentary inquiry. Do I have the floor?

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. I thank the Chair.

Mr. DASCHLE. Will the Senator from Pennsylvania now yield for a question, given the fact he has completed——

Mr. SPECTER. No, the Senator will not yield for a question but will at a later time. At the present time, a question is pending by the Senator from Pennsylvania to the chairman of the committee. I think I better restate the question.

My question is, Senator BRYAN, when you had responded to Senator COHEN yesterday that had Senator PACKWOOD turned over all the relevant material to the three charges, that that would have ended it at that stage. And then you responded in addition the situation has changed.

My question goes to a request that the chairman support the substitute resolution because why not support the substitute resolution, Senator BRYAN, in light of the fact that you have everything which is relevant as to the charges of sexual misconduct, intimidation in the use of staff, and the substitute amendment takes care of the concerns expressed by a number of Senators and yourself, that Senator PACKWOOD has crossed the Rubicon, so we are not going to rely upon him but go to Judge Starr. The substitute resolution takes into account everything that the chairman has said he was looking for when he talked about possible criminal violations. Does not that reach everything that the chairman says the committee is looking for?

Mr. BRYAN. Let me respond to the learned Senator from Pennsylvania by saying that the substitute amendment that he is offering is identical to the proposal which was advanced this morning by Senator PACKWOOD and his lawyers and which was the subject of a meeting by the Ethics Committee and was unanimously rejected, unanimously rejected.

Now, let me explain why that was rejected, and the distinguished Senator from Kentucky, the vice chairman, has indicated. First of all, the proposal embraced in this amendment suggests that there be two standards in America, one for 250 million ordinary citizens minus 100, and that a separate standard be established for the 100 of us who are privileged to serve as Members of this institution.

That is a dual standard which I find unacceptable because what it suggests is that a Senator ought to have a greater measure of protection than an ordinary citizen faced with a comparable investigation. That is the first reason why I think it is unacceptable.

Second, under the terms of the amendment only two things could be considered: Those matters which may be relevant to the first series of charges, sexual misconduct, the allegation with respect to intimidation of witnesses, and the use of employees to further that intimidation.

The second area that would be permitted to be inquired into was the area that was characterized this morning by Senator PACKWOOD as dealing with those circumstances around the solicitation by him of employment if, indeed, that did occur—no prejudgment being made there.

Now, the consequence of that is to require Judge Starr, who would get all of the information, to turn a blind eye. In other words, we put a patch over one of his eyes and say you can only look at only these two things. If there is anything else in the diary unrelated to the first series of allegations which constitute the preliminary inquiry, unrelated to the area that Senator PACKWOOD described himself in some detail this morning, if there is anything else, he could not report that back to the committee and say there is another allegation. The Ethics Committee has rejected that.

And finally let me just suggest a very practical consideration. As Senator PACKWOOD himself has indicated, perhaps a thousand documents, many, many depositions have been taken, many, many depositions, many statements have been taken. For Judge Starr to make a determination of relevance on the first series of allegations, namely the sexual misconduct, the intimidation of witnesses, the use of employees to further that intimidation, would require the independent examiner in whom the committee has great confidence, and apparently the Senator and his staff also, to review the totality of that record before making a determination. One could not determine what is relevant unless that individual has the benefit of the complete record. So I think rather than expediting the process, that would encourage delay.

Finally, let me say, I think my colleague from Maryland, as she so often does, frames the issue appropriately. What is wrong with the original process by which 5,000 pages of this diary were reviewed. It is inconceivable to me that counsel would allow that review process to go forward and to allow information to be unmasked, as clearly this information was that gives rise to the concern that's been discussed this morning about the employment solicitations, if any, indeed, occurred. That agreement ought to be adhered to in my judgment.

And, very succinctly, I would say to my friend from Pennsylvania those are the reasons why I believe that the substitute amendment ought to be rejected.

Mr. SPECTER. Mr. President, when the Senator from Nevada talks about Judge Starr having a big job on his hands to review the totality of the record, that is something Judge Starr is used to. That is what judges do. They

review the totality of records, and sometimes records a lot longer than this one, 2, 3, 4, 5 times as long as this record. But if Judge Starr has a problem with it, let him say so. But Judge Starr has not raised any objection. He has already been involved in this matter.

When the chairman of the Ethics Committee talks about one standard for all Americans, I agree totally. There ought to be a single standard for all Americans, for all 250 million Americans, and that would include the 100 Senators; it would include Senator PACKWOOD. And this Senator is not trying to have anything else applied by the Senate and by the Ethics Committee.

When the Senator from Nevada talks about the proposal by the Senator from Maryland, questions about the agreement, that matter is subject to a disagreement as to what counsel had agreed to. I would suggest to my colleagues, without getting too far afield in the area of constitutional law, that a waiver on a constitutional right is something that only the individual does. It is not something that his counsel does for him. When you have cases of waiver on search and seizure, on consent, it is what happens with the individual. When you have a waiver on the fifth amendment, one question is answered, and then the respondent cannot decline to answer subsequent questions. It is a matter of waiver by the individual.

As I understand the facts of this matter—and I hope they do not have to go to a judge sitting in an evidentiary hearing—Senator PACKWOOD thought these matters were limited to what was relevant, and that is what he thought when he participated in turning over documents. That is what he thought when, as he has explained on the Senate floor, he responded and with some question in his mind, considering the consequences of perjury if he did not, to something which was relevant.

They asked him, do you have corroboration? He said yes, I do; it is in the diaries. But it was his understanding—and this is a limitation which his lawyers have talked about—as to what was relevant.

I suggest to my colleagues in the Senate that we not deal too lightly with what constitutes a waiver of a right. If you read the waiver cases, there is no bright line in them. I think it is a solid principle still in effect, although I have not read all the cases in the last decade, that only Senator PACKWOOD can waive those rights, and nobody has said that he was party to a transaction with the committee where he made an agreement. His lawyers made an agreement. That is subject to a dispute. The Senate wants to try to resolve that, then let the Ethics Committee listen to the lawyers on both sides, which they have not done. They have to listen to Senator PACKWOOD's lawyers.

They have only listened to the committee's lawyers. That really points up one of the problems which this Senator has seen in this proceeding from the outset. That is the comingling of what an investigator does, what a prosecutor does, and what a judge does. The decisions are plain. You cannot have that comingling of functions. It is not enough to say the Ethics Committee is analogous to a grand jury. The grand jury makes charges. The Ethics Committee comes to a great many conclusions.

When you talk about who is right and who is wrong, on what the agreement was, would not the finders of fact have to listen to both sides? The Ethics Committee has found and has said in very emphatic terms, very derogatory to Senator PACKWOOD's lawyers, that they breached an agreement. But how does the Ethics Committee know when they never listened to the lawyers to hear what the facts were from both sides?

When the chairman talks about the response by the Senator from Kentucky on the analogy to a grand jury, I would suggest to my colleagues that that is not what governs a congressional inquiry. A congressional inquiry is governed by what is relevant and pertinent. And the landmark case, the seminal case, Watkins versus United States, where the Supreme Court said that it is up to the Senate, up to the legislative body to define pertinence, is the word the Court used, for its committees, and the committees are to look for pertinent information, which is another way of saying relevant information. The analogy to a grand jury simply does not apply.

As the Senator from Delaware [Mr. BIDEN] said yesterday afternoon on the floor, before you get to a grand jury you have a great many hurdles to overcome. When a grand jury is investigating a general circumstance to look for criminality, they have not focused in on one individual as the Ethics Committee has on Senator PACKWOOD, who is a respondent, in effect a defendant in this proceeding. If a grand jury requires information which identifies an individual as a target, then the grand jury must advise that individual that he or she is a target. It is a much more limited process.

But the grand jury analogy is not pertinent. It is not pertinent. It is not a governing law. The governing law is Watkins versus United States. That requires a showing of relevancy.

When the Senator from Kentucky had this morning quoted the transcript from Sam Dash, there were two very important words in the transcript as I listened to it. And the words that Sam Dash, a former district attorney of Philadelphia, used were "relevant and probable cause," and that is precisely my point. The information has to be relevant, and there has to be probable cause to seek it.

Permit me to address another question to the chairman of the committee, the Senator from Nevada, concerning the basis for the committee's proceedings in looking for evidence on the statement the chairman made concerning what may constitute a criminal violation.

My point here on the question, and I put it on top of the table, is whether you have a basis for doing so for this state of the record outside of the substitute resolution. If the Senate passes this substitute resolution, you have authority to do it. My point is to take a look on what is on the record today to see if you have a basis for doing so.

The Senator from Virginia [Mr. WARNER] yesterday asked a question about whom you could consult, and I think it would be informative for the Senate to know what the views were of the other members of the committee as to whether there was a possible criminal violation.

The essence of question goes to whether you have probable cause, which the Senator from Maryland articulated as the standard. I wrote down as best I could what the chairman said yesterday about the information which he has, second-hand from his counsel; that he had "formed no judgment as to where it might lead," and it "may lead nowhere," and the judgment of the Senator from Kentucky that any information on that subject was "inconclusive at best." My question to the Senator from Nevada is, Does the committee have probable cause to proceed to get the information relating to the possible criminal charges?

Mr. BRYAN. Let me respond to the Senator from Pennsylvania by first indicating that following the October 18 impasse in which the information came to the attention of our counsel, the staff member that discovered that during the course of reading the diary believed it to be significant and thereafter contacted Mr. Baird, the chief counsel. The two of them together looked at it and believed that the committee should be briefed on it.

I will indicate to the Senator from Pennsylvania the entire Ethics Committee was briefed on the essence of that information contained in the diary.

Because Senator PACKWOOD and his lawyers have refused to produce or copy that section we did not have copies of the diary before us.

Based upon that discussion, what was related to us by counsel, it was my belief, and I think shared by each and every member of the committee, although they can speak for themselves, that the threshold needed to pursue that information, credible evidence, was available, and it was the unanimous vote of the committee after that

information was shared with the committee to authorize our counsel to go forward and to proceed.

Have I responded to the Senator's question?

Mr. SPECTER. Not really. But let me pursue the matter if I may. As I understand the positions of the members of the committee, and I do not know what the Senator from Maryland or the Senator from South Dakota have to say on the subject, but I heard what the Senator from Kentucky had to say, and that was that it was inconclusive at best. He is quoted this morning in the Washington Post as saying it was inconclusive and Senator BRYAN's action was "injudicious and inappropriate."

I am reliably informed that the Senator from New Hampshire did not think there was a criminal violation stated. May the record show he is nodding yes. The Senator from Idaho did not think there was a criminal violation. He can speak for himself on that subject.

Ms. MIKULSKI. Would the Senator from Pennsylvania yield for a clarification of a comment?

I bring to the Senator's attention——

Mr. SPECTER. Mr. President, do I have the floor? I will yield at a later time.

I want to pursue my question, and then I will be glad to yield for a question.

The rules of the Senate Ethics Committee, rule 8, provides that "Wherever the committee determines by a majority vote that there is reason to believe that a violation of law may have occurred, it may report such violations to the proper State and Federal authorities."

Let me underscore the "may," because that is the word which the chairman underscored at one point in his statement. In the chairman's statement, there are two references. One says "may"—and I emphasize the word "may"—and the other does not have any emphasis on "may."

Let me refer to that specifically.

Mr. BRYAN. I am familiar with the Senator's——

Mr. SPECTER. I know you are familiar with it, but other people may not be. I think it is an important point.

At page 2 of the statement by the Senator from Nevada, it says:

> The committee counsel came across information indicating possible misconduct by Senator Packwood unrelated to the current inquiry. This information raised questions about a possible violation of one or more laws including criminal laws.

That does not have him in it. It says "possible" in it. Later on the statement, on page 4,

The Senator from Nevada said:

> Senator Packwood's attorneys broke off a committee review of the diaries only after committee counsel found information which may—I emphasize "may"—indicate possible misconduct unrelated to the inquiry underway and which raised questions about possible violations of criminal laws.

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I think it is important that the duty of the committee is activated on a showing that it may have occurred, not that it did, or a probable cause. "May" does not amount to probable cause.

So my question to the Senator from Nevada is: Has the committee considered a vote to refer this matter to the appropriate authorities, as called for by rule 8?

The PRESIDING OFFICER. The time of 12:30 having arrived, the Chair notes that under the previous order the Senate is to recess.

Mr. MITCHELL. Does the Senator from Pennsylvania have any idea how long the current line of inquiry he is engaged in will take? If he can complete in a relatively short period of time, it would be my intention to continue this session until that line is completed, and then recess.

Mr. SPECTER. In responding, I have a fair amount more, but I cannot make a judgment because the Senator from South Dakota [Mr. DASCHLE] has a question he wants to ask, and the Senator from Maryland indicates she has a clarification she wants to make. My sense is that it will not be concluded in the next few minutes.

Mr. MITCHELL. Accordingly, Mr. President, pursuant to the prior order, the Senate should stand in recess.

RECESS UNTIL 2:15 P.M.

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

Thereupon, the Senate, at 12:31 p.m., recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. KOHL).

ISSUANCE OF A SUBPOENA

The Senate continued with the consideration of the resolution.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I move to instruct the Sergeant at Arms to request the presence of absent Senators, and I ask for the yeas and nays.

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

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO INSTRUCT THE SERGEANT AT ARMS

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Illinois [Ms. MOSELEY-BRAUN] is absent because of illness in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 346 Leg.]

YEAS—99

Akaka	Faircloth	Mathews
Baucus	Feingold	McCain
Bennett	Feinstein	McConnell
Biden	Ford	Metzenbaum
Bingaman	Glenn	Mikulski
Bond	Gorton	Mitchell
Boren	Graham	Moynihan
Boxer	Gramm	Murkowski
Bradley	Grassley	Murray
Breaux	Gregg	Nickles
Brown	Harkin	Nunn
Bryan	Hatch	Packwood
Bumpers	Hatfield	Pell
Burns	Heflin	Pressler
Byrd	Helms	Pryor
Campbell	Hollings	Reid
Chafee	Hutchison	Riegle
Coats	Inouye	Robb
Cochran	Jeffords	Rockefeller
Cohen	Johnston	Roth
Conrad	Kassebaum	Sarbanes
Coverdell	Kempthorne	Sasser
Craig	Kennedy	Shelby
D'Amato	Kerrey	Simon
Danforth	Kerry	Simpson
Daschle	Kohl	Smith
DeConcini	Lautenberg	Specter
Dodd	Leahy	Stevens
Dole	Levin	Thurmond
Domenici	Lieberman	Wallop
Dorgan	Lott	Warner
Durenberger	Lugar	Wellstone
Exon	Mack	Wofford

NOT VOTING—1

Moseley-Braun

So the motion was agreed to.

Mr. SPECTER addressed the Chair.

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

Mr. SPECTER. Mr. President, when we adjourned, there was a question which had been asked of the chairman of the Ethics Committee, but before restating it, I would like to make a couple of preliminary comments on questions which have arisen over the lunch hour, and those questions which have come into my office relate to why we are taking the time of the Senate on this matter when there is other pressing business of the country which we might be considering.

It is my hope that we will finish this matter today, although no one knows that for sure because Senators have a right to express themselves on the matter. But I would say to those who have asked the question about why we are taking the time of the Senate that we have plenty of time to do the country's business. We have evening hours, as everybody in this Chamber knows. Sometimes we do not work on Friday when we can. Sometimes we are in our States on Mondays. We were here yesterday. We do have time to take care of the country's business. And, also, this is an important matter.

As I see this matter, it is much broader than a single Senator. It is much broader than Senator PACKWOOD. It involves the institution of the Senate. It involves the institution of the Senate which transacts the country's business. I have two able, young sons who would not consider a life in politics, public service, because of what they see involved in it.

I believe that we have to be fair to everyone. We have to be fair to the country, the American people, getting to the bottom of the charges against Senator PACKWOOD, which are very serious. We have to be fair to the institution, to the individuals, to Senator PACKWOOD, and to those who may want to come to the Senate.

I do not represent Senator PACKWOOD in these proceedings. Some people may wonder why Senator PACKWOOD has spoken so much. I think people may not know that Senator PACKWOOD's lawyers are not permitted to speak on the Senate floor by rules of the Senate. So Senator PACKWOOD has been speaking himself, essentially defending himself. While I think he has done generally a good job, I do not think he has done as good a job as if he were representing somebody else. When people represents themselves, they are under a lot of pressure; there are a lot of statements about that. But he has had to speak for himself.

When Senator DANFORTH and I offered this substitute amendment, we did not do so on behalf of Senator PACKWOOD. We did so because we think that it achieves the right result. When there are similarities between what Senator PACKWOOD and his attorneys offered to the committee last night, that is because Senator DANFORTH and I had this amendment prepared yesterday and I tried to offer it yesterday afternoon. He has come to the conclusion with his lawyers that that is what he thinks will be an appropriate resolution.

But Senator DANFORTH and I and anybody else who votes on this matter do so in our capacity as Senators and not as representatives or counsel for Senator PACKWOOD.

There were some questions which came into my office over the phones during the intervening lunch hour which I think require just a little bit of explanation, and that is what happens on a quorum call, then what happens on recognition.

Recognition depends upon who addresses the Chair first, with certain reservations for the leadership to have the right to recognition if it is at the same time that recognition is sought. When a Senator seeks recognition, it is to express himself and put up a substitute resolution or do what the Senator wants to do.

When the quorum call issue came up—and we deal with this so often, we do not stop to focus on what people are thinking when they see it on television or hear it in the Chamber. Any Senator has the right to suggest the absence of a quorum at any time, which means the proceedings stop to determine whether or not there is a quorum. A quorum means whether there are 51 Senators present, because the rules of the Senate provide that if somebody challenges the absence of a quorum or suggests the absence of a quorum, then the Senate cannot conduct any business.

Ordinarily, we conduct business without 51 Senators being present. But when that happens, any Senator can challenge whether there is a quorum present. And when I introduced my substitute amendment, there was a suggestion of the absence of a quorum. Why that was done remains for the person who made the suggestion. My speculation would be so somebody could take time to study it and perhaps raise some objection.

Mr. BRYAN. Mr. President could I just interrupt for one limited purpose, to simply say to the Senator that the purpose why the chairman suggested that was simply to get a copy of the amendment that was forthcoming about which the Senator spoke. I assure him that was the sole purpose of that parliamentary suggestion.

Mr. SPECTER. I thank the Senator from Nevada for that explanation.

Of course, that was not known to me at the time, and I wanted to proceed. Had the chairman asked for a copy of the amendment, he could have gotten one instantaneously from the clerk. We would not have had to have a quorum call which would have interrupted this Senator's presentation of that matter.

But when I challenged the quorum and raised with the Presiding Officer, Senator BOXER, a parliamentary inquiry of whether a quorum was present, that was for the purpose of having Senator BOXER look over the room and see that there were more than 51 Senators in this Chamber.

Senator BOXER then responded, I think on the advice of the Parliamentarian, that the Presiding Officer did not have the authority to make that determination, something to that effect.

People misunderstood when I said cannot the Presiding Officer count, which was my way of saying that all you had to do was count the people in the Chamber to see that there were 51 present. It was not made with any suggestion that anybody cannot count. It was only for the purpose of trying to establish that there were 51 people here.

I do not know the ins and outs of the rules, why the Parliamentarian said the Chair cannot rule on it when it is a simple matter to ascertain whether 51 people were present. If the matter came to me, I would count the house and see if there were 51 people here.

But I was not suggesting that any Senator could not count. I was just trying to ascertain that there were 51 people here, and I wanted to proceed. I did proceed, but a lot of people misunderstood why that went on. I think it is worth that much of an explanation.

Mr. DASCHLE. Mr. President, will the Senator yield for a couple questions now with regard to his amendment, with that clarification?

Mr. SPECTER. No, but I will be glad to yield when I finish the question which is pending to the Senator from Nevada and the other points that I wish to make. I wish to make my presentation in an orderly way, and after that is done I will be glad to yield for any questions.

If I may then—I know I have the attention of the chairman of the Ethics Committee, and I wish to pursue the question which I had started to ask when the hour of 12:30 came and we adjourned in accordance with the standing order for the legislative caucuses.

My question to the Senator from Nevada is, referring to rule 8, subsection (a) which provides in relevant part "whenever the committee determines, by majority vote, there is reason to believe that a violation of law may have occurred, it shall report such possible violation to the proper State and Federal authorities."

Before the luncheon break, I had focused on the fact that the language "may have occurred" was the same language which the chairman used in part of a statement which he released last Thursday. I think the record ought to show what the committee has done in that respect. I know the committee—well, I do not know for sure, but I think it is important that the record show whether the committee has made such a reference, whether the committee has voted or, if the chairman cares to respond, what the individual members had to say about it.

Mr. BRYAN. Let me respond to my friend from Pennsylvania by indicating that the Ethics Committee is obligated, in my view, to pursue any credible information. The information that was brought to our attention by our counsel certainly met that standard, and we were attempting to pursue it when the impasse, which is the subject of all of this debate that we have had over the last 2 days, occurred.

The practice of the Ethics Committee predating my chairmanship and membership on this committee, as I am informed, is not to turn over the information at that stage to the Justice Department; that such a determination would be preliminary, and that we would want to at least pursue the information that was contained in the diary, that was first called to our attention by our counsel, to see where that might lead, if anywhere. That is consistent with our historical practice.

Mr. SPECTER. Was that matter taken before the full committee?

Was that matter taken before the full committee?

Mr. BRYAN. Yes, it was. And in response to that——

Mr. SPECTER. As to whether——

Mr. BRYAN. Yes. In response to that the committee made a determination to issue the subpoena.

Mr. SPECTER. Was the matter taken before—let me sharpen the question so

there is no doubt about it. Did the committee have before it a reference in turning over the possible violation of law to appropriate authorities? Did the committee consider that issue?

Mr. BRYAN. As I recall, we did not discuss that. It was premature to have done so. And so our inquiry was—at that point we were alerted by counsel as to that information. It certainly suggested the possibility of violations to those who had seen it. We were advised by our staff that it did. And so the committee did the very responsible thing, in my judgment, having been so informed; we directed that a subpoena be issued to gain access to that information.

Mr. SPECTER. Without prolonging the discussion, which would take a lot more time, I would make a suggestion to the chairman that any citizen has the obligation to report a violation of law, criminal violation, and that especially in the context where there is a specific rule which says that there should be a possible violation reported when it may have occurred, that that would be the appropriate course. But I understand that that was not followed, and I say I will not pursue that and take up additional time unless the chairman would care to comment.

Mr. BRYAN. I would just simply respond to my friend from Pennsylvania, the practice the committee followed is a time-honored practice, consistent with all matters brought to our attention. So Senators should not have the impression that this matter was dealt with in any other fashion other than that which all other matters are in which there is credible information that would suggest the possibility of a violation, which the committee feels obligated to pursue and is so charged with that responsibility under our rules.

Mr. SPECTER. When the committee chairman said yesterday that he had formed no judgment as to where this issue might lead—I do not quote him directly; I just wrote down as best I could—formed no judgment where it might lead, that was referring to his statement about a possible criminal charge, and his statement that it might lead nowhere and having the information from the vice chairman, the Senator from Kentucky, who did not agree with the chairman, why did the chairman consider it appropriate to make the statement about a possible criminal violation? Just to strengthen the argument for a subpoena? To state it differently, is it not an inappropriate reason to make a public statement to strengthen the argument for a subpoena?

Mr. BRYAN. Responding to the Senator from Pennsylvania, that was not the reason why the statement was made. As I have indicated, the statement was made because in the view of myself and others, the Senate was being left with the impression as the American people were that the committee was on some fishing expedition, "out of control," to use the terminology of the distinguished Senator from Maryland, some committee on voyeurism, and I thought it was appropriate to focus the attention on the seriousness of the matter and why we needed to have access to it.

I just simply say to my friend from Pennsylvania that the real issue I think that is presented by his substitute amendment is that if adopted that would deprive the committee from looking at any other information that might be in the diaries which indicates other information. That is the effect of that. I think the Senators need to understand that that is the limitation which is sought to be imposed here. And I think that is something that we ought to discuss at some point in time.

Mr. SPECTER. I will do that next. I will take that up immediately after I get an answer to my question which is pending about strengthening the argument of the subpoena. I will take up the issue which you have raised directly, take it up head on, about having access to all the information in the diaries.

But first, I will call the chairman's attention to page 26957 of the CONGRESSIONAL RECORD of yesterday. I know the chairman has answered a great many questions. I compliment the chairman for being the chairman, for taking on the laborious task. We do not have to agree with each other on everything but he has taken on a very laborious task, and he deserves the thanks of the Senate for that.

One of the things the chairman of the Ethics Committee said yesterday, on page 26957—I again repeat that the chairman has said a lot of things so this statement does not stand alone. This is what the chairman said.

Mr. BRYAN. Clearly, in my judgment it strengthens the argument for the subpoena.

Mr. BRYAN. I agree with that statement, Senator. That was not the reason for the statement made. Clearly, the fact that the level of potential misconduct would rise to that level certainly strengthens the argument. But that was not the reason why the statement was made.

Mr. SPECTER. That will be a matter for argument, and I do not intend to press the point beyond what I have already said.

On the issue of depriving the committee of information—and I believe that is a very important issue—I will say to the chairman that the question of a general warrant has been the subject of much discussion in this country for a long time; and that the Revolutionary War was fought over two principles as I read the history. One was taxation without representation, and the other was the issue of the general warrant, that there should not be a general warrant; that men and women should be secure in their houses and in their personal effects from a warrant which did not specify anything but was general in nature. That is why there has been such a large body of constitutional law interpreting the fourth amendment which says that people shall be secure in their homes from unreasonable search and seizures.

The test of the general warrant which distinguishes what the committee is asking for from the substitute offered by Senator DANFORTH and myself is just that; that our amendment seeks all of the information relevant to the charges. The really big issue which I think the American people want answered I would like to have answered: What are the facts on the charge against Senator PACKWOOD if he was guilty of misconduct in sexual matters and did he intimidate witnesses; did he improperly use the Senate staff?

Then the other matter has come out which the chairman has called possible criminal violation, and notwithstanding the fact that it does not rise to the level of a charge because the material at hand has not led the committee to make the charge, we say let us put it all before the hearing examiner. So that Senator PACKWOOD is not judging whether it is related to that matter, not judging what is relevant to sexual misconduct charges and the other, but that Judge Starr will make that determination.

When you come to a general warrant which could be issued against any one of the 100 Senators, it could not be issued against any one of the 250 million other Americans on any process that I know about. I would ask the chairman if he disagrees with that.

Mr. BRYAN. With great respect, because my friend from Pennsylvania is an able and distinguished lawyer, I could not disagree with him more emphatically. If a citizen in this country under a grand jury investigation had provided to the grand jury a diary, I cannot conceive of a circumstance in which that citizen would be in a position as Senator PACKWOOD is today to say, "Wait, I've allowed you to look at the diary, but now I am going to tell you the circumstances under which you can see the remaining portion."

No citizen in America would have that right. And the thrust of what the amendment of the distinguished Senator from Pennsylvania would do would be to confer that right only upon 100 citizens in this land, 100 of us who are privileged to serve in this body.

Mr. SPECTER. Well, the chairman of the committee ignores the Supreme Court ruling in Watkins versus United States on that. Senate committee inquiries are limited to the issue of pertinence. The chairman also ignores the basic point, as represented by Senator PACKWOOD, which is that he entered into no waiver and that he had agreed

to turn over the diary subject to relevancy, and that as soon as he found out that the committee was seeking matters which were not relevant to the three charges, he said he would not permit that. As yet the committee has not made a factual determination in listening to the people who were involved in the agreement; the committee has accepted the statement of the counsel without hearing from Senator PACKWOOD's counsel.

Let me pursue this matter with another question.

Mr. LEVIN. Would the Senator yield on that narrow point?

Mr. SPECTER. No. But I will later.

Let me pick up a subject which has already been raised, I think by the Senator from South Dakota [Mr. PRESSLER], as to whether there had been a violation of the rules of the Committee on Ethics. In raising this, I might suggest to you that there ought to be a charge of the violation of the rule, but I think it will illustrate my point in response to what the chairman has asked about whether the committee would be deprived of all information.

Rule 9(d)(1) provides in relevant parts that no member of the select committee shall release, publish or reveal by written word, conduct, or disclose in any way in whole or in part, or by way of summary, any sensitive information, document, or material received or generated by the Select Committee on Ethics.

Now, assuming, hypothetically, that a charge was brought against the Senator from Nevada. The Senator from Nevada has been in the Senate since being elected in 1988, as I believe the facts are. Suppose a subpoena were issued. And it ought to be noted at this time that this subpoena does not call just for diaries, it calls for diaries, journals, or other documents and materials, including all typewritten or handwritten documents, as well as tape recordings, all materials stored by computer or electronic means which are in your possession, custody or control and which were prepared by or at the direction of Senator PACKWOOD—and we can substitute any Senator, such as Senator BRYAN—recording or describing the Senator's daily activities for July 1, 1989 through present.

The Senator from Nevada became a Senator on January 3, 1989. Would the Senator, if faced with that situation, agree to turn over to the committee all of the materials enumerated therein, including a diary, if he had a diary?

Mr. BRYAN. The Senator from Nevada would. And this marks the first time in the history of the Senate Ethics Committee, I say to my friend from Pennsylvania, where a Senator faced any kind of an inquiry by the Ethics Committee in which the requested information of that Senator was not made available. That is what makes this case unique in the sense that it is brought to the Senate floor by reason of the circumstances that have been debated at some length.

Mr. SPECTER. Well, I will pursue, when I have finished my questioning today, whether there is any precedent for this kind of subpoena having been served and followed. I think that the Senator from Nevada has drawn the issue.

I believe that the law is clear that no citizen would be required to do that in a grand jury proceeding, and that even with the scope of a grand jury proceeding, the judges at the trial level will examine any documents to see whether they ought to be submitted to the grand jury; and in the Senate inquiry, the pertinence requirement of the Watkins versus United States is in issue. But there would be no mistake that—and any of the other Senators will understand this—anytime anyone makes a complaint about a violation to the Ethics Committee, of which there are many, it opens up, in the view of the Ethics Committee, the chairman, that kind of a general search.

Mr. BRYAN. I respond to my friend from Pennsylvania by citing a personal situation of the distinguished junior Senator from Utah. I quote from page 26969 of the CONGRESSIONAL RECORD of November 1, when Senator BENNETT went on to say:

> I appreciate what the Senator is saying because I have been in the situation where my diary has been subpoenaed and used in an investigation.

I am assuming that the distinguished Senator was involved in a matter in his capacity as a private citizen before being elected to the body. I do not know the circumstances completely, but that is my understanding. So he is a living example of one of our colleagues who has been subjected to the standard that all American citizens are. And I think our colleague, Senator KERRY, yesterday, put the issue in perspective when he said:

> * * * we are affording our colleague a privilege afforded to no other American citizen in a document judged to be relevant to an investigation. No American citizen can go out and decide with their counsel what they are going to turn over in an investigation. You cannot do that.

That is the position that the Senator from Nevada takes with respect to this line of questioning.

Mr. SPECTER. Well, I suggest that there could not be a statement more directly in variance with the law of this country; that when search warrants are issued, if they specify item A and the searchers find item B, you cannot take it unless it is in plain view, the instrumentality of a crime, or shows on its face the commission of a crime itself; and that before a grand jury—which is not analogous to this situation—but even before a grand jury, this kind of material would not be turned over.

The issue of pertinence is indispensable in this kind of proceeding under U.S. Supreme Court decisions, starting with the case of Watkins versus United States. In fact, when the committee has filed its report, there are numerous references in the committee's report to the requirement of relevance.

In going through the committee's report, the references to relevance are scattered throughout the entire report.

At page 1, "committee documents relevant to the committee's preliminary inquiry." At page 2. "A determination directly relevant to the current preliminary inquiry." And so it goes throughout the entire committee report. Supreme Court decisions have established that when private papers are relevant to a lawful inquiry, there is no constitutional privacy right, but you still have the due process requirement of relevancy.

Later, on page 4, again, the word "relevant." "The committee has determined the documents in their entirety may be relevant and probative."

When the chairman issued his own statement, the word "relevancy" appeared throughout the text of the statement. On page 1, "relevant" occurs twice and then throughout the pages of the statement. When the Senator from Nevada made his argument, "relevant" comes up again and again. When the Senator from Kentucky has made suggestions, "relevant" comes up again and again. The issue of relevancy is as basic to any concept of fair play as any in the case law.

Put in capsule form yesterday by the Senator from Louisiana [Mr. JOHNSTON], in the quotation—and it is worth another specific reference—on page 26972 of yesterday's CONGRESSIONAL RECORD:

> I know that rule 7 says that, but I think it contemplates throughout the law that you are entitled to notice and relevance to a charge.

That is my concern. When you take a total look at this entire proceeding, Senator PACKWOOD would not make the determination of what goes to the committee; that will be made by Judge Starr, that information is relevant to the charges. We get on with the sexual misconduct issue and the others related to that. Notwithstanding that no charge has been filed and there has not been a showing of probable cause, this resolution calls for turning over all matters related to what the chairman has characterized as criminal conduct.

It seems to me that this amendment gives the committee full access to everything that any citizen would have to face, and I am in total agreement with the chairman that the standard is what would be applied to any American, and that is all that I think ought to apply to any standard.

I would be glad to yield for any questions at this time.

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

Mr. LEVIN. Mr. President, will the Senator yield for a question?

Mr. SPECTER. I will yield to the Senator. I think Senator KEMPTHORNE was ahead of the Senator from Michigan.

Mr. LEVIN. I did not see where it was coming from. I was going to ask the Senator to yield for a question.

Mr. KEMPTHORNE. I do have a question for the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, to the Senator from Pennsylvania I need to say that for 2 days now I have listened to the legal arguments that have been made concerning this entire issue. I must add that I may be one of the few Members of this body who is not an attorney. So I need to put it into terms that I can come to grips with.

I am extremely intent in saying that I want the truth about whether or not the allegations against Senator PACKWOOD are true or not. I also would want to protect the legitimate rights of privacy of all citizens, including those citizens who serve as U.S. Senators. I want to ensure that in our pursuit in finding the truth I do not in any way support any effort that would give a U.S. Senator greater protection than a citizen of this Nation. Nor do I want to give a Senator less protection under the law.

So my question to the Senator from Pennsylvania is this: If your substitute amendment is passed, would it grant a Senator greater protection under the law than a citizen of this Nation?

Mr. SPECTER. No. It would not grant Senator PACKWOOD any greater rights than any other citizen would have for these reasons: Where any citizen is called before a legislative body, Watkins versus the United States, a decision of the Supreme Court, held that the question of pertinence, which is another word for relevance, must be determined by the whole body and that must be applied by the committee in seeking information.

So if any citizen were subpoenaed by the Ethics Committee and came before the committee, that person could not be compelled to answer any question which was not pertinent, which means relevant to the inquiry.

Now when the committee rests on an alternative rationale, that there has been a waiver involved, no citizen would be held to a waiver on something which his attorney does. Waivers of constitutional rights are personal. When a person is called before an investigating committee, as we had many famous cases years ago, on privileges against self-incrimination, if the person answers the first question, that constitutes a waiver of subsequent questions, but the person does that waiver. It is not something that you do through an attorney.

When someone enters a guilty plea in a criminal case, the person comes to the bar of the court, and the judge has a colloquy or a discussion with that person to make sure that the person understands the nature of the charge and has understanding of what rights are being given up.

The lawyer may not say to the judge I have explained it to my client and he understands what is happening and he waives his rights to a trial and we will plead guilty and not stand before a jury, which he has a constitutional right to, because that waiver has to be given by the individual person.

So whatever the agreement was with the attorneys for Senator PACKWOOD and the attorneys for the committee, that does not bind Senator PACKWOOD. We do not know and this committee does not know what that agreement was, because they only heard one side, and they have admitted that on this floor.

When Senator PACKWOOD turned over many pages over many days through his attorneys, he did that, as he has stated, based on his understanding that he was only giving relevant information. When the committee then asked for information which was not relevant to the three charges, that is, this issue which the chairman has characterized as possible criminal violations, Senator PACKWOOD stood up and said, "No, that is not the agreement which I made."

So he has never had a waiver of that right. If any citizen would challenge a waiver, that citizen would have to do it personally or, if there was a question of what the facts were, there would be a hearing to determine the facts, not taking the word of only one side.

I think that is what is so critical for everyone to understand, and that is Senator PACKWOOD would not be treated differently than anyone else under this amendment. The broad brush of the grand jury is not the standard which is applied for a legislative inquiry. When a grand jury functions, it does not have any named respondents or defendants. If the grand jury comes to the point where it zeros in on a person, that person becomes a target, and that is a very specific category. When the person becomes a target, the person has to get a letter from the Justice Department and be told: You are a target. At that juncture a target has many additional rights.

I do not wish to comment extensively about the law on the subject, and I have not maintained a familiarity during my tenure in the Senate except to the extent that the issue has come before the Judiciary Committee during a variety of hearings. But I think those are basic and accepted principles that have withstood the test of time.

That is the long way around. The direct answer is Senator PACKWOOD would not be treated differently from any other Senator, but if the Senate votes this subpoena up he would be.

Mr. KEMPTHORNE. To clarify the last point there, Senator PACKWOOD would not be treated any differently than any other Senator, but also we are not establishing a separate set of standards. He would not be given any greater protection than a citizen.

Mr. SPECTER. Correct. He would not be given any greater protection than any other citizen if the substitute resolution is adopted. The fact is he would be given slightly less, as I have explained before, because I do not believe the committee has a right to get the diary entries on the issues related to Senator BRYAN's criminal charge unless they make a charge themselves, which they have not done. I think they have conceded they have not enough evidence to do it or have probable cause, which was the standard of the Senator from Maryland.

But Senator DANFORTH and I are prepared on a substitute resolution in order to clear the air to go just that little distance further.

Mr. KEMPTHORNE. My next question is this, which is of equal importance to me, and that is: If your substitute amendment passes, does it in any way infringe upon the rights of those who have filed the allegations?

Mr. SPECTER. No. And by way of amplification, it would not in any way infringe upon anyone who has filed the allegations because those allegations have been filed by the women who raised their contention that Senator PACKWOOD has been guilty of misconduct, and the women who have raised the contention that Senator PACKWOOD has been guilty of intimidation, and the related issue as to whether Senator PACKWOOD acted unethically in using his Senate staff, not only would they not be prejudiced, but they would be helped by this alternative, by this substitute resolution for the reasons which Senator METZENBAUM, the Senator from Ohio, raised this morning.

The Senator from Ohio raised the question as to what would happen on a time sequence, and I believe it is plain, without reviewing the details, the Senator from Ohio said that he thought it would be closer to 3 years than 1 year before this issue was resolved. And he was concerned, as I am concerned, that the central point on the charges of sexual misconduct and intimidation not being delayed.

We have a duty to get to all those facts. If the facts support action against Senator PACKWOOD, then this body, including this Senator, has a duty to vote that action whatever we may decide.

So the short answer is the victims of sexual misconduct, as they have articulated their versions, would not be prejudiced. In fact, they would be helped by this substitute resolution.

Mr. KEMPTHORNE. I thank very much the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Virginia was heard first by the Chair. I wonder, will the Senator yield for a moment? I am sorry, the Senator from Virginia did get recognition first. I wonder if the Senator will yield for a moment. I know the Senator from Michigan had put a question, one question, to the Senator from Pennsylvania and then deferred to the Senator from Idaho.

If the Senator will yield?

Mr. WARNER. Mr. President, I am happy to accommodate the Chair and seek recognition following that.

The PRESIDING OFFICER. I appreciate that and will recognize you next.

The Senator from Michigan.

Mr. LEVIN. If the Senator from Pennsylvania will yield for two questions, I would appreciate it.

Mr. SPECTER. I do.

Mr. LEVIN. First of all, under your substitute amendment, you state that certain documents will be turned over to the Select Committee on Ethics by Judge Starr, two types of materials: The first, materials relevant to the charges of misconduct currently before the Select Committee on Ethics, and, second, materials referring to the incidents cited in the statement of Senator BRYAN dated October 28, 1993.

If Judge Starr comes across other material or material relating to, let us say, other violations of law than the ones referred to in this substitute, what should Judge Starr do with that material under this substitute? Would he keep it to himself? Would he report it to the committee? Would he report it to the prosecutor if appropriate? You are silent on a very critical issue.

Under rule 3 of the Rules of Procedure of the Select Committee:

> Any Member or staff member of the committee shall report to the committee and any other person may report to the committee any credible information available to him or her that indicates that any named or unnamed Member, officer, or employee of the Senate may have—(1) violated the Senate Code of Official Conduct; (2) violated a law; (3) violated any rule or regulation of the Senate. * * *

Under your substitute, are you saying that Judge Starr, if he found evidence in those diaries other than the evidence specified in your substitute amendment, that he would keep that information to himself? Or that he would follow rule 3?

Mr. SPECTER. I am saying that he would treat that information just as he would treat information which came to him from Mrs. Packwood on matters disclosed by Senator PACKWOOD during their marriage, where there is a husband-wife privilege. That privilege is accorded so married people can talk freely to each other. I would say that he would not disclose that information, just as he would not disclose any information if one of Senator PACKWOOD's lawyers came to Judge Starr and told him something that incriminated Senator PACKWOOD that he had learned in the course of his representation.

So that you have the essence of what I think is a general warrant and the essence of what is prohibited as a fishing expedition, where there is a voluntary turnover by Senator PACKWOOD responding on the condition that the scope of the committee's inquiry be honored. But to say that there is something improper about Judge Starr not turning over other incriminating items which may be there—I do not know what is in the diaries. I have not read the diaries. All I know about the diaries is what I have read in the papers and heard on this floor, except as related to the allegations on possible criminal misconduct.

But there are some areas—and I have chosen only two for purposes of brevity. As a district attorney, once the wife of a judge came to me and gave me incriminating evidence, and I could not use it. I could not use it. I knew the judge had committed the crime of bribery, and I could not use it. That would be the consequence.

Mr. LEVIN. Of course, the difference there is the law has created a privilege for certain information that relates to information passing from husband to wife, between the person and their minister, and so forth.

But in this case this is a new privilege that you could be carving out under this subpoena because here, under your substitute, you are asking an independent examiner who comes into possession of information which is not privileged like husband and wife information, to keep that information to himself. There is no such privilege that I know of similar to the one which the Senator from Pennsylvania is carving out for the first time in this substitute. I am familiar with the husband and wife privilege, I am familiar with the doctor-patient privilege, and I am familiar with the privilege between someone and his or her priest and minister and rabbi. There are a lot of privileges that the law provides.

But I know of no privilege of this kind which would allow any independent examiner to be asked to go into material which is or could be relevant to an investigation, to keep that material to himself or herself. I think that is a totally new privilege which the Senator from Pennsylvania is carving out. But, nonetheless, he gave me a clear answer on it, and I appreciate that.

Mr. SPECTER. Let me make a comment about that. I disagree with my distinguished colleague, who is a very fine attorney. Without unduly talking about the concept of privilege, I will say to the Senator from Michigan that, if a police officer has a search warrant which specifies certain materials and finds other materials —without getting into the details—and there is evidence of a crime, that police officer cannot use that evidence against the individual. There is a large body of law in our society which touches on unreasonable search and seizure. Where you have the kind of a general warrant as you have here—I would be interested in my colleague from Michigan's comment as to his view of the legality of a general warrant such as is encompassed in the request by the committee for all sorts of information.

Mr. LEVIN. I thank my friend. I will get to my second question, but quickly commenting, my recollection of the law—and it has been a few years since I practiced law, too—is that if there is a valid search warrant that identifies something that an officer is to go and obtain in someone's property, in a house for instance, and it identifies a specific item, and during that legal search the officer comes across something else which is incriminating, I believe—and I may be wrong—but I believe that other evidence can be used in court against the defendant who owned the property. I do not think that, providing it is a legal search under a legal warrant, the officer then must ignore something which that officer comes across during that legal search.

However, let me get to my second question. My second question is that the Senator from Pennsylvania has, like others on the floor a number of times, made reference to the fact that there was apparently a disagreement as to what was agreed to by the attorneys for Senator PACKWOOD and the attorneys for the Ethics Committee. Some people said maybe it is not important what the agreement was. I think it at least is relevant to our discussion what that agreement was. It may not be the ultimate question, but it surely is relevant, and many people have discussed it here.

All we have heard, so far at least, from the Senator from Oregon is that his lawyer's understanding of the agreement was different from that of the attorneys for the Ethics Committee. That is basically what we have been told, that his understanding was different.

The Ethics Committee has made very specific statements to the Senate as to what the agreement was. For instance, Senator BRYAN, in his October 28 letter, said that, "Ethics Committee counsel specifically informed the Senator's attorneys—"

Mr. SPECTER. Where are you reading from, Senator?

Mr. LEVIN. I am sorry, page 4 of the October 28 letter.

Let me start again.

> The Ethics Committee counsel specifically informed the Senator's attorneys that if the committee saw information related to possible other misconduct, the committee would be compelled to pursue that material.

This is a statement of the chairman of the Ethics Committee as to what

counsel for the committee has represented to the committee as stated to the attorneys for Senator PACKWOOD.

Yesterday, on this floor, the chairman of the Ethics Committee stated that it was—it says, and this is on page 26937 of the RECORD; page 26937.

Mr. SPECTER. If the Senator from Michigan will repeat the citation that he first referred to.

Mr. LEVIN. The first citation was on page 4 of a letter from Chairman BRYAN dated October 28.

Mr. SPECTER. Would the Senator repeat that statement?

Mr. LEVIN. The first one?

Mr. SPECTER. Yes.

Mr. LEVIN. It is about 10 lines down in the fourth paragraph. It says, quite the opposite:

Ethics Committee counsel specifically informed the Senator's attorneys that if the committee saw information related to possible other misconduct, the committee would be compelled to pursue that material.

And then yesterday—and now I am at page 26937

Mr. SPECTER. Repeat that citation again.

Mr. LEVIN. Yes. 26937. It was said that:

At that time, Senator Packwood's attorneys were expressly advised by the committee staff that the committee could not turn a blind eye to evidence of any other possible violations even if unrelated to the ongoing inquiry. That point was made clear to Senator Packwood's lawyers and was part of the basis of the understanding by which the diaries were made available to the committee staff.

Then on page 26941, the vice chairman of the Ethics Committee, Senator MCCONNELL said the following yesterday:

In particular, the question was raised by the Senator's counsel whether we would consider evidence of any other misconduct that we found in the process of reviewing the diaries. In response, the Senator's counsel was informed that the committee could not turn a blind eye to any suggestion of misconduct that came to its attention.

And then about 8 lines down, Senator MCCONNELL said that:

* * * the committee could not agree up front to simply disregard any evidence of unrelated misconduct until some future date. And that is what the Senator's counsel was told up front.

Now what we have from the chairman and the vice chairman of the Ethics Committee are specific statements that their counsel told them were made to the attorneys for Senator PACKWOOD. But all we have heard on the other side of this issue is that there was a disagreement as to what was agreed to.

It would seem to me, particularly in light of the request of the Senator from Colorado last night when Senator BROWN, on page S14759, said:

I wonder if Senator Packwood's attorneys have a copy of a memorandum or any written recording of their understanding of the agreement. Certainly they are not required to present it, but at least it would be helpful to this Member to know if we have some written memorandum of this agreement, since it does bear on the relevancy.

Senator PACKWOOD:

I am advised we have notes of the discussions but not a formal memorandum for the file.

Senator BROWN:

For my own purposes, inasmuch as that is an issue, if either party would care to present that to us, I would appreciate it.

Let me say to the Senator from Pennsylvania, we have had very specific representations of what counsel to the Ethics Committee have told the committee about specific conversations relative to any agreement on this issue between the counsel—very specific information. On the other side, all we have are statements that there was a disagreement over this and that the effort to present this disagreement to the Ethics Committee has been rejected by the Ethics Committee.

My question of the Senator from Pennsylvania, since it obviously is important to Members of this Senate: Do you not believe it would be helpful, at least to some of us, if we had the specifics from the attorneys for Senator PACKWOOD that they believe constituted an agreement not to look at material other than material relating to the first charges, just the way we got specifics represented by Senator BRYAN and Senator MCCONNELL of what their counsel told them? And if that question is not clearly stated, we have the actual words——

Mr. SPECTER. I have the question——

Mr. LEVIN. We have the actual words represented by the chairman and the vice chairman as to what their counsel were told. I wonder whether or not my friend from Pennsylvania would agree it might not be helpful for us to understand the basis, the words that they heard from the counsel for the committee that led counsel for Senator PACKWOOD to believe that material that was not relevant to the original charges would be ignored by the reviewing counsel of the diaries? I thank my friend.

Mr. SPECTER. The answer is yes, and I will amplify that. I believe that it would be useful to find out what the specifics are from counsel for Senator PACKWOOD as to their testimony and any notes which they have which bear on that testimony.

I will say further to my colleague from Michigan that that is a rudimentary and fundamental inquiry which the committee, its chairman, and its vice chairman should have made before the chairman wrote in a letter that there had been a breach by Senator PACKWOOD's lawyers and before the chairman and the vice chairman went to the floor and said there had been a breach by Senator PACKWOOD's lawyers, because I believe that on any disputed question which is important, you have to hear from both sides to come to a conclusion.

I would say further that in the public offices I have held and I have dealt with individuals, I think it is the institutional responsibility for the institution, like an Ethics Committee or like a Senate, to have a written agreement. I am surprised, to put it mildly, on all sides—this includes Senator PACKWOOD's side—that they did not have a written agreement as to the inquiry and the scope on what they would look for in the diaries.

But I would say that is between the parties, and people can have different views. Institutionally, if I were running the committee, I would have insisted on a written agreement. Of course, if I had been Senator PACKWOOD, I would have insisted on a written agreement. But I think there are a few more resources in the institution.

I think the Senator from Michigan raises a very valid point, and I would hope that there would be that inquiry, and I will say that I am going to pursue it.

Mr. LEVIN. I join Senator BROWN in saying that it would be very helpful to this Senator if it was represented to the Senate by Senator PACKWOOD as to what the basis of any understanding of his attorneys were, what words were told to his attorneys which led them to believe that relevant information, relevant to some unrelated offense or misconduct would not be forwarded to the Ethics Committee. I would find that very helpful.

The chairman and the vice chairman of the Ethics Committee have been very precise, very specific, as to what their counsel tells them that they told to Senator PACKWOOD's attorneys on this matter. We have no such precision or specifics from Senator PACKWOOD.

I want to join Senator BROWN in what he said last night. It would be helpful to this Senator and to, my hunch is, many Senators if we have the specifics as to what Senator PACKWOOD's attorneys heard that led them to the conclusion they reached, just the way we have specifics from the counsel for the Ethics Committee.

Mr. SPECTER. I will say now that I agree with what the Senator from Michigan said about exploring this issue. I would add to that that I do not think there is any probative value in the precision as to what the chairman and the vice chairman say that they were told by their counsel. Of course, that is what their counsel has to say. But it does not advance a disagreement very far. A disagreement can only be determined if you hear the other side. I am a little more than a little surprised that on a really important question like that, the committee would accept one side of it.

Mr. LEVIN. I think on an important question like that, I am surprised that

we have not heard from the other side the specifics that their attorneys tell them were agreed to or not. We have the specifics represented by the chairman and the vice chairman on one side of this issue and on the other side, we have a silence. All we have is, well, there was not any agreement on that.

What were the words that led the Senator from Oregon to believe, or the attorneys for the Senator from Oregon to believe that they had an agreement that the staff of this committee, in violation of the rules of the committee, could see information relevant to misconduct and not forward it to the committee? I would like to know what those words were because it would be a violation of the rules of the committee that that staff was sworn to serve.

Mr. SPECTER. Again, I would agree, but I would add this, that those lawyers cannot speak in the Chamber. And I would say that when Senator PACKWOOD has made his arguments—and I have said earlier that I thought he has done a pretty good job, but I do not think that the individual respondent is really capable of making a presentation like a lawyer because he is so deeply involved in it.

I see my friend from Michigan nodding in the affirmative.

He has gone through so much. But the issue has been raised. I do not know the answers to the questions. I have not seen the memoranda. I do not represent Senator PACKWOOD. But I think it is an important question for the Senate and I will endeavor to determine it.

Mr. WARNER addressed the Chair.

Mr. DASCHLE. Will the Senator——

Mr. SPECTER. I will speak for 1 more minute to the comment, having the floor, on the case of search and seizure.

I do not know that it does a whole lot of good to cite all these Supreme Court cases because we have already had the comment, with some justification, that this is not a class in constitutional law. But I would disagree with my colleague from Michigan about what a police officer finds which is inadmissible even though it is evidence of crime.

In just one case, Coolidge versus New Hampshire, if somebody is stopped for reckless driving and a police officer finds a dead body in the back seat, you bet it is admissible. But if the police officer goes into the trunk, it is not admissible as not being reasonably related to the search and seizure. Or if you search somebody and find a gun in their possession, that is admissible. But if you go into an adjoining room, it is not admissible.

But I raise that from the point that there are accepted principles of the law beyond the issue of privilege where evidence is not used to incriminate a person if the scope is too broad.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor. The Senator from Virginia has a question.

Mr. WARNER. Yes, of the Senator from Pennsylvania.

First, I wish to commend the Senator for his role in this case and for his courage to step up and suggest this alternative to the Senate, and I hope my comments are taken as being constructive. But my questions are as follows—and incidentally, I have known Judge Starr for 15 years. I would like to advise the Senate that if there ever were a man of impeccable credentials, of knowledge, of fairness and honesty, it is Judge Starr.

But my concern, I say to the Senator from Pennsylvania, to put it candidly, suppose Judge Starr refuses to take on this rather unique and possibly onerous task. Suppose, he, once he takes it on, becomes incapacitated. I do not see, as this instrument is drawn, what is to occur if he either refuses or is unable to finish the task assigned by the Senate.

I would think that you need to amend it to give some flexibility and then that would give rise to a second question if the Senator agrees.

Mr. SPECTER. I think my colleague from Virginia raises a good point. I do not know the extent of Judge Starr's participation until now, but I understand it has been extensive. I do not know, but I have reason to believe he would probably be amenable to taking on the job.

I think the Senator from Virginia is exactly right, that there ought to be an alternative and that modification would be accepted.

Before the second question, let me thank the Senator from Virginia for his commendation. This Senator is not unaware that it would have been much easier to stay below the trench line on this matter. This is not a pleasant task, and it is subject to being seriously misunderstood everywhere. We have all been in enough of these proceedings to know it is subject to being misunderstood everywhere, but it seems to me that it is a job which has to be done by all of us.

One of my colleagues from the other side of the aisle came over during the lunch break, and we were talking about that. He said there is more reason to be here than to stay here. There is more reason to be here to take on these jobs than to stay here, assure your election by keeping your head below the trench line. But this is as a question that, as I say, goes far beyond Senator PACKWOOD. It goes to this institution and who is going to be willing to come here and serve and what the national interest is, getting the evidence now on the charges of sexual misconduct as opposed to tying it up for 3 years.

Mr. WARNER. Mr. President, I share in those thoughts, and I am delighted to hear the Senator's comments. So the Senator agrees with the Senator from Virginia we need to rework—I say "we"—the authors of this need to rework it for the contingency either that he refuses or, second, he becomes incapacitated, because otherwise, as I read this, it is so tightly drawn we would have to come back and reinitiate the very debate we are having now to substitute another individual.

Mr. SPECTER. We certainly would not want to do that.

Mr. WARNER. And I would have to tell the Senator in all fairness from this Senator, I am not prepared to leave to the discretion of some unknown body, that is, the committee or some unknown individuals, picking an alternative to Judge Starr because if I am to support this the fact that Judge Starr is the named individual I would find is one of the main reasons were I to support this. But an unknown, then I think I would like to render future judgment on any substitute.

My next question goes to the word "relevant" which is used with respect to those findings the independent examiner has on the charges that were initially filed, but then in the second paragraph the Senator did not use the word "relevant" but used the word "referring." Did he intentionally use a different standard to guide the examiner or is there a difference between "relevant" and "referring?" It seems to me that "relevant" should be substituted for the word "referring" in the second paragraph.

Mr. SPECTER. I would have no objection to that.

Mr. WARNER. There we would have a parallel between the duties of the examiner.

Mr. SPECTER. I would have no objection to that.

Mr. WARNER. Mr. President, another question. The amendment gives a title "Independent Examiner" to one Kenneth Starr. I have looked through the rules of procedure for the Select Committee on Ethics. The only place in which I can find any reference to such an individual is on page 4, section F, and it reads:

> The select committee may in its discretion employ hearing examiners to hear testimony and make findings of fact and/or recommendations to the select committee concerning the disposition of complaints.

Is that the section on which we predicate this title in caps "Independent Examiner?"

Mr. SPECTER. If I may respond to my colleague from Virginia, I think not. Judge Starr has been used already, and the name "Independent Examiner" has been given to him. I believe that it is within the purview of the committee to have made that determination and to have applied that name even though it is not specified in the rules. Certainly, if the full Senate adopts that, there would be ample authority. But I do not believe that the reference made by the Senator from Virginia is the point of origin of this term.

Mr. WARNER. Mr. President, I share that because this paragraph F, as my good friend and fellow counselor knows, refers to an individual who is performing not necessarily ministerial duties but certainly not duties tantamount or in any way equivalent to the heavy burden that is to be placed on such an individual as Judge Starr as designated by this. And my next question follows on from the Senator from Michigan because I had the same question.

This independent examiner in this amendment, to whom does he owe allegiance? Is it the committee? Is it our fellow colleague, Senator PACKWOOD? Or is it to the Senate as a whole?

Mr. SPECTER. It is to the Senate. The independent examiner, Judge Starr, would owe allegiance to the Senate and he would take his charge from the Senate's action if the Senate chooses to adopt this substitute amendment.

Mr. WARNER. Then in following up the important question by the Senator from Michigan, if his allegiance is to the Senate, then it is the Senate that is creating this special privilege as such for this individual to analyze the diaries and to perform the duties enumerated and not report to the Senate based on that privilege a finding or findings which in his judgment would lead to allegation of offenses or misconduct in addition to the two enumerated, two categories in this amendment. Is that correct?

Mr. SPECTER. It would be a determination by the Senate that the way to get at all of the materials relevant to what has been filed and to the charge of possible criminal violation would be misread and we would be analogizing the exclusion of any other matter just as you exclude them from privilege or from what police officers seize. The cases are in the thousands where evidence has been excluded because it goes beyond the purview of what we consider to be good public policy—and we are a body which determines public policy. That would be our determination.

Mr. WARNER. Mr. President, then, in reference to the question from the Senator from Idaho as to whether under this amendment we would have according Senator PACKWOOD any protection over and above those available to a normal citizen, it would seem to me we are following the reasoning of the Senator from Pennsylvania to his response, because it is not as we have known and talked in the law, that of a clergyman, that of a doctor, that of a lawyer or client or the other well-recognized privileges that emanate from British common law through statute, law and case law today.

Mr. SPECTER. We would not be, according Senator PACKWOOD any rights beyond that which any other citizen would have in the context of what the law excludes from being admissible in a court for a criminal prosecution or for any perceived. The law recognizes privileges such as we have talked about, the law recognizes the suppression of evidence against the worst of criminals where there is not a warrant which is specific——

Mr. WARNER. I am fully aware of that. I just point out my own observations and conclusions. I think we should speed this up if we can.

Leaving Judge Starr to one side, my next point, let us say it is Mr. or Mrs. or Ms. X that takes on the important responsibilities in the Senator's amendment. And they do in fact during the course of the examination find such material which in their professional judgment does give rise to allegations of additional misconduct. And in furtherance of this Senate resolution, which in a sense sanctions their not bringing it to the attention, they do that. Then later on in their career practicing on another case or handling other things, all of a sudden somehow these diaries become public. And they will be held accountable by their peers, the public and otherwise, when you were the one that went through, why did not you tell us about that?

In other words, they run that risk. I simply point that out. That might cross the mind of Judge Starr or any other individual designated to take on the responsibilities here, that this is somewhat unique in their own professional careers of being given a task by the Senate which might entail not coming forward with such factual information which in some later time might be disclosed.

Mr. SPECTER. By way of response to that hypothetical, let me say to my colleague from Virginia, that happens all the time. When judges issue orders suppressing evidence, when they are interpreting the Constitution, they say that a guilty man should go free. I can give you some lurid examples from my own experience where there are murderers who went free——

Mr. WARNER. I agree with you.

Mr. SPECTER. I have not finished my answer. I am not finished. But I will not be long.

There are horrendous examples of judges doing unpopular things. I recently read in Justice Douglas' autobiography, "Go East Young Man," a comment about Justice Black, who after the decision in Brown versus Board of Education was excluded from his 50th reunion of his law school in Alabama.

Judges do that. I think Judge Starr has the courage to do it if he thinks it is right. If somebody later complains about it, there will be a lot of complaints that are made about a lot of us, including you and me, Senator WARNER.

Mr. WARNER. I understand that, Mr. President, very clearly. I point out that while this is a well-recognized category of privileges and in the law, and members of the judicial branch attorneys have undertaken those responsibilities, this in my judgment would be a case of first impression for the U.S. Senate as giving that responsibility.

Mr. SPECTER. If I may say, Mr. President, this is a case of first impression. There is no doubt about that. The Senator from Nevada has made that point again and again. This has never happened before. That is why we are struggling with it in a way that we would prefer not to do, not to be here. We will be talking about the crime bill. We will be talking about the Interior appropriations bill. We have to resolve this for the interests of the American people, this institution and every individual in it.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, I want to ask the Senator from Pennsylvania a couple of questions. I have wanted to do that now for some time. Before I do, let me make a couple of introductory remarks.

Mr. SPECTER. I object to that. If the Senator from South Dakota has a question, I yielded to him for a question.

Mr. DASCHLE. The Senator was recognized in his own right.

The PRESIDING OFFICER. The Senator from Pennsylvania does have the floor.

Mr. SPECTER. Permit me to withdraw that comment.

Senator DASCHLE, I will be pleased to hear your introductory remarks.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, could you clarify who controls the floor at this point? It is my understanding that the Senator from Virginia yielded the floor, and the Presiding Officer recognized the Senator from South Dakota. Is that not correct?

The PRESIDING OFFICER. The Chair believed that the Senator from Pennsylvania still has the floor and that the Senator from South Dakota rose to put, to ask a question of the Senator from Pennsylvania.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

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

The PRESIDING OFFICER. Does the Senator from Pennsylvania yield——

Mr. SPECTER. I yield on the condition that I do not lose my right to the floor.

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

Mr. MITCHELL. Mr. President, it does not take unanimous consent to suggest a quorum. I have no objection

to the Senator from Pennsylvania having the floor when he gets back. But let us make it clear, that one Senator cannot dictate whether or not a quorum is suggested.

I ask unanimous consent that following this quorum call, the Senator from Pennsylvania be recognized. I now suggest the absence of a quorum.

Mr. SPECTER. That is agreeable with me.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. MITCHELL. Mr. President, I note the presence of the distinguished Republican leader on the Senate floor at this time. He and I have previously discussed privately, in the last few moments, how best to proceed on this matter and whether it would be possible to reach an agreement that would bring it to a conclusion this evening. I, therefore, now inquire of the Republican leader. As he knows, I have, over the past several days, suggested and requested a time agreement as to when we could complete action on this measure. No such agreement has been possible until this time. I now inquire of the Republican leader whether it may be possible to obtain a time agreement with respect to the pending amendment?

The PRESIDING OFFICER. The Senate Republican leader.

Mr. DOLE. If the majority leader will yield, it is not possible to get a time agreement, although, as I have indicated to the majority leader, it may not be necessary. In my view—I think the Senator from Missouri wishes to speak, not at length. There are others, maybe one or two others. I think Senator SPECTER wishes to add additional information into the RECORD. I do not see it taking a great deal of time. We might move more rapidly in this instance without a time agreement, in my view—in the view of this Senator. If something should develop, I will certainly come to the majority leader.

Mr. MITCHELL. Mr. President, I regret the response, but I accept the Republican leader's analysis of the situation. And, therefore, it is my intention that we will simply proceed and remain in session until such time as we are able to dispose of both the pending amendment and the underlying resolution. I thank my colleague for his consideration.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania [Mr. SPECTER], is recognized.

Mr. SPECTER. I thank the Chair.

Mr. President, I had concluded the substance of my comments and was yielding for questions. I believe Senator DASCHLE has an introductory statement and certain questions. I will be glad to yield to that.

Mr. DASCHLE. I thank the Senator from Pennsylvania. I do not want to belabor this issue. I know we are probably getting close to some resolution. Let me just say that I cannot sit on the floor and listen to the Senator from Pennsylvania assert without challenge that we are not creating a double standard here. He has every right to believe that, as he has so stated, but I think it is very clear from the legal advice we have been given in the committee, the advice I have been given personally, the information printed in a number of different sources, that this amendment clearly creates a double standard.

I rise now, however, to ask the Senator from Pennsylvania some questions. The questions relate to the pertinent sentence in the amendment, and I will read the sentence because I make a couple of references to it in my questions:

> These documents shall be examined by the independent examiner, Kenneth Starr, who will then turn over to the Select Committee on Ethics all materials which are relevant to the charges of misconduct regarding Senator BOB PACKWOOD currently before the Senate Ethics Committee.

There are three questions relating to that sentence that I would like to explore with the Senator from Pennsylvania.

The first has to do with the specific reference in the amendment to independent examiner Kenneth Starr. I do not know Mr. Starr. I know he was a judge. I know he has had other legal positions and is highly regarded. He is now in private practice. He is an attorney. But I assume that the Senator from Pennsylvania has consulted with this individual and has his acknowledgment that he would be willing to serve in this capacity under these conditions. Would the Senator address that question?

Mr. SPECTER. I have not consulted with Judge Starr. I have been advised that he has played a role in the proceedings up to the present time. I would ask my colleague from South Dakota if that is true?

Mr. DASCHLE. He has played a role in the proceedings, but he certainly has not been put in the position that this amendment would establish. So I guess the question is really not what he has done, but rather would he be willing to serve in the capacity delineated by this amendment?

Mr. SPECTER. I believe that he will be, but the question was raised earlier by the Senator from Virginia [Mr. WARNER], who wanted to be sure of it. We are trying to be sure now and to provide for an alternative, because as the Senator from Virginia said, he has confidence in Judge Starr but wanted to know who a substitute would be.

But Judge Starr has been consulted, as I understand it, by the committee to resolve disputes. That has been represented to me, although, again I repeat, I have not talked to Judge Starr and the expectation is that he would be available. But we are trying to make sure of that.

Mr. DASCHLE. That is a very consequential expectation given the fact that within the next couple of hours we may be called upon to vote on whether or not an individual will serve in a capacity for which he has not been consulted. We do not know whether this individual is prepared to take on this responsibility under these circumstances, and yet we are being asked to vote on it. That is question No. 1. And I would caution everyone: Be very concerned about voting on something involving an individual who has not been consulted about the very role he is described to have in this amendment.

I think the Senator from Virginia raised a similar question, the question of whether or not anyone would even want to be put in that capacity. The bottom line is that it is very important that we find out whether Judge Starr would be willing to serve prior to the time we vote on an amendment of this kind.

The second issue has to do with the word "currently." Several other Senators have raised this issue, and I am still confused. I hope that perhaps the Senator from Pennsylvania can clarify this issue.

Let us assume that Mr. Starr agrees to accept this assignment; that he will take on the responsibility with the constraints that are outlined in the amendment. And let us assume that he gets into page 6,000 or 7,000 and finds a clear violation of the law. As I think I understand the Senator's answer to an earlier question, under this amendment, Mr. Starr would have to treat that information, a new violation, as if it were simply a consultation with a family member; is that correct?

Mr. SPECTER. No. The family member exception has already been carved out by the committee as something that it has been willing to accept. To that extent, the committee has given leeway to Senator PACKWOOD that other Americans do not have. The committee has already done that.

The answer to your question about whether, if Judge Starr finds other information it would have to be turned over, that is the subject of very extensive discussions that I had with the Senator from Michigan [Mr. LEVIN]. The answer is that he would not and the analogy would be public policy which recognizes privileges—although this is not in the privileged category—but closer to excluding materials that cannot go to prosecuting authorities on the search and seizure analogy.

Mr. DASCHLE. The Senator from Pennsylvania has made that reference,

but I must say, again, that there is a very strong disagreement among constitutional experts.——

Mr. SPECTER. I am not too concerned about your reference to constitutional experts unless you cite me some cases, cite me some propositions that we can talk about. When you talk about constitutional experts, that is an easy generalization to make. We have had some fairly detailed discussions on the floor of this Senate among a great many lawyers, and we talked about legal principles and we talked about Watkins versus United States, which no one has disputed, about pertinence. We have talked about grand juries, and we have talked about the difference on targets. We had Senator BIDEN talk about grand juries on a different threshold. We have not exactly avoided the specifics, nor has this Senator. So if you have something specific, I would be delighted to discuss it with you, but I do not understand how I am supposed to respond to generalized constitutional experts.

Mr. DASCHLE. Let me just say, I do not think it serves the purpose of the body at this point to go back into these specifics. We have talked about them. But I think it is very important that every Senator fully appreciate what it is we are requiring here, beyond the debate about specifics and past constitutional law.

What we are requiring here, pure and simple—and there should be no misunderstanding—is that this individual, the independent examiner, will be required to ignore any additional information having to do with a possible criminal violation, ethical violation or anything else that he views to be suspicious. Such information would have to be ignored if we adopt this amendment.

Now the third question I have——

Mr. SPECTER. Let me respond to that, if I may. It is a question. When you say "ignore," you make it sound as if it is unprecedented or inappropriate under a decision of public policy. There are many items which are ignored and not turned over to authorities, both by way of analogy to privileges, which we have talked about, and where the Supreme Court of the United States has struck out evidence which is competent and incriminating of criminals on the ground of public policy and under the Constitution. So this is not a novel concept, as I understand the law.

Mr. DASCHLE. It may not be, and I appreciate the Senator's explanation here, but I must tell you that it is clearly, as I have described it. If the examiner were to find additional information that would cause him concern, he would have no recourse but to ignore it and withhold it from the Ethics Committee and this Senate.

Now the third question——

Mr. SPECTER. Let me respond again. I am delighted to pursue it or not. We have gone into it in some great detail in my discussions with the chairman, with the vice chairman and with the Senator from Michigan and with others. I do not want to leave your argument hang as if there is something unusual about it or unprecedented. The law is full of precedents where matters are not turned over to law enforcement officials where there is sound public policy reason not to do so.

Mr. DASCHLE. So it is the Senator's argument that all legal precedent requires that this individual under this amendment take no action. The Senator does acknowledge that the individual can take no action if there would be any additional information that would be of concern to him as he reviews the remaining 3,000 pages?

Mr. SPECTER. As the Senator from South Dakota articulates, on the question of all legal principles, I make no such assertion about all legal principles. I am saying to the Senator from South Dakota, there is a large body of authority that I have gone into in some detail where there is incriminating evidence. If Mrs. Packwood goes to Judge Starr and tells him incriminating things told during the course of their marriage relationship, that cannot be disclosed.

Where you have cases of evidence which would convict of murder, the courts have said, as a matter of public policy, it will not be disclosed. So that where there is a determination of a matter of public policy that has been the rule.

Mr. DASCHLE. There is a difference, of course, between public policy and evidence of some ethical or criminal violation, I would think. The point that I reiterate—and the Senator can base his judgment as to the acceptability of this particular point anyway he wants to; it does not change the bottom line. The bottom line, as I understand this amendment, is this individual can take no action were he to find some additional matter of concern in the remaining 3,000 pages. For whatever reason the Senator from Pennsylvania has suggested may be the legal basis for that prohibition, under this amendment there is no alternative but to do nothing.

Mr. SPECTER. I repeat myself, but again the Senator wishes to have the last word to make it sound as if there is something wrong with that.

When I say "public policy," if I may expand on it for the Senator from South Dakota, I mean the public policy that is articulated by the Congress when we pass a law. Public policy is in a sense what is enforced by the Supreme Court of the United States when it interprets the fourth amendment. When you have a case like Coolidge versus New Hampshire or other cases in which there is material that does not find its way into a criminal court because it is not admissible under the law, it is because there is a decision that it is desirable not to do so in the public interest, as a matter of public policy.

Mr. DASCHLE. I am happy to give the Senator from Pennsylvania the last word on that question.

Let me go to the third question. That has to do with relevance.

I am troubled, frankly, after watching our staff and having participated over the last 6 months in trying to determine, sifting through all of the documents trying to determine what is relevant and what is not. In fact, there are times when I view a name or an incident that goes right by me because I do not know as well as the staff does the details of each one of the cases and all of the work that has gone into the investigation so far. Sometimes the staff points me and the rest of the committee toward what is relevant and what is not.

But under this amendment, we relegate all of the responsibility for interpretation of relevance to an independent examiner, who has not been working on this lightly for the last 10 months, who has not been involved in decisions relating to individual charges, who has no concept, really, of the intricate analysis of the relationships between charges and incidents and the review of the first 5,000 or so pages of the diary that has been brought out on the floor in the last couple of days.

My question is really this: How is it that we can expect this individual to make a decision with regard to relevance in the remaining 3,000 pages under those circumstances?

Mr. SPECTER. Because a judge, as Judge Starr was, or the Solicitor General, as he was, arguing complicated cases before the Supreme Court, is accustomed to going through massive bodies of factual materials on records which are much longer. Some records are 10,000, 15,000, 20,000 pages long. When a case comes to an appellate court, the judge has the responsibility of familiarizing himself or herself with the record to rule on just such an issue that some evidence as adduced and admitted by the trial judge which the appellant, the person taking the appeal, says is not relevant, and that is precisely what he does.

I would suggest to the Senator from South Dakota that that is an appropriate function for an impartial judge, and that where the committee has functioned as the investigator of the facts and as the prosecutor making the charges and as the judges making decisions, that that commingling of functions is highly suspect. Some would say—and I am one of them—that it is excessive, that you ought not to have that kind of commingling of functions.

That is why there is an effort to find an independent hearing examiner. We have a committee which has relied on

its staff. We have a chairman who has made a statement about possible criminal violations without looking at the materials but has relied on two staff members. I think that there is better assurance for the Senate and the country if Judge Starr takes a look at it, something he is well equipped and well qualified to do.

Mr. DASCHLE. My question is whether he is well equipped under the circumstances. This is a major undertaking. How he can know what is relevant without first reading 5,000 pages in the diary, without reading all of the other depositions taken of individuals who have come before the committee? I do not know. But let me ask the Senator this hypothetical question. What would happen——

Mr. SPECTER. Let me respond to that. Judges do know that because they do go through records which are thousands of pages long. That is done all the time.

Mr. DASCHLE. I would accept that answer.

Let me ask the Senator a hypothetical question. What happens if Senator PACKWOOD, as we finish his deposition, raises a matter in the diary that Mr. Starr had deemed irrelevant under the terms of the amendment and therefore was not available to the committee. What do we do in a case like that?

Mr. SPECTER. If the Senate accepts Judge Starr in this resolution, relying on his integrity—many people have spoken about his integrity, and the committee has already endorsed his standing and made a comment about his integrity by submitting disputed questions to him. If he makes a judgment, that is the judgment. That is it.

Mr. DASCHLE. So what the Senator is saying it is conceivable that Senator PACKWOOD could make reference to material in the diary that Mr. Starr viewed to be irrelevant?

Mr. SPECTER. I would think that Senator PACKWOOD would be bound by Judge Starr's determination of relevancy although that does not go to the essence of this amendment, which calls upon Judge Starr not to rule on what Senator PACKWOOD does but to make a ruling on what will be turned over to the committee.

Mr. DASCHLE. You certainly would not allow, again, what would be a double standard, allowing Senator PACKWOOD to make references to material in the diary, that we had not had access to because Mr. Starr viewed it to be irrelevant?

Mr. SPECTER. No, I would not look for a double standard, and that is why I answered the Senator's question that I would say that Senator PACKWOOD should be bound by Judge Starr's determination of relevancy, just as the committee should be.

Let me just amplify that very briefly. I have already made this point, so I do not think a great deal of amplification is necessary. I understand that there are concerns among Senators as to whether there is a double standard in favor of Senator PACKWOOD. I say to the Senator that there is not. We are not giving Senator PACKWOOD anything that any other of the 250 million-plus Americans would not have. He is not benefited in any way by this substitute resolution; that, in fact, he is getting less because he would be compelled to turn over items related to what Senator BRYAN has characterized as a possible criminal violation when the committee has not voted to charge, when the indicators are that the committee does not think it has enough evidence to have the charge, and where there is not probable cause to call for Senator PACKWOOD's turning that over. But Senator DANFORTH and I have included that in order to clear the air on that issue which gives Senator PACKWOOD less than any other person would have.

Mr. DASCHLE. I know that the Senator continues to assert that, but I must say there are—I believe he is in the clear minority on this, and we will not resolve this matter this afternoon. Suffice it to say that there is clearly another school of thought, and I believe the majority opinion is that this is clearly a double standard.

But I am far more concerned about the conditions that we place on Judge Starr. In any event, I certainly hope that the Senator from Pennsylvania will find out definitively before we are called upon to vote whether Mr. Starr is willing to subject himself to these constraints.

But I thank the Senator for his questions. I will allow other statements.

Mr. SPECTER. I can do no more than give the Senator the same assurance as I have given him several times in the course of this colloquy.

Mr. BYRD. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? Is there a sufficient second?

Mr. BYRD. I will suggest the absence of a quorum.

The PRESIDING OFFICER. If the Senator will withhold, there is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Chair recognizes the Senator from Missouri [Mr. DANFORTH].

Mr. DANFORTH. Mr. President, I am a cosponsor of this amendment, and I regret that I have lost my audience before I had the chance to speak on it because I want to explain to the Senate exactly what I have in mind, what I had in mind in cosponsoring this amendment because I think it is an extremely important point.

I want to say at the outset that I have no interest in appearing to represent Senator PACKWOOD or to speak for Senator PACKWOOD or in any way defend Senator PACKWOOD. I have no intention whatever of speaking on the underlying issue, the matter that has been now in the press for almost a year, the matter of alleged sexual harassment. That issue will come to the Senate on another day.

I am not going to speak on it, but I would say that the allegations of misusing the staff are extremely serious allegations. But as the chairman and the vice chairman both pointed out and other members of the Ethics Committee pointed out yesterday, those are not the questions before us at all.

So I want to talk about the question that is on my mind, and it has nothing to do with Senator PACKWOOD. If there is any way that I can get through the debate without any further allusion to Senator PACKWOOD or to his problem, I am going to try to do that.

The issue that is significant to me is the Senate. That is what is significant to me. And the simple issue before us, in my opinion, is one that can be summarized in one word, and the word is "scope." That is the question. That is the question that I attempted to deal with in cosponsoring the amendment with Senator SPECTER, the substitute with Senator SPECTER. The issue is one of scope. The issue is one of scope of a subpoena; scope of a subpoena to be enforced by a vote of the U.S. Senate.

The issue to this Senator has nothing to do with waiver. Maybe that is an important matter. I am sure it is. But this Senate is asked to do something with respect to a subpoena. We are asked as a U.S. Senate to enforce a subpoena, to authorize a court to enforce the subpoena for us. So we as a Senate are asked to put our stamp on this subpoena. And that to me is the issue and the only issue that is worth debating today, the question of scope of a subpoena.

And, particularly, the question is: Does the subpoena's scope have to be somehow connected with some charge or some suspected offense or some suspected situation or state of facts? Does the subpoena have to have some connection to some suspicion at least? Or, in the alternative, does the subpoena have to be relevant to really nothing at all? Is the universe the appropriate scope of the subpoena? That, to me, is the question before us.

Now, the committee has basically dealt with its request for information from Senator PACKWOOD in two ways: first, in making its request for documents. This is on the committee report that is on our desk. The committee, according to its own report, requested that Senator PACKWOOD produce to the committee documents relevant to the committee's preliminary inquiry into allegations of sexual misconduct and intimidation of witnesses.

So the original request for documents, for information by the committee, was tied to something. The information, the documents that were requested, had to be relevant to something. The documents had to be relevant to a charge. And that charge was identifiable. That charge was known.

Now the committee, in the course of going through the records, finds something else. My own suspicion is that Senator PACKWOOD's counsel let the search go too far astray. But I do not know. I am not going to second-guess him. And I do not want to get into the question of waiver because, to me, that is not the subject that is on my mind.

But in any event, there is this other thing. It was described in the newspaper today, I guess. It has to do with Senator PACKWOOD's former wife and discussing job opportunities with a lobbyist or two or three or four, however many lobbyists. So that is a subject. That is something that the committee came on, and under the committee's rules, it is required to pursue it. That is something that the committee must pursue, information that falls from the heavens, falls into the committee's lap. It cannot ignore that.

So it is the opinion of this Senator that the subpoena should be tied to something that the committee knows it is trying to find out. In other words, the subpoena should be tied to the initial group of charges relating to sexual harassment and intimidation, and then, furthermore, the subpoena should be tied to this other thing relating to lobbyists or jobs for Georgie Packwood, or however you want to describe it.

But the problem with this subpoena is that while it includes the initial set of allegations and while it includes the Georgie Packwood situation, or whatever the other thing is, it goes farther than that and it includes the universe. The subpoena includes everything. It includes 3,000 or so pages of diary. And it includes more than the diaries. The subpoena includes—here is the language of the subpoena—"all diaries, journals, or other documents or material, including all typewritten or handwritten documents as well as tape recordings and all material stored by computer or electronic means that are in your possession, custody, or control which were prepared by, or at the direction of, Senator BOB PACKWOOD, recording or describing Senator BOB PACKWOOD's diary activities for January 1, 1989, through the present"—for approximately 5 years. That is the diaries; it is the telephone logs; it is the little pieces of paper that all of us stick in our pockets every day; it is everything relating to any notation he made, or any record that he kept, of absolutely anything he did. And the subpoena extends to all of that.

The question before the Senate is, I think, a very simple question. It is: Is that right? Is it right to have a subpoena extend not just to the specific charge, or the specific suspicion, or the specific fact situation, or whatever fell into the lap of the committee; but is it right to have the subpoena extend to all of the diaries, all of the records, all of the notations, all of the phone logs, everything else, with the three specific exceptions relating to attorney-client and family matters and medical information. That is the whole issue.

So what were Senator SPECTER and I trying to do? Maybe we did not do it right. Maybe the Senator from South Dakota is correct. Maybe we should have telephoned Judge Starr, or figured out some other way of doing it. But what we were trying to do is to say this subpoena should not cover everything; that there should be some limits to what the subpoena covers.

It was pointed out yesterday that this is going to be precedent. I think Senator BIDEN said that. He asked what is the basis for this? Is it some particular thing Senator PACKWOOD did or some agreement? Is that the basis? Is it unique to him? Or is the basis for this just a general principle that if the Ethics Committee is interested in something, it has a right to get everything?

We have not resolved that question. And because we have not resolved this question, this is a precedent, and it is an enormous precedent for this Senate. It is a precedent that is going to go on well after this Senator leaves the U.S. Senate. But the precedent is that if the Ethics Committee suspects something, it can get everything. If it has any kind of inquiry into anything, it can get everything, and it does not have to tie the subpoena, the request for documentation, to any particular allegation. That is the simple point we were trying to make.

I want to get to the question that everybody talks about, and that is: Is Senator PACKWOOD being dealt with like 250 million other Americans? Well, first of all, 250 million other Americans would not have had this happen to them. Why? Because 250 million other Americans would not have been in this position, because the statute of limitations would have barred the sexual harassment claim that got the Ethics Committee into the diary in the first place.

It is said that this is like a grand jury proceeding. No, it is not. A grand jury proceeding is an inquiry into criminal matters. This is not a criminal matter. This is not a grand jury. This is the Senate. This is the Senate establishing the precedence of the Senate. This is the Senate establishing the principles of the Senate—not of a grand jury, not of a criminal proceeding, but the principle by which the Senate is to act.

The fact is that the issue of standards is not a comparison of the standards that Senator SPECTER and I are asking be applied here with 250 million Americans. The comparison is the standard that was originally established by the Ethics Committee and the standard that is established by this subpoena, because the Ethics Committee originally asked for material that was relevant to charges.

Now the request is for material, whether or not it is relevant to anything. So was the original request correct or not? When the Ethics Committee originally requested that Senator PACKWOOD produce for the committee documents relevant to the committee's preliminary inquiry, was that the correct standard? Was the standard of relevance in the original request correct? Was the standard of relevance that was originally asked for the standard that we want to apply to all 250 million Americans, or was the standard to relevance wrong?

I think what I hear the committee saying is that the standard originally sought, the standard of relevance, is the wrong standard, and that the new standard is the right standard. And the standard that henceforth is going to be applied to Members of the U.S. Senate is the standard that has no tie to relevance whatever. Henceforth, the precedent will be that this original standard of relevance was wrong. Henceforth, the precedent will be that there does not have to be any connection.

So you have a complaint, or you have a charge, or you have a suspicion; and then you just go into the records, and if you find anything there, why, that is fair game.

The Senator from South Dakota asked Senator SPECTER: Does this mean that if Judge Starr comes upon something that is an offense that nobody has ever thought of, Judge Starr keeps that to himself and ignores it? The answer to the question is yes, yes, yes. The answer is that the price that is paid for some limitation, for some rule of reason is that maybe something will get by; just like the price that is paid for not having a police state is that maybe some bad guys get away. The price that is paid for the Constitution is that maybe some crooks get loose, or killers get loose on the streets. The price that is paid for the fourth amendment is that some bad guys do not get their records seized.

Years and years ago, they talked about "fifth amendment Communists," people who claimed the fifth amendment. It was alleged that it was a terrible thing to claim the fifth amendment. It is America. It is American to claim it. What we are saying is that maybe there are some things in this that are not going to be discovered, that are going to be kept in the bosom of Judge Starr. Maybe that is going to happen. All we say is that there should be a filter so that somebody stands between Senator PACKWOOD or Senator

DANFORTH or any other Senator and the total sweep of a blanket request for absolutely anything that could be requested.

(Mr. DORGAN assumed the chair.)

Mrs. BOXER. Mr. President, will the Senator yield for a question?

Mr. DANFORTH. I really do not want to. I am going to make my statement and I am going to sit down, because we have been going back and forth with people asking questions about the law, questions about whether there was a waiver. I just do not want to do it. I am just going to make my statement, and I am going to sit down.

But I want just to read what the fourth amendment says. It says:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The only people who can answer the question of particularity of whether this particular subpoena particularly describes the places to be searched and the persons or things to be seized are right here in this Chamber.

If we decide that anything goes, I guess it will be taken to court. Maybe the court will overrule the Senate. We should be setting the standards for the Senate, not kicking it to a court. We should be setting the standards for the U.S. Senate, not kicking it to a court.

Does this meet the standard of particularity? Is this any Senator's view of what describes the place to be searched and the persons or things to be seized—all diaries, journals, or other documents or material, including all typewritten or handwritten documents, as well as tape recordings, and all materials stored by computer or electronic means that are in your possession, custody, or control, which were prepared by or at the direction of Senator BOB PACKWOOD recording or describing Senator BOB PACKWOOD's daily activities for January 1, 1989, to the present.

Is that any specification? Is that controlled by any rule of relevance as was the original request by the committee? I do not think so.

So, again, I want to close by reiterating I am not here to defend BOB PACKWOOD. If the charges made against him turn out to be correct, I think the Senate should throw the book at him. I am not here to defend him. I am here to talk about the process and only the process. Maybe it is nerdy to talk about process. Maybe it is nerdy to talk about it. But to me it is what the country is all about, and this should be the focus of this debate.

Mr. SIMPSON and Mr. SHELBY addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I have not yet spoken on this debate, so I will go forward, because I know that we will conclude today.

I hope that what Senator DANFORTH has said has been well heard by all. Although I have not participated I have been listening to all of this with the greatest intent and interest. I have seldom been absent from the floor, and I have listened attentively to this very impressive debate. The presentation of the case by the Ethics Committee—well done. The presentation of "his side" by the Senator from Oregon—well done. Senators have spoken from their deepest passions and interests and prejudices, if you will, and biases—nothing wrong with that. That is always very stimulating to hear. Now we are coming down to the cutting edge of this debate and our decision is imminent.

I practiced law for 18 years. I do not know how many in this body ever practiced quite that long. I did it all. I won more than I lost, and I settled myriad more than I ever tried, and worked on cases from the police court to the Wyoming Supreme Court to the U.S. District Court. I did jury trials, nonjury trials, settlements, custody scraps, probate proceedings before the body had even cooled, child abuse, incest, first-degree murder, car wrecks, injuries, and even affray. I do not know if any of you have been involved in a case of affray. My client had chewed a chunk of a guy's ear at Cassie's Supper Club outside Cody, WY. He apparently had too many and thought he was steer wrestling.

So I have been there; I have been there. I have seen the faces of people who look up at you at the counsel table in a courtroom in the most helpless fashion and would say to me or to opposing counsel: Will the law help me? Will it be fair? Will I get justice? That is the eternal plea of an American, the eternal cry. That is what we fought for many years ago.

I have legislated for about 30 years since I took the oath of office in the Wyoming Legislature in 1965. I served as chairman of a Judiciary Committee. So I really know what Senator JOE BIDEN's job is—boy, do I. He does it well, and he does it fairly.

I served as an assistant majority leader, so I know a little bit about the job I hold now as assistant minority leader. I served as majority leader. So I know something about that job that Senator GEORGE MITCHELL does for us now and that Senator BOB DOLE did for us in the past. It is a tough job, and they do it beautifully, because they are strong, fair, tough, and partisan—just the kind of person you want for that task.

I love legislating. I love the fray. I love the Senate. I have been here 14 years. The longer each one of us is here we attain the same level of respect and love of the institution as is locked in the bosom of our deeply respected senior colleague from West Virginia, Senator ROBERT BYRD. He is a living substance of institutional memory and history of this unique deliberative body.

And I have seen gripping drama on this floor as we have previously judged our colleagues. What could ever be more difficult? Whether one is a member of a profession or a craft or a guild, there is no more onerous and uncomfortable duty or obligation than judging one of your peers.

I think the only group in society that does not have such a mechanism is the media. Do not throw anything up there. I do not want to even look up. They give us all a great deal of advice and counsel. They give doctors advice. They give the President advice. They give accountants advice in how to police their ranks. They give lawyers advice on how to police their ranks. They give legislators advice.

They have no peer review, and no self-regulating mechanism. They have nothing, no heat applied to one of their own, just the usual disclaimer: "We stick by our story." That is usually the top one. Or if you get into it with them, they pull the cloak of the chilling effect around their shivering shoulders. Then there is always the lame comment about the public's right to know, and they have a lot of fun with that one.

Do not ever believe they soon will not know everything in the diaries of BOB PACKWOOD, and the leaker will be protected, and the alarmed "fourth estater" will say, "Why, I will go to jail before I will ever divulge my source,"—even if there might not be a source, and that will be that.

This is a heavy burden on us, and it should be, but I must say—and I will admit to my own prejudices and bias—I say that the finest effort that I have ever seen here as to these type of proceedings had to do with the tragic case with our friend Senator Harrison "Pete" Williams of New Jersey. My long-time friend and steady compatriot in legislating, Senator MALCOLM WALLOP, served as chairman of the Ethics Committee, and another close friend of mine, a fellow of the class of 1978, who came here with me, Senator HOWELL HEFLIN, was the vice chairman.

They compiled a record and they gave us a procedure to follow which served to render a just and fair result. That is all we seek here. And please hear this—my friends Senator MALCOLM WALLOP and Senator HOWELL HEFLIN have told me that they would consult with Senator Pete Williams' counsel whenever they felt it appropriate to do so within the scope of their proceedings. Remember Senator Williams went through three sets of counsel, and they visited with them all.

What Judge HEFLIN said the other day about the issues of the circumstance of the waiver and relinquishment of the right to retain the

diaries is so true. Remember this. You heard what the Senator from Oregon said about why he had done that, because the answer of "yes" or "no" meant whether he perjured himself or he did not.

So he voluntarily chose to relinquish the right of privacy of his own personal diaries—an extraordinary act of voluntary cooperation with the Ethics Committee. And his reward for that? You have seen it. A voracious, riveted, obsessive, and continuing intrusion into the most private documents compiled by any human being—one's own personal diaries. But that is done.

And what of this precious right of privacy? I hear it prattled about in a near reverent, almost religious way. I might reflect for a split second back to the Robert Bork judicial nomination. All of us—and I remember these things with clarity because I was one who never got it. Recall that he was savaged as an invader of the bedroom, a violator of the privacy of his fellow human beings, one who favored the sterilization of women, a racist, a bigot, a lover of the poll tax, and much, much more. But it was his views of the right to privacy that seemed to energize the American media and his detractors. And then we read in the media and hear on the floor that somehow we in the Senate "don't get it." I think we do.

Revisionist history will not be able to change the basic facts that gave rise to that remarkable and mistakenly catchy comment. I did get it when Clarence Thomas came before the U.S. Senate for confirmation to the U.S. Supreme Court. What I did get was that he had appeared before the U.S. Senate, and the Senate Judiciary Committee, for confirmation in four—four—previous occasions and that in each and every one of those hearings about his character and abilities there was never any record at all of even the existence of one Anita Hill. He was confirmed by the Senate by voice vote for the U.S. district court of appeals, and in committee by a vote of 13 to 1 by the Democrats and Republicans on the Senate Judiciary Committee.

Then came the big one, the Race for the Roses—the Supreme Court. And from 10 years back, but in this case we go back 23 or 25 years—and the statute of limitations would have expired with every other American, but not here. I remember so well that incident, when from 10 years back, suddenly came a person who had four previous separate opportunities to come forward before the U.S. Senate but never did. And when she did finally come forward, please recall that she never—ever—alleged sexual harassment. Do not gasp. That was the record. Any one of us could tell you that. Any one of us on the Judiciary Committee recalls all that she asked for was that the Committee look at his behavior—but before her public testimony she refused to allow the use of her name, or for her name to be revealed to the accused. Senator JOE BIDEN, the fine chairman of the Judiciary Committee, and Senator THURMOND, my dear friend, the ranking member, did about the best job that they could have done under all of the dramatic circumstances that were presented to us.

If we had gone into executive session or closed session which we should have done under normal circumstances, the media would have pulled the marbled walls down around us in this Chamber. So we did what we had to do. That is what we are doing here again. And, yes, we do get it. We really do. What we have some trouble with here is political correctness.

We probably do not get it because political correctness, or media pressure, has nothing to do with justice and freedom and due process.

So let us cut through some of what may be going on here. In an effort to show that this Senate has been properly chastened and baptized in the purest waters of political correctness—and that we do finally all get it—this subpoena, this extraordinary subpoena, has been issued. It contains the most remarkable breadth that I have ever seen in order to—I think at least partially, for all of us—to shield this body from the slightest suggestion that we would ever shirk or shrink from pursuing and conducting the most thorough inquisition of sexual misconduct—not sexual harassment—sexual misconduct.

That, my friends, is politics—not partisan politics—just politics and political correctness.

But we really have a greater duty. And I do not have any trepidation at all as to how this looks to the American public. Democracy is always pretty sloppy business. We have a greater duty, and that is the duty of fairness, the duty to establish fair precedents for those who serve in this body in 10 years or 20 years or 200 years from now.

If this were a case involving violations of the gift rules or campaign indiscretions or misuse of the frank, and if these diaries had turned up, would we allow a subpoena like this one to be issued and served for any and all information currently unbeknownst to the committee which might further—might further implicate a Senator on unrelated matters? I think not.

If this were a gift violation case, would we or others consider and approve the proposal submitted by Senator PACKWOOD to allow the scrutiny of all of his diaries as they relate to all preliminary issues as well as any current issues raised and within the committee's knowledge, to be reasonable? I think so.

I do not think we might hesitate, as we are doing now as we consider the Specter proposal. We are in a halt now. We are puzzled. We are wandering a bit.

Therefore, let us try to be consistent. Let us not alter the fairness or justness of traditional Senate procedures because of some version of political correctness or some continuing rabid mantra from some zealots in the land as to whether the Senate finally gets it.

We get it. I get it. It is about equal justice and fairness to the alleged women victims, if they are there. They may well be. It is about fairness to the Senator from Oregon. It is about fairness to the other U.S. Senators, to all involved in these difficult proceedings—and that is the way most Americans get it. Thank Heaven it still works that way.

What more do we make of this situation before us? What of the right of privacy of the diary? Oh, you say, he waived that. We have heard that.

Yes, he did. He waived it only as to things relevant to the charges against him—nothing more. The American public has that one figured out. I can promise you they have that figured out. They may be confused about the issues but not that one. The guy on the bar stool in Buffalo, WY, knows that this is an extraordinary venture into the basic right of a human being in the United States of America, the precious right to privacy which we prattle about day and night, the right to be left alone, the right to preserve and protect the intimate and most reflective and nostalgic and sensitive parts of your life. But BOB PACKWOOD chose not to do that in the interest of cooperating with the Ethics Committee, to avoid 2 or 3 or 4 years of trial and court proceedings which may well come if we do not do this right.

I hope we will all see the irony of that. It will then be 2, 3, or 4 years of this continuing episode through the courts if we do not do it right here.

What will the alleged victims think then? What will those who trumpet their cause think then? That is what is out there. Either get to the nub of things now and do it or see a numbing judicial hiatus, delays beyond dimension. That is what is out there. Do not think it is not; that it is.

What a dear price has been paid. I was in Wyoming the entire weekend. Many of you were home. We find at least in every paper I read from the Casper Star Tribune to the Cheyenne Eagle, Gillette News Record, we find BOB PACKWOOD is now guilty of some criminal conduct. That is what we found, at least while I was home. That is what was said in every newspaper in the United States.

What is it? I do not know. I have no idea. Some of us think we know. You do not know. Some has been leaked, but knowing this town as we all do—and I love the comments of one of our colleagues at our caucus last week who said if anybody on this Ethics Committee staff of the U.S. Senate tells you to

produce certain relevant documents and that the rest of them will be held in complete and strictest confidence, just laugh. Toss back your head and laugh. Ask the Judiciary Committee about that one. Just laugh.

We all know that all derogatory things will find their way into the media on a regular and sustained basis to seek, search, and destroy the victim, Democrat or Republican, man or woman. It is the way it works in this village. It does not work that way out there with the other 260 million Americans, but that is the way it works here. And BOB PACKWOOD has learned that the hard way, and many more of us will probably learn it the hard way.

So, in those 18 years of real love of law, and I had a father who taught me, an attorney father who taught me that: "If anybody goes to jail, be sure it's your client." And I live that way. I get in trouble and I take my licks. That happens to me because sometimes I get a bellyful of things. I internalize things and that does get me in trouble from time to time. I bring those things on myself. I do not blame anybody for that—the media, or radical groups. I do that.

Politics is a contact sport, and I love to take on the powers that be and especially the media, as I say, because I believe the first amendment belongs to me, too, and I feel strongly about that. But from coast to coast in these last days, since the chairman of the Ethics Committee—and he is a remarkable man and I have the deepest respect for him, and for my friend Senator MCCONNELL. These people—I would not do it; I would not do what they do. And so the chairman misfired—and I misfire a lot, I can tell you—he misfired using the word "criminal." I think if he wishes he could snatch that back, he would snatch it out of the airwaves in an instant. But it came out. He stepped to the floor and he said that the Senator had broken off the committee review and he said the words we have heard quoted here, but he used the term "possible violations of criminal laws."

Since then, BOB PACKWOOD's life has been an accelerated nightmare. And remember the essence of what the committee started with. Here is the report. Here is what they started with. This is dated October 22, and it is a report—it says a "report." Do not ask me how I got it. It probably was handed to me by some source that I would protect to my death, whatever. Anyway, it is in my hands here now and it is a report of BOB PACKWOOD on his refusal. Here is what it says on page 4. It does not have anything on it that says "classified" or anything else. It says:

> Senator Packwood has objected to the production of the diaries to the extent they contain information not directly related—

And then this:

> The committee has determined that the documents in their entirety may be relevant and probative with respect to the committee's current preliminary inquiry and are within the committee's jurisdiction.

I will buy that. Do you know what that was? That was about the three pending charges before the Ethics Committee and not the fourth. It had nothing to do at all with anything criminal. Nothing. So that is bad. That is bad stuff. That is what it says. That will get into the court record. That will take a year while the victims are waiting to get relief and surcease.

This Chamber is not a group of purple robed magistrates or persons of nobility privileged to gather in the star chamber sessions as in centuries ago to render justice or to wrest justice away from the accused. We know this is America in November 1993. An old phrase I used when legislating in the spirit of debate and after listening for a long time—and it works here—and it is a little corny: Keep your eye on the rabbit here. The rabbit is running, the hounds are out, but keep your eye on the rabbit. And the rabbit and the eye should rivet on October 21, when the chairman of the Select Committee on Ethics reported an original resolution to the floor, and there was no subpoena attached to it. No subpoena attached to it.

So from October 21 until yesterday—and three times I had asked for the subpoena and I received the greatest song and dance that you have ever been through. Once I was told it was "committee sensitive," whatever that means. Then I was told that it was something else. But after the cannonading of yesterday, it has to be presented and so we have it. I circulated it yesterday.

Why was there no subpoena attached on October 21 so the people of America could look at the CONGRESSIONAL RECORD and understand the most extraordinary scope and breadth of this document which has been read twice by Senator DANFORTH? I just touch on three or four words of it again:

> * * * all diaries, journals or other documents, all material under computer, electronic means in your custody, control or possession prepared at your direction—

But I do not think my friend from Missouri emphasized this one enough—

> recording or describing Senator Packwood's daily activities for January 1, 1989 through the present.

His "daily activities." Come on. Unbelievable. And if the people of America had seen it on October 21, we probably would not be at this point.

I distributed the text of it. You never saw that during the time the resolution was entered. You did not. Did you ever have your staff presented with a copy of this subpoena until you received it yesterday when I distributed it? I will ask that question. No, I say they did not because it was described as "committee sensitive." Imagine that. After all of what we heard yesterday still calling it committee sensitive, whatever that is. But it is one remarkable subpoena. It is unbelievable in scope.

In my years of practice, I have never seen one like it. You have read it and you have it in front of you. Let the American public have it. They have heard it now three times. Do you hear the keyword anywhere in it, the word "relevant"—relevant, for Lord's sake—anywhere in it as you read it? Of course not, and that is the issue here. That is what Senator SPECTER was trying to get at. That is what Senator BIDEN was trying to get at, what Senator PACKWOOD is trying to get at, and the staff of the Senate Ethics Committee refuses to "get it," and they do not get it, and that is the legal issue of relevance.

You cannot do this. You cannot have a subpoena like this unless it is relevant. You insert the word "relevant" in this subpoena and I will vote for it. Just put it right there, "all relevant diaries, journals," stick that in there and you have my vote for a sure shot. Senator PACKWOOD may not like that, but I will like it as a lawyer. That is the issue. That is where we are. Insert that word in there—"all relevant diaries and journals"—insert that word in the work of your committee, put that word in there and then go ahead with your work. Charge him. Charge him and then we will help you.

How could the committee know that there was any possible violation of criminal laws if the individuals on the committee, without exception, told us they had never seen the diaries? The individuals on the committee never saw the diaries. They did not? I believe that. And then how possibly can they say what they said?

So much of this is staff-driven. I am going to say that. I have said it before. So much in this arena is staff-driven. We rise in the morning, we are handed the clips for the day, and then are to go to the Senate floor and babble about whatever it is we read in clips so that we look bright, alert, and sharp, and half of us do not even know how we came to that point.

That happens here. Wait until the people get to the fourth charge, when it will eventually find its way into the public venue, and then look at the staff memorandums that every one of us deal with every day, which say, "be careful here, this was a contributor"; they want you to ask a question; better watch out; "the guy 'maxed out' on you."

Anybody ready for that? Anybody not been involved in that? Those little commentaries from their staff? Do tell me. I do not think so. There will be a lot of that in there. This is a classic example of it—because now our colleagues on the committee will take the heat because they would not visit with fellow members or counsel.

And let me tell you what rule 26 of the Federal Rules of Civil Procedure says so you just do not think we are off half-cocked. Rule 26 of the Rules of Civil Procedure says, quote, at the top, "Parties may obtain discovery"—and that is what this is, ladies and gentlemen. This is "discovery" deluxe. They will obtain discovery "regarding any matter, not privileged"—that was taken care of well by the chairman and vice chairman—"which is relevant to the subject matter involved in the pending action, whether it relates to the claim or the defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody * * *."

That word has escaped us all for 2 full days. The word is "relevant." That is all you do in the Rules of Civil Procedure—stick with what is relevant. There is no other test.

So here we are. Who would have guessed at what would have happened in the last few days? I think it is frightening in its scope. I think it is petty, staff driven, unconscionable, and I say to the Ethics Committee and to the chairman and vice chairman, "Charge this man." Charge this colleague of ours with these alleged elements of criminal—criminal conduct. You cannot pierce the veil of this man's privacy in this way. Charge him with these criminal indiscretions by majority vote. Place it all before us.

When you do that, by majority vote, then you can come before me and us and beseech us to assist you in your further work because then, at that time, after you have again done your hard and obligatory work, working at justice for this man, who is now simply actually "the defendant"—he is no longer anyone but the defendant, Senator ROBERT PACKWOOD, in this near-criminal trial, and yet he has never been charged with an information or an indictment—yes, after you have done that, then I will be one U.S. Senator who will step forward and say, "Yes, Senator BOB PACKWOOD, you did waive your right to privacy with your diary, but we will let the court sort that out." A now bitter experience that has proven to be.

Then when he has been confronted with the new charge by the Ethics Committee, I will also demand that he submit his diary to review by a respected third party.

I do know Judge Kenneth Starr. He is a perfectly appropriate choice. I have known him for many years, a splendid man, a man of judgment, honesty, integrity, and common sense. Turn the diary over to him; have him go through it with the Ethics Committee lawyers, with BOB PACKWOOD's lawyers and come up with anything further that is relevant to the new charge made.

How in good conscience can anyone turn that into a sinister or invidious or devious request or act? Charge him. Go through his diary with a third person, attorneys all over the place, dig it all out, dig all the relevant material out from this presently shrouded and phantom criminal charge and release this man from this medieval experience.

Whatever happened to lawyers talking together, sitting down to talk, to kick things around, to sit down or go off and have a large grape pop, as I used to do with my colleagues on the other side of a case—occasionally something stronger—and talk about the case and negotiate and reconcile and say, "Here, I have some real horses here; I have some tough stuff here"—knowing the next time he or she might have the tough stuff. You do not do that through faceless minions, through faceless guardians who will not even allow other counsel to get through to members of the committee. There is nothing wrong with that. This is the U.S. Senate. This is absurd. You do not give up anything when you communicate. Get in there and argue and scrap and raise hell, state your case.

My magnificent and witty wife Ann and I have always said, "Never go to bed angry; stay up and fight." The important thing to remember is even when you are arguing to beat the band, at least you are communicating. That is so critical. You cannot give each other the ice treatment. We cannot do that in here—give each other the ice treatment. That is what destroys marriages. That is what destroys relationships with other countries. That is how the phrase "cold war" came about. That is what happened in Somalia. We would not visit with all the factions involved. That leads to nothing. That is a way to assure destruction of human relationships. You have to talk.

If we had done that, we would not be here. And why this one is different with BOB PACKWOOD has a great deal to say about political correctness. If we had just been able to sit down together, no one would have thought that anyone was selling out, that anyone was outnegotiating the other or violating confidences on the other side. No one was talking about hiding anything or making the Senate look good. Is anyone here really trying to do this just to make the Senate look good? I do not think so. I really do not. Or anyone running from our terrible task, We should just be able to sit down and say, "What is wrong with this? What is right with this?" and then do it. Let us weigh the issues, but let us weigh all the issues as fellow Senators.

And this precious right to privacy that we hear all day long in this place, the precious right to one's own personal observations of life as contained in dictation or scribblings or writings or just meanderings are sacred, hallowed ground for most of us. How many in America do that, keep little notes and diaries? Plenty of them. They understand. So let us cease this unattractive spectacle. And I say do not ask me to render my version of how we got here, but we are here with egos on the line, reputations on the line, ideals and values and morals on the line.

But, please, please, no more innuendoes, no more conjecture, no more leaks, no more passion about things that do not have a thing to do with what we are talking about right here; no more hype, no more hysteria, no more emotion, all the things that go with it—and guilt; no more hurried press conferences on either side, no more one-upsmanship. Spare us, spare us all that. Put it all out here before us—the good, the bad, and the ugly. Make the charges specific against the man now known as the defendant, appoint this mutually agreeable third party and go through the entire diary and limit it only to relevant material, relevant to the charges made and publicly presented like you do in real life. That is what Americans, 260 million of them, really get.

And he is not getting it here. Anything else is a throwback to a prehistoric age where we did not heed the things that are orated about daily on this floor—justice, freedom, due process, and the right to be confronted by your accusers, and the right to know what you are being accused of; such simple and basic things, such an essential and basic part of the fabric of America. Charge this man of wrongdoing or cease the utterances of the wrongdoing. This is unacceptable—to violate the spirit, essence, and history of this Chamber. Charge, vote, and move on. That can be done. There is a forum for the resolution of this issue—in the courts. Thank God for the courts.

Think of people you know in public life, Democrat and Republican alike, who have had to go through the fires. And when it was all done and they were acquitted after spending themselves into oblivion, people of both parties, all through the spectrum, people like Ray Donovan who said, "Who gives me back my good name?" There is no court for that. But there is not a court in the land that would allow a free ranging search of a person's diary even after opening it up, or even a full waiver of a portion meant for the public purview unless it was relevant to the charges made under rules of civil procedure, or under the criminal rules of self-incrimination. You know that. I know that. America knows that. They have that figured out. Either do that, or cease.

We cannot decline to have a Senate Ethics Committee. But who of our peers will dare serve in the future?

I admire each and every one of the persons on that committee. I have never wanted it. I would never accept it. If they said you have to do it or you are out, I would be out.

But there is a marvelous test, for all we do in life. A simple and intimate and gut-heart test, one that you can never fool down in your gut, for likely your head or your heart might well lead you astray. It is one that we should remember with a clarity as bright as the lights in this Chamber. And it is, "How would you feel if this were happening to you?" Forget all the other afterthoughts. Forget all the other stuff. How would you feel if this were happening to you in this fashion, as a human being? That is the only test.

Charge this man with this dramatic new charge, glean through his diaries for only relevant material, for the specific charge, but stop this process. This is now a crucible of criminal innuendo. A sad day. Remember the words of the current subpoena. I hope it changes. If they change one word or two, I am ready. Remember the words of this current subpoena of the Ethics Committee because they will haunt you—haunt you for many years to come.

Mrs. BOXER addressed the Chair.

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

Mrs. BOXER. Mr. President, I thank you. I will be very brief.

I want to say that when my colleague and friend from Wyoming told everyone not to be emotional, he was quite emotional. And I think he made his point very well.

I would also say to my friend that if you read the October 21 report that Senator BRYAN and Senator MCCONNELL put into the RECORD, the exact description of the subpoena is in that document word for word. So it has been out here word for word.

I just want to quickly comment on Senator DANFORTH's statement, and on Senator SIMPSON's statement because I think the word "relevant" is an important word. But I see it in a little different light.

To me, the question is this: Is it relevant to the task of the Ethics Committee to see these diaries that Senator PACKWOOD himself voluntarily gave over to the committee? That is the issue for me. Is it relevant to them? And I am looking at six individuals, as the Senator from Wyoming said, all of whom have our great respect, quite painful as this is. Tell us it is relevant for them to do their job. So yes, I think the question about it being relevant is important here. But I think the question is, Is it relevant to the committee to get this material? They are telling us they must have it to do their work, and I am not going to substitute my judgment for theirs because they have sat with this day after day, week after week, month after month.

And then my colleague from Missouri, his point, and I tried to ask him this question. At that time I understood he did not want to engage in a colloquy with me. He talked about the fact that under this amendment Judge Starr, or whatever judge is selected—we do not know, I assume, if Judge Starr will even take this assignment—would act as a filter. I do not think that is what this amendment is, Mr. President. I think this is a point of someone not to act as a filter but to act as a censure because the judge has to not report to the committee anything but a certain set of issues.

So we are not selecting a filter. We are selecting a censure. I do not know if the judge would even take this job.

So in conclusion, I feel very strongly that America must be thinking now, let us get on with this so that the Ethics Committee can proceed. There have been very serious charges against a sitting Senator. And we should get on with our work. We should trust this committee. We should vote down what I consider to be an amendment that is to me, this is just me, I call it a cover-up amendment because actually, you would be institutionalizing covering up relevant material to this Ethics Committee.

And I hope we will vote it down. I hope we will stand united with the Ethics Committee.

I yield the floor.

Mr. SIMPSON. Mr. President, may I ask a point of personal privilege just for a moment, not to respond to Senator BOXER, but to indicate my remarks about alleging criminal conduct by Senator PACKWOOD, and I associated Senator MCCONNELL with those. That is incorrect. He did not align himself with the remarks about criminal conduct, and any allusion of mine to that effect is wholly unfair and not so.

I certainly want to correct those remarks. I apologize to my friend Senator MCCONNELL for any pain caused in that reference.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska [Mr. EXON].

Mr. EXON. I thank the Chair.

Mr. President, I rise for two purposes tonight. First, to go to the defense of the Ethics Committee. Second, to hope to lay some groundwork for the Senate to move ahead to conserve its time and still do its duty.

I salute all members of the Ethics Committee. I am quite surprised to see that the body seems to be turning around to an attack on our colleagues on the Ethics Committee. This should not be an attack procedure. This should be a very deliberative one, to discharge the duties regarding one of our Members whom we have all known for a long, long time. That is what we have an Ethics Committee for. That is why I thank and salute the members of the committee who for the most part have acted completely in unison on a bipartisan basis.

I thank Senator MCCONNELL. I thank Senator SMITH. I thank Senator CRAIG. I thank Senator BRYAN. I thank Senator MIKULSKI, and I thank Senator DASCHLE.

I hope that in our fervor here to do what many of us think is right, and there are obvious divisions of opinion on that; that to turn on the Ethics Committee, to criticize them for the wording of a subpoena, and not being a lawyer, but if I were writing a subpoena, I may have worded it a little bit differently than this. Suffice to say, Mr. President, that my experience throughout my life has been that once you get more than one lawyer in a room, or in meeting, you have an immediate difference of opinion. And that is very much, I think, clear with what is going on here on the Senate floor right now. For the life of me, I simply say that we have to talk. Senator SIMPSON said it is time to talk. It sure is past time to talk, because if we do not talk and come to some kind of a workable compromise improving upon the excellent work to date of the Ethics Committee, then I would foresee an unfortunate situation, and maybe that is part of the process that we have been brought into here in the last 2 days. Maybe there is a plan by some to take this into the courts, where it could go on for months and months and maybe years and years, without a timely resolution.

Certainly, I believe that Senator PACKWOOD is entitled to bring up any defense that he wants. I would suspect that he is advised by capable legal counsel. I hope that we will not contribute to this being in the court forever. There has been some talk this afternoon about what is going on out there with the people in this great country that we represent. I certainly share and associate myself with the remarks of my friend and colleague from Missouri, Senator DANFORTH, who says his main goal here is to preserve what is left—he did not say that; those are my words—of the integrity of this institution.

I am very fearful, Mr. President, that the people sitting on a bar stool in Wyoming, or at their farms in Nebraska, or in the factories in New York, or in their homes in Nebraska, who have been watching this, must be overwhelmed with the legalistic nature and talk that has been going on here, which I am afraid they will interpret as: Why do they not get on with the business at hand?

I think and I hope that some kind of a compromise is in order. I, frankly, do not think it is very constructive to talk about what has happened in the past with Judge Bork or Judge Thomas. Those two names come up. I must tell all that I voted against Judge Bork, but I voted for Judge Thomas. I have received a lot of criticism over the years for those votes. But I voted my convictions at the time, and I still am pleased with the way I voted when

I voted on the floor on those two individuals.

But that is all beside the point. I would think there may be room for some compromise if we could quit attacking each other. It seems to me, from what I have heard and read, that there probably are the seeds of compromise strewn all over this body, but we have not paid much attention to them. When the matter came up of the possible criminal activities, or further violation of Senate rules or ethics, and no one seemed to know what that was all about, it did not concern me a great deal, because I was confident that if I would just wait a day or two, the newspapers would tell us all about it—secrets are supposedly very holy in this body. I did not know what the additional possible charge involving my colleague, Senator PACKWOOD, was until I read it in the Washington Post this morning. Sure enough, nothing is sacred around here. I suspect that most of the other Members of this body were similarly situated as the Senator of Nebraska, because they did not know either. But like the Senator from Nebraska, they were wise enough to know if they would be patient and not ask any questions, it would come out in the news media.

I referred to a possible compromise. I will read two paragraphs from the letter that the chairman of the Ethics Committee wrote that was included in the RECORD on October 28 last. And I say as I read these two paragraphs—and I will make some brief comments about them—that it seems clear to me that everything was going quite well. The committee was discharging their duties. There was cooperation, but challenges, as there should have been, from the attorneys representing Senator PACKWOOD. But on October 17, we reached this impasse when it was discovered—or at least believed to have been discovered that there were further violations. Then everything fell apart.

I read from these two paragraphs from Senator BRYAN's letter, and this is after a breakdown in the smooth, ongoing process:

> The committee then proposed that a hearing examiner be brought into the process. Under the proposal, Senator Packwood would turn over the remaining diaries to the examiner. The examiner would ensure that the only masked material would be material related to the three categories in the original agreement: attorney-client, physician-patient privilege, and personal, private matters, and would then allow the committee counsel to review the unmasked material. The diaries would be returned to the examiner for safekeeping.
>
> Senator Packwood's counsel rejected the committee's proposal and again refused to turn over copies of the material reviewed on October 17 in the remaining unreviewed diaries. Let me point out here that information supplied to the Senate and to the media by Senator Packwood's attorneys seemed to indicate that Senator Packwood's attorneys were willing to turn over the diaries to a hearing examiner. What has not been made clear is that Senator Packwood's attorneys stipulated that neither the hearing examiner nor the committee would receive those portions of the diaries that would raise questions about other possible misconduct and that they would mask additional material. In addition, they were not willing to provide any diary material unless the committee agreed to not pursue as part of this inquiry evidence of possible misconduct reflected in the diaries.

I say that those two paragraphs, and what I have heard here and what I heard off the floor, seem to indicate that there is a legitimate attempt by the committee and committee staff to carry out their duties and I, for one, cannot buy, nor can I accept, the proposition that anything else that would come up in those diaries indicating a violation of ethics, violation of Senate rules, or violation of the law, should simply be overlooked.

The fact of the matter is very clear that, for whatever reason, Senator PACKWOOD and his attorneys agreed to turn over the diaries to the committee on a set program schedule. And I suspect that if there were concerns about what may be taking place later on, the diaries would not have been supplied, even page 1 of the 8,000 pages.

In any event, I want to suggest once again that it seems to me that if it could be agreed—and probably it cannot for many reasons, including possible reasons that some may want to take this into court to sell it off—but if there is an effort and if there is a compromise, it could and should be, in my view, along these lines:

If someone like Judge Starr—I do not know Judge Starr, but I have heard from lots of people that he is a highly respected individual, served in some distinguished judicial posts, as I understand it, in the Bush administration, and he has the confidence of most of those who know him and, I suspect, the confidence of most of us in the Senate—it would seem to me that if Judge Starr would become the hearing officer alluded to in the statements that I just read from the letter from Chairman BRYAN and that Judge Starr would take the remaining 3,000 pages—if Senator PACKWOOD and his attorneys would agree to that—go through all of those 3,000 pages, and that he would be granted the instructions by the Ethics Committee to report back to them on anything in those remaining 3,000 pages not yet examined, he would report back to the committee anything that alluded or was relevant to the charges that were originally brought, relevant to the charges that were announced in the newspapers this morning against allegedly possible misuse of his position by Senator PACKWOOD with regard to getting a position of some kind for his wife and, in addition thereto, anything else that Judge Starr would find in those 3,000 pages that were, in his opinion, violations of ethics rules or law, it would seem to me that if Judge Starr might not agree to become such a hearing officer or a special counsel under any other circumstances, it just seems to me that we could protect the privacy of Senator PACKWOOD as best we can under these difficult circumstances, and I recognize he finds himself in.

But the facts of the matter are that I happen to feel that the die was indeed cast when the first page of that diary was voluntarily turned over to the committee. I think that the public at large is not going to be satisfied if we would agree somehow, because of legalistic pronouncements that might have some basis in law in some instances, if we simply said that we are going to waive our rights to even have a highly qualified hearing officer appointed by the Ethics Committee to review those 3,000 pages and report back to the committee.

Unfortunately, that is not what is proposed in the amendment before us offered by Senator SPECTER. There was some indication from Senator SPECTER that I heard during the debate when Senator LEVIN was asking some questions of Senator SPECTER about this, and Senator SPECTER indicated that, yes, maybe this could be rephrased.

That, too, indicates to me that probably there is enough good will in this place that we can all bend just a little bit. Maybe we could move this process forward and onward to a conclusion that, at best, is not going to be a happy occasion for all concerned.

I happen to feel that the integrity of the U.S. Senate, its standing, and its chance for improvement of its image in the future, could thereby be enhanced rather than ducking and running the risk that the people of the United States would feel that the U.S. Senate cannot even realistically and properly deal with an ethics charge against one of its own and the "good old boy" network still is in full force and effect.

Mr. President, I hope and encourage all to come to some kind of a compromise as quickly as possible. I hope that we would not need extended debate on this because the more we debate, the more we look less than the deliberative body that we claim to be.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER (Mr. FEINGOLD). The Chair recognizes the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I note that the chairman of the committee is on the floor. I would like to address a couple questions to him if I might.

First, my questions deal with the subject of diaries and what are the rules now and for the future. Specifically, I would ask this question of the chairman as to if Senator PACKWOOD had not used the diaries referred to. I am taking your case. As I understand your case, it is that Senator PACKWOOD

referred to the diaries to rebut a point he was making. My question to you is: If he had not done that, would the diaries be considered privileged material?

I am trying to get the ground rules for the future, because I am concerned. Senator DANFORTH gave a very powerful speech, I felt, and I share his concerns. I just wonder what is the reach of subpoenas in the future? And let us just restrict it to diaries.

Mr. BRYAN. The Senator is asking a hypothetical question. Diaries are not, per se, privileged. So there is no constitutional privilege as such to diaries. It has to be considered in the context of the specific facts.

I think we have made it very clear, both the vice chair and myself, that we were perfectly content, knowing the existence of the diaries—in response to the document productions of March 29 and again on July 16, when there was no diary information forthcoming, the committee made a determination at that point—or the staff has—and there was no recommendation to us to pursue the documents. So at that point we did not seek the diaries, even though we knew of their existence.

Once the Senator specifically made reference to the diary and that that diary contained relevant information, at that point is when the negotiations for the diary's release to the committee occurred and was subsequently made available, and the 5,000 pages were reviewed by the committee staff.

Mr. CHAFEE. Set aside the negotiations. I found here in the RECORD when I was reading Senator MCCONNELL's statement—this was on November 1, yesterday. In it Senator MCCONNELL says:

> It is important to note no diaries or diary entries were turned over to the committee in response to these requests, despite the fact that at least portions of the diaries were obviously within the scope of the document requests. * * * I want to point out the bitter irony that, if Senator PACKWOOD's attorneys had responded properly to the committee's earlier requests, simply by producing those diary entries relating directly to the allegations before us, it is inconceivable we would be in the position we find ourselves in today, arguing before the Senate and the entire world over a committee subpoena of complete diaries. In other words, if the committee's request had been complied with, then the committee would have gotten what it wanted and the rest of the diaries would have remained undisturbed.

If I understand what Senator MCCONNELL is saying there, it is that, if a request is made for diaries, portions of those diaries only, and a Senator responds by turning over only those portions that he or she thinks are relevant, then that ends the matter, if I follow what Senator MCCONNELL said.

Mr. BRYAN. That is not strictly accurate referring to the question of the Senator from Rhode Island.

Mr. CHAFEE. I am asking because this is not the last—obviously this is not the last time that subpoenas are going to be issued for documents or diaries of Senators. I think it is important if we set some kind of a record here.

Mr. BRYAN. I think, responding to my friend from Rhode Island, it is important to understand that we accepted the implicit determination by the Senator from Oregon that the diaries contained no relevant information. In other words, when the document requests were sent out and when they were returned and no diary material was contained in any of the returned documents, the committee at that point was prepared to accept the representation that was implicit in that there is no relevant information in the diaries, and that was the end of it. That was the end of it—no further pursuit. That was in March and July of this year.

We get now to October—and there is no intervening effort to inquire about the diaries, to request them, no discussion—but when Senator PACKWOOD referred to the diary material on October 6, it was clear by his statement that the diary contained relevant information.

That was the first time the committee was aware of that and obviously the fact of the matter changed at that point. What Senator MCCONNELL, I believe, was saying—and he can speak for himself—if there had been no reference by him to the diary at that point perhaps we would not be at this point. I want to yield to him.

Mr. CHAFEE. What I want to establish here, clearly, are some rules for the future. Because I think, although we think our words will be little noted, they are long remembered—which is probably true in most instances. People in the future are liable to look back and see what Senator MCCONNELL or Senator BRYAN has said about diaries because, from the quotes that were given in case after case, it seems diaries are put in a rather separate category from normal correspondence that one deals with.

I am just curious, what are the ground rules?

Mr. MCCONNELL. I would say to the Senator from Rhode Island, I think probably diaries are not in a separate category. I am going to address that once debate on this amendment ends—at the conclusion.

If you want to go into it now, I think it is essentially our view that they are not protected for any other citizen in a situation similar to this and, therefore, should not be for the Senator.

Mr. CHAFEE. Is it that there is something "Government" about them? That the key thing is you dictate it to a Government-paid Secretary and she writes it? Or is it—suppose you kept one at home?

Mr. BRYAN. In answer to the Senator's inquiry, I concur with the statement made by the vice chairman. There is nothing constitutionally protected or privileged about diaries per se.

So the attenuated distinctions, whether they were dictated to a staff person or not, is not dispositive of the situation. It seems to me that those are factors that may be weighed. What is a constitutional balancing test? It is part of a fourth amendment determination made by a Federal court. But I believe that the Senator from Kentucky has responded accurately. And I concur. I know it is his intention to address this issue more fully at an appropriate time.

Mr. MCCONNELL. Does the Senator from Rhode Island yield?

There has been a lot of talk on the floor, with all due respect, by a lot of Senators who may be great lawyers but who have not practiced in recent years. A lawyer here in town who has been before us in a number of different capacities, in cases similar to this, is Bob Bennett, whose name I suspect the Senator from Rhode Island is familiar with.

Bob Bennett, just within the last day or so, on this very subject that the Senator raises about diaries said the standard that should apply—and he was being asked about this matter before us—the standard that should apply is "a reasonable possibility that the category of materials sought is relevant to the general nature of the investigation." This is Bob Bennett, practicing lawyer, who appears before the Senate and has represented the Ethics Committee. He has also represented, I am told, people before the Ethics Committee.

Bennett also said, referring to the rights of private citizens versus the rights of Senators, "I can tell you, in my practice subpoenas are used all of the time asking for all sorts of diaries and personal calendars and we do not have a legal basis to resist them." This is Bob Bennett talking about any old regular citizen out there.

I repeat, and this was just last night when asked about this very issue that the Senator from Rhode Island raises——

Mr. CHAFEE. Would those be in civil cases?

Mr. MCCONNELL. May I finish? When asked about the very issue the Senator from Rhode Island raises he says, "I can tell you, in my practice subpoenas are issued all of the time, asking for all sorts of diaries and personal calendars, and we do not"—he said, "—do not have a legal basis to resist them."

There has been a lot of talk citing cases. I frankly have not practiced law in years. I would not go to me for a simple will. So I am quoting a lawyer here in town who has both represented the Ethics Committee as an independent outside counsel and has also represented Senators before the Ethics

Committee. He says with regard to the issue my friend from Rhode Island raises, "I can tell you, in my practice subpoenas are issued all of the time asking for all sorts of diaries and personal calendars and we do not have a legal basis to resist them."

Obviously some courts are going to tell us at some point the answers to these questions. But as nearly as I can ascertain it, I would say to my friend from Rhode Island, that is the answer to his question.

Mr. CHAFEE. I take it that Attorney Bennett was involved in a civil case? Otherwise, presumably, the fourth amendment would apply?

Mr. McCONNELL. He was commenting about the matter before us. He was being asked about it on a television show last night, I think. Within the last 24 hours. He was being asked about the matter before us that we are here discussing, and I cite him because I need some expert to rely on. It has been suggested around here that members of the Ethics Committee are sort of robots, being manipulated by the nefarious staff of the committee which is pushing us in the direction of violating Senators' rights willy-nilly.

I plead guilty to occasionally referring to staff people. I reject out of hand the notion that I am some robot being manipulated by this nefarious staff that is out to embarrass Senators.

It seems to me that has been at the heart of some of the comments here as the debate, I hope, is winding to a merciful conclusion on the Specter amendment.

But I just say to my friend from Rhode Island, that is the best legal advice I can offer him at the moment on the question he raises.

Mr. CHAFEE. I thank you.

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

Mr. COHEN. Mr. President, a number of people from the press have asked me the question, "Is this debate helping Senator PACKWOOD?" And the answer is, I do not know. I do not know if he is being helped or harmed by this fairly extensive debate that has occurred during the past day and a half.

The next question is, "Is it helping the Senate?" And I suggested: Not this one—not this one. But, hopefully, it will help the Senate with inquiries to come, with the next one and all that succeed it, because I think we may just hold up a lamplight to a very difficult path that each one of us who serves in public office has to walk.

It was suggested yesterday, either directly or indirectly, that we are holding this whole system up. Do we not have better things to do? There is NAFTA, there is the crime bill, there is health care, there are a variety of appropriations bills, defense authorization. We have all of these matters. Why are we wasting this much time on this one Senator?

Let us just forget these rules that lawyers use to obfuscate and confuse and send up a mushroom cloud to blind the people as to what really is involved here. Let us get rid of the process. Let us just get to the facts.

It struck me as ironic that the suggestion was made in this particular body.

I recall reading, I think it was either Wigmore on Evidence some 30 years ago or maybe it was Roscoe Pound, the great jurist from Harvard. I remember a quote that came to mind that was in an introduction to a book that he had written. He said, "Let us just rub red pepper into some poor devil's eyes who is sitting under a banyan tree and we'll get at the truth."

We have rejected that particular fact finding approach. We say no, there is a process of getting at the truth and the way in which we arrive at the truth, how we arrive at the truth, can be just as important—and in many cases more important—than the truth itself. That is the very foundation of our system. It is called a legal process. It consists of rules of evidence and procedure—and yes, they are cumbersome but they are designed to arrive at the truth in a way that strikes most citizens as being fair minded, equitable, just. Not through oppressive or dictatorial or fascist type means, but through a process of law. And that is really what we are about.

We are a nation of laws, and we devise rules in order to arrive at facts through a process. It is at the very heart of our system. Yesterday I took to the floor to ask a couple of questions. A number of my colleagues accused me of having been the preliminary bomb that set off the nuclear explosion by my colleague from Delaware, and that somehow I set in motion a whole series of questions that otherwise might have gone unanswered.

Let me explain exactly why I raised those questions. Every one of us knows that there is a growth industry in this town and I might say it is spreading throughout the country. We talk a lot about special interest influence, special interest groups. We are talking more than simply money. We are talking about political activists.

There is an explosion of interest groups in this country on the right and on the left and they are becoming more politically active and engaged and more, I might say, litigious as well. They like to file lawsuits. We are finding a pattern developing in our system that as elections roll around, more and more lawsuits are filed alleging more and more violations.

To the committee's credit, I might say, it refuses to take up allegations of wrongdoing on the part of those who are running for election or reelection in the final months of any campaign in order that interest groups or individuals cannot in any way skew the election by making last minute allegations. That is to their credit. It is a policy I hope we will continue indefinitely into the future.

But then after the election is over, we still have the allegations made, and they sit there and pressure is put upon the committee to do something about the allegations and the committee is duty bound to do something about those allegations. So they have to conduct a preliminary inquiry.

I raised the point yesterday that when a complaint is filed, the Ethics Committee is required, as we all will insist, to conduct an inquiry. A request will be made for relevant documentation. The question I asked was who determines what is relevant? And I believe the chairman—he can correct me if I am wrong—I think in the first instance that Senator or Congressman or person under inquiry or investigation is the person who would first determine relevancy.

So assume hypothetically that an allegation is made of wrongdoing on the part of a Senator and that Senator then goes through thousands, tens of thousands—we are not talking 8,000 pages, we are talking about 10,000, 15,000 or 20,000 pages, correspondence, documents, whatever might be in the Senator's file that constitutes relevant information. Assuming that Senator hands over the relevant information, what he or she believes to be all of the relevant information. But then assume another set of facts that maybe it is a disgruntled employee who is fired and he says, "Wait a minute, there are a couple pages missing," or maybe more, "a whole file missing" and that Senator was not even aware of its existence.

Then the question becomes, well, does the committee from that point on no longer accept that Senator's good faith effort to find all relevant documents because, believe me, there are thousands upon thousands of pages in everyone's office. So the element of good faith then comes into question. Does the committee then determine it will assume or determine what is relevant and it will go through the entire records available in that individual's office to determine what is relevant and what is not relevant?

By the way, if it should discover any other hint of impropriety, it can then extend and expand that investigation into something much broader than where it started.

So this raises many questions, I think, in terms of process, about who determines relevancy, is relevancy the test, when does relevancy fall by the wayside as a restriction? I do not think these questions have been cleared up.

I have had a number of my colleagues come to me in the corridors and say, "You asked some good questions yesterday. Unfortunately, they were never

answered or not answered satisfactorily." So hopefully during this debate, we have had at least an exchange among Senators raising these issues so we can define for the future—forget about the Packwood case for the moment—define for the future exactly where we are going as we can anticipate more and more complaints being filed, some legitimate, many perhaps frivolous, but nonetheless requiring this committee that we have mandated must conduct the investigation to carry out that mandate. And it is important that we understand what the guidelines and the ground rules are going to be.

I have been assured by some, "Well, you can take comfort in the fact we have a three-three split on the committee; that if there is any hint that this is going overboard, that it is engaging in a partisan fishing expedition, somehow they are a bunch of teenagers prowling around for pornography, that will come to a halt because of the bipartisan composition of the committee."

I do not take great comfort in that because I know the pressure that can be generated on any given issue can be enormous, and it only takes one vote switch to make a majority under those circumstances.

So I think the past 2 days may have been unpleasant but terribly important, as far as I am concerned. Maybe we will pause long enough to consider what the rules ought to be to govern our conduct and inquiries in the future. For example, I know I am on the committee now to help propose recommendations to reform the Congress, how we operate. One suggestion is that we make ourselves subject to the Freedom of Information Act. Why should we be different than the executive branch?

I hope that this kind of discussion will at least raise our consciousness in terms of what that might very well entail in terms of every document that is received or prepared by a Senator or Congressman or person would then be subject to a freedom of information request.

It was also suggested yesterday that if you were to vote against the committee's position, you were sending a signal to the millions of women who are out there watching that when they are abused or misused, when they are sexually mistreated, as the allegations in this case, they can expect no relief from the Members of the Senate. And conversely, if you do support the committee's position, then you send the signal you are very much opposed to any mistreatment of women.

I would like to say there is something fundamentally wrong with that syllogism. Everyone I talked to in this Senate Chamber is not here defending BOB PACKWOOD. Most, if not all, said if he, in fact, is guilty of the allegations and accusations made against him, we want very tough measures to be meted out against him. JACK DANFORTH said throw the book at him if it is true.

So I do not like or do not approve of the position that if you were to question the committee's judgment on anything, somehow you do not support tough measures against any Senator who abuses his position in any way, transgresses the rights of women to be free from sexual advances. Everyone who I talked to, everyone with whom I associate with feels very strongly on protecting those rights.

I saw something quite interesting in the Wall Street Journal today. It gives me some cause for concern. It is written by Jeremy Stone. He may not be known to many of you, but he is quite an activist in his own right in terms of nuclear disarmament. He is a very bright, capable individual. He wrote an article for the Wall Street Journal entitled "PC Invades the FBI." I would like to read just a few paragraphs of this this evening because I think that we are on a track which is quite dangerous to our entire system of governance:

> Breathes there a soul so dead that he or she has never privately speculated on cultural or intellectual differences between women and men or between various ethnic or racial groups? If so, he or she will have no trouble, in this new world of political correctness, getting a position in the Federal Government. No one else will qualify.

And he goes on to explain that apparently the FBI has been charged to investigate the nominees for positions in this administration, to elicit and thoroughly explore comments bearing upon a candidate's ability to be fair and free of biases against any class of citizens. The FBI is not just looking into racist or discriminatory actions but eliciting and exploring comments. He gives some rather provocative hypotheticals of comments that might prove to be disqualifying.

We have to be very careful we do not enter into a world of political correctness to apply these statements and tests not only to nominees to the executive branch but also to our colleagues and others.

I raise this because last week one of our colleagues placed on the Senate floor a portrait or a picture that allegedly hung in the office of President Aristide of Haiti. That was shown as an example of the character of that particular individual, along with psychological profiles being presented by the CIA.

It occurred to me that we are fast approaching that point in time where Federal authorities, be they the executive branch or perhaps even our own investigative committees, will start looking into pictures that hang on our walls, or search for private comments that have been made; according this article, any jokes that have been told. Many of my colleagues apparently maintain joke books. Should those also be the subject of investigation?

I think we have to be very careful as we start to proceed to inquire into the private realm of each individual Senator's life that we keep in mind we are really concerned not only about the facts; they are important, but how we arrive at acquiring them.

I have not taken issue with the committee. I think the committee has tried to do the best it possibly could, and none of us, by the way, volunteer for this committee. The majority leader and the minority leader come to us and say, "Would you like to serve on the Ethics Committee?" There are not many takers, not many takers.

And so I take to heart what both my colleagues, Senator MCCONNELL, and Senator BRYAN have said in the Chamber. This is a very tough responsibility we have handed to you, and maybe some mistakes were made along the way, and maybe there have been some misunderstandings, but we cannot reconcile those misunderstandings. We are in no position to reconcile those misunderstandings.

I do not want to be overly critical of the committee, but I do want to say that this proceeding, these deliberations, as long as they have been, as perhaps even as embarrassing as they have been to Senator PACKWOOD and to others, they have been important. It is very important that we go through this process and explain it to our constituents. It is not simply as easy as saying: I support the committee; they are right; and PACKWOOD is wrong. There are legitimate arguments on both sides. It has been important that we have listened to them so we can come to some kind of conclusion.

The diaries of Senator PACKWOOD are going to be produced. They are either going to be produced through the Specter amendment, if that is voted upon, or certainly through the committee process if the case goes to the courts. They will be subject to examination at some point in time, hopefully more expeditiously than not, because I think that the women who have complaints and allegations pending against Senator PACKWOOD are entitled to have those resolved as quickly as possible.

That is really what we have been trying to do: try and find a way we can compel production of the diaries in a fashion other than recommended by the committee. If not, then we have no choice but to support the committee.

So I take the floor this evening just to point out that process is important; how we get at the facts is important as getting at the facts. We can abandon the rules of procedure. We can toss out considerations of due process or unreasonable search and seizure or fifth amendment and say let us just go to the facts. But that is not what this country is about.

In my humble opinion, it was worth a day and a half.

I can see my colleague from Maine looking at me saying OK, time to wrap it up.

But I thought it was important we talk about the importance of our procedures and why Senator PACKWOOD is entitled to have these views debated and aired. I would repeat what JACK DANFORTH said. This is not about defending BOB PACKWOOD's conduct. If the allegations are true, I expect the committee to recommend fairly severe and harsh punishment, and it will be supported by the full Senate; I have no doubt about that. But how we proceed to get the information is important, and I think this has been a tremendously helpful experience, even if it has been described as being embarrassing to the Senate.

I yield the floor.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. It had been my hope to propound a unanimous consent request for an agreement to govern the disposition of this matter at this time, but I am advised that my colleagues are still in consultation on that. I know the distinguished Senator from Indiana has been present and waiting to address the Senate for some time. I was going to incorporate his time in the agreement. But may I suggest, if he wishes to proceed, that he do so and perhaps by the time he has completed his remarks we will be in a position to get an agreement.

Mr. COATS. I will be happy to proceed. I do not have a statement to make, but I do have some questions I would like to propound to the chairman and ranking member of the Ethics Committee.

Mr. MITCHELL. Mr. President, I yield the floor.

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

Mr. COATS. Mr. President, I do have some questions I would like to propound to the chairman and the ranking member of the Ethics Committee and also to Senator PACKWOOD, if he cares to respond to them. I know I am going over ground which has already been plowed, but for this particular Senator I am still concerned that I know exactly what the situation was relative to the proffering of the diaries initially to the committee by Senator PACKWOOD, and to the so-called agreement that was entered into between the committee and Senator PACKWOOD.

I share the concerns that were just raised by the Senator from Maine relative to the scope of the authority granted to the Ethics Committee, the implications of that authority, and the exercising of that authority in future cases. I do think the questions that have been raised in that regard are relevant questions, questions that we need to find answers to because, in a sense, the procedures of the committee and even the existence of the committee itself is also somewhat on trial here during these 2 days, as well as the question relative to Senator PACKWOOD's subpoena.

However the fourth amendment may limit the right of search and seizure to a reasonable search and seizure, and bear on this question, it seems to me, at least to this particular Senator, that the waiver question has been raised but also dismissed on a number of occasions is a relevant question.

I think in making a determination as to how best to proceed it is important—at least for me it is important—to understand just exactly the procedures that took place to make sure I have the facts down correctly.

It was my understanding—and it was discussed yesterday in the initial arguments—it was my understanding that first the chairman of the committee indicated that the point of whether or not material in the diaries unrelated to the specific allegations made against Senator PACKWOOD could be used or subject to further investigation by the committee.

The chairman indicated, as evidenced in the RECORD on page 26937, that clearly that was the case. And in fact the chairman added to the RECORD, either quoted into the RECORD or submitted for inclusion in the RECORD, a statement made by counsel for Senator PACKWOOD indicating that on National Public Radio the statement made by Mr. Fitzpatrick:

> The ground rules were that the committee was not going to use review of this diary to create new incidents. The agreement was that they have received—they spent a year inquiring of people as to whether they might want to file an allegation. There's a finite universe there. They are not using this diary to build their case. That was a clear understanding between us.

The chairman said, "This statement is false" and then went on to describe that it was clearly stated to the attorneys for Senator PACKWOOD that that exemption was not to be granted.

Now, the question I have is that in relating to the statement made on National Public Radio, the word "incidents" is used. The ground rules were, in describing the arrangement—and we have not heard from Senator PACKWOOD a definitive answer as to what he thought or his counsel thought the agreement was—but the statement that was made on National Public Radio to which the chairman responded said, "The ground rules were that the committee was not going to use review of this diary to create new incidents." Incidents of what? What new incidents of charges of sexual harassment or new incidents unrelated to the allegations made of sexual harassment? If counsel for Senator PACKWOOD was referring to new incidents of sexual harassment, then that is a different situation as new incidents outside the scope of sexual harassment. They went on to say the agreement was that they spent a year inquiring of people as to whether they might want to file an allegation.

That seems to say that the year was spent inquiring of people who may have a relationship, a relevance to the allegations made of sexual harassment, not new incidents of unrelated material.

So my question to the chairman is in reference to that National Public Radio comment to which you said this statement is false, and then went on to describe, does that have a bearing on the question here, and were you responding to the issue of unrelated material discovered in reading the diaries or were you referring to, did you understand the attorneys to refer only to incidents related to sexual harassment?

Mr. BRYAN. I would say to my friend from Indiana, I was distracted with a couple of comments here. Can you very briefly frame the question? I will try and respond to your question as best I can.

Mr. COATS. Yesterday you stated that the statement made by counsel for Senator PACKWOOD, Mr. Fitzpatrick, on National Public Radio, indicating that the ground rules of the committee were not to use review of the diaries to create new incidents. You said that statement is false. You then went on to describe how it was that the Ethics Committee counsel clearly presented to Senator PACKWOOD and/or his counsel the fact that unrelated matter would be fair game for the committee to look at it, look at if they determined it was a possible violation of Ethics Committee rules or criminal conduct.

Mr. BRYAN. Let me try to respond as best I can to my friend from Indiana and certainly invite a response from the vice chair, for which, as well, this has been a very tiring day—for all of us.

The understanding was entered into on the 8th of October. That understanding was entered into following the discovery for the first time that indeed the diary contained relevant information that having been ascertained by statements made by Senator PACKWOOD during his deposition on October 6.

At that time, counsel for Senator PACKWOOD, counsel for the committee, entered into negotiations. We have been informed as to what the understanding was, and we have expressly incorporated that in a document which if the Senator will beg my indulgence for a moment, it will be far better than my repeating it again extemporaneously. That would be the statement which I made yesterday on the floor. I quote from it. It is the November 1 statement, as follows:

> An agreement was reached under which the Senator agreed to allow committee review of the diaries. To respect the private nature of certain information the committee offered to allow the Senator's attorneys to mask with tape portions of the document dealing with the attorney-client, physician-patient

privilege, and personal, private, family matters. The Senator's attorneys would then deliver the masked diaries to the committee's counsel who in the presence of the Senator's attorneys review each broadly. The committee staff would not take notes or make copies. If the committee desired a copy of the page, counsel would mark that page, for later copying by the Senator's attorneys in their office. At no point would the committee retain physical possession of the diaries.

In addition, there was discussion with the committee's counsel by Senator PACKWOOD's counsel as to whether or not if the diaries contained other information unrelated to the charges before us, would those, could those, be seen by our counsel? Would that information be considered?

Mr. COATS. That was specifically directed to unrelated matters.

Mr. BRYAN. Yes; I say most respectfully we have said that a number of times. If we have not made that clear——

Mr. COATS. The reason I have asked the question is that I have not been satisfied that I have, because Senator PACKWOOD has on a number of occasions indicated that his counsel's and his understanding of that agreement is different than the committee's understanding of the agreement, and because his statement made on National Public Radio by his counsel seemed to indicate, gives some clue as to what their understanding was. My question was whether or not that shed any light at all on Senator PACKWOOD's or his counsel's understanding of what the agreement is. Since we do not have an agreement in writing, I am having trouble pinning this down.

Mr. MCCONNELL. It is true we do not have agreement in writing, but there must have been some meeting of the minds because it operated for 5,000 pages and 20 years. There must have been some meeting of the minds there even though it was not written down. It went forward for 5,000 pages and 20 years until 1989.

Mr. COATS. And the only evidence we have though of something other than a written agreement are notes? Do I understand that correctly, notes taken by counsel, or a memorandum issued by counsel?

Mr. BRYAN. Let me respond to the Senator's question. There was some indication I think on the floor by Senator PACKWOOD that there may have been some notes taken by his counsel. Those certainly are not statements that have come from me. But that is my recollection of the record.

Mr. COATS. I assume at this point that Senator PACKWOOD does not wish to shed any additional light as to what his understanding or his counsel's understanding of the agreement was relative to this question and whether or not that constituted a waiver? I know I have heard you speak to this before. I am not trying to press this. It is an important issue to me in making a determination.

Mr. PACKWOOD. Let me respond if I might to the question.

I know what my understanding is. I was not involved in these negotiations. My understanding was that they were looking for relevant material. It never occurred to me that they were looking for other material. So this was my personal understanding. It just never occurred to me. It is not something that I think about to reject. I never thought about it.

Mr. COATS. Did you at any time have any indication from your counsel that that might be a possibility?

Mr. PACKWOOD. No; they thought—I cannot speak exactly for them, because they are the ones that were directly involved. I do not want to misstate it. I think they thought and that based upon the first 20 years of examination when only marginally, you would be, you could make an argument out of, I do not know, 10 or 15 entries that may be relevant, but most of the things that staff was asking for were relevant. So I think we were all kind of lulled into a sense of they are looking for relevancy. That is about the only way I can explain it.

Mr. COATS. Is it your understanding though or do you agree that they at least broached the subject with the Ethics Committee before the first page was even looked at? Because according to counsel, to the chairman, that subject was raised specifically with your attorneys prior to the diary being examined.

Mr. PACKWOOD. If it was, I did not know about it. That is all I can say. Whether or not it was raised with them, I think they have to speak to that. But I did not. But if you think about it, I do not think it was a question of misleading me. I did not know about it, think about it at all, and I think they assumed that they were looking for relevancy. I have heard them say that they said, well, we cannot turn a blind eye if we see something. But we are not, I think—I ask my counsel to correct me if I am wrong. They said they were not interested in certain things. I do not mean violations. But there were certain types of things they were looking for. I am not sure the issue was ever joined.

Mr. COATS. Was the Senator from Oregon aware of the rule of the Ethics Committee that mandated that material discovered during an investigation, nonrelevant material but applicable to a situation where there might be a violation of the code of ethics, or the law, that they were obligated to report that material?

Mr. PACKWOOD; No. I was not aware of it until frankly the issue came up a few days ago, came up whenever the dispute surfaced. I certainly was not aware of it early on. I do not know when I became aware of it. But not until it was raised. I did know at the time we started into this that the committee looked at things other than allegations, other than the charges before us. So that is the best answer I can give you. Whenever this issue was raised, that is when I became aware of it. I did not know it at the start.

Mr. COATS. I have a final question, if the Senator cares to respond. Relative to the statement just made by the ranking member that 20 years of material—5,000 pages—were examined and that, therefore, constituted some meetings of the minds on that particular question, does the Senator care to respond?

Mr. PACKWOOD. I think so, because while we might have quarreled with some of the things, I used an example yesterday where one of the complainants—it appears in the diary—was getting ready to meet with me and my wife. There is a reference to the complainant. Is that relevant? I might say it has nothing to do with the incident and would not shed any light, but you might say it is relevant because it is mentioned. That is what I said was marginally relevant. It does not add anything, but she can argue that it is relevant. But of all of the things asked for in the 20 years—I do not know how many, but there might have been some we would have quarreled with. On every one you could have made an argument that it was marginally relevant.

Mr. COATS. I thank the Senator, and I thank the chairman and ranking member. I know we have gone over this before, but to me it is a critical issue. I wanted to make sure I fully understood the sequence of events.

I yield the floor.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER (Mr. AKAKA). The Chair recognizes the majority leader, Mr. MITCHELL.

Mr. MITCHELL. Mr. President, I am still awaiting a response to my proposal for reaching agreement on the disposition of this matter.

I yield the floor.

Mr. DASCHLE. Mr. President, in the colloquy I had with Senator SPECTER a couple of hours ago, I inquired as to whether Judge Starr had agreed to fulfill the obligation required in the Specter amendment, and the Senator from Pennsylvania had indicated that no contact been made and that he could not answer in the affirmative. I would just hope that somebody who has indicated support for this amendment, and who wishes the Senate to cast its vote on this amendment sometime tonight, will give us some assurance that Judge Starr is willing to commit to the constraints that are incorporated in this amendment.

I would certainly hate to have had this body go through the entire day debating this amendment, with the expectation that Judge Starr would agree to these limitations, only to find out subsequently that he would not agree,

and be right back where we started tomorrow morning debating a new amendment with another name.

So it is very important that at some point we get some understanding as to whether Judge Starr is prepared to do this. I again urge my colleagues, those who are proposing this amendment, to give us that assurance prior to the time we are required to vote.

I yield the floor.

Mr. DANFORTH. Mr. President, I have never spoken to Judge Starr, either today or at any other time, about the Packwood case. I am one of the two cosponsors of this substitute. In the opinion of this Senator, the issue that is going to be resolved tonight is not the fine issue of what name or what person serves in the capacity that we have designated for Judge Starr. A number of Senators have expressed their high regard for Judge Starr. I have expressed my high regard for Judge Starr. But the identity of an individual is not the heart of this substitute. The heart of this substitute is to find a mechanism that permits us to put some parameters on the subpoena power of the U.S. Senate and its Ethics Committee.

The issue that has been raised by this substitute is whether there are any limits to the reach of an Ethics Committee subpoena. It is the position of Senator SPECTER and me that there must be limits to an Ethics Committee subpoena, and that the limits must be framed in such a way so that the committee is allowed access to matters which will allow it to proceed to do its work.

The work of the committee is to investigate complaints, or to investigate facts, or to investigate leads. Therefore, the whole issue before the Senate is whether the subpoena power is related to those allegations or facts or leads or not.

This subpoena is so broad that it covers absolutely anything, not only in the diaries, but in notes or phone logs or anything else that Senator PACKWOOD has, or anybody has who made such notes pursuant to his request—anything under his control. It is an extraordinarily broad subpoena. If some Senator would like to suggest some other mechanism for placing parameters on the subpoena other than the one suggested by Senator SPECTER and me, please suggest it. I would be happy to support it. I would be happy to accept it as a substitute for our substitute, if it is better. But the essential point before the Senate remains the same. And I submit to the Senate that the essential point is not specific to Senator PACKWOOD. The essential point is a fundamental issue of civil liberties.

It is not an issue of sexual harassment. It is not an issue of whatever the other charge is about some proposed job for Senator PACKWOOD's wife. It is a fundamental issue of civil liberties. An absolutely unfettered ability of a committee to get any papers on this broad a subpoena is a violation, in the opinion of this Senator, of the basic principles of civil liberties set forth in the fourth amendment to our Constitution.

There is no particularity, none. We are talking about 3,000 pages or so of diary. In addition to the 3,000 pages of diary, we are talking about journals, other documents or material, typewritten or handwritten documents, tape recordings, all materials stored in computer or electronic means.

It is an enormously sweeping request, and what we are saying to the Senate is it is a very serious precedent for the U.S. Senate to vote to place its imprimatur on something as sweeping as this subpoena. Regardless of how you might feel about Senator PACKWOOD, regardless of how anybody might feel about the charges made against Senator PACKWOOD, this is a blockbuster of a precedent, and it goes to the fundamental issue of civil liberties. This is a debate about civil liberties, and I am appealing to people who feel strongly about civil liberties on both sides of the aisle as a matter of fundamental fairness. We cannot agree to a subpoena that is this broad for any reason.

I do not know the answer to this question, but maybe somebody does. Is there any precedent for issuing a subpoena as broad as this one? Is there any precedent for the Senate agreeing to take this to court and to use the power of the court to enforce it? There is no limitation, and a subpoena without any limitation poses fundamental civil liberties questions.

Now, whether Judge Starr is going to agree or not agree, whether he has other things to do—maybe he is going on a vacation; I do not know—but what I am saying is that if there is not some mechanism in this case called Judge Starr that serves as a filter between the raw data, the documents, all of this stuff that is out there, and the Senate Ethics Committee serving as prosecutor, judge, and jury, if there is no filter, then the reach of the Ethics Committee is total, it is complete, there is no limitation to it.

I said when I started my remarks 2 or 3 hours ago that this whole issue, in my mind, is summed up in a single word, and the single word is "scope"—scope. Is there a scope to the subpoena? Is there a scope to the investigatory reach of the Senate Ethics Committee? I have never heard anybody answer that question on the floor. Is there a scope? Is there a limitation?

Now, in the original request made to Senator PACKWOOD there was a scope. The scope was the word "relevant," relevant to the charges. That is what the Ethics Committee asked for, not every paper Senator PACKWOOD had, not his entire files for 25 years, or whatever it is, in the U.S. Senate, not everything he had in his office, everything he had in his home. No. It was something that was much more specific than that. And it was that the committee requested that Senator PACKWOOD produce to the committee documents relevant to the committee's preliminary inquiry and to allegations of sexual misconduct and intimidation. That is a limitation. It is a limitation. It is not "give us everything you have."

Now the standard of the committee has been changed. It has been changed from the standard of relevance to everything, to no standard at all. It has been changed.

Why has it been changed? Has it been changed to punish Senator PACKWOOD because he is recalcitrant, allegedly? Is that the reason that the standard of relevance has been altered, changed? Has it been changed because the Ethics Committee is fed up?

I do not know why they changed the standard, but they changed the standard. The standard was relevance. Now it is nothing at all. The standard in the Federal Rules of Civil Procedure for discovery of documents is relevance. Under rule 26 of the Federal Rules of Civil Procedure, you only get what is relevant, relevant material, relevant to something, just as the committee set out a standard of relevance in its original request. And if Senator PACKWOOD did not respond to that request properly, then maybe that is an offense of Senator PACKWOOD. Maybe that should be investigated. Maybe Senator PACKWOOD should be held in contempt. I do not know.

But I do know that what we cannot do, at least without this Senator standing up and talking about it, what we cannot do is to change the whole precedents of the Senate, to establish a precedent, to establish a rule which is not any rule, to establish a sweep which encompasses absolutely everything that you can drag in, because, if we do this, I say to the Senate, everything anybody has is available. Why not have sort of a roving commission? Maybe they might say, well, there might be something out there. You could have the Ethics Committee go by people's offices at random, just go through stuff. I do not think they can do that.

So I say to the Senator from South Dakota, Judge Starr, Joe Doaks, whoever, someone, someone mutually agreeable—strike the name, and put in "someone mutually agreeable," someone designated by the Ethics Committee, someone without even the permission of Senator PACKWOOD, someone named by the Senator from South Dakota, I do not care, just someone other than the prosecutor himself, someone other than the judge and the jury themselves, someone out there who can say there is a standard that is going to be applied before this information is turned over in totality and the standard is relevance and that standard is

going to be put in place. Everything that is relevant is going to be turned over to the committee, nothing that is not relevant.

Under this amendment all the diaries would be turned over to Judge Starr, or whomever. Judge Starr would be able to read all of the diaries, everything. Not a word would be left out. And then Judge Starr would apply the standard agreed to by the Senate and turn them over to the Ethics Committee, but it would not be a wide sweep, and it would meet the standards of fundamental fairness. This subpoena does not.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, I will be very brief. I have listened to virtually all of the debate in the last 2 days.

I wanted to make three or four statements and ask the chairman and the ranking member of the committee some questions to see if I have this straight.

First of all, does the subpoena now seek production of all the diary or only the diary from 1989 to 1993?

Mr. BRYAN. The answer to the Senator from Arkansas' question is, only to the diary from 1989 to 1993.

Mr. BUMPERS. Mr. President, first of all, the agreement between the committee and Senator PACKWOOD was an oral agreement. It was not reduced to writing; is that correct?

Mr. BRYAN. The Senator from Arkansas is correct.

Mr. BUMPERS. And the Senator was given what I guess we could call carte blanche authority to redact anything that came within the three categories that he and his attorneys wanted excluded in handing the diary over to the committee; is that correct?

Mr. BRYAN. The Senator is correct.

Mr. BUMPERS. That included personal matters between him and his family?

Mr. BRYAN. The Senator is correct.

Mr. BUMPERS. And professional relationships between him and his doctor and lawyer and so on?

Mr. BRYAN. The Senator is correct on both of those as well.

Mr. BUMPERS. For the first 5,000 of the pages of the diary, I take it that everything that has been redacted by the Senator and his attorneys, the committee had not challenged any of that? They accepted the Senator's good faith; is that correct?

Mr. BRYAN. The Senator from Arkansas is correct once again.

Mr. BUMPERS. And finally, the Senator could have, if he had chosen, redacted the thing that has precipitated us being here, and that is, passages in the disputed positions of the diary in which the committee finds something that they think constitutes or could constitute a violation of the rules and ethics of the Senate and possibly the laws of the United States, is that correct?

Mr. BRYAN. The Senator is correct.

Mr. BUMPERS. So if the Senator had chosen to redact that, either because he had a right to under that part of the agreement where the committee and he agreed that he would redact anything dealing with his family—and all I know about that is what I read in the papers, so far as his possibly soliciting a job for his wife, and that sort of thing—it did deal with his wife, so he might have redacted that simply because he did not want you to see it, and maybe in bad faith, but he could also have redacted that and made the argument that that was one of the exclusions; could he not have?

Mr. BRYAN. The Senator from Arkansas is correct. The Senator from Oregon could have made that assertion.

Mr. BUMPERS. Well, I will just take a couple more minutes, because I certainly do not want to burden the Senate in carrying on any longer than necessary. I think about everything that needs to be said has been said in the last 2 days.

It goes without saying, this is very difficult for every Senator. I think it is especially difficult for the committee. I certainly have a profound respect for the committee's work and everything you have done. I know it has been laborious and painful to you and certainly it is to the other Members of the Senate.

I will yield to nobody in my reverence for the Constitution. I was a trial lawyer, country trial lawyer, before I was Governor and Senator, and I developed a very keen appreciation for the rights of defendants.

Having said that, and having voted a number of times here, cast a number of unpopular votes back home against things that I thought were palpably unconstitutional, not only unconstitutional but probably very bad for the country but popular at the time such as legislation regarding prayer in school. I was the only Southern Senator to vote against the Reagan amendment to put prayer in school. I thought it was a bad idea then and it is a bad idea now.

I have cast a few other unpopular votes like my vote against the constitutional amendment to balance the budget. If somebody could tell me how that thing would work, I might vote for it. I know it is popular. And if I wanted to ingratiate myself a little more with my constituents—and there are times when I certainly wish I could—I would vote for that. But I have very serious qualms about such an amendment and how it would work.

Let us just assume that during the course of the hearings and deliberations of your committee, Mr. Chairman, you had said, "Senator PACKWOOD, we understand you have a diary."

Incidentally, the only reason I do not have one is because I am not that well disciplined. I never could keep a diary because I just forget, and I finally gave up.

But if you had said, "Senator PACKWOOD, do you have a diary?" And Senator PACKWOOD said, "Yes, I have a diary." And then the committee had voted to ask Senator PACKWOOD to surrender that diary—I am talking about on the front end—and Senator PACKWOOD said, "No. This is confidential. This is private. It deals with my family and me and it deals with random thoughts. Some of it is hearsay, some of it is pure opinion. It could hurt other people. No, I'm not going to turn this over to you."

If that had happened, and that is what we were here voting on, I would be voting with Senator PACKWOOD.

I intend to support the committee. But I must say I do not do so lightly. I really believe very strongly that one of the problems with this hearing is that historians are going to have a little trouble with this, because some of the greatest history ever produced has been produced from diaries.

I read Count Ciano's diary after World War II. As you know, he was Mussolini's son-in-law. It turns out that he was apparently sort of an agent for the United States. And Mussolini told his own daughter that he was having Ciano executed. We did not know about the diaries that he had kept until well after he was dead.

I can tell you people in the White House are keeping diaries, because they intend to write books when they leave the White House.

You go down to any book store downtown and you will find diaries of people in the Bush administration, in the Reagan administration. Colin Powell is going to be paid $6 million for his book, and I am sure a lot of it will be based on diaries.

One of the things that troubles me, completely aside from the legalisms, which is about all we talked about here, is that I do think it has a chilling effect on people keeping a diary and I think that history will suffer to some small extent as a result.

Two quick points: Judge HEFLIN, one of our legal scholars in this body, made an observation yesterday that I thought was perfectly legitimate and pretty astute. And that is, I would like to think that I am not voting to say that Senator PACKWOOD's defense is specious, erroneous, or without merit. And that is not what the committee is really asking us to do. The committee wants to see these diaries. But it is only asking us for permission to simply go to court.

Now we have 100 Senators, men and women, black and white. Many of us are lawyers. Many take pride in the fact that they are not. But to expect 100 men and women in this body to

evaluate from a legalistic standpoint Senator PACKWOOD's defenses, I think is almost unfair to us and to him.

So what we are voting on here is whether or not to allow the committee to go to court and make its case and let the court decide.

I thought Senator HEFLIN spoke extremely well on that point yesterday.

Finally, there is a doctrine that I think will come into play when this gets into court, and it is called the plain view doctrine.

I do not think there is any question but that the committee had a right to come to the Senate, once they discovered something that could be a violation of the Senate rules, the Senate ethics, or the laws of the United States. I do not think the committee, once they saw information in the diary that could be construed in any of those categories, could sit idly by and do nothing.

And the plain view doctrine, which many lawyers are familiar with, would come into play where the police get a warrant, for example, to go into somebody's home because they think the occupants are storing cocaine, and they go down to the basement and the first thing they see is a body with 3 bullet holes in it. That is where the plain view doctrine comes into play. The police would have a perfect right, even though the warrant is limited to looking for cocaine in that home, a perfect right to pursue the possibility of a murder. I hope in saying that I am not trying to put too much on this case. That is certainly a far cry from what we are talking about. But it seems to me that the plain view doctrine sort of applies here. You came across it in plain view and you could not ignore it. As a matter of fact you had a duty not to ignore it.

What Senator PACKWOOD wants is for the committee to get Judge Starr to look at the rest of the diary but not at anything you might stumble across as you stumbled across this, if Judge Starr is the only person looking at the last 3,000 pages of the diary, and he comes across other sort of admissions. I mean, these kinds of things—that is the problem with diaries, you know. My diary probably would not mean anything, it would probably be so self-serving. I have a big ego. Somebody said today, "Your diary would be so self-serving it would not be worth anything anyway."

But people write candidly in a diary. That is what it is all about. But to say that even though the committee has found this on page 5,000 or wherever it is, that if anything else crops up in the next 3,200 pages you must ignore it—I think Judge Starr, incidentally, would have a little difficulty accepting that kind of burden.

I would not take on that responsibility myself because I would divinely hope there is nothing else in the diary that would ever bring us back to this kind of a situation. But it would put a terrible onus on Judge Starr to say in these 3,200 pages no matter what you find you must ignore it unless it fits in any of these categories, no matter how even felonious it might be. As I say, I would not assume that burden. I do not know whether Judge Starr would or not. He probably would, based on the fact that everybody says—I assume somebody has asked him if he would.

So those are some rambling thoughts about a very difficult situation for all of us. It is not easy to walk up and down the corridors of this Capitol Building and our office buildings and speak a half dozen times a day to almost every colleague in the Senate and then be asked to sit in judgment on them, on a very difficult case. Nobody enjoys this. But I must say I would compliment the Senate. I think most of what has been said, certainly most everything I have heard, has been said with a great deal of heartfelt feeling, a true desire to make sure that Senator PACKWOOD's rights are protected, if not necessarily here then in the court, which is the place where this ought to be decided.

So as I say those are my thoughts. Again, I respect the committee. I certainly respect Senator PACKWOOD for raising all the defenses that he can possibly raise.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, just a very brief unanimous consent request and a comment on the plain view reference of my friend from Arkansas. We had a discussion on the floor, Senator SPECTER and I. The case of Coolidge versus New Hampshire was cited a number of times by our friend from Pennsylvania. This is a plain view doctrine case.

I happen to agree with my friend from Arkansas on his analysis of the plain view doctrine and how it could be analogous to a situation here, that if we have someone who is reviewing these diaries properly, with authority, indeed, with an invitation and with permission in this case, who comes across other material which is either a violation of criminal or civil law, that it is appropriate under the plain view doctrine for that person to take note of it and to take appropriate action with it.

As a matter of fact, I cannot think of anything that is in plainer view in going through a diary than material that the person is reading. It is about as plain a view as one can have under the plain view doctrine. If one is looking for material relevant to A, B, and C, that if they come across material relevant to D and E, which would be violations of law also, that this is in plain view while they are reviewing the diary for A, B, and C, they inadvertently come across D and E, that under the plain view analogy, that they would be able to utilize it.

I ask unanimous consent at this time, since the Coolidge case has been referred to, that the portion of the Coolidge case which is 403 U.S., starting at 464 and going through pages 473, be printed in the RECORD, since I believe the Coolidge case—although not totally unambiguous—is supportive of the analysis of the Senator from Arkansas of the plain view doctrine.

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

[October Term, 1970, 403 U.S.]

COOLIDGE V. NEW HAMPSHIRE

C

The State's third theory in support of the warrantless seizure and search of the Pontiac car is that the car itself was an "instrumentality of the crime," and as such might be seized by the police on Coolidge's property because it was in plain view. Supposing the seizure to be thus lawful, the case of *Cooper* v. *California*, 386 U.S. 58, is said to support a subsequent warrantless search at the station house, with or without probable cause. Of course, the distinction between an "instrumentality of crime" and "mere evidence" was done away with by *Warden* v. *Hayden*, 387 U.S. 294, and we may assume that the police had probable cause to seize the automobile.[22] But, for the reasons that follow, we hold that the "plain view" exception to the warrant requirement is inapplicable to this case. Since the seizure was therefore illegal, it is unnecessary to consider the applicability of *Cooper*, *supra*, to the subsequent search.[23]

It is well established that under certain circumstances the police may seize evidence in plain view without a warrant. But it is important to keep in mind that, in the vast majority of cases, *any* evidence seized by the police will be in plain view, at least at the moment of seizure. The problem with the "plain view" doctrine has been to identify the circumstances in which plain view has legal significance rather than being simply the normal concomitant of any search, legal or illegal.

An example of the applicability of the "plain view" doctrine is the situation in which the police have a warrant to search a given area for specified objects, and in the course of the search come across some other article of incriminating character. Cf. *Go-Bart Importing Co.* v. *United States*, 282 U.S. 344, 358; *United States* v. *Lefkowitz*, 285 U.S. 452, 465; *Steele* v. *United States*, 267 U.S. 498; *Stanley* v. *Georgia*, 394 U.S. 557, 571 (STEWART, J., concurring in result). Where the initial intrusion that brings the police within plain view of such an article is supported, not by a warrant, but by one of the recognized exceptions to the warrant requirement the seizure is also legitimate. Thus, the police may inadvertently come across evidence while in "hot pursuit" of a fleeing suspect. *Warden* v. *Hayden*, *supra*; cf. *Hester* v. *United States*, 265 U.S. 57. And an object that comes into view during a search incident to arrest that is appropriately limited in scope under existing law may be seized without a warrant.[24] *Chimel* v. *California*, 395 U.S., at 762–763. Finally, the "plain view" doctrine has been applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object. *Harris* v. *United States*,

390 U.S. 234; *Frazier* v. *Cupp*, 394 U.S. 731; *Ker* v. *California*, 374 U.S., at 43. Cf. *Lewis* v. *United States*, 385 U.S. 206.

What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification—whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused—and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the "plain view" doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges. Cf. *Stanley* v. *Georgia*, *supra*, at 571–572 (Stewart, J., concurring in result).

The rationale for the "plain view" exception is evident if we keep in mind the two distinct constitutional protections served by the warrant requirement. First, the magistrate's scrutiny is intended to eliminate altogether searches not based on probable cause. The premise here is that any intrusion in the way of search or seizure is an evil, so that no intrusion at all is justified without a careful prior determination of necessity. See, e.g., *McDonald* v. *United States*, 335 U.S. 451; *Warden* v. *Hayden*, 387 U.S. 294; *Katz* v. *United States*, 389 U.S. 347; *Chimel* v. *California*, 395 U.S., at 761–762. The second, distinct objective is that those searches deemed necessary should be as limited as possible. Here, the specific evil is the "general warrant" abhorred by the colonists, and the problem is not that of intrusion *per se*, but of a general, exploratory rummaging in a person's belongings. See, *e.g.*, *Boyd* v. *United States*, 116 U.S., at 624–630; *Marron* v. *United States*, 275 U.S. 192, 195–196; *Stanford* v. *Texas*, 379 U.S. 476. The warrant accomplishes this second objective by requiring a "particular description" of the things to be seized.

The "plain view" doctrine is not in conflict with the first objective because plain view does not occur until a search is in progress. In each case, this initial intrusion is justified by a warrant or by an exception such as "hot pursuit" or search incident to a lawful arrest, or by an extraneous valid reason for the officer's presence. And, given the initial intrusion, the seizure of an object in plain view is consistent with the second objective, since it does not convert the search into a general or exploratory one. As against the minor peril to Fourth Amendment protections, there is a major gain in effective law enforcement. Where, once an otherwise lawful search is in progress, the police inadvertently come upon a piece of evidence, it would often be a needless inconvenience, and sometimes dangerous—to the evidence or to the police themselves—to require them to ignore it until they have obtained a warrant particularly describing it.

The limits on the doctrine are implicit in the statement of its rationale. The first of these is that plain view alone is never enough to justify the warrantless seizure of evidence. This is simply a corollary of the familiar principle discussed above, that no amount of probable cause can justify a warrantless search or seizure absent "exigent circumstances." Incontrovertible testimony of the senses that an incriminating object is on premises belonging to a criminal suspect may establish the fullest possible measure of probable cause. But even where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure. *Taylor* v. *United States*, 286 U.S. 1; *Johnson* v. *United States*, 333 U.S. 10; *McDonald* v. *United States*, 335 U.S. 451; *Jones* v. *United States*, 357 U.S. 493, 497–498; *Chapman* v. *United States*, 365 U.S. 610; *Trupiano* v. *United States*, 334 U.S. 699.[25]

The second limitation is that the discovery of evidence in plain view must be inadvertent.[26] The rationale of the exception to the warrant requirement, as just stated, is that a plain-view seizure will not turn an initially valid (and therefore limited) search into a "general" one, while the inconvenience of procuring a warrant to cover an inadvertent discovery is great. But where the discovery is anticipated, where the police know in advance the location of the evidence and intend to seize it, the situation is altogether different. The requirement of a warrant to seize imposes no inconvenience whatever, or at least none which is constitutionally cognizable in a legal system that regards warrantless searches as "per se unreasonable" in the absence of "exigent circumstances."

If the initial intrusion is bottomed upon a warrant that fails to mention a particular object, though the police know its location and intend to seize it, then there is a violation of the express constitutional requirement of "Warrants . . . particularly describing . . . [the] things to be seized." The initial intrusion may, of course, be legitimated not by a warrant but by one of the exceptions to the warrant requirement, such as hot pursuit or search incident to lawful arrest. But to extend the scope of such an intrusion to the seizure of objects—not contraband nor stolen nor dangerous in themselves—which the police know in advance they will find in plain view and intend to seize, would fly in the face of the basic rule that no amount of probable cause can justify a warrantless seizure.[27]

In the light of what has been said, it is apparent that the "plain view" exception cannot justify the police seizure of the Pontiac car in this case. The police had ample opportunity to obtain a valid warrant; they knew the automobile's exact description and location well in advance; they intended to seize it when they came upon Coolidge's property. And this is not a case involving contraband or stolen goods or objects dangerous in themselves.[28]

The seizure was therefore unconstitutional, and so was the subsequent search at the station house. Since evidence obtained in the course of the search was admitted at Coolidge's trial, the judgment must be reversed and the case remanded to the New Hampshire Supreme Court. *Mapp* v. *Ohio*, 367 U.S. 643.

FOOTNOTES

[22] Coolidge had admitted that on the night of Pamela Mason's disappearance he had stopped his Pontiac on the side of the highway opposite the place where the body was found. He claimed the car was stuck in the snow. Two witnesses, who had stopped and asked him if he needed help, testified that his car was not stuck.

[23] See nn. 12 and 21, supra.

[24] The "plan view" exception to the warrant requirement is not in conflict with the law of incident to a valid arrest expressed in *Chimel* v. *California*, 395 U.S. 752. The Court there held that "[t]here is ample justification * * * for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." Id., at 763. The "plain view" doctrine would normally justify as well the seizure of other evidence that came to light during such an appropriately limited search. The Court in *Chimel* went on to hold that "[t]here is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs—or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant." Ibid. Where, however, the arresting officer inadvertently comes within plain view of a piece of evidence, not concealed, although outside of the area under the immediate control of the arrestee, the officer may seize it, so long as the plain view was obtained in the course of an appropriately limited search of the arrestee.

[25] *Trupiano* v. *United States*, *supra*, applied the principle in circumstances somewhat similar to those here. Federal law enforcement officers had infiltrated an agent into a group engaged in manufacturing illegal liquor. The agent had given them the fullest possible description of the layout and equipment of the illegal distillery. Although they had ample opportunity to do so, the investigators failed to procure search or arrest warrants. Instead, they staged a warrantless nighttime raid on the premises. After entering the property, one of the officers looked through the doorway of a shed, and saw one of the criminals standing beside an illegal distillery. The officer entered, made a legal arrest, and seized the still. This Court held it inadmissible at trial, rejecting the Government's argument based on "the long line of cases recognizing that an arresting officer may look around at the time of the arrest and seize those fruits and evidences of crime or those contraband articles which are in plain sight and in his immediate and discernible presence." 334 U.S., at 704. The Court reasoned that there was no excuse whatever for the failure of the agents to obtain a warrant before entering the property, and that the mere fact that a suspect was arrested in the proximity of the still provided no "exigent circumstance" to validate a warrantless seizure. The scope of the intrusion permitted to make the valid arrest did not include a warrantless search for and seizure of a still whose exact location and illegal use were known well in advance. The fact that at the time of the arrest the still was in plain view and nearby was therefore irrelevant. The agents were in exactly the same position as the policemen in *Taylor* v. *United States*, 286 U.S. 1, who had unmistakable evidence of sight and smell that contraband liquor was stored in a garage, but nonetheless violated the Fourth Amendment when they entered and seized it without a warrant.

Trupiano, to be sure, did not long remain undisturbed. The extremely restrictive view taken there of the allowable extent of a search and seizure incident to lawful arrest was rejected in *United States* v. *Rabinowitz*, 339 U.S. 56. See *Chimel* v. *California*, 395 U.S. 752. The case demonstrates, however, the operation of the general principle that "plain view" alone can never justify a warrantless seizure. Cf. n. 24, supra.

[26] None of the cases cited in Part III-C of the concurring and dissenting opinion of Mr. Justice Black casts any doubt upon this conclusion. In *Steele* v. *United States*, 267 U.S. 498, agents observed cases marked "Whiskey" being taken into a building from a truck. On this basis, they obtained a warrant to search the premises for contraband liquor. In the course of the search, they came upon a great deal of whiskey and gin—not that they had seen unloaded—and various bottling equipment, and seized all they found.

In *Warden* v. *Hayden*, 387 U.S. 294, the police entered and searched a house in hot pursuit of a fleeing armed robber. The Court pointed out that "[s]peed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons which could be used against them or to effect an escape." 387 U.S., at 299. The Court then established with painstaking care that the various articles of clothing seized were discovered during a search directed at the robber and his weapons. Id., at 299–300.

In *United States* v. *Lee*, 274 U.S. 559, a Coast Guard patrol approached a boat on the high seas at night. A searchlight was turned on the boat and revealed cases of contraband. The liquor subsequently seized was never introduced in evidence, but the seizing officers were allowed to testify to what they had seen. As the Court put it: "A later trespass by the officers, if any, did not render inadmissible in evidence knowledge legally obtained." 274 U.S., at 563.

In *Marron* v. *United States*, 275 U.S. 192, officers raided a speakeasy with a warrant to search for and

seize contraband liquor. They arrested the bartender and seized a number of bills and other papers in plain view on the bar. While searching a closet for liquor they came across a ledger kept in the operation of the illegal business, which they also seized. There is no showing whatever that these seizures outside the warrant were planned in advance. The Marron Court upheld them as "incident" to the arrest. The "plain view" aspect of the case was later emphasized in order to avoid the implication that arresting officers are entitled to make an exploratory search of the premises where the arrest occurs. See *Go-Bart Importing Co.* v. *United States*, 282 U.S., at 358; *United States* v. *Lefkowitz*, 285 U.S. 452, 465; *United States* v. *Rabinowitz*, 339 U.S., at 78 (Frankfurter, J., dissenting). Thus Marron, like Steele, supra, Warden, supra, and Lee, supra, can hardly be cited for the proposition that the police may justify a planned warrantless seizure by maneuvering themselves within "plain view" of the object they want.

Finally, *Ker* v. *California*, 374 U.S. 23, is fully discussed in n. 28, infra.

[27] MR. JUSTICE BLACK laments that the Court today "abolishes seizure incident to arrest" (but see n. 24, supra), while MR. JUSTICE WHITE no less forcefully asserts that the Court's "new rule" will "accomplish nothing." In assessing these claims, it is well to keep in mind that we deal here with a planned warrantless seizure. This Court has never permitted the legitimation of a planned warrantless seizure on plain-view grounds, see n. 26, supra, and to do so here would be flatly inconsistent with the existing body of Fourth Amendment law. A long line of cases, of which those cited in the text, at n. 25, supra, are only a sample, make it clear beyond doubt that the mere fact that the police have legitimately obtained a plain view of a piece of incriminating evidence is not enough to justify a warrantless seizure. Although MR. JUSTICE BLACK and MR. JUSTICE WHITE appear to hold contrasting views of the import of today's decision, they are in agreement that this warrant requirement should be ignored whenever the seizing officers are able to arrange to make an arrest within sight of the object they are after. "The exceptions cannot be enthroned into the rule." *United States* v. *Rabinowitz*, 339 U.S., at 80 (Frankfurter, J., dissenting). We recognized the dangers of allowing the extent of Fourth Amendment protections to turn on the location of the arrestee in *Chimel* v. *California*, 395 U.S., at 767, noting that under the law of search incident to arrest as enunciated prior to *Chimel*, "law enforcement officials [had] the opportunity to engage in searches not justified by probable cause, by the simple expedient of arranging to arrest suspects at home rather than elsewhere." Cf. *Trupiano* v. *United States*, *supra*, n. 25, where the Court held:

"As we have seen, the existence of [the illegal still] and the desirability of seizing it were known to the agents long before the seizure and formed one of the main purposes of the raid. Likewise, the arrest of Antoniole [the person found in the shed with the still] . . . was a foreseeable event motivating the raid. But the precise location of the petitioners at the time of their arrest had no relation to the foreseeability or necessity of the seizure. The practicability of obtaining a search warrant did not turn upon whether Antoniole and the others were within the distillery building when arrested or upon whether they were then engaged in operating the illicit equipment. . . . Antoniole might well have been outside the building at that particular time. If that had been the case and he had been arrested in the farmyard, the entire argument advanced by the Government in support of the seizure without warrant would collapse. We do not believe that the applicability of the Fourth Amendment to the facts of this case depends upon such a fortuitous factor as the precise location of Antoniole at the time of the raid." 334 U.S., at 707–708. (Emphasis supplied.)

[28] *Ker* v. *California*, 374 U.S. 23, is not to the contrary. In that case, the police had probable cause to enter Ker's apartment and arrest him, and they made an entry for that purpose. They did not have a search warrant, but the Court held that "time . . . was of the essence," so that a warrant was unnecessary. As the police entered the living room, Ker's wife emerged from the adjacent kitchen. One of the officers moved to the door of the kitchen, looked in, and observed a brick of marihuana in plain view on a table. The officer brought Ker and his wife into the kitchen, questioned them, and, when they failed to explain the marihuana, arrested them, and seized the contraband. The police then searched the whole apartment and found various other incriminating evidence. The Court held that the general exploratory search of the whole apartment "was well within the limits upheld in *Harris* v. *United States* [331 U.S. 145]" for a search incident to a lawful arrest. The Court also rejected Ker's claim that the seizure of the brick of marihuana in the kitchen was illegal because the police had "searched" for it (by going to the door of the kitchen and looking in) before making any arrest. The Court reasoned that when Mrs. Ker emerged from the kitchen it was reasonable for the officer to go to the door and look in, and that when he saw the brick of marihuana he was not engaged in any "search" at all. Once he had arrested the Kers, the actual seizure of the brick was lawful because "incident" to the arrest. 374 U.S., at 42–43.

Ker is distinguishable from the present case on at least the following grounds: in *Ker*, the Court found that "the officers entered the apartment for the purpose of arresting George Ker," rather than for purposes of seizure or search, 374 U.S., at 42–43; exigent circumstances justified the failure to obtain a search warrant; the discovery of the brick of marihuana was fortuitous; the marihuana was contraband easily destroyed; and it was in the immediate proximity of the Kers at the moment of their arrest so that the seizure was unquestionably lawful under the search-incident law of the time, and might be lawful under the more restrictive standard of *Chimel* v. *California*, 395 U.S. 752. Not one of these elements was present in the case before us.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I had hoped to have reached an agreement some time ago governing the disposition of this matter but that proved not to be possible, and I now am discussing with the Republican leader and other interested Senators yet another suggestion to govern the disposition of this. It remains my intention that, either with or without an agreement, the Senate will stay in session until we complete action on this measure. My hope is that we can do so in the reasonably near future and that we can reach a final disposition.

In the meantime, the matter remains open if any Senator wishes to address the subject. If no one does, then I will suggest the absence of a quorum. If we have reached a point where nobody else has anything to say, perhaps that is a good indication that we may be nearing a time when we can reach agreement governing its disposition.

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

The PRESIDING OFFICER. The clerk will call the roll

The bill clerk proceeded to call the roll.

Mr. SPECTER. 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. SPECTER. Mr. President, I had expected to make these comments a few moments from now. But since the Senate does not have any pending matters before it, I will take this time and perhaps save some time at a later stage of the proceeding. There are just a couple of comments I want to make at this time.

I thought that the reference by the Senator from California to the pending amendment being a coverup was unfortunate. I do not think when evidence is excluded from the use of the law enforcement officials, at its worst, that is a sign of a coverup.

If that is so, then anyone who advocates that on public policy grounds—I want to compliment my colleague from Missouri, Senator DANFORTH, for his extraordinarily effective presentation about public policy. There has been a lot of talk on the floor of the Senate about public policy and the reasons why sometimes evidence is excluded. If the exclusion of evidence is a coverup, then those of us who say public policy sometimes requires that are in very good company, from Oliver Wendell Holmes and Louis Dembitz Brandeis all the way to the unanimous Supreme Court of the United States in a 1989 decision which was written by Chief Justice Rehnquist and concurred in by Associate Justice Scalia, two of the Justices who are not known to be soft on crime.

But I submit to this body it takes a substantial amount of courage and not a penchant for coverup to come to this floor and articulate, as many Senators have, a concern for civil liberties and a concern for public policy which respects procedures and which respects the absence of a general warrant which, as I had said earlier, was one of the two reasons, along with taxation without representation, that the Revolutionary War was fought.

There has been a great deal of discussion about a variety of cases, and I would like to add two more. The cases are legion where evidence is suppressed on grounds of public policy. The Senator from Michigan just inserted into the RECORD a case, and I ask unanimous consent for the 1989 Supreme Court opinion of Florida versus Wells showing a unanimous court, including Justice Rehnquist, Justice Scalia, Justice O'Connor, et cetera, saying the public policy required keeping certain evidence away from being incriminating on public policy grounds.

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

[Cases Adjudged in the Supreme Court of the United States at October Term, 1989]

FLORIDA *v.* WELLS

CERTIORARI TO THE SUPREME COURT OF FLORIDA

Following his arrest for driving under the influence of alcohol, respondent Wells gave the Florida Highway Patrol permission to open the trunk of his impounded car. An inventory search of the car turned up two marijuana cigarettes butts in an ashtray and a locked suitcase in the trunk. The suitcase was opened, and a considerable amount of marijuana was discovered. After the state trial court denied Wells' motion to suppress the marijuana on the ground that it was seized in violation of the fourth Amendment, he pleaded nolo contendere to a charge of possession of a controlled substance, but retained his right to appeal the denial of the motion to suppress. The intermediate appellate court held, inter alia, that the trial court erred in denying suppression of the marijuana found in the suitcase. The State Supreme Court affirmed, noting the absence of any Highway Patrol policy on the opening

of closed containers found during inventory searches, and holding that *Colorado* v. *Bertine*, 479 U.S. 367, requires police to mandate either that all containers be opened during such searches, or that no containers be opened, leaving no room for discretion on the part of individual officers.

Held: Absent any Highway Patrol policy with respect to the opening of closed containers encountered during an inventory search, the instant search was insufficiently regulated to satisfy the Fourth Amendment. Requiring standardized criteria or established routine as to such openings prevents individual police officers from having so much latitude that inventory searches are turned into a ruse for a general rummaging in order to discover incriminating evidence. However, denying, as did the State Supreme Court, police officers all discretion is at odds with Bertine. While an "all or nothing" policy is permissible, one that allows a police officer sufficient latitude to determine whether a particular container should be opened in light of the nature of the search and characteristics of the container itself does not violate the Fourth Amendment. Pp. 3–5.

539 So. 2d 464, affirmed.

Rehnquist, C.J., delivered the opinion of the court, in which White, O'Connor, Scalia, and Kennedy, JJ., joined. Brennan, J., filed an opinion concurring in the judgment, in which Marshall, J., joined, post, p.5. Blackmun, J., post, p. 10, and Stevens, J., post, p. 12, filed opinions concurring in the judgment.

Michael J. Neimand, Assistant Attorney General of Florida, argued the cause for petitioner. With him on the brief were Robert A. Butterworth, Attorney General, and Enoch J. Whitney.

Huntley Johnson argued the cause for respondent. With him on the brief was Fletcher N. Baldwin, Jr.

Chief Justice Rehnquist delivered the opinion of the court.

A Florida Highway Patrol trooper stopped respondent Wells for speeding. After smelling alcohol on Wells' breath, the trooper arrested Wells for driving under the influence. Wells then agreed to accompany the trooper to the station to take a breathalyzer test. The trooper informed Wells that the car would be impounded and obtained Wells' permission to open the trunk. At the impoundment facility, an inventory search of the car turned up two marijuana cigarette butts in an ashtray and a locked suitcase in the trunk. Under the trooper's direction, employees of the facility forced open the suitcase and discovered a garbage bag containing a considerable amount of marijuana.

Wells was charged with possession of a controlled substance. His motion to suppress the marijuana on the ground that it was seized in violation of the Fourth Amendment to the United States Constitution was denied by the trial court. He thereupon pleaded nolo contendere to the charge but reserved his right to appeal the denial of the motion to suppress. On appeal, the Florida District Court of Appeal for the Fifth District held, inter alia, that the trial court erred in denying suppression of the marijuana found in the suitcase. Over a dissent, the Supreme Court of Florida affirmed. 539 So. 2d 464, 469 (1989). We granted certiorari, 491 U.S. 903 (1989), and now affirm (although we disagree with part of the reasoning of the Supreme Court of Florida).

The Supreme Court of Florida relied on the opinions in *Colorado* v. *Bertine*, 479 U.S. 367 (1987); id., at 376 (Blackmon, J., concurring). Referring to language in the Bertine concurrence and a footnote in the majority opinion, the court held that

"[i]n the absence of a policy specifically requiring the opening of closed containers found during a legitimate inventory search, Bertine prohibits us from countenancing the procedure followed in this instance." 539 So. 2d, at 469.

According to the court, the record contained no evidence of any Highway Patrol policy on the opening of closed containers found during inventory searches. Ibid. The court added, however:

"The police under Bertine must mandate either that all containers will be opened during an inventory search, or that no containers will be opened. There can be no room for discretion." Ibid.

While this latter statement of the Supreme Court of Florida derived support from a sentence in the Bertine concurrence taken in isolation, we think it is at odds with the thrust of both the concurrence and the opinion of the Court in that case. We said in Bertine:

"Nothing in [*South Dakota* v.] *Opperman*[, 428 U.S. 364 (1976),] or [*Illinois* v.] *Lafayette*[, 462 U.S. 640 (1983),] prohibits the exercise of police discretion so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." 479 U.S., at 375.

Our view that standardized criteria, ibid., or established routine, *Illinois* v. *Lafayette*, 462 U.S. 640, 648 (1983), must regulate the opening of containers found during inventory searches is based on the principle that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. The individual police officer must not be allowed so much latitude that inventory searches are turned into "a purposeful and general means of discovering evidence of crime," Bertine, supra, at 376 (Blackmun, J., concurring).

But in forbidding uncanalized discretion to police officers conducting inventory searches, there is no reason to insist that they be conducted in a totally mechanical "all or nothing" fashion. "[I]nventory procedures serve to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." Id., at 372; see also *South Dakota* v. *Opperman*, 428 U.S. 364, 369 (1976). A police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself. Thus, while policies of opening all containers or of opening no containers are unquestionably permissible, it would be equally permissible, for example, to allow the opening of closed containers whose contents officers determine they are unable to ascertain from examining the containers' exteriors. The allowance of the exercise of judgment based on concerns related to the purposes of an inventory search does not violate the Fourth Amendment.

In the present case, the Supreme Court of Florida found that the Florida Highway Patrol had no policy whatever with respect to the opening of closed containers encountered during an inventory search. We hold that absent such a policy, the instant search was not sufficiently regulated to satisfy the Fourth Amendment and that the marijuana which was found in the suitcase, therefore, was properly suppressed by the Supreme Court of Florida. Its judgment is therefore Affirmed.

Justice Brennan, with whom Justice Marshall joins, concurring in the judgment.

I agree with the Court that the judgment of the Florida Supreme Court should be affirmed because the Florida Highway Patrol had no policy at all with respect to opening closed containers. As the majority recognizes, see ante, at 4 and this page, the search was therefore unconstitutional under any reading of our cases. See *Colorado* v. *Bertine*, 479 U.S. 367, 374 (1987) (opening closed container found in a vehicle during an inventory search constitutional only because policy mandated opening of such containers). Our cases have required that inventory searches be "sufficiently regulated," ante, this page, so as to avoid the possibility that police will abuse their power to conduct such a search. See *South Dakota* v. *Opperman*, 428 U.S. 364, 384 (1976) (Powell, J., concurring) ("[N]o significant discretion is placed in the hands of the individual officer: he usually has no choice as to the subject of the search or its scope").

The facts of this case demonstrate a prime danger of insufficiently regulated inventory searches; police may use the excuse of an "inventory search" as a pretext for broad searches of vehicles and their contents. In this case, there was no evidence that the inventory search was done in accordance with any standardized inventory procedure. Although the State characterized the search as an inventory search in the trial court, it did not point to any standard policy governing inventory searches of vehicles (much less to any policy governing the opening of closed containers) until the case reached the Florida Supreme Court. At that time, which was after our decision in Bertine, supra, the Florida Highway Patrol entered the case as amicus curiae and argued that Chapter 16 of the "Florida Highway Patrol Forms and Procedural Manual" contained the standard policy that guided the conduct of the search in this case. The Florida Supreme Court concluded that the manual did not provide any policy for the opening of closed containers. App. 256. But it now appears that the Florida Supreme Court may have been under the misapprehension that the manual was in effect at the time of the search in this case. See Tr. of Oral Arg. 30–31. The State conceded at oral argument before this Court that the manual was not in effect at the time of the search in this case, but argued nonetheless that the officer had performed the search according to "standard operating procedures" that were later incorporated into the Highway Patrol Manual. See id., at 17 ("The rules and regulations which . . . came into effect shortly thereafter, merely codified what the Florida Highway Patrol was doing to all procedures [sic] during that period of time"). But the State did not offer any evidence at the suppression hearing to support a finding that Trooper Adams performed the inventory according to "standard operating procedures." Trooper Adams testified that he asked his immediate superior whether he should impound and inventory the car but that his superior left it to Adams' discretion, stating that he found nothing suspicious about the car. Trooper Adams testified that he "took it upon [himself] to go ahead and have the car towed." App. 88. He also testified that he thought that opening the suitcase was part of a proper inventory but that he did not ask anyone else's opinion until after the search was completed. Id., at 82–83. He testified "Well, I had to take my chances." Id., at 83.

In addition, there was no evidence that an inventory was actually done in this case: [T]he State introduced neither an inventory sheet nor any testimony that the officer actually inventoried the items found in respondent's car. Tr. of Oral Arg. 5, 25–26. Rather, the testimony at the suppression hearing suggests that the officer used the need to "inventory" as an excuse to search for drugs. The testimony establishes that after arresting respondent for driving under the influence of alcohol and accompanying him to the station house, Trooper Adams returned to the impound lot to conduct the inventory search at 1:30 a.m. Grover Bryan, who assisted the state trooper with the inventory, testified at the hearing that Trooper Adams told him that "he wanted to inventory the car good, he wanted to go through it real good because he felt that there was drugs in it." App. 141. According to Bryan, Adams' desire to inventory the car stemmed from the fact that there was a large amount of cash lying on the floor of the car when respondent was arrested. Bryan testified that Adams insisted that contraband would be found in the car because "[t]here ain't nobody runs around with that kind of money in the floorboard unless they're dealing drugs or something like that." Id., at 142; see ibid. ("[H]e felt that the money that they had found was from a drug deal"). When they finally found the locked suitcase in the trunk, Bryan testified that Adams "want[ed] in the suitcase" because he "had a strong suspicion there was drugs in that car and it was probably in that suitcase." Id., at 145. The men then spent 10 minutes prying open the lock on the suitcase with two knives. App. 82, 147. Bryan testified that once they opened the suitcase and found a bag of marijuana inside, "[Adams] was quite excited. He said 'there it is.'" Id., at 147. See also Tr. of Oral Arg. 24 ("Well, to be quite frank, the officer as he got further and further along in his search, got hungrier and hungrier").

The majority finds it unnecessary to recount these facts because it affirms the Florida Supreme Court on the narrow ground, clearly established by Opperman and Bertine, that police may not be given total discretion to decide whether to open closed containers found during an inventory search. With this much I agree. Like Justice Blackmun, post, at 11–12, however, I cannot join the majority opinion because it goes on to suggest that a State may adopt an inventory policy that vests individual police officers with some discretion to decide whether to open such containers. See ante, at 4 ("A police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself"). This suggestion is pure dictum given the disposition of the case. But as Justice Blackmun notes, post, at 11, there is a danger that this dictum will be relied on by lower courts in reviewing the constitutionality of particular inventory searches, or even by local policymakers drafting procedures for police to follow when performing inventories of impounded vehicles. Thus, I write separately to emphasize that the majority's suggestion is inconsistent with the reasoning underlying our inventory search cases and relies on a mischaracterization of the holding in Bertine.

Our cases clearly hold that an inventory search is reasonable under the Fourth Amendment only if it is done in accordance with standard procedures that limit the discretion of the police. See Opperman, 428 U.S., at 384 (Powell, J., concurring). In Bertine, the Court held that the police may open closed containers found within an impounded vehicle only if the inventory policy mandates the opening of all such containers. See 479, U.S., at 374, n. 6 ("We emphasize that, in this case, the trial court found that the Police Department's procedures mandated the opening of closed containers and the listing of their contents"). Contrary to the majority's assertion today, ante, at 3, Bertine did not establish that police may exercise discretion with respect to the opening of closed containers during an inventory search. The statement in Bertine that "[n]othing in Opperman . . . prohibits the exercise of police discretion so long as that discretion is exercised according to standard criteria," 479 U.S., at 375, was made in response to an argument that the inventory search was unconstitutional because the police had some discretion to determine whether to impound the car. The Court's conclusion that the opening of defendant's backpack was constitutional was clearly premised on the city's inventory police that left no discretion to individual police officers as to the opening of containers found inside a car once it was impounded. See id., at 374, n. 6. Justice Blackmun's concurrence in Bertine could not be clearer: "[I]t is permissible for police officers to open closed containers in an inventory search only if they are following standard police procedures that mandate the opening of such containers in every impounded vehicle." Id., at 377 (emphasis added).[1]

Opening a closed container constitutes a great intrusion into the privacy of its owner even when the container is found in an automobile. See *Arkansas* v. *Sanders*, 442 U.S. 753, 762–764 (1979); *United States* v. *Chadwick*, 433 U.S. 1, 13 (1977). For this reason, I continue to believe that in the absence of consent or exigency, police may not open a closed container found during an inventory search of an automobile. See Bertine, 479 U.S., at 387 (Marshall, J., joined by Brennan, J. dissenting).[2] In any event, in Bertine, the Court recognized that opening a container constitutes such a great intrusion that the discretion of the police to do so must be circumscribed sharply to guard against abuse. If the Court wishes to revisit that holding, it must wait for another case. Attempting to cast doubt on the validity of the holding in Bertine and this otherwise easy case is not justified.

Justice Blackmun, concurring in the judgment:

I agree with the Court that the judgment of the Supreme Court of Florida is to be affirmed. If our cases establish anything, it is that an individual police officer cannot be given complete discretion in choosing whether to search or to leave undisturbed containers and other items encountered during an inventory search, See *Colorado* v. *Bertine*, 479 U.S. 367, 374, n. 6 (1987), *South Dakota* v. *Opperman*, 428 U.S. 364 (1976). Here, given the complete discretion Florida Highway Patrol troopers enjoyed to open or not to open closed containers, the evidence in question properly was suppressed. I do not join the majority opinion, however, because, instead of ending the case at that point, it continues with language, unnecessary on the facts of this case, concerning the extent to which a policeman, under the Fourth Amendment, may be given discretion in conducting an inventory search.

The majority disagrees with the Florida Supreme Court's statement that a police department must have a policy which "mandate[s] either that all containers will be opened during an inventory search, or that no containers will be opened." Ante, at 3. The majority concludes that the Fourth Amendment does not impose such an "all or nothing" requirement. With this much I agree. A State, for example, consistent with the Fourth Amendment, probably could adopt a policy which requires the opening of all containers that are not locked, or a policy which requires the opening of all containers over or under a certain size, even though these policies do not call for the opening of all or no containers. In other words, a State has the discretion to choose a scheme that lies somewhere between the extremes identified by the Florida Supreme Court.

It is an entirely different matter, however, to say, as this majority does, that an individual policeman may be afforded discretion in conducting an inventory search. The exercise of discretion by an individual officer, especially when it cannot be measured against objective, standard criteria, creates the potential for abuse of Fourth Amendment rights our earlier inventory-search cases were designed to guard against. Thus, when the majority states that a "police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search," and that it is permissible for a State "to allow the opening of closed containers whose contents officers determine they are unable to ascertain from examining the containers' exteriors," ante, at 4 (emphasis added), the majority is doing more than refuting the Florida Supreme Court's all-or-nothing approach; it is opining about a very different and important constitutional question not addressed by the state courts here and not raised by the circumstances of the case. Although the majority's statements on the issue perhaps are to be regarded as no more than dicta, they nonetheless are problematic inasmuch as they may be taken out of context or misinterpreted by policymakers and trial courts. Because, as noted above, the complete discretion afforded Florida policemen in this case renders the search at issue undeniably unconstitutional, I see no reason for the Court to say anything about precisely how much, if any, discretion an individual policeman constitutionally may exercise.

Justice Stevens, concurring in the judgment.

While I agree with Justice Blackmun's opinion, I think additional criticism of the Court's activism is appropriate. One must wonder why this case merited a grant of certiorari. The judgment of the Florida Supreme Court was obviously correct. Its opinion contained a minor flaw, as countless opinions do. Unless we are to become self-appointed editors of state court opinions in the criminal law area, that is surely an unsufficient reason for exercising our certiorari jurisdiction.

The flaw, of course, might impose a stricter standard for the conduct of inventory searches in Florida than the Federal Constitution actually requires, but there is no suggestion that the extra layer of protection provided to Florida citizens by the Florida Supreme Court will hamper law enforcement in that State. Apparently the mere possibility of a minor burden on law enforcement interests is enough to generate corrective action by this Court.

But then, as Justice Blackmun properly observes, the Court does not content itself with commenting on the flaw in the Florida

Footnotes at end of article.

Supreme Court's opinion. Instead, it plunges ahead with a flawed opinion of its own. While purportedly reaffirming the requirement of "standard criteria" to control police discretion in conducting inventory searches, see *Colorado* v. *Bertine*, 479 U.S. 367, 375 (1987), the Court invites the State to allow their officers discretion to open—or not to open—"closed containers whose contents officers determine they are unable to ascertain from examining the containers' exteriors." Ante, at 4. Thus, luggage, briefcases, handbags, brown paper bags, violin cases—indeed, virtually all containers except goldfish bowls—could be opened at the whim of the officer, whether locked or unlocked. What is left for the "standard criteria"?

It is a proper part of the judicial function to make law as a necessary by-product of the process of deciding actual cases and controversies. But to reach out so blatantly and unnecessarily to make new law in a case of this kind is unabashed judicial activism.

FOOTNOTES

[1]Indeed, the majority's suggestion that police may be vested with discretion to open a container "in light of the nature of the search and characteristics of the container itself," ante, at 4, flatly contradicts the reasoning in Bertine. In that case, the Court rejected the argument that police are required to "weigh the strength of the individual's privacy interest in the container against the possibility that the container might serve as a repository for dangerous or valuable items." Bertine, 479 U.S., at 374. The Court found such a rule unworkable for "'it would be unreasonable to expect police officers in the everyday course of business to make fine and subtle distinctions in deciding which container or items may be searched and which must be sealed as a unit.'" Id., at 375, quoting *Illinois* v. *Lafayette*, 462 U.S. 640, 648 (1983); see also 479 U.S., at 376 ("We reaffirm these principles here: [a] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront") (internal quotations omitted).

[2]The Court has recognized that an inventory search potentially can serve three governmental interests: protection of the owner's valuables, protection of the police from the false claims of theft or damage, and protection of the police from danger *South Dakota* v. *Opperman*, 428 U.S. 364, 369 (1976); id., at 378 (Powell, J., concurring). The Court has concluded that routine inventory searches are constitutional because these government interests outweigh an individual's diminished expectation of privacy in a car. Id., at 378–379 (Powell, J., concurring). I do not agree that these interests justify the opening of a closed container in which an individual retains a significant expectation of privacy. See Bertine, supra, at 382–387 (Marshall, J., dissenting). Indeed, I do not see how the treatment of the luggage in this case—prying open the lock with two knives—served any of these governmental interest.

Mr. SPECTER. Mr. President, there has been a fair amount of discussion about what kind of a proceeding we have here. I think, again, the Senator from Missouri [Mr. DANFORTH] articulated it very well. This is a proceeding in the Senate and it is not a grand jury proceeding, although there has been a great deal of talk to the contrary. I think it is worthwhile citing very briefly the case of the United States versus R. Enterprises, a U.S. Supreme Court decision decided in 1991 in which the opinion of Justice O'Connor says a great many things. This is the relevant portion, although I do not represent that this is the entire context. Justice O'Connor made these statements which are relevant to the issue now pending before the Senate. She said this:

Grand juries are not licensed to engage in arbitrary fishing expeditions.

So even if you are dealing with a grand jury, which we are not, even a grand jury is not authorized to engage in a fishing expedition, let alone have a congressional committee, a Senate committee, undertaking an inquiry into matters which are not pertinent as required by the case of Watkins versus United States.

Earlier today, the Senator from South Dakota made a reference to some legal authorities without citing them, and I pointed out at that time that there are a great many lawyers in this Chamber who have expressed judgments in opposition to the amendment which Senator DANFORTH and I have proposed, but no one has challenged Watkins versus United States regulating congressional committees requiring pertinent inquiries, which is another word for "relevant."

Justice O'Connor's opinion in United States versus R. Enterprises, Inc. goes on to say—this is referring to the Nixon case:

We determined that, in order to require production of information prior to trial, a party must make a reasonably specific request for information that would be both relevant and admissible at trial.

Justice O'Connor then proceeds to say that is the standard of a grand jury proceeding. But I would submit that kind of a statement has applicability to a non-grand-jury proceeding, like the one we have here. The language is very important when it calls for a reasonably specific request for information that would be both relevant and admissible.

Justice O'Connor then, in talking about even the breadth of the grand jury subpoena, which is much broader than what we are dealing with here for the reasons we have discussed, said this:

After all, a subpoena recipient cannot put his whole life before the court in order to show that there is no crime to be investigated.

That, I submit, is precisely what the subpoena in this case does.

There was a question with respect to Judge Starr's willingness to participate. I have a call in to him. He is traveling. I do not think it would be germane, as we shall see as the proceedings unfold, but the idea for Kenneth Starr came from the action of the Ethics Committee itself in looking to him to arbitrate, or to decide, conversely, the questions on which the committee and the respondent, Senator PACKWOOD, do not agree.

After we had discussions with the Senator from Michigan about the terms of the agreement, I made an inquiry as to what those terms were on the question of documentation. I have had a response that it is preferred that that issue await litigation in court if that is to be, which is, candidly, highly likely at this point, and the matter can be addressed there.

I will speak in a few moments, after the unanimous-consent agreement is entered into, but I thought it would be useful to make these comments to abbreviate my later statements.

In the absence of any other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the yeas and nays ordered on the Specter-Danforth amendment No. 1093 be vitiated; that Senator SPECTER be recognized for the purpose of withdrawing his amendment and to speak for up to 5 minutes immediately upon the granting of this consent request; that Senator SIMPSON then be recognized to offer an amendment identical to the amendment attached to this unanimous consent request; that there be 30 minutes for debate on his amendment, equally divided in the usual form; that upon the use or yielding back of time on the amendment, the following Senators be recognized to speak in the order listed and for the time limit specified: Senator PRESSLER for 5 minutes, Senator BYRD for 30 minutes, Senator MCCONNELL for 10 minutes, Senator BRYAN for 10 minutes, Senator DOLE for 5 minutes, Senator MITCHELL for 5 minutes; that immediately upon the conclusion of the majority leader's remarks and without intervening action or debate, the Senate vote on the Simpson amendment, to be followed immediately, without any intervening action or debate, by a vote on the adoption of Senate Resolution 153.

The PRESIDING OFFICER. Is there objection?

Mr. SIMPSON. Mr. President, may I just inquire of the majority leader——

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. There is a minor typo in line 10 where the word "the" should be removed. "For debate on his amendment" instead of "the his amendment," at least on my copy. So remove the word "the."

Mr. MITCHELL. That is correct. I did not read the word "the" because it was a typographical error.

Mr. SIMPSON. I see.

The PRESIDING OFFICER. Is there objection?

Mr. SIMPSON. May I ask, will there be an up-or-down vote on that amendment?

Mr. MITCHELL. Yes.

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

Mr. MITCHELL. Mr. President, before the Chair recognizes Senator SPECTER, then let me say for the information of Senators, there will now follow 5 minutes to Senator SPECTER, 30 minutes on the Simpson amendment, 5 minutes for Senator PRESSLER. That is 40; Senator BYRD 30. That is up to 70; Senator MCCONNELL and Senator BRYAN, 10 minutes each. That is 90; Senator DOLE and myself for 5 minutes each. That is 100 minutes. Therefore, Senators should expect that the two votes will occur on the Simpson amendment and immediately following that on the resolution in approximately 100 minutes, if all of that time is used.

Mr. President, I will be pleased to yield.

Mr. DOLE. Does the majority leader then intend to follow this tonight with the vote on cloture or the State Department matter, or will that be tomorrow morning?

Mr. MITCHELL. That will be tomorrow morning. I have received a request from a Republican Senator that we put that off until tomorrow morning. I think it is a reasonable request under the circumstances and therefore we will do that in the morning. Debate on that——

Mr. CHAFEE addressed the Chair.

Mr. MITCHELL. If I could complete my response. I anticipate that debate on the cloture motion will begin at 10 and the cloture vote will begin at 11, approximately.

Mr. CHAFEE. Mr. President, I listened to the majority leader allowing as to times. It is not mandatory that everybody use their full time, I assume?

Mr. MITCHELL. That is not part of the agreement.

Mr. CHAFEE. As a matter of fact, indeed, we could encourage people not to use their time perhaps, or not use all of it.

Mr. MITCHELL. Understanding in advance the limitation of my appeals in that regard, I so urge.

Mr. CHAFEE. I thank the Senator.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Pennsylvania, [Mr. SPECTER.]

Mr. SPECTER. Mr. President, I seek recognition for the purpose of withdrawing the amendment which Senator DANFORTH and I have introduced.

We introduced this amendment because we thought that it provided a solid accommodation for many competing interests, and we knew at the outset that there was little, if any, chance of success for the amendment. But we thought that it would sharpen the issues for what will be a court test which is surely to follow. There will be a vote instead on an amendment to be offered by the Senator from Wyoming [Mr. SIMPSON] and whether or not that will fare any better than this amendment would have fared remains to be seen.

The matter has been raised and repeated about the complexity of the discussion on the amendment which Senator DANFORTH and I have offered, and it has been complicated, and necessarily so, because we have been talking about a great many legal issues.

We believe that the debate on this amendment has sharpened those issues and has made a record with which a court of law will be able to deal in reviewing the issues of public policy and waiver and have an evidentiary hearing, which has never been done since the committee just accepted the representations of their attorneys and never heard from anybody else.

We thought this amendment would be important because it compelled Senator PACKWOOD to turn over all of the materials relating to the charge of sexual misconduct and intimidation of women and use of Senate staff. I think that point was made very emphatically by the Senator from Ohio [Mr. METZENBAUM] this morning, that if we were able to resolve this issue, those very serious complaints would be heard on a prompt basis.

If the Simpson amendment is defeated, and if the committee request for subpoena enforcement is granted, the likelihood is very high, as the Senator from Ohio said this morning, it will be a 3-year process.

Senator DANFORTH and I thought that the paramount issue of having the Senate uphold its integrity and standards would be promoted by finding this kind of an accommodation. The course of the debate has been steeped in legalisms which I believe have been unavoidable. Those who are opposed to this amendment, many lawyers, many fine lawyers, never did challenge the basic underpinning of Watkins versus United States that a Senate committee had to proceed on pertinent information, which is another way of saying relevant, and that even at the worst a grand jury proceeding would not contemplate the kind of a subpoena which is outstanding.

Perhaps the essence of it is that it was the general warrant here, the type of subpoena here, that formed the basis for the Revolutionary War, along with taxation without representation. It was said that you simply had to fight a war in order to establish the principle prohibiting general warrants as a matter of constitutional right. I predict that when this matter reaches the courts the position that Senator DANFORTH and I have articulated will be upheld.

I thank the Chair, I yield the floor, and as Senator CHAFEE said yield back some of my time.

The PRESIDING OFFICER. The Chair advises the Senator from Pennsylvania that the Senator needs to withdraw his amendment.

Mr. SPECTER. I thank the Chair. I thought I had, but if I have not, I hereby withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The amendment (No. 1093) was withdrawn.

AMENDMENT NO. 1094

The PRESIDING OFFICER. The Senator from Wyoming [Mr. SIMPSON] is recognized.

Mr. SIMPSON. Mr. President, in accordance with the previous order, I submit an amendment to the desk and ask that it be read.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for himself, Mr. DANFORTH, and Mr. SPECTER, proposes an amendment numbered 1094:

On page 2 line 3 after the word "subpoena" add the following: "as modified as follows: All relevant diaries, journals, or other documents or material, including all relevant typewritten or handwritten documents, as well as tape recordings and all relevant material stored by computer or electronic means, that are in your possession, custody or control, which were prepared by or at the direction of Senator Bob Packwood, recording or describing Senator Bob Packwood's daily activities for January 1, 1989, through the present.".

The PRESIDING OFFICER. The Chair recognizes the Senator from Wyoming [Mr. SIMPSON].

Mr. SIMPSON. I thank the Chair. I am pleased that the clerk read through the entire amendment because it is the essence of basic simplicity. What I have done in this amendment is to insert the word "relevant" three times in the text of the original committee subpoena.

So that there will be no conjecture about what I am doing, it will now say "all diaries, journals or other documents, including all typewritten or handwritten documents, as well as tape recordings and all relevant materials stored by computer." Nothing else is changed. There is not one single word changed from the subpoena which will be presented to the court for its decision.

I think throughout the debate I have heard the term "relevant" or "pertinent" continually. And, therefore, this is my good faith presentation of what I hope will be an attractive alternative to at least some on both sides of the aisle.

I would think that Senator DANFORTH, the cosponsor of the amendment, Senator SPECTER, a cosponsor of the amendment, and others will speak shortly, and I will reserve the remainder of my time. There is no mystery here. No games. No tricks. I am not saying there ever were. There were not. The Ethics Committee worked hard on this matter, and again I want to say that I have certainly not alluded that my colleague from Kentucky, for whom I have the greatest respect and regard has in any way made reference to "criminal activity". He has not done so. In the excitement of the debate I

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did indicate that. I have already apologized for that. That was inappropriate. He knows that and he knows my intent.

So there it is. If we are going to gather up material on our fellow man and woman in the Senate, in the Ethics Committee in the future, and we will, indeed we will, whatever engines are driving it, let it just reflect that here we are not asking to give Senators, and a very privileged group we are, anything special at all. This is the way it works with real people, 260 million Americans. It is relevancy that is the key. We should not miss that point. I earlier cited rule XXVI of the Rules of Civil Procedure. We are still in a civil proceeding because no criminal charge has been made. That has been alluded to. But rule XXVI under the Rules of Civil Procedure says "all relevant material will be the subject of discovery." That is what my amendment does.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Nevada controls 15 minutes in opposition to the amendment.

Mr. BRYAN. Mr. President, Members of the Senate, let me say that I appreciate the efforts of my friend, the distinguished Senator from Wyoming. But I must oppose the amendment which has been proffered.

This is, in my judgment, a further step backward than the previous amendment that has been discussed, offered by Senator SPECTER and Senator DANFORTH. The practical effect of this amendment is to negate the committee's subpoena. I know that is not the intention of my friend from Wyoming. But that is the practical effect because his amendment, by inserting the word "relevant," creates all of the ambiguity in the world. There is no standard for relevance. Relevant to what?

Moreover, the decision as to who would make the determination of relevance clearly would lie with Senator PACKWOOD and his counsel. That is its most serious defect, and that is what creates the dual standard that has been the subject of much of our debate throughout the day. That is the standard that American citizens, who are not Members of the U.S. Senate, live by, and those that we are proposing to provide for ourselves, because Senator PACKWOOD and his attorneys would determine what is relevant before that information is even turned over to Judge Starr or the independent examiner.

That clearly cannot be what the Senate wants to adopt, in my view. Like every other investigative body, the Ethics Committee must make the determination as to what is relevant, not the subject of the party to the investigative process himself or herself.

I reserve the remainder of my time.

Mr. SIMPSON. Mr. President, I yield 3 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho, [Mr. CRAIG] is recognized for 3 minutes.

Mr. CRAIG. Mr. President, Members of the Senate, for the last 2 days I, like many of you, have stayed on this floor and listened to what was extremely valuable debate and is special over a fundamentally important issue before this Senate; fundamental because it is precedent setting in the actions of what we do.

I spoke briefly yesterday as a member of the Ethics Committee. I held up this pamphlet of rules, and said that I had, and I continue even today to support the Ethics Committee because we were clearly within the rule. But what I also believe is that this body has the fundamental right to direct, define, or refine our action. And as we came to the floor to ask, we also provided you, as Senators, the opportunity for that kind of refinement.

I also said yesterday that in our process to find the truth we must be extremely careful—careful in the fact that we did not abuse the rights of the victims, and clearly this amendment does not because the charges are before us, and this relevancy relates to the charges that the Ethics Committee has brought against Senator BOB PACKWOOD. That in no way is a coverup to those who feel they have been wronged by this individual.

We have the responsibility as Senators to protect the institution. But we also have the responsibility to protect the right of the accused. And while that has been little talked about over the last 2 days, it is fundamentally important, and it is clearly a charge of the Ethics Committee.

I believe inherent in this amendment we speak to the right of the accused.

We also have the right to protect the innocent. While there may be, and there clearly is, following the debates of the last 2 days, innocents involved in the diaries of BOB PACKWOOD, somehow they went skipping by us, of no concern in our effort to get at the protection of the right of those who might be the victims. But we dare not fail to address all, the victims, the accused, the innocents, the Senate, the institution. And it is phenomenally important that we do that.

The Senate Ethics Committee has acted properly. It has functioned within the rules that you gave it. And I supported that as a member of that committee. But I also support, as we do every 2 years, the clear and responsible refining of the rules under which we govern ourselves for the citizens of this country. And what we may be doing by our actions this evening is in a fair and responsible way refining or defining——

What I believe we are doing in a fair and responsible way is defining those rules that are so fundamentally important. I will support the Simpson amendment.

I yield the floor.

Mr. SIMPSON. I thank the Senator, a Member of the Senate Committee on Ethics.

I yield 3 minutes to my friend, Senator DANFORTH of Missouri.

Mr. DANFORTH. Mr. President, I have pretty much said what I have to say on this matter. But I simply point out to the Senate that in connection with the question of how broad or narrow the scope of the subpoena is to be, that is the point that is being raised by this amendment, because the word that has been inserted —"relevant"—is obviously a limiting word. The question is: Should the scope of the subpoena be limited to relevant material, or should it include material which is both relevant and irrelevant, which would be the broadest sweep? I take it that the argument against this amendment is that relevant material is too narrow, and that the scope of the subpoena should encompass the irrelevant, as well.

The second point is that this amendment simply returns the committee to where it was originally when it asked Senator PACKWOOD to produce to the committee documents relevant to the committee's preliminary inquiry. That was the committee's own standard. If that was a standard that did not apply to the rest of the country at that time, then that would be the committee's fault, in the opinion of this Senator.

So what we are saying in this amendment is: Let us bring back the original standard of the committee, and let us at least have a scope that is restricted to what is relevant.

Mr. SIMPSON. Mr. President, what is the situation with regard to time?

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mr. SIMPSON. Mr. President, I reserve the remainder of my time for the moment.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN. Mr. President, I will yield to Senator MCCONNELL, and I think one other Member might wish to talk. Will the Senator indicate how much time he needs?

Mr. MCCONNELL. If the chairman will give me 3 or 4 minutes, I would appreciate it.

Mr. BRYAN. I yield 5 minutes to the Senator from Kentucky.

Mr. MCCONNELL. Mr. President, there are two crucial defects that the amendment submitted by the Senator from Wyoming has. First, the amendment by its terms makes Senator PACKWOOD and his counsel the arbiter of what is relevant to the committee's inquiry, not the committee.

In other words, the person who will be deciding what the committee needs to complete its inquiry in a thorough and fair manner is not the Ethics Committee, nor will it under this amendment even be an arguably impartial independent hearing examiner, such as we had in the previous amendment, which was withdrawn. Rather, it will be the accused in this case who gets to make that decision.

The Senator from Wyoming stated that his amendment reflects the way the real world works and the way real people are treated. With all due respect to my good friend from Wyoming, that is not how the rest of the world works—not anywhere in the entire justice system of America, at least. I am sure that private citizens who are the subjects of an investigation for wrongdoing would be thrilled, literally thrilled, to have the opportunity to choose what information they would like to turn over to investigators on the basis of what they deem to be relevant.

That is not how the real world works, and that is not how the rules that govern the Senate Ethics Committee work, unless the amendment of the Senator from Wyoming should pass.

Mr. President, if this amendment should pass, then we will have erected a double standard of justice in this land—one for the Senate and one for everybody else. Clearly, that is a step in the wrong direction. We spent a lot of time today arguing a proposal to allow an outside party to determine for the Ethics Committee what is relevant to its investigation. This amendment is a step back from that. It is a step in the other direction.

This amendment goes even further, putting the full and unquestioned authority for determining what information should be turned over to the committee on the basis of relevance in the hands of the person being investigated. Let me point out to my colleagues why the committee was prepared to reject the Specter amendment, and why I feel we certainly should reject this more extreme amendment.

First, and perhaps most important, this proposal is essentially a declaration that the Senate Ethics Committee, duly established and constituted by all of the rest of us, those who have been deputized by the rest of the Senate to carry out this task, cannot get the job done; that we just are incapable of carrying this job out. So we need to subcontract it. That is what they were saying under the Specter amendment. Now we are saying not only do we not want to subcontract it to some independent party, we will let anybody who is accused determine what is relevant and what is not. We can pass bills, we can make statements, raise taxes and cut taxes; but, oh, no, we cannot investigate ourselves. We are not competent to do that. Remove that from us somehow. Get an independent arbiter. Let the accused determine what to hand over to us. Get it out of our hands. We cannot handle it. That has been the crux of the observations here today.

Some have suggested that the members of the committee are like robots being manipulated by nefarious staffers that are drooling over the possibility of embarrassing some Senator. Why in the world would we have any taste for that, I ask? That is nonsense. In fact, most of the time we are protecting Senators from ridiculous accusations that have no basis.

So make no mistake about it. What we are talking about here is whether we have the ability to do this job here in the Senate. And we are also talking about whether we are going to have a separate standard for everybody else in the world and a different one for us.

The rules of procedure of the Ethics Committee—in particular, rule 3 (c)(2)—provide that the committee may, in the course of conducting a preliminary inquiry, which we are in right now, "include any inquiries, interviews, sworn statements, depositions and subpoenas that the chairman and vice chairman deem appropriate to obtain information upon which to make any determination."

In other words, the rules make it clear that the authority to decide what evidence to gather rests with the committee. It is the committee that must determine what is or is not relevant to the investigation.

We simply cannot, or at least should not, in my judgment, subcontract that authority to anyone else, least of all the person who is being looked at by the committee. If we were to do so, we would rob the Ethics Committee of a proper function accorded to it by its rule of procedure and we would be admitting that we, meaning both the Ethics Committee and the Senate, are simply not qualified for this job, as I said earlier, not up to it.

As the Supreme Court has said and as we have heard from several legal experts, a private citizen who is the subject of a grand jury investigation has just one option. We may not like that. But a private citizen who is the subject of a grand jury investigation has just one option—turn over the documents.

Yesterday, the distinguished Senator from Utah [Mr. BENNETT] confirmed this when he spoke as follows. Senator BENNETT said yesterday:

> I appreciate what the Senator is saying because I have been in a situation where my diary has been subpoenaed and used in an investigation, and I have not been able to redact anything.

Now some have argued that this standard should not apply to the Ethics Committee because it is more than a grand jury. Let me quote from another Bob Bennett, an attorney who has served as special counsel to the Senate Ethics Committee on several occasions and has also been on the other side as defense counsel in several unrelated actions.

The standard that should apply, in his words, is "a reasonable possibility that the category of material sought is relevant to the general nature of the investigation." That is Bob Bennett. That is Mr., not Senator BENNETT. He also said the following about the rights of private citizens versus the rights of Senators. This is Bob Bennett, the lawyer we talked about who has worked for the Ethics Committee in the past as recently as yesterday said as follows: "I can tell you in my practice subpoenas are used all of the time asking for all sorts of diaries and personal calendars, and we do not have a legal basis to resist them."

He is not happy about that, you understand. He is talking about where he is representing the defendant. He said the following—and this is not all of us who may have practiced law 15 or 20 years ago. This is someone who is doing it now. He said: "I can tell you in my practice subpoenas are issued all of the time asking for all sorts of diaries and personal calendars, and we do not have a legal basis to reject them."

That is the standard which every other U.S. citizen lives with in investigations of this kind. We were asked to have a different standard, a more protective standard, for ourselves. This kind of double standard is exactly what we have been trying to get away from for the last several years.

Let me say, in conclusion, make no mistake about it. It is not just Senator PACKWOOD who is under the gun here. The issue is whether the Ethics Committee will be given the authority by the U.S. Senate to carry out its responsibility. The chairman and I, and others in the Senate, have been on an Ethics Study Commission taking a look at possibilities for changing our procedures.

I personally am convinced that we can handle this job, that we ought not to give it over to any outsiders to determine the course of action, that we can do the job. But a lot of comments that have been made here today seem to me to indicate that some Senators, maybe a lot of Senators, would be happy if we just threw this hot potato out to the public. Let someone else do the job. It is messy. It is unpleasant.

I tell you, the chairman and I—and this applies to everybody else on the committee—did not ask for this assignment.

I feel very strongly we ought to be carrying this job out. We ought to be given the tools to carry it out by the full Senate and complete the task.

I yield the floor.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The Senator from Wyoming.

Mr. SIMPSON. Madam President, what is the situation with regard to time?

The PRESIDING OFFICER. Your side has 5 minutes 59 seconds, and the other side has 1 minute and 27 seconds.

Mr. SIMPSON. Madam President, I think that certainly was the most novel argument of the day from my friend from Kentucky, and I understand the tremendous feeling he must have as I and some of your colleagues, have challenged some of the committee's activities with regard to the issuance of a subpoena. There is no one

who would understand more clearly how the Senator from Kentucky must feel. I can understand your pain and sensitivity in this matter.

However, that is not what we are talking about. Every bit of this argument you just heard was presented earlier in the day. How can requiring relevant discovery be a step backward in any kind of process that has anything to do with civil litigation? And remember there is no criminal activity alleged here. Forget criminal activity. But that has been discussed on the floor all day for 2 days. We do not even know what kind of activity has been alleged. Providing for only relevant discovery is a fundamentally fair step forward, which I am confident the courts will confirm.

We are acting as if the inserting of term "relevant" is some bizarre approach to resolving this impasse. The real issue is how did we ever get to the point where the imposition of due process in this process is a controversial issue? That is a real issue.

But, to the people of America, the 260 million who are watching us writher, and we should writher because if this subpoena was directed to Joe Six-Pack, and if he were involved in a civil proceeding—and that is what this is, at least essentially so far—although there have been recent allegations of criminal activity, the Federal rules of civil procedure say: "Parties may obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending action."

That is what it says, Mr. and Mrs. America, and they are taking that away from Senator BOB PACKWOOD. That is the choice before the Senate. Make your choice.

The issue is relevancy. It is a very clear term of art in the legal profession and in due process. Relevent discovery does not negate anything. If there is a double standard here, this is one. How can it be said, as I have heard here for 2 days, that apparently Senator PACKWOOD was allowed by the committee to determine what was relevant in the first 5,000 pages or so of his diaries and now is being told that he can do nothing to primarily determine what is relevant in the final 3,000 pages?

But remember this: We are not going to determine relevancy here. The courts will determine what is relevant. It will be out of our hands. It will go on up to the courts, and in the courts they will determine relevancy and they will determine the person who will make preliminary decisions about relevancy. It will be done as it should be done and as the committee wanted it done in court, but you cannot have a double standard.

I have heard it said here in this debate that the choice as to what was relevant at least for the first 5,000 or so pages was at the discretion of Senator PACKWOOD. The committee initially thus gave him that ability. The committee therefore gave him something you do not give to other Americans, ladies and gentlemen, if you really want to get to the nub of it.

And I will reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Nevada.

Mr. BRYAN. Madam President, I yield to the Senator from New Hampshire. How much time do I have remaining?

The PRESIDING OFFICER. You have 1 minute and 21 seconds.

Mr. BRYAN. May I confer briefly with the vice chair?

I yield to the Senator from New Hampshire the remainder of the time.

The PRESIDING OFFICER. The Senator from New Hampshire is yielded the remainder of the time.

Mr. SMITH. Thank you, Madam President, and I thank the chairman.

I rise now to lend support to the chairman of the committee and the vice chairman for the remarks that they have made in opposition to the Simpson amendment.

This is a very difficult thing to do, as you might expect, and I understand the strong feelings about relevance and the very sensitive subject that we are dealing with.

But in the original document request, the committee asked for relevant information from Senator PACKWOOD. Had it been provided, we would not be here today, we would not have a diary issue before us.

The committee asked Senator PACKWOOD in good faith for all relevant information. Now 8 months later, 8 months later at least, and 2 days of debate, we are back again to a motion on the floor of the U.S. Senate to ask Senator PACKWOOD for relevant information. Senator PACKWOOD in his deposition admitted that in the original request he did not answer the original request and provide all relevant information.

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

Mr. SMITH. That is a quick minute and a half.

Thank you.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. What is the time situation?

The PRESIDING OFFICER. Two minutes and 2 seconds and zero time on the other side.

Mr. SIMPSON. I yield 15 seconds to my colleague on the other side.

The PRESIDING OFFICER. Fifteen seconds to the Senator from New Hampshire.

Mr. SMITH. I thank my friend from Wyoming for that.

I just want to say that I am very sensitive to some of the comments made around here about us moving into this territory of privacy.

The diaries are not the threshold here. The diaries came about as a result of requesting relevant information. And then those diaries were pulled back because of some information Senator PACKWOOD did not wish to provide. That is really why we are here.

The diaries are not the threshold. There were not charges out there and diaries over here and we then brought the diaries in because of the charges. The diaries came in as part the relevant information, and they were pulled back.

I thank my friend from Wyoming for his courtesy.

The PRESIDING OFFICER. The Senator from Wyoming has 1 minute and 44 seconds remaining.

Mr. SIMPSON. Madam President, the diaries were pulled back because of the adventurism of the investigative activity.

Let us not miss what happened. It was all right for all to go ahead as long as it was relevant. Then suddenly, certain eyes lit up like a pinball machine, and they said, "Aha, look at this!" Then the Senator's counsel said, "No."

You would do that. You would want your counsel to do that.

The court will determine what is relevant. We are going to go on to court now. The court will determine the scope of the subpoena and compliance with the subpoena.

Nothing—nothing—in this amendment says that Senator PACKWOOD alone will decide what is relevant. That is an erroneous argument, totally fallacious. Nothing in this amendment—says that Senator PACKWOOD will alone decide what was relevant. Is that what the committee meant in its original subpoena, that Senator PACKWOOD would be the determinant of relevancy?

Because all I did here was change three words. Surely the committee did not intend that, in any sense.

So that is where we are. The passage of this amendment of mine—three words changed in the committee's subpoena—does not give Senator PACKWOOD the sole right to determine relevancy. The court will decide that. It will be out of our hands. That is exactly what the Ethics Committee wanted to do, is go to court.

We are going to court. It will probably take 2 or 3 or 4 years. I do not know how long it will take. But I am confident that what the court will do will not be done in the swirl of the brutal crosswinds of what may be politically expedient or politically correct. The court will be guided by precedent. And the court's decision will be guided by what has been established by the Federal Rules of Civil Procedure.

I thank the Chair.

Mr. GORTON. Mr. President, on March 29 and July 16, the Ethics Committee asked Senator PACKWOOD to

produce all documents relevant to the allegations against him alleging sexual misconduct, attempts to intimidate and discredit the alleged victims, and misuse of official staff in efforts to intimidate and discredit.

At the time of that request, Senator PACKWOOD produced voluminous records, not including entries from his diary; in fact, the existence of his diary was not even revealed at that time.

Senator PACKWOOD voluntarily disclosed the existence of his diary as corroborating evidence during his deposition. In spite of the fact that some entries were relevant to the allegations against Senator PACKWOOD, this was the first time the Ethics Committee learned about these diaries and the possibility of its relevance.

Following detailed negotiations, an agreement was reached between the Ethics Committee and Senator Packwood's counsel that allowed the Ethics Committee staff to examine the entire diary with the exception of three specific categories which were blacked out: attorney-client and physician-patient privilege and personal, private family matters. Unfortunately, the details of that agreement were never put in writing.

Following the agreement, Ethics Committee staff was allowed to read some 5,000 pages of the diary with the exceptions noted above. When the staff found entries which it thought might indicate separate and new violations, Senator PACKWOOD and his counsel immediately withdrew permission to examine the balance of the diary.

Having in fact and in practice agreed that the Ethics Committee staff could read the entire diary, Senator PACKWOOD's right to privacy was clearly waived. At that point Senator PACKWOOD could not unilaterally repudiate the agreement between the Ethics Committee and his counsel.

As a result, the Ethics Committee subpoena asks only for what it was already entitled to both by reason of Senator PACKWOOD's initial failure to disclose relevant diary entries and by reason of the procedure for disclosure of the diary followed by both parties after its discovery, whatever the specific terms of the agreement leading to that disclosure.

Thus, approving the Ethics Committee subpoena does not create a broad precedent for fishing expeditions into personal papers; it only requires compliance with an appropriate demand and a voluntary agreement between the parties.

The Ethics Committee subpoena is proper and should be enforced.

Mr. LIEBERMAN. Mr. President, I will vote to support the resolution authorizing the Senate legal counsel to seek enforcement of the Ethics Committee's subpoena which has been issued to our colleague from Oregon, Senator PACKWOOD, and I want to explain why.

Mr. President, we all spend our life in a fishbowl, and enjoy very little privacy. As much as we might empathize with our colleague's desire to safeguard his privacy, we must also be guided by law and precedent. Courts in this country every day wrestle with issues regarding when documents must be made available for inspection by civil or criminal law enforcement authorities. These precedents should guide and shape our decision today.

In virtually any civil discovery matter, the most significant limiting principle is relevance. We do not, in our judicial system, allow parties to request documents from one another, simply to go on a fishing expedition. But the scope of what is, in fact, relevant can and does change during the course of an investigation. If a particular set of documents is judged to be relevant, then the next question is whether the material under subpoena is subject to a privilege, such as the attorney-client, physician-patient or clergy-congregant privileges. In general, relevant, nonprivileged documents must be produced.

In this case, Senator PACKWOOD appears to concede that portions of his diaries are relevant to at least some of the allegations being investigated by the Ethics Committee, and that the portions of the diaries that are relevant are not privileged. (See statement of James F. Fitzpatrick, at 4, citing *Cooke* v. *New Mexico Junior College Board*, 579 F.2d 568 (10th Cir. 1978).) The real issue here is whether the Ethics Committee can seek production of portions of the diaries that may not be relevant to the allegations it announced it was investigating in its statement of February 4, 1993, but which it subsequently discovered and now believes are relevant.

I believe that the Ethics Committee has the ability and the duty to investigate alleged violations of Senate ethics rules by Senators, regardless of whether it learned of those allegations in the course of another investigation. This is similar to the situation in which a police officer executing a search warrant seeking evidence of one crime comes across evidence of a second offense. Just as the police officer could, in most cases, and should be able to use the additional evidence to support an investigation into the additional offense, the Ethics Committee should also be able to use the evidence it discovered as the foundation for further inquiry. In fact, it has a responsibility to do so.

With a unanimous vote by the Ethics Committee to seek to enforce the subpoena and with no evidence that these proceedings are motivated by partisan or ideological concerns, I am comfortable deferring to the committee's conclusion that these other allegations must be investigated and that it is the investigation of these other allegations that necessitates drawing this subpoena to encompass portions of the diary beyond those relevant only to the allegations contained in the committee's statement of February 4, 1993.

I also note that in voting to authorize the Senate legal counsel to seek enforcement of the committee's subpoena, we are not voting to strip Senator PACKWOOD of the protections of his constitutional and common law privileges. Nor are we actually seizing his diaries. The next step would be for the Senate legal counsel to seek an order from the court requiring Senator PACKWOOD to produce documents in accordance with the subpoena. At that point, Senator PACKWOOD would have the opportunity to raise all legal defenses against production. Senator PACKWOOD could argue, at that time, that some or all of the material is privileged, or that the request is unduly broad and violates his constitutional rights, including his privacy rights. The court would then determine the validity of Senator PACKWOOD'S objections. Only if the court determined that Senator PACKWOOD's objections were not well taken would it then issue an order compelling compliance, that is production of the diaries.

Mr. President, if we do not go forward and authorize the Senate legal counsel to seek enforcement of the Ethics Committee's subpoena, the committee will have no way to gain access to these documents, even to the extent that they are relevant to sexual misconduct and intimidation allegations, other than through voluntary compliance by Senator PACKWOOD. On the other hand, if we go forward and authorize the Senate legal counsel to seek enforcement of this subpoena, Senator PACKWOOD will still be able to seek to preserve his rights in court.

Mr. President, in light of all these circumstances, I see no way that we can protect the Senate's interest in preserving its integrity except by voting to adopt this resolution authorizing Senate legal counsel to enforce this subpoena. Our first responsibility must be to allow the Ethics Committee, on behalf of the Senate as a whole, to investigate fully evidence of misconduct by individual Senators. I will, therefore, vote to support the resolution.

Mr. MACK. Mr. President, I want to be absolutely clear about what the heart of this matter is, and what it is not. The question before us today is whether or not we believe Senator PACKWOOD should be required to abide by the agreement he entered into with the Ethics Committee. This is not a vote to corroborate the notion that the Ethics Committee has an unabridged right to personal or private information simply because they say they need it. For the record, I do not accept that the committee has broad authority to subpoena whatever it chooses, regardless of the nature of the documents or

the scope of the request. I hold in the highest possible regard the protection of individual rights to privacy. But that is a question for another time. Here, Senator PACKWOOD gave up these rights when he negotiated the agreement with the Ethics Committee for review of the diaries.

I cast my vote with the committee and its authority to review the remainder of these diaries because I believe that Senator PACKWOOD has been given an opportunity to raise these issues and defend his rights. At the time of his deposition, Senator PACKWOOD, with the help of his lawyers, fashioned an agreement by which the review of his diaries would be governed. Three exceptions to full disclosure were hammered out and the examination commenced. Senator PACKWOOD and his attorneys knew more about what was in the diaries than did the committee. If he wanted additional exceptions, he should have said so at the time and bargained for a different set of exceptions. As it stands, Senator PACKWOOD is asking for more than what he originally agreed to and thus, the committee is within their rights in asking to continue their review of the Senator's papers under the original agreement.

The PRESIDING OFFICER. All time has expired.

Under the previous order, the Senator from South Dakota is recognized for 5 minutes.

Mr. PRESSLER. Madam President, I rise to say that for many years I have observed the House and Senate struggle with issues such as we are struggling with this evening.

I arrived here in 1974 as part of the so-called reform class, and each year, rightly or wrongly, we have had proceedings such as we are having tonight. I remember in 1974 or 1975, the first time I ever saw the full House of Representatives sitting with close to 430 Members in one room late at night, was over alleged leaks by a Member of the House. And the next year, the same thing happened with the Wayne Hays affair. And I could go on and on.

I came to the Senate in 1978. I think the only time 90 or more Members sit and listen to debate in one place is to consider ethical charges such as these. It seems that we struggle with these issues internally, as we have to, as church organizations have to, as business organizations have to. And it is very, very painful.

The press loves it. Indeed, the stories are almost the same since 1974, recycled. As Senator SIMPSON said, we rile when we do this.

Indeed, the day when my father was buried in 1990, the Senate was debating and voting on a matter coming from the Ethics Committee.

So this debate we have had here that has occupied us for 2 days has not really been about sexual allegations. It has been about a subpoena duces tecum or, more simply, an order from a court to produce documents.

And so I rise to pay my personal tribute to the members of the Ethics Committee. Some say that we should have Federal judges or retired appellate court judges making these decisions for the Senate and the House, because every year we have these proceedings in one form or another.

I think the Senate needs to continue to struggle internally with these issues with the Ethics Committee providing leadership. There is always pain. Last night I asked some questions that were critical of the leadership of the Ethics Committee. And I am sure all Members have done that at some time or another. I have seen the pain in our caucus when members of the Ethics Committee are put on the spot and cannot really respond.

I was once offered to serve on the Ethics Committee in the House and turned it down, which perhaps was a copout.

I did want to say that I will probably be voting with Senator SIMPSON here shortly, which will be against what the Ethics Committee is advocating. But I believe this is the correct course.

I believe strongly in what I said last night, even though I said some things very critical of the Ethics Committee. I know the pain that goes through this institution. I have seen it happen every year since 1978. But I do not think there is any escaping it in this organization. I simply wanted to add that.

The PRESIDING OFFICER. Senator BYRD is recognized for 30 minutes.

Mr. BYRD. Madam President, I wish to thank and commend the members of the Senate Committee on Ethics—Senators BRYAN, MCCONNELL, SMITH, MIKULSKI, CRAIG, and DASCHLE.

For much of the time during this debate, especially today, this body has completely lost sight of what we are supposed to be doing here. We have been lulled into mind-numbing legalisms and off-point trial arguments.

I am sure we have some good lawyers in this body. Most of them have been out of the courtroom a good many years, but you would not think it. As I have listened to some of our able lawyers, I wondered whether or not they realize that they are not in a courtroom; that this is the Senate of the United States, one of the two greatest Senates in all time—the Roman Senate and the United States Senate.

But one would think they are still out there in the courtroom. They cannot seem to divorce themselves from that courtroom. They talk about Federal Rules of Civil Procedure; this rule and that rule. What standards? What is an agreement?

Madam President, we have all taken the oath of United States Senator since we practiced law or served as a judge or served on a jury. This is the United States Senate. That is why I wear this lapel pin. I am proud of it. I wear it every day.

Madam President, I would suggest to the lawyers in the body—I do not speak disparagingly or pejoratively—read the Constitution again. Read the Constitution.

Alexander believed that the Iliad was the greatest of literature, and he slept on it every night beneath his pillow. He had his sword and the Iliad under his pillow. He had Aristotle and some others to revise the Iliad. And the revised copy was called the "casket copy," because he found a small golden casket in the tomb of Darius the Great. He kept the Iliad in that golden casket.

I do not sleep with the Constitution under my pillow, nor do I sleep with my sword under my pillow. But I have it close by, the Constitution. I read it, and I read it often. Let us read from this great document, section 5, paragraph 2, Article I. Some would call it clause 2.

> Each House may determine the Rules of Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

That is it. That is the beauty of this Constitution—one of the beauties of it. It does not mince words. There are no redundancies in it. There are no empty words in it. There are no useless phrases in it: Expel. With the concurrence of two thirds, expel a Member.

It does not say by what standard. It lays out no standard of proof. It does not say that he has to be guilty of conduct unbecoming of a Senator. It does not say anything. It just says with two-thirds, the concurrence of two-thirds, the Senate may expel a Member.

That is saying to me that a Senator is to be held to a higher standard than the ordinary Joe Six-Pack. The ordinary Joe Six-Pack is going to be protected by those Federal Rules of Civil Procedure we have been hearing about. He is going to be protected by certain standards of proof. He is going to be protected by certain standards of relevance. But not this Senator. If two-thirds of the Members of this body want to expel me, there is no court in the land that can save me, and Senators do not have to say why they are expelling me, either.

There are only two protections. One is in the two-thirds requirement, but it does not say two-thirds of the whole body. It does not say two-thirds of those Senators who are elected and sworn: By the concurrence of two-thirds.

The other protection is in my hands. My conduct as a Senator, that is my protection. That is Senator FORD's protection. That is Senator ROCKEFELLER's protection. That is Senator MCCONNELL's protection—his conduct, his behavior as a Senator. The Senate will never muster two-thirds or even a majority, nor will it even think of expelling a Member who is doing his duty

and who tries to live up to the name of Senator.

There has been much discussion here about what the standards are. I read from the Standing Orders of the Senate, contained in the United States Senate Manual. I assume that most of the members, if not all the members, of the Ethics Committee have read this. Perhaps some other Members have, as well. But I cite Senate Manual section 79.6 to all Senators, titled "Standards of Conduct." Here it is. "Standards Of Conduct For Members Of The Senate And Officers And Employees Of The Senate."

"Resolved, It is declared to be the policy of the Senate"—not the policy of the House—"the policy of the Senate that—(a) The ideal concept of public office, expressed by the words, 'A public office is a public trust', signifies that the officer has been entrusted with public power by the people; that the officer holds this power in trust to be used only for their benefit"—the people's benefit—"and never for the benefit of himself or of a few; and that the officer must never conduct his own affairs"—never—"so as to infringe on the public interest. All official conduct of Members of the Senate should be guided by this paramount concept of public office."

There it is. There is the guiding standard. And it was resolved by the Senate as of March 22, 1968. There is our guiding policy. There are our standards. It does not say anything about Rules of Federal Civil Procedure. And anybody can read it and anybody can understand it and nobody can dispute it and nobody can do anything about it until the Senate repeals it or replaces it by some other standard.

A Member of this body has been accused of serious wrongdoing. Our own Ethics Committee has unanimously recommended that a subpoena be issued for certain documents in order to get to a resolution of these serious matters.

The American public is watching and, I daresay, must be convinced that the Senate is simply dithering and delaying to try to protect one of its own.

Mr. President, I have a great respect for the distinguished author of the pending amendment before the Senate, and I am fond of him, and we are friends. But he says the issue is "relevancy". The issue is not relevancy. The issue is whether or not we are going to have a double standard for Senators; whether we are going to have a different standard for a Senator from that which governs Joe Six-Pack or the ordinary citizen. It is whether or not we are going to add to the already regrettable perception throughout the land that we, the Senate, will not police ourselves, that we will gather around one of our own and that we will protect him. The Senate will become secondary and the interests of the people out there will become secondary, to protecting a Member of this body.

Mr. President, the Earl of Mansfield, speaking as Chief Justice in the case of John Wilkes—who was an English political agitator in the 18th century—is quoted as saying:

> If we do not speak our real opinions we prevaricate with God and with our own consciences.

I shall abide by that dictum.

The Senate is larger than any one of its Members. When the duly elected representatives of the people gather together in this hallowed Chamber, they become much more than the combined intellects, talents, and idiosyncracies of 100 people. They become the living, breathing manifestation of the spirit and soul of the people of this Nation.

We who assemble here in our official capacities embody the hopes, the dreams, the aspirations, the wisdom, and the shortcomings and the flaws of the people we serve. We have been selected by our fellow citizens and entrusted with their sacred rights and personal liberties.

Service in this body is a supreme honor. It is also a burden and serious responsibility. Members' lives become open for inspection and are used as examples for other citizens to emulate. A Senator must really be much more than hardworking, much more than conscientious, much more than dutiful. A Senator must reach for noble qualities—honor, total dedication—total dedication—self-discipline, extreme selflessness, exemplary patriotism, sober judgment, and intellectual honesty.

He or she should try to live a life and shape a character that are above reproach and serve as an example for our children and grandchildren to follow. No one of us in this Chamber or in any other profession or walk of life is perfect.

Paul the Apostle, in his epistle to Titus, chose to say these words in chapter 3, verses 3 and 5, and I read from the King James version:

> For we ourselves also were sometimes foolish, disobedient, deceived, serving divers lusts and pleasures, living in malice and envy, hateful and hating one another.
>
> Not by works of righteousness which we have done, but according to His mercy He saved us, by the washing of regeneration, and renewing of the Holy Ghost.

So, Madam President, none of us is righteous and no man's life—no man's life—will bear looking into. But, Madam President, it is not a question of how bad or how good we are. Samuel Johnson spoke for many of us when he said:

> I hate mankind, for I think myself one of the best of them, but I know how bad I am.

It is not a matter of how bad or how good we are, it is rather a matter of duty and where does it lie? Many Senators are inspired by this honor to do the best they can to serve the Republic and to justify the faith of the people who choose to send us here for a term—just for a term. The Senate brings out, or ought to bring out, a yearning to cultivate the best in the human psyche, to reach for the best in one's self, to push down the small and debasing flaws that are in all of us.

Members strive for that perfection because we know that the Senate is more important than any one or all of us—more important than me; more important than all 100 of us; more important than all of the 1,815 men and women who have served in this body since 1789 and, indeed, what a high calling it is to have been chosen to represent—each of us—his or her sovereign State in this, the only forum of the States, the United States Senate.

Every time that one of us tarnishes the Senate by not living up to the title and the high calling of Senators, we are hurting much more than ourselves or our families or even the constituents we serve. Every time that a Member brings less than honor to this Chamber, a little more of the marble of the people's trust is chipped away from this institution.

Each of us has a solemn responsibility to remember that, and to remember it daily. We asked to serve here. I asked to serve here. I have asked six times to serve here. Many of us spent years, raised millions, neglected our families, shortchanged our friendships, exhausted our energies, and focused our total concentration on winning a seat in this body.

Let us not forget what a sacred thing that that seat is once we have won it. Let us not forget that we are no longer private citizens—no longer private citizens—while we serve here. We have to have a higher standard than Joe Six-Pack. We have relinquished that status of private citizen while we serve here. It is now incumbent upon those of us who serve here to live up to the title of Senator so that we do not defame the thing that is bigger and grander and more important than any one of us or our egos—and they get to be pretty big—I know—the Senate of the United States!

Once any Senator forgets that, once our own personal fortunes, misfortunes, and foibles become more important than the overall good of the institution we serve; once staying in office, holding on to power and retaining that title of "Senator" become more important than the good of the Senate and the good of the Nation; once those things have become the raison d'etre for being a Senator, then that Senator has lost a true understanding of what service here means.

Each Member who sits here today is no State or county or city magistrate or officer, no justice of the peace, no town councilman, no alderman, no member of someone else's cabinet—and all of these are very important and

necessary and honorable offices. But the office of United States Senator is the highest of all political callings in this land, and every Member of this body should know that, should understand it, and should believe it!

It is not, as one of our most beloved colleagues is often quoted as saying—my good friend BOB DOLE—it is not "the second best view in town"; it is, rather, the best, the preeminent, the pinnacle of all views in this town or any other. All other views pale into mere shadows in comparison with the view from the greatest Capitol Building in the world. When dawn first shows "her rosy fingers through the early mists of morning," to quote from Homer, "spreading her saffron robe over the world," she favors first, with her smile, this marble shrine of freedom, this "Temple of Celestial Liberty," this home of the "people's branch" before she takes modest note of the great house at the other end of the avenue to the West.

When Majorian was made emperor in 457 A.D., he referred to himself as a prince "who still glories in the name of Senator." The same emotion should fill the breast of every man and woman who swears the solemn oath at that desk to "well and faithfully discharge the duties of the office" of United States Senator.

There is no God-given right to a seat in the Senate. A seat in this august body is a privilege granted under the Constitution by the people. With all privileges, especially high and honored privileges, come demanding, daunting, and difficult responsibilities. One of those, as I have already mentioned, is to bring honor and respect to this body in which only 1,815 men and women have been allowed to serve during these 205 years since the first day that the Senate met in Federal Hall in New York City.

Senator PACKWOOD has never done anything personally or said an unkind word to me. I do not know him well. I do not recall ever having had a personal conversation with him lasting more than 2 minutes, perhaps. I hold no personal animus toward him, and I trust he has none for me. He is a man of ability and knowledge, and he has been an effective and influential Senator. But I believe he has lost his grasp of what it means to be a United States Senator. I believe his floor statements over the last several days demonstrate that he has no compunction about casting a reflection upon the honor of the Congress and the men and women who serve here in one capacity or another.

It is his right to keep diaries, but it is not his right to record damaging information about other individuals, have a second party transcribe that information, and then in an apparent effort to somehow protect himself proclaim the existence of this very embarrassing information on the Senate floor as he did on October 25, page 25990. Whether the information is true or untrue, he has hurt the Senate in the eyes of the public, not to mention the damage he has caused to the individuals who were the targets of his pen.

For what purpose did he cause this injury to the Senate and to other unsuspecting human beings? Was it his purpose to try to intimidate the Senate from further examination of material which may be damaging to him? He has said it was not for such a purpose. He has stated that his diary of over 8,000 pages, and kept for 25 years, is not intended to be used for blackmail, but is willed to the Oregon Historical Society, and not to be revealed until years after his death.

What soothing balm will that be to the hearts of innocent people who will be hurt by the diary's revelations even after the death of its author? Of what interest can such prurient matter be to any State's historical society? What possible motivation can cause any person to put in writing or dictate to a secretary or dictate to anyone else an account of the personal peccadilloes or private sins of other individuals?

Our omniscient Maker and final Judge, we are taught, keeps a record of our wrongful doings for all eternity, be they open trespasses or done in secret. But man is not God.

The author of the diary has stated in this Chamber on October 25, page 25991, that he does "not think it fair" to be "required to reveal, from a personal diary, incidents of any kind that are totally unrelated in any way, shape, or form to any charge that is currently against" him.

Did he think of fairness to others whose names were probably sullied or blackened by dictation into his diary, someday to be revealed to searching eyes, however distant that day may or may not be?

Madam President, none of us is pure or without flaws, but when those flaws damage the institution of the Senate, it is time to have the grace to go.

Senator PACKWOOD has chosen to do the opposite. He has chosen to stay in spite of the continuing damage he is doing to the body by prolonging this matter and refusing to comply with the Ethics Committee's request that he produce certain documents to the committee.

The committee is not seeking information dealing with attorney-client or physician-patient privileged matters, or information dealing with personal, private family matters. Supreme Court Decisions have established that, when private papers are relevant to a lawful inquiry, there is no constitutional privacy right that allows the withholding of such papers. Senator PACKWOOD has chosen to protect himself at the expense of the Senate and has even resorted to the use of certain revelations that give every appearance of an attempt to intimidate the Senate and the committee charged with investigating allegations of improper conduct which may reflect upon this body.

Madam President, Lycurgus, urged the judges of Leocrates, in their votes, to "make Leocrates a proof that compassion and tears not prevail" with the judges "over solicitude for the laws and for the commonweal." Madam President, in the interests of both the Senate and the commonweal, it is our duty here not to let friendship or partisanship distort our perspective. I have voted, during my years here, to censure two Democratic Senators and was fully prepared to vote to expel a third, had he not resigned from the Senate.

I urge my colleagues to stand behind the committee. Senator PACKWOOD has been served with a subpoena by the Ethics Committee. The action was taken with unanimous bipartisan support, and he must be made to comply.

Madam President, let us not bring further dishonor to the Senate by refusing to back our own Ethics Committee. If we turn our backs on our colleagues, three Republicans and three Democrats, who have so carefully investigated this difficult matter, and now ask for our support and approval, we may as well disband the committee. If I were a member of that committee and this amendment were adopted, I would resign from that committee tomorrow. The Senate will have been intimidated, and we may as well give up any thought of claiming that the United States Senate ought to police itself.

Madam President, I yield the floor.

The PRESIDING OFFICER (Mrs. MURRAY). Under the previous agreement, the Senator from Kentucky is allowed 10 minutes.

Mr. MCCONNELL. Madam President, let me first thank the distinguished Senator from West Virginia for his remarks this evening. I think they have helped to put the whole matter in better perspective for all of us.

Let me say, Madam President, that a critical defect of the Simpson amendment is that it fails to state to what the evidence must be relevant. Are we only talking about evidence relevant to the preliminary inquiry or must the accused provide evidence to the committee which the accused, in his sole judgment, believes is relevant to the additional potential misconduct involving jobs, for example, for the Senator's wife?

A court, reading the statement of the Senator from Wyoming from earlier today, might conclude that the Senator would not have to submit any evidence relevant to this other possible misconduct because the committee has taken no formal action with regard to that issue yet. The truth is, though, that it really will not matter, it will not matter what the Ethics Committee does or what any court thinks, if the

Simpson amendment passes, because the only person who will be empowered to determine what evidence is relevant and what criteria should be used to make that determination will be Senator PACKWOOD himself.

What Senator SIMPSON's amendment does is dramatically change the subpoena which our Senate legal counsel must take to court and attempt to enforce. There can be no question that the insertion of the word "relevant" into the text of the subpoena has only one effect, just one, which the court will have to recognize and ratify as the expressed will of the Senate. And that is this: The person receiving the subpoena, namely Senator PACKWOOD, is to be required to produce all diary entries which he—which he—deems to be relevant. That is the obvious and plain English meaning of the changes made by the amendment of the Senator from Wyoming.

Maybe he does not want his amendment to do that. I am not sure that he does, in fact. If that is really how he feels, then I would suggest he might just withdraw the amendment or amend the amendment. There is no escaping the fact that altering a subpoena to ask someone only for relevant information gives the recipient of the subpoena—the recipient of the subpoena, the one who is obligated to comply—the sole discretion to determine what is relevant information.

No court in America will be able to devise a tortuous enough, convoluted enough, rationale to change the plain meaning of the Senator's amendment from what it actually says, and actually does.

Interestingly enough, the committee did many months ago give Senator PACKWOOD the ability to determine what evidence was relevant to the committee's preliminary inquiry. By the terms of the committee's document request of March 29 and July 19, the committee specifically asked that Senator PACKWOOD review all documents in his possession and turn over to the committee those documents which Senator PACKWOOD judged were relevant to the committee's inquiry.

In addition, in response to the committee's request which gave the Senator the discretion to provide what was relevant, not a single page, I repeat not a single page, of a single diary was turned over to the committee, not one. Not a single page.

Yet when the Senator was called upon in his deposition 2½ months after the last document request to provide relevant evidence to corroborate some assertions he was making, he brought to the committee's attention for the first time his diaries.

So this committee has already been down the road contemplated by the Simpson amendment. We decided unanimously up until now that we cannot go down that road again. There is only one entity which holds the right to determine what evidence is relevant to decide questions about misconduct involving a Member of the Senate. Senator BYRD outlined that pretty well, as a matter of fact, better than I have ever heard anyone outline.

The entity to make that determination is the Senate itself, and the Senate has by Resolution 338 delegated this authority together with its commensurate duty of impartiality and thoroughness to its own Ethics Committee.

It must be understood by every Senator that the amendment before us, the Simpson amendment, does not just strip the right to decide relevance from the Ethics Committee. This amendment strips that right away from the Senate itself for which the Ethics Committee is merely acting as agent. So this amendment strips that ability away from us as your agent to handle these unpleasant matters.

If you believe the U.S. Senate must retain the right to control and shape and to fully pursue any investigation of the essential misconduct involving any of its Members, including the right to determine the relevancy of evidence to be considered in any such investigation, then you will vote against the amendment of the Senator from Wyoming and for the resolution to enforce the subpoena of Senator PACKWOOD's diaries.

Let me say, Madam President, that the Senate by the very words of the U.S. Constitution clearly has such a right. It has chosen to delegate that right to the Ethics Committee. We should not in my judgment take that away. We have been deputized by the rest of the Senate to carry out this responsibility.

Nobody could have said it better than the Senator from West Virginia. The rules basically mean what we say they mean, that we have created contrary to public perception a higher standard for us. They think it is lower. But in fact, it is higher. It is a higher standard.

And we are trying to carry out a very unpleasant task here on behalf of all of us to try in part to convince the public of what is in fact the case that the standards that apply to us are indeed higher than to most others in our society.

Madam President, I rest my case and yield the floor.

The PRESIDING OFFICER. Under the previous order the Senator from Nevada is recognized.

Mr. BRYAN. Madam President, I thank the Chair.

Madam President, Members of the Senate, let me say that for all Senators this has been a particularly difficult and painful experience over the last couple of days.

I want to express my personal appreciation to each member of the Ethics Committee. Over the past months we have spent literally hundreds of hours together carefully evaluating the evidence as it has been presented to us, carefully considering a myriad of decisions that we have been called upon to make. This committee's task is a thankless one, and one that none of us volunteered to assume but each of us has accepted that duty as a part of our responsibility of service.

I would also like to thank my colleagues who have been on the floor and in their offices carefully watching the debate as it has unfolded during the past couple of days.

I am especially grateful for the distinguished Senator from West Virginia. His statement ought to be required reading by every Member of the U.S. Senate, to remind us of our responsibilities to this institution and those for whom we serve.

Let me put this in some perspective by indicating that a vote in support of the resolution, Senate Resolution 153, simply allows this process to move forward, to move forward into the U.S. district court for counsel for the Senate who will present all of these arguments, legal and constitutional, that have been raised during the past 2 days.

Senator PACKWOOD and his attorneys will have every opportunity to assert every constitutional right, every privilege, every nuance of the law which has been discussed on the floor of this body. That is the appropriate forum for those discussions and debates and for the decision to be made with respect to what the law is.

I think it also important to remind Senators what the procedure is that was developed by the Ethics Committee with respect to the subpoena.

The subpoena directs Senator PACKWOOD to turn over all of the diary entries from 1989 through 1993 to Judge Starr, to Judge Starr. Judge Starr then will examine those diary entries subject to three criteria, two of which are required by law, the attorney-client privilege, the doctor-patient privilege, and one additional category which as a matter of accommodation to Senator PACKWOOD. Recognizing the sensitivity of personal and family material, even though there is no requirement under the law to do so, this committee was prepared to say—and did in fact say to Senator PACKWOOD—that that information could be redacted as well.

What Judge Starr would do under the procedure if we are authorized to go forward, is to examine the entire remaining portions of the diary from 1989 to 1993, and subject to those three exceptions turn over the rest of the diary for the Senate Ethics Committee to make the determination as to relevance.

The amendment offered by the distinguished Senator from Wyoming in effect emasculates that subpoena. For all intents and purposes, it negates it.

As the vice chair has pointed out, there are several fatal flaws, one of which is that there is no definition of relevance. How is it to be determined? By what standard? We do not know.

The second is that Senator PACKWOOD would be empowered to make the determination of what is relevant. So before the information contained in that diary even got to Judge Starr, Senator PACKWOOD would have the ability to redact out any information which he deemed not to be relevant.

I respectfully suggest to our colleagues that we have gone down that path before and that is not an acceptable discharge of the responsibility of this committee. As my friend from Kentucky has pointed out, therein lies the dual standard. Our colleague from Utah, Senator BENNETT, has indicated what occurred with respect to his own experience with the law. Senator MCCONNELL read at some length from his comments yesterday. He was required to turn over all his records, specifically his diaries and other personal records, when they were subject to a subpoena.

That is the standard, whether we like it or not, that every other American is required to live by. If we adopt the amendment offered by Senator SIMPSON, we adopt a dual standard in which we provide for 100 people in this country a different standard, a more protective, a more restrictive standard than every other American is entitled to. I have heard many times on the floor of this body that we ought not to provide for ourselves a different standard than that which we provide for the American people in general.

Finally, let me say that tonight we are about to add a new chapter in the history of the U.S. Senate. In that chapter will be the answer to the question: Is the Senate of the United States capable of discharging its responsibilities under article I, section 5 of the Constitution of the United States? An affirmative vote in support of the resolution and a vote "no" against the Simpson amendment answers that question in the affirmative.

I urge my colleagues to support the unanimous vote of the Ethics Committee by adopting Senate Resolution 153 and rejecting the amendment offered by the Senator from Wyoming.

I yield the remainder of my time.

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the Republican leader for up to 5 minutes.

Mr. DOLE. Madam President, I first wish to thank all of our colleagues. I think we have had the attention of our colleagues nearly all the time, either on the floor or in the offices. I think that is certainly appropriate.

I want to suggest what this debate is not about. It is not about whether the Senate condones or does not condone sexual misconduct, and it is not about whether Senator PACKWOOD is guilty or innocent of the charges that have been made against him. That will be determined by the Ethics Committee in due time. I guess it has been said many times that the debate is all about how the Senate should conduct its own business, and whether we believe the Ethics Committee can investigate allegations of wrongdoing and at the same time protect the rights of the accused—in this case, Senator PACKWOOD.

I guess that after a couple days of this debate, we are not going to be able to untie this Gordian knot, and maybe the court can make that determination. I listened carefully to the distinguished Senator from West Virginia talk about the Senate and talk about a two-thirds vote and about our responsibilities. I agree with him on our responsibilities and that we do have a higher standard. But I do not think we can resolve this issue.

I have listened to the debate. I think probably 99 percent of it is probably totally objective, and there may be a little politics and a little posturing, as there always is. Some may see different things. Some may see advantages for one party over the other, but very little of that has been expressed on the floor. It is a little more difficult for us on this side of the aisle. If it were involving a Senator on that side, maybe the debate would have been different.

In any event, it seems to this Senator that the court is going to have to make the judgment. It may take a lot of time, as the Senator from Ohio pointed out. And the Senator from Washington stated it last evening, as did others on the floor, that it may take thousands and thousands of dollars and waste a lot of taxpayer dollars, because some represent the Senate, too. There may be 2 or 3 years in additional delay.

The big loser will not be just Senator PACKWOOD and the Ethics Committee that has worked very hard, but also Senator PACKWOOD's accusers.

I want to say again that I respect the Members of the Ethics Committee. That is one assignment that nobody seeks. Nobody asks the leader to put them on the Ethics Committee—at least no one since I have been around. Trying to find somebody to take a seat on the Ethics Committee is very difficult. Few are called, and even fewer want to serve. So it is a very difficult task and I think, for the most part, we have done a good job.

I am not going to belabor the issue, but as I said last Thursday, I am still troubled by the statement of the distinguished chairman of the Ethics Committee, when it was stated first in a press conference and in a statement on the floor, that Senator PACKWOOD "may" have violated some unspecified criminal provisions. And I can tell you, from my newspapers and from my letters and faxes, that makes a difference with the American public; that word "criminal" seems to leave an impression with a lot of people.

I hope my colleagues will be more careful and tread a little more lightly before they start tossing that word around in the future, because I think the American people believe even Senators are entitled to some protection and should be protected from allegations of this kind.

Then we read in the Oregonian and other papers specifics, which I think also may make the public feel good or feel bad about us. But it does not do any service when you talk about the Senate as an institution; certainly it does not do any service to the Senate as an institution.

So maybe if we have learned anything from the debate, it is that we need to take a second look at the rules that govern the way the Ethics Committee operates. There is no question about it, they are the judge, jury, and prosecutor. But we set it up that way; it is not their fault.

I am all for giving the Ethics Committee subpoena power, and I am certainly for letting the committee do its job. But I do believe that most Americans would understand that we have some rights, too—maybe not many. We should not be treated better than anyone else. That is fairly obvious with the American people. Maybe some people have the view that we are being treated better. But there has not been any judgment made in this case yet. So I at least hope the public will withhold their judgment until there is a final judgment in this case with reference to Senator PACKWOOD.

I have listened to the debate on the amendment by the Senator from Wyoming. I am going to vote for that and vote for the final resolution. I think the word "relevant" is important. We have been talking about it for 2 days. It certainly has some importance.

I am not certain, but I assume that the validity of the subpoena will be challenged in court and decided there.

Finally, if there is any silver lining in this whole affair, I think that everyone who has spoken has demonstrated that the Senate takes its responsibilities very seriously. We do not sweep charges of misconduct under the rug. If and when appropriate, Members of this body will be held accountable for their actions, as they have been in other cases, will be in this case, and will be in future cases. And there will be future cases—maybe next week, maybe next month, maybe next year, maybe in 10 years, but hopefully never. But I assume there may be future cases, and I assume that the Senate, at that time, will conduct itself in an appropriate way and make the appropriate judgment.

So it seems to me that we have just about said everything that can be said

about this particular resolution. I hope that we will support the resolution from the committee, and I also hope that we will indicate our support for "relevant" information by voting for the Simpson amendment.

The PRESIDING OFFICER. Under the previous order, the majority leader is recognized.

Mr. MITCHELL. Madam President, and Members of the Senate, this has been a difficult debate. These will for some be difficult votes, for Senator PACKWOOD, for the six Senators who are members of the Ethics Committee, for every other Member of the Senate. But while difficult, the debate has also, in some respects, been informative.

Each of us has learned much more about the issues presented by the pending resolution. Each of us has learned more about the rules under which the Senate and the Senate Ethics Committee operate. And hopefully each of us has learned more about our responsibilities as Members of the Senate.

I believe we have also learned that in this sensitive, complex, controversial matter, the members of the Ethics Committee have performed their duties in a responsible manner. The resolution on which we will soon vote was approved unanimously by the members of the Ethics Committee, three Republicans and three Democrats.

It is regrettable that the committee had to seek Senate support for a subpoena, but for the reasons that have been fully set forth in this debate that is where we are.

It should be clear to each of us and to all Americans that the subpoena process neither expresses nor implies a final judgment of wrongdoing. Let me repeat that so there can be no misunderstanding by any Senator or any American. These votes deal with the enforcement of a subpoena. They are not a final judgment on wrongdoing. The duty of the Ethics Committee is to inquire into the conduct of Senators when credible allegations are made about their conduct. It is a process which the Senate itself has designed and by which Senators themselves have agreed to abide.

That authority and that process are now at issue, and these votes will determine whether or not the Members of the Senate support that process and that authority.

I urge my colleagues to vote against the Simpson amendment and for the committee resolution.

Madam President, I yield back the remainder of my time, and I ask for the yeas and nays on both votes.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question now occurs on amendment No. 1094 offered by the Senator from Wyoming [Mr. SIMPSON]. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 23, nays 77, as follows:

[Rollcall Vote No. 347 Leg.]

YEAS—23

Bingaman	Domenici	Murkowski
Bond	Durenberger	Packwood
Brown	Faircloth	Pressler
Coverdell	Gramm	Simpson
Craig	Hatfield	Specter
D'Amato	Helms	Thurmond
Danforth	Kempthorne	Wallop
Dole	Lott	

NAYS—77

Akaka	Glenn	McConnell
Baucus	Gorton	Metzenbaum
Bennett	Graham	Mikulski
Biden	Grassley	Mitchell
Boren	Gregg	Moseley-Braun
Boxer	Harkin	Moynihan
Bradley	Hatch	Murray
Breaux	Heflin	Nickles
Bryan	Hollings	Nunn
Bumpers	Hutchison	Pell
Burns	Inouye	Pryor
Byrd	Jeffords	Reid
Campbell	Johnston	Riegle
Chafee	Kassebaum	Robb
Coats	Kennedy	Rockefeller
Cochran	Kerrey	Roth
Cohen	Kerry	Sarbanes
Conrad	Kohl	Sasser
Daschle	Lautenberg	Shelby
DeConcini	Leahy	Simon
Dodd	Levin	Smith
Dorgan	Lieberman	Stevens
Exon	Lugar	Warner
Feingold	Mack	Wellstone
Feinstein	Mathews	Wofford
Ford	McCain	

So the amendment (No. 1094) was rejected.

Mr. MITCHELL. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Madam President, I ask for the yeas and nays on the resolution.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the resolution. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 94, nays 6, as follows:

[Rollcall Vote No. 348 Leg.]

YEAS—94

Akaka	Byrd	Dorgan
Baucus	Campbell	Durenberger
Bennett	Chafee	Exon
Biden	Coats	Faircloth
Bingaman	Cochran	Feingold
Bond	Cohen	Feinstein
Boren	Conrad	Ford
Boxer	Coverdell	Glenn
Bradley	Craig	Gorton
Breaux	D'Amato	Graham
Brown	Daschle	Gramm
Bryan	Dodd	Grassley
Bumpers	Dole	Gregg
Burns	Domenici	Harkin
Hatch	Lott	Reid
Hatfield	Lugar	Riegle
Heflin	Mack	Robb
Hollings	Mathews	Rockefeller
Hutchison	McCain	Roth
Inouye	McConnell	Sarbanes
Jeffords	Metzenbaum	Sasser
Johnston	Mikulski	Shelby
Kassebaum	Mitchell	Simon
Kempthorne	Moseley-Braun	Smith
Kennedy	Moynihan	Stevens
Kerrey	Murkowski	Thurmond
Kerry	Murray	Wallop
Kohl	Nickles	Warner
Lautenberg	Nunn	Wellstone
Leahy	Pell	Wofford
Levin	Pressler	
Lieberman	Pryor	

NAYS—6

Danforth	Helms	Simpson
DeConcini	Packwood	Specter

So the resolution (S. Res. 153) was agreed to.

The preamble was agreed to.

Mr. BRYAN. Madam President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

RESOLUTION REGARDING THE SUBPOENA TO SENATOR PACKWOOD

Mr. HATFIELD. Mr. President, it is with great regret that I find the Senate involved in this matter in this way. This has been an extremely difficult process for all parties involved. The system of justice in our country contains certain safeguards and limitations that we all enjoy. Our rights to privacy must be protected. We want relevant evidence available to investigators, but we do not want them confiscating our personal belongings without justifications which meet the constitutional demands of the fourth amendment. In this regard, I am very concerned about the unlimited scope of the subpoena that the Ethics Committee is asking us to endorse.

For this reason, I voted for the amendment of Senator SIMPSON which would have brought the subpoena more in line with the rules that apply to every other American by requiring that the information demanded be relevant to the inquiry. I would have preferred that the Senate handle this matter itself without subjecting it to the judiciary branch for resolution.

The modifying amendment having failed, I support the Ethics Committee resolution so that it may complete its investigation of these matters.

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

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

The legislative clerk proceeded to call the roll.

Mr. FORD. 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. FORD. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators allowed to speak therein.

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

SGT. RORY TUGGLE: NATION'S TOP COP

Mr. REID. Mr. President, it is with great honor and pleasure that I stand to recognize Sgt. Rory Tuggle, a man of remarkable courage and relentless dedication.

Sergeant Tuggle, a native of Las Vegas, NV, and member of its Metropolitan Police force, was selected from among the Nation's 604,000 police officers by the International Association of Chiefs of Police [IACP] as the 1993 Police Officer of the Year. He received this outstanding award on October 14 at the IACP's 100th annual convention in St. Louis, MO.

I wish to salute Sergeant Tuggle who earned this award for his extreme bravery and leadership during the brutal riots that erupted following the Rodney King trial of 1992. The 34-year-old officer risked his own life to save the life of a man who had been severely beaten by malicious crowds. The injured man lay unconscious upon the ground and Sergeant Tuggle stood over him until an ambulance arrived, defying the attackers who fired bullets, rocks, and bottles at him. Despite this life threatening situation, Rory Tuggle never fired a bullet from his gun.

Tuggle, the senior sergeant at the scene of the riots, was in command of 40 officers. His decisiveness and courageous leadership facilitated the quick dispersal of the rioting mobs. Miraculously, once the violence has passed, not one officer had been killed, and we can only estimate how many citizen's lives were saved.

Sergeant Tuggle is an exemplary role model for young and old alike. His dedication, loyalty, and courage toward the people he serves is inspiring. I am proud to join in with all of Nevada in saying, "Thank you, Rory. A job well done."

RECENT ADVANCES IN PREVENTION AND TREATMENT OF SPINA BIFIDA

Mr. DOLE. Mr. President, I would like to bring to the attention of my colleagues information about some important new advances in prevention and treatment of spina bifida. Spina bifida is a birth defect resulting from the failure of the spinal tube to close properly during the first month of fetal development. It is the single most common birth defect in this Nation, affecting about 1 of every 1,000 newborns each year. Spina bifida is more common than muscular dystrophy, multiple sclerosis, cystic fibrosis, and polio combined.

Mr. President, spina bifida can be seriously disabling—with varying degrees of paralysis, loss of sensation in the lower limbs, and bowel and bladder complications. It is often accompanied by hydrocephalus, a condition involving accumulation of fluid in the brain. Fortunately, thanks to medical advances spina bifida is no longer necessarily fatal and the overwhelming majority of people born with spina bifida live a normal life span. However, extensive therapy—both physical and psychological—is critical for these children and young adults. With proper care, they can enjoy independent and fulfilling lives.

But there is more good news. Recently, a medical breakthrough has made it possible to dramatically reduce the incidence of spina bifida. Folic acid supplements, a B vitamin, have been shown to prevent spina bifida by as much as 50 percent. In fact, the U.S. Public Health Service recommends that all women capable of becoming pregnant consume 0.4 milligrams of folic acid daily to reduce the risk of having a child born with spina bifida or other neural tube defects.

Mr. President, October has been traditionally designated as National Spina Bifida Prevention Month. But this designation is only intended to remind us of the importance of year-round activities to educate the American people about this birth defect and the impressive work of private and public health care officials in treating spina bifida. In alerting the public to the simple measures necessary to prevent this defect, we will make important inroads in reducing its occurrence.

TECHNICAL CORRECTIONS ACT OF 1993—H.R. 17

Mr. INOUYE. Mr. President, today, I rise to urge the House Committee on Ways and Means and the Senate Committee on Finance to act upon important legislation which has been mired in the legislative process for nearly 3 years despite the fact that it has no opposition in the Congress or the administration, is noncontroversial, and has no revenue impact. I refer to H.R. 17, the Technical Corrections Act of 1993, originally contained as title VI of the Omnibus Budget Reconciliation Act of 1992, which was vetoed by President Bush.

The Technical Corrections Act is meant to provide redress for technical errors made either during the legislative drafting process or the implementation of provisions which were included in the Omnibus Budget Act of 1989, and other legislation enacted in the 101st Congress. The provisions contained in this bill must meet two essential tests: First, they must be noncontroversial; and second, they must be revenue neutral in their budget impact. Last year, these provisions were carefully reviewed during extensive hearings held by the House Committee on Ways and Means, and the Senate Committee on Finance. The executive branch departments with jurisdiction over the provisions also reviewed the legislation. Only provisions to which the administration had no objection were included in the technical corrections bill. With regard to revenue impact, the Congressional Budget Office and the Joint Committee on Taxation reviewed each provision to determine that it was revenue-neutral in order to be considered a technical correction. The Technical Corrections Act was scored as having a negligible revenue impact.

Mr. President, this legislation corrects errors that were made by the Federal Government approximately 4 years ago. As I stated, this legislation was passed last year by the Congress and included as title VI of the Budget Reconciliation Act of 1992, which was vetoed by President Bush. Due to political factors which have served to delay enactment of the Technical Corrections Act, constituents across the country continue to be governed by existing law that does not represent the correct intent of the Congress.

Congress has again delayed action this year on this simple, noncontroversial corrective legislation despite a universal agreement among my House and Senate colleagues that it should be enacted as quickly as possible. I have constituents who have been waiting over 3 years for congressional action on this legislation. I believe that many other Congressmen and Senators have constituents in the same position. Accordingly, I urge the House and Senate tax writing committees to establish as a priority, the enactment of H.R. 17, the Technical Corrections Act of 1993 before the end of this session of Congress.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, anyone even remotely familiar with the U.S. Constitution knows that no President can spend a dime of Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

So when you hear a politician or an editor or a commentator declare that "Reagan ran up the Federal debt" or that "Bush ran it up," bear in mind that it was, and is, the constitutional duty of Congress to control Federal spending. Congress has failed miserably in that task for about 50 years.

The fiscal irresponsibility of Congress has created a Federal debt which stood at $4,432,423,020,228.89 as of the

close of business yesterday, Monday, November 1. Averaged out, every man, woman, and child in America owes a share of this massive debt, and that per capita share is $17,256.25.

TRIBUTE TO MIKE O'CALLAGHAN, FORMER GOVERNOR, STATE OF NEVADA

Mr. REID. Mr. President, I rise today to recognize former Governor of the State of Nevada, Mike O'Callaghan, who will be honored by the State of Israel and the Las Vegas Jewish community at a special dinner on November 7.

I have known Governor O'Callaghan for many years, since he was my government teacher and boxing coach at Basic High School in Henderson. I learned a lot from Mr. O'Callaghan in those early years, including the values of hard work, dedication, diligence, and perseverance. Mr. O'Callaghan was always willing to stay after school to work with his students, and he always gave his time and energy to help us succeed. I know, in my own case, he was instrumental in helping me get to college to continue my education.

When I returned to southern Nevada after college, Mike O'Callaghan again became my mentor and advised me on my political campaigns even as he was campaigning for Governor. In 1971, his efforts proved fruitful when he was elected Governor and I was elected to serve as Lieutenant Governor. Governor O'Callaghan had a hard-driving, energetic style of leadership; he asked the tough questions, and he demanded rigorous answers. His success and personal appeal is manifested in the fact that he is one of only five Nevada Governors to serve two terms and that he twice served as Chairman of the Western Governor's Conference.

Mike O'Callaghan began his service to his country by joining the Marines at age 16, joining the Marine Corps Reserves after being discharged in 1948, joining the Air Force as an intelligence officer in 1950, and serving with the U.S. Army Infantry from 1952–53. He is one of the few men who have served in three of our Nation's four military organizations. There are those who believe he would have joined the Navy had he not lost his leg in combat in the freezing mountains of Korea. For his efforts, Mike O'Callaghan was awarded two Purple Hearts, a Bronze Star with "V", and a Silver Star.

Today, Governor O'Callaghan is the executive editor of the Las Vegas Sun newspaper in Las Vegas, publisher of the Henderson Home News and the Boulder City News, a newspaper columnist for all three papers, and a frequent political commentator on TV and radio. He has served as a member of the board of directors of the National Judicial College, as president of the Nevada State Press Association, as president of the Nevada Gaming Foundation for Educational Excellence, and, since 1985, as a delegate and volunteer for Volunteers for Israel and as a board member for the National Jewish Hospital. He has recently served in Nicaragua and Iraqi Kurdistan on election fairness commissions.

Mike has made many trips to Nicaragua as a journalist and to assist the wartorn and ravaged youth. These journeys have been over the last 6 years and continue to this day.

The Governor's most important contribution to society has been being an exemplary husband, father, and grandfather. His partner throughout his adult life has been Carolyn, his wife. His success has been intertwined with Carolyn's contribution to this governmental duties. His fine family is also a direct result of Carolyn's hard work and leadership. We are fortunate to have friends like Mike O'Callaghan and his wife Carolyn. Together, they have helped shape the history of our State and country.

BOB JONES HIGH: AN ALABAMA BLUE RIBBON SCHOOL

Mr. HEFLIN. Mr. President, on October 21 and 22, the Department of Education honored 260 outstanding Blue Ribbon Schools as part of its national recognition ceremonies here in Washington. Approximately 700 members of local school delegations from across the country were here to recognize the excellence of these junior and senior high schools. One of these Blue Ribbon schools was Bob Jones High School in Madison, AL.

Bob Jones serves a community rich in cultural and technical resources. Madison is one of the fastest growing, most affluent communities in the State, but Bob Jones serves a broad spectrum of students. Its major strength is the impact of its program in teaching essential skills for life-long learning. The academic successes are the result of staff dedication and unity, well-defined administrative expectations, and a warm learning environment. Bob Jones students far surpass national and county mean percentiles on the Stanford Achievement Test. The myriad of student successes, the staff professionalism, the diverse academic curriculum, and strong instructional leadership give Bob Jones the potential to be the most outstanding school in the State of Alabama.

We often hear about what is wrong with our schools. Blue Ribbon schools provide an excellent model of what is right with our schools. They represent the diversity of American public and private schools at their best. Many have overcome serious obstacles to make significant improvements and all are working hard to meet our National Education Goals. The Blue Ribbon program is an important way to demonstrate that our Government cares about our children and is committed to the reform of our education system in order to assure a bright and sustainable future.

I am proud to commend and congratulate Bob Jones High School for being selected as a Blue Ribbon school poised on the cutting edge of the future in secondary education.

MOUNTAIN BROOK HIGH SCHOOL: AN ALABAMA BLUE RIBBON SCHOOL

Mr. HEFLIN. Mr. President, on October 21 and 22, the Department of Education honored 260 outstanding Blue Ribbon Schools as part of its national recognition ceremonies here in Washington. Approximately 700 members of local school delegations from across the country were here to recognize the excellence of these junior and senior high schools. One of these Blue Ribbon schools was Mountain Brook High School in Mountain Brook, AL, a suburb of Birmingham.

The first students and faculty at Mountain Brook established a standard of excellence, and its students have enjoyed many successes over the years. More than 95 percent of the seniors in the first graduating class of 1968 chose to attend 4-year colleges and universities. That tradition has continued to the present. Over 300 National Merit Finalists have been recognized in the 26-year history of the school, and three graduates have been chosen as Rhodes scholars. Its various athletic teams have won 58 State championships, which exceeds the number of any other public high school in the State. The tremendous community support for education, the high expectations it has for its students, and an excellent faculty and staff have enabled Mountain Brook High School students to rank first in scholastic achievement on a consistent basis in Alabama.

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I am proud to commend and congratulate Mountain Brook High School for being selected as a Blue Ribbon school poised on the cutting edge of the future in secondary education.

THE COSTS OF SUBSTANCE ABUSE

Mr. DASCHLE. Mr. President, today I would like to highlight new findings

on the costs to this country of substance abuse that were released last week in the report "Substance Abuse: The Nation's Number One Health Problem."

The report was prepared for the Robert Wood Johnson Foundation by Brandeis University's Institute for Health Policy. It documents how substance abuse—including abuse of alcohol, legal and illegal drugs, and tobacco—is driving up health care costs, destroying families, overwhelming our education, law enforcement, and welfare systems, and contributing to an unprecedented wave of violence and homelessness in America.

The report points to the startling conclusion that the total costs of substance abuse to the U.S. economy is more than $238 billion per year—a figure that includes the price of health care services, productivity losses caused by premature death and disability, and costs related to crime and destruction of property.

This report has direct bearing on a cause about which I am particularly concerned—substance abuse among pregnant women that too often leads to fetal alcohol syndrome. It also has profound implications for health care reform, since we must recognize the importance of providing substance abuse prevention and treatment services if we are truly interested in promoting health and, at the same time, containing costs. I think the study's findings merit our close attention.

According to the report, of the $238 billion the Nation spends each year on substance abuse, $34 billion is spent on avoidable health care. A heavy smoker will remain hospitalized 25 percent longer than a nonsmoker, and a problem drinker four times as long as a nondrinker. In addition, substance abuse exacerbates other illnesses and diseases, adding days and dollars to treatment.

Babies of substance-abusing mothers stay in hospitals three times as long as other infants, and their health care costs, driven up by long stays in intensive care units, are thousands of dollars more than care for healthy babies. The costs of treating drug and alcohol-impaired infants multiplies exponentially as they grow to adulthood, as the costs of their mental and physical disabilities are borne by our health and welfare systems.

Despite the well-documented financial and human costs associated with substance abuse, the Robert Wood Johnson Foundation report indicates that less than one-fourth of those needing alcohol and drug treatment get it. It is even more difficult for pregnant women to obtain substance abuse treatment.

The long-term implications of these findings are frightening. A primary obstacle to substance abuse treatment is the lack of adequate coverage of treatment costs by our public and private health care systems. Yet failure to treat substance abuse will sentence our health care system to escalating costs. As the health care reform debate unfolds in Congress, it simply makes more sense to address these problems head-on, by investing in addiction treatment services up front and preventing the illness, accidents, birth defects, and diseases associated with substance abuse, rather than paying the consequences of inaction later.

The roadmap for action is clear. The Medicaid Substance Abuse Treatment Act (S. 484) and the Comprehensive Fetal Alcohol Syndrome Prevention Act (S. 923) would make a significant step in the right direction by increasing Medicaid coverage of substance abuse treatment services and targeting resources to reduce the enormous human and societal costs associated with drug-affected babies and fetal alcohol syndrome.

Also, President Clinton is committed to expanding research into substance abuse prevention and improving national public education efforts targeted to substance abuse prevention. That effort merits universal support.

Finally, the President has included coverage of substance abuse treatment in his health care reform bill. Guaranteeing access to substance abuse treatment for those who need it will provide addicted persons the tools to fight their addictions. It will also save Americans hundreds of dollars in out-of-pocket and indirect health care costs. In fact, the Robert Wood Johnson Foundation report estimates that the average American now spends nearly $1,000 annually to cover the costs of substance abuse to our society. The final health care reform proposal that emerges from Congress should provide substance abuse treatment and prevention services coverage.

Mr. President, while there is no simple antidote to the human and financial consequences of substance abuse, the costs of prevention and treatment are substantially less than the long-term costs of allowing addiction to go untreated considering the illnesses, accidents, and diseases associated with that addiction. The health care reform debate presents us with an opportunity to address this problem head-on with a renewed commitment to investing in substance abuse prevention and treatment. I hope the 103d Congress will meet this challenge.

HEALTH CARE

Mr. STEVENS. Mr. President, yesterday morning I was delighted to read in the Washington Post an article by Meg Greenfield entitled "Health Care: An All-Points Alert." I know this was published in several publications, but I believe it is an article that all Senators should be aware of.

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

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

HEALTH CARE: AN ALL-POINTS ALERT

(By Meg Greenfield)

[From, the Washington Post, Nov. 1 1993]

Now that the Clinton administration has begun to market its new, improved health care plan and various competitors are similarly marketing theirs, you are going to need a plan of your own to know what, if anything, to believe about all the conflicting claims. It's going to be a "will not!/will too!" sort of debate and it could conceivably last longer than you do. If it doesn't, you are going to need to keep at least a few cautionary principles in mind as guides to what to take seriously, what to assume and what to expect.

We have, in this country, a handy if depressing recent history to consult on the subject. Nobody knew or even wildly guessed what the last major medical-care reform—Medicare and Medicaid—would cost and practically nobody understood or even knew about all of the more important provisions that were in it. This is the first thing you should remember whenever you find yourself in the presence of rhetorical certainty concerning the numbers, and never more so than when you hear the telltale word "outyears"—as in, "the gap between revenues and costs then narrows in the outyears." "Outyears," which is not to be found in any dictionary I own, is a congressional testimony-ese word designating that future time when everybody involved in the legislation will have been safely reelected and the costs of the program will in fact begin to explode contrary to all the modest projections of what they were going to be.

The reason for these all but inevitable explosions gets you to the next consideration to keep in mind. It is that you are right now looking only at legislative blueprints and graph-paper projections and inspired guesses and wishful premises. Together they amount to a construct of life that takes into account everything but life itself, that is, everything but the way incorrigible, flawed humankind and the institutions it creates behave and have tended to behave for the past several thousand years. Some time ago at a science fair I watched a row of pigeons lined up before a row of machines that dispensed a beakful of corn to them only when they had given it the required (and continually changing) number of taps. It was amazing to me how fast these old birds got on to the system and managed to make it yield up one presumably scrumptious beakful after another. To some this experiment provided evidence that the pigeons could count. I didn't think so. I thought it was evidence that they could manipulate and outsmart the system. And so, these talented pigeons have ever since seemed to me the perfect metaphor for what happens in this country the instant we have enacted any of that usually long-awaited and much-prayed-for social legislation that marks our time. Someone—or a lot of someones—learns how to outsmart it.

I note morosely in this connection that in the very week the Clintons were announcing their proposed, far-reaching new health care system, more than a few old pigeons were coming home to roost in programs that had once seemed all aglow in good purpose and high hopes too. There was a big conviction in the HUD scandal that concerned the widespread misuse of federal housing funds.

There were revelations of terrible fraud and theft of federal education grant funds for needy students. This is worst-case stuff, of course, but it is part of what drives up the costs of programs that require or at least presume some integrity and restraint on the part of those who run them and those who seek their benefits. A larger part is not fraudulent at all, merely opportunistic and clever. People can, by and large, be counted on to take the high-end option of what is available to them in any program, or to push to raise costs to cover what it costs them or otherwise redirect the way the thing is supposed, in theory, to work. And, by "people" I mean every kind of people: this is one truly bipartisan aspect of our public/private life.

That brings us to yet another fact worth keeping in mind throughout the medical-care-reform debate now starting: ideology is a totally unreliable guide as to how various individuals and institutions will behave under a new law. So is whatever palaver they were putting out with so much seeming passion during the argument about enacting it. No one figured out better how to flourish under the health care reforms of the mid-'60s than numerous of those medical, hospital and insurance entities that had denounced them most hysterically as legislation and predicted the ruin of the world in general and themselves in particular. Some of the worst and most shocking rip-offs of the Great Society's poverty-program funds were perpetrated by none other than people who had been participating in the debate as devoted spokesmen for and advocates of the poor. Be very leery of those in this debate who are speaking in apocalyptic terms "in the name of" just about any group at all.

Be leery too of those who respond to criticism of the proposed legislation or offer miraculous substitutes for it based on one-word tranquilizer concepts. We have developed a compendious vocabulary of glow-words, as I think of them, with which you can exit an argument without quite saying how you would solve the problem that's just been raised: education-and-treatment, job retraining, rehabilitation, prioritizing etc. Health care will have its own set of terms that people will invoke without ever bothering to say just how well the proposed one-word solution works or who will administer it or whether there's either money or knowledge enough to bring it off.

Keeping an eye out for such terms will require some literary skill and so will what I advise as an all-points verb alert. I wish you had been paying attention in class instead of staring out the window when they were explaining the subjunctive mood and the conditional, not to mention the future perfect tense. You are going to get a heavy dose of all these and more—the "ifs," the "assuming thats," the "at that point, provided thats," the "should produce, all things being equals" and the "will have beens." That is the kind of structure on which both the pros and the antis will be seeking to rest their case. People tend to take these finely wrought and much hedged propositions as assertions of objective truth or hard predictions of what is to come. But they are not. The best advice is to kick away old assumptions and biases for this debate, be skeptical of everyone, including your own side. Above all, believe that all numbers are provisional and that anything that looks easy is almost certainly fake.

TOWARD PEACE IN NORTHERN IRELAND

Mr. KENNEDY. Mr. President, in the past 9 days, 24 people have been killed in the escalating violence in Northern Ireland. All of us who hope for a peaceful settlement of the conflict in that tragic land were shocked and outraged at the latest atrocities which the terrorists on both sides have committed.

On Saturday, October 23, the IRA carried out a savage bombing of a fish shop on the Shankill Road, a Protestant area of Belfast. One of the 10 people murdered in that bombing was Leanne Murray, a 13-year-old Protestant girl who had gone there to shop for her mother. Her story was told on an especially poignant segment of ABC's "World News Tonight" last week.

What is especially heart breaking about Leanne's death is that her young life was already a hopeful example of the possibility of peace in Northern Ireland. In her own way, she was breaking through the sectarian divide which serves no purpose but to breed hate and mistrust between the Protestant and Catholic traditions of Northern Ireland.

Leanne spent the summer of 1993 in the United States as part of a program to bring Catholic and Protestant children together. While here in this country, she became friends with Roisin Coulter, a Catholic girl, who is also from Belfast and whom Leanne was unlikely to meet in the divided condition of Northern Ireland today. But these two young girls became friends in the United States and now one of them has died.

Gina Murray, Leanne's mother, put it eloquently when she said: "If people could be like Roisin and Leanne, it would be a better place. Leanne would still be here." I hope all those involved in this senseless violence will hear Mrs. Murray's words and heed them.

Tragically, the atrocity committed by the IRA has been answered with equally inexcusable killings of Catholics by Protestant paramilitary groups seeking revenge. Last Saturday, seven people were killed when these paramilitaries indiscriminately opened fire on a Halloween party in a bar not far from Derry.

Despite this latest surge in the violence that has scarred Northern Ireland for so long, there are hopeful signs based on recent peace initiatives.

On October 27, Ireland's Foreign Minister, Dick Spring gave an important speech setting out six principles for peace in Northern Ireland. On October 29, British Prime Minister John Major and Irish Prime Minister Albert Reynolds met in Brussels and pledged to renew the peace process. On October 30, President Clinton issued a statement condemning the violence and reiterating the United States' willingness to support efforts to bring peace to Northern Ireland. And yesterday, Prime Minister Major announced that he will be meeting—in the near future—with each of the constitutional party leaders in Northern Ireland. I welcome all of these efforts.

Mr. Spring's speech is a timely and eloquent articulation of what is required to move toward peace in Northern Ireland and I commend his efforts to bring an end to the bloodshed. His statement recognizes that the status of Northern Ireland should not be altered without the consent of the majority of the people in Northern Ireland. That means no change will occur without the concurrence of the Unionist community. Mr. Spring also opens the door to the real possibility that the Republic of Ireland will remove from its constitution—at the appropriate time—those parts which lay claim to Northern Ireland. He also calls for an immediate end to the violence. Only by laying down their guns and bombs can those now engaged in violence become part of the search for peace.

These recent developments offer rays of hope as the search for peace goes on. The appalling recent violence is not a permanent setback. I urge those on all sides who seek peace to redouble their efforts, and I am confident that the United States stands ready to help in any way possible.

I ask unanimous consent that Mr. Spring's address, the joint statement of Prime Minister Reynolds and Prime Minister Major, and President Clinton's statement may be printed in the RECORD.

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

SPEECH BY MR. DICK SPRING, TÁNAISTE (DEPUTY PRIME MINISTER) AND MINISTER FOR FOREIGN AFFAIRS IN THE DÁIL (PARLIAMENT) DEBATE ON NORTHERN IRELAND OCTOBER 27, 1993

This debate arises from the events that caused such horror and shame in Belfast this past week-end. In speaking here, I want to speak as openly, as dispassionately, and as frankly as I can about the events and what they mean.

In the few days since this House last met, fifteen people have died, in one of the bloodiest few days in the history of Northern Ireland. Those victims have come from both communities, and form a part of the escalating spiral of violence and hatred which must concern us all.

I have to say that it is almost impossible to find the words that would adequately describe the revulsion, indeed the despair, that I felt when news of the Shankill massacre reached me on Saturday afternoon. Yet another place name to be added to the dark history that has been accumulating in the last couple of years alone—another to stand besides names like Warrington, Castlerock, and Teebane Cross.

Yet another community, with more than its fair share of troubles already, has been added to the list of those who must cope with trauma and bitterness. Yet more families, to add to the thousands in both communities and from both islands, have been left to suffer the bottomless agony of loss. And left with the bitterest feeling of all—that there is no point, no meaning, no purpose, to the violent deaths of their loved ones.

The most savage irony of the Shankill massacre lies in two facts. First, the victims

of that massacre were blown to pieces on the orders of people who believe, or say they believe, in the right of the Irish people to self-determination. Second, the people who authorized that massacre are the same people who, just about a week ago, issued a public statement proclaiming their support for a peace process.

There is no one on this island more committed to peace, who practices democracy with more conviction, honesty, and integrity, than John Hume. The initiative that he has taken, with a view to finding a pathway towards peace, is potentially one of the most significant pieces of the jigsaw of recent years.

If the provisional IRA have done nothing else by their actions of last weekend, they have made it far more difficult to find the basis on which we might be able to proceed with, and to develop, that initiative, combining it with the other elements essential to a lasting peace.

But we cannot be deflected from the search for peace. We owe it to the thousands of people who have died before last Saturday, to those slaughtered on Saturday and on the days since, to the families who mourn them, to the communities who are the poorer for their loss, never to be turned away from the quest.

That does not mean, and it can never mean, surrendering or capitulating to men of violence on any side. To do that would be to negate the very democracy that John Hume and many others like him practice with such distinction and courage.

The democratic way forward must be founded on certain key principles. And if I attempt here to outline these principles, I do so not in any way to fudge the need for a negotiated and agreed approach.

In the final analysis, there can be no lasting settlement except through agreement between the Unionist and Nationalist traditions about how we can share this island, which is our common home, and where we both have our rights. The British and Irish Governments have major roles to play, and major responsibilities—but peace must come finally from within the hearts of the people who live in the shadow of violence.

In addition, in setting down principles, I am not attempting either to lay down preconditions for any negotiation. I make only one exception—the only people welcome at the negotiating table would be those who have foresworn violence.

Nobody can be expected to negotiate about their future, or the future of their community, with guns outside the door. Bombs and guns must be set aside if we are to avoid a recurrence of the horror and terror of the Shankill massacre, and the frightening aftermaths of Kennedy Way and elsewhere.

The democratic principles which can underpin a peace process, and which can be combined through negotiation and dialogue to secure sustainable peace, are simply set out.

Indeed, many of them are already encapsulated and contained in Article 1 of the Anglo-Irish Agreement, to which the Irish and British Governments remain fully committed. That Article solemnly enshrines the principle of consent. We can build on those principles by seeing them in the following way:

First, the people living in Ireland, North and South, without coercion, without violence, should be free to determine their own future.

Second, that freedom can be expressed in the development of new structures for the governing of Northern Ireland, for relationships between North and South, and for relationships between our two islands. For many of us, of course, the freedom to determine our own future by agreement should ideally lead to the possibility ultimately of unity on this island.

Third, no agreement can be reached in respect of any change in the present status of Northern Ireland without the freely expressed consent of a majority of the people of Northern Ireland—free as I have said from coercion or violence.

Fourth, let us once and for all accept here that if we talk about the freedom of Unionists to give their consent to constitutional change, we must also recognise the freedom of Unionists to withhold their consent from such change, unless and until they are persuaded by democratic political means only.

Fifth, if we believe in consent as an integral part of any democratic approach to peace, we must be prepared at the right time and in the right circumstances to express our commitment to that consent in our fundamental law.

Sixth, even in the aftermath of some of the most horrible crimes we have witnessed, we must be prepared to say to the men of violence that they can come to the negotiating table, that they can play a peaceful part in the development of Ireland's future—if only they would stop the killing and the maiming and the hurting. We will make a place, and we will develop structures, to bring in from the cold those who have lived in the shadow of their own terrorism—and we are prepared to begin that process the moment that a total cessation of violence makes it possible for us to do so.

The British Government has said repeatedly that it has no selfish or strategic interest in remaining in Northern Ireland. It has said that Britain is in Northern Ireland because the majority of Northern Ireland's people want it that way, and for no other reason. At the same time, the British Government has said that it will not yield to terrorism, nor bargain with it.

That is the way it is, and that is the way it is going to remain. I do not believe that the British Government has any objection, or could find anything to argue with, in any of the principles I have outlined above. I do not believe that any Unionist could, on calm reflection, find fault with any of these principles.

Above all, I do not believe that anyone who claims to be a modern nationalist or republican, could seriously reject any of these principles. They are more than a basis for peace, they are a basis for people working together for the good and the future of this whole island.

Ireland may remain divided by a border for years to come. What is vital is that we begin now to find ways of breaking down the barriers that are between us, rather than erecting new ones with more bombs and more atrocities.

Many of the activists of the provisional IRA have been involved in violence and terror for all of their adult lives. Many of them now have teenage children. They have a choice—they can condemn their children, and their children's children, to lives of violence and terror. Or they can stop.

If they were to stop now, it would re-establish, at least to some extent, the credentials of the peace process that they claim to have publicly endorsed. It would provide hope that politics can replace terror as a means of achieving political objectives. It would free their children from the shadow of the gunman, and empower them for the first time in their lives to contribute to the wellbeing of their own communities.

We are at a crossroads. If the horror of recent days is not to be the latest step in an ever-rising stairway of violence, then those involved must draw back. They must reflect now on the opportunity that is open, on the possibility that political action is a legitimate alternative for them. We can condemn, and I do condemn, the atrocities of recent times. But this is a time to appeal for reason and for hope. If the men of violence would only agree to give peace a chance the political future of Northern Ireland can be utterly transformed. I believe that all of us in this House should unite in saying—do it now.

To Unionists, I would say this. I believe that the two traditions on this island can work out a Covenant for our own times. What I envisage is a covenant of rights and guarantees, capable of being applied by agreement to every part of this island and to every aspect of the relationship between these islands.

It would provide an assurance for all time to every citizen on this island—Protestant or Catholic or Dissenter, Nationalist or Unionist—that basic political rights, including political identities, can be enshrined to ensure that nothing—even a change in sovereignty if such were ultimately arrived at by agreement and consent—could undermine them. Any accommodation between the two traditions on this island must be based on the principle that both identities must each have equally satisfactory, secure and durable political, administrative and symbolic expression and protection for their rights and identities.

The principle of equal respect for both traditions, of equal expression of allegiance, can be worked out in innovative ways, if we want to do it.

There is a heavy onus now on all who are democrats. Now is one of those moments in our history when we choose to go forward or backward. As someone who was elected, I believe, to speak on behalf of a new generation, I say we must go forward.

JOINT STATEMENT BY MR. ALBERT REYNOLDS, TAOISEACH (PRIME MINISTER) OF IRELAND, AND MR. JOHN MAJOR, BRITISH PRIME MINISTER, BRUSSELS, OCTOBER 29, 1993

1. The Prime Minister and the Taoiseach discussed a range of matters of common interest, with particular focus on Northern Ireland.

2. They condemned the recent terrorist outrages as murderous and premeditated acts which could serve no end other than to deepen the bloodshed in Northern Ireland. They expressed their deep sympathy to the innocent victims, children, women and men who had been injured or bereaved.

3. The Prime Minister and the Taoiseach called for restraint from all members of the community in Northern Ireland; expressed support for the security forces in their fight against all forms of terrorism; and noted the recent successes of cross-border security cooperation.

4. They utterly repudiated the use of violence for political ends. Their two Governments were resolute in their determination to ensure that those who adopted or supported such methods should never succeed.

5. The Taoiseach gave the Prime Minister an account of the outcome of the Hume/Adams dialogue, in the light of the Irish Government's own assessment of these and other related matters. They acknowledged John Hume's courageous and imaginative efforts. The Prime Minister and the Taoiseach

agreed that any initiative can be taken only by the two Governments, and that there could be no question of their adopting or endorsing the report of the dialogue that was recently given to the Taoiseach and which he had not passed on to the British Government. They agreed that the two Governments must continue to work together in their own terms on a framework for peace, stability and reconciliation consistent with their international obligations and their wider responsibilities to both communities.

6. Against this background, the Prime Minister and the Taoiseach reaffirmed that:

The situation in Northern Ireland should never be changed by violence or the threat of violence;

Any political settlement must depend on consent freely given in the absence of force or intimidation;

Negotiations on a political settlement can only take place between democratic governments and parties committed exclusively to constitutional methods, and consequently there can be no talks or negotiations between their Governments and those who use, threaten or support violence for political ends;

There could be no secret agreements or understandings between Governments and organizations supporting violence as a price for its cessation;

All those claiming a serious interest in advancing the cause of peace in Ireland should renounce for good the use of, or support for, violence;

If and when such a renunciation of violence had been made and sufficiently demonstrated, new doors could open, and both Governments would wish to respond imaginatively to the new situation which would arise.

7. The Prime Minister and the Taoiseach renewed their support for the objectives of the talks process involving political dialogue between the two Governments and the main constitutional parties in Northern Ireland. They regard that process as vital and its objectives as valid and achievable. They urge the Northern Ireland parties to intensify their efforts to find a basis for new talks. The Taoiseach and the Prime Minister agreed that the two Governments will continue their discussions to provide a framework to carry the process forward.

THE WHITE HOUSE,
October 30, 1993.

STATEMENT BY THE PRESIDENT

I welcome the efforts of Irish Prime Minister Albert Reynolds and British Prime Minister John Major to reinvigorate the negotiations for peace in Northern Ireland. I join their condemnation of the use of violence for political ends and strongly support their commitment to restart talks among their two governments and the four constitutional parties of Northern Ireland. Their joint statement issued yesterday in Brussels underscores their common resolve to work for peace, justice and reconciliation in Northern Ireland. The United States stands ready to support this process in any appropriate way.

All friends of peace were outraged at the tragic and senseless IRA bombing in Belfast on October 23 and the ensuing violence. Especially in the wake of such action, we must redouble our efforts to reject violence and pursue the path of peace. As we remember the victims of the sectarian violence that has torn the region for too long, let us work together to ensure that the vision of the two Governments demonstrated in their joint statement bears lasting fruit.

DIETARY SUPPLEMENTAL HEALTH AND EDUCATION ACT

Mr. WOFFORD. Mr. President, I have decided to become a cosponsor of S. 784, the Dietary Supplement Health and Education Act.

As Senator HATCH, the principal sponsor of this bill, knows well, I have been sympathetic to his legislation from the outset. However, I wanted to wait until I had an opportunity to hear from all affected parties before deciding on cosponsorship. Last week, the Labor and Human Resources Committee held a hearing with consumers, representatives from the nutritional supplement industry, and the Commissioner of the Food and Drug Administration. This hearing convinced me that I want to add my support as a cosponsor of the bill.

At the Labor Committee hearing, Senator HATCH indicated that he does not expect his bill to be adopted in its current form, and that he is working toward a mutually acceptable resolution with Chairman KENNEDY. In a letter I sent to Chairman KENNEDY along with 9 of my colleagues on September 30, I expressed my strong hope that Senators KENNEDY and HATCH will work together to achieve a compromise that properly protects consumers' access to nutritional and dietary supplements. I look forward to working with Senators KENNEDY and HATCH and others in contributing to that solution.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Edwin R. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on the Judiciary.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:07 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 bill, in which it requests the concurrence of the Senate:

H.R. 334. An act to provide for the recognition of the Lumbee Tribe of Cheraw Indians of North Carolina, and for other purposes.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 334. An act to provide for the recognition of the Lumbee Tribe of Cheraw Indians of North Carolina, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

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

EC–1700. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled "Energy Policy Act Transportation Rate Study: Availability of Data and Studies"; to the Committee on Energy and Natural Resources.

EC–1701. A communication from the Chairman of Federal Trade Commission, transmitting, pursuant to law, report of a study of a uniforn national label for devices that dispense automotive fuel to consumers; to the Committee on Energy and Natural Resources.

EC–1702. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report entitled "Current and Future Methane Emissions from Natural Sources"; to the Committee on Environment and Public Works.

EC–1703. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report entitled "Options for Reducing Methane Emissions Internationally"; to the Committee on Environment and Public Works.

EC–1704. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report of the deepwater ports study; to the Committee on Environment and Public Works.

EC–1705. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on hydrogen sulfide emissions associated with the extraction of oil and natural gas resources; to the Committee on Environment and Public Works.

EC–1706. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on the effects of the 1990 Clean Air Act Amendments on visibility in class I areas; to the Committee on Environment and Public Works.

EC–1707. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a report relative to United States exports to the Republic of Korea; to the Committee on Banking, Housing, and Urban Affairs.

EC–1708. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, a report on community development lending by depository institutions; to the Committee on Banking, Housing, and Urban Affairs.

EC–1709. A communication from the Executive Director of the Thrift Depositor Protection Oversight Board and the Interim Chief Executive Officer of the Resolution Trust Corporation, transmitting, pursuant to law, the semiannual report for the period April 1 through September 30, 1993; to the Committee on Banking, Housing, and Urban Affairs.

EC–1710. A communication from the Chairman of the International Trade Commission, transmitting, pursuant to law, a report on trade between the United States and China, the Successor States to the Former Soviet Union, and other title IV countries during the period April through June 1993; to the Committee on Finance.

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. BYRD:

S. 1608. A bill to rescind certain budget authority proposed to be rescinded in special messages transmitted to the Congress by the President on November 1, 1993, in accordance with title X of the Congressional Budget and Impoundment Control Act of 1974, as amended; to the Committee on the Budget and the Committee on Appropriations, jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, with instructions that the Budget Committee be authorized to report its views to the Appropriations Committee, and that the latter alone be authorized to report the bill.

By Mr. SHELBY (for himself, Mr. HEFLIN, Mr. NUNN, and Mr. COVERDELL):

S. 1609. A bill to grant the consent of Congress to an amendment of the Historic Chattahoochee Compact between the States of Alabama and Georgia; to the Committee on the Judiciary.

By Mr. WELLSTONE:

S. 1610. A bill for the relief of Reza A. Maleki; to the Committee on the Judiciary.

By Mr. KERRY:

S. 1611. A bill to authorize appropriations to carry out the Atlantic Tunas Convention Act of 1975, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MURKOWSKI:

S. 1612. A bill to extend the authority of the Women in Military Service for America Foundation to establish a memorial in the District of Columbia area; to the Committee on Energy and Natural Resources.

By Mr. CONRAD (for himself and Mr. DORGAN):

S. 1613. A bill to amend the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act; considered and passed.

By Mr. LEAHY (for himself, Mr. HARKIN, Mr. DASCHLE, Mr. ROCKEFELLER, and Mr. JEFFORDS):

S. 1614. A bill to amend the Child Nutrition Act of 1966 and the National Lunch Act to promote healthy eating habits for children and to extend certain authorities contained in such Acts through fiscal year 1998, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. DURENBERGER (for himself, Mr. SIMON, Mr. JEFFORDS, Mr. FEINGOLD, Mrs. KASSEBAUM, and Mr. GRASSLEY):

S. Res. 160. A resolution expressing the sense of the Senate regarding the October 21, 1993, attempted coup d'etat in Burundi, and for other purposes; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WELLSTONE:

S. 1610. A bill for the relief of Reza A. Maleki; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

• Mr. WELLSTONE. Mr. President, today I am introducing legislation to provide for a reprieve for Reza Maleki and his family. Mr. Maleki is an Iranian national and a Moorhead, MN resident who is married to a U.S. citizen. He is currently in deportation status.

Mr. Maleki was convicted in 1984 of making false statements to the INS with respect to an immigration-motivated marriage, and has paid a fine and served time in incarceration. It is clear that he recognizes the seriousness of his crime, and has made restitution for it in a variety of ways, including through significant service to his community and to the public university where he works. He is now married to a U.S. citizen, and has two young U.S. citizen children.

He is a tenured faculty member at Moorhead State University, and by all accounts has been a model citizen of the Fargo-Moorhead area during the past decade. I have heard from numerous community leaders, including the mayors of Fargo and Moorhead and the president of Moorhead State University, expressing support for Mr. Maleki and testifying to his myriad contributions to the university and to the community. I understand that former Senator, Jocelyn Burdick, and former North Dakota Governor, George Sinner, have also expressed their interest in this case, and their support for Mr. Maleki and his family.

Mr. Maleki's case has a long and complex history of adjudication, beginning with a 1984 decision by an immigration judge to reject a petition for asylum and a request for a stay of deportation, followed by a 1987 decision by the INS' Board of Immigration Appeals [BIA] to uphold this decision, and culminating most recently in a late September 1993 decision by a three-judge panel of the Eighth Circuit Court of Appeals to affirm the BIA's ruling.

When this case first was brought to my attention, I asked my staff to review carefully all of the relevant INS and court decisions to determine if, in their judgment, Mr. Maleki's case merited private relief, or at least a second look by INS officials. They have now completed that review, which included not only an assessment of these important official opinions but also broad consultation with interested public officials who could testify regarding Mr. Maleki's record, the Maleki family and their counsel, INS officials, human rights experts who specialize in Iran, and others.

My staff have recommended to me based on that review that there are sufficient grounds to introduce private relief legislation and ask Chairman KENNEDY to request a report from the INS regarding the case, thus staying, at least temporarily, Mr. Maleki's imminent deportation back to Iran. Chairman KENNEDY has agreed to request such a formal report.

Since taking office, I have been careful to introduce immigration-related private relief legislation only in extraordinary cases. I believe this is such a case, where great and potentially permanent harm could be done to Mr. Maleki's family were he to be deported, since they have concluded that they could not return to Iran together for fear of persecution, and thus would be forced to separate.

My primary concern in this case has been to balance the best interests of the U.S. citizen family members, including Mr. Maleki's two young children, with the public interest of ensuring fair and consistent application of the law. I have concluded that these children, and their mother, would face truly extraordinary hardship if he were to be deported, and that no reasonable public interest which outweighs this hardship would be served by his immediate deportation.

In making this decision, I want to underscore that my intention is not to substitute my judgment for that of the immigration authorities who have worked on this case for years. But in assessing the potentially devastating effect that separating Mr. Maleki from his family would have, and considering the evidence available to me, including some new evidence that I understand the appeals court was unable to consider for procedural reasons, and the very high standards of review which tightly constrained the discretion of the BIA and the eighth circuit, I believe that a reprieve is justified.

In my view, the balance of the equities, especially with respect to Mr. Maleki's innocent U.S. citizen wife and his two young children, argue for a second look by the INS. It is my hope that delaying his deportation will provide an opportunity for that reassessment. It should provide his counsel time to move to reopen the case and request that the case be remanded for a rehearing when he becomes eligible.

My action today does not grant him permanent residency status. It simply provides him an opportunity to make his case for asylum again in light of new evidence, and eventually for suspension of deportation and adjustment of his status to permanent resident, based on section 244(a)(2) of the Immigration and Nationality Act. This provision makes him eligible for reconsideration of his status at the discretion of the attorney general if he: First, has been physically present in the United States for no less than 10 years following a conviction; second, proves that during that period he has been a person of good moral character; and third, proves that his departure would result in exceptional hardship to his family members.

I understand that this 10-year rule is not a statute of limitations, but simply

a threshold test which makes him eligible for reconsideration. I believe that when he is given another chance to make his case, the immigration judge will conclude, as I have, that it has considerable merit. Indeed, the original immigration judge concluded that although he had found insufficient evidence to affirm Mr. Maleki's asylum claim, he believe his conviction should not preclude a positive decision either on an application for asylum or for withholding of deportation if he was otherwise eligible for adjustment of status under the law. He observed:

Upon review of the facts of the case, I do not find that the respondent's conviction in the U.S. constitutes a particularly serious offense which would preclude statutory consideration for withholding of deportation, or preclusion of an asylum application, as a matter of discretion. I believe the respondent has developed other equities in the U.S. which would offset the negative impact of his conviction, which would support a merit (sic) decision if otherwise eligible.

This case has required me to make a prudential judgment about the merits of Mr. Maleki's claims, the sufficiency of the evidence presented to the INS and to the court, their considered opinions on how the law is to be applied to that evidence, the best interests of the family members, and the interest of the public in seeing that the law is enforced fairly and consistently.

As lawmakers, we attempt always to construct the law in such a way that it can be fairly and consistently applied. It is cases like this that remind us powerfully that the laws we write affect real families whose lives can be permanently and irreversibly changed by our decisions.

As I have observed, deportation of Mr. Maleki, and the resulting separation from his family, could have permanent and tragic consequences for his children and his wife, who are innocent in all of this. Ultimately, I believe that introducing this legislation, thus staying deportation long enough to allow Mr. Maleki to apply for a rehearing and make his case again, was the proper approach which balances appropriately all of these interests. It was not an easy decision, but one which given the high stakes for his family called for my giving him and his family the benefit of the doubt.

I am hopeful that the INS will consider carefully any new evidence he may present should he move to reopen his case, and will take into account his 10 years of achievement in this country, his broad embrace by the Moorhead community and by the university, and the critical impact his deportation could have on his U.S. citizen family members.•

By Mr. KERRY:

S. 1611. A bill to authorize appropriations to carry out the Atlantic Tunas Convention Act of 1975, and for other purposes; to the Committee on Commerce, Science, and Transportation.

ATLANTIC TUNAS CONVENTION AUTHORIZATION ACT OF 1993

• Mr. KERRY. Mr. President, today I am introducing the Atlantic Tunas Convention Authorization Act of 1993. This legislation is essential to ensure the conservation of Atlantic bluefin tuna and other wide-ranging fishery stocks and the preservation of U.S. fishermen who depend on these stocks for their livelihood.

The purposes of the bill are twofold. First, it amends the Atlantic Tunas Convention Act, extending the authorization of appropriations, calling for an inventory of current research on Atlantic highly migratory fish, and establishing a program to resolve unanswered scientific questions that have limited our ability to fairly and effectively manage this international fishery.

Second, the legislation puts the Congress on record encouraging other fishing nations to comply with the conservation and management recommendations of the International Commission for the Conservation of Atlantic Tuna [ICCAT]. In its second purpose, the bill provides companion legislation to a concurrent resolution now pending in the House of Representatives.

In recognition of the unique problems related to the highly migratory nature of tunas and tuna-like species, the United States signed the International Convention for the Conservation of Atlantic Tunas in 1966. This convention established the mechanism for ICCAT, which was founded in 1969. ICCAT's mandate is to provide an effective program of international cooperation in research and conservation for highly migratory species in the Atlantic Ocean and Mediterranean Sea. The Commission is responsible, among other things, for developing regulatory proposals to govern fishing by the member nations, in order to conserve and manage tuna resources throughout their range in a manner which achieves the maximum sustainable catch.

Due to declining stock levels, regulatory measures were recommended by the Commission in 1974. Concern over the low level of abundance of small bluefin tuna in the western Atlantic led to additional catch limits in that area. While Atlantic bluefin tuna are exceptionally large fish, reaching 1,500 pounds, the Commission recommended landing restrictions for fish weighing less than 14 pounds (6.4 kilograms).

For management purposes, the Commission adopted a two-stock hypothesis, using a line drawn at 45 degrees west longitude to divide Atlantic blue fin tuna into western and eastern stocks. Little conclusive data has been collected to support the two-stock hypothesis, and I urge ICCAT scientists to continue to investigate the stock structure of the Atlantic bluefin tuna. I raise this issue because while western Atlantic harvests have been reduced by 65 percent, catches in the east are reported to have increased by 31 percent. If further investigation reveals that mixing rates between the two stocks are greater than current data indicate, then overfishing in the eastern Atlantic is having a greater impact on the western stock than is currently acknowledged. In order to rebuild the fishery in the western Atlantic, it would then become critical to reduce fishing effort in the eastern Atlantic. Additional stock reductions for the western Atlantic would be of questionable value from a conservation standpoint.

Other countries' lack of compliance with ICCAT recommendations also may be linked to problems in the U.S. bluefin tuna fishery. A 1992 report of the ICCAT Infractions Committee noted that harvests in the eastern fisheries have greatly exceeded the 15-percent allowance of bluefin tuna under 6.4 kilograms. In addition, the catch of bluefin tuna by fishing vessels of non-ICCAT member countries and the reflagging of vessels to avoid ICCAT restrictions may inhibit the stock's ability to recover. The result is that the effectiveness of U.S. conservation efforts is dissipated by the failure of other nations to take complementary action. Regardless of whether there are one or two stocks of Atlantic bluefin tuna, participation by all fishing parties in concerted action to implement and enforce management measures is long overdue. Such participation is essential if we are to have any hope for rebuilding these stocks and ensuring sustainable fishery harvests.

The Atlantic bluefin resource supports valuable commerical and recreational fisheries in the United States. A general national estimate is that the commercial industry generates $22 to $32 million in direct sales of bluefin tuna. Of course, this figure does not begin to take into consideration the supporting industry and businesses for which the bluefin tuna industry generates revenue. Nationally, there are approximately 11,600 permits issued to commercial vessels to fish for bluefin tuna, of which over one-third are held by vessels from my State of Massachusetts. Numerous families in small coastal communities from Maine to Louisiana depend upon this fishery for their livelihood—in commercial fisheries, charter boat operations, or in assorted supply, maintenance, and processing operations.

For these reasons, I encourage prompt Senate consideration of the legislation I am introducing today. We need better information to properly assess and manage Atlantic bluefin tuna and other highly migratory species. In addition, we must encourage other countries in the eastern and western Atlantic and the Mediterranean to do

their fair share. The benefits of coordinated action and shared responsibility for these stocks will be enjoyed by all.

Mr. President, I ask unanimous consent that the full text of that bill be printed in the RECORD.

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

S. 1611

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 "Atlantic Tunas Convention Authorization Act of 1993".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS

Section 10 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971h) is amended to read as follows:

"SEC. 10. There are authorized to be appropriated to carry out this Act, including use for payment of United States share of the joint expenses of the Commission as provided in article X of the Convention, the following sums:

"(1) For fiscal year 1994, $2,750,000, of which $50,000 are authorized in the aggregate for the advisory committee established under section 4 and the species working groups established under section 4A and $1,500,000 are authorized for research activities under this Act.

"(2) For fiscal year 1995, $4,000,000, of which $62,000 are authorized in the aggregate for such advisory committee and such working groups, and $2,500,000 are authorized for such research activities.

"(3) For fiscal year 1996, $4,000,000 of which $75,000,000 are authorized in the aggregate for such advisory committee and such working groups, and $2,500,000 are authorized for such research activities.".

SEC. 3. ADVISORY COMMITTEE PROCEDURES.

Section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) is amended—

(1) by designating the existing text as subsection (a); and

(2) by adding at the end the following new subsection:

"(b)(1) A majority of the members of the advisory committee shall constitute a quorum, but one or more such members designated by the advisory committee may hold meetings to provide for public participation and to discuss measures relating to the United States implementation of Commission recommendations. All decisions of the advisory committee shall be by a three-fifths majority vote of the members present and voting.

"(2) The advisory committee shall elect a Chairman from among its members.

"(3) The advisory committee shall meet at appropriate times and places at least twice a year, at the call of the Chairman or upon the request of the majority of its voting members, the United States Commissioners, the Secretary, or the Secretary of State.

"(4)(A) The Secretary shall provide to the advisory committee such administrative and technical support services as are necessary for the effective functioning of the committee.

"(B) The Secretary and the Secretary of State shall furnish the advisory committee with relevant information concerning fisheries and international fishery agreements.

"(5) The advisory committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures.".

SEC. 4. RESEARCH ACTIVITIES.

"(a) REPORT TO CONGRESS.—The Secretary of Commerce shall, within 90 days after the date of enactment of this Act, report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives—

(1) identifying current governmental and nongovernmental research activities on Atlantic bluefin tuna and other highly migratory species;

(2) describing the personnel and budgetary resources allocated to such activities; and

(3) explaining how each activity contributes to the conservation and management of Atlantic bluefin tuna and other highly migratory species.

(b) RESEARCH PROGRAM.—Section 3 of the Act of September 4, 1980 (16 U.S.C. 971i) is amended—

(1) by amending the section heading to read as follows:

"SEC. 3. RESEARCH ON ATLANTIC HIGHLY MIGRATORY SPECIES.";

(2) by striking the last sentence;

(3) by inserting "(a) BIENNIAL REPORT ON BLUEFIN TUNA.—" immediately before "The Secretary of Commerce shall"; and

(4) by adding at the end the following new subsection:

"(b) HIGHLY MIGRATORY SPECIES RESEARCH.—(1) Within 6 months after the date of enactment of this subsection, the Secretary of Commerce, in cooperation with the advisory committee established under section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) and in consultation with the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas and the Secretary of State, shall develop and implement a comprehensive research program to support the conservation and management of Atlantic bluefin tuna and other highly migratory species that shall—

"(A) identify and define the range of stocks of highly migratory species in the Atlantic Ocean, including Atlantic bluefin tuna; and

"(B) provide for appropriate program participation by nations participating in the Commission.

"(2) The program shall provide for, but not be limited to—

"(A) statistically designed tagging studies;

"(B) genetic and biochemical stock analyses;

"(C) population censuses carried out through aerial surveys of fishing grounds;

"(D) adequate observer coverage of commercial and recreational fishing activity;

"(E) collection of real-time data on commercial and recreational catches and landings, including charter operations, fishing tournaments, and private anglers;

"(F) studies of the life history parameters of Atlantic bluefin tuna and other highly migratory species; and

"(G) integration of data from all sources and the preparation of data bases to support management decisions.".

SEC. 5. ACTIONS TO IMPROVE CONSERVATION.

(a) FINDINGS.—The Congress makes the following findings:

(1) Atlantic bluefin tuna and other highly migratory species are valuable commercial and recreational fisheries of the United States.

(2) The vessels of many countries, including the United States, fish for Atlantic bluefin tuna and other highly migratory species in the Atlantic Ocean and the Mediterranean Sea.

(3) The International Commission for the Conservation of Atlantic Tunas (hereinafter referred to as the "Commission") is the international entity established to adopt recommendations and develop international agreements for the conservation and management of Atlantic bluefin tuna and other highly migratory species in the Atlantic Ocean and the Mediterranean Sea.

(4) In the last 25 years Atlantic bluefin tuna stocks and other stocks of highly migratory species have declined from historic levels.

(5) Countries that are not members of the Commission are having a detrimental impact on the recovery of Atlantic bluefin tuna stocks and other stocks of highly migratory species by fishing throughout the Atlantic Ocean and the Mediterranean Sea without regard for conservation and management recommendations and agreements adopted by the Commission.

(6) For management purposes, the Commission has adopted a working hypothesis of two stocks of Atlantic bluefin tuna: a western stock found in the Atlantic Ocean west of 45 degrees west longitude (hereinafter referred to as the "45 degree line"), and an eastern stock found in the Atlantic Ocean east of the 45 degree line and in the Mediterranean Sea.

(7) The existing scientific evidence is inconclusive with respect to the working hypothesis of two stocks, and the extent to which each of the hypothesized stocks migrates across the 45 degree line is unknown.

(8) The Commission adopted conservation and management recommendations and agreements in 1974 to ensure the recovery and sustainability of all Atlantic bluefin tuna throughout the Atlantic Ocean and the Mediterranean Sea.

(9) In recent years, the Commission has adopted additional, more restrictive conservation and management recommendations and agreements for Atlantic bluefin tuna, for countries that fish for Atlantic bluefin tuna west of the 45 degree line.

(10) The United States and other countries that are members of the Commission and that fish west of the 45 degree line have implemented all conservation and management recommendations and agreements for Atlantic bluefin tuna adopted by the Commission that apply west of the 45 degree line. The implementing regulations have been vigorously enforced by the Secretary of Commerce and the Coast Guard.

(11) Many other countries that are members of the Commission do not comply with conservation and management recommendations and agreements for Atlantic bluefin tuna adopted by the Commission that apply east of the 45 degree line and in the Mediterranean Sea. This noncompliance undermines the recovery of Atlantic bluefin tuna stocks.

Recent large increases in the catch of Atlantic bluefin tuna within 100 miles east of the 45 degree line by countries that are members of the Commission may be having a detrimental impact on the recovery of Atlantic bluefin tuna and probably do not comply with recommendations and agreements of the Commission.

(b) OBJECTIVES.—It is the sense of the Congress that—

(1) the United States and the Commission should continue to promote the conservation

and management of Atlantic bluefin tuna and other highly migratory species throughout the Atlantic Ocean and the Mediterranean Sea;

(2) the United States should obtain commitments through the Commission, from all countries that are signatories to the International Convention for the Conservation of Atlantic Tunas and that are not in compliance with all of the conservation and management recommendations and agreements for Atlantic bluefin tuna and all other highly migratory species that have been adopted by the Commission, that those countries will immediately comply with those recommendations and agreements;

(3) the United States should continue to encourage all other countries whose vessels fish for Atlantic bluefin tuna and other highly migratory species in the Atlantic Ocean or the Mediterranean Sea to comply with the conservation and management recommendations and agreements adopted for those species by the Commission;

(4) if vessels of a country fish in the Atlantic Ocean or the Mediterranean Sea for Atlantic bluefin tuna or another highly migratory species without complying with conservation and management recommendations and agreements of the Commission, such fishing will be considered by the Congress to diminish the effectiveness of an international fishery conservation program, and as such will be considered by the Congress to be certifiable under section 8(a)(1) of the Fishermen's Protective Act of 1967 (22 U.A.C. 1978(a)(1));

(5) the United States should encourage countries that have significant markets for Atlantic bluefin tuna and other highly migratory species to prohibit the importation of those species from countries whose vessels fish for such species without regard for the conservation and management recommendations and agreements adopted by the Commission;

(6) the United States should continue to explore, through the Commission, the appropriateness of working hypotheses of the Commission that Atlantic stocks of highly migratory species can be delineated by lines of latitude or longitude and, specifically, that there are two stocks of Atlantic bluefin tuna delineated by the 45 degree line; and

(7) the United States should seek through the Commission an agreement to ensure that if the Commission uses any line to divide stocks of Atlantic bluefin tuna for management purposes and adopts for that stock conservation and management recommendations and agreements for one side of the line that are more restrictive than the conservation and management recommendations and agreements adopted by the Commission for the other side of the line, then any fishing for Atlantic bluefin tuna within 10 degrees of the line shall be conducted in compliance with those more restrictive recommendations and agreements.●

By Mr. MURKOWSKI:

S. 1612. A bill to extend the authority of the Women in Military Service for America Foundation to establish a memorial in the District of Columbia area; to the Committee on Energy and Natural Resources.

WOMEN IN MILITARY SERVICE FOR AMERICA FOUNDATION LEGISLATION

● Mr. MURKOWSKI. Mr. President, I introduce legislation which would authorize an extension of the Women in Military Service for America [WIMSA] Foundation's authority to establish a memorial commemorating the more than 1.8 million women who have served, or are now serving, in the Armed Forces. The current authorization expires November 5, 1993. This bill will extend the authorization for 3 years, allowing additional time for fund raising activities.

Over the years, under the leadership of retired Brig. Gen. Wilma Vaught, the Memorial Foundation has worked at the State and local levels to encourage contributions for the memorial. In fact, the Alaska State Legislature appropriated $15,000 toward the memorial project last year. In addition to the Foundation's grassroots activities, last spring I introduced S. 1159, the Women in the Armed Forces Commemorative Coins Act to aid the fundraising efforts. This bill has 55 cosponsors and is on the legislative calendar for full Senate consideration.

Mr. President, I truly hope this will be the last extension needed for this project. A site has been selected and a design team has been awarded a contract to build the memorial at the gateway to Arlington National Cemetery. I believe the coin bill, if passed, will go a long way toward raising the necessary funds to complete this project.

The women who served this country deserve no less than a national memorial recognizing their contributions to the Armed Forces. Their service represents only one side of the equation of commitment defining the relationship between our Nation and her veterans. Completion of the memorial will be a step in balancing that equation by acknowledging our national indebtedness to those American women. I believe a 3-year extension will provide the necessary time to raise the remainder of the funds needed to achieve this goal.

I urge my colleagues to support this important measure.●

By Mr. LEAHY (for himself, Mr. HARKIN, Mr. DASCHLE, Mr. ROCKEFELLER, and Mr. JEFFORDS):

S. 1614. A bill to amend the Child Nutrition Act of 1966 and the National Lunch Act to promote healthy eating habits for children and to extend certain authorities contained in such Acts through fiscal year 1998, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE BETTER NUTRITION AND HEALTH FOR CHILDREN ACT OF 1993

Mr. LEAHY. Mr. President: I am proud to introduce the Better Nutrition and Health for Children Act. This bill reauthorizes and makes improvements in all child nutrition programs.

At the outset I want to thank the cosponsors of this bill. Senator HARKIN is the chair of the nutrition subcommittee and is a strong fighter for these nutrition programs. Over the years he has done an outstanding job as chair of that subcommittee. This bill reflects his concerns for the well-being of America's children. The bill improves programs that are very important to Iowa and to the entire Nation.

Senator DASCHLE also has been one of the Senate's leaders regarding child nutrition programs and I am pleased that he is sponsoring this legislation.

Senator ROCKEFELLER is also an original cosponsor of this bill. As chairman of the National Commission on Children he issued a major report—"Beyond Rhetoric: A New American Agenda for Children and Families"—on improving the health, security and well-being of America's future. This bill focuses on many of the themes in that important report.

I am very pleased to be joined by Senator JEFFORDS in this effort. This united Vermont bipartisan support will help get this bill enacted into law. I look forward to working with Senator JEFFORDS as this bill progresses through the Congress.

I have already received letters of support for the bill from the American Academy of Pediatrics, the American Heart Association, the American Cancer Society, the Children's Defense Fund, Public Voice for Food and Health Policy, the Center for Science in the Public Interest, the Food Research and Action Center, and others.

An ounce of prevention is indeed worth a pound of cure—good nutrition can lead to dramatically lower health care costs and can represent a major force in preventing or reducing the incidence of major chronic diseases.

Proper diet can greatly reduce the incidence of America's biggest killers—heart disease, stroke and cancer.

Real reform of the health care system must begin with our children and with prevention. Teaching them to eat right—teaching them the link between good nutrition and good health—is a lesson they will carry with them for the rest of their lives.

In a letter regarding this bill, Hillary Rodham Clinton praised this approach to reducing health costs. She noted that "[t]he Better Nutrition and Health for Children Act is an example of the kind of leadership and cooperation it will take to be successful in reforming our health care system."

The School Lunch Program should set the right example for proper eating habits. The Surgeon General's Report on Nutrition and Health noted—"For the two out of three adult Americans who do not smoke or do not drink excessively, one personal choice seems to influence long-term health prospects more than any other: what we eat."

Recent scientific studies indicate that good nutrition may be more critical to cognitive development than was formerly thought. At a recent congressional seminar sponsored by Tufts University Dr. Ernesto Pollitt, professor of

pediatrics, University of California at Davis, noted that even moderate undernutrition can have lasting effects on the cognitive development of children.

He noted that iron deficiency anemia is associated with poor intellectual development and that anemia affects 20 percent of low-income children under 2 years old.

At the same meeting, Dr. Deborah Frank, professor of pediatrics at Boston University, explained how nutritional deficiencies can be a major factor in infants that fail to thrive. She has firsthand experience in this regard since she operates the Failure to Thrive Clinic at Boston City Hospital.

Dr. Larry Brown, director, Center on Hunger, Poverty and Nutrition Policy of Tufts University and Laura Sherman, director of the Nutrition-Cognition Initiative, will sponsor additional seminars for congressional staff to assist in the reauthorization process.

I want to thank several Vermonters who provided me with valuable input in drafting this bill. For example, Dr. Richard Narkewicz, former president of the American Academy of Pediatrics, has provided me with the evidence over the years to demonstrate how well WIC works. I appreciate his strong support of this bill.

Dr. Joe Hagan, president of the Vermont chapter of the American Academy of Pediatrics, has been extremely helpful, and I look forward to working with him and the academy.

Mike Scarpone, executive director of the Vermont Heart Association, was one of the earliest supporters of this health prevention effort. He, and the American Heart Association, continue to offer their considerable support for moving this bill forward.

Title I of the Better Nutrition and Health for Children Act implements the President's goal of full funding for WIC. Many Members of this body, and the other body, have been working toward fully funding the WIC Program for years. Senator BUMPERS, as chairman of the Appropriations Subcommittee with jurisdiction over WIC, has worked hard to increase funding for the program—as have many other Members.

The title would increase the benefits of the Special Supplemental Food Program for Women, Infants, and Children by allowing all eligible low-income and at-risk women and children to participate. In addition to the nutrition and health benefits WIC brings to participants, full funding of WIC results in significant savings in other Federal programs.

A USDA report showed that "for every dollar spent on the prenatal component of the WIC Program, the associated savings in Medicaid costs for illnesses beginning in the first 60 days after birth ranged from $1.92 to $4.21 for newborns and mothers and from $2.98 to $4.75 for newborns only."

Yet a 1991 GAO report concluded that only 55 percent of pregnant women eligible for WIC participate.

The WIC title of this legislation provides mandatory spending, in addition to regular appropriations otherwise available for WIC, to help ensure that the WIC Program reaches full funding status at the end of fiscal year 1996 and then remains at full funding levels, as the President has pledged. The bill language is taken from the President's bill on health care and it contains a unique approach to funding for WIC.

Under the President's budget submitted earlier this year, the President set forth a path to full funding that included an appropriations level of $3.564 billion in fiscal year 1995. The next step along that path is a funding increase of about $350 million for WIC in fiscal year 1995, the same level of increase as Congress provided for fiscal year 1994.

This legislation proposes that appropriations reach the $3.564 billion level in the President's budget for fiscal year 1995, and maintain that level in subsequent years adjusted for inflation. If discretionary appropriations are made according to those targets, then additional mandatory spending will become available to provide the remaining amounts estimated to be needed to reach full funding at the end of fiscal year 1996 and remain at full funding levels after that.

Under this provision, the Secretary of the Treasury is required to credit to a special fund of the Treasury $254 million for fiscal year 1996, $407 million for fiscal year 1997, $384 million for fiscal year 1998, $398 million in fiscal year 1999, and $411 million for fiscal year 2000.

These funds are for use solely in the WIC Program and shall be paid to the Secretary of Agriculture for that purpose. However, the funds will become available for use in WIC in any fiscal year only if discretionary appropriations for that year are at least equal to the $3.564 billion level for fiscal year 1995, adjusted for inflation. The sum of the discretionary appropriations levels and mandatory funding amounts equals the total needed to serve all eligible program applicants in each respective year through the year 2000.

Many groups have been supportive of making WIC a mandatory program and I appreciate their efforts. I wish to note that Bread for the World has led the charge in the fight to fully fund the WIC Program. Once again they will do a nationwide offering of letters regarding making WIC available for all those in need. This national grassroots show of support will be very helpful in getting this bill passed.

Bread for the World's president, David Beckman, and their domestic hunger analyst, Barbara Howell, deserve a great deal of praise for their steadfast efforts.

The National Association of WIC Directors has also been in the forefront in this fight. I look forward to working with their president, Mary Kassler of Massachusetts and their executive director, Doug Greenaway, on reauthorization issues. This bill already contains several of their recommendations.

I would also like to thank Gerri Henchy of FRAC for her efforts in improving the WIC Program and providing me with advice and counsel.

Also, I wish to thank the Center for Budget and Policy Priorities for all their support over the years regarding the WIC Program. Bob Greenstein, Ellen Nissenbaum, and Stefan Harvey have played a major role in helping to get additional funding for WIC over the years.

In addition to full funding, the title covers another important WIC issue: breastfeeding promotion. Section 102 encourages good nutrition for children from the beginning of their lives by encouraging breastfeeding among mothers enrolled in WIC. It follows from the recommendations of the Department of Health and Human Services, which lists one of its Healthy Children 2000 National Health Promotion and Disease Prevention Objectives as increasing the number of new mothers who breastfeed their children to at least 75 percent for the early postpartum period and to at least 50 percent for babies less than 6 months old.

The health benefits of breastfeeding have been fully documented and include the immunological effects of breastmilk which cannot be duplicated in formula. Breastfeeding rates are especially low among low-income mothers, 32 percent compared with 54 percent for all mothers.

This bill expands the breastfeeding promotion program for WIC participants to $16 million per year, restoring the ratio of spending that was intended when the breastfeeding program was initiated.

It also begins to track breastfeeding in WIC by adding breastfeeding rates and expenditures to the list of items to be included in biennial reports from the States to the Secretary. Such statistical data is essential in evaluating both the cost and success of the WIC breastfeeding promotion program. We will be working with many groups regarding breastfeeding promotion. I want to thank Minda Lazaroff who has provided valuable counsel on this issue over the years. In addition, Dr. Sandra Huffman of NUTURE has played a lead role regarding this important issue.

With respect to all the WIC issues I will be working with Donna Bister of the Vermont WIC Program.

Section 103 of the bill promotes consumption of fresh produce among low-income individuals and families while helping farmers' markets. Over 400,000 people participate in the highly successful WIC Farmers' Market Program in 11 States. Fruits, vegetables, and

other farm products provide a healthy supplement to the dairy products, juices, and fortified cereals included in the WIC package. Other States would join the program if Federal matching funds were available.

The bill increases Federal funding for the WIC Farmers' Market Program to $10.5 million in 1995, $12.5 million in 1996, $15 million in 1997, and $18 million in 1998. This should more than double the number of participating States. In addition, it reduces the State match required for participation in the WIC Farmers' Market Program from 30 to 25 percent. This will allow States to remain in the program and encourage others to join.

The bill permits States to use up to 3 percent of total program funds for farmers' market development in areas which have limited access to locally grown fruits and vegetables or to promote the participation of farmers who are disadvantaged, located in very rural areas or who operate small-scale farms. This will help expand the program, benefiting more WIC participants as well as low-income farmers.

Finally, the bill requires USDA to promote the use of farmers' markets by recipients of all Federal nutrition programs administered by the Department and requires annual reports on those efforts. For example, making it possible to use food stamps at farmers' markets would both help the food stamp family and the farmers' markets where they shop.

The success of the WIC Farmers' Market program gives evidence that introduction of more low-income individuals and families to fresh fruits and vegetables can have a positive effect on nutrition and eating habits.

The National Association of Farmers' Market Nutrition Programs has become a potent force in assisting farmers' markets. I appreciate their detailed input and look forward to working with their board members.

Another Vermonter, Mary Carlson, is now treasurer of that organization. Mary Carlson has been very helpful to me over the years in understanding how legislation that we pass actually impacts at the local level.

Section 104 of the bill makes some technical changes and one name change. At the request of the National Association of WIC Directors, with whom I recently met, the bill proposes that the name of the Special Supplemental Food Program for Women, Infants and Children be changed to the Special Nutrition Program for Women, Infants and Children.

Title II of the bill expands the Special Milk Program by requiring USDA to reimburse schools for milk that elementary schools provide to children in schools where 60 percent or more of the children are from low-income families. This will permit children bringing bag lunches to get milk and will also permit other children in the school to get a second half-pint of milk.

I had lunch with grade school students at the Brent school in Washington recently. One complaint I heard is they could not get a second milk. The expansion of the Special Milk program will address this problem.

This provision is very well targeted to low-income children who have to rely all too often on schools to provide them with nutritious foods.

The title is also designed to ensure that more children from low-income families have the opportunity to eat a nutritious breakfast. Children who start the day hungry jeopardize not only their health, but also their ability to learn.

A 1987 study conducted by physicians and researchers from universities in Boston found that low-income elementary school children participating in the school breakfast program showed an improvement in standardized achievement test scores and a tendency toward improved attendance rates and reduced tardiness.

Unfortunately, over 40 percent of schools which offer school lunch do not offer breakfast, leaving almost two-thirds of low-income children without the benefit of this important school meal.

The Food Research and Action Center has taken a lead role on school breakfast and summer food service expansion. Their "School Breakfast Score Card" highlights the States who have done a good job in starting breakfast programs, and those States who need to improve. They also recommended detailed legislative changes.

I want to commend Rob Fersh, executive director, Ed Cooney, deputy director, Ellen Teller, and Mike Haga of FRAC for the leadership they are providing on breakfast and summer food service expansion. I know that Michelle Tingling-Clemmons and Ann Kittlaus worked hard on this year's score card and I appreciate all their efforts.

Title II will promote and market the school breakfast program to enhance its image and expand participation by schools and students.

The bill will increase funding for school breakfast start-up grants from the current $5 million to $7 million in 1994 and $9 million each year from 1995 through 1998. These grants help offset the initial costs of setting up a breakfast program and have been highly successful in encouraging schools to participate.

For example, Vermont schools have received over $300,000 in grants to establish breakfast programs under provisions included in the last reauthorization bill reported out of the committee in 1989.

The Food Research and Action Center has twice honored Vermont by listing Vermont as one of the top 10 States in terms of increases in participation. I know that the local CAP agencies in Vermont have done a great job in encouraging schools to participate in the program.

Also Josephine Busha, child nutrition director for Vermont, has been very helpful over the years in getting additional schools in the breakfast program.

The bill language will assist States in expanding existing school breakfast programs by designating up to $3 million from the allocation for start-up grants in 1995 and 1996, and up to $4 million in 1997 and 1998 to be used for that purpose. Many existing school breakfast programs need additional resources to improve their programs and serve additional students.

The bill seeks to improve choices offered in school breakfasts by permitting schools to serve low-fat yogurt, protein fortified if needed, as an alternative for eggs, meat, peanut butter or other meat alternatives in school breakfast and lunch. Under current USDA regulations, schools are not allowed to serve yogurt as a reimbursable portion of a meal, a meal for which the school gets a USDA payment.

Since yogurt is a good source of minerals, vitamins, and protein the USDA ban on reimbursing schools for serving yogurt should be changed. Schools should have this choice. Indeed, the Surgeon General's Report on Nutrition and Health explained that dairy products are an essential source of protein, minerals, and vitamins for children. However, the Surgeon General recommended that children over age 2 consume low-fat dairy products.

The title also provides for integrating nutrition education into school curricula. In their letters of support the American Cancer Society and the American Academy of Pediatrics were very supportive of this idea.

The American Cancer Society noted they were:

> * * * particularly encouraged by the inclusion in the bill of USDA grants to integrate nutrition education into the health education curriculum in grades K–12 and to provide better training for school food service personnel. Education and health are interdependent systems.

In this respect the bill increases the authorization for the Nutrition Education and Training Program to $30 million per year. I am particularly thankful for the input provided by Alison Gardner, NET director of the Vermont health department, regarding NET and other programs.

In this regard, I want to thank the American School Service Association for their detailed recommendations for child nutrition reauthorization. I look forward to working with them and president Dorothy Caldwell on reauthorization.

I also look forward to working with the Vermont School Food Service Association and their president Marilyn

Edwards. This bill introduction is the beginning of the process of improving the school lunch and other child nutrition programs.

I recognize that some of the recent rhetoric has caused concerns. This bill puts its money where its mouth is—enacted it will greatly assist in helping schools do their job. Most of the funding required by this bill would go to improving school food programs. The bill provides $170 million a year more for grade school lunch programs, $40 million a year more for fruits and vegetable purchases, $35 million more for low-fat dairy products, and $10 million more for lean meats.

It allows schools to buy whatever type of fluid milk they think is appropriate. It funds after school snack programs at schools. It greatly expands the Special Milk Program. It increases the minimum SAE, State administration expense, grant levels, and provides additional SAE funds.

The bill includes many ideas recommended by ASFSA and I thank them for their efforts. I will be working closely with Kevin Dando, ASFSA manager of government affairs, and Marshall Matz, ASFSA counsel, Marilyn Hurt, the chair of the ASFSA legislation committee, and Barbara Borschow, the executive director of ASFSA, on this reauthorization effort.

While further progress should be made—we must recognize that significant improvements have been made in the quality of school lunches. Further, ASFSA working together with USDA can get the job done.

A recent USDA report notes that "in 44 percent of schools students can select at least one National Lunch Program lunch that meets the goal of 30 percent or less of calories from fat." This does represent significant progress.

This title clarifies the authority of schools to ban food which compete against the School Lunch Program—it does not ban those products. It allows the local schools to ban them. Because of litigation in the early 1980's there is some confusion over the authority of schools to ban these competitive foods. This bill would confirm the local authority to control what foods are sold in the schools on school property.

To be more precise the bill expressly permits schools, at their option, to go beyond Federal requirements and ban the sale of junk food and soft drinks anywhere on school grounds at any time during the day. Federal regulations state only that certain foods cannot be sold in the cafeteria during lunch, but this has been misunderstood as permitting the sale of such food at other locations and times. This clarification should help promote the sale of fruit, fruit juices, milk, and other foods of nutritional value in vending machines.

Title III of the bill makes a number of important improvements in school lunch and related programs. One major goal is to bring school lunches in line with the Government's own nutrition guidelines by first, reducing dietary fat intake to an average of 30 percent of calories and reducing average saturated fat intake to less than 10 percent of calories; second, increasing consumption of dietary fibers; third, reducing the consumption of sodium and sugars; and fourth, increasing consumption of fruits and vegetables.

In a recent proclamation President Clinton noted that, "[t]here is no longer any question that diet is related to good health, and school meal programs should meet the Dietary Guidelines for Americans so that children get nutritious meals." The President also points out that school lunches also teach children good dietary habits.

The American Heart Association notes that,

> It seems incomprehensible that the federal government can set dietary recommendations for the nation and then ignore those recommendations when it comes to operating the child nutrition programs.

The American Cancer Society notes that they are "pleased to see" that the bill—

> Will require that school meals subsidized by the US Department of Agriculture be consistent with the Federal Government's nutrition guidelines. Evidence indicates that people may reduce their disease risk by observing these nutrition guidelines.

The American Academy of Pediatrics makes a similar point by noting that the bill will improve nutrition by "requiring the menus for the school lunch and school breakfast programs to comply with recommended dietary guidelines * * *"

The National School Lunch Program provides lunch to 25 million children each day, with over half the lunches served to low-income children. That represents an opportunity to make a lasting difference in the nutrition and health of children.

A study by Public Voice for Food and Health Policy found that over one-half of children eat less than one serving of fruit a day and one in five eat less than one serving of vegetables a day.

The bill establishes a national pilot program to assist schools in offering additional choices of fruits and vegetables in the School Lunch Program, and provides funding of $40 million in each of fiscal years 1995, 1996, and 1997 for the pilot program. Priority may be given to schools located in very rural areas, those which rarely offer three servings of fruits or vegetables per meal, or those which purchase a significant portion of their fruits and vegetables from farmers who are disadvantaged or operate small farms.

While the Government cannot force children to eat foods they do not like, providing increased choices to children should increase the likelihood that they find a fruit or vegetable they do like to eat.

The farm bill included the Organic Foods Production Act which defined the term organically produced agricultural products.

This bill provides $2 million per year for USDA to purchase or assist schools which want the assistance in purchasing organically produced agricultural products, such as fruits, vegetables, grains, emats, poultry, and dairy products. As interest in organic foods grow nationwide, many schools have expressed an interest in offering these items. The provision also provides a market for farmers who wish to employ organic methods.

The bill gives a priority to schools which purchase such products from farmers who are disadvantaged, located in very rural areas, or who operate small-scale farms. The bill also establishes an information clearinghouse to collect and provide to schools information on where to obtain organic products.

The Center for Science in the Public Interest noted that:

> Although the amount of money that the bill provides schools to purchase organic foods is modest, your bill is a step in the right direction toward implementing the USDA, EPA, and FDA's recent recommendations concerning farming with fewer pesticides. Moreover, it shows farmers and the public that there is a real market for food grown without synthetic chemicals.

To help schools meet the nutrition guidelines, the bill instructs the Secretary to improve the nutritional quality of entitlement commodities provided to schools. It also requires that nutritional information be provided to schools regarding such commodities. This will help school service personnel in preparing nutritious meals which include commodities.

The Center for Science in the Public Interest and Public Voice for Food and Health Policy has strongly supported such a labeling requirement.

The bill also establishes a national pilot program to provide schools with low-fat dairy products and lean meats. Provides funding for the purchase of $35 million in low-fat dairy products and $10 million in leaner meats for each of fiscal years 1995 through 1997, along with the $40 million a year worth of fruits and vegetables. This should help schools meet targets for fat content in school meals.

Title III also encourages milk consumption by expanding eligibility for participation in the Special Milk Program to elementary schools in which 60 percent or more of children in the School Lunch Program receive free or reduced price lunches, and to any schools that participate in the School Breakfast Program but not the School Lunch Program. This change will provide free milk to those children who bring bag lunches to school, as well as additional milk to those eating school lunches.

It promotes the consumption of low-fat milk by eliminating the whole milk

requirement for school lunch programs. This is based on a bill introduced by Senator LUGAR and allows schools to choose what types of milk to offer children. Under current law schools must offer both whole milk and low-fat milk.

Many schools would prefer to offer low-fat milk, helping to reduce fat intake among children. The choice should be theirs. For example, Marilyn Edwards, the president of the Vermont School Food Service Association, stated: "I strongly support the elimination of the whole milk requirement.* * *"

The bill also educates parents concerning the importance of nutrition for good health by funding parent-student education programs and programs to encourage parents to visit the school lunch program with their children. Educating parents will help them reinforce at home the nutrition lessons children learn at school.

The idea of inviting parents to participate in the lunch program was practiced at Barre Town Elementary School. The Chef Dale Conoscenti would encourage parents to have lunch with their children at school.

While Dale is now with Ben & Jerry's of Vermont he is advising individual schools in how to improve their meals programs. I am very pleased that Dale is still active in this area and that he continues to live in Montpelier, VT. He has his own company, Kids' Inc., which consults with schools and hospitals. Dale visits the lunch programs and examines their facilities and systems and recommends ways to make the lunch program healthier.

He is also going video with his message—he is working with Kulinary Kids on the production of a series of educational and instructional videos. These instructional videos could assist schools in improving their own lunch programs.

The bill also requires that the USDA menu cards be updated. Dale Conoscenti has felt for some time that these cards are out of date. Dale has also urged that the commodities supplied by USDA should have nutritional content labels and should be low in fat and sodium.

In order to assess the success of these initiatives, the bill also requires the USDA to report in 3 years on the impact of increasing fruits and vegetables in the school lunch program; the means by which the USDA has encouraged the consumption of healthy low fat, reduced fat, low sodium, and high fiber foods; and the steps that have been taken to reduce the fat, sodium, or sugar content of commodities donated to schools.

The bill also focuses on the Summer Food Service Program. Many of the provisions in this section are based on advice from Julie Staub who is executive director of the Vermont Campaign to End Childhood Hunger.

Her assistance has been invaluable in terms of making improvements in this Summer Food Program. The bill expands the program so that more low-income children who get school lunch and breakfast can receive meals in the summertime.

Summer food service participation is very low compared to participation in the School Lunch Program. Nationwide only 15 percent of the targeted population is being reached by this program. Barriers to participation include initial start-up costs and the cost of bussing children to summer food sites in very rural areas.

Mike Haga of the Food Research and Action Center and Julie Staub have been very helpful in providing specific legislative ideas on the summer food service program.

This section broadens the eligibility for participation in the Summer Food Service Program by lowering the standard for an area in which poor economic conditions exist from one in which 50 percent of the children live below 185 percent of the poverty level to 40 percent. Many poor children are currently denied the opportunity to receive summer meals because they do not live in large pockets of poverty.

It allow for increased participation by private nonprofit organizations in the summer food program by expanding limits on the number of sties they can operate and the number of children they can serve. It also permits them, with approval of the Secretary, to obtain meals from a vendor under the same terms and conditions as other service institutions. Increased participation by nonprofit organizations will help the summer food program reach more children, especially in areas which are currently underserved.

In order to help address the special problems of offering summer food programs in very rural areas, the bill increases reimbursement rates for the transportation costs of busing children to and from schools to eat in those areas. Summer Food Service Program participation is currently very low in these areas because of the added transportation costs. I know that in Vermont participation is very low—but this bill should greatly help.

The bill provides at least $2 million per year in Federal funding for grants to help States defray the costs of setting up additional Summer Food Service Program sites. Similar start-up grants have been highly successful in promoting expansion of the School Breakfast Program. Priority will be given to States with the lowest current participation and the greatest need. In a October 26, 1993, letter Marilyn Edwards of the Vermont School Food Service Association pointed out her support for provisions covering the start-up and transportation costs for summer food service programs.

Sections 312 and 313 of the Better Nutrition and Health for Children Act focus on reaching needy children in child care and after-school programs. Department of Agriculture programs provide meals and snacks to children while they are in child care—including Head Start—or after school programs, supplementing the nutrition they receive the rest of the day.

The bill expands participation in the Child and Adult Care Food Program by allowing for-profit centers to be eligible if 25 percent or more of the children they serve meet the guidelines for free- or reduced-price school meals. This would expand a very successful two-State pilot project—now in Iowa and Kentucky—to all 50 States. This expansion is support by both the chair and ranking minority member of the Nutrition and Investigations Subcommittee.

The bill also improves the implementation of the Child and Adult Care Food Program start-up and expansion funds to promote such programs in rural and low-income areas, and permits the use of CACFP expansion funds to conduct outreach to unlicensed day care homes and to enable the day care homes to become licensed and to participate in the program. This will help expand the program precisely in those areas where it is most needed.

The bill improves coordination among programs serving the same populations by requiring center based Child and Adult Care Food Program sponsors to inform parents of low-income children enrolled in their program that they may be eligible for Medicaid and WIC coverage. Children participating in this program are most likely eligible for those other Federal benefits as well.

And it allows children in after-school care to be automatically eligible for free or reduced price meal supplements if they are certified as eligible for free or reduced price meals. Those children necessarily meet CACFP eligibility guidelines, so this provision reduces the duplication of paperwork and removes a possible barrier to participation.

The bill addresses the situation of pre-school age children living in homeless shelters. GAO reports that 25,000 children under age 6 live in homeless shelters. These children are at nutritional risk and often go hungry while their older brothers eat in school. The homeless preschool projects feed them meals that the USDA reports are "more balanced, more nutritious, and more frequently included fresh fruit, milk, vegetables and full-strength juices" than they would otherwise receive.

This bill will expand the homeless preschool projects which are currently just demonstration projects funded from leftover administrative expense funds not used by States. The legislation provides a stable source of guaranteed funding in the amounts of $4 million in 1995, $5 million in 1996, $8 million in 1997, and $10 million in 1998. And

it requires the Secretary to report on how the program can be further expanded to serve more eligible children.

I must commend the Archdiocese of Philadelphia and the Nutritional Development Services for the way in which they have implemented the homeless demonstration projects in Philadelphia. They have truly set the right model for the rest of the Nation.

I want to especially thank two people who have played a major role in the success of these programs that feed homeless children: Patrick Temple-West, director of Nutritional Development Services, and Bonnie Baehr, assistant director for operations. Their dedication and hard work have been remarkable.

My staff has twice conducted on-site reviews of the program in Philadelphia and has reported back that it is operating extremely well.

I am looking at additional ways to eventually reach all homeless children with this program. One possibility is to integrate the homeless preschool project into the existing Child and Adult Care Food Program. This idea will be carefully reviewed during the upcoming hearing process.

Another project that has worked extremely well in Philadelphia is that alternate counting and certification projects. These programs provide universal meals at no charge and do so without additional Federal funding.

These programs greatly reduce paperwork and increase school lunch participation. My staff visited the Strawberry Mansion High School in Philadelphia and was quite impressed with how well these alternatives were working. My staff met with Pat Birkenshaw and Jane Thorne of the Pennsylvania Department of Education, and with acting principal Karen Del Guercio and with Tom McGlinchy, the food service director. It is my intention to keep these projects running.

The Better Nutrition and Health for Children Act also aims to improve understanding of proper nutrition among children and to train parents and school staff in child nutrition. Child nutrition programs should not only provide nutritious meals to kids when they are in school, but should also teach them about good nutrition. Nutrition education will assist them in making positive choices about what they eat both in and out of school so they will grow into healthy adults.

The bill provides grants to State educational agencies and local schools through the Nutrition Education and Training [NET] program, including programs which: First, include a nutrition component in the health education curriculum offered kindergarten–12th grade; second, instruct teachers and other school staff on how to promote better nutritional health and motivate children to practice sound eating habits; third, develop ways to provide education and children and their families through after-school programs; fourth, provide training in relation to healthy and nutritious meals; fifth, create instructional programming for teachers, school food service personnel, and parents on the relationships between nutrition and health and the role of the food guide pyramid; sixth, fund aspects of the Strategic Plan for Nutrition Education release by the Department of Agriculture; and seventh, encourage public service advertisements to promote healthy eating habits for children.

It requires the Secretary to develop and make available public service advertisements to promote healthy eating habits for children.

And the bill also instructs the Food Service Management Institute and other institutions to train food service personnel to comply with the USDA's nutrition guidance, and assists state education departments in providing additional nutrition and health instruction and instructors.

In addition, the bill requires the USDA to revise its published menu planning guides to include guidance regarding the consumption of fat and saturated fat.

Finally, the bill looks ahead to the future of nutrition education. It provides for competitive grants of between $100,000 and $300,000 per year through 1998 in three States to non-profit educational organizations to create and demonstrate food and nutrition projects which are fully integrated with elementary school curricula.

The selected nonprofits will assist in teaching sustainable agricultural practices and ecology through practical applications, such as gardening. These programs will teach children the interaction between the environment, agriculture, and good nutrition.

These demonstrations like the Common roots projects in Vermont can provide models for teaching nutrition education in the future. I would like to thank Jack Peduzzi and Joseph Keifer of the Vermont Food Works for their ideas in this area.

The bill also makes administrative improvements so child nutrition programs work better. These changes will help reduce paperwork, improve program management, and facilitate access for eligible low-income children.

The bill increases minimum funding for State administrative expenses related to child nutrition programs from $100,000 to $175,000. The current minimum, which is received by small States, is inadequate for program administration.

The bill also calls for USDA to conduct a pilot project in at least 25 school districts to test the acceptability of milk—whole, lowfat, and skim—which contains additional calcium and protein. The Healthy People 2000 recommendations of the Secretary of Health and Human Services, the Surgeon General's Report on Nutrition and Health, and the National Academy of Sciences Report on Diet and Health stress the importance of calcium. A report would be required in 2 years and the pilots would terminate in 3 years so that Congress could then use the information in working on the next reauthorization of child nutrition programs.

The bill ensures the privacy of information on a child's eligibility for free or reduced price school meals, while permitting the use of such information to demonstrate eligibility for other means-tested government programs. This will help reduce duplication of paperwork when a child applies for participation in several programs with similar eligibility standards.

It also allows children enrolled in Head Start to be considered automatically eligible for a free lunch and breakfast. This eliminates duplication of paperwork, since children who are eligible for Head Start necessarily meet the income guidelines for free school meals.

The bill establishes a single rate for operational and administrative costs in payments to service institutions participating in the Summer Food Service Program, with a maximum of 12 percent of total reimbursement to be spent on administration, and adjusts payments annually in accordance with changes in the Consumer Price Index.

The bill permits children participating in the summer food program which has on-site food preparation to refuse one food item that they do not intend to consume without lowering Federal reimbursement levels. This will reduce food waste and is similar to provisions in the School Lunch Program.

In addition, it requires the Secretary to submit a report analyzing the coordinated review system established under the School Lunch Act, its advantages and disadvantages, and its cost to schools.

I also wish to mention that I look forward to working with the American Commodity Distribution Association and their president, Katherine Miller, in terms of reauthorization issues. I will be carefully reviewing their recommendations during this process and would like to note that it already includes several of their proposals.

Finally, the Better Nutrition and Health for Children Act addresses anticompetitive activities in order to prevent price-gouging and bid-rigging in child nutrition programs, including school lunch and breakfast and WIC.

During the past several years, the Antitrust Division of the U.S. Department of Justice has filed over 100 criminal cases against persons and companies accused of bid-rigging, price-fixing, and similar activities involving dairy products sold to schools of the Department of Defense. As of

March 1992, the Secretary of Agriculture had neither suspended nor debarred any of the 13 dairy companies of 28 individuals convicted of milk-contract bid-rigging from participating in the school lunch or breakfast programs.

Effective educational and monitoring programs can greatly reduce the incidence of price-fixing and bid-rigging by companies that sell products to schools. Reducing the incidence of these anticompetitive activities could save school districts, parents, and taxpayers millions of dollars per year.

For these reasons, title IV of the bill provides training and technical assistance to States and local agencies in identifying and preventing anti-competitive activities in conjunction with child nutrition programs, and instructs the Secretary to cooperate with the Attorney General and State attorneys general regarding investigations of anticompetitive activities in conjunction with these programs.

It establishes guidelines and a timetable for the Secretary to consider debarment of contractors for committing various criminal or civil offenses, and establishes mandatory child nutrition program debarment periods.

Last, title IV provides grants totaling $4 million per year to States to assist in prevention and control of anti-competitive activities relating to child nutrition programs. This investment in prevention of fraud will save more taxpayer dollars in the future.

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

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

S. 1614

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 "Better Nutrition and Health for Children Act of 1993".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
TITLE I—SPECIAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN
Sec. 101. Full funding for WIC.
Sec. 102. WIC breastfeeding promotion.
Sec. 103. Expansion of WIC farmers' market program.
Sec. 104. Technical amendments.
TITLE II—SCHOOL BREAKFAST AND RELATED PROGRAMS
Sec. 201. Providing milk to low-income children.
Sec. 202. Elimination of cost basis for severe need reimbursement.
Sec. 203. Low-fat yogurt as an allowable choice.
Sec. 204. Promotion of school breakfast program.
Sec. 205. Startup costs for school breakfast program.
Sec. 206. Expansion of school breakfast programs.
Sec. 207. State administrative expenses.
Sec. 208. Clarification of authority to ban junk foods.
Sec. 209. Nutrition education and training program.
TITLE III—SCHOOL LUNCH AND RELATED PROGRAMS
Sec. 301. Elimination of whole milk requirement.
Sec. 302. Low-fat yogurt as an allowable choice.
Sec. 303. Reports on increasing consumption of healthy foods in school lunches.
Sec. 304. Information to parents concerning importance of nutrition.
Sec. 305. Income guidelines for free lunches served to elementary school students.
Sec. 306. School flexibility.
Sec. 307. Automatic eligibility of Head Start participants.
Sec. 308. Special assistance payments.
Sec. 309. Promotion of healthy eating habits for children.
Sec. 310. Organic foods.
Sec. 311. Food and nutrition projects.
Sec. 312. Summer food service program for children.
Sec. 313. Commodity distribution program.
Sec. 314. Child and adult care food program.
Sec. 315. Meal supplements for children in afterschool care.
Sec. 316. Demonstration projects to improve food service for homeless children.
Sec. 317. Pilot program to increase offerings of fruits and vegetables.
Sec. 318. Pilot program to increase consumption of low-fat dairy products and lean meats.
Sec. 319. Pilot projects for fortified fluid milk; information on fortified milk.
Sec. 320. Food service management institute and other institutions.
Sec. 321. Compliance and accountability.
Sec. 322. Nutrition guidance for child nutrition programs.
Sec. 323. Information clearinghouse.
TITLE IV—PROGRAM INTEGRITY
Sec. 401. Findings.
Sec. 402. Duties of the Secretary relating to anticompetitive activities.
Sec. 403. Prevention and control of anti-competitive activities.
TITLE V—EFFECTIVE DATES
Sec. 501. Effective dates.

TITLE I—SPECIAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

SEC. 101. FULL FUNDING FOR WIC.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in the second sentence of subsection (a)—

(A) by striking "authorized" and inserting "established"; and

(B) by striking ", up to the authorization levels set forth in subsection (g) of this section,";

(2) in subsection (c)—

(A) in the first sentence of paragraph (1), by striking "may" and inserting "shall"; and

(B) in paragraph (2), by striking "appropriated" and inserting "made available";

(3) in subsection (g)—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1)(A) There are authorized to be—

"(i) appropriated to carry out this section such amounts as are necessary for each of fiscal years 1995 through 2000; and

"(ii) made available such amounts as are necessary for the Secretary of the Treasury to fulfill the requirements of subparagraph (B).

"(B)(i) For each of fiscal years 1996 through 2000, the Secretary of the Treasury shall credit to a special fund of the Treasury an amount equal to—

"(I) $254,000,000 for fiscal year 1996;

"(II) $407,000,000 for fiscal year 1997;

"(III) $384,000,000 for fiscal year 1998;

"(IV) $398,000,000 for fiscal year 1999; and

"(V) $411,000,000 for fiscal year 2000.

"(ii) Amounts in the fund—

"(I) shall be available only for the program authorized under this section, exclusive of activities authorized under subsection (m); and

"(II) shall be paid to the Secretary to carry out subclause (I).

"(iii) For a fiscal year specified in clause (i), the amount credited to the fund for the fiscal year shall be available for use in the program only if appropriations Acts for the fiscal year, without the addition of amounts provided under clause (i) for the fund, provide new budget authority for the program of no less than—

"(I) $3,660,000,000 for fiscal year 1996;

"(II) $3,759,000,000 for fiscal year 1997;

"(III) $3,861,000,000 for fiscal year 1998;

"(IV) $3,996,000,000 for fiscal year 1999; and

"(V) $4,126,000,000 for fiscal year 2000.

"(C) As authorized by section 3 of the National School Lunch Act (42 U.S.C. 1752), funds made available to carry out this section shall remain available until expended.";

(B) in the first sentence of paragraph (4), by striking "appropriated" and inserting "made available"; and

(C) in paragraph (5), by striking "appropriated" and inserting "made available";

(4) in subsection (h)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "appropriated" both places it appears and inserting "made available"; and

(ii) in subparagraph (C), by striking "appropriated" both places it appears and inserting "made available"; and

(B) in the first sentence of paragraph (2)(A), by striking "1990, 1991, 1992, 1993 and 1994" and inserting "1990 through 2000"; and

(5) in subsection (l), by striking "funds appropriated" and inserting "funds made available".

SEC. 102. WIC BREASTFEEDING PROMOTION.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in subsection (d)(4)—

(A) by striking "and" at the end of subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following new subparagraph:

"(C) the rate of breastfeeding among postpartum women participating in the program, and expenditures for breastfeeding promotion; and"; and

(2) in subsection (h)(3)(A)—

(A) in clause (i)(II), by striking "$8,000,000" and inserting "$16,000,000"; and

(B) in clause (ii), by inserting after "support activities" the following: "(including the purchase of breast pumps)".

SEC. 103. EXPANSION OF WIC FARMERS' MARKET PROGRAM.

(a) IN GENERAL.—Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)) is amended—

(1) in paragraph (3), by striking "30 percent" and inserting "25 percent";

(2) in paragraph (5)(C)(ii), by inserting before the period at the end the following: ",

except that the Secretary, at the request of the State agency, may increase the amount under unusual circumstances such as a natural disaster";

(3) in paragraph (5)(F)—

(A) in clause (i), by striking "15 percent" and inserting "17 percent";

(B) in clause (ii), by striking "2 percent" each place it appears and inserting "3 percent";

(C) by redesignating clause (iii) as clause (iv); and

(D) by inserting after clause (ii) the following new clause:

"(iii) During any fiscal year for which a State receives assistance under this subsection, the Secretary shall permit the State to use 3 percent of total program funds for market development (including the establishment of additional farmers' markets and the improvement and expansion of participating markets) if the Secretary determines that the State intends to promote—

"(I) the development of farmers' markets in socially or economically disadvantaged areas where residents have limited access to locally grown fruits and vegetables; or

"(II) the participation of—

"(aa) socially disadvantaged farmers (as defined in section 2501(e)(2) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)(2)));

"(bb) farmers located in very rural areas (as defined by the Secretary); or

"(cc) farmers who own or operate small-scale or limited-resource farms (as defined by the Secretary).";

(4) in paragraph (10)(A), by striking "and $8,000,000 for fiscal year 1994" and inserting "$8,000,000 for fiscal year 1994, $10,500,000 for fiscal year 1995, $12,500,000 for fiscal year 1996, $15,000,000 for fiscal year 1997, and $18,000,000 for fiscal year 1998"; and

(5) in paragraph (11)(D), by inserting before the period at the end the following: "or any other agency approved by the chief executive officer of the State".

(b) PROMOTION BY THE SECRETARY.—The Secretary of Agriculture shall promote the use of farmers' markets by recipients of Federal nutrition programs administered by the Secretary and shall annually report to the appropriate committees of Congress on the efforts of the Secretary to carry out this subsection.

SEC. 104. TECHNICAL AMENDMENTS.

(a) CARRYOVER FUNDS.—Section 17(1)(3)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(1)(3)(A)) is amended by striking "1 percent" each place it appears in clauses (i) and (ii) and inserting "3 percent".

(b) CHANGE OF NAME OF WIC PROGRAM.—

(1) IN GENERAL.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(A) by striking the section heading and inserting the following new section heading:

"SPECIAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN";

(B) in the first sentence of subsection (c)(1), by striking "special supplemental food program" and inserting "special nutrition program";

(C) in the second sentence of subsection (k)(1), by striking "special supplemental food program" each place it appears and inserting "special nutrition program"; and

(D) in subsection (o)(1)(B), by striking "special supplemental food program" and inserting "special nutrition program".

(2) CONFORMING AMENDMENTS.—

(A) The second sentence of section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) is amended by striking "special supplemental food program for women, infants and children" and inserting "special nutrition program for women, infants, and children".

(B) Section 685(b)(8) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a(b)(8)) is amended by striking "Special Supplemental Food Program for Women, Infants and Children" and inserting "special nutrition program for women, infants, and children".

(C) Section 3803(c)(2)(C)(x) of title 31, United States Code, is amended by striking "special supplemental food program" and inserting "special nutrition program".

(D) Section 399(b)(6) of the Public Health Service Act (42 U.S.C. 280c-6(b)(6)) is amended by striking "special supplemental food program" and inserting "special nutrition program".

(E) Paragraphs (11)(C) and (53)(A) of section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) are each amended by striking "special supplemental food program" and inserting "special nutrition program".

(F) Section 202 of the Children's Nutrition Assistance Act of 1992 (Public Law 102-512; 42 U.S.C. 1786 note) is amended by striking "special supplemental food program" each place it appears and inserting "special nutrition program".

TITLE II—SCHOOL BREAKFAST AND RELATED PROGRAMS

SEC. 201. PROVIDING MILK TO LOW-INCOME CHILDREN.

Section 3(a)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(2)) is amended—

(1) by inserting "(A)" after "shall not apply to";

(2) by striking "kindergarten"; and

(3) by inserting before the period at the end the following: ", (B) elementary schools in which at least 60 percent of the children participating in the school lunch program authorized under the National School Lunch Act (42 U.S.C. 1751 et seq.) are eligible for free or reduced price lunches, or (C) schools that do not participate in the school lunch program but that participate in the school breakfast program authorized under this Act".

SEC. 202. ELIMINATION OF COST BASIS FOR SEVERE NEED REIMBURSEMENT.

Section 4(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(d)) is amended—

(1) in paragraph (1)(B), by striking ", and in which" and all that follows through "program"; and

(2) by striking paragraph (2) and inserting the following new paragraph:

"(2) If at least 40 percent of the students at a school who participate in the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) are eligible to receive meals at free or reduced prices, the school shall be entitled to receive the meal reimbursement rate specified in subsection (b)(2).".

SEC. 203. LOW-FAT YOGURT AS AN ALLOWABLE CHOICE.

Section 4(e)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)) is amended by adding at the end the following new sentences: "The Secretary shall permit schools to offer low-fat yogurt as an alternative for eggs, meats, or other meat alternatives in the school breakfast program. The Secretary may require that the yogurt be enriched with proteins or other nutrients.".

SEC. 204. PROMOTION OF SCHOOL BREAKFAST PROGRAM.

Section 4(f)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(f)(1)) is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end the following new subparagraph:

"(B) In cooperation with State educational agencies, the Secretary shall establish a program to promote the school breakfast program by—

"(i) marketing the program in a manner that expands participation in the program by schools and students; and

"(ii) improving public education and outreach efforts that enhance the public image of the program.".

SEC. 205. STARTUP COSTS FOR SCHOOL BREAKFAST PROGRAM.

Section 4(g)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(g)(1)) is amended—

(1) in the first sentence, by striking "and $5,000,000 for each of the fiscal years 1991, 1992, 1993, and 1994," and inserting ", $5,000,000 for each of fiscal years 1991 through 1994, and $9,000,000 for each of fiscal years 1995 through 1998,"; and

(2) by inserting after the first sentence the following new sentence: "Of the amounts made available under the preceding sentence for fiscal years 1995 through 1998, not more than $3,000,000 shall be used to carry out the expansion program authorized by subsection (i) for each of fiscal years 1995 and 1996, and not more than $4,000,000 shall be used to carry out the expansion program for each of fiscal years 1997 and 1998.".

SEC. 206. EXPANSION OF SCHOOL BREAKFAST PROGRAMS.

Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) is amended by adding at the end the following new subsection:

"EXPANSION OF PROGRAMS

"(h)(1) With funds made available to carry out this subsection under subsection (g)(1), the Secretary shall make payments on a competitive basis to State educational agencies in a substantial number of States for distribution to eligible schools to assist the schools with expenses incurred in expanding a school breakfast program established under this section. Payments received under this subsection shall be in addition to payments to which State educational agencies are entitled under subsection (b).

"(2) In making payments under this subsection in any fiscal year, the Secretary shall provide a preference to State educational agencies that submit to the Secretary—

"(A) a plan to expand school breakfast programs conducted in the State, including a description of—

"(i) the manner in which the agency will provide technical assistance and funding to schools in the State to expand the programs; or

"(ii) significant public or private resources that have been assembled to carry out the expansion of the programs during the year; or

"(B) documentation of the need for—

"(i) equipment, including the purchase, replacement, or upgrading of equipment associated with expanding the school breakfast program; or

"(ii) other needs, including a need for temporary personnel, or funds to defray administrative or other costs associated with expanding the school breakfast program.

"(3) Subparagraphs (B) and (C) of subsection (g)(2), and paragraphs (3) through (5) of subsection (g), shall apply to payments made under this subsection.".

SEC. 207. STATE ADMINISTRATIVE EXPENSES.

Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended—

(1) in subsection (a)(2)—

(A) in the first sentence, by inserting after "1 percent" the following: "plus $780,000,"; and

(B) in the second sentence, by striking "September 30, 1981, or $100,000" and inserting "September 30, 1993, or $175,000"; and

(2) by striking subsection (h) and inserting the following new subsection:

"(h)(1) In addition to the funds allocated pursuant to the other provisions of this section, the Secretary shall make available to each State, for administrative costs incurred for any fiscal year in connection with the distribution of commodities, an amount equal to not less than 1 percent, and not more than 1½ percent, of the value of the commodities distributed by the Secretary to each State pursuant to this Act and the National School Lunch Act (42 U.S.C. 1751 et seq).

"(2) The allocation required under this subsection shall be made to the State agency responsible for the distribution of commodities authorized under this Act and the National School Lunch Act.".

SEC. 208. CLARIFICATION OF AUTHORITY TO BAN JUNK FOODS.

Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) is amended—

(1) by designating the first, second, and third sentences as subsections (a), (b), and (c), respectively;

(2) in subsection (b) (as so designated)—

(A) by striking "Such regulations" and inserting "(1) Except as provided in paragraph (2), the regulations"; and

(B) by adding at the end the following new paragraphs:

"(2) The regulations shall authorize State agencies and school food authorities to establish rules and policies that are more stringent than the minimum requirements imposed by the Secretary, including prohibiting or controlling the sale of any competitive foods throughout the school campus at any time during the school day.

"(3) The Secretary shall develop and recommend to each State agency and school food authority model language that bans the sale of competitive foods of minimal nutritional value anywhere on school grounds before the end of the last lunch period.".

SEC. 209. NUTRITION EDUCATION AND TRAINING PROGRAM.

(a) USE OF FUNDS.—Section 19(f)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(f)(1)) is amended—

(1) by striking "for (A) employing" and inserting "for—

"(A) employing";

(2) by indenting the margins of each of subparagraphs (B) through (I) so as to align with the margin of subparagraph (A) (as amended by paragraph (1));

(3) by striking "and" at the end of subparagraph (H);

(4) by redesignating subparagraph (I) as subparagraph (Q); and

(5) by inserting after subparagraph (H) the following new subparagraphs:

"(I) providing funding for a nutrition component in the health education curriculum offered to children in kindergarten through grade 12;

"(J) instructing teachers, school administrators, or other school staff on how to promote better nutritional health and to motivate children to practice sound eating habits;

"(K) developing means of providing nutrition education to children and families of children through after-school programs;

"(L) training in relation to healthy and nutritious meals;

"(M) creating instructional programming for teachers, school food service personnel, and parents on the relationships between nutrition and health and the role of the food guide pyramid established by the Secretary;

"(N) funding aspects of the Strategic Plan for Nutrition and Education issued by the Secretary;

"(O) increasing evaluation efforts at the State level regarding needs assessment for nutrition education efforts;

"(P) encouraging public service advertisements to promote healthy eating habits for children; and".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 19(i)(2)(A) of such Act is amended—

(1) by striking "and" at the end of clause (iii);

(2) by striking the period at the end of clause (iv) and inserting "; and"; and

(3) by adding at the end the following new clause:

"(v) $30,000,000 for each of fiscal years 1995 through 1998.".

TITLE III—SCHOOL LUNCH AND RELATED PROGRAMS

SEC. 301. ELIMINATION OF WHOLE MILK REQUIREMENT.

Section 9(a)(2) of the National School Lunch Act (42 U.S.C. 1758(a)(2)) is amended by striking "fluid whole milk and fluid unflavored lowfat milk" and inserting "fluid milk".

SEC. 302. LOW-FAT YOGURT AS AN ALLOWABLE CHOICE.

Section 9(a)(2) of the National School Lunch Act (42 U.S.C. 1758(a)(2)) is amended by adding at the end the following new sentences: "The Secretary shall permit schools to offer low-fat yogurt as an alternative for meats, eggs, cooked dry beans or peas, peanut butter, or other meat alternatives in the school lunch program. The Secretary may require that the yogurt be enriched with proteins or other nutrients.".

SEC. 303. REPORTS ON INCREASING CONSUMPTION OF HEALTHY FOODS IN SCHOOL LUNCHES.

Not later than 3 years after the date of enactment of this Act, the Secretary of Agriculture shall submit to the appropriate committees of Congress—

(1) a report on the impact on the nutritional health of children of increasing the number of servings of fruits and vegetables offered or served in lunches served by schools participating in the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) from 2 to 3 servings per lunch, including—

(A) a summary of school food practices regarding offerings of fruits and vegetables during lunch; and

(B) a description of the desirability of providing an additional Federal reimbursement as an incentive to encourage schools to offer or serve 3 or more fruits or vegetables per lunch;

(2) a report on means by which the Secretary has encouraged students participating in the school lunch program to increase consumption of—

(A) fresh fruits and vegetables;

(B) fiber-rich, low-sodium, whole grains, breads, and pastas;

(C) low-fat, low-sodium soups and stews;

(D) low-fat yogurt, cheeses, and other dairy products;

(E) reduced-fat or leaner meats;

(F) low-fat salad dressings; and

(G) other similar low-fat, reduced-fat, low-sodium, or high-fiber foods; and

(3) a report on the actions the Secretary has taken—

(A) to reduce the fat, saturated fat, sodium, or sugar content of the bonus and entitlement commodities the Secretary donates to schools; and

(B) to carry out paragraph (2) of section 14(b) of the National School Lunch Act (42 U.S.C. 1762a(b)) (as added by section 313(2)(B)).

SEC. 304. INFORMATION TO PARENTS CONCERNING IMPORTANCE OF NUTRITION.

Section 9(a) of the National School Lunch Act (42 U.S.C. 1758(a)) is amended by adding at the end the following new paragraph:

"(5)(A) The Secretary shall carry out a program to assist States through grants-in-aid and other means to provide information to parents concerning the importance of nutrition for good health by carrying out parent-student education programs and programs to encourage parents to visit schools with their children to see the operation of the school lunch program established under this Act and the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

"(B) There are authorized to be appropriated to carry out subparagraph (A) $2,000,000 for each fiscal year.".

SEC. 305. INCOME GUIDELINES FOR FREE LUNCHES SERVED TO ELEMENTARY SCHOOL STUDENTS.

The second sentence of section 9(b)(1)(A) of the National School Lunch Act (42 U.S.C. 1758(b)(1)(A)) is amended by inserting after "130 percent" the following: "(or, in the case of a student attending an elementary school, 185 percent)".

SEC. 306. SCHOOL FLEXIBILITY.

Section 9(b)(5) of the National School Lunch Act (42 U.S.C. 1758(b)(5)) is amended by adding at the end the following new sentences: "A State agency or local school food authority shall use information concerning the eligibility of a child for free or reduced price meals for the purpose of determining the eligibility of the child for free or reduced price meals. A State agency or local school food authority may use a determination of the eligibility of a child for free or reduced price meals to demonstrate the eligibility of the child for benefits under other Federal, State, or local means-tested programs.".

SEC. 307. AUTOMATIC ELIGIBILITY OF HEAD START PARTICIPANTS.

Section 9(b)(6) of the National School Lunch Act (42 U.S.C. 1758(b)(6)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking "a member of";

(B) in clause (i)—

(i) by inserting "a member of" after "(I)"; and

(ii) by striking "or" at the end of the clause;

(C) in clause (ii)—

(i) by inserting "a member of" after "(ii)"; and

(ii) by striking the period at the end of the clause and inserting "; or"; and

(D) by adding at the end the following new clause:

"(iii) enrolled as a participant in the Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.).".; and

(2) in subparagraph (B), by striking "food stamps or aid to families with dependent children" and inserting "food stamps, aid to families with dependent children, or enrollment or participation in the Head Start program".

SEC. 308. SPECIAL ASSISTANCE PAYMENTS.

Section 11(a)(1) of the National School Lunch Act (42 U.S.C. 1759a(a)(1)) is amended by striking "lunches" each place it appears in the third and fourth sentences and inserting "meals".

SEC. 309. PROMOTION OF HEALTHY EATING HABITS FOR CHILDREN.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end the following new subsection:

"(j) The Secretary shall develop, and make available to the public, public service advertisements that promote healthy eating habits for children.".

SEC. 310. ORGANIC FOODS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) (as amended by section 309) is further amended by adding at the end the following new subsection:

"(k)(1) The Secretary shall advise State educational agencies and schools participating in the school lunch program about the increased opportunities offered by the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.), and by programs established under this subsection, for schools to obtain organically produced agricultural products (as defined in section 2103 of such Act (7 U.S.C. 6502)) (referred to in this subsection as 'organically produced agricultural products') such as meats, poultry products, fruits, products made from grains, dairy products, and vegetables that are organically produced.

"(2) The Secretary shall—

"(A) establish an information clearinghouse to provide information on where to obtain organically produced agricultural products;

"(B) collect, obtain, or develop information regarding the availability of organically produced agricultural products; and

"(C) provide the information, or make the information readily available, to State educational agencies and schools participating in the school lunch program established under this Act or the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

"(3) Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary $2,000,000 for each of fiscal years 1995 through 1997. The Secretary shall be entitled to receive the funds and shall accept the funds.

"(4)(A) The Secretary shall use the funds provided under paragraph (3) to provide to States and schools participating in the school lunch program authorized under this Act or the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773)—

"(i) organically produced agricultural products purchased by the Secretary; or

"(ii) incentive awards or other payments in such amounts as the Secretary determines appropriate to encourage the purchase of organically produced agricultural products by schools that agree to purchase significant quantities of the products.

"(B) In carrying out subparagraph (A)(ii), the Secretary may provide—

"(i) payments to schools to assist in covering the price differential between products that are not organically produced agricultural products and organically produced agricultural products;

"(ii) incentive awards to schools that agree to purchase significant quantities (as determined by the Secretary) of organically produced agricultural products during the school year; or

"(iii) other types of payments to schools to promote the use of organically produced agricultural products by school lunch and breakfast programs.

"(5) The Secretary shall report to the appropriate committees of Congress on the numbers of schools affected by the program established under this subsection and on the effectiveness of the program in encouraging the purchase of organically produced agricultural products by schools.

"(6) The Secretary may provide a priority for receiving funds under this subsection to schools that purchase organically produced products from—

"(A) socially disadvantaged farmers or ranchers (as defined in section 2501(e)(2) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)(2)));

"(B) farmers or ranchers located in very rural areas (as defined by the Secretary); or

"(C) farmers or ranchers who own or operate small-scale or limited-resource farms or ranches (as defined by the Secretary).".

SEC. 311. FOOD AND NUTRITION PROJECTS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) (as amended by section 310) is further amended by adding at the end the following new subsection:

"(l)(1) The Secretary shall award on an annual basis grants to private nonprofit educational organizations in 3 States to create and demonstrate food and nutrition projects that are fully integrated with elementary school curricula.

"(2) Each private nonprofit organization referred to in paragraph (1) shall be selected by the Secretary and shall—

"(A) assist local schools and educators in teaching food and nutrition education that integrates math, science, and verbal skills in the elementary grades;

"(B) assist local schools and educators in teaching sustainable agricultural practices and ecology through practical applications, like gardening;

"(C) assist in teaching the importance of community-based models to combat hunger;

"(D) create community service learning opportunities;

"(E) be experienced in assisting in the creation of curriculum-based models in elementary schools;

"(F) be sponsored by an organization, or be an organization, that provides information concerning hunger and community involvement; and

"(G) be able to provide model curricula, examples, advice, and guidance to school, community groups, States, and local organizations regarding means of carrying out similar projects.

"(3) Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary for payment to each of the 3 private nonprofit educational organizations selected under this section not less than $100,000 nor more than $200,000 for each of fiscal years 1994 through 1998. The Secretary shall be entitled to receive the funds and shall accept the funds.

"(4) The Secretary shall establish fair and reasonable auditing procedures regarding the expenditure of funds under this subsection.".

SEC. 312. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

(a) DEFINITION OF AREAS IN WHICH POOR ECONOMIC CONDITIONS EXIST.—Section 13(a)(1)(C) of the National School Lunch Act (42 U.S.C. 1761(a)(1)(C)) is amended by striking "50 percent" and inserting "40 percent".

(b) PRIVATE NONPROFIT ORGANIZATIONS.—

(1) LIMITS ON SITES AND NUMBER OF CHILDREN SERVED.—Section 13(a)(7)(B) of such Act is amended by striking clause (i) and inserting the following new clause:

"(i) serve a total of not more than 3,000 children per day at not more than 20 sites, with not more than 500 children being served at any 1 site;".

(2) VENDORS; WAITING PERIOD.—Section 13(a)(7) of such Act is amended—

(A) in subparagraph (B)(ii), by inserting before the semicolon at the end the following: ", except as provided in subparagraph (C)"; and

(B) by striking subparagraph (C) and inserting the following new subparagraph:

"(C) A State may, with the approval of the Secretary, grant a waiver to a private nonprofit organization from the eligibility requirements of subparagraph (B)(ii) to permit the organization to obtain meals from a vendor under the same terms and conditions as other service institutions, if the State determines that other reasonable alternatives do not exist and that failure to grant a waiver will result in the lack of the establishment of a feeding site for children in the area.".

(c) SECOND HELPINGS.—Section 13(a) of such Act is amended by adding at the end the following new paragraph:

"(8) In carrying out this section, the Secretary shall issue regulations that provide an allowance for second helpings of up to 5 percent.".

(d) SINGLE RATE FOR OPERATIONAL AND ADMINISTRATIVE COSTS.—

(1) IN GENERAL.—Paragraph (1) of section 13(b) of such Act is amended to read as follows:

"(1)(A) Except as otherwise provided in this paragraph, payments to service institutions shall equal the full cost of food service operations, including the cost of obtaining, preparing, and serving food, and administrative costs.

"(B) Payments to an institution may not exceed—

"(i) $2.2375 for each lunch and supper served;

"(ii) $1.2425 for each breakfast served; and

"(iii) 58.75 cents for each meal supplement served.

"(C) The amounts specified in subparagraph (B) shall be adjusted on January 1, 1994, and each January 1 thereafter, to the nearest ¼ cent in accordance with the changes for the 12-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

"(D) Notwithstanding any other provision of this paragraph, reimbursement for administrative costs of a service institution shall not exceed 12 percent of the total reimbursement provided to the service institution under this paragraph.".

(2) CONFORMING AMENDMENTS.—Section 13(b) of such Act is amended—

(A) in paragraph (3), by striking the second sentence; and

(B) by striking paragraph (4).

(e) OFFER VS. SERVE OPTION.—Section 13(b)(2) of such Act is amended by adding at the end the following new sentences: "The Secretary shall issue regulations that allow schools that are service institutions and that prepare and serve meals on-site to permit children to refuse 1 food item that the children do not intend to consume without lowering the Federal reimbursement levels that are due under the program established by this section and be treated in the same manner as a service institution that serves meals under the program.".

(f) REIMBURSEMENT FOR TRANSPORTATION.—Section 13(b) of such Act (as amended by subsection (d)(2)(B)) is further amended by adding at the end the following new paragraph:

"(4)(A) The Secretary shall provide an additional reimbursement to each eligible service institution located in a very rural area (as defined by the Secretary) for the cost of

transporting each child to and from a feeding site for children who are brought to the site by the service institution or for whom transportation is arranged by the service institution.

"(B) Subject to subparagraph (C), the amount of reimbursement provided to a service institution under this paragraph may not exceed the lesser of—

"(i) 75 cents per day for each child transported to and from a feeding site; or

"(ii) the actual cost of transporting children to, and home from, a feeding site.

"(C) The amounts specified in subparagraph (B) shall be adjusted in accordance with paragraph (1)(C).".

(g) STARTUP COSTS.—Section 13 of such Act is amended—

(1) in subsection (g), by striking the second and third sentences;

(2) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(3) by inserting after subsection (f) the following new subsection:

"(g)(1) The Secretary shall make payments, totalling not less than $2,000,000 for each fiscal year, to States for distribution to service institutions in a substantial number of States to assist the institutions with nonrecurring expenses incurred in initiating the summer food service program. Payments received under this subsection shall be in addition to payments to which States are entitled under other provisions of this section and shall be used for increasing the number of feeding sites or the total meals served.

"(2) In making payments under this subsection for any fiscal year, the Secretary shall, to the maximum extent practicable, ensure a wide geographic distribution among the States receiving the payments.

"(3) In making payments under this subsection for any fiscal year, the Secretary shall provide a preference to States—

"(A)(i) in which the number of children participating in the program authorized by this section represents the lowest percentages of the number of children receiving free or reduced price meals under the national school lunch program; or

"(ii) that do not have a summer food service program available to a large number of low-income children in the State; and

"(B) that submit to the Secretary a plan to expand the programs conducted in the State, including a description of—

"(i) the manner in which the State will provide technical assistance to service institutions in the State to expand the programs; or

"(ii) significant public or private resources that have been assembled to carry out the expansion of the programs during the year.

"(4) Funds made available under this subsection that are not used by the State shall be available to the Secretary for distribution to the States during the following fiscal year, in accordance with procedures established by the Secretary.

"(5) The Secretary shall allow States to apply on an annual basis for assistance under this subsection.

"(6) In allocating funds within the State, each State shall give preference for assistance under this subsection to service institutions in areas that demonstrate the greatest need for the program or that are in areas in which poor economic conditions exist.

"(7) Each State shall ensure that—

"(A) service institutions receiving assistance under this subsection establish additional feeding sites that provide meal service to children in previously unserved areas; or

"(B) as a result of receiving the assistance, service institutions serve more meals than were served in the previous year.

"(8) Expenditures of funds from State and local sources for the maintenance of the program shall not be diminished as a result of payments received under this subsection.

"(9) Not later than January 1, 1996, the Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning the efforts of the Secretary and the States to increase the participation of service institutions in the program.

"(10) As used in this subsection, the term 'service institution' means a service institution (as defined in subsection (a)(1)(B)) that—

"(A) will serve children a significant percentage of whom are members of low-income families; and

"(B) agrees to operate the summer food service program established with the assistance provided under this subsection for a period of not less than 3 years.".

(h) AUTHORIZATION OF APPROPRIATIONS.—Section 13(r) of such Act is amended by striking "1994" and inserting "1998".

SEC. 313. COMMODITY DISTRIBUTION PROGRAM.

Section 14 of the National School Lunch Act (42 U.S.C. 1762a) is amended—

(1) in subsection (a), by striking "1994" and inserting "1998"; and

(2) in subsection (b)—

(A) by inserting "(1)" after "(b)"; and

(B) by adding at the end the following new paragraphs:

"(2) The Secretary shall improve the overall nutritional quality of entitlement commodities provided to schools to assist the schools in furthering the nutritional goals for meals established under section 24.

"(3) The Secretary shall—

"(A) require that nutritional content information labels be placed on packages or shipments of entitlement commodities provided to the schools; or

"(B) otherwise provide nutritional content information regarding the commodities provided to the schools.".

SEC. 314. CHILD AND ADULT CARE FOOD PROGRAM.

(a) DEFINITION OF INSTITUTION.—The second sentence of section 17(a) of the National School Lunch Act (42 U.S.C. 1766(a)) is amended by striking "for which it receives compensation from amounts granted to the States under title XX of the Social Security Act (but only if such organization receives compensation under such title for at least 25 percent of its enrolled children or 25 percent of its licensed capacity, whichever is less)" and inserting "if at least 25 percent of the children served by the organization meet the income eligibility criteria established under section 9(b) for free or reduced price meals".

(b) EXPANSION FUNDS.—Section 17(f)(3)(C) of such Act is amended—

(1) in the last sentence, by striking "two months" and inserting "6 months"; and

(2) by adding at the end the following new sentences: "Expansion funds may be used to conduct outreach to unlicensed day care homes to enable the day care homes to become licensed and to participate in the program established under this section. A sponsoring organization may receive expansion funds for no more than 50 day care homes.".

(c) EXTENSION.—Section 17(p)(5) of such Act is amended by striking "1994" and inserting "1998".

(d) MEDICAID AND WIC INFORMATION.—Section 17 of such Act is amended by adding at the end the following new subsection:

"(q)(1)(A) The Secretary shall provide materials concerning the medical assistance program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (referred to in this subsection as the 'medicaid program') to State agencies for use in carrying out the program established under this section.

"(B) The materials shall inform State agencies about the availability and importance of—

"(i) the medicaid program to children from low-income families, including a basic explanation of program benefits and national income standards; and

"(ii) the medicaid program components established for low-income elderly and disabled persons under subparagraphs (A)(ii)(X) and (E) of section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)), including a basic explanation of program benefits and national income standards.

"(C) The Secretary—

"(i) may request that the Secretary of Health and Human Services assist in the preparation of the materials; and

"(ii) shall submit the materials to the Secretary of Health and Human Services for comment prior to submitting the materials to State agencies.

"(2) The Secretary shall also provide State agencies with basic information concerning the importance and benefits of the special nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

"(3) The State agency shall—

"(A) provide each child care institution participating in the program established under this section, other than institutions providing day care outside school hours for schoolchildren, with materials that include—

"(i) a basic explanation of the benefits and importance of—

"(I) health care coverage provided to young low-income children under the medicaid program; and

"(II) the special nutrition program for women, infants, and children;

"(ii) the maximum income limits, according to family size, applicable to children up to age 5 in the State under the medicaid program and under the special nutrition program for women, infants, and children; and

"(iii) a listing of the addresses and phone numbers of offices at which parents may apply;

"(B) provide each adult day care center participating in the program established under this section with materials that include—

"(i) a basic explanation of benefits provided under subparagraphs (A)(ii)(X) and (E) of section 1902(a)(10) of the Social Security Act;

"(ii) information on the income limits for the benefits by household size; and

"(iii) a listing of addresses and phone numbers of offices at which low-income elderly and disabled persons may apply for the benefits;

"(C) annually provide the institutions with an update of the information on income limits described in subparagraphs (A)(ii) and (B)(ii);

"(D) ensure that, at least once a year, the institutions to which subparagraph (A) applies provide written information to parents that includes—

"(i) basic information on the benefits provided under the medicaid program and the special nutrition program for women, infants, and children;

"(ii) information on the maximum income limits, according to family size, applicable to each program; and

"(iii) information on where parents may apply to participate in each program; and

"(E) ensure that, at least once a year, adult day care centers provide written information to program participants that provides—

"(i) basic information on the benefits provided under subparagraphs (A)(ii)(X) and (E) of section 1902(a)(10) of the Social Security Act;

"(ii) information on the income limits, by household size, applicable to the benefits; and

"(iii) information on where low-income and disabled persons may apply for the benefits.".

SEC. 315. MEAL SUPPLEMENTS FOR CHILDREN IN AFTERSCHOOL CARE.

Section 17A of the National School Lunch Act (42 U.S.C. 1766a) is amended—

(1) in subsection (a)(2)—

(A) by inserting "and" at the end of subparagraph (A);

(B) by striking "; and" at the end of subparagraph (B) and inserting a period; and

(C) by striking subparagraph (C); and

(2) by adding at the end the following new subsection:

"(e) AUTOMATIC ELIGIBILITY.—

"(1) IN GENERAL.—A child shall be considered automatically eligible for a free or reduced price meal supplement under this section, without further application or eligibility determination, if the child has been certified as eligible for free or reduced price breakfasts or lunches under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) or this Act, respectively.

"(2) PROOF.—Proof of eligibility for free or reduced price breakfasts or lunches shall be sufficient to satisfy any verification requirement imposed for meal supplements under this section.".

SEC. 316. DEMONSTRATION PROJECTS TO IMPROVE FOOD SERVICE FOR HOMELESS CHILDREN.

Section 18(c) of the National School Lunch Act (42 U.S.C. 1769(c)) is amended—

(1) in paragraph (1), by inserting after "(1)" the following new sentences: "Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary to carry out this subsection $4,000,000 for fiscal year 1995, $5,000,000 for fiscal year 1996, $8,000,000 for fiscal year 1997, and $10,000,000 for fiscal year 1998. The Secretary shall be entitled to receive the funds and shall accept the funds.";

(2) in the first sentence of paragraph (5)(A)—

(A) by inserting "or provided" after "appropriated";

(B) by striking "and" after "1993,"; and

(C) by inserting after "1994," the following: ", and the amount specified in paragraph (1) for each of fiscal years 1995 through 1998";

(3) in paragraph (6)—

(A) by inserting "(A)" after "(6)";

(B) by striking "1994" and inserting "1998"; and

(C) by adding at the end the following new subparagraph:

"(B)(i) For any fiscal year in which all the funds provided for homeless demonstration programs established under this subsection are not completely used, the Secretary shall transfer the unused funds for the fiscal year to the Secretary of the Treasury.

"(ii) For each fiscal year for which funds are transferred to the Secretary of the Treasury under clause (i), the Secretary of Agriculture shall submit a report to the appropriate committees of Congress that includes—

"(I) an explanation of the actions the Secretary has taken to carry out paragraph (7);

"(II) an estimate, if practicable, of the number of children living in homeless shelters who are not served by the program established under this subsection; and

"(III) a detailed plan for expanding the program so that more eligible children may participate in the program."; and

(4) by adding at the end the following new paragraph:

"(8)(A) Out of the funds provided under paragraph (1), the Secretary shall use funds, for each of fiscal years 1995 through 1998, to carry out programs operated by shelters, halfway houses, and hospitals described in subparagraph (B) that the Secretary has approved for participation, for the purpose of providing nutrition counseling, nutrition assessments, and referrals to individuals participating in—

"(i) the program established under this subsection;

"(ii) the special nutrition program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

"(iii) the medical assistance program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (also known as the 'medicaid program'); and

"(iv) similar programs for homeless pregnant women, pregnant women at risk of becoming homeless, homeless mothers with newborn infants, or the guardians of boarder babies or other abandoned infants.

"(B) Programs administered by halfway houses, homeless shelters, hospitals, or transitional housing organizations under subparagraph (A), if approved by the Secretary, may receive funding under this paragraph for purposes specified in regulations of the Secretary.

"(C) The Secretary shall impose such auditing and recordkeeping requirements as are necessary to monitor the use of Federal funds to carry out this paragraph.

"(D) The Secretary shall periodically report to the appropriate committees of Congress on the referral and nutrition counseling and assessment programs carried out under this paragraph.".

SEC. 317. PILOT PROGRAM TO INCREASE OFFERINGS OF FRUITS AND VEGETABLES.

Section 18 of the National School Lunch Act (42 U.S.C. 1769) is amended by adding at the end the following new subsection:

"(e)(1) The Secretary shall establish a national pilot program (referred to in this subsection as the 'pilot program') to assist schools participating in the school lunch program established under this Act, and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), to offer participating students additional choices of fruits and vegetables.

"(2) The Secretary shall establish procedures under which schools may apply to participate in the pilot program. To the maximum extent practicable, the Secretary shall select qualified schools that apply from each State.

"(3) The Secretary shall use the funds provided under this subsection to provide to the schools referred to in paragraph (1)—

"(A) per meal reimbursements, in addition to reimbursements otherwise due the schools;

"(B) incentive awards to schools that agree to increase their offerings of fruits and vegetables during the school year; or

"(C) fruits and vegetables purchased by the Secretary.

"(4) The Secretary may provide a priority for receiving benefits under this subsection to schools that—

"(A) are located in low-income areas (as defined by the Secretary);

"(B) rarely offer 3 or more servings of fruits or vegetables per meal; or

"(C) purchase or agree to purchase a substantial portion of their fruits and vegetables from—

"(i) socially disadvantaged farmers (as defined in section 2501(e)(2) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)(2)));

"(ii) farmers located in very rural areas (as defined by the Secretary); or

"(iii) farmers who own or operate small-scale or limited-resource farms (as defined by the Secretary).

"(5) Not later than March 31, 1996, and March 31, 1997, the Secretary shall report to the appropriate committees of Congress on the impact of the pilot program on participating schools, including—

"(A) the extent to which school children increased consumption of fruits and vegetables;

"(B) the extent of any increase in costs to the schools in offering the additional fruits or vegetables;

"(C) the desirability of—

"(i) requiring that each school participating in the school lunch program increase the number of servings of fruits or vegetables offered per meal to at least 3 servings; and

"(ii) mandating that the Secretary provide additional Federal reimbursements to assist schools in complying with the proposed requirement described in clause (i); and

"(D) the extent to which fresh, frozen, and canned foods are offered under the pilot program.

"(6) Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary to carry out this subsection $40,000,000 for each of fiscal years 1995 through 1997. The Secretary shall be entitled to receive the funds and shall accept the funds.".

SEC. 318. PILOT PROGRAM TO INCREASE CONSUMPTION OF LOW-FAT DAIRY PRODUCTS AND LEAN MEATS.

Section 18 of the National School Lunch Act (42 U.S.C. 1769) (as amended by section 317) is further amended by adding at the end the following new subsection:

"(f)(1) The Secretary shall establish a national pilot program (referred to in this subsection as the 'pilot program') to better assist schools participating in the school lunch program established under this Act and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to offer low-fat dairy products and lean meats and poultry products.

"(2) The Secretary shall establish procedures under which schools may apply to participate in the pilot program. To the maximum extent practicable, the Secretary shall select qualified schools that apply from each State.

"(3) The Secretary shall purchase, and provide to schools selected to participate in the pilot program, low-fat dairy products and lean meats and poultry products.

"(4) Not later than March 31, 1996, and March 31, 1997, the Secretary shall report to the appropriate committees of Congress on the impact of the pilot program on participating schools, including—

"(A) the extent to which school children increased consumption of low-fat dairy products and lean meats and poultry products; and

"(B) alternative means of providing additional offerings of low-fat dairy products and lean meats and poultry products in the school lunch and breakfast programs.

"(5) Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary to carry out the pilot program with respect to the purchase and distribution of—

"(A) low-fat dairy products, $35,000,000 for each of fiscal years 1995 through 1997; and

"(B) lean meats and poultry products, $10,000,000 for each of fiscal years 1995 through 1997.

"(6) The Secretary shall be entitled to receive the funds described in paragraph (5) and shall accept the funds.".

SEC. 319. PILOT PROJECTS FOR FORTIFIED FLUID MILK; INFORMATION ON FORTIFIED MILK.

(a) IN GENERAL.—Section 18 of the National School Lunch Act (42 U.S.C. 1769) (as amended by section 318) is further amended by adding at the end the following new subsection:

"(g)(1) The Secretary shall establish pilot projects in at least 25 school districts under which the milk offered by schools meets the fortification requirements of paragraph (3) for lowfat, skim, and other forms of fluid milk.

"(2) The Secretary shall make available to school districts information that compares the nutritional benefits of fluid milk that meets the fortification requirements of paragraph (3) and the nutritional benefits of other milk that is made available through the school lunch program established under this Act.

"(3) The fortification requirements for fluid milk for the pilot project referred to in paragraph (1) shall provide that—

"(A) all whole milk in final package form for beverage use shall contain not less than—

"(i) 3.25 percent milk fat; and

"(ii) 8.7 percent milk solids not fat;

"(B) all lowfat milk in final package form for beverage use shall contain not less than 10 percent milk solids not fat; and

"(C) all skim milk in final package form for beverage use shall contain not less than 9 percent milk solids not fat.

"(4)(A) In selecting where to establish pilot projects under this subsection, the Secretary shall take into account, among other factors, the availability of fortified milk and the interest of the school district in being included in the pilot program.

"(B) The Secretary shall establish the pilot projects in as many geographic areas as practicable, except that none of the projects shall be established in school districts that use milk described in paragraph (3) or similar milk.

"(5) Not later than 2 years after the establishment of pilot projects under this subsection, the Secretary shall report to the appropriate committees of Congress on—

"(A) the effect of the pilot program on the nutrition and health of children;

"(B) the acceptability of fortified whole, lowfat, and skim milk products to participating children and teachers;

"(C) the impact of offering the milk on milk consumption;

"(D) the views of the school food service authorities on the pilot program; and

"(E) any increases or reductions in costs attributed to the pilot program.

"(6) The Secretary shall—

"(A) obtain copies of research studies and papers that discuss the impact of the fortification of milk pursuant to standards established by the State of California in the early 1960's; and

"(B) make the information available to the public.

"(7)(A) The pilot projects established under this subsection shall terminate on the last day of the third year after the establishment of the pilot projects.

"(B) The Secretary shall advise representatives of all districts participating in the pilot projects that the districts may continue to offer the fortified forms of milk described in paragraph (3) after the project terminates.".

(b) INFORMATION ON FORTIFIED MILK.—Section 9(a) of such Act (7 U.S.C. 1758(a)) (as amended by section 304) is further amended by adding at the end the following new paragraph:

"(6)(A) In the case of fluid milk offered under the national school lunch program established under this Act, the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), and the special milk program established under section 3 of such Act (42 U.S.C. 1772), the Secretary shall establish a program under which schools may obtain information about where to obtain milk described in section 18(g)(3).

"(B) The Secretary shall notify State educational agencies and participating schools about the possible benefits to school children of the milk described in section 18(g)(3) and of the availability of the informational service made available under this paragraph.

"(C) Not later than 120 days after the date of enactment of this paragraph, the Secretary shall issue an evaluation that compares the nutritional value of—

"(i) milk that is fortified as described in section 18(g)(3);

"(ii) milk that is fortified in a similar manner to milk described in clause (i); and

"(iii) milk not fortified as described in clause (i) or (ii).".

SEC. 320. FOOD SERVICE MANAGEMENT INSTITUTE AND OTHER INSTITUTIONS.

Section 21 of the National School Lunch Act (42 U.S.C. 1769b-1) is amended—

(1) in subsection (b)—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(4) in the case of a food service management institute established as authorized by subsection (a)(2) and other institutions (such as a culinary institute)—

"(A) training food service personnel to comply with the nutrition guidance and objective referred to in section 24(b) through a national network of instructors or other means;

"(B) preparing informational materials, such as video instruction tapes and menu planners, to promote healthier food preparation; and

"(C) assisting State educational agencies in providing additional nutrition and health instructions and instructors."; and

(2) in subsection (e)—

(A) in paragraph (1), by striking "1992, 1993, and 1994" and inserting "1992 through 1998"; and

(B) in paragraph (2), by striking "1991, 1992, 1993, and 1994" and inserting "1991 through 1998".

SEC. 321. COMPLIANCE AND ACCOUNTABILITY.

Not later than 90 days after the date of enactment of this Act, the Secretary of Agriculture shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate that analyzes—

(1) the status of the coordinated review system authorized under section 22 of the National School Lunch Act (42 U.S.C. 1769c);

(2) the advantages and disadvantages of the system; and

(3) the cost impact of the system on schools.

SEC. 322. NUTRITION GUIDANCE FOR CHILD NUTRITION PROGRAMS.

(a) IN GENERAL.—Section 24 of the National School Lunch Act (42 U.S.C. 1769e) is amended—

(1) by striking subsection (b) and inserting the following new subsection:

"(b) REVISION OF MENU PLANNING GUIDES.—

"(1) FAT CONTENT.—The Secretary shall include in menu planning guides the recommendation provided in the April 1992 version of the publication that menus achieve an average fat content of 30 percent of calories from fat and that saturated fat intake should be reduced to an average of 10 percent or less of calories.

"(2) REVISED RECOMMENDATIONS.—The Secretary shall, as necessary, revise the menu planning guides for each covered program to include recommendations for the implementation of nutrition guidance described in the publication, including revised recommendations in the publication concerning the consumption of fat and saturated fat.";

(2) in subsection (c), by inserting after "publication" the following: ", including the guidance regarding fat and saturated fat consumption,"; and

(3) in subsection (d), by inserting after "publication" the following: ", including the guidance regarding fat and saturated fat consumption".

(b) REPORT.—Not later than July 1, 1995, the Secretary of Agriculture shall submit to the appropriate committees of Congress a report that—

(1) describes actions taken to ensure compliance with the requirements of section 24 of the National School Lunch Act (42 U.S.C. 1769e); and

(2) makes recommendations regarding the usefulness of specific guidelines for dietary fiber, sodium, and sugar regarding the school lunch and breakfast programs established under the National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively.

(c) REGULATIONS.—Not later than 150 days after the date of enactment of this Act, the Secretary of Agriculture shall issue final regulations to implement section 24 of the National School Lunch Act (as amended by subsection (a)).

SEC. 323. INFORMATION CLEARINGHOUSE.

The National School Lunch Act (42 U.S.C. 1751 et seq.) is amended by adding at the end the following new section:

"SEC. 25. INFORMATION CLEARINGHOUSE.

"(a) IN GENERAL.—The Secretary shall enter into a contract with a nongovernmental organization described in subsection (b) to establish and maintain a clearinghouse to provide information to nongovernmental groups located throughout the United States that assist low-income individuals or communities regarding food assistance, self-help activities to aid individuals in becoming self-reliant, and other activities that empower low-income individuals or communities to improve the lives of low-income individuals and reduce reliance on Federal, State, or local governmental agencies for food or other assistance.

"(b) NONGOVERNMENTAL ORGANIZATION.—The nongovernmental organization referred

to in subsection (a) shall be selected on a competitive basis and shall—

"(1) be experienced in the gathering of first-hand information in all the States through on-site visits to grassroots organizations in each State that fight hunger and poverty or that assist individuals in becoming self-reliant;

"(2) be experienced in the establishment of a clearinghouse similar to the clearinghouse described in subsection (a);

"(3) agree to contribute in-kind resources towards the establishment and maintenance of the clearinghouse and agree to provide the clearinghouse information, free of charge, to the Secretary, States, counties, cities, antihunger groups, and grassroots organizations that assist individuals in becoming self-sufficient and self-reliant;

"(4) be sponsored by an organization, or be an organization, that—

"(A) has helped combat hunger for at least 10 years;

"(B) is committed to reinvesting in the United States; and

"(C) is knowledgeable regarding Federal nutrition programs;

"(5) be experienced in communicating the purpose of the clearinghouse through the media, including the radio and print media, and be able to provide access to the clearinghouse information through computer or telecommunications technology, as well as through the mails; and

"(6) be able to provide examples, advice, and guidance to communities, States, counties, cities, antihunger groups, and local organizations regarding means of assisting individuals and communities to reduce reliance on government programs, to reduce hunger and to improve nutrition, and to otherwise assist low-income individuals and communities become more self-sufficient.

"(c) AUDITS.—The Secretary shall establish fair and reasonable auditing procedures regarding the expenditures of funds to carry out this section.

"(d) FUNDING.—Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall pay to the Secretary to provide to the organization selected under this section, to establish and maintain the information clearinghouse, $200,000 for each of fiscal years 1995 and 1996, $150,000 for fiscal year 1997, and $75,000 for fiscal year 1998. The Secretary shall be entitled to receive the funds and shall accept the funds.".

TITLE IV—PROGRAM INTEGRITY

SEC. 401. FINDINGS.

Congress finds that—

(1) in recent years, there has been an alarming number of instances of price-fixing and bid-rigging regarding foods purchased for—

(A) the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.); and

(B) the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(2) during the past several years, the Antitrust Division of the United States Department of Justice has filed over 100 criminal cases against companies and individuals accused of bid-rigging conspiracies, false statements, mail fraud, price-fixing, and similar activities involving dairy products sold to schools or the Department of Defense;

(3) over 30 grand juries in States are investigating similar activities, especially in connection with activities involving the dairy industry;

(4) 54 corporations and 50 individuals have been convicted by Federal courts of similar activities, and total fines and civil damages of approximately $100,000,000 have been assessed in Federal and State actions for similar activities;

(5) a report of the Comptroller General of the United States noted that, as of March 1992, the Secretary of Agriculture had neither suspended nor debarred any of the 13 dairy companies or 28 individuals convicted, as of March 1992, of milk contract bid-rigging from participating in the school lunch and breakfast programs;

(6) effective educational and monitoring programs can greatly reduce the incidence of price-fixing and bid-rigging by companies that sell products to schools;

(7) reducing the incidence of price-fixing and bid-rigging in connection with the school lunch and breakfast programs could save school districts, parents, and taxpayers millions of dollars per year;

(8) the Comptroller General of the United States has noted that bid-rigging awareness training is an effective means of deterring improper collusion and bid-rigging; and

(9) the Comptroller General of the United States in a General Accounting Office report addressed many of the concerns described in this section with respect to bid rigging in the school lunch program.

SEC. 402. DUTIES OF THE SECRETARY RELATING TO ANTICOMPETITIVE ACTIVITIES.

(a) IN GENERAL.—The National School Lunch Act (42 U.S.C. 1751 et seq.) (as amended by section 323) is further amended by adding at the end the following new section:

"SEC. 26. DUTIES OF THE SECRETARY RELATING TO ANTICOMPETITIVE ACTIVITIES.

"(a) DEFINITIONS.—As used in this section:

"(1) CHILD NUTRITION PROGRAM.—The term 'child nutrition program' means—

"(A) the school lunch program established under this Act;

"(B) the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

"(C) the special milk program established under section 3 of such Act (42 U.S.C. 1772);

"(D) the special nutrition program for women, infants, and children authorized under section 17 of such Act (42 U.S.C. 1786);

"(E) the summer food service program for children established under section 13 of this Act; and

"(F) the child and adult care food program established under section 17 of this Act.

"(2) CONTRACTOR.—The term 'contractor' means a person that contracts with a State, an agency of a State, or a local agency to provide goods or services in conjunction with the participation of a local agency in a child nutrition program.

"(3) LOCAL AGENCY.—The term 'local agency' means a school, school food authority, child care center, sponsoring organization, or other entity authorized to operate a child nutrition program at the local level.

"(4) NONPROCUREMENT DEBARMENT.—The term 'nonprocurement debarment' means an action to bar a person from programs and activities involving Federal financial and nonfinancial assistance, but not including Federal procurement programs and activities.

"(5) PERSON.—The term 'person' means any individual, corporation, partnership, association, or other legal entity, however organized.

"(b) ASSISTANCE.—The Secretary shall—

"(1) provide advice, training, technical assistance, and guidance (which may include awareness training, training films, and troubleshooting advice) to representatives of States and local agencies regarding means of identifying and preventing anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program; and

"(2) provide information to, and fully cooperate with, the Attorney General and State attorneys general regarding investigations of anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program.

"(c) FOOD SERVICE MANAGEMENT INSTITUTE.—The Secretary may request assistance from the food service management institute authorized under section 21 in carrying out subsection (b)(1).

"(d) NONPROCUREMENT DEBARMENT.—

"(1) DEBARMENT DECISIONS.—Except as provided in paragraph (3), not later than 180 days after notification of the occurrence of a cause for debarment described in paragraph (2), the Secretary shall decide whether to initiate nonprocurement debarment proceedings against the contractor who has committed the cause for debarment.

"(2) CAUSES FOR DEBARMENT.—

"(A) IN GENERAL.—Subject to subparagraph (B), actions requiring consideration of nonprocurement debarment pursuant to paragraph (1) shall be limited to convictions or civil judgments for the following offenses:

"(i) Violation of Federal or State antitrust laws, including laws relating to bid-rigging and price-fixing.

"(ii) Commission of embezzlement, theft, forgery, fraud, bribery, making false statements, receiving stolen property, making false claims, or obstruction of justice.

"(B) APPLICATION.—Subparagraph (A) shall apply to the extent an offense is committed by a contractor in connection with providing a good or service in conjunction with the participation of a local agency in a child nutrition program.

"(3) EXCEPTION.—If the Secretary determines that a decision on initiating nonprocurement debarment proceedings cannot be made within 180 days because of the need to further investigate matters relating to the possible debarment, the Secretary may have such additional time as the Secretary considers necessary to make a decision, but not to exceed an additional 180 days.

"(4) MANDATORY CHILD NUTRITION PROGRAM DEBARMENT PERIODS.—

"(A) IN GENERAL.—Subject to the other provisions of this paragraph and notwithstanding any other provision of law except subsection (e), if after deciding to initiate nonprocurement debarment proceedings pursuant to paragraph (1) the Secretary decides to debar a contractor, the debarment shall be for no less than 1 year.

"(B) PREVIOUS DEBARMENT.—If the contractor has been previously debarred pursuant to nonprocurement debarment proceedings initiated pursuant to paragraph (1), and the cause for debarment is a conviction or civil judgment described in paragraph (2) based on activities that occurred subsequent to the initial debarment, the debarment shall be for no less than 3 years.

"(C) SCOPE.—At a minimum, a debarment under this subsection shall serve to bar the contractor for the specified period from contracting to provide goods or services in conjunction with the participation of a local agency in a child nutrition program.

"(D) REVERSAL, REDUCTION, OR EXCEPTION.—Nothing in this paragraph shall restrict the ability of the Secretary to reverse a debarment decision, to reduce the period or scope of a debarment, nor to grant an exception permitting a debarred contractor to participate in a particular contract to provide

goods or services in conjunction with the participation of a local agency in a child nutrition program, if the Secretary determines there is good cause for the action.

"(5) INFORMATION.—On request, the Secretary shall present to the appropriate committees of Congress information regarding the decisions required by this subsection.

"(6) RELATIONSHIP TO OTHER AUTHORITIES.—

"(A) IN GENERAL.—Subject to subparagraph (B), consideration of nonprocurement debarment pursuant to this subsection shall not reduce or diminish the authority of a Federal, State, or local government agency or court to penalize, imprison, fine, suspend, debar, or take other adverse action against a person in a civil, criminal or administrative proceeding.

"(B) COORDINATION.—To the maximum extent practicable, the Secretary shall consolidate and coordinate any nonprocurement debarment actions pursuant to this subsection with other adverse actions, including other nonprocurement debarment actions.

"(7) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this subsection.

"(e) MANDATORY DEBARMENT.—Notwithstanding any other provision of this section, the Secretary shall initiate nonprocurement debarment proceedings against the contractor (including a dairy cooperative) who has committed the cause for debarment (as determined under subsection (d)), unless the action—

"(1) is likely to have a significant adverse effect on competition or prices in the relevant market or nationally;

"(2) will interfere with the ability of a school, school district, or school district consortium to procure a needed product for a child nutrition program; or

"(3) is not in the public interest, as determined by the Secretary.

"(f) TERMINATION OF AUTHORITY.—The authority provided by this section shall terminate on September 30, 1999.".

(b) REPORT ON CONSISTENT DEBARMENT POLICY.—Not later than 120 days after the date of enactment of this Act, the Director of the Office of Management and Budget (in consultation with the Secretary of Agriculture and the Secretary of Defense) shall advise the appropriate committees of Congress and the Comptroller General of the United States as to the appropriateness and usefulness of a consistent debarment policy under—

(1) the Federal acquisition regulations issued under title 48, Code of Federal Regulations; and

(2) Federal nonprocurement regulations.

(c) APPLICATION.—Section 26(d) of the National School Lunch Act (as added by subsection (a)) shall not apply to a conviction or civil judgment that is based on an activity that took place prior to the date of enactment of this Act.

SEC. 403. PREVENTION AND CONTROL OF ANTICOMPETITIVE ACTIVITIES.

The National School Lunch Act (42 U.S.C. 1751 et seq.) (as amended by section 402) is further amended by adding at the end the following new section:

"SEC. 27. PREVENTION AND CONTROL OF ANTICOMPETITIVE ACTIVITIES.

"(a) ASSISTANCE.—

"(1) IN GENERAL.—The Secretary may provide grants to State educational agencies and other State agencies that administer child nutrition programs (as defined in section 26(a)(1)) to assist the agencies in the prevention and control of anticompetitive activities relating to the programs, including activities to further coordination and cooperation with law enforcement officials.

"(2) FORMULA.—The grants shall be made pursuant to a formula established by the Secretary that takes into account the size of the child nutrition programs in each State, subject to a minimum grant amount for each State.

"(b) FEDERAL ACTIVITIES.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall retain 25 percent of the sums made available for any fiscal year to carry out this section to administer subsection (a) and to conduct the activities described in section 26(b).

"(2) ADDITIONAL FUNDS.—Nothing in paragraph (1) shall preclude the Secretary from expending for the activities described in section 26(b) any funds otherwise available to carry out section 26(b).

"(c) INFORMATION.—On request, the Secretary shall provide to the appropriate committees of Congress information regarding the administration of this section and other efforts to reduce the incidence of anticompetitive activity (such as price-fixing and bid-rigging), in connection with child nutrition programs (as defined in section 26(a)(1)).

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $4,000,000 for each of fiscal years 1994 through 1998.".

TITLE V—EFFECTIVE DATES

SEC. 501. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act shall become effective on the date of enactment of this Act.

(b) SPECIAL EFFECTIVE DATES.—The amendments made by—

(1) sections 101 through 104, 205 through 207, 313, and 318 shall become effective on October 1, 1994;

(2) sections 201 through 204, 209, 301 through 310, 314(a), 314(b), 315, 317, and 320 shall become effective on July 1, 1995;

(3) section 312 shall become effective on September 1, 1995; and

(4) section 314(c) shall become effective on October 1, 1995.

ADDITIONAL COSPONSORS

S. 259

At the request of Mr. LEVIN, the names of the Senator from Wyoming [Mr. SIMPSON], the Senator from Arkansas [Mr. PRYOR], the Senator from Oklahoma [Mr. BOREN], and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of S. 259, a bill to require that stock option compensation paid to corporate executives be recorded as a compensation expense in corporate financial statements.

S. 446

At the request of Mr. ROTH, the names of the Senator from Louisiana [Mr. JOHNSTON] and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of S. 446, a bill to extend until January 1, 1996, the existing suspension of duty on tamoxifen citrate.

S. 725

At the request of Mr. KENNEDY, the names of the Senator from Vermont [Mr. JEFFORDS], the Senator from Missouri [Mr. DANFORTH], the Senator from Illinois [Mr. SIMON], and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 725, a bill to amend the Public Health Service Act to provide for the conduct of expanded studies and the establishment of innovative programs with respect to traumatic brain injury, and for other purposes.

S. 732

At the request of Mr. KENNEDY, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of S. 732, a bill to provide for the immunization of all children in the United States against vaccine-preventable diseases, and for other purposes.

S. 784

At the request of Mr. HATCH, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 784, a bill to amend the Federal Food, Drug, and Cosmetic Act to establish standards with respect to dietary supplements, and for other purposes.

S. 1011

At the request of Mr. PRYOR, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 1011, a bill to amend title XI of the Social Security Act to improve and clarify provisions prohibiting misuse of symbols, emblems, or names in reference to social security programs and agencies.

S. 1042

At the request of Mr. HATFIELD, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 1042, a bill to amend the Public Health Service Act to establish an Ethical Advisory Board, and for other purposes.

S. 1175

At the request of Mr. LIEBERMAN, the names of the Senator from Nebraska [Mr. KERREY], the Senator from New Hampshire [Mr. SMITH], and the Senator from Washington [Mrs. MURRAY] were added as cosponsors of S. 1175, a bill to amend the Internal Revenue Code of 1986 to allow corporations to issue performance stock options to employees, and for other purposes.

S. 1208

At the request of Mr. WOFFORD, the names of the Senator from Minnesota [Mr. WELLSTONE], the Senator from California [Mrs. BOXER], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of S. 1208, a bill to authorize the minting of coins to commemorate the historic buildings in which the Constitution of the United States was written.

S. 1373

At the request of Mr. WOFFORD, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 1373, a bill to amend the Reclamation Project Act of 1939 to reform irrigation assistance repayments and to require the Secretary of the Interior to redetermine the ability of irrigators to repay construction charges at least every 5 years.

S. 1376

At the request of Mr. WOFFORD, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 1376, a bill to repeal the Helium Act, to require the Secretary of the Interior to sell Federal real and personal property held in connection with activities carried out under the Helium Act, and for other purposes.

S. 1379

At the request of Mr. WOFFORD, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 1379, a bill to limit the continued availability of foreign assistance funds for obligation and expenditure.

S. 1406

At the request of Mr. KERREY, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 1406, a bill to amend the Plant Variety Protection Act to make such Act consistent with the International Convention for the Protection of New Varieties of Plants of March 19, 1991, to which the United States is a signatory, and for other purposes.

S. 1460

At the request of Ms. MOSELEY-BRAUN, the names of the Senator from Ohio [Mr. METZENBAUM] and the Senator from New Jersey [Mr. BRADLEY] were added as cosponsors of S. 1460, a bill to amend the Elementary and Secondary Education Act of 1965 to authorize programs of child abuse education and prevention, and to establish a demonstration project relating to child abuse education and prevention.

S. 1522

At the request of Mrs. FEINSTEIN, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 1522, a bill to direct the United States Sentencing Commission to promulgate guidelines or amend existing guidelines to provide sentencing enhancements of not less than 3 offense levels for hate crimes.

S. 1533

At the request of Mr. LOTT, the names of the Senator from Wyoming [Mr. WALLOP] and the Senator from Georgia [Mr. COVERDELL] were added as cosponsors of S. 1533, a bill to improve access to health insurance and contain health care costs, and for other purposes.

S. 1552

At the request of Mr. WARNER, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 1552, a bill to extend for an additional two years the authorization of the Black Revolutionary War Patriots Foundation to establish a memorial.

SENATE JOINT RESOLUTION 90

At the request of Mr. ROBB, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of Senate Joint Resolution 90, a joint resolution to recognize the achievements of radio amateurs, and to establish support for such amateurs as national policy.

SENATE CONCURRENT RESOLUTION 45

At the request of Mr. D'AMATO, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of Senate Concurrent Resolution 45, a concurrent resolution relating to the Republic of China on Taiwan's participation in the United Nations.

SENATE RESOLUTION 160—RELATIVE TO BURUNDI

Mr. DURENBERGER (for himself, Mr. SIMON, Mr. JEFFORDS, Mr. FEINGOLD, Mrs. KASSEBAUM, and Mr. GRASSLEY) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 160

Whereas Burundi has a long history of military rule and ethnic conflict between the majority Hutu and the minority Tutsi;

Whereas on March 9, 1992, the people of Burundi adopted a democratic constitution, leading to Burundi's first multiparty elections on June 1, 1993, through which Melchoir Ndadaye was overwhelmingly elected president in a free and fair election;

Whereas President Ndadaye had shown his commitment to ethnic reconciliation and democracy by appointing members of the opposition to key government posts;

Whereas recent years have also witnessed a period of ethnic reconciliation in Burundi, in large part because of policies implemented by former President Buyoya;

Whereas on October 21, 1993, President Ndadaye and other senior government officials were murdered by coup plotters; and

Whereas the attempted coup and murder of President Ndadaye sparked ethnically motivated attacks throughout the country, resulting in widespread deaths and approximately 500,000 refugees fleeing to neighboring Rwanda, Tanzania, and Zaire: Now, therefore, be it

Resolved, That the Senate—

(1) strongly condemns the attempted coup d'etat in Burundi and the murder of President Ndadaye;

(2) commends the people of Burundi for their commitment to democracy by adopting a constitution and holding free and fair elections, and for their respect for the democratic process;

(3) urges the people of Burundi to help end ethnic strife that has caused untold suffering;

(4) encourages the people of Burundi to continue their commitment to ethnic reconciliation and democracy;

(5) commends the Clinton administration for its prompt condemnation of the October 21, 1993, coup in Burundi, and for the immediate suspension of foreign assistance to Burundi;

(6) calls upon the Organization of African Unity (OAU) to bolster and support the continuation of democracy and the end of ethnic strife in Burundi; and

(7) calls upon the international community to assist the OAU in its efforts to strengthen democracy in Burundi and to address the humanitarian needs of Burundian refugees in Rwanda, Tanzania, and Zaire.

• Mr. DURENBERGER. Mr. President, I submit a resolution expressing the sense of the Senate regarding the attempted October 21, 1993, coup d'etat in Burundi. I am pleased to be joined in this resolution by Senators SIMON, JEFFORDS, FEINGOLD, KASSEBAUM, and GRASSLEY.

Mr. President, several weeks ago, during debate on United States military involvement in Somalia, I cited the Central African country of Burundi as a shining example of reconciliation and democratization in Africa.

Burundi is located in Central Africa, bordered on the south and west by Zaire, on the north by Rwanda, and Tanzania to the east. It has a population of 5.6 million, and is the second most densely populated country in Africa. There are two major ethnic groups in Burundi—the Hutu and the Tutsi. The Hutu make up about 85 percent of the population and the Tutsi about 14 percent.

In 1923, the League of Nations mandated Burundi to Belgium as part of the territory of Ruanda-Urundi. Ruanda-Urundi became a U.N. Trust Territory administered by Belgium following World War II. In 1962, Burundi and Rwanda declared their independence.

Since then, Burundi has been struggling with ethnic tensions between the Hutu and Tutsi ethnic groups. The minority Tutsi have dominated the government and the military.

Initially, a constitutional monarchy was established, and the country fell into political disorder and economic stagnation.

In November 1966, Michel Micombero, a Tutsi, became the first in a succession of military dictators. He proclaimed a republic that in fact ensued as a Tutsi-led military government.

In 1976, another Tutsi, Jean-Baptiste Bagaza, gained power in a bloodless coup. His tenure is widely remembered for his campaign against organized religion, especially the Catholic Church, which he viewed as a tool of the Hutu.

Another Tutsi, Pierre Buyoya seized power in a bloodless coup in 1987. Unlike his predecessors, Buyoya is widely recognized for overseeing a transition to democracy in Burundi and bringing ethnic reconciliation between the Tutsi and Hutu. He appointed Hutus to government positions and released hundreds of political prisoners.

In March 1992, the people of Burundi approved a democratic constitution by an overwhelming margin of 9 to 1. In order to stand for election as President under the new constitution, Buyoya resigned from the military. His main opponent in the election was Melchoir Ndadaye, a Hutu with a background in banking.

In June of this year, 2.8 million voters went to the polls and elected Melchoir Ndadaye President in the country's first-ever multiparty elections. Buyoya accepted his defeat gracefully and is now leading a freedom foundation to encourage economic development in Burundi.

President Ndadaye in July granted amnesty to over 500 political prisoners and even allowed the former military dictator Bagaza to return to the country.

In early October President Ndadaye paid a visit to this country. Several of us in the Senate hosted him for breakfast and discovered him to be committed to national unity, democracy, and economic progress.

Then tragedy struck.

On October 21st, I came to the floor of the Senate to express my shock and dismay at events that had just occurred in Burundi. That morning, elements of the Burundian army had staged a military coup, and murdered President Ndadaye.

This tragic action motivated ethnic attacks throughout the country, killing thousands of Burundians.

More than 500,000, largely women and children—approximately one tenth of the population of Burundi—have fled to neighboring Rwanda, Tanzania, and Zaire.

But within this tragedy there is reason for hope. The people of Burundi did not permit factions within the military to rob the nation of democracy. The military was unable to consolidate its power.

The people of Burundi—Tutsi and Hutu—together with the international community, condemned this action, and the coup failed.

Senior military officials have denied involvement in the coup. Some coup plotters have been arrested, and several of those suspected to have been involved have fled the country.

Prime Minister Sylvie Kinigi and other surviving ministers, still in hiding in the French embassy, have begun to establish a foundation for a return to normalcy.

The resolution I am submitting puts the Senate on record as strongly condemning the coup and the murder of President Ndadaye.

It also commends the people of Burundi for their commitment to democracy and encourages them to continue on the path of democratization and ethnic reconciliation.

Finally, it calls upon the African leaders and the Organization of Africa Unity [OAU] to support democracy and the end of ethnic violence in Burundi. It also urges the international community to aid African leaders and organizations, and to immediately address the humanitarian needs of Burundian refugees in Rwanda, Tanzania, and Zaire.

Mr. President, Burundi is a small country. But its problems are real and immediate.

Though the humanitarian needs of Burundi are paramount, I would also urge, in the strongest terms possible, that President Clinton name an ambassador to Burundi—now. By moving forward with this appointment, President Clinton shows the international community our genuine commitment to democracy in Burundi.

Mr. President, I urge the Foreign Relations Committee to act on this resolution promptly, and I urge all my colleagues to demonstrate their support for the future of democracy in Burundi by supporting this resolution.●

● Mr. SIMON. Mr. President: It is with deep sadness that I have learned of the assassination of President Melchior Ndadaye of Burundi, and the subsequent turmoil and bloodshed inflicted upon this Central African country—actions initiated by a small number who wish to stop Burundi's historic progress in democracy.

I had the good fortune to meet with President Ndadaye only a few weeks ago during his visit to Washington. I was impressed by his youthful vigor and his earnest commitment to democracy. On June 1, 1993, in elections deemed free and fair by international observers, President Ndadaye became Burundi's first democratically elected president since the country's independence in 1962. President Ndadaye's victory was a symbolic step for Burundi in many ways. Former President Buyoya graciously paved the way for a peaceful transfer of power. As a member of the majority Hutu ethnic group, which had been violently persecuted by the long-ruling Tutsi minority, and a former political refugee, President Ndadaye had begun to forge a government for all Burundians. He demonstrated sensitivity and realism in his approach to dealing with his country's ethnic and economic struggles. He also offered thoughtful insights as to how the international community could help put an end to the strife in other countries in the region, such as Somalia and Zaire.

The latest reports from Burundi suggest that support for the coup has failed within the ranks of the Tutsi-dominated military. I urge immediate restoration of the democratic government of Prime Minister Sylvie Kinigi. Order must be restored in the capital of Bujumbura and most especially in the countryside, where thousands are reported to have been killed in revenge fighting. Furthermore, those responsible for the deaths of President Ndadaye, senior government officials, and hundreds of others throughout the country must be brought to justice.

I am proud to cosponsor the thoughtful resolution submitted by my colleague from Minnesota, Senator DURENBERGER, which condemns the attempted coup, and urges the immediate restoration of the democratically elected government. It also urges the OAU, with the support of the international community, to act quickly to assist the government in restoring order to Burundi, and ensuring that Burundi does not plunge back into the chaos and ethnic violence it has known throughout its 30-year history.

I applaud the OAU response to date, including a summit meeting on the crisis by the prime ministers of Rwanda, Tanzania and Zaire, as well as the appointment of an OAU special envoy to Burundi to address the crisis through diplomatic channels. But continued engagement is critical. I therefore urge the Foreign Relations Committee to give prompt consideration to this resolution, to support the efforts of Prime Minister Kinigi and of the OAU member states to restore peace to Burundi. The Burundian people demonstrated their commitment to democracy by electing the Ndadaye government, and their will must prevail.●

AMENDMENTS SUBMITTED

COMPLIANCE WITH THE ISSUANCE OF A SUBPOENA

SPECTER (AND DANFORTH) AMENDMENT NO. 1093

Mr. SPECTER (for himself and Mr. DANFORTH) proposed an amendment to the resolution (S. Res. 153) to comply with the issuance of a subpoena; as follows:

Strike all after the resolving clause, and insert the following: That Senator Bob Packwood is hereby directed to turn over to Independent Examiner Kenneth Starr such documents as are referred to in the subpoena to Senator Bob Packwood from the Select Committee on Ethics. These documents shall be examined by Independent Examiner Kenneth Starr who will then turn over to the Select Committee on Ethics all materials which are relevant to the charges of misconduct regarding Senator Bob Packwood currently before the Select Committee on Ethics. Independent Examiner Kenneth Starr shall also turn over to the Select Committee on Ethics all materials referring to the incident cited in the statement of Senator Richard Bryan, dated October 28, 1993, which Senator Bryan alleges may constitute a criminal violation.

SIMPSON (AND OTHERS) AMENDMENTS NO. 1094

Mr. SIMPSON (for himself, Mr. DANFORTH, and Mr. SPECTER) proposed an amendment to the resolution S. Res. 153, supra; as follows:

On Page 2 line 3 after the word "subpoena" add the following: as modified as follows: All relevant diaries, journals, or other documents or material, including all relevant typewritten or handwritten documents, as well as tape recordings and all relevant material stored by computer or electronic means, that are in your possession, custody or control, which were prepared by or at the direction of Senator Bob Packwood, recording or describing Senator Bob Packwood's daily activities for January 1, 1989 through the present.

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1993

ROCKEFELLER AMENDMENT NO. 1095

Mr. FORD (for Mr. ROCKEFELLER) proposed an amendment to the bill (S. 843) to amend title 38, United States Code, to improve reemployment rights and benefits of veterans and other benefits of employment of certain members of the uniformed services; as follows:

On page 133, below line 21, add the following:

SEC. 10. INCREASE IN AMOUNT OF LOAN GUARANTY FOR LOANS FOR THE PURCHASE OR CONSTRUCTION OF HOMES.

Subparagraphs (A)(i)(IV) and (B) of section 3703(a)(1) of title 38, United States Code, are each amended by striking out "$46,000" and inserting in lieu thereof "$50,750".

EARLY DETECTION AND PREVENTIVE HEALTH ACT OF 1993

KENNEDY (AND OTHERS) AMENDMENT NO. 1096

Mr. FORD (for Mr. KENNEDY, for himself and Mrs. KASSEBAUM) proposed an amendment to the bill (H.R. 2202) to amend the Public Health Service Act to revise and extend the program of grants relating to preventative health measures with respect to breast and cervical cancer; 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 "Early Detection and Preventive Health Act of 1993".

TITLE I—TUBERCULOSIS

SEC. 101. SHORT TITLE.

This title may be cited as the "Tuberculosis Prevention and Control Amendments of 1993".

SEC. 102. FINDINGS.

Congress finds that—

(1) between 10,000,000 and 15,000,000 people in the United States have been infected with tuberculosis, nearly 26,000 new active cases are reported each year, and over 1,700 tuberculosis-related deaths occur each year;

(2) the number of reported cases of tuberculosis has risen from 22,201 in 1985 to 26,673 in 1992, representing 51,000 more cases than those that would have been expected since 1985;

(3) a recent national survey discovered that 14.4 percent of all active tuberculosis cases were resistant to at least one drug;

(4) drug resistant tuberculosis strains can cost more than $150,000 to treat, and even then, between 40 and 60 percent of the patients receiving such treatment die;

(5) in 1992, tuberculosis cases were reported to the Centers for Disease Control and Prevention by all 50 States, and cases resistant to one or more tuberculosis drugs were reported in at least 36 States, the District of Columbia and Puerto Rico;

(6) in 1992, 27 percent of the reported cases of tuberculosis occurred in foreign born persons;

(7) one third of the world's population harbors tuberculosis; and

(8) among infectious diseases tuberculosis is still the number one killer in the world with an estimated 8,000,000 new cases each year and 2,900,000 deaths.

SEC. 103. PROGRAMS OF CENTERS FOR DISEASE CONTROL AND PREVENTION.

(a) PROVISION OF SERVICES FOR PREVENTION, CONTROL, AND ELIMINATION.—Section 317(j)(2) of the Public Health Service Act (42 U.S.C. 247b(j)(2)) is amended—

(1) by inserting "(A)" after the paragraph designation;

(2) in the first sentence by striking "and" after "1991," and all that follows through "1995" and inserting the following: ", $200,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1997, of which not more than $50,000,000 may be made available in each such fiscal year for grants under subparagraph (B)"; and

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

"(B) With respect to amounts made available to carry out this subparagraph, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may use such amounts to make emergency grants for the prevention, control, and elimination of tuberculosis. The Secretary may make such a grant only if the geographic area in which activities under the grant are to be carried out has, relative to other areas, a substantial incidence of cases of tuberculosis or a substantial rate of increase in such cases.".

(b) STATE TUBERCULOSIS PLAN.—Section 317(j) of the Public Health Service Act (42 U.S.C. 247b(j)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) With respect to an application submitted by a State for a grant under this section for the prevention, control and elimination of tuberculosis, such application shall contain a State plan that demonstrates that amounts received under the grant will be expended in a manner that ensures that tuberculosis services will be provided to those at the highest risk of contracting tuberculosis, or in those areas with the highest rates of tuberculosis infection.

"(B) Such plans shall demonstrate that the applicant will work closely with and provide support to entities receiving funds under sections 329, 330, 340, 340A, or titles V or XIX, and to correctional facilities, and nongovernmental organizations such as community-based organizations and describe how the State intends to carry out the requirements of section 1924(a).

"(C) Such plans shall demonstrate that grant funds will be used for directly observed therapy or other effective interventions with respect to populations with the highest rates of active infection with tuberculosis.

"(D) In developing the State plan, each State shall ensure that the entities described in subparagraph (B), the single State agency for drug and alcohol services and any other State agency that has responsibility for individuals in need of tuberculosis services are consulted during the planning process.".

(c) RESEARCH, DEMONSTRATION PROJECTS, EDUCATION, AND TRAINING.—

(1) IN GENERAL.—Section 317(k)(2) of the Public Health Service Act (42 U.S.C. 247b(k)(2)) is amended—

(A) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively;

(B) by inserting "(A)" after the paragraph designation; and

(C) by adding at the end thereof the following new subparagraphs:

"(B) In support of grants referred to in subparagraph (A), the Secretary may conduct or support applied research and training regarding the surveillance, diagnostic methodologies, prevention, control, and treatment of tuberculosis, including intramural projects and extramural projects.

"(C) For the purpose of carrying out subparagraphs (A) and (B), there are authorized to be appropriated $26,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1997. The authorization of appropriations established in the preceding sentence is in addition to the authorization of appropriations established in subsection (j)(2) for carrying out this paragraph.".

(2) TECHNICAL AMENDMENT.—Section 317(j)(2) of the Public Health Service Act (42 U.S.C. 247b(j)(2)) is amended by striking the last sentence.

SEC. 104. RESEARCH THROUGH NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES.

(a) CERTAIN DUTIES.—

(1) IN GENERAL.—Subpart 6 of part C of title IV of the Public Health Service Act (42 U.S.C. 285f) is amended by inserting after section 446 the following section:

"RESEARCH AND RESEARCH TRAINING REGARDING TUBERCULOSIS

"SEC. 447. In carrying out section 446, the Director of the Institute shall conduct or support basic research and research training regarding the cause, diagnosis, early detection, prevention and treatment of tuberculosis.".

(2) CONFORMING AMENDMENT.—Section 446 of the Public Health Service Act (42 U.S.C. 285f) is amended by inserting after "Diseases" the following: "(hereafter in this subpart referred to as the 'Institute')".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 408(a) of the Public Health Service Act (42 U.S.C. 284c(a)) is amended by adding at the end the following new paragraph:

"(3) For the purpose of carrying out section 447 (relating to research on tuberculosis through the National Institute on Allergy and Infectious Diseases), there are authorized to be appropriated $46,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1997. The authorization of appropriations established in the preceding sentence may not be construed as terminating the availability for such purpose of any other authorization of appropriations.".

SEC. 105. RESEARCH THROUGH THE FOOD AND DRUG ADMINISTRATION.

Chapter V of the Food, Drug and Cosmetic Act is amended by inserting after section 512 (21 U.S.C. 360b) the following new section:

"SEC. 512A. TUBERCULOSIS DRUG AND DEVICE RESEARCH.

"(a) AUTHORITY.—The Commissioner of Food and Drugs shall implement a tuberculosis drug and device research program under which the Commissioner shall—

"(1) provide assistance to other Federal agencies for the development of tuberculosis protocols;

"(2) review and evaluate medical devices designed for the diagnosis and control of airborne tuberculosis; and

"(3) conduct research concerning drugs or devices to be used in diagnosing, controlling and preventing tuberculosis.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $5,000,000 for each of the fiscal years 1994 through 1997.".

SEC. 106. CONVERSION OR RENOVATION OF PUBLIC HEALTH FACILITIES.

Section 1610 of the Public Health Service Act (42 U.S.C. 300r) is amended by adding at the end the following subsection:

"(c)(1) With respect to services for the prevention, control, and elimination of tuberculosis, the Secretary may make grants to public and nonprofit private entities for—

"(A) conversion of existing facilities into outpatient medical facilities or facilities for long-term care to provide such services for such populations;

"(B) renovation of inpatient facilities; or

"(C) renovation of facilities to provide such services with respect to incarceration.

"(2) The amount of any grant under paragraph (1) may not exceed 50 percent of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 75 percent of such costs.

"(3) There are authorized to be appropriated for grants under paragraph (1), $25,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1997.".

TITLE II—SEXUALLY TRANSMITTED DISEASES

SEC. 201. SHORT TITLE.

This title may be cited as the "Sexually Transmitted Diseases Amendments of 1993".

SEC. 202. EXTENSION OF PROGRAM OF GRANTS REGARDING PREVENTION AND CONTROL OF SEXUALLY TRANSMITTED DISEASES.

(a) EXTENSION OF PROGRAM.—Section 318(d)(1) of the Public Health Service Act (42 U.S.C. 247c(d)(1)) is amended in the first sentence—

(1) by striking "(b) and (c)" and inserting "(b) and (c) of this section and section 318B"; and

(2) by striking "there are authorized" and all that follows and inserting the following: "there are authorized to be appropriated $132,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1997.".

(b) TECHNICAL CORRECTIONS.—Section 318 of the Public Health Service Act (42 U.S.C. 247c) is amended—

(1) in subsection (b)(3), by striking ", and" and inserting "; and"; and

(2) in subsection (d)(5)—

(A) in subparagraph (A), by striking "form, or" and inserting "form; or"; and

(B) in subparagraph (B), by striking "purposes," and inserting "purposes;".

SEC. 203. EXTENSION OF PROGRAM REGARDING PREVENTABLE CASES OF INFERTILITY ARISING AS RESULT OF SEXUALLY TRANSMITTED DISEASES.

(a) TECHNICAL CORRECTION.—Section 318A of the Public Health Service Act (42 U.S.C. 247c–1), as added by section 304 of Public Law 102–531 (106 Stat. 3490), is amended in subsection (o)(2) by striking "subsection (s)" and inserting "subsection (q)".

(b) EXTENSION OF PROGRAM.—Section 318A of the Public Health Service Act (42 U.S.C. 247c–1), as added by section 304 of Public Law 102–531 (106 Stat. 3490), is amended—

(1) in subsection (q), by striking "and 1995" and inserting "through 1997"; and

(2) in subsection (r)(2), by striking "through 1995" and inserting "through 1997".

SEC. 204. SEXUALLY TRANSMITTED DISEASE ACCELERATED PREVENTION CAMPAIGNS.

Part B of title III of the Public Health Service Act is amended by inserting after section 318A (42 U.S.C. 247c–1) the following new section:

"SEC. 318B. SEXUALLY TRANSMITTED DISEASE ACCELERATED PREVENTION CAMPAIGNS.

"(a) GRANTS.—The Secretary is authorized to award grants to States and political subdivisions of States for the development, implementation, and evaluation of innovative, interdisciplinary approaches to the prevention and control of sexually transmitted diseases and their sequelae by—

"(1) expanding access to sexually transmitted disease services through collaborations with other public health programs and with nongovernmental partners;

"(2) implementing community-based behavioral interventions to prevent disease transmission; and

"(3) establishing collaborations between health departments and university-based experts to strengthen sexually transmitted diseases prevention programs.

"(b) APPLICATION.—To be eligible to receive a grant under subsection (a), a State or political subdivision of a State, shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

"(c) PRIORITY.—In awarding grants under subsection (a), the Secretary shall give priority to applications that seek to conduct activities with grant funds that focus on the prevention of sexually transmitted diseases among women and other populations that are disproportionately affected by these diseases.".

TITLE III—INJURY CONTROL AND VIOLENCE PREVENTION

SEC. 301. SHORT TITLE.

This title may be cited as the "Injury Control and Violence Prevention Act of 1993".

SEC. 302. FINDINGS.

Congress finds that—

(1) violence or the threat of violence has adverse effects on the health and safety of Americans of all ages, races, ethnicities and economic conditions;

(2) the majority of homicides and violent assaults are committed by people who have relationships with their victims and are not committed by strangers;

(3) violence is being committed in private as well as public, in homes, schools, and neighborhoods;

(4) interventions by law enforcement and criminal justice systems have limited ability to prevent violence;

(5) family and interpersonal violence represent serious threats to the health and well-being of millions of women in the United States;

(6) violence against women has serious health consequences for its victims, including fatality, severe trauma, repeated physical injuries, and chronic stress-related disorder;

(7) violence against women has serious mental health consequences for its victims, including substance abuse, severe psychological trauma, and suicide;

(8) fewer than 5 percent of injured women are correctly diagnosed by medical personnel as being victims of domestic violence;

(9) hospitals and clinics do not have a uniform set of protocols for the identification and referral of victims of family and interpersonal violence, or for the training of health care professionals to perform such functions;

(10) a national surveillance system for monitoring the health effects of injury should be established to determine the nature and extent of family and interpersonal violence in the United States; and

(11) the Surgeon General has identified domestic violence as a public health problem to which all health care providers must actively and vigorously respond.

SEC. 303. FAMILY AND INTERPERSONAL VIOLENCE PREVENTION.

Section 393 of the Public Health Service Act (42 U.S.C. 280b–2) is amended to read as follows:

"SEC. 393. PREVENTION OF FAMILY AND INTERPERSONAL VIOLENCE.

"(a) RESEARCH AND TECHNICAL ASSISTANCE.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may conduct research and provide technical assistance to appropriate public and nonprofit private entities and to academic institutions to assist such entities in performing research in, and conducting training and public health programs for, the prevention of injuries and deaths associated with family and interpersonal violence.

"(b) GRANTS.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may award grants to States, political subdivisions of States, and any other public and nonprofit private entity for—

"(1) the conduct of research into identifying effective strategies to prevent interpersonal violence within the family and among acquaintances;

"(2) the development, implementation, and evaluation of demonstration projects for the prevention of interpersonal violence within families and among acquaintances;

"(3) the implementation of public information and education programs for prevention of family and interpersonal violence and to broaden public awareness of the public health consequences of family and interpersonal violence; and

"(4) the provision of education, training and clinical skills improvement programs for health care professionals to—

"(A) routinely interview and identify individuals whose medical condition or statements indicate that the individuals are victims of domestic violence or sexual assault; and

"(B) refer the individuals to entities that provide services regarding such violence and assault, including referrals for counseling, housing, legal services, and services of community organizations.

"(c) INJURY SURVEILLANCE PROGRAM.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall support the establishment of national systematic surveillance of injuries, including those caused by family and interpersonal violence.

"(d) DEFINITION.—As used in this section, the term 'interpersonal violence within families and acquaintances' means any intentional violence, controlling, or coercive behavior or pattern of behavior by an individual who is currently or who was previously, in an intimate or acquaintance relationship with the victim. Such behavior may occur at any stage of the lifecycle and may encompass single acts or a syndrome of actual or threatened physical injury, sexual assault, rape, psychological abuse, or neglect. Such term includes behavior which currently may be described as 'child neglect', 'child abuse', 'spousal abuse', 'domestic violence', 'woman battering', 'partner abuse', 'elder abuse', and 'date rape'.

"(e) APPLICATION.—To be eligible to receive assistance under subsection (a) or (b), an entity shall prepare and submit to the Secretary an application at such time, in such

manner, and containing such information as the Secretary may require.".

SEC. 304. ADVISORY COMMITTEE; REPORTS.

Part J of title III of the Public Health Service Act (as amended by Public Law 103–43) is amended by inserting after section 393 (42 U.S.C. 280b–2) the following new section:

"SEC. 393A. GENERAL PROVISIONS.

"(a) ADVISORY COMMITTEE.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish an advisory committee to advise the Secretary and such Director with respect to the prevention and control of injuries.

"(b) REPORT.—Not later than February 1 of 1996 and of every second year thereafter, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities carried out under this part during the preceding 2 fiscal years. Such report shall include a description of such activities that were carried out with respect to domestic violence and sexual assault and with respect to rural areas.".

SEC. 305. TECHNICAL CORRECTIONS.

(a) TERMINOLOGY.—Part J of title III of the Public Health Service Act (42 U.S.C. 280b et seq.) (as amended by Public Law 103-43) is amended—

(1) in the heading for such part, by striking "INJURY CONTROL" and inserting "PREVENTION AND CONTROL OF INJURIES"; and

(2) in section 392—

(A) in the heading for such section, by inserting "PREVENTION AND" before "CONTROL ACTIVITIES";

(B) in subsection (a)(1), by inserting "and control" after "prevention"; and

(C) in subsection (b)(1), by striking "injuries and injury control" and inserting "the prevention and control of injuries".

(b) PROVISIONS RELATING TO PUBLIC LAW 102–531.—Part J of title III of the Public Health Service Act (42 U.S.C. 280b et seq.) (as amended by Public Law 103–43 (106 Stat. 3482), is amended—

(1) in section 392(b)(2), by striking "to promote injury control" and all that follows and inserting "to promote activities regarding the prevention and control of injuries; and"; and

(2) in section 391(b), by adding at the end the following sentence: "In carrying out the preceding sentence, the Secretary shall disseminate such information to the public, including through elementary and secondary schools.".

SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

Section 394 of the Public Health Service Act (42 U.S.C. 280b–3) is amended—

(1) by striking "391 and 392" and inserting "391, 392, and 393"; and

(2) by striking "$10,000,000" and all that follows through the period and inserting "$60,000,000" for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1997.".

TITLE IV—BREAST AND CERVICAL CANCER AMENDMENTS

SEC. 401. SHORT TITLE.

This title may be cited as the "Breast and Cervical Cancer Amendments of 1993".

SEC. 402. REVISIONS IN PROGRAM OF STATE GRANTS REGARDING BREAST AND CERVICAL CANCER.

(a) LIMITED AUTHORITY REGARDING FOR-PROFIT ENTITIES.—

(1) IN GENERAL.—Section 1501(b) of the Public Health Service Act (42 U.S.C. 300k(b)) is amended—

(A) by striking "STATES.—A State" and all that follows through "may expend" and inserting the following: "STATES.—

"(1) IN GENERAL.—A State receiving a grant under subsection (a) may, subject to paragraphs (2) and (3), expend"; and

(B) by adding at the end the following paragraphs:

"(2) LIMITED AUTHORITY REGARDING OTHER ENTITIES.—In addition to the authority established in paragraph (1) for a State with respect to grants and contracts, the State may provide for screenings under subsection (a)(1) through entering into contracts with private entities.

"(3) PAYMENTS FOR SCREENINGS.—The amount paid by a State to an entity under this subsection for a screening procedure under subsection (a)(1) may not exceed the amount that would be paid under part B of title XVIII of the Social Security Act if payment were made under such part for furnishing the procedure to a woman enrolled under such part.".

(2) CONFORMING AMENDMENT.—Section 1505(3) of the Public Health Service Act (42 U.S.C. 300n-1(3)) is amended by inserting before the semicolon the following: "(and additionally, in the case of services and activities under section 1501(a)(1), with any similar services or activities of private entities)".

(b) SPECIAL CONSIDERATION FOR GRANTS.—Section 1501 of the Public Health Service Act (42 U.S.C. 300k) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL CONSIDERATION.—In making grants under subsection (a) after the date of enactment of this subsection, the Secretary shall give special consideration to projects that have been peer reviewed and approved and that involve areas that—

"(1) have high cervical or breast cancer mortality rates; or

"(2) have a high incidence of cervical or breast cancer.".

(c) EXEMPTION FROM MATCHING REQUIREMENTS.—Section 1502(b)(1) of the Public Health Service Act (42 U.S.C. 3001(b)(1)) is amended to read as follows:

"(1) TYPES OF CONTRIBUTIONS.—

"(A) GENERAL RULE.—Non-Federal contributions required in subsection (a) may be in cash or in kind, fairly evaluated, including equipment or services (and excluding indirect or overhead costs). Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

"(B) DONATED TREATMENT SERVICES.—In meeting the non-Federal contribution requirement of this section, the State involved—

"(i) may, with respect to a grant awarded for a program under paragraph (1) or (2) of section 1501(a), use the value of any donated outreach services associated with the delivery of breast and cervical cancer screenings conducted under the program, and the value of any additional donated breast or cervical cancer diagnostic or treatment services provided subsequent to the screening conducted under the program; and

"(ii) may not, with respect to a grant awarded for a program under paragraph (3), (4), (5) or (6) of section 1501(a), include the value of any donated breast or cervical cancer outreach, diagnosis, or treatment services.".

(d) REQUIREMENTS WITH RESPECT TO TYPE AND QUALITY OF SERVICES.—

(1) IN GENERAL.—Section 1503 of the Public Health Service Act (42 U.S.C. 300m) is amended—

(A) in subsection (a)—

(i) in paragraph (1), to read as follows:

"(1) to ensure that, after a limited period of time and thereafter throughout the period during which amounts are received pursuant to the grant, except for the period of the first year when a 50 percent minimum shall apply, not less than 60 percent of the grant is expended to provide each of the services or activities described in paragraphs (1) and (2) of section 1501(a), including making available screening procedures for both breast and cervical cancers;"; and

(ii) in paragraph (4), to read as follows:

"(4) to ensure that not more than 40 percent of the grant is expended to provide the services or activities described in paragraphs (3) through (6) of section 1501(a), except in the case of the first year during which the maximum expended for these purposes shall not exceed 50 percent of the grant."; and

(B) by striking subsections (c) through (e) and inserting the following:

"(c) QUALITY ASSURANCE REGARDING SCREENING PROCEDURES.—The Secretary may not make a grant under section 1501 unless the State involved agrees that the State will, in accordance with applicable law, assure the quality of screening procedures conducted pursuant to such section.".

(2) TRANSITION RULE REGARDING MAMMOGRAPHIES.—With respect to the screening procedure for breast cancer known as a mammography, the requirements in effect on the day before the date of the enactment of this Act under section 1503(c) of the Public Health Service Act remain in effect (for an individual or facility conducting such procedures pursuant to a grant to a State under section 1501 of such Act) until there is in effect for the facility a certificate (or provisional certificate) issued under section 354 of such Act.

(e) STATEWIDE PROVISION OF SERVICES.—Section 1504(c) of the Public Health Service Act (42 U.S.C. 300n(c)) is amended by adding at the end the following paragraph:

"(3) GRANTS TO TRIBES AND TRIBAL ORGANIZATIONS.—

"(A) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to tribes and tribal organizations (as such terms are used in paragraph (1)) for the purpose of carrying out programs described in section 1501(a). This title applies to such a grant (in relation to the jurisdiction of the tribe or organization) to the same extent and in the same manner as such title applies to a grant to a State under section 1501 (in relation to the jurisdiction of the State).

"(B) If a tribe or tribal organization is receiving a grant under subparagraph (A) and the State in which the tribe or organization is located is receiving a grant under section 1501, the requirement established in paragraph (1) for the State regarding the tribe or organization is deemed to have been waived under paragraph (2).".

(f) EVALUATIONS AND REPORTS.—Section 1508 of the Public Health Service Act (42 U.S.C. 300n–4) is amended—

(1) in subsection (a), by adding at the end the following sentence: "Such evaluations shall include evaluations of the extent to which States carrying out such programs are in compliance with section 1501(a)(2) and with section 1504(c)."; and

(2) in subsection (b), by inserting before the period the following: ", including recommendations regarding compliance by the States with section 1501(a)(2) and with section 1504(c)".

(g) TECHNICAL CORRECTIONS.—Title XV of the Public Health Service Act (42 U.S.C. 300k et seq.) is amended—

(1) in section 1501(a), in the matter preceding paragraph (1), by striking "Control," and inserting "Control and Prevention,"; and

(2) in section 1505—

(A) in paragraph (3), by striking "nonprivate" and inserting "nonprofit private"; and

(B) in paragraph (4), by inserting "will" before "be used".

SEC. 403. ESTABLISHMENT OF DEMONSTRATION PROGRAM OF GRANTS FOR ADDITIONAL PREVENTIVE HEALTH SERVICES FOR WOMEN.

(a) IN GENERAL.—Title XV of the Public Health Service Act (42 U.S.C. 300k et seq.) is amended—

(1) by redesignating section 1509 as section 1510; and

(2) by inserting after section 1508 the following section:

"SEC. 1509. SUPPLEMENTAL GRANTS FOR ADDITIONAL PREVENTIVE HEALTH SERVICES.

"(a) DEMONSTRATION PROJECTS.—In the case of States receiving grants under section 1501, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to not more than 3 such States to carry out demonstration projects for the purpose of—

"(1) providing preventive health services in addition to the services authorized in such section, including screenings regarding blood pressure and cholesterol, and including health education;

"(2) providing appropriate referrals for medical treatment of women receiving services pursuant to paragraph (1) and ensuring, to the extent practicable, the provision of appropriate follow-up services; and

"(3) evaluating activities conducted under paragraphs (1) and (2) through appropriate surveillance or program-monitoring activities.

"(b) STATUS AS PARTICIPANT IN PROGRAM REGARDING BREAST AND CERVICAL CANCER.—The Secretary may not make a grant under subsection (a) unless the State involved agrees that services under the grant will be provided only through entities that are screening women for breast or cervical cancer pursuant to a grant under section 1501.

"(c) APPLICABILITY OF PROVISIONS OF GENERAL PROGRAM.—This title applies to a grant under subsection (a) to the same extent and in the same manner as such title applies to a grant under section 1501.

"(d) FUNDING.—

"(1) IN GENERAL.—Subject to paragraph (2), for the purpose of carrying out this section, there are authorized to be appropriated $3,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1997.

"(2) LIMITATION REGARDING FUNDING WITH RESPECT TO BREAST AND CERVICAL CANCER.—The authorization of appropriations established in paragraph (1) is not effective for a fiscal year unless the amount appropriated under section 1510(a) for the fiscal year equals or exceeds $100,000,000.".

(b) CONFORMING AMENDMENT.—Section 1510(a) of the Public Health Service Act, as redesignated by subsection (a)(1) of this section, is amended in the heading for the section by striking "**FUNDING.**" and inserting "**FUNDING FOR GENERAL PROGRAM.**".

SEC. 404. FUNDING FOR GENERAL PROGRAM.

Section 1510(a) of the Public Health Service Act (as amended by section 403(a)(2)) is amended—

(1) by striking "and" after "1991,"; and

(2) by inserting before the period the following: ", $200,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1997".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. EVALUATIONS.

Section 2711 of the Public Health Service Act (42 U.S.C. 300aaa-10) is amended to read as follows:

"EVALUATION OF PROGRAMS

"SEC. 2711. (a) IN GENERAL.—Such portion as the Secretary shall determine, but not less than .2 percent nor more than 1 percent, of any amounts appropriated for programs authorized under this Act for any fiscal year beginning after September 20, 1993, shall be made available for the evaluation (directly, or by grants of contracts) of the implementation and effectiveness of such programs.

"(b) REPORT ON EVALUATIONS.—

"(1) IN GENERAL.—To provide information for legislative deliberations concerning Federal health programs, the Secretary shall, not later than January 1 of each year, prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that identifies and synthesizes the findings of the evaluations conducted under subsection (a) by program area. Such report shall also include the plans of the Secretary for the subsequent year's evaluations, including programs and issue areas.

"(2) FIVE YEAR REVIEW.—A report submitted under paragraph (1) shall contain a description of the findings of the Secretary with respect to evaluations conducted under subsection (a) or other provisions of law, during the 5-year period prior to the year for which the report is being submitted. Such description shall provide the Committees referred to in paragraph (1) with information concerning program changes that the Secretary intends to implement in response to such findings in order to improve the health of the American people and their receipt of needed and effective public health services.".

SEC. 502. FEDERAL BENEFITS FOR OVERSEAS ASSIGNEES.

Section 307 of the Public Health Service Act (42 U.S.C. 242l) is amended by adding at the end thereof the following new subsection:

"(c) The Secretary may provide to personnel appointed or assigned by the Secretary to serve abroad, allowances and benefits similar to those provided under chapter 9 of title I of the Foreign Service Act of 1990 (22 U.S.C. 4081 et seq.). Leaves of absence for personnel under this subsection shall be on the same basis as that provided under subchapter I of chapter 63 of title 5, United States Code to individuals serving in the Foreign Service.".

SEC. 503. LOAN REPAYMENT PROGRAM.

Part J of title III of the Public Health Service Act (as amended by section 2008 of Public Law 103-43) is amended by inserting after section 393A (as added by section 304) the following new section:

"SEC. 393B. LOAN REPAYMENT PROGRAM.

"(a) IN GENERAL.—

"(1) AUTHORITY.—Subject to paragraph (2), the Secretary may carry out a program of entering into contracts with appropriately qualified health professionals under which such health professionals agree to conduct prevention activities, as employees of the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $20,000 of the principal and interest of the educational loans of such health professionals.

"(2) LIMITATION.—The Secretary may not enter into an agreement with a health professional pursuant to paragraph (1) unless such professional—

"(A) has a substantial amount of educational loans relative to income; and

"(B) agrees to serve as an employee of the Centers for Disease Control and Prevention or the Agency for Toxic Substances and Disease Registry for purposes of paragraph (1) for a period of not less than 3 years.

"(b) APPLICABILITY OF CERTAIN PROVISIONS.—With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III of this Act, the provisions of such subpart shall, except as inconsistent with subsection (a), apply to the program established in this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program.

"(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $500,000 for each of the fiscal years 1994 through 1997.".

SEC. 504. ESTABLISHMENT OF REQUIREMENT OF BIENNIAL REPORT ON NUTRITION AND HEALTH.

Title XVII of the Public Health Service Act (42 U.S.C. 300u et seq.), as amended by section 302 of Public Law 102-531 (106 Stat. 3483), is amended by adding at the end the following section:

"BIENNIAL REPORT REGARDING NUTRITION AND HEALTH

"SEC. 1709. (a) BIENNIAL REPORT.—The Secretary shall require the Surgeon General of the Public Health Service to prepare biennial reports on the relationship between nutrition and health. Such reports may, with respect to such relationship, include any recommendations of the Secretary and the Surgeon General regarding the public health.

"(b) SUBMISSION TO CONGRESS.—The Secretary shall ensure that, not later than February 1 of 1995 and of every second year thereafter, a report under subsection (a) is submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

"(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 1997.".

SEC. 505. ALIGNMENT OF CURRENT CENTERS FOR DISEASE CONTROL AND PREVENTION REAUTHORIZATION SCHEDULE.

(a) PROSTATE CANCER PREVENTION.—Section 317D((l)(1) of such Act (42 U.S.C. 247b-5(l)(1)) is amended by striking "through 1996" and inserting "through 1997".

(b) CANCER REGISTRIES.—Section 399L(a) of such Act (42 U.S.C. 280e-4(a)) (as amended by section 2003(1) of Public Law 103-43) is amended by striking "through 1996" and inserting "through 1997".

(c) HEALTH PROMOTION AND DISEASE PREVENTION RESEARCH AND DEMONSTRATION CENTERS.—Section 1706(e) of such Act (42 U.S.C. 300u-5(e)) is amended by striking "through 1996" and inserting "through 1997".

(d) SENSE OF CONGRESS.—It is the sense of Congress that, beginning on the date of enactment of this Act and continuing through fiscal year 1997, all Acts regarding the authorization or reauthorization of Centers for

Disease Control and Prevention programs should be authorized only through fiscal year 1997. Beginning in fiscal year 1997, Congress should reauthorize the Centers for Disease Control and Prevention and its programs in one comprehensive Act. After fiscal year 1997, reauthorization of such Centers and its programs should occur on a regular cyclical basis.

SEC. 506. BREAST AND CERVICAL CANCER INFORMATION.

Title XXVII of the Public Health Service Act (42 U.S.C. 300aaa et seq.) is amended by adding at the end the following new section:

"SEC. 2715. BREAST AND CERVICAL CANCER INFORMATION.

"(a) IN GENERAL.—Each of the entities referred to in subsection (b) shall make available, to such individuals as the entities determine appropriate, information (in a culturally competent manner) concerning breast and cervical cancer, including if appropriate, information on the need for breast self-examinations and the skills for such self-examinations, and shall refer such clients as the entities determine appropriate for breast and cervical cancer screening, treatment or other services.

"(b) ENTITIES.—The entities referred to in subsection (a) are—

"(1) a migrant health center receiving assistance under section 329;

"(2) a community health center receiving assistance under section 330;

"(3) an entity receiving assistance under section 340;

"(4) an alcohol or drug treatment entity or mental health entity receiving assistance under title V or title XIX;

"(5) a family planning project described in section 1001;

"(6) an entity receiving assistance under title XXVI;

"(7) a clinic that treats sexually transmitted diseases and is authorized under section 318;

"(8) an entity receiving funds to provide primary health services to residents of public housing under section 340A;

"(9) a non-Federal entity authorized under the Indian Self-Determination Act; and

"(10) a tuberculosis clinic receiving assistance under section 317(j)(2) or 317(k)(2).".

SEC. 507. PAYMENT OF JUDGMENTS.

Section 224(k)(2) of the Public Health Service Act (42 U.S.C. 233(k)(2)), as added by section 4 of the Federally Supported Health Centers Assistance Act of 1992, is amended by adding at the end thereof the following new sentence: "Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of sections 329, 330, 340 and 340A.".

SEC. 508. INTERIM FINAL REGULATIONS.

The Secretary of Health and Human Services is authorized to issue interim final regulations—

(1) under which the Secretary may approve accreditation bodies under section 354(e) of the Public Health Service Act (42 U.S.C. 263b(e)); and

(2) establishing quality standards under section 354(f) of the Public Health Service Act (42 U.S.C. 263b(f)).

NOTICES OF HEARINGS

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. LEVIN. Mr. President, I would like to announce that the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, will hold a hearing on Tuesday, November 9, 1993, at 2:30 p.m., on Oversight of the FDIC: Are Investors Cashing in on FDIC Mismanagement? The hearing will take place in room 342 of the Dirksen Senate Office Building.

SUBCOMMITTEE ON AGRICULTURAL RESEARCH, CONSERVATION, FORESTRY AND GENERAL LEGISLATION

Mr. LEAHY. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry Subcommittee on Agricultural Research, Conservation, Forestry and General Legislation will hold a hearing on S. 1288, the National Aquaculture Development, Commercialization, and Promotion Act of 1993. The hearing will be held on Wednesday, November 10, 1993 at 2:30 p.m. in SR–332. Senator TOM DASCHLE will preside.

For further information, please contact Doug O'Brien of the committee staff at 224–2035.

NOTICE OF CANCELLATION OF FIELD HEARING

SUBCOMMITTEE ON WATER AND POWER

Mr. BRADLEY. Mr. President, I regretfully announce for the public the cancellation of a field hearing that had been scheduled before the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources to receive testimony on the contemporary needs and management of the Newlands, project in Nevada, a Bureau of Reclamation project.

The hearing had been scheduled to take place Monday, November 8, 1993, beginning at 8 a.m., in the Reno-Sparks Convention Center, 4590 S. Virginia Street, Reno, NV.

The hearing will be rescheduled for December 1993.

For further information, please contact Dana Sebren Cooper, counsel for the subcommittee at (202) 224–4531.

ADDITIONAL STATEMENTS

CALIFORNIA GULCH SUPERFUND SITE

• Mr. BROWN. Mr. President, today I received an article by Helene Monberg concerning the California Gulch Superfund site in Leadville, CO, published in the Leadville Herald Democrat.

Helene Monberg is a Leadville native and has played a vital role in communicating important matters regarding the West as a veteran journalist for Western Resources Wrap-up, in Washington, DC. It is an excellent article about problems with the way EPA is administering the Superfund Program and I commend it to my colleagues. I ask unanimous consent that it be printed in the RECORD.

[From the Leadville (CO) Herald Democrat, Oct. 27, 1993]

SUPERFUND DETAILED BY FORMER LEADVILLE RESIDENT

(By Helene Monberg)

WASHINGTON.—Mayor Robert J. Zaitz is fed to the teeth with the way the Environmental Protection Agency (EPA) is handling the Superfund site in Leadville. "It's a scandal," he charged.

After 11 years, he told Western Resources Wrap-up (WRW) in telephone interviews on Sept. 16 and Sept. 21, "EPA is still studying the health problems here. EPA hasn't even been able to determine whether the mine dumps in the area pose a health risk, said the exasperated Leadville native, whose family name is synonymous with Leadville.

Currently EPA is completing research under the direction of a University of Michigan researcher to determine whether lead in cookie dough is "biodegradable, which means whether it poses a health hazard to children, Zaitz said. According to EPA studies, about one out of every five children in Leadville has lead levels above normal in his/her blood. By law that is a concern to EPA.

So EPA and its research team conceived of the idea of feeding cookie dough with various levels of lead in it to baby pigs to determine whether lead entered their bloodstream. "Just because kids are exposed to lead doesn't mean it's a problem. It must enter their bloodstream to be harmful. That's what this swine study is all about.

By feeding small doses of lead to these animals EPA hopes to learn how much is being absorbed by the young children in Leadville, Paul Day, an environmental specialist, told Channel 4 in Denver on Sept. 6. Too much lead in one's bloodstream puts kids at risk of developing learning disabilities and may cause reduced hand-to-eye coordination and diminished IQ, according to the Centers for Disease Control. Why use pigs, an uncommon Leadville product? "We felt they would be a good animal model for young children, according to Professor Bob Peppenga, who is working on the study. This study has now moved into the brain-dissecting stage to find whether the piglets were damaged by the lead fed to them in their food, Zaitz told WRW.

Kids in Leadville, like kids everywhere, eat dirt from time to time. Zaitz and other Leadville residents claim they know no kids who ever developed disabilities due to being exposed to lead in Leadville.

Tammy Everett told Channel 4, "My grandparents used to live in California Gulch in the heart of the Leadville Superfund site. As children, "they played in the tailings and stuff . . . and there's been . . . no problem. They haven't had any poisoning," she observed. Zaitz said that blood levels in kids in Leadville have gone down recently because many Leadville mothers have made eating dirt a no-no for their kids, have insisted on them washing their hands after playing outside, and no longer feed their kids locally grown root vegetables. "I still eat locally grown vegetables, and I'm 63, but that probably doesn't prove anything, Zaitz told WRW.

Along with EPA's piglet-lead study, Zaitz questions a lot of the other actions that EPA has taken (or has not taken) in the name of cleaning up. He told WRW:

All 23 miles of Leadville have been put in the Superfund site, but it excluded the Leadville drainage tunnel on federal land.

The U.S. government doesn't want to be stuck with any clean-up costs itself, although it directly generated much of the

mine waste. He recalled that the feds cracked the whip during World War II. Uncle Sam insisted that the mines and mills in the Leadville mining district work overtime to produce vitally needed ore for the war effort. Miners were exempt from the draft. But the feds now have a lapse of memory on that count, he said.

EPA tries to push cleanup costs on "anyone with deep pockets."

It does so regardless of their degree of liability, he charged. So the mining companies and others have gone to court or are trying to negotiate settlements with the feds to limit their liability.

Very little on-the-ground clean-up has taken place, but lawyers have cleaned up personally in handling the legal disputes that have arisen over the Leadville Superfund site. "Superfund is a lawyer's paradise. It's a Garden of Eden for lawyers," Zaitz charged. "They (both EPA and industry) use lawyers to try to intimidate us up here in Leadville, but they don't," he claimed.

EPA is considering a proposal to have all landowners in town remove 18 inches of top soil from their yards because of its potential lead and other metal content. Such an operation would not only be costly but "where would you put the dug-up soil?" Zaitz asked.

EPA officials, lawyers and other professionals dealing with Superfund speak in gobbledygook, and Leadville officials and residents don't know what they are talking about. Their reports are written in technical terms and go unread because they are so difficult to read.

"Then EPA complains because their reports go unread," he said.

EPA uses only soil samples to establish the health hazards at Leadville. "They don't consider lead paint or lead pipes," he said.

"They expect the soil to be clean enough to eat," Zaitz noted.

Because of Leadville's designation as a Superfund site, real property values in the town have dropped sharply. For example, his house in the prime residential area in town is only valued at $50,000 on the current market, even though its true value sans Superfund site designation would be well over $100,000, Zaitz said.

EPA expects the town and county to maintain any work done in the area under Superfund even though Leadville is just holding its own financially, and Lake County is "nearly broke, as mining is minimal in the area now." EPA has insisted on fencing part of the area. This has prompted the local residents to call EPA "Eco-Naziism." They have put up a sign on the fence reading "East Berlin Wall-EPA." About that time Zaitz asked this WRW writer, a Leadville native, to check why it has taken so long for EPA to move ahead on this Superfund site.

Denise Link in EPA's Denver office told WRW on Sept. 16 she agreed with Zaitz that progress has been painfully slow in Leadville. It is frustrating, she said. But she did note, and Zaitz agreed, that EPA has successfully gotten ASARCO Mining Company to build a filter plant at a cost of $13 million and the Bureau of Reclamation has built a filter plant at the Leadville drainage tunnel at a cost of about $6 million. The Bu/Rec plant would be more effective if it also received water from Stray Horse Gulch, a heavily mined area, but EPA hasn't suggested that because of its cost to the feds, Zaitz said. EPA's Eleanor Dwight told WRW on Sept. 21 she was writing a letter to Zaitz detailing that an "agreement in principle" had been reached.

She said it was arrived at on July 16 between EPA, and ASARCO, Newmont, Resurrection, and Hecla mining companies and D&RGW Railroad regarding their liability under Superfund, under the supervision of the U.S. District Court in Denver. She said EPA hoped the details could be worked out in a couple of months.

SUPERFUND, A STIGMA FOR TOWN?

Few communities want to become designated as Superfund sites because of "the stigma attached to the term,n according to Chairman Frank R. Lautenberg, D–N.J., of the Superfund Subcommittee of the Senate Environment and Public Works Committee.

He has been holding hearings on Superfund. At the hearing that the Lautenberg panel held on Sept. 9 several of the witnesses raised many of the same points made by Zaitz—that EPA moves with glacial slowness in getting to actual clean-up; too much time and money are spent on studies, litigation and lawyers' fees; ordinary citizens don't understand the technical language used by the pro's in hazardous waste clean-up; real property values drop sharply in areas where a Superfund site is designated, and new businesses are deterred from going into such areas because of the potential high liability that goes with such areas.

A newly released study by the General Accounting Office dated September, 1993 states EPA has spend $15.2 billion to date to implement the 1980 Superfund Act (P.L. 96–510) as amended, but of the 1,275 hazardous waste sites designated on the Superfund list, only 374 are being worked on at the present time. Construction has been completed on only 109 sites to remedy the hazardous waste problem. Forty sites were dropped by EPA from the priority list without clean-up. The U.S. Army Corps of Engineers, which has several divisions starved for civil projects work, has done only about $300 million work annually in clean-up on these sites since 1982 under a contractual agreement with EPA, the Corps told WRW on Sept. 21. The Superfund Act expires at the end of this year; its tax provisions in 1994. Congressional hearings indicated a general consensus that EPA cannot speed up the slow-going clean-up process markedly on its own until the law is updated because of major problems in the law that have arisen over liability, definition of permanent clean-up, and who pays for maintenance of cleaned-up sites; and because funding has been inadequate for the size of the program. Currently reauthorization of the Clean Water Act (PL 92–500) has a higher priority than Superfund in Congress and with the Clinton Administration as well. That could change later if controversies over wetlands slow down reauthorization of the Clean Water Act.

Assistant Attorney General Alan C. Williams of Minnesota, who represented the states at the Sept. 9 Senate hearing on Superfund and is an expert on both the federal and Minnesota Superfund laws, strongly urged that major changes be made in the federal law reauthorization. "All Superfund sites should be subject to uniform national clean-up goals and minimum clean-up goals and minimum clean-up standards. This approach should help meet the (current) concern for environmental justice expressed by some communities affected by Superfund clean-ups. He urged that Congress allow EPA "to delegate remedy selection authority to the states with accompanying responsibility. That should encourage increased state participation in the federal Superfund program, and facilitate more and faster clean-up of (federal) Superfund sites. That would speed up the whole pace of Superfund clean-up, Williams predicted.•

SMALL BUSINESS INCENTIVE ACT OF 1993

Mr. FORD. Mr. President, on behalf of the majority leader I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 249, S. 479, a bill to promote capital formation for small business; that the committee substitute amendment be adopted; that the bill, as amended, then be read three times, and passed, the motion to reconsider laid upon the table; that any statements relating to this measure appear in the RECORD in the appropriate place.

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

The bill (S. 479), as amended, was deemed read three times, and passed; as follows:

S. 479

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 "Small Business Incentive Act of 1993".

SEC. 2. EXEMPTED SECURITIES.

Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended by striking "$5,000,000" and inserting "$10,000,000".

SEC. 3. EXCLUSIONS FROM THE DEFINITION OF INVESTMENT COMPANY.

Section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)) is amended—

(1) in paragraph (1), by inserting after the first sentence the following new sentence: "Such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 12(d)(1) governing the purchase or other acquisition by such issuer of any security issued by a registered investment company and the sale of any security issued by a registered open-end investment company to any such issuer.";

(2) in paragraph (1)(A)—

(A) by inserting after "issuer" the first place it appears "and the company is or (but for the exceptions set forth in this paragraph and paragraph (7)) would be an investment company"; and

(B) by striking "unless as of the date" and all that follows through the end of subparagraph (A) and inserting a period; and

(3) by amending paragraph (7) to read as follows:

"(7) Any issuer whose outstanding securities are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, except that such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 12(d)(1) governing the purchase or other acquisition by such issuer of any security issued by a registered investment company and the sale of any security issued by a registered open-end investment company to any such issuer.".

SEC. 4. DEFINITION OF QUALIFIED PURCHASER.

Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended by adding at the end the following new paragraph:

"(51) 'Qualified purchaser' means—

"(A) any natural person who owns at least $10,000,000 in securities of issuers, each of which is not an affiliated person, as defined in section 2(a)(3)(C), of such person;

"(B) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $100,000,000 in securities of issuers, each of which is not an affiliated person, as defined in section 2(a)(3)(C), of such person; or

"(C) any person, who may own or invest a lesser amount in securities than specified in subparagraphs (A) and (B), that the Commission, by rule or regulation, has determined does not need the protections of this title, after consideration of factors such as—

"(i) a high degree of financial sophistication, including extensive knowledge of and experience in financial matters;

"(ii) sizable net worth;

"(iii) a substantial amount of assets owned or under management;

"(iv) relationship with an issuer; or

"(v) such other factors as the Commission may determine to be consistent with the purpose of this paragraph.

The Commission also may adopt such rules and regulations governing the persons specified in subparagraphs (A) and (B) as it determines are necessary or appropriate in the public interest and for the protection of investors.".

SEC. 5. DEFINITION OF INVESTMENT SECURITIES.

Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) is amended in the last sentence by striking subparagraph (C) and inserting the following: "(C) securities issued by any majority-owned subsidiary of the owner, unless such subsidiary is an investment company or is excluded from the definition of an investment company solely by virtue of paragraph (1) or (7) of subsection (c).".

SEC. 6. EXEMPTION FOR ECONOMIC, BUSINESS, AND INDUSTRIAL DEVELOPMENT COMPANIES.

Section 6(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a)) is amended by adding at the end the following new paragraph:

"(5)(A) Any company that is not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which the company is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business, in that State if—

"(i) the organizational documents of the company state that the activities of the company are limited to the promotion of economic, business, or industrial development in the State through the provision of financial or managerial assistance to enterprises doing business, or proposing to do business, in that State, and such other activities that are incidental or necessary to carry out that purpose;

"(ii) immediately following each sale of the securities of the company by the company or any underwriter for the company, not less than 80 percent of the securities of the company being offered in such sale, on a class-by-class basis, are held by persons who reside or have a substantial business presence in that State;

"(iii) the securities of the company are sold, or proposed to be sold, by the company or any underwriter for the company, solely to accredited investors, as defined in section 2(15) of the Securities Act of 1933, or to such other persons that the Commission, as necessary or appropriate in the public interest and consistent with the protection of investors, may permit by rule, regulation, or order; and

"(iv) the company does not purchase any security issued by an investment company, as defined in section 3, or by any company that would be an investment company except for the exclusions from the definition of investment company in section 3(c), other than—

"(I) any security that is rated investment grade by at least 1 nationally recognized statistical rating organization; or

"(II) any security issued by a registered open-end investment company that is required by its investment policies to invest not less than 65 percent of its total assets in securities described in subclause (I) or securities that are determined by such registered open-end investment company to be comparable in quality to securities described in subclause (I).

"(B) Notwithstanding the exemption provided by this paragraph, the provisions of section 9 (and, to the extent necessary to enforce such provisions, sections 38 through 51) of this title shall apply to a company described in this paragraph as if the company were an investment company registered under this title.

"(C) Any company proposing to rely on the exemption provided by this paragraph shall file with the Commission a notification stating that the company intends to do so, in such form and manner as the Commission may prescribe by rule.

"(D) Any company meeting the requirements of this paragraph may rely on the exemption provided by this paragraph upon filing with the Commission the notification required by subparagraph (C), until such time as the Commission determines by order that such reliance is not in the public interest or consistent with the protection of investors.

"(E) The exemption provided by this paragraph may be subject to such additional terms and conditions as the Commission may by rule, regulation, or order determine are necessary or appropriate in the public interest or for the protection of investors.".

SEC. 7. INTRASTATE CLOSED-END INVESTMENT COMPANY EXEMPTION.

Section 6(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(d)(1)) is amended by striking "$100,000" and inserting "$10,000,000, or such other amount as the Commission may set by rule, regulation, or order".

SEC. 8. DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.

Section 2(a)(46)(C) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(46)(C)) is amended—

(1) in clause (ii), by striking "or" at the end;

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting after clause (ii) the following:

"(iii) it has total assets of not more than $4,000,000, and capital and surplus (shareholders' equity less retained earnings) of not more than $2,000,000, except that the Commission may adjust such amounts by rule, regulation, or order to reflect changes in 1 or more generally accepted indices or other indicators for small businesses; or".

SEC. 9. DEFINITION OF BUSINESS DEVELOPMENT COMPANY.

Section 2(a)(48)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)(B)) is amended by inserting before the semicolon at the end the following: ", and provided further that a business development company need not make available significant managerial assistance with respect to any company described in section 2(a)(46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of this title".

SEC. 10. ACQUISITION OF ASSETS BY BUSINESS DEVELOPMENT COMPANIES.

Section 55(a)(1)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–54(a)(1)(A)) is amended—

(1) by striking "or from any person" and inserting "from any person"; and

(2) by inserting before the semicolon ", or from any other person, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors".

SEC. 11. CAPITAL STRUCTURE AMENDMENTS.

Section 61(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–60(a)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1)(A) The asset coverage requirements of subparagraphs (A) and (B) of section 18(a)(1) applicable to business development companies shall be 200 percent.

"(B) Notwithstanding subparagraph (A) of this section or subparagraphs (A) and (B) of section 18(a)(2), a business development company may have an asset coverage of not less than 110 percent, if, immediately before the issuance or sale of senior securities, the business development company has—

"(i) total interest and dividend income for the 12 months preceding such issuance or sale that exceeds 120 percent of the sum of its total expenses (including taxes and interest expenses accrued) and dividends declared on senior securities for that 12-month period; and

"(ii) either—

"(I) an average of not less than 50 percent of its assets invested in securities described in paragraphs (1) through (5) of section 55(a) throughout the preceding 12-month period; or

"(II) not less than 50 percent of its assets invested in securities described in paragraphs (1) through (5) of section 55(a) throughout 10 months of the preceding 12-month period.

"(C) It shall be unlawful for any business development company to issue any class of senior security representing indebtedness, or to sell any such security pursuant to subparagraph (B), unless provision is made to prohibit the declaration of any dividend (except a dividend payable in stock of the issuer), or the declaration of any other distribution upon any class of the capital stock of such business development company, or the purchase of any such capital stock, unless, in every such case—

"(i) the class of senior securities has, at the time of the declaration of any such dividend or distribution or at the time of any such purchase, an asset coverage of not less than 110 percent after deducting the amount of such dividend, distribution, or purchase price, as the case may be; and

"(ii) the business development company complies with subparagraph (B)(i), except with respect to any amounts that are required to be distributed to maintain the status of the company as a regulated investment company under the Internal Revenue Code of 1986.

"(D) It shall be unlawful for any business development company to issue any class of

senior security representing stock, or to sell any such security pursuant to subparagraph (B), unless provision is made to prohibit the declaration of any dividend (except a dividend payable in common stock of the issuer), or the declaration of any other distribution, upon the common stock of such business development company, or the purchase of any such common stock, unless, in every such case—

"(i) the class of senior securities has, at the time of the declaration of any such dividend or distribution or at the time of any such purchase an asset coverage of not less than 110 percent after deducting the amount of such dividend, distribution, or purchase price, as the case may be; and

"(ii) the business development company complies with subparagraph (B)(i), except with respect to any amounts that are required to be distributed to maintain the status of the company as a regulated investment company under the Internal Revenue Code of 1986.";

(2) in paragraph (2), by striking "if such business development company" and all that follows through the end of paragraph (2) and inserting a period;

(3) in paragraph (3)(A)—

(A) by striking "senior securities representing indebtedness accompanied by";

(B) inserting "accompanied by securities," after "of such company,"; and

(C) in clause (ii), by striking "senior"; and

(4) in paragraph (3)—

(A) in subparagraph (A), by striking "and" at the end;

(B) in subparagraph (B), by striking the period at the end of clause (iv) and inserting "; and"; and

(C) by inserting after subparagraph (B) the following new subparagraph:

"(C) a business development company may issue warrants, options, or rights to subscribe to, convert to, or purchase voting securities not accompanied by securities, if—

"(i) such warrants, options, or rights satisfy the conditions in clauses (i) and (iii) of subparagraph (A); and

"(ii) the proposal to issue such warrants, options, or rights is authorized by the shareholders or partners of such business development company, and such issuance is approved by the required majority (as defined in section 57(o)) of the directors of or general partners in such company on the basis that such issuance is in the best interests of the company and its shareholders or partners.".

SEC. 12. FILING OF WRITTEN STATEMENTS.

Section 64(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-63(b)(1)) is amended by inserting "and capital structure" after "portfolio".

THE SMALL BUSINESS INCENTIVE ACT

Mr. DODD. Mr. President, I rise in support of S. 479, the Small Business Incentive Act of 1993. This is legislation designed to increase the flow of capital to the small businesses of this Nation.

Mr. President, I have come to this floor many times over the past several years to talk about economic conditions in New England and in my State of Connecticut. The New England region has suffered from the longest and deepest recession since the Great Depression of the 1930's. In Connecticut, the recession claimed one of every eight jobs during the past 4 years. More than 200,000 jobs have been lost, and the number continues to grow. Recent studies predict that Connecticut may be heading into its fifth winter of declining productivity and declining employment.

Connecticut's misfortune has been severely deepened by the credit crunch. Sixty percent of all Connecticut businesses responding to a survey conducted earlier this year reported credit availability problems in their industries. Good, sound businesses in my State have had to forego opportunities for expansion and job creation, simply because the capital was not available. Others have had to shrink their operations and lay off good workers; still others have gone bankrupt.

This problem has been especially severe for small businesses, which have been the primary source of economic growth and job creation in this country in the past. Ninety-eight percent of all firms in Connecticut employ fewer than 100 people; 87 percent have fewer than 20 workers. Many of these small business owners have told me about going to bank after bank, and being turned down time after time.

In testimony before the Banking Committee earlier this year, Federal Reserve Chairman Alan Greenspan confirmed what businesses in my State had been telling me for more than 3 years, when he said the credit crunch "is a major factor in the problems that small businesses have and their ability to finance their employment and product growth."

Witnesses before the Securities Subcommittee agreed. At a hearing last March on small business access to capital, a spokesman for the National Association of Small Business Investment Companies and the National Association of Business Development Companies, talked about the magnitude of the problem, saying:

In 1974–75 * * * credit availability was terrible. There were no loans available. In 1981–82 when interest rates were sky high, credit for small business was nonexistent. Both periods were tough times for small business. But both * * * periods pale by comparison to the credit shrinkage of 1991–93. There is almost no credit available to small business today. The landscape for credit is a wasteland. Businesses are starving for funds.

But the lack of bank financing has not been the only problem confronting small businesses in the recent recession. Another witness at the subcommittee's March hearing, Patricia M. Cloherty, testifying on behalf of the National Venture Capital Association, noted: "The much ballyhooed banking credit crunch is nothing new to small business. Small businesses are always part of a credit crunch." She said, however, "recently the country has experienced for the first time a sustained decline in the amount of venture capital available." She said it is "critical to small businesses that the United States maintain a sufficient flow of venture capital."

The Small Business Incentive Act of 1993 is a part of a broader effort to enhance these alternative sources of small business credit. The bill will reduce the regulatory burdens on venture capital funds, business development companies and other financing vehicles that supplement, or serve as alternatives to, bank lending.

The act: Increases from $5 to $10 million the amount of capital that may be raised through the sale of securities in exempt public offerings under SEC rules;

Creates a new category of private venture capital funds that may be sold to an unlimited number of sophisticated investors, and streamlines the current exception for private venture funds;

Creates an exemption from the Investment Company Act for economic, business and industrial development companies that operate under State statutes to provide financial or managerial assistance to businesses located within a particular State;

Raises from $100,000 to $10 million the amount of capital that closed-end funds can raise through intrastate offerings eligible for exemptions; and

Creates new flexibility for business development companies in the nature of their portfolio companies, their capital structures, and other activities.

Mr. President, it is essential to encourage these types of small business financing vehicles. This legislation does this while preserving important investor protections that are the foundation of the Federal securities laws. Moreover, the bill costs taxpayers nothing. It will lower the cost of capital, lower the costs of doing business, and, ultimately, lower costs to consumers—with no additional costs to the taxpayer.

Finally, I would note that this legislation originated in a proposal by the Securities and Exchange Commission 1 year ago. It has the strong support of the current SEC Chairman, Arthur Levitt, as well as the administration. I want to thank Chairman Levitt and all of the hard-working SEC staff who worked with us on the legislation. In addition, I would like to thank the committee staff who worked so hard on this legislation: Mitchell Fever of Chairman RIEGLE's staff, Wayne Abernathy of Senator GRAMM'S staff, Laura Unger of Senator D'AMATO'S staff, and, of course, my Securities Subcommittee staff, Martin Cochran, George Kramer, and Michael Stein, who recently left the subcommittee.

I hope the House will take up this legislation soon, so that the small businesses of this country will have access to these much-needed sources of capital.

NATIONAL HOME CARE WEEK

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that the Judiciary Committee be discharged from, and the Senate proceed to the immediate consideration, of Senate Joint Resolution 55 relating to National Home Care Week; that the joint resolution be read a third time, passed; the preamble be agreed to; that the motion to reconsider be laid upon the table; and, that any statements relative to the passage of this item appear in the appropriate place in the RECORD.

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

The joint resolution (S.J. Res. 55) was deemed read the third time and passed.

The preamble was agreed to.

The joint resolution, with its preamble, is as follows:

S.J. RES. 55

Whereas organized home care services for the elderly and disabled have existed in the United States since the last quarter of the 18th century;

Whereas home care is an effective and economical alternative to unnecessary institutionalization;

Whereas caring for the ill and disabled in their homes places an emphasis on the dignity and independence of the individual receiving these services;

Whereas since the enactment of the medicare home care program, which provides coverage for skilled nursing services, physical therapy, speech therapy, social services, occupational therapy, and home health aide services, the number of home care agencies in the United States providing these services has increased from fewer than 1,275 to more than 12,000; and

Whereas many private and charitable organizations provide these and similar services to millions of individuals each year, preventing, postponing, and limiting the need for them to become institutionalized to receive these services: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the periods commencing on November 28, 1993, and ending on December 4, 1993, and commencing on November 27, 1994, and ending on December 3, 1994, are each designated as "National Home Care Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such weeks with appropriate ceremonies and activities.

TO AMEND THE THREE AFFILIATED TRIBES AND STANDING ROCK SIOUX TRIBE EQUITABLE COMPENSATION ACT

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1613, a bill to amend Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act, introduced earlier today by Senators CONRAD and DORGAN; that the bill be deemed read three times, and passed; that the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD at the appropriate place.

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

The bill (S. 1613) was deemed read the third time and passed, as follows:

S. 1613

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

SECTION 1. AMENDMENTS.

(a) TIME EXTENSION.—Section 3508(d)(1) and section 3509(c)(1) of the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act (Title XXXV; Public Law 102–575; 106 Stat. 4731) are each amended by deleting "1 year" and inserting in lieu thereof in each such section "twenty-six months".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be considered as having taken effect October 30, 1992.

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT ACT OF 1993

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 232, S. 843, relating to reemployment rights and the benefits of veterans.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 843) to amend title 38, United States Code, to improve reemployment rights and benefits of veterans and other benefits of employment of certain members of the uniformed services.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consideration of bill which was reported from the Committee on Veterans' Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

S. 843

SECTION 1. SHORT TITLE.

This Act may be cited as the "Uniformed Services Employment and Reemployment Rights Act of 1993".

SEC. 2. REVISION OF CHAPTER 43 OF TITLE 38.

(a) RESTATEMENT AND IMPROVEMENT OF EMPLOYMENT AND REEMPLOYMENT RIGHTS.—Chapter 43 of title 38, United States Code, is amended to read as follows:

"CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

"SUBCHAPTER I—GENERAL

"Sec.
"4301. Purposes; sense of Congress.
"4302. Relation to other law; construction.
"4303. Definitions.
"4304. Character of service.
"SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS
"4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited.
"4312. Reemployment rights of persons who serve in the uniformed services.
"4313. Reemployment positions.
"4314. Reemployment by the Federal Government.
"4315. Reemployment by certain Federal agencies.
"4316. Rights, benefits, and obligations of persons absent from employment for service in a uniformed service.
"4317. Employee pension benefit plans.
"SUBCHAPTER III—PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION
"4321. Assistance in obtaining reemployment or other employment rights or benefits.
"4322. Enforcement of rights with respect to a State or private employer.
"4323. Enforcement of rights with respect to the Federal executive agencies.
"4324. Enforcement of rights with respect to certain Federal agencies.
"4325. Conduct of investigation; subpoenas.
"SUBCHAPTER IV—MISCELLANEOUS
"4331. Regulations.
"4332. Outreach.

"SUBCHAPTER I—GENERAL

"§4301. Purposes; sense of Congress

"(a) The purposes of this chapter are—

"(1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

"(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service under honorable conditions; and

"(3) to prohibit discrimination against persons because of their service in the uniformed services.

"(b) It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.

"§4302. Relation to other law; construction

"(a) Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance) or employer practice, policy, agreement, or plan that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

"(b) This chapter supersedes any State law (including any local law or ordinance) or employer practice, policy, agreement, or plan that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

"§4303. Definitions

"For the purposes of this chapter—

"(1) The term 'Attorney General' means the Attorney General of the United States or any person designated by the Attorney General to carry out a responsibility of the Attorney General under this chapter.

"(2) The term 'benefit', 'benefit of employment', or 'rights and benefits' means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or an employer practice or custom and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

"(3)(A) The term 'employee' means any person employed by an employer.

"(B) With respect to employment in a foreign country, the term 'employee' includes an individual who is a citizen of the United States.

"(4)(A) Except as provided in subparagraphs (B) and (C), the term 'employer' means any person, institution, organization, or other entity that pays salary or wages for work performed or that has control over employment opportunities, including—

"(i) a person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities;

"(ii) the Federal Government;

"(iii) a State;

"(iv) any successor in interest to a person, institution, organization, or other entity referred to in this subparagraph; and

"(v) a person, institution, organization, or other entity that has denied initial employment in violation of section 4311 of this title.

"(B) In the case of a National Guard technician employed under section 709 of title 32, the term 'employer' means the adjutant general of the State in which the technician is employed.

"(C) Except as an actual employer of employees, an employee pension benefit plan described in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) shall be deemed to be an employer only with respect to the obligation to provide benefits described in section 4317 of this title.

"(5) The term 'Federal executive agency' includes the United States Postal Service, the Postal Rate Commission, any nonappropriated fund instrumentality of the United States, and any Executive agency (as that term is defined in section 105 of title 5) other than an agency referred to in section 2302(a)(2)(C)(ii) of title 5.

"(6) The term 'Federal Government' includes any Federal executive agency, the legislative branch of the United States, and the judicial branch of the United States.

"(7) The term 'health plan' means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

"(8) The term 'notice' means (with respect to subchapter II) any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

"(9) The term 'qualified', with respect to an employment position, means having the ability to perform the essential tasks of the position.

"(10) The term 'reasonable efforts', in the case of actions required of an employer under this chapter, means actions, including training provided by an employer, that do not place an undue hardship on the employer.

"(11) The term 'Secretary' means the Secretary of Labor or any person designed by such Secretary to carry out an activity under this chapter.

"(12) The term 'seniority' means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

"(13) The term 'service in the uniformed services' means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

"(14) The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof).

"(15) The term 'undue hardship', in the case of actions taken by an employer, means actions requiring significant difficulty or expense, when considered in light of—

"(A) the nature and cost of the action needed under this chapter;

"(B) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

"(C) the overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and

"(D) the type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

"(16) The term 'uniformed services' means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

"§ 4304. Character of service

"A person's entitlement to the benefits of this chapter by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

"(1) A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.

"(2) A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned.

"(3) A dismissal of such person permitted under section 1161(a) of title 10.

"(4) A dropping of such person from the rolls pursuant to section 1161(b) of title 10.

"SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

"§4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited

"(a) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance, service, application for service, or obligation.

"(b) An employer shall be considered to have denied a person initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can demonstrate that the action would have been taken in the absence of such membership, application for membership, performance, service, application for service, or obligation.

"(c)(1) An employer may not discriminate in employment against or take any adverse employment action against any person because such person has taken an action to enforce a protection afforded any person under this chapter, has testified or otherwise made a statement in or in connection with any proceeding under this chapter, has assisted or otherwise participated in an investigation under this chapter, or has exercised a right provided for in this chapter.

"(2) The prohibition in paragraph (1) shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

"(d)(1) An employer may take an action otherwise prohibited by this section with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer to violate the law of the foreign country in which the workplace is located.

"(2) If an employer controls a corporation incorporated and located in a foreign country, any practice prohibited by this chapter that is engaged in by such corporation shall be presumed to be engaged in by such employer.

"(3)(A) The prohibitions of this section shall not apply to a foreign employer not controlled by an American employer.

"(B) For purposes of this paragraph the determination of whether an employer controls a corporation shall be based on—

"(i) the interrelation of operations;

"(ii) the common management;

"(iii) the centralized control of labor relations; and

"(iv) the common ownership or financial control of the employer and the corporation.

"§4312. Reemployment rights of persons who serve in the uniformed services

"(a) Subject to subsections (b), (c), and (d), any person who is absent from a position of employment by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if—

"(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

"(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

"(3) the person reports to, or submits an application for reemployment to, such employer in accordance with subsection (e).

"(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

"(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service—

"(1) that is required, beyond five years, to complete an initial period of obligated service;

"(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

"(3) performed as required pursuant to section 270 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements

determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

"(4) performed by a member of a uniformed service who is—

"(A) ordered to or retained on active duty under section 672(a), 672(g), 673, 673b, 673c, or 688 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

"(B) ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or the Congress;

"(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 673b of title 10;

"(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services; or

"(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 3500 or 8500 of title 10.

"(d)(1) An employer is not required to reemploy a person under this chapter if—

"(A) the employer's circumstances have so changed as to make such reemployment impossible or unreasonable; or

"(B) in the case of a person entitled to reemployment under subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313 of this title, such employment would impose an undue hardship on the employer.

"(2) In any proceeding involving an issue of whether—

"(A) any reemployment referred to in paragraph (1) is impossible or unreasonable because of a change in an employer's circumstances, or

"(B) any accommodation, training, or effort referred to in subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313 of this title would impose an undue hardship on the employer,

the employer shall have the burden of proving the impossibility or unreasonableness or undue hardship.

"(e)(1) Subject to paragraph (2), a person referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the employer referred to in such subsection of the person's intent to return to a position of employment with such employer as follows:

"(A) In the case of a person whose period of service in the uniformed services was less than 31 days, by reporting to the employer—

"(i) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or

"(ii) as soon as possible after the expiration of the eight-hour period referred to in clause (i), if reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.

"(B) In the case of a person who is absent from a position of employment for a period of any length for the purposes of an examination to determine the person's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in subparagraph (A).

"(C) In the case of a person whose period of service in the uniformed services was for more than 30 days but less than 181 days, by submitting an application for reemployment with the employer not later than 14 days after the completion of the period of service.

"(D) In the case of a person whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the employer not later than 90 days after the completion of the period of service.

"(2)(A) A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated by, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the person's employer (in the case of a person described in subparagraph (A) or (B) of paragraph (1)) or submit an application for reemployment with such employer (in the case of a person described in subparagraph (C) or (D) of such paragraph). Except as provided in subparagraph (B), such period of recovery may not exceed two years.

"(B) Such two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control which make reporting within the period specified in subparagraph (A) impossible or unreasonable.

"(3) A person who fails to report for employment or reemployment within the appropriate period specified in this subsection shall not automatically forfeit such person's entitlement to the rights and benefits referred to in subsection (a) but shall be subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.

"(f)(1) A person who submits an application for reemployment in accordance with subparagraph (C) or (D) of subsection (e)(1) or subsection (e)(2) shall provide to the person's employer (upon the request of such employer) documentation to establish that—

"(A) the person's application is timely;

"(B) the person has not exceeded the service limitations set forth in subsection (a)(2) (except as permitted under subsection (c)); and

"(C) the person's entitlement to the benefits under this chapter has not been terminated pursuant to section 4304 of this title.

"(2) Documentation of any matter referred to in paragraph (1) that satisfies regulations prescribed by the Secretary shall satisfy the documentation requirements in such paragraph.

"(3)(A) Except as provided in subparagraph (B), the failure of a person to provide documentation that satisfies regulations prescribed pursuant to paragraph (2) shall not be a basis for denying reemployment in accordance with the provisions of this chapter if the failure occurs because such documentation does not exist or is not readily available at the time of the request of the employer. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements referred to in subparagraphs (A), (B), and (C) of paragraph (1), the employer of such person may terminate the employment of the person and the provision of any rights or benefits afforded the person under this chapter.

"(B) An employer who reemploys a person absent from a position of employment for more than 90 days may require that the person provide the employer with the documentation referred to in subparagraph (A) before beginning to treat the person as not having incurred a break in service for pension purposes under section 4317(a)(2)(A) of this title.

"(4) An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.

"(g) The right of a person to reemployment under this section shall not entitle such person to retention, preference, or displacement rights over any person with a superior claim under the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

"(h) In any determination of a person's entitlement to protection under this chapter, the timing, frequency, and duration of the person's training or service, or the nature of such training or service (including voluntary service) in the uniformed services, shall not be a basis for denying protection of this chapter if the service does not exceed the limitations set forth in subsection (c) and the notice requirements established in subsection (a)(1) and the notification requirements established in subsection (e) are met.

"§4313. Reemployment positions

"(a) Subject to subsection (b) (in the case of any employee) and section 4314 of this title (in the case of an employee of the Federal Government), a person entitled to reemployment under section 4312 of this title upon completion of a period of service in the uniformed services shall be promptly reemployed in a position of employment in accordance with the following order of priority:

"(1) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for less than 31 days—

"(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, the duties of which the person is qualified to perform; or

"(B) if the person is not qualified to perform the duties of the position referred to in subparagraph (A), after reasonable efforts by the employer to qualify the person, in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services.

"(2) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for more than 30 days—

"(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status, and pay, the duties of which the person is qualified to perform; or

"(B) if the person is not qualified to perform the duties of a position referred to in subparagraph (A), after reasonable efforts by the employer to qualify the person, in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform.

"(3) In the case of a person who has a disability incurred in, or aggravated by, such service, and who (after reasonable efforts by the employer to accommodate the disability) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service—

"(A) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or

"(B) if not employed under subparagraph (A), in a position which is the nearest approximation to a position referred to in subparagraph (A) in terms of seniority, status, and pay consistent with circumstances of such person's case.

"(4) In the case of a person who (A) is not qualified to be employed in (i) the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or (ii) in the position

of employment in which such person was employed on the date of the commencement of the service in the uniform services for any reason (other than disability incurred in, or aggravated by, service in the uniformed services), and (B) cannot become qualified with reasonable efforts by the employer, in any other position of lesser status and pay which such person is qualified to perform, with full seniority.

"(b)(1) If two or more persons are entitled to reemployment under section 4312 of this title in the same position of employment and more than one of them has reported for such reemployment, the person who left the position first shall have the prior right to reemployment in that position.

"(2) Any person entitled to reemployment under section 4312 of this title who is not reemployed in a position of employment by reason of paragraph (1) shall be entitled to be reemployed as follows:

"(A) Except as provided in subparagraph (B), in any other position of employment referred to in subsection (a)(1) or (a)(2), as the case may be (in the order of priority set out in the applicable subsection), that provides a similar status and pay to a position of employment referred to in paragraph (1) of this subsection, consistent with circumstances of such person's case, with full seniority.

"(B) In the case of a person who has a disability incurred in, or aggravated by, service in the uniformed services that requires reasonable efforts by the employer for the person to be able to perform the duties of the position of employment, in any position referred to in subsection (a)(3) (in the order of priority set out in that subsection) that provides a similar status and pay to a position referred to in paragraph (1), consistent with circumstances of such person's case, with full seniority.

"§4314. Reemployment by the Federal Government

"(a) Except as provided in subsections (b), (c), and (d), if a person is entitled to reemployment by the Federal Government under section 4312 of this title, such person shall be reemployed in a position of employment as described in section 4313 of this title.

"(b)(1) If the Director of the Office of Personnel Management makes a determination described in paragraph (2) with respect to a person who was employed by a Federal executive agency at the time the person entered the service from which the person seeks reemployment under this section, the Director shall—

"(A) identify a position of like seniority, status, and pay at another Federal executive agency that satisfies the requirements of section 4313 of this title and for which the person is qualified; and

"(B) ensure that the person is offered such position.

"(2) The Director shall carry out the duties referred to in subparagraphs (A) and (B) of paragraph (1) if the Director determines that—

"(A) the Federal executive agency that employed the person referred to in such paragraph no longer exists and the functions of such agency have not been transferred to another Federal executive agency; or

"(B) it is impossible or unreasonable for the agency to reemploy the person.

"(c) If the employer of a person described in subsection (a) was, at the time such person entered the service from which such person seeks reemployment under this section, a part of the judicial branch or the legislative branch of the Federal Government, and such employer determines that it is impossible or unreasonable for such employer to reemploy such person, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment in an alternative position in a Federal executive agency on the basis described in subsection (b).

"(d) If the adjutant general of a State determines that it is impossible or unreasonable to reemploy a person who was a National Guard technician employed under section 709 of title 32, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment in an alternative position in a Federal executive agency on the basis described in subsection (b).

"§ 4315. Reemployment by certain Federal agencies

"(a) The head of each agency referred to in section 2302(a)(2)(C)(ii) of title 5 shall prescribe procedures for ensuring that the rights under this chapter apply to the employees of such agency.

"(b) In prescribing procedures under subsection (a), the head of an agency referred to in that subsection shall ensure, to the maximum extent practicable, that the procedures of the agency for reemploying persons who serve in the uniformed services provide for the reemployment of such persons in the agency in a manner similar to the manner of reemployment described in section 4313 of this title.

"(c)(1) The regulations prescribed under subsection (a) shall designate an official at the agency who shall determine whether or not the reemployment of a person referred to in subsection (b) by the agency is impossible or unreasonable.

"(2) Upon making a determination that the reemployment by the agency of a person referred to in subsection (b) is impossible or unreasonable, the official referred to in paragraph (1) shall notify the person and the Director of the Office of Personnel Management of such determination.

"(3) A determination pursuant to this subsection shall not be subject to judicial review.

"(4) The head of each agency referred to in subsection (a) shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives on an annual basis a report on the number of persons whose reemployment with the agency was determined under this subsection to be impossible or unreasonable during the year preceding the report, including the reason for each such determination.

"(d)(1) Except as provided in this section, nothing in this section, section 4313 of this title, or section 4324 of this title shall be construed to exempt any agency referred to in subsection (a) from compliance with any other substantive provision of this chapter.

"(2) This section may not be construed—

"(A) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter, alternative employment in the Federal Government under this chapter, or information relating to the rights and obligations of employee and Federal agencies under this chapter; or

"(B) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

"(e) The Director of the Office of Personnel Management shall ensure the offcr of employment to a person in a position in a Federal executive agency on the basis described in subsection (b) if—

"(1) the person was an employee of an agency referred to in section 2302(a)(2)(C)(ii) of title 5 at the time the person entered the service from which the person seeks reemployment under this section;

"(2) the appropriate officer of the agency determines under section 4315(c) of this title that reemployment of the person by the agency is impossible or unreasonable; and

"(3) the person submits an application to the Director for an offer of employment under this subsection.

"§4316. Rights, benefits, and obligations of persons absent from employment for service in a uniformed service

"(a) A person who is reemployed under this chapter after a period of service in the uniformed services is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of such service plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.

"(b)(1)(A) Subject to paragraphs (2) through (6), a person who performs service in the uniformed services shall be—

"(i) deemed to be on furlough or leave of absence while performing such service; and

"(ii) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a practice, policy, agreement, or plan in effect at the commencement of such service or established while such person performs such service.

"(B) Such person may be required to pay the employee cost, if any, of any funded benefit continued pursuant to subparagraph (A) to the extent other employees on furlough or leave of absence are so required. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), any liability of the plan arising under this paragraph shall be allocated by the plan in such manner as the sponsor maintaining the plan may provide (or, if the sponsor does not so provide, shall be allocated to the last employer employing the person before the period served by the person in the uniformed services).

"(2) A person deemed to be on furlough or leave of absence under this subsection while serving in the uniformed services shall not be entitled under this subsection to any benefits which the person would not otherwise be entitled if the person were not on a furlough or leave of absence.

"(3) A person is not entitled under this subsection to coverage under a health plan to the extent that the person is entitled to care or treatment from the Federal Government as a result of such person's service in the uniformed services.

"(4) A person is not entitled under this subsection to coverage, under a disability insurance policy, of an injury or disease incurred or aggravated during a period of active duty service in excess of 31 days to the extent such coverage is excluded or limited by a provision of such policy.

"(5) A person is not entitled under this subsection to coverage, under a life insurance policy, of a death incurred by the person as a result of the person's participation in, or assignment to an area of, armed conflict to the extent that such coverage is excluded or limited by a provision of such policy.

"(6) The requirement that an employer provide rights or benefits under paragraph (1) to a person deemed to be on furlough or leave of absence shall expire on the earlier of—

"(A) the date of the end of the 18-month period that begins on the date on which the person commences the performance of the service referred to in paragraph (1); or

"(B) the date of the expiration of the person's obligation with respect to such service to notify the person's employer of the person's intent to return to a position of employment under section 4312(e) of this title.

"(7) The entitlement of a person to a right or benefit under an employee pension benefit plan is provided for under section 4317 of this title.

"(c)(1)(A) Subject to paragraphs (2) and (3), if a person's employer-sponsored health-plan coverage would otherwise terminate due to an extended absence from employment for purposes of performing service in the uniformed services, the person may elect to continue health-plan coverage acquired through civilian employment in accordance with this paragraph so that such coverage continues for not more than 18 months after such absence begins.

"(B) A person who elects to continue health-plan coverage under this paragraph may be required to pay not more than 102 percent of the full premium (determined in the same manner as the applicable premium under section 4980B(f)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 4980B(f)(4))) associated with such coverage for the employer's other employees, except that in the case of a person who performs a period of service in the uniformed services for less than 31 days, such person may not be required to pay more than the employee share, if any, for such coverage.

"(C) In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), any liability of the plan arising under this paragraph shall be allocated by the plan in such manner as the sponsor maintaining the plan may provide (or, if the sponsor does not so provide, shall be allocated to the last employer employing the person before the period served by the person in the uniformed services).

"(2) A person who elects to continue health-plan coverage under this subsection shall not be entitled to coverage under the plan to the extent that the person is entitled to care or treatment from the Federal Government as a result of such person's service in the uniformed services.

"(3) The period of coverage of a person and the person's dependents under a continuation of health-plan coverage elected by the person under this subsection shall be the lesser of—

"(A) the 18-month period beginning on the date on which the absence referred to in paragraph (1) begins; or

"(B) the aggregate of the period of the person's service in the uniformed services and the period in which the person is required to notify the person's employer of the person's intent to return to a position of employment under section 4312(e) of this title.

"(d)(1) Except as provided in paragraph (2), in the case of a person whose coverage by an employer-sponsored health plan as an employee is terminated by reason of the service of such person in the uniformed services, an exclusion or waiting period may not be imposed in connection with the reinstatement of the coverage of the person upon reemployment under this chapter, or in connection with any other individual who is covered by the health plan by reason of the reinstatement of the coverage of such person upon reemployment, if an exclusion or waiting period would not have been imposed under such health plan had coverage of such person by such health plan not been terminated as a result of such service.

"(2) Paragraph (1) shall not apply to the condition of a person if the Secretary determines that the condition was incurred or aggravated during active military, naval, or air service.

"(e) A person who is reemployed by an employer under this chapter shall not be discharged from such employment, except for cause—

"(1) within one year after the date of such reemployment, if the person's period of service before the reemployment was more than 180 days; or

"(2) within 180 days after the date of such reemployment, if the person's period of service before the reemployment was more than 30 days but less than 181 days.

"(f)(1) Any person described in paragraph (2) whose employment with an employer referred to in that paragraph is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during such period of service any vacation or annual leave with pay accrued by the person before the commencement of such service.

"(2) A person entitled to the benefit described in paragraph (1) is a person who—

"(A) has accrued vacation or annual leave with pay under a policy or practice of a State (as an employer) or private employer; or

"(B) has accrued such leave as an employee of the Federal Government pursuant to subchapter I of chapter 63 of title 5.

"§4317. Employee pension benefit plans

"(a)(1)(A) Except as provided in subparagraph (B), in the case of a right provided pursuant to an employee pension benefit plan described in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) or a right provided under any Federal or State law governing pension benefits for governmental employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

"(B) In the case of benefits under the Thrift Savings Plan, the rights of a person reemployed under this chapter shall be those rights provided in section 8432b of title 5. This subparagraph shall not be construed to affect any other right or benefit under this chapter.

"(2)(A) Except as provided in section 4312(f)(3)(B) of this title, a person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person's period or periods of service in the uniformed services.

"(B) Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the employer or employers maintaining the plan for purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

"(b)(1) An employer reemploying a person under this chapter shall be liable to an employee benefit pension plan for funding any obligation of the plan to provide the benefits described in subsection (a)(2). For purposes of determining the amount of such liability and for purposes of section 515 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1145) or any similar Federal or State law governing pension benefits for governmental employees, service in the uniformed services that is deemed under subsection (a) to be service with the employer shall be deemed to be service with the employer under the terms of the plan or any applicable collective bargaining agreement. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), any liability of the plan described in this paragraph shall be allocated by the plan in such manner as the sponsor maintaining the plan may provide (or, if the sponsor does not so provide, shall be allocated to the last employer employing the person before the period described in subsection (a)(2)(B)).

"(2) A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the person elects to make employee contributions or elective deferrals that are attributable to the period of service described in subsection (a)(2)(B). No such contributions or deferrals may exceed the amount the person or employer would have been permitted or required to make had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any employee contribution or deferral to the plan described in this paragraph shall be made during any reasonable continuous period (beginning with the date of reemployment) as the employer and the person may agree but in no event shall such person be afforded a payment period shorter than the length of absence for service for which the payments are due.

"(3) For purposes of computing an employer's liability under paragraph (1) or the employee's contributions under paragraph (2), the employee's compensation during the period of service described in subsection (a)(2)(B)—

"(A) shall be computed at the rate the employee would have received but for the absence during the period of service; or

"(B) if the employee's compensation was not based on a fixed rate, shall be computed on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

"(4) Notwithstanding any other provision of this section—

"(A) no earnings shall be credited to an employee with respect to any contribution prior to such contribution being made; and

"(B) any forfeitures during the period described in subsection (a)(2)(B) shall not be allocated to persons reemployed under this chapter.

"(c) Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), under which benefits are or may be payable to such person by reason of the obligations set forth in this chapter, shall, within 30 days after the date of such reemployment, provide notice of such reemployment to the administrator of such plan.

"(d) No provision of this section shall apply to the extent it—

"(1) requires any action to be taken which would cause the plan, any of its participants, or employer to suffer adverse tax or other consequences under the Internal Revenue Code of 1986; or

"(2) requires contributions to be returned or reallocated, or additional contributions to be made, with respect to employees not reemployed under this chapter.

"SUBCHAPTER III—PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION

"§4321. Assistance in obtaining reemployment or other employment rights or benefits

"(a) The Secretary (through the Veterans' Employment and Training Service) shall provide assistance to any person with respect to the employment and reemployment rights and benefits to which such person is entitled under this chapter. In providing such assistance, the Secretary may request the assistance of existing Federal and State agencies engaged in similar or related activities and utilize the assistance of volunteers.

"(b)(1)(A) A person referred to in subparagraph (B) may submit a complaint to the Secretary with respect to the matters described in clause (ii) of such subparagraph. Such complaint shall be submitted in accordance with subsection (c).

"(B) A person may submit a complaint under subparagraph (A) if the person claims—

"(i) to be entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer; and

"(ii) that the employer (including the Office of Personnel Management, if the employer is the

Federal Government) has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter.

"(2) The Secretary shall, upon request, provide technical assistance to a potential claimant with respect to a complaint under this subsection, and to such claimant's employer.

"(c) A complaint submitted under subsection (b) shall be in a form prescribed by the Secretary and shall include—

"(1) the name and address of the employer or potential employer against whom the complaint is directed; and

"(2) a summary of the allegations upon which the complaint is based.

"(d) The Secretary shall investigate each complaint submitted pursuant to subsection (b). If the Secretary determines as a result of the investigation that the action alleged in such complaint occurred, the Secretary shall resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter.

"(e) If the efforts of the Secretary with respect to a complaint under subsection (d) are unsuccessful, the Secretary shall notify the person who submitted the complaint of—

"(1) the results of the Secretary's investigation; and

"(2) the complainant's entitlement to proceed under the enforcement of rights provisions provided under section 4322 of this title (in the case of a person submitting a complaint against a State or private employer) or section 4323 of this title (in the case of a person submitting a complaint against the Federal Government).

"(f) This subchapter does not apply to any action relating to benefits to be provided under the Thrift Savings Plan under title 5.

"§4322. Enforcement of rights with respect to a State or private employer

"(a)(1) A person who receives from the Secretary a notification pursuant to section 4321(e) of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) or a private employer may request that the Secretary refer the complaint to the Attorney General. If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to the rights or benefits sought, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for appropriate relief for such person in an appropriate United States district court.

"(2)(A) A person referred to in subparagraph (B) may commence an action for appropriate relief in an appropriate United States district court.

"(B) A person entitled to commence an action for relief with respect to a complaint under subparagraph (A) is a person who—

"(i) has chosen not to apply to the Secretary for assistance regarding the complaint under section 4321(c) of this title;

"(ii) has chosen not to request that the Secretary refer the complaint to the Attorney General under paragraph (1); or

"(iii) has been refused representation by the Attorney General with respect to the complaint under such paragraph.

"(b) In the case of an action against a State as an employer, the appropriate district court is the court for any district in which the State exercises any authority or carries out any function. In the case of a private employer the appropriate district court is the district court for any district in which the private employer of the person maintains a place of business.

"(c)(1)(A) The district courts of the United States shall have jurisdiction, upon the filing of a complaint, motion, petition, or other appropriate pleading by or on behalf of the person entitled to a right or benefit under this chapter—

"(i) to require the employer to comply with the provisions of this chapter;

"(ii) to require the State or private employer, as the case may be, to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter; and

"(iii) to require the employer to pay the person an amount equal to the amount referred to in clause (ii) as liquidated damages, if the court determines that the employer's failure to comply with the provisions of this chapter was willful.

"(B) Any compensation under clauses (ii) and (iii) of subparagraph (A) shall be in addition to, and shall not diminish, any of the other rights and benefits provided for in this chapter.

"(2)(A) No fees or court costs shall be charged or taxed against any person claiming rights under this chapter.

"(B) In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(2) who obtained private counsel for such action or proceeding, the court may award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.

"(3) The court may use its full equity powers, including temporary or permanent injunctions and temporary restraining orders, to vindicate fully the rights or benefits of persons under this chapter.

"(4) An action under this chapter may be initiated only by a person claiming rights or benefits under this chapter, and not by an employer, prospective employer, or other entity with obligations under this chapter.

"(5) In any such action, only a State and local government (as an employer), an employer, or a potential employer, as the case may be, shall be a necessary party respondent.

"(6) No State statute of limitations shall apply to any proceeding under this chapter.

"(7) A State shall be subject to the same remedies, including prejudgment interest, as may be imposed upon any private employer under this section.

"§4323. Enforcement of rights with respect to Federal executive agencies

"(a)(1) A person who receives from the Secretary a notification pursuant to section 4321(e) of this title of an unsuccessful effort to resolve a complaint relating to a Federal executive agency may request that the Secretary refer the complaint for litigation before the Merit Systems Protection Board. The Secretary shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5.

"(2)(A) If the Special Counsel is reasonably satisfied that the person on whose behalf a complaint is referred under paragraph (1) is entitled to the rights or benefits sought, the Special Counsel (upon the request of the person submitting the complaint) may appear on behalf of, and act as attorney for, the person and initiate an action regarding such complaint before the Merit Systems Protection Board.

"(B) If the Special Counsel decides not to initiate an action and represent a person before the Merit Systems Protection Board under subparagraph (A), the Special Counsel shall notify such person of that decision.

"(b)(1) A person referred to in paragraph (2) may submit a complaint against a Federal executive agency under this subchapter directly to the Merit Systems Protection Board. A person who seeks a hearing or adjudication by submitting such a complaint under this paragraph may be represented at such hearing or adjudication in accordance with the rules of the Board.

"(2) A person entitled to submit a complaint to the Merit Systems Protection Board under paragraph (1) is a person who—

"(A) has chosen not to apply to the Secretary for assistance regarding a complaint under section 4321(c) of this title;

"(B) has received a notification from the Secretary under section 4321(e) of this title;

"(C) has chosen not to be represented before the Board by the Special Counsel pursuant to subsection (a)(2)(A); or

"(D) has received a notification of a decision from the Special Counsel under subsection (a)(2)(B).

"(c)(1) The Merit Systems Protection Board shall adjudicate any complaint brought before the Board pursuant to subsection (a)(2)(A) or (b)(1).

"(2) If the Board determines that a Federal executive agency has not complied with the provisions of this chapter relating to the employment or reemployment of a person by the agency, the Board shall enter an order requiring the agency or employee to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by such person by reason of such lack of compliance.

"(3) Any compensation received by a person pursuant to an order under paragraph (1) shall be in addition to any other right or benefit provided for by this chapter and shall not diminish any such right or benefit.

"(4) If the Board determines as a result of a hearing or adjudication conducted pursuant a complaint submitted by a person directly to the Board pursuant to subsection (b)(1) that such person is entitled to an order referred to in paragraph (2), the Board may, in its discretion, award such person reasonable attorney fees, expert witness fees, and other litigation expenses.

"(d) A person adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board under subsection (c) may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision. Such petition and review shall be in accordance with the procedures set forth in section 7703 of title 5.

"(e) A person may be represented by the Special Counsel in an action for review of a final order or decision issued by the Merit Systems Protection Board pursuant to subsection (c) that is brought pursuant to section 7703 of title 5 unless the person was not represented by the Special Counsel before the Merit Systems Protection Board regarding such order or decision.

"§4324. Enforcement of rights with respect to certain Federal agencies

"(a) This section applies to any person who alleges that—

"(1) the reemployment of such person by an agency referred to in subsection (a) of section 4315 of this title was not in accordance with procedures for the reemployment of such person under subsection (b) of such section; or

"(2) the failure of such agency to reemploy the person under such section was otherwise wrongful.

"(b) Any person referred to in subsection (a) may submit a claim relating to an allegation referred to in that subsection to the inspector general of the agency which is the subject of the allegation. The inspector general shall investigate and resolve the allegation pursuant to procedures prescribed by the head of the agency.

"(c) In prescribing procedures for the investigation and resolution of allegations under subsection (b), the head of an agency shall ensure, to the maximum extent practicable, that the procedures are similar to the procedures for investigating and resolving complaints utilized by the Secretary under section 4321(d) of this title.

"(d) This section may not be construed—

"(1) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under

this chapter, alternative employment in the Federal Government under this chapter, or information relating to the rights and obligations of employee and Federal agencies under this chapter; or

"(2) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

"§4325. Conduct of investigation; subpoenas

"(a) In carrying out any investigation under this chapter, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or employer that the Secretary considers relevant to the investigation.

"(b) In carrying out any investigation under this chapter, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

"(c) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or employer to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this chapter and district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

"(d) Subsections (b) and (c) shall not apply to the legislative branch or the judicial branch of the United States.

"SUBCHAPTER IV—MISCELLANEOUS

"§4331. Regulations

"(a) The Secretary (in consultation with the Secretary of Defense) may prescribe regulations implementing the provisions of this chapter with respect to States and local governments (as employers) and private employers.

"(b)(1) The Director of the Office of Personnel Management (in consultation with the Secretary and the Secretary of Defense) may prescribe regulations implementing the provisions of this chapter with regard to the application of this chapter to Federal executive agencies (other than the agencies referred to in paragraph (2)) as employers. Such regulations shall be consistent with the regulations pertaining to the States as employers and private employers.

"(2) The following entities may prescribe regulations to carry out the activities of such entities under this chapter:

"(A) The Merit Systems Protection Board.

"(B) The Office of Special Counsel.

"(C) The agencies referred to in section 2303(a)(2)(C)(ii) of title 5.

"§ 4332. Outreach

"The Secretary, the Secretary of Defense, and the Secretary of Veterans Affairs shall take such actions as such Secretaries determine are appropriate to inform persons entitled to rights and benefits under this chapter and employers of the rights, benefits, and obligations of such persons and employers under this chapter.".

(b) TABLE OF CHAPTERS.—The tables of chapters at the beginning of title 38, United States Code, and the beginning of part III of such title are each amended by striking out the item relating to chapter 43 and inserting in lieu thereof the following:

"43. Employment and reemployment rights of members of the uniformed services ..... 4301".

(c) REPORT RELATING TO IMPLEMENTATION OF REEMPLOYMENT RIGHTS PROVISIONS.—Not later than one year after the date of the enactment of this Act, the Secretary of Labor, the Attorney General of the United States, and the Special Counsel referred to in section 4323(a)(1) of title 38, United States Code (as added by subsection (a)), shall each submit a report to the Congress relating to the implementation of chapter 43 of such title (as added by such subsection).

SEC. 3. EXEMPTION FROM MINIMUM SERVICE REQUIREMENTS.

Section 5303A(b)(3) of title 38, United States Code, is amended—

(1) by striking out "or" at the end of subparagraph (E);

(2) by striking out the period at the end of subparagraph (F) and inserting in lieu thereof "; or"; and

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

"(G) to an entitlement to rights and benefits under chapter 43 of this title.".

SEC. 4. REPEAL OF TITLE 5 PROVISIONS RELATING TO REEMPLOYMENT RIGHTS OF RESERVISTS.

(a) REPEAL.—Subchapter II of chapter 35 of title 5, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by striking out the items relating to subchapter II and section 3551.

SEC. 5. REVISION OF FEDERAL CIVIL SERVICE RETIREMENT BENEFIT PROGRAM FOR RESERVISTS.

(a) CREDITABLE MILITARY SERVICE UNDER CSRS.—Section 8331(13) of title 5, United States Code, is amended in the flush matter by inserting "or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990" before the semicolon.

(b) PAY DEDUCTIONS FOR MILITARY SERVICE UNDER CSRS.—Section 8334(j)(1) of such title is amended—

(1) by striking out "Each employee" and inserting in lieu thereof "(A) Except as provided in subparagraph (B), each employee"; and

(2) by adding at the end the following:

"(B) In any case where military service interrupts creditable civilian service under this subchapter and reemployment pursuant to chapter 43 of title 38 occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.".

(c) CREDITABLE MILITARY SERVICE UNDER FERS.—Section 8401(31) of such title is amended in the flush matter by inserting "or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990" before the semicolon.

(d) PAY DEDUCTIONS FOR MILITARY SERVICE UNDER FERS.—Section 8422(e)(1) of such title is amended—

(1) by striking out "Each employee" and inserting in lieu thereof "(A) Except as provided in subparagraph (B), each employee"; and

(2) by adding at the end the following:

"(B) In any case where military service interrupts creditable civilian service under this subchapter and reemployment pursuant to chapter 43 of title 38 occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.".

(e) TECHNICAL AMENDMENTS.—Title 5, United States Code, is amended as follows:

(1) In section 8401(11), by striking out "1954" in the flush matter above clause (i) and inserting in lieu thereof "1986".

(2) In section 8422(a)(2)(A)(ii), by striking out "1954" and inserting in lieu thereof "1986".

(3) In section 8432(d), by striking out "1954" in the first sentence and inserting in lieu thereof "1986".

(4) In section 8433(i)(4), by striking out "1954" and inserting in lieu thereof "1986".

(5) In section 8440—

(A) by striking out "1954" in subsection (a) and inserting in lieu thereof "1986"; and

(B) by striking out "1954" in subsection (c) and inserting in lieu thereof "1986".

SEC. 6. THRIFT SAVINGS PLAN.

(a) IN GENERAL.—(1) Title 5, United States Code, is amended by inserting after section 8432a the following:

"§8432b. Contributions of persons who perform military service

"(a) This section applies to any employee who—

"(1) separates or enters leave-without-pay status in order to perform military service; and

"(2) is subsequently restored to or reemployed in a position which is subject to this chapter, pursuant to chapter 43 of title 38.

"(b)(1) Each employee to whom this section applies may contribute to the Thrift Savings Fund, in accordance with this subsection, an amount not to exceed the amount described in paragraph (2).

"(2) The maximum amount which an employee may contribute under this subsection is equal to—

"(A) the contributions under section 8432(a) which would have been made, over the period beginning on date of separation or commencement of leave-without-pay status (as applicable) and ending on the day before the date of restoration or reemployment (as applicable); reduced by

"(B) any contributions under section 8432(a) actually made by such employee over the period described in subparagraph (A).

"(3) Contributions under this subsection—

"(A) shall be made at the same time and in the same manner as would any contributions under section 8432(a);

"(B) shall be made over the period of time specified by the employee under paragraph (4)(B); and

"(C) shall be in addition to any contributions then actually being made under section 8432(a).

"(4)(A) The Executive Director shall prescribe the time, form, and manner in which an employee may specify—

"(i) the total amount such employee wishes to contribute under this subsection with respect to any particular period referred to in paragraph (2)(B); and

"(ii) the period of time over which the employee wishes to make contributions under this subsection.

"(B) The employing agency may place a maximum limit on the period of time referred to in subparagraph (A)(ii), which cannot be shorter than two times the period referred to in paragraph (2)(B) and not longer than four times such period.

"(c) If an employee makes contributions under subsection (b), the employing agency shall make contributions to the Thrift Savings Fund on such employee's behalf—

"(1) in the same manner as would be required under section 8432(c)(2) if the employee contributions were being made under section 8432(a); and

"(2) disregarding any contributions then actually being made under section 8432(a) and any agency contributions relating thereto.

"(d) An employee to whom this section applies is entitled to have contributed to the Thrift Savings Fund on such employee's behalf an amount equal to—

"(1) 1 percent of such employee's basic pay (as determined under subsection (e)) for the period referred to in subsection (b)(2)(B); reduced by

"(2) any contributions actually made on such employee's behalf under section 8432(c)(1) with respect to the period referred to in subsection (b)(2)(B).

"(e) For purposes of any computation under this section, an employee shall, with respect to the period referred to in subsection (b)(2)(B), be considered to have been paid at the rate which would have been payable over such period had such employee remained continuously employed in the position which such employee last held before separating or entering leave-without-pay status to perform military service.

"(f) Amounts paid under subsection (c) or (d) shall be paid—

"(1) by the agency to which the employee is restored or in which such employee is reemployed;

"(2) from the same source as would be the case under section 8432(e) with respect to sums required under section 8432(c); and

"(3) within the time prescribed by the Executive Director.

"(g)(1) For purposes of section 8432(g), in the case of an employee to whom this section applies—

"(A) a separation from civilian service in order to perform the military service on which the employee's restoration or reemployment rights are based shall be disregarded; and

"(B) such employee shall be credited with a period of civilian service equal to the period referred to in subsection (b)(2)(B).

"(2)(A) An employee to whom this section applies may elect, for purposes of section 8433(d), or paragraph (1) or (2) of section 8433(h), as the case may be, to have such employee's separation (described in subsection (a)(1)) treated as if it had never occurred.

"(B) An election under this paragraph shall be made within such period of time after restoration or reemployment (as the case may be) and otherwise in such manner as the Executive Director prescribes.

"(h) The Executive Director shall prescribe regulations to carry out this section.".

(2) The table of sections at the beginning of chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8432a the following:

"8432b. Contributions of persons who perform military service.".

(b) PRESERVATION OF CERTAIN RIGHTS.—(1) Section 8433(d) of title 5, United States Code, is amended by striking "subsection (e)." and inserting "subsection (e), unless an election under section 8432b(g)(2) is made to treat such separation for purposes of this subsection as if it had never occurred.".

(2) Paragraphs (1) and (2) of section 8433(h) are each amended by striking the period at the end and inserting ", or unless an election under section 8432b(g)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.".

(c) ELECTION TO RESUME REGULAR CONTRIBUTIONS UPON RESTORATION OR REEMPLOYMENT.—Section 8432 of title 5, United States Code, is amended by adding at the end the following:

"(i)(1) This subsection applies to any employee—

"(A) to whom section 8432b applies; and

"(B) who, during the period of such employee's absence from civilian service (as referred to in section 8432b(b)(2)(B))—

"(i) is eligible to make an election described in subsection (b)(1); or

"(ii) would be so eligible but for having either elected to terminate individual contributions to the Thrift Savings Fund within 2 months before commencing military service or separated in order to perform military service.

"(2) The Executive Director shall prescribe regulations to ensure that any employee to whom this subsection applies shall, within a reasonable time after being restored or reemployed (in the manner described in section 8432b(a)(2)), be afforded the opportunity to make, for purposes of this section, any election which would be allowable during a period described in subsection (b)(1)(A).".

(d) APPLICABILITY TO EMPLOYEES UNDER CSRS.—Section 8351(b) of title 5, United States Code, is amended by adding at the end the following:

"(11) In applying section 8432b to an employee contributing to the Thrift Savings Fund after being restored to or reemployed in a position subject to this subchapter, pursuant to chapter 43 of title 38—

"(A) any reference in such section to contributions under section 8432(a) shall be considered a reference to employee contributions under this section;

"(B) the contribution rate under section 8432b(b)(2)(A) shall be the maximum percentage allowable under subsection (b)(2) of this section; and

"(C) subsections (c) and (d) of section 8432b shall be disregarded.".

(e) EFFECTIVE DATE; APPLICABILITY.—This section and the amendments made by this section—

(1) shall take effect on the date of enactment of this Act; and

(2) shall apply to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of title 38, United States Code (as added by section 2(a)), occurs on or after August 1, 1990.

(f) RULES FOR APPLYING AMENDMENTS TO EMPLOYEES RESTORED OR REEMPLOYED BEFORE EFFECTIVE DATE.—In the case of any employee (described in subsection (e)(2)) who is restored or reemployed in a position of employment (in the circumstances described in section 8432b(a) of title 5, United States Code, as amended by this section) before the date of enactment of this Act, the amendments made by this section shall apply to such employee, in accordance with their terms, subject to the following:

(1) The employee shall be deemed not to have been reemployed or restored until—

(A) the date of enactment of this Act, or

(B) the first day following such employee's reemployment or restoration on which such employee is or was eligible to make an election relating to contributions to the Thrift Savings Fund,

whichever occurs or occurred first.

(2) If the employee changed agencies during the period between date of actual reemployment or restoration and the date of enactment of this Act, the employing agency as of such date of enactment shall be considered the reemploying or restoring agency.

(3)(A) For purposes of any computation under section 8432b of such title, pay shall be determined in accordance with subsection (e) of such section, except that, with respect to the period described in subparagraph (B), actual pay attributable to such period shall be used.

(B) The period described in this subparagraph is the period beginning on the first day of the first applicable pay period beginning on or after the date of the employee's actual reemployment or restoration and ending on the day before the date determined under paragraph (1).

SEC. 7. CONFORMING AMENDMENTS.

(a) TITLE 5.—Section 1204(a)(1) of title 5, United States Code, is amended by striking out "section 4323" and inserting in lieu thereof "chapter 43".

(b) TITLE 10.—Section 706(c)(1) of title 10, United States Code, is amended by striking out "section 4321" and inserting in lieu thereof "chapter 43".

SEC. 8. TECHNICAL AMENDMENT.

(a) TECHNICAL AMENDMENT.—Section 9(d) of Public Law 102–16 (105 Stat. 55) is amended by striking out "Act" the first place it appears and inserting in lieu thereof "section".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in Public Law 102–16 to which such amendment relates.

SEC. 9. TRANSITION RULES AND EFFECTIVE DATES.

(a) REEMPLOYMENT.—(1) Except as otherwise provided in this Act, the amendments made by this Act shall be effective with respect to reemployments initiated on or after the first day after the 60-day period beginning on the date of enactment of this Act.

(2) The provisions of chapter 43 of title 38, United States Code, in effect on the day before such date of enactment, shall continue to apply to reemployments initiated before the end of such 60-day period.

(3) In determining the number of years of service that may not be exceeded in an employee-employer relationship with respect to which a person seeks reemployment under chapter 43 of title 38, United States Code, as in effect before or after the date of enactment of this Act, there shall be included all years of service without regard to whether the periods of service occurred before or after such date of enactment unless the period of service is exempted by the chapter 43 that is applicable, as provided in paragraphs (1) and (2), to the reemployment concerned.

(4) A person who initiates reemployment under chapter 43 of title 38, United States Code, during or after the 60-day period beginning on the date of enactment of this Act and whose reemployment is made in connection with a period of service in the uniform services that was initiated before the end of such period shall be deemed to have satisfied the notification requirement of section 4312(a)(1) of title 38, United States Code, as provided in the amendments made by this Act, if the person complied with any applicable notice requirement under chapter 43, United States Code, as in effect on the day before the date of enactment of this Act.

(b) DISCRIMINATION.—The provisions of section 4311 of title 38, United States Code, as provided in the amendments made by this Act, and the provisions of subchapter III of chapter 43 of such title, as provided in the amendments made by this Act, that are necessary for the implementation of such section 4311 shall become effective on the date of enactment of this Act.

(c) INSURANCE.—(1) Except as provided in paragraph (2), the provisions of section 4316(c) of title 38, United States Code, as provided in the amendments made by this Act, concerning insurance coverage shall become effective on the date of enactment of this Act.

(2) A person on active duty on the date of enactment of this Act, or a family member or personal representative of such person, may, after the date of enactment of this Act, elect to reinstate or continue insurance coverage as provided in such section 4316. If such an election is made, insurance coverage shall remain in effect for the remaining portion of the 18-month period that began on the date of such person's separation from civilian employment or the period of the person's service in the uniformed service, whichever is the period of lesser duration.

(d) DISABILITY.—(1) Section 4313(a)(3) of chapter 43 of title 38, United States Code, as provided in the amendments made by this Act, shall apply to reemployments initiated on or after August 1, 1990.

(2) Effective as of August 1, 1990, section 4307 of title 38, United States Code (as in effect on the date of enactment of this Act), is repealed, and the table of sections at the beginning of chapter 43 of such title (as in effect on the date of enactment of this Act) is amended by striking out the item relating to section 4307.

(e) INVESTIGATIONS AND SUBPOENAS.—The provisions of section 4325 of title 38, United States Code, as provided in the amendments made by this Act, shall become effective on the date of the enactment of this Act and apply to any matter pending with the Secretary of Labor under section 4305 of title 38, United States Code, as of that date.

(f) PREVIOUS ACTIONS.—Except as otherwise provided, the amendments made by this Act do not affect reemployments that were initiated, rights, benefits, and duties that matured, penalties that were incurred, and proceedings that begin before the end of the 60-day period referred to in subsection (a).

(g) DEFINITION.—For the purposes of this section, the term "service in the uniformed services" shall have the meaning given such term in section 4303(13) of title 38, United States Code, as provided in the amendments made by this Act.

AMENDMENT NO. 1095

(Purpose: To amend title 38, United States Code, to increase the amount of the loan guaranty for loans for the purchase of construction of homes)

Mr. FORD. Mr. President, on behalf on Senator ROCKEFELLER, I send an amendment to the desk, and I ask unanimous consent that the amendment be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kentucky, [Mr. FORD], for Mr. ROCKEFELLER, proposes an amendment numbered 1095.

On page 133, below line 21, add the following:

SEC. 10. INCREASE IN AMOUNT OF LOAN GUARANTY FOR LOANS FOR THE PURCHASE OR CONSTRUCTION OF HOMES.

Subparagraphs (A)(i)(IV) and (B) of section 3703(a)(1) of title 38, United States Code, are each amended by striking out "$46,000" and inserting in lieu thereof "$50,750".

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 1095) was agreed to.

The PRESIDING OFFICER. The substitute is agreed to.

The bill is deemed read three times and passed.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 843

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 "Uniformed Services Employment and Reemployment Rights Act of 1993".

SEC. 2. REVISION OF CHAPTER 43 OF TITLE 38.

(a) RESTATEMENT AND IMPROVEMENT OF EMPLOYMENT AND REEMPLOYMENT RIGHTS.—Chapter 43 of title 38, United States Code, is amended to read as follows:

"CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

"SUBCHAPTER I—GENERAL

"Sec.
"4301. Purposes; sense of Congress.
"4302. Relation to other law; construction.
"4303. Definitions.
"4304. Character of service.
"SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS
"4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited.
"4312. Reemployment rights of persons who serve in the uniformed services.
"4313. Reemployment positions.
"4314. Reemployment by the Federal Government.
"4315. Reemployment by certain Federal agencies.
"4316. Rights, benefits, and obligations of persons absent from employment for service in a uniformed service.
"4317. Employee pension benefit plans.
"SUBCHAPTER III—PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION
"4321. Assistance in obtaining reemployment or other employment rights or benefits.
"4322. Enforcement of rights with respect to a State or private employer.
"4323. Enforcement of rights with respect to the Federal executive agencies.
"4324. Enforcement of rights with respect to certain Federal agencies.
"4325. Conduct of investigation; subpoenas.
"SUBCHAPTER IV—MISCELLANEOUS
"4331. Regulations.
"4332. Outreach.

"SUBCHAPTER I—GENERAL

"§ 4301. Purposes; sense of Congress

"(a) The purposes of this chapter are—

"(1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

"(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service under honorable conditions; and

"(3) to prohibit discrimination against persons because of their service in the uniformed services.

"(b) It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.

"§ 4302. Relation to other law; construction

"(a) Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance) or employer practice, policy, agreement, or plan that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

"(b) This chapter supersedes any State law (including any local law or ordinance) or employer practice, policy, agreement, or plan that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

"§ 4303. Definitions

"For the purposes of this chapter—

"(1) The term 'Attorney General' means the Attorney General of the United States or any person designated by the Attorney General to carry out a responsibility of the Attorney General under this chapter.

"(2) The term 'benefit', 'benefit of employment', or 'rights and benefits' means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or an employer practice or custom and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

"(3)(A) The term 'employee' means any person employed by an employer.

"(B) With respect to employment in a foreign country, the term 'employee' includes an individual who is a citizen of the United States.

"(4)(A) Except as provided in subparagraphs (B) and (C), the term 'employer' means any person, institution, organization, or other entity that pays salary or wages for work performed or that has control over employment opportunities, including—

"(i) a person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities;

"(ii) the Federal Government;

"(iii) a State;

"(iv) any successor in interest to a person, institution, organization, or other entity referred to in this subparagraph; and

"(v) a person, institution, organization, or other entity that has denied initial employment in violation of section 4311 of this title.

"(B) In the case of a National Guard technician employed under section 709 of title 32, the term 'employer' means the adjutant general of the State in which the technician is employed.

"(C) Except as an actual employer of employees, an employee pension benefit plan described in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) shall be deemed to be an employer only with respect to the obligation to provide benefits described in section 4317 of this title.

"(5) The term 'Federal executive agency' includes the United States Postal Service, the Postal Rate Commission, any nonappropriated fund instrumentality of the United States, and any Executive agency (as that term is defined in section 105 of title 5) other than an agency referred to in section 2302(a)(2)(C)(ii) of title 5.

"(6) The term 'Federal Government' includes any Federal executive agency, the legislative branch of the United States, and the judicial branch of the United States.

"(7) The term 'health plan' means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

"(8) The term 'notice' means (with respect to subchapter II) any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

"(9) The term 'qualified', with respect to an employment position, means having the ability to perform the essential tasks of the position.

"(10) The term 'reasonable efforts', in the case of actions required of an employer under this chapter, means actions, including training provided by an employer, that do not place an undue hardship on the employer.

"(11) The term 'Secretary' means the Secretary of Labor or any person designed by such Secretary to carry out an activity under this chapter.

"(12) The term 'seniority' means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

"(13) The term 'service in the uniformed services' means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

"(14) The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof).

"(15) The term 'undue hardship', in the case of actions taken by an employer, means actions requiring significant difficulty or expense, when considered in light of—

"(A) the nature and cost of the action needed under this chapter;

"(B) the overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

"(C) the overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and

"(D) the type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

"(16) The term 'uniformed services' means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

"§ 4304. Character of service

"A person's entitlement to the benefits of this chapter by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

"(1) A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.

"(2) A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned.

"(3) A dismissal of such person permitted under section 1161(a) of title 10.

"(4) A dropping of such person from the rolls pursuant to section 1161(b) of title 10.

"SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS; PROHIBITIONS

"§ 4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited

"(a) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance, service, application for service, or obligation.

"(b) An employer shall be considered to have denied a person initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can demonstrate that the action would have been taken in the absence of such membership, application for membership, performance, service, application for service, or obligation.

"(c)(1) An employer may not discriminate in employment against or take any adverse employment action against any person because such person has taken an action to enforce a protection afforded any person under this chapter, has testified or otherwise made a statement in or in connection with any proceeding under this chapter, has assisted or otherwise participated in an investigation under this chapter, or has exercised a right provided for in this chapter.

"(2) The prohibition in paragraph (1) shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

"(d)(1) An employer may take an action otherwise prohibited by this section with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer to violate the law of the foreign country in which the workplace is located.

"(2) If an employer controls a corporation incorporated and located in a foreign country, any practice prohibited by this chapter that is engaged in by such corporation shall be presumed to be engaged in by such employer.

"(3)(A) The prohibitions of this section shall not apply to a foreign employer not controlled by an American employer.

"(B) For purposes of this paragraph the determination of whether an employer controls a corporation shall be based on—

"(i) the interrelation of operations;

"(ii) the common management;

"(iii) the centralized control of labor relations; and

"(iv) the common ownership or financial control of the employer and the corporation.

"§ 4312. Reemployment rights of persons who serve in the uniformed services

"(a) Subject to subsections (b), (c), and (d), any person who is absent from a position of employment by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if—

"(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

"(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

"(3) the person reports to, or submits an application for reemployment to, such employer in accordance with subsection (e).

"(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

"(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service—

"(1) that is required, beyond five years, to complete an initial period of obligated service;

"(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

"(3) performed as required pursuant to section 270 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

"(4) performed by a member of a uniformed service who is—

"(A) ordered to or retained on active duty under section 672(a), 672(g), 673, 673b, 673c, or 688 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

"(B) ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or the Congress;

"(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 673b of title 10;

"(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services; or

"(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 3500 or 8500 of title 10.

"(d)(1) An employer is not required to reemploy a person under this chapter if—

"(A) the employer's circumstances have so changed as to make such reemployment impossible or unreasonable; or

"(B) in the case of a person entitled to reemployment under subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313 of this title, such employment would impose an undue hardship on the employer.

"(2) In any proceeding involving an issue of whether—

"(A) any reemployment referred to in paragraph (1) is impossible or unreasonable because of a change in an employer's circumstances, or

"(B) any accommodation, training, or effort referred to in subsection (a)(3), (a)(4), or (b)(2)(B) of section 4313 of this title would impose an undue hardship on the employer,

the employer shall have the burden of proving the impossibility or unreasonableness or undue hardship.

"(e)(1) Subject to paragraph (2), a person referred to in subsection (a) shall, upon the completion of a period of service in the uniformed services, notify the employer referred to in such subsection of the person's intent to return to a position of employment with such employer as follows:

"(A) In the case of a person whose period of service in the uniformed services was less than 31 days, by reporting to the employer—

"(i) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or

"(ii) as soon as possible after the expiration of the eight-hour period referred to in clause (i), if reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.

"(B) In the case of a person who is absent from a position of employment for a period of any length for the purposes of an examination to determine the person's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in subparagraph (A).

"(C) In the case of a person whose period of service in the uniformed services was for more than 30 days but less than 181 days, by submitting an application for reemployment with the employer not later than 14 days after the completion of the period of service.

"(D) In the case of a person whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the employer not later than 90 days after the completion of the period of service.

"(2)(A) A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated by, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the person's employer (in the case of a person described in subparagraph (A) or (B) of paragraph (1)) or submit an application for reemployment with such employer (in the case of a person described in subparagraph (C) or (D) of such paragraph). Except as provided in subparagraph (B), such period of recovery may not exceed two years.

"(B) Such two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control which make reporting within the period specified in subparagraph (A) impossible or unreasonable.

"(3) A person who fails to report for employment or reemployment within the appropriate period specified in this subsection shall not automatically forfeit such person's entitlement to the rights and benefits referred to in subsection (a) but shall be subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.

"(f)(1) A person who submits an application for reemployment in accordance with subparagraph (C) or (D) of subsection (e)(1) or subsection (e)(2) shall provide to the person's employer (upon the request of such employer) documentation to establish that—

"(A) the person's application is timely;

"(B) the person has not exceeded the service limitations set forth in subsection (a)(2) (except as permitted under subsection (c)); and

"(C) the person's entitlement to the benefits under this chapter has not been terminated pursuant to section 4304 of this title.

"(2) Documentation of any matter referred to in paragraph (1) that satisfies regulations prescribed by the Secretary shall satisfy the documentation requirements in such paragraph.

"(3)(A) Except as provided in subparagraph (B), the failure of a person to provide documentation that satisfies regulations prescribed pursuant to paragraph (2) shall not be a basis for denying reemployment in accordance with the provisions of this chapter if the failure occurs because such documentation does not exist or is not readily available at the time of the request of the employer. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements referred to in subparagraphs (A), (B), and (C) of paragraph (1), the employer of such person may terminate the employment of the person and the provision of any rights or benefits afforded the person under this chapter.

"(B) An employer who reemploys a person absent from a position of employment for more than 90 days may require that the person provide the employer with the documentation referred to in subparagraph (A) before beginning to treat the person as not having incurred a break in service for pension purposes under section 4317(a)(2)(A) of this title.

"(4) An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.

"(g) The right of a person to reemployment under this section shall not entitle such person to retention, preference, or displacement rights over any person with a superior claim under the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

"(h) In any determination of a person's entitlement to protection under this chapter, the timing, frequency, and duration of the person's training or service, or the nature of such training or service (including voluntary service) in the uniformed services, shall not be a basis for denying protection of this chapter if the service does not exceed the limitations set forth in subsection (c) and the notice requirements established in subsection (a)(1) and the notification requirements established in subsection (e) are met.

"§ 4313. Reemployment positions

"(a) Subject to subsection (b) (in the case of any employee) and section 4314 of this title (in the case of an employee of the Federal Government), a person entitled to reemployment under section 4312 of this title upon completion of a period of service in the uniformed services shall be promptly reemployed in a position of employment in accordance with the following order of priority:

"(1) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for less than 31 days—

"(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, the duties of which the person is qualified to perform; or

"(B) if the person is not qualified to perform the duties of the position referred to in subparagraph (A), after reasonable efforts by the employer to qualify the person, in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services.

"(2) Except as provided in paragraphs (3) and (4), in the case of a person whose period of service in the uniformed services was for more than 30 days—

"(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status, and pay, the duties of which the person is qualified to perform; or

"(B) if the person is not qualified to perform the duties of a position referred to in subparagraph (A), after reasonable efforts by the employer to qualify the person, in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform.

"(3) In the case of a person who has a disability incurred in, or aggravated by, such service, and who (after reasonable efforts by the employer to accommodate the disability) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service—

"(A) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or

"(B) if not employed under subparagraph (A), in a position which is the nearest approximation to a position referred to in subparagraph (A) in terms of seniority, status, and pay consistent with circumstances of such person's case.

"(4) In the case of a person who (A) is not qualified to be employed in (i) the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or (ii) in the position of employment in which such person was employed on the date of the commencement of the service in the uniform services for any reason (other than disability incurred in, or aggravated by, service in the uniformed services), and (B) cannot become qualified with reasonable efforts by the employer, in any other position of lesser status and pay which such person is qualified to perform, with full seniority.

"(b)(1) If two or more persons are entitled to reemployment under section 4312 of this title in the same position of employment and more than one of them has reported for such reemployment, the person who left the position first shall have the prior right to reemployment in that position.

"(2) Any person entitled to reemployment under section 4312 of this title who is not reemployed in a position of employment by reason of paragraph (1) shall be entitled to be reemployed as follows:

"(A) Except as provided in subparagraph (B), in any other position of employment referred to in subsection (a)(1) or (a)(2), as the case may be (in the order of priority set out in the applicable subsection), that provides a similar status and pay to a position of employment referred to in paragraph (1) of this subsection, consistent with circumstances of such person's case, with full seniority.

"(B) In the case of a person who has a disability incurred in, or aggravated by, service in the uniformed services that requires reasonable efforts by the employer for the person to be able to perform the duties of the position of employment, in any position referred to in subsection (a)(3) (in the order of priority set out in that subsection) that provides a similar status and pay to a position referred to in paragraph (1), consistent with circumstances of such person's case, with full seniority.

"§ 4314. Reemployment by the Federal Government

"(a) Except as provided in subsections (b), (c), and (d), if a person is entitled to reemployment by the Federal Government under section 4312 of this title, such person shall be reemployed in a position of employment as described in section 4313 of this title.

"(b)(1) If the Director of the Office of Personnel Management makes a determination described in paragraph (2) with respect to a person who was employed by a Federal executive agency at the time the person entered the service from which the person seeks reemployment under this section, the Director shall—

"(A) identify a position of like seniority, status, and pay at another Federal executive agency that satisfies the requirements of section 4313 of this title and for which the person is qualified; and

"(B) ensure that the person is offered such position.

"(2) The Director shall carry out the duties referred to in subparagraphs (A) and (B) of paragraph (1) if the Director determines that—

"(A) the Federal executive agency that employed the person referred to in such paragraph no longer exists and the functions of such agency have not been transferred to another Federal executive agency; or

"(B) it is impossible or unreasonable for the agency to reemploy the person.

"(c) If the employer of a person described in subsection (a) was, at the time such person entered the service from which such person seeks reemployment under this section, a part of the judicial branch or the legislative branch of the Federal Government, and such employer determines that it is impossible or unreasonable for such employer to reemploy such person, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment in an alternative position in a Federal executive agency on the basis described in subsection (b).

"(d) If the adjutant general of a State determines that it is impossible or unreasonable to reemploy a person who was a National Guard technician employed under section 709 of title 32, such person shall, upon application to the Director of the Office of Personnel Management, be ensured an offer of employment in an alternative position in a Federal executive agency on the basis described in subsection (b).

"§ 4315. Reemployment by certain Federal agencies

"(a) The head of each agency referred to in section 2302(a)(2)(C)(ii) of title 5 shall prescribe procedures for ensuring that the rights under this chapter apply to the employees of such agency.

"(b) In prescribing procedures under subsection (a), the head of an agency referred to in that subsection shall ensure, to the maximum extent practicable, that the procedures of the agency for reemploying persons who serve in the uniformed services provide for the reemployment of such persons in the agency in a manner similar to the manner of reemployment described in section 4313 of this title.

"(c)(1) The regulations prescribed under subsection (a) shall designate an official at the agency who shall determine whether or not the reemployment of a person referred to in subsection (b) by the agency is impossible or unreasonable.

"(2) Upon making a determination that the reemployment by the agency of a person referred to in subsection (b) is impossible or unreasonable, the official referred to in paragraph (1) shall notify the person and the Director of the Office of Personnel Management of such determination.

"(3) A determination pursuant to this subsection shall not be subject to judicial review.

"(4) The head of each agency referred to in subsection (a) shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives on an annual basis a report on the number of persons whose reemployment with the agency was determined under this subsection to be impossible or unreasonable during the year preceding the report, including the reason for each such determination.

"(d)(1) Except as provided in this section, nothing in this section, section 4313 of this title, or section 4324 of this title shall be construed to exempt any agency referred to in subsection (a) from compliance with any other substantive provision of this chapter.

"(2) This section may not be construed—

"(A) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter, alternative employment in the Federal Government under this chapter, or information relating to the rights and obligations of employee and Federal agencies under this chapter; or

"(B) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

"(e) The Director of the Office of Personnel Management shall ensure the offer of employment to a person in a position in a Federal executive agency on the basis described in subsection (b) if—

"(1) the person was an employee of an agency referred to in section 2302(a)(2)(C)(ii) of title 5 at the time the person entered the service from which the person seeks reemployment under this section;

"(2) the appropriate officer of the agency determines under section 4315(c) of this title that reemployment of the person by the agency is impossible or unreasonable; and

"(3) the person submits an application to the Director for an offer of employment under this subsection.

"§ 4316. Rights, benefits, and obligations of persons absent from employment for service in a uniformed service

"(a) A person who is reemployed under this chapter after a period of service in the uniformed services is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of such service plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.

"(b)(1)(A) Subject to paragraphs (2) through (6), a person who performs service in the uniformed services shall be—

"(i) deemed to be on furlough or leave of absence while performing such service; and

"(ii) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a practice, policy, agreement, or plan in effect at the commencement of such service or established while such person performs such service.

"(B) Such person may be required to pay the employee cost, if any, of any funded benefit continued pursuant to subparagraph (A) to the extent other employees on furlough or leave of absence are so required. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), any liability of the plan arising under this paragraph shall be allocated by the plan in such manner as the sponsor maintaining the plan may provide (or, if the sponsor does not so provide, shall be allocated to the last employer employing the person before the period served by the person in the uniformed services).

"(2) A person deemed to be on furlough or leave of absence under this subsection while serving in the uniformed services shall not be entitled under this subsection to any benefits which the person would not otherwise be entitled if the person were not on a furlough or leave of absence.

"(3) A person is not entitled under this subsection to coverage under a health plan to the extent that the person is entitled to care or treatment from the Federal Government as a result of such person's service in the uniformed services.

"(4) A person is not entitled under this subsection to coverage, under a disability insurance policy, of an injury or disease incurred or aggravated during a period of active duty service in excess of 31 days to the extent such coverage is excluded or limited by a provision of such policy.

"(5) A person is not entitled under this subsection to coverage, under a life insurance policy, of a death incurred by the person as a result of the person's participation in, or assignment to an area of, armed conflict to the extent that such coverage is excluded or limited by a provision of such policy.

"(6) The requirement that an employer provide rights or benefits under paragraph (1) to a person deemed to be on furlough or leave of absence shall expire on the earlier of—

"(A) the date of the end of the 18-month period that begins on the date on which the person commences the performance of the service referred to in paragraph (1); or

"(B) the date of the expiration of the person's obligation with respect to such service to notify the person's employer of the person's intent to return to a position of employment under section 4312(e) of this title.

"(7) The entitlement of a person to a right or benefit under an employee pension benefit plan is provided for under section 4317 of this title.

"(c)(1)(A) Subject to paragraphs (2) and (3), if a person's employer-sponsored health-plan coverage would otherwise terminate due to an extended absence from employment for purposes of performing service in the uniformed services, the person may elect to continue health-plan coverage acquired through civilian employment in accordance with this paragraph so that such coverage continues for not more than 18 months after such absence begins.

"(B) A person who elects to continue health-plan coverage under this paragraph may be required to pay not more than 102 percent of the full premium (determined in the same manner as the applicable premium under section 4980B(f)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 4980B(f)(4))) associated with such coverage for the employer's other employees, except that in the case of a person who performs a period of service in the uniformed services for less than 31 days, such person may not be required to pay more than the employee share, if any, for such coverage.

"(C) In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), any liability of the plan arising under this paragraph shall be allocated by the plan in such manner as the sponsor maintaining the plan may provide (or, if the sponsor does not so provide, shall be allocated to the last employer employing the person before the period served by the person in the uniformed services).

"(2) A person who elects to continue health-plan coverage under this subsection shall not be entitled to coverage under the plan to the extent that the person is entitled to care or treatment from the Federal Government as a result of such person's service in the uniformed services.

"(3) The period of coverage of a person and the person's dependents under a continuation of health-plan coverage elected by the person under this subsection shall be the lesser of—

"(A) the 18-month period beginning on the date on which the absence referred to in paragraph (1) begins; or

"(B) the aggregate of the period of the person's service in the uniformed services and the period in which the person is required to notify the person's employer of the person's intent to return to a position of employment under section 4312(e) of this title.

"(d)(1) Except as provided in paragraph (2), in the case of a person whose coverage by an employer-sponsored health plan as an employee is terminated by reason of the service of such person in the uniformed services, an exclusion or waiting period may not be imposed in connection with the reinstatement of the coverage of the person upon reemployment under this chapter, or in connection with any other individual who is covered by the health plan by reason of the reinstatement of the coverage of such person upon reemployment, if an exclusion or waiting period would not have been imposed under such health plan had coverage of such person by such health plan not been terminated as a result of such service.

"(2) Paragraph (1) shall not apply to the condition of a person if the Secretary determines that the condition was incurred or aggravated during active military, naval, or air service.

"(e) A person who is reemployed by an employer under this chapter shall not be discharged from such employment, except for cause—

"(1) within one year after the date of such reemployment, if the person's period of service before the reemployment was more than 180 days; or

"(2) within 180 days after the date of such reemployment, if the person's period of service before the reemployment was more than 30 days but less than 181 days.

"(f)(1) Any person described in paragraph (2) whose employment with an employer referred to in that paragraph is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during such period of service any vacation or annual leave with pay accrued by the person before the commencement of such service.

"(2) A person entitled to the benefit described in paragraph (1) is a person who—

"(A) has accrued vacation or annual leave with pay under a policy or practice of a State (as an employer) or private employer; or

"(B) has accrued such leave as an employee of the Federal Government pursuant to subchapter I of chapter 63 of title 5.

"§ 4317. Employee pension benefit plans

"(a)(1)(A) Except as provided in subparagraph (B), in the case of a right provided pursuant to an employee pension benefit plan described in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) or a right provided under any Federal or State law governing pension benefits for governmental employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

"(B) In the case of benefits under the Thrift Savings Plan, the rights of a person reemployed under this chapter shall be those rights provided in section 8432b of title 5. This subparagraph shall not be construed to affect any other right or benefit under this chapter.

"(2)(A) Except as provided in section 4312(f)(3)(B) of this title, a person reemployed under this chapter shall be treated as not having incurred a break in service with the employer or employers maintaining the plan by reason of such person's period or periods of service in the uniformed services.

"(B) Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the employer or employers maintaining the plan for purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

"(b)(1) An employer reemploying a person under this chapter shall be liable to an employee benefit pension plan for funding any obligation of the plan to provide the benefits described in subsection (a)(2). For purposes of determining the amount of such liability and for purposes of section 515 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1145) or any similar Federal or State law governing pension benefits for governmental employees, service in the uniformed services that is deemed under subsection (a) to be service with the employer shall be deemed to be service with the employer under the terms of the plan or any applicable collective bargaining agreement. In the case of a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), any liability of the plan described in this paragraph shall be allocated by the plan in such manner as the sponsor maintaining the plan may provide (or, if the sponsor does not so provide, shall be allocated to the last employer employing the person before the period described in subsection (a)(2)(B)).

"(2) A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the person elects to make employee contributions or elective deferrals that are attributable to the period of service described in subsection (a)(2)(B). No such contributions or deferrals may exceed the amount the person or employer would have been permitted or required to make had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any employee contribution or deferral to the plan described in this paragraph shall be made during any reasonable continuous period (beginning with the date of reemployment) as the employer and the person may agree but in no event shall such person be afforded a payment period shorter than the length of absence for service for which the payments are due.

"(3) For purposes of computing an employer's liability under paragraph (1) or the employee's contributions under paragraph (2), the employee's compensation during the period of service described in subsection (a)(2)(B)—

"(A) shall be computed at the rate the employee would have received but for the absence during the period of service; or

"(B) if the employee's compensation was not based on a fixed rate, shall be computed on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

"(4) Notwithstanding any other provision of this section—

"(A) no earnings shall be credited to an employee with respect to any contribution prior to such contribution being made; and

"(B) any forfeitures during the period described in subsection (a)(2)(B) shall not be allocated to persons reemployed under this chapter.

"(c) Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), under which benefits are or may be payable to such person by reason of the obligations set forth in this chapter, shall, within 30 days after the date of such reemployment, provide notice of such reemployment to the administrator of such plan.

"(d) No provision of this section shall apply to the extent it—

"(1) requires any action to be taken which would cause the plan, any of its participants, or employer to suffer adverse tax or other consequences under the Internal Revenue Code of 1986; or

"(2) requires contributions to be returned or reallocated, or additional contributions to be made, with respect to employees not reemployed under this chapter.

"SUBCHAPTER III—PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION

"§ 4321. Assistance in obtaining reemployment or other employment rights or benefits

"(a) The Secretary (through the Veterans' Employment and Training Service) shall

provide assistance to any person with respect to the employment and reemployment rights and benefits to which such person is entitled under this chapter. In providing such assistance, the Secretary may request the assistance of existing Federal and State agencies engaged in similar or related activities and utilize the assistance of volunteers.

"(b)(1)(A) A person referred to in subparagraph (B) may submit a complaint to the Secretary with respect to the matters described in clause (ii) of such subparagraph. Such complaint shall be submitted in accordance with subsection (c).

"(B) A person may submit a complaint under subparagraph (A) if the person claims—

"(i) to be entitled under this chapter to employment or reemployment rights or benefits with respect to employment by an employer; and

"(ii) that the employer (including the Office of Personnel Management, if the employer is the Federal Government) has failed or refused, or is about to fail or refuse, to comply with the provisions of this chapter.

"(2) The Secretary shall, upon request, provide technical assistance to a potential claimant with respect to a complaint under this subsection, and to such claimant's employer.

"(c) A complaint submitted under subsection (b) shall be in a form prescribed by the Secretary and shall include—

"(1) the name and address of the employer or potential employer against whom the complaint is directed; and

"(2) a summary of the allegations upon which the complaint is based.

"(d) The Secretary shall investigate each complaint submitted pursuant to subsection (b). If the Secretary determines as a result of the investigation that the action alleged in such complaint occurred, the Secretary shall resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter.

"(e) If the efforts of the Secretary with respect to a complaint under subsection (d) are unsuccessful, the Secretary shall notify the person who submitted the complaint of—

"(1) the results of the Secretary's investigation; and

"(2) the complainant's entitlement to proceed under the enforcement of rights provisions provided under section 4322 of this title (in the case of a person submitting a complaint against a State or private employer) or section 4323 of this title (in the case of a person submitting a complaint against the Federal Government).

"(f) This subchapter does not apply to any action relating to benefits to be provided under the Thrift Savings Plan under title 5.

"§ 4322. Enforcement of rights with respect to a State or private employer

"(a)(1) A person who receives from the Secretary a notification pursuant to section 4321(e) of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) or a private employer may request that the Secretary refer the complaint to the Attorney General. If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to the rights or benefits sought, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for appropriate relief for such person in an appropriate United States district court.

"(2)(A) A person referred to in subparagraph (B) may commence an action for appropriate relief in an appropriate United States district court.

"(B) A person entitled to commence an action for relief with respect to a complaint under subparagraph (A) is a person who—

"(i) has chosen not to apply to the Secretary for assistance regarding the complaint under section 4321(c) of this title;

"(ii) has chosen not to request that the Secretary refer the complaint to the Attorney General under paragraph (1); or

"(iii) has been refused representation by the Attorney General with respect to the complaint under such paragraph.

"(b) In the case of an action against a State as an employer, the appropriate district court is the court for any district in which the State exercises any authority or carries out any function. In the case of a private employer the appropriate district court is the district court for any district in which the private employer of the person maintains a place of business.

"(c)(1)(A) The district courts of the United States shall have jurisdiction, upon the filing of a complaint, motion, petition, or other appropriate pleading by or on behalf of the person entitled to a right or benefit under this chapter—

"(i) to require the employer to comply with the provisions of this chapter;

"(ii) to require the State or private employer, as the case may be, to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter; and

"(iii) to require the employer to pay the person an amount equal to the amount referred to in clause (ii) as liquidated damages, if the court determines that the employer's failure to comply with the provisions of this chapter was willful.

"(B) Any compensation under clauses (ii) and (iii) of subparagraph (A) shall be in addition to, and shall not diminish, any of the other rights and benefits provided for in this chapter.

"(2)(A) No fees or court costs shall be charged or taxed against any person claiming rights under this chapter.

"(B) In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(2) who obtained private counsel for such action or proceeding, the court may award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.

"(3) The court may use its full equity powers, including temporary or permanent injunctions and temporary restraining orders, to vindicate fully the rights or benefits of persons under this chapter.

"(4) An action under this chapter may be initiated only by a person claiming rights or benefits under this chapter, and not by an employer, prospective employer, or other entity with obligations under this chapter.

"(5) In any such action, only a State and local government (as an employer), an employer, or a potential employer, as the case may be, shall be a necessary party respondent.

"(6) No State statute of limitations shall apply to any proceeding under this chapter.

"(7) A State shall be subject to the same remedies, including prejudgment interest, as may be imposed upon any private employer under this section.

"§ 4323. Enforcement of rights with respect to Federal executive agencies

"(a)(1) A person who receives from the Secretary a notification pursuant to section 4321(e) of this title of an unsuccessful effort to resolve a complaint relating to a Federal executive agency may request that the Secretary refer the complaint for litigation before the Merit Systems Protection Board. The Secretary shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5.

"(2)(A) If the Special Counsel is reasonably satisfied that the person on whose behalf a complaint is referred under paragraph (1) is entitled to the rights or benefits sought, the Special Counsel (upon the request of the person submitting the complaint) may appear on behalf of, and act as attorney for, the person and initiate an action regarding such complaint before the Merit Systems Protection Board.

"(B) If the Special Counsel decides not to initiate an action and represent a person before the Merit Systems Protection Board under subparagraph (A), the Special Counsel shall notify such person of that decision.

"(b)(1) A person referred to in paragraph (2) may submit a complaint against a Federal executive agency under this subchapter directly to the Merit Systems Protection Board. A person who seeks a hearing or adjudication by submitting such a complaint under this paragraph may be represented at such hearing or adjudication in accordance with the rules of the Board.

"(2) A person entitled to submit a complaint to the Merit Systems Protection Board under paragraph (1) is a person who—

"(A) has chosen not to apply to the Secretary for assistance regarding a complaint under section 4321(c) of this title;

"(B) has received a notification from the Secretary under section 4321(e) of this title;

"(C) has chosen not to be represented before the Board by the Special Counsel pursuant to subsection (a)(2)(A); or

"(D) has received a notification of a decision from the Special Counsel under subsection (a)(2)(B).

"(c)(1) The Merit Systems Protection Board shall adjudicate any complaint brought before the Board pursuant to subsection (a)(2)(A) or (b)(1).

"(2) If the Board determines that a Federal executive agency has not complied with the provisions of this chapter relating to the employment or reemployment of a person by the agency, the Board shall enter an order requiring the agency or employee to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by such person by reason of such lack of compliance.

"(3) Any compensation received by a person pursuant to an order under paragraph (1) shall be in addition to any other right or benefit provided for by this chapter and shall not diminish any such right or benefit.

"(4) If the Board determines as a result of a hearing or adjudication conducted pursuant a complaint submitted by a person directly to the Board pursuant to subsection (b)(1) that such person is entitled to an order referred to in paragraph (2), the Board may, in its discretion, award such person reasonable attorney fees, expert witness fees, and other litigation expenses.

"(d) A person adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board under subsection (c) may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision. Such petition and review shall be in accordance with the procedures set forth in section 7703 of title 5.

"(e) A person may be represented by the Special Counsel in an action for review of a

final order or decision issued by the Merit Systems Protection Board pursuant to subsection (c) that is brought pursuant to section 7703 of title 5 unless the person was not represented by the Special Counsel before the Merit Systems Protection Board regarding such order or decision.

"§ 4324. Enforcement of rights with respect to certain Federal agencies

"(a) This section applies to any person who alleges that—

"(1) the reemployment of such person by an agency referred to in subsection (a) of section 4315 of this title was not in accordance with procedures for the reemployment of such person under subsection (b) of such section; or

"(2) the failure of such agency to reemploy the person under such section was otherwise wrongful.

"(b) Any person referred to in subsection (a) may submit a claim relating to an allegation referred to in that subsection to the inspector general of the agency which is the subject of the allegation. The inspector general shall investigate and resolve the allegation pursuant to procedures prescribed by the head of the agency.

"(c) In prescribing procedures for the investigation and resolution of allegations under subsection (b), the head of an agency shall ensure, to the maximum extent practicable, that the procedures are similar to the procedures for investigating and resolving complaints utilized by the Secretary under section 4321(d) of this title.

"(d) This section may not be construed—

"(1) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter, alternative employment in the Federal Government under this chapter, or information relating to the rights and obligations of employee and Federal agencies under this chapter; or

"(2) as prohibiting such an agency from voluntarily cooperating with or seeking assistance in or of clarification from the Secretary or the Director of the Office of Personnel Management of any matter arising under this chapter.

"§ 4325. Conduct of investigation; subpoenas

"(a) In carrying out any investigation under this chapter, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or employer that the Secretary considers relevant to the investigation.

"(b) In carrying out any investigation under this chapter, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

"(c) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or employer to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this chapter and district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

"(d) Subsections (b) and (c) shall not apply to the legislative branch or the judicial branch of the United States.

"SUBCHAPTER IV—MISCELLANEOUS

"§ 4331. Regulations

"(a) The Secretary (in consultation with the Secretary of Defense) may prescribe regulations implementing the provisions of this chapter with respect to States and local governments (as employers) and private employers.

"(b)(1) The Director of the Office of Personnel Management (in consultation with the Secretary and the Secretary of Defense) may prescribe regulations implementing the provisions of this chapter with regard to the application of this chapter to Federal executive agencies (other than the agencies referred to in paragraph (2)) as employers. Such regulations shall be consistent with the regulations pertaining to the States as employers and private employers.

"(2) The following entities may prescribe regulations to carry out the activities of such entities under this chapter:

"(A) The Merit Systems Protection Board.

"(B) The Office of Special Counsel.

"(C) The agencies referred to in section 2303(a)(2)(C)(ii) of title 5.

"§ 4332. Outreach

"The Secretary, the Secretary of Defense, and the Secretary of Veterans Affairs shall take such actions as such Secretaries determine are appropriate to inform persons entitled to rights and benefits under this chapter and employers of the rights, benefits, and obligations of such persons and employers under this chapter.".

(b) TABLE OF CHAPTERS.—The tables of chapters at the beginning of title 38, United States Code, and the beginning of part III of such title are each amended by striking out the item relating to chapter 43 and inserting in lieu thereof the following:

"43. Employment and reemployment rights of members of the uniformed services ..... 4301".

(c) REPORT RELATING TO IMPLEMENTATION OF REEMPLOYMENT RIGHTS PROVISIONS.—Not later than one year after the date of the enactment of this Act, the Secretary of Labor, the Attorney General of the United States, and the Special Counsel referred to in section 4323(a)(1) of title 38, United States Code (as added by subsection (a)), shall each submit a report to the Congress relating to the implementation of chapter 43 of such title (as added by such subsection).

SEC. 3. EXEMPTION FROM MINIMUM SERVICE REQUIREMENTS.

Section 5303A(b)(3) of title 38, United States Code, is amended—

(1) by striking out "or" at the end of subparagraph (E);

(2) by striking out the period at the end of subparagraph (F) and inserting in lieu thereof "; or"; and

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

"(G) to an entitlement to rights and benefits under chapter 43 of this title.".

SEC. 4. REPEAL OF TITLE 5 PROVISIONS RELATING TO REEMPLOYMENT RIGHTS OF RESERVISTS.

(a) REPEAL.—Subchapter II of chapter 35 of title 5, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by striking out the items relating to subchapter II and section 3551.

SEC. 5. REVISION OF FEDERAL CIVIL SERVICE RETIREMENT BENEFIT PROGRAM FOR RESERVISTS.

(a) CREDITABLE MILITARY SERVICE UNDER CSRS.—Section 8331(13) of title 5, United States Code, is amended in the flush matter by inserting "or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990" before the semicolon.

(b) PAY DEDUCTIONS FOR MILITARY SERVICE UNDER CSRS.—Section 8334(j)(1) of such title is amended—

(1) by striking out "Each employee" and inserting in lieu thereof "(A) Except as provided in subparagraph (B), each employee"; and

(2) by adding at the end the following:

"(B) In any case where military service interrupts creditable civilian service under this subchapter and reemployment pursuant to chapter 43 of title 38 occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.".

(c) CREDITABLE MILITARY SERVICE UNDER FERS.—Section 8401(31) of such title is amended in the flush matter by inserting "or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990" before the semicolon.

(d) PAY DEDUCTIONS FOR MILITARY SERVICE UNDER FERS.—Section 8422(e)(1) of such title is amended—

(1) by striking out "Each employee" and inserting in lieu thereof "(A) Except as provided in subparagraph (B), each employee"; and

(2) by adding at the end the following:

"(B) In any case where military service interrupts creditable civilian service under this subchapter and reemployment pursuant to chapter 43 of title 38 occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.".

(e) TECHNICAL AMENDMENTS.—Title 5, United States Code, is amended as follows:

(1) In section 8401(11), by striking out "1954" in the flush matter above clause (i) and inserting in lieu thereof "1986".

(2) In section 8422(a)(2)(A)(ii), by striking out "1954" and inserting in lieu thereof "1986".

(3) In section 8432(d), by striking out "1954" in the first sentence and inserting in lieu thereof "1986".

(4) In section 8433(i)(4), by striking out "1954" and inserting in lieu thereof "1986".

(5) In section 8440—

(A) by striking out "1954" in subsection (a) and inserting in lieu thereof "1986"; and

(B) by striking out "1954" in subsection (c) and inserting in lieu thereof "1986".

SEC. 6. THRIFT SAVINGS PLAN.

(a) IN GENERAL.—(1) Title 5, United States Code, is amended by inserting after section 8432a the following:

"§ 8432b. Contributions of persons who perform military service

"(a) This section applies to any employee who—

"(1) separates or enters leave-without-pay status in order to perform military service; and

"(2) is subsequently restored to or reemployed in a position which is subject to this chapter, pursuant to chapter 43 of title 38.

"(b)(1) Each employee to whom this section applies may contribute to the Thrift Savings Fund, in accordance with this subsection, an amount not to exceed the amount described in paragraph (2).

"(2) The maximum amount which an employee may contribute under this subsection is equal to—

"(A) the contributions under section 8432(a) which would have been made, over the period beginning on date of separation or commencement of leave-without-pay status (as applicable) and ending on the day before the date of restoration or reemployment (as applicable); reduced by

"(B) any contributions under section 8432(a) actually made by such employee over the period described in subparagraph (A).

"(3) Contributions under this subsection—

"(A) shall be made at the same time and in the same manner as would any contributions under section 8432(a);

"(B) shall be made over the period of time specified by the employee under paragraph (4)(B); and

"(C) shall be in addition to any contributions then actually being made under section 8432(a).

"(4)(A) The Executive Director shall prescribe the time, form, and manner in which an employee may specify—

"(i) the total amount such employee wishes to contribute under this subsection with respect to any particular period referred to in paragraph (2)(B); and

"(ii) the period of time over which the employee wishes to make contributions under this subsection.

"(B) The employing agency may place a maximum limit on the period of time referred to in subparagraph (A)(ii), which cannot be shorter than two times the period referred to in paragraph (2)(B) and not longer than four times such period.

"(c) If an employee makes contributions under subsection (b), the employing agency shall make contributions to the Thrift Savings Fund on such employee's behalf—

"(1) in the same manner as would be required under section 8432(c)(2) if the employee contributions were being made under section 8432(a); and

"(2) disregarding any contributions then actually being made under section 8432(a) and any agency contributions relating thereto.

"(d) An employee to whom this section applies is entitled to have contributed to the Thrift Savings Fund on such employee's behalf an amount equal to—

"(1) 1 percent of such employee's basic pay (as determined under subsection (e)) for the period referred to in subsection (b)(2)(B); reduced by

"(2) any contributions actually made on such employee's behalf under section 8432(c)(1) with respect to the period referred to in subsection (b)(2)(B).

"(e) For purposes of any computation under this section, an employee shall, with respect to the period referred to in subsection (b)(2)(B), be considered to have been paid at the rate which would have been payable over such period had such employee remained continuously employed in the position which such employee last held before separating or entering leave-without-pay status to perform military service.

"(f) Amounts paid under subsection (c) or (d) shall be paid—

"(1) by the agency to which the employee is restored or in which such employee is reemployed;

"(2) from the same source as would be the case under section 8432(e) with respect to sums required under section 8432(c); and

"(3) within the time prescribed by the Executive Director.

"(g)(1) For purposes of section 8432(g), in the case of an employee to whom this section applies—

"(A) a separation from civilian service in order to perform the military service on which the employee's restoration or reemployment rights are based shall be disregarded; and

"(B) such employee shall be credited with a period of civilian service equal to the period referred to in subsection (b)(2)(B).

"(2)(A) An employee to whom this section applies may elect, for purposes of section 8433(d), or paragraph (1) or (2) of section 8433(h), as the case may be, to have such employee's separation (described in subsection (a)(1)) treated as if it had never occurred.

"(B) An election under this paragraph shall be made within such period of time after restoration or reemployment (as the case may be) and otherwise in such manner as the Executive Director prescribes.

"(h) The Executive Director shall prescribe regulations to carry out this section.".

(2) The table of sections at the beginning of chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8432a the following:

"8432b. Contributions of persons who perform military service.".

(b) PRESERVATION OF CERTAIN RIGHTS.—(1) Section 8433(d) of title 5, United States Code, is amended by striking "subsection (e)." and inserting "subsection (e), unless an election under section 8432b(g)(2) is made to treat such separation for purposes of this subsection as if it had never occurred.".

(2) Paragraphs (1) and (2) of section 8433(h) are each amended by striking the period at the end and inserting ", or unless an election under section 8432b(g)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.".

(c) ELECTION TO RESUME REGULAR CONTRIBUTIONS UPON RESTORATION OR REEMPLOYMENT.—Section 8432 of title 5, United States Code, is amended by adding at the end the following:

"(i)(1) This subsection applies to any employee—

"(A) to whom section 8432b applies; and

"(B) who, during the period of such employee's absence from civilian service (as referred to in section 8432b(b)(2)(B))—

"(i) is eligible to make an election described in subsection (b)(1); or

"(ii) would be so eligible but for having either elected to terminate individual contributions to the Thrift Savings Fund within 2 months before commencing military service or separated in order to perform military service.

"(2) The Executive Director shall prescribe regulations to ensure that any employee to whom this subsection applies shall, within a reasonable time after being restored or reemployed (in the manner described in section 8432b(a)(2)), be afforded the opportunity to make, for purposes of this section, any election which would be allowable during a period described in subsection (b)(1)(A).".

(d) APPLICABILITY TO EMPLOYEES UNDER CSRS.—Section 8351(b) of title 5, United States Code, is amended by adding at the end the following:

"(11) In applying section 8432b to an employee contributing to the Thrift Savings Fund after being restored to or reemployed in a position subject to this subchapter, pursuant to chapter 43 of title 38—

"(A) any reference in such section to contributions under section 8432(a) shall be considered a reference to employee contributions under this section;

"(B) the contribution rate under section 8432b(b)(2)(A) shall be the maximum percentage allowable under subsection (b)(2) of this section; and

"(C) subsections (c) and (d) of section 8432b shall be disregarded.".

(e) EFFECTIVE DATE; APPLICABILITY.—This section and the amendments made by this section—

(1) shall take effect on the date of enactment of this Act; and

(2) shall apply to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of title 38, United States Code (as added by section 2(a)), occurs on or after August 1, 1990.

(f) RULES FOR APPLYING AMENDMENTS TO EMPLOYEES RESTORED OR REEMPLOYED BEFORE EFFECTIVE DATE.—In the case of any employee (described in subsection (e)(2)) who is restored or reemployed in a position of employment (in the circumstances described in section 8432b(a) of title 5, United States Code, as amended by this section) before the date of enactment of this Act, the amendments made by this section shall apply to such employee, in accordance with their terms, subject to the following:

(1) The employee shall be deemed not to have been reemployed or restored until—

(A) the date of enactment of this Act, or

(B) the first day following such employee's reemployment or restoration on which such employee is or was eligible to make an election relating to contributions to the Thrift Savings Fund,

whichever occurs or occurred first.

(2) If the employee changed agencies during the period between date of actual reemployment or restoration and the date of enactment of this Act, the employing agency as of such date of enactment shall be considered the reemploying or restoring agency.

(3)(A) For purposes of any computation under section 8432b of such title, pay shall be determined in accordance with subsection (e) of such section, except that, with respect to the period described in subparagraph (B), actual pay attributable to such period shall be used.

(B) The period described in this subparagraph is the period beginning on the first day of the first applicable pay period beginning on or after the date of the employee's actual reemployment or restoration and ending on the day before the date determined under paragraph (1).

SEC. 7. CONFORMING AMENDMENTS.

(a) TITLE 5.—Section 1204(a)(1) of title 5, United States Code, is amended by striking out "section 4323" and inserting in lieu thereof "chapter 43".

(b) TITLE 10.—Section 706(c)(1) of title 10, United States Code, is amended by striking out "section 4321" and inserting in lieu thereof "chapter 43".

SEC. 8. TECHNICAL AMENDMENT.

(a) TECHNICAL AMENDMENT.—Section 9(d) of Public Law 102-16 (105 Stat. 55) is amended by striking out "Act" the first place it appears and inserting in lieu thereof "section".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in Public Law 102-16 to which such amendment relates.

SEC. 9. TRANSITION RULES AND EFFECTIVE DATES.

(a) REEMPLOYMENT.—(1) Except as otherwise provided in this Act, the amendments

made by this Act shall be effective with respect to reemployments initiated on or after the first day after the 60-day period beginning on the date of enactment of this Act.

(2) The provisions of chapter 43 of title 38, United States Code, in effect on the day before such date of enactment, shall continue to apply to reemployments initiated before the end of such 60-day period.

(3) In determining the number of years of service that may not be exceeded in an employee-employer relationship with respect to which a person seeks reemployment under chapter 43 of title 38, United States Code, as in effect before or after the date of enactment of this Act, there shall be included all years of service without regard to whether the periods of service occurred before or after such date of enactment unless the period of service is exempted by the chapter 43 that is applicable, as provided in paragraphs (1) and (2), to the reemployment concerned.

(4) A person who initiates reemployment under chapter 43 of title 38, United States Code, during or after the 60-day period beginning on the date of enactment of this Act and whose reemployment is made in connection with a period of service in the uniform services that was initiated before the end of such period shall be deemed to have satisfied the notification requirement of section 4312(a)(1) of title 38, United States Code, as provided in the amendments made by this Act, if the person complied with any applicable notice requirement under chapter 43, United States Code, as in effect on the day before the date of enactment of this Act.

(b) DISCRIMINATION.—The provisions of section 4311 of title 38, United States Code, as provided in the amendments made by this Act, and the provisions of subchapter III of chapter 43 of such title, as provided in the amendments made by this Act, that are necessary for the implementation of such section 4311 shall become effective on the date of enactment of this Act.

(c) INSURANCE.—(1) Except as provided in paragraph (2), the provisions of section 4316(c) of title 38, United States Code, as provided in the amendments made by this Act, concerning insurance coverage shall become effective on the date of enactment of this Act.

(2) A person on active duty on the date of enactment of this Act, or a family member or personal representative of such person, may, after the date of enactment of this Act, elect to reinstate or continue insurance coverage as provided in such section 4316. If such an election is made, insurance coverage shall remain in effect for the remaining portion of the 18-month period that began on the date of such person's separation from civilian employment or the period of the person's service in the uniformed service, whichever is the period of lesser duration.

(d) DISABILITY.—(1) Section 4313(a)(3) of chapter 43 of title 38, United States Code, as provided in the amendments made by this Act, shall apply to reemployments initiated on or after August 1, 1990.

(2) Effective as of August 1, 1990, section 4307 of title 38, United States Code (as in effect on the date of enactment of this Act), is repealed, and the table of sections at the beginning of chapter 43 of such title (as in effect on the date of enactment of this Act) is amended by striking out the item relating to section 4307.

(e) INVESTIGATIONS AND SUBPOENAS.—The provisions of section 4325 of title 38, United States Code, as provided in the amendments made by this Act, shall become effective on the date of the enactment of this Act and apply to any matter pending with the Secretary of Labor under section 4305 of title 38, United States Code, as of that date.

(f) PREVIOUS ACTIONS.—Except as otherwise provided, the amendments made by this Act do not affect reemployments that were initiated, rights, benefits, and duties that matured, penalties that were incurred, and proceedings that begin before the end of the 60-day period referred to in subsection (a).

(g) DEFINITION.—For the purposes of this section, the term "service in the uniformed services" shall have the meaning given such term in section 4303(13) of title 38, United States Code, as provided in the amendments made by this Act.

SEC. 10. INCREASE IN AMOUNT OF LOAN GUARANTY FOR LOANS FOR THE PURCHASE OR CONSTRUCTION OF HOMES.

Subparagraphs (A)(i)(IV) and (B) of section 3703(a)(1) of title 38, United States Code, are each amended by striking out "$46,000" and inserting in lieu thereof "$50,750".

Mr. ROCKEFELLER. Mr. President, as chairman of the Committee on Veterans' Affairs, I urge my colleagues to give their unanimous approval to S. 843, the proposed Uniformed Services Employment and Reemployment Rights Act of 1993, as reported by the Veterans' Affairs Committee on October 18, as it will be amended by a committee modification that I am proposing. This measure, which I will refer to as the committee bill, would revise chapter 43 of title 38, United States Code, to clarify veterans' reemployment rights [VRR] law provisions and to make improvements in various aspects of this law.

This bill is derived from S. 1095, as passed by unanimous consent in the 102d Congress on October 1, 1992. It is also similar to H.R. 995—a bill derived from H.R. 1578 as passed by the House on October 6, 1992. H.R. 995 was reported on April 28, 1993 (H. Rpt. No. 103-65) and was passed by the House on May 4, 1993.

BACKGROUND

Mr. President, the VRR provisions, first enacted in 1940, are codified in chapter 43 of title 38. The current VRR law provides job security to employees who leave their civilian jobs in order to enter active military service, voluntarily or involuntarily. Within certain limits, the law generally entitles the individual who serves in the military to return to his or her former civilian job after being discharged or released from active duty under honorable conditions. For purposes of seniority, status, and pay, the employee is entitled to be treated as though he or she never left. The effect of this law is often characterized as enabling the returning veteran to step back on the seniority escalator at the point he or she would have occupied without interruption for military service. The law applies both to active-duty service and to training periods served by reservists and members of the National Guard.

The VRR law is intended to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which occur as a result of such service. The bill that is before the Senate today would help ensure that the VRR law effectively and fairly serves this purpose.

The bill is also aimed at clarifying the law. It is important that both employees and employers be able to understand the VRR law clearly so that active-duty servicemembers and reservists, whether they serve on active duty during an extended conflict or participate in routine training, do not experience unnecessary delays or disputes in returning to their former civilian jobs. Unfortunately, over the last 53 years the VRR law has become a confusing and cumbersome patchwork of statutory amendments and judicial constructions that, at times, hinders the resolution of claims. Thus, this bill would amend the VRR law to restate past amendments in a clearer manner and to incorporate important court decisions interpreting the law. The substantive rights at the heart of the VRR law would remain as valuable protection to those who provide this country with noncareer service in the uniformed services.

Mr. President, Congress has long recognized that the support of civilian employers is necessary if the uniformed services are to be able to recruit and retain noncareer personnel. I sincerely appreciate the very cooperative and patriotic manner in which the vast majority of employers have carried out their responsibilities under the VRR law. The committee bill is designed to take into account the legitimate interest and needs of employers and to assist them by stating their obligations in a clear fashion.

Both Committees on Veterans' Affairs and the administration committed much time and energy to the revision and improvement of this law during the 102d Congress. For over 3 years, an executive branch task force on VRR law, including representatives of the Departments of Labor, Defense, and Justice and the Office of Personnel Management, worked to develop a revision of chapter 43. H.R. 1578, the Uniformed Services Employment and Reemployment Rights Act of 1991, as passed by the House on May 14, 1991, was similar to and largely derived from the administration's March 5, 1991 draft. H.R. 1578 was modified and passed again by the House on October 1, 1992.

The Senate Veterans' Affairs Committee, under the leadership of Chairman Alan Cranston during the 102d Congress, worked closely with representatives from each of the Federal agencies responsible for administering the VRR law in developing the Senate bill, S. 1095, entitled the Uniformed Services Employment and Reemployment Rights Act of 1991. Senator Cranston introduced S. 1095 on May 16, 1991.

The Senate Veterans' Affairs Committee held a hearing on the legislation and subsequently filed a report of S. 1095 on November 7, 1991. Unfortunately, the Senate was unable to proceed to the consideration of S. 1095 until October 1, 1992—only a few days before adjournment of the 102d Congress.

The delay of nearly 11 months was the result of objections to S. 1095 by several organizations representing both large and small businesses which expressed reservations with S. 1095 as reported. The bill that the Senate finally passed on October 1, with a substantial committee modification as an amendment to the bill, reflected a substantial compromise reached with the business organizations and various Senators, while upholding the interests of veterans. The committee bill substantially embodies the compromise reached at the end of the last Congress.

Mr. President, because the various provisions in the committee bill are described in detail in the committee's report accompanying this measure, Senate Report No. 103-158, I will at this time just set forth a summary of the provisions and then discuss some selected provisions that I want to highlight. I refer my colleagues and all others with an interest in the committee bill to the committee report for more complete information on it.

SUMMARY OF MAJOR PROVISIONS

As modified by this bill, chapter 43 would:

1. Define terms used in the new chapter 43.

2. Continue to protect employees or applicants for employment from discrimination or reprisal based on their military obligation, and add a prohibition of employer reprisals against witnesses in reemployment rights cases.

3. Expand the term "employee" to include U.S. citizens employed in a foreign country if an American employer controls the corporation, but allow an employer to take an otherwise prohibited action if compliance with chapter 43 would violate the law of the foreign country.

4. Place a 5-year limit, with certain exceptions, on the cumulative length of time that an individual may be absent from a position of employment and still be eligible for reemployment rights with respect to that position.

5. Repeal the exclusion of individuals who held temporary positions from reemployment protection.

6. Generally base time requirements for returning to work or applying for reemployment on the length of the individual's absence for service.

7. Require absent individual (or an appropriate officer of the uniformed service) to give employer advance written or verbal notice of service.

8. Allow employers who reemploy individuals absent for more than 90 days for active-duty service to require documentation regarding their service before they would become entitled to pension benefits with respect to the period of service.

9. Codify court holding that entitlement to reemployment protection does not depend upon the timing, frequency, duration, or nature of an individual's service.

10. Require employers to make reasonable efforts—actions, including training, that do not create an undue hardship on the employer—to refresh or update the skills of an individual who needs training in order to qualify for reemployment.

11. Require employers to make reasonable efforts to accommodate the disability of an individual seeking employment who has a service-connected disability.

12. Ensure an individual whose reemployment in a legislative or judicial branch position, or as a National Guard technician, is impossible or unreasonable is given an offer of alternative employment in a Federal executive agency in a position of like seniority, status, and pay.

13. Maintain the so-called escalator principle under which an individual absent from employment by reason of service in the uniformed services is entitled, upon being reemployed, to the seniority and other rights and benefits determined by seniority the individual had when he or she began service plus the additional seniority and rights and benefits he or she would have attained with reasonable certainty if the person had remained continuously employed.

14. Reaffirm that while an individual is performing service in the uniformed services that he or she is deemed to be on furlough or leave of absence and is entitled to those other rights and benefits not determined by seniority which were in effect at the beginning of the service. Expand the individual's entitlement to include those other rights and benefits which are established while the individual performs the service, but limit the duration of entitlement to such rights and benefits to a period of 18 months or the completion of service and the period of time to notify the employer of the person's intent to return, whichever is earlier.

15. Clarify that an individual on leave of absence from employment while serving in the uniformed services would not be entitled to any non-seniority benefits to which the person would not otherwise be entitled if the person were not on a leave of absence.

16. Provide that an individual in the uniformed services who is entitled to an extension of the civilian employer's health-plan coverage by virtue of being deemed to be on furlough or leave of absence is entitled to that coverage to the extent that the individual is not entitled to care and treatment from the Federal Government as a result of service in the uniformed services.

17. Provide that an individual in the uniformed services who is entitled to an extension of the civilian employer's disability insurance policy is not entitled to the coverage of and injury or disease incurred or aggravated during a period of active duty in excess of 31 days to the extent that that coverage is excluded or limited by any provision of the plan or policy.

18. Provide that an individual in the uniformed services who is entitled to an extension of his or her civilian employer's life insurance policy is entitled to the coverage of a death incurred as a result of participation in, or assignment to an area of, armed conflict to the extent that that coverage is not excluded or limited by any provision of the plan or policy.

19. Provide that if an individual's employer-sponsored health-plan coverage would otherwise terminate due to an extended absence from employment for purposes of service in the uniformed services, the individual may elect to continue the health-plan coverage for up to 18 months after the absence begins or for the period of service and the period of time to notify the employer of the individual's intent to return, whichever period is the shorter period. The individual could be required to pay no more than 102 percent of the full premium for the coverage, and an individual serving for less than 31 days could not be required to pay more than the normal employee share of any premium. The individual will not be entitled to coverage under that plan to the extent that the person is entitled to care or treatment from the Federal Government as a result of his or her service in the uniformed services.

20. Provide that if an individual's coverage by an employer-sponsored health plan is terminated by reason of that individual's uniformed service, an exclusion or waiting period may not be imposed in connection with the reinstatement of the coverage upon reemployment, if an exclusion or waiting period would not have been imposed under the health plan had coverage not been terminated as a result of service; however, this provision does not apply to a condition of a service member that the Secretary of Veterans Affairs has determined was incurred or aggravated in the line of duty in the military service.

21. Provide that (a) a reemployed individual whose period of service was more than 30 days but less than 181 days could not be removed from employment without cause for 6 months; and (b) an individual whose period of service was more than 180 days could not be removed from employment without cause for 1 year.

22. Provide that an individual, upon submitting a written request to the individual's employer, would be able to use accrued vacation or annual leave while serving in the uniformed services.

23. Provide that, for pension purposes, an individual must be treated as not having incurred a break in service with the employer; service in the uniformed services would be considered service with the employer for vesting and benefit accrual purposes; the employer who reemploys the individual is liable for funding any resulting obligation; and the reemployed individual would be entitled to any accrued benefits from employee contributions only to the extent that the individual makes payments with respect to the contributions.

24. Provide that, in a multiemployer benefit plan, the sponsor maintaining the plan may allocate among the participating employers the liability of the plan for health care and pension benefits for individuals who are absent for service in the uniformed services. If no cost-sharing arrangement is provided, the full liability for providing continued health care coverage and for making the retroactive contributions to the plan would be allocated to the last employer employing the person before the period of uniformed service.

25. Provide that a returning employee's payments into the pension plan may be made, as the employer and employee may agree, during any reasonable continuous period (beginning with the date of reemployment) but in no event will the individual be required to make payments over a period less than the length of absence for service for which the payments are due.

26. Provide that, for the purposes of determining an employer's liability or an employee's contributions under a pension benefit plan, the employee's reconstructed compensation during the period of his or her service in the uniformed services would be based on (a) the rate of pay the employee would have received with reasonable certainty from the employer but for the absence during the period of service, or (b) if the employee's compensation was not based on a fixed rate, on the basis of the employee's average rate of pay during the 12-month period immediately preceding the employee's entry into service (or, if shorter than 12 months, the period of employment immediately preceding entry into service).

27. Provide that, unless a pension plan provides otherwise, (a) no earnings would be credited to an employee with respect to any contribution prior to the contribution actually being made to the plan, and (b) any forfeiture of contributions made by other participants, for any year during the period of service, would not be allocated to the returning servicemember.

28. Provide that no provision of the section regarding employee pension benefit plans would apply to the extent it would (a) require any action to be taken which would cause the plan, participant, or employer to suffer adverse tax or other consequences under the Internal Revenue Code of 1986 or (b) require contributions to be made with respect to employees not reemployed under the veterans' reemployment rights law.

29. Provide that, following an individual's submission of a complaint that the employer has failed or refused, or is about to fail or refuse, to comply with the veterans' reemployment rights law, the Secretary of Labor must investigate the complaint and make reasonable efforts to ensure compliance with that law, and if the efforts of the Secretary are unsuccessful, notify the individual who submitted the complaint of the results of the investigation and the individual's right to pursue the complaint further—generally in Federal district court or, in the case of a Federal executive agency employee, before the Merit Systems Protection Board [MSPB].

30. Authorize the Secretary of Labor to require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. Legislative and judicial branches would be exempt from the service of such a subpoena.

31. Enable Federal executive agency employees whose cases are not resolved successfully by the Department of Labor to receive representation by the Office of Special Counsel before the MSPB and the U.S. Court of Appeals for the Federal Circuit.

32. Provide that an individual would be able to petition a U.S. Court of Appeals for the Federal Circuit to review a decision of the MSPB and that both the MSPB and Courts of Appeals for the Federal Circuit would have the authority to award reasonable attorney fees, expert witness fees, and other litigation expenses to individuals who prevail.

33. Require the heads of intelligence agencies, which are otherwise exempt from the enforcement procedures of the veterans' reemployment laws applicable to Federal agencies, to prescribe the conditions under which individuals who are absent from employment by reason of service in the uniformed services will be reemployed and the procedures for ensuring that those who satisfy the conditions are reemployed. In cases where it is impossible or unreasonable to reemploy an individual, the agency head would be required to notify the individual and the Director of the Office of Personnel Management [OPM]. The Director of OPM would be required to place the individual in a comparable position elsewhere in a Federal executive agency. The head of each intelligence agency would also be required annually to report to Congress the number of individuals whose reemployment with the agency was determined to be impossible or unreasonable and the reasons for each determination. Employees of intelligence agencies would be authorized to submit reemployment claims to the Inspector General of the agency, who would be required to investigate and resolve the claim in accordance with procedures prescribed by the head of the agency. The head of each intelligence agency would be required, to the maximum extent possible, to make the agency's conditions and procedures for reemployment, investigation, and resolution of claims similar to those applicable to employees of other Federal executive agencies.

34. Authorize the Attorney General to decide whether an individual who has been denied reemployment with a State or private employer will receive representation by a U.S. attorney in Federal court.

35. Authorize the award of attorney fees and expenses to employees who choose to be represented by private counsel and who prevail in court.

36. Provide for liquidated damages in an amount equal to the lost wages and benefits awarded in a case in which an employee prevails against a State (as an employer) or a private employer in court and the court determines that the employer's failure to comply with the provisions of the employment law was willful.

37. Require the Secretaries of Labor, Defense, and Veterans Affairs to take appropriate actions to inform individuals entitled to rights and benefits under the veterans' reemployment rights law and employers of their rights, benefits, and obligations under the new law.

38. Require the Secretary of Labor, the Attorney General, and the Special Counsel to each submit to Congress not later than one year after the date of enactment a report on the implementation of the new law.

39. Provide that, effective August 1, 1990, the amount of Federal civil service retirement payments for a period of military service may not exceed the amount that would have been deducted or withheld for a period of civilian service if the employee had not performed the period of military service.

40. Provide for the payment of contributions to the Thrift Savings Fund by Federal employees who perform military service.

41. Provide that the investigations and subpoenas provision would be effective immediately upon enactment and apply to cases pending with the Secretary of Labor as of that date.

PROHIBITION AGAINST DISCRIMINATION AND ACTS OF REPRISAL

Mr. President, the proposed new section 4311 of title 38 would provide that individuals who have performed, apply to perform, or have an obligation to perform service in the uniformed services may not be denied initial employment, reemployment, retention, promotion, or any benefit of employment

by an employer on the basis of that service or obligation. This would recodify and expand the current prohibition against discrimination, which provides that a person may not be denied hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces. This measure would also prohibit employer reprisals against employees who have taken an action to enforce their employment or reemployment rights or against witnesses in such cases, whether or not the witnesses had performed service in the uniformed service.

Mr. President, to maintain a strong and effective reserve force, it is necessary to ensure reservists that they will not have to sacrifice their civilian job security and advancement because of an obligation for service in the uniformed services. This provision would strengthen considerably the current law proscription of discrimination against members of the Reserve and National Guard.

SCOPE OF COVERAGE

Mr. President, under current law, an individual is eligible for reemployment rights only if the position held prior to absence for service in the uniformed services was other than temporary. As first proposed by the distinguished chairman of the Committee on Labor and Human Resources, Mr. KENNEDY, in the 102d Congress, the committee bill would repeal the exclusion of temporary positions from the scope of reemployment rights.

There is no definition of "temporary" for reemployment purposes in current law, and the scope of the exclusion is unclear. Over the past 50 years, the courts have determined that many positions that employers would describe as temporary are covered by current law. As a general rule, the courts have held that a position will not be considered temporary and thus excluded from reemployment rights protection if the employee had a reasonable expectation that the employment would continue for a significant or indefinite period. Thus, I believe that, although deletion of the exception for temporary positions will simplify the administration of reemployment rights, it will not constitute a major expansion of the scope of chapter 43.

In proposing the application of the reemployment rights law to temporary positions, the committee intends to remove one potentially contentious issue—whether a particular job was temporary or not—that could create an unnecessary obstacle to prompt reemployment. The inclusion of temporary positions would not alter for employers the fundamental protection in current law—and incorporated in our bill—against having to reemploy an individual when the employer's circumstances have changed so as to make it impossible or unreasonable to do so. I also note that the employer is only obligated to restore the individual to a position that he or she would have attained by continuous employment without interruption for service in the uniformed services. If the position would have terminated during the period of service and would not have recurred, as a seasonal job would, the employer would have no reemployment obligation.

APPLICATIONS FOR REEMPLOYMENT

Mr. President, under current law, distinctions are made among types or categories of military training or service for the purposes of reemployment rights. For example, the time periods during which a person must report back to work vary depending on the type of service, and an employee who is ordered to active duty as a reservist is treated differently than an employee who is inducted into the Armed Forces.

Under proposed new section 4312 all types of service would be treated as service in the uniformed services and the time periods within which an individual must return to work or make an application for reemployment would be based on the length of his or her period of service. Different lengths of service would invoke different requirements.

Individuals who are hospitalized for or convalescing from a service-connected injury or illness could extend their reemployment reporting or application dates for up to 2 years. Additionally, the 2-year period may be extended by the minimum time required to accommodate circumstances beyond the servicemember's control that make it impossible or unreasonable to report within the 2 years.

In my view, the current extension of up to 1 year during hospitalization does not allow sufficient time for recovery or rehabilitation in some cases. Appropriate physical and vocational rehabilitation can take a considerable amount of time during the beyond hospitalization. The committee bill would afford individuals with service-connected disabilities a more reasonable amount of time for recovery and rehabilitation.

DOCUMENTATION

Mr. President, proposed section 4312(f) would provide that an employer must reemploy a person notwithstanding the person's failure to provide proper documentation. If after reemployment, documentation becomes available that establishes that the person was not eligible for VRR protection, the employer may terminate the employment and any rights or benefits afforded the person under the VRR law.

The committee bill recognized the employers' concern that employer pension contributions to a defined contribution plan could possibly be withdrawn prior to a discovery that the person did not have VRR eligibility and allowed employers to insist on documentation before providing pension benefits to those who were absent for more than 90 days. The committee understood that the Department of Defense is not required to provide discharge documentation for active-duty service of less than 31 days—2-week annual training exercises being the most common example of when documentation would not be available upon the servicemember's return to work—but that documentation would generally be available for longer periods of uniformed service. The committee also realized that from an employer's perspective, retroactive pension payments would be fairly small when an employee has been absent for a short period of uniformed service. The committee's compromise provision strikes a balance between interests of employees and employers.

REASONABLE EFFORTS TO ACCOMMODATE DISABLED PERSONS

Mr. President, the Persian Gulf War Veterans' Benefits Act of 1991 (title III, C of Public Law 102-25) amended the VRR law to require employers to make "reasonable accommodation"—as that term is defined in the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12111(9))—for disabled individuals seeking reemployment. That provision was derived from a provision as introduced by Senator KENNEDY. However, in conference with the House, exemptions from this requirement were added for certain employers, primarily certain small businesses that are exempt from the reasonable accommodation requirments under the ADA. The committee bill would eliminate these exemptions. However, I note that the committee bill would not require the employer to make reasonable efforts to accommodate when doing so would impose an undue hardship for the employer.

RETRAINING

Mr. President, the committee bill would provide that an individual seeking reemployment is considered qualified to perform the duties of a position if he or she either (1) has the ability to perform the essential tasks of the position, or (2) would qualify after reasonable efforts by the employer, including training to refresh or update necessary skills.

Under current law, the concept of retraining is reflected only in the establishment of periods of time after reinstatement—1 year in the case of an individual who has been inducted and 6 months for certain members of a Reserve component—during which an employee may not be discharged without cause. These periods of protection apparently were initially intended to allow a returning servicemember to become reacclimated to his or her former position and to prevent a mere perfunctory and meaningless reinstatement for a brief period.

Mr. President, I understand that at times being away from a job may cause

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an employee's skills to become rusty. Also, rapidly changing technology in the workplace may require that employees be given a significant period of time to learn how the job has changed. For example, we intend that, under this training requirement, returning employees be provided with the opportunity to refresh their skills and with training on new equipment installed in their absence. Thus, before an employer could make a good faith determination that a returning employee is not qualified, the committee believes that the employer generally first would have to provide refresher training or make other reasonable efforts to update the employee's skills.

REEMPLOYMENT BY THE FEDERAL GOVERNMENT

Mr. President, the proposed new section 4314(c) and (d) would expand the rights of an individual whose reemployment in a Federal legislative or judicial branch position, or in a position as a National Guard technician, is not feasible.

Section 3304(c) of title 5 provides that a returning servicemember whose previous position of employment had been in the legislative branch is eligible for competitive civil service status only if he or she served for at least 3 years in the legislative branch in a position in which he or she was paid by the Secretary of the Senate or the Clerk of the House of Representatives. Section 3304(c) also provides that one whose position of employment had been in the judicial branch is eligible for competitive civil service status if he or she served for at least 4 years as a secretary or law clerk, or both, to a justice or judge of the United States. Under section 3304(d), a person whose position of employment had been as a National Guard technician is eligible for competitive civil service status if he or she served for at least 3 years as a technician.

In accordance with the declaration in proposed new section 4301(b) of title 38 that it is the sense of Congress that the Federal Government should be a model employer in carrying out veterans' reemployment practices, I believe that individuals whose previous Federal employment had been in the legislative or judicial branch, or as a National Guard technician, should be provided the same reemployment rights as individuals whose positions were in an executive agency. Executive branch employees are not faced with restrictions relating to length of prior civilian service and categories of position as conditions for obtaining an alternative position in another agency. In the committee's view, Office of Personnel Management should ensure that all individuals who were in a Federal Government position, or were National Guard technicians, and whose reemployment in the entity they left when they went into uniformed service is not feasible should be offered an alternative position of employment in a Federal executive agency.

Mr. President, some employees of the legislative and judicial branches and some National Guard technicians are currently provided OPM assistance in Federal executive agency placement if reemployment in their original entity is determined to be not feasible. The concept of personnel movement between branches of the Federal Government is not new. All that is new is the proposed expansion of that concept.

EMPLOYMENT RIGHTS AND BENEFITS

Seniority and Other Rights and Benefits: Mr. President, current law provides that an individual reemployed under the VRR law is to be considered as having been on furlough or leave of absence during the period of training and service. Thus, the reemployed individual is entitled to participate in benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time the individual enters active duty.

Proposed new section 4316 would expand upon the current protection by clarifying that the individual in the uniformed services would be considered to be on a leave of absence while serving and would be entitled to rights and benefits under agreements and practices in force at the time he or she left the employment and to those that become effective during the period of service.

Individuals could be required to pay the employee share, if any, of the cost of any benefit that would be continued during service under section 4316.

The committee does not intend in this legislation to change current law regarding vacation, sick pay, bonus payments, and other benefits accorded as compensation for services currently rendered. Thus, for example, the pending legislation would not provide for an employee to accrue vacation leave at his or her civilian job while serving on active duty.

Disability Insurance Limitation: Proposed section 4316(b)(4) would provide that a person is not entitled to coverage, under a disability insurance policy, of an injury or disease incurred or aggravated during a period of active duty in excess of 31 days to the extent that such coverage is excluded or limited by a provision of that policy.

I understand that some civilian employer disability insurance policies contain clauses that would limit coverage for disabilities that occur as a result of an injury or disease incurred or aggravated during a period of active duty. Since the Federal Government provides compensation for servicemembers who have an injury or disease incurred or aggravated during a period of active duty, and since the period of active duty for most reservists and National Guard members is less than one month in length each year, it seems appropriate to give recognition to potentially overlapping coverage for the servicemember but still provide full protection for reservists who perform short-term training.

War-exclusion Clauses: Proposed new section 4316(b)(5) would specify that the legislation does not override clauses in many civilian employer life insurance policies that would exclude or limit coverage for deaths that occur in an area of armed conflict.

Duplicative Coverage: Mr. President, an individual is provided complete health-plan coverage by the Federal Government while he or she is in the uniformed services. The committee bill, in proposed new section 4316(b)(3), would provide that a person entitled to acquire health-plan coverage under proposed new section 4316(b) will not be entitled to care or treatment under the plan to the extent that the person is entitled to care or treatment from the Federal Government as a result of that person's service in the uniformed services.

A similar limitation would also be imposed in proposed new section 4316(c)(2) for a person who elects to acquire health-plan coverage under proposed new section 4326(c).

These provisions would not apply to the dependents of a servicemember who elects to continue health-plan coverage acquired through civilian employment.

Continuation of Insurance Coverage: Proposed new section 4316 would provide that, if an individual's employer-sponsored health-plan coverage would otherwise terminate due to an extended absence from employment to perform uniformed service, the servicemember could elect to continue temporarily coverage for a maximum of 18 months after the absence begins. The employee generally could be required to pay no more than 102 percent of the full premium associated with such coverage for the employer's other employees, except that individuals who perform a period of service for less than 31 days may not be required to pay more than the normal employee share of any premium.

When Congress enacted in the Consolidated Omnibus Budget Reconciliation Act of 1985 a similar health benefit provision for civilian employees in general, it exempted group health plans sponsored by the Federal Government and certain church-related organizations, as well as plans maintained by employers with fewer than 20 employees in the previous year. The proposed new section would eliminate those gaps and provide the health-care option for all employees entering a uniformed service.

In addition, proposed new section 4316 would provide that, if an individual's employer-sponsored health plan is terminated by reason of military service, upon reemployment an exclusion

or waiting period may not be imposed in connection with coverage of the servicemember or any other individual covered by the health plan through the servicemember if an exclusion or waiting period would not have been imposed had coverage not been terminated. An exception would apply to disabilities that VA has determined to be service connected.

A similar provision was enacted in section 5 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1991 (Public Law 102-12) in response to concerns relating to gaps in health-plan coverage for reservists who were activated during the Persian Gulf War and their families. Thus, current law was amended to prohibit the imposition of an exclusion from or waiting period for reinstatement of employer-offered health plans for a condition of a servicemember, or of any individual covered by reason of the servicemember's coverage, if the condition arose before or during the period of training or service, an exclusion or waiting period would not otherwise have been imposed, and the condition has not been determined by VA to be service connected.

The new section would close a loophole that arguably might have been created unintentionally by the health-benefit amendment enacted in Public Law 102-12. The prohibition in current law against the imposition of exclusions or waiting periods expressly applies only to cases involving coverage of a condition that preexisted reinstatement. Thus, if the current entitlement to restoration of insurance coverage were interpreted as allowing a waiting period with respect to a servicemember who returned in perfect health, a literal interpretation of the amendment might allow for the imposition of a waiting period and a subsequent exclusion from coverage for conditions that arose during the waiting period. Proposed new section 4316 would clarify that a waiting period or exclusion may not be imposed in any case—by either a health insurer or an employer—in which coverage would have been provided if the servicemember's coverage had not been interrupted as a result of service in the uniformed services.

EMPLOYEE PENSION BENEFIT PLANS

Proposed new section 4317 would clarify conflicting Federal case law regarding employee rights to various pension benefits plans while on active duty with the uniformed services. All pension benefit plans described in the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) or under Federal or State laws governing pension benefits for governmental employees—whether a defined-benefit [DB] plan, which is funded on a group basis and promises a specific benefit at retirement age, or a defined-contribution [DC] plan, the funds for which are accumulated in individual accounts for each employee and the benefits of which depend on investment performance—would be covered by the new law.

Under this new section, for pension purposes, an individual would be treated as not having incurred a break in service with the employer; service in the uniformed services would be considered service with the employer for the purpose of determining the nonforfeitability of the individual's accrued benefits and for the purpose of determining the vesting and accrual of benefits under the plan; the employer who reemploys the individual would be liable for funding any resulting obligation; and the reemployed individual would be entitled to any accrued benefits based on employee contributions to the extent that the individual makes the requisite payments.

Computation of Compensation Deemed to Have Been Received: Mr. President, the Committee bill would also provide, for pension-benefit purposes, for the computation of the level of compensation that the individual will be deemed to have received if he or she had stayed on the job rather than serving in the uniformed services. Contributions to be allocated under a DC plan and benefits to be accrued under a DB plan are often a function of the level of the individual's compensation, but in most cases the individual receives no compensation during his or her absence while in the uniformed services. The Committee bill clarifies what compensation is to be deemed to have been received during the absence for the sole purpose of calculating an employee's compensation with regard to pension benefits. Thus, under proposed new section 4317(b), the employee's compensation during the period of his or her service in the uniformed services would be based either on (a) the rate of pay the employee would have received from the employer but for the absence during the period of service, or (b) if the employee's compensation was not based on a fixed rate, on the basis of the employee's average rate of pay during the 12-month period immediately preceding his or her entry into service (or, if shorter than 12 months, the period of employment immediately preceding entry into service).

Multiemployer Pension Plans: Mr. President, multiemployer pension plans are negotiated between a consortium of employers in an industry and a labor union. One example of this kind of arrangement is that of construction workers who move among various firms in the industry and earn credits under a common pension plan in each job. Such plans are funded jointly by employers, who contribute a negotiated amount per hour of labor to the fund, and are administered by a sponsoring organization. Most multiemployer plans are DB plans, but a growing number are DC plans.

When a veteran who, before entering service, had been employed by a member or members of a multiemployer plan is employed after service by one of the employers, the question arises as to which firm or firms must pay for the contributions for the period of absence for uniformed service, since there is no way to know where the servicemember would have worked had his or her civilian employment not been interrupted. I believe the fairest approach would be to make it possible for the sponsor maintaining the plan to have discretion as to how best to allocate any liability of the plan. The Committee bill would so provide. The default position—should the sponsor maintaining the plan not provide specifically for returning servicemembers—would be to allocate full liability for making retroactive payments to the last employer employing the person before the commencement of the period of service in the uniformed services.

Earnings and Forfeitures: Mr. President, contributions for participants under DC plans are placed in individual participant accounts, which thereafter increase or decrease based on the plan's investment return. The Committee bill would clarify that retroactive contributions would not include earnings that would have been realized if the contributions had been made during the individual's active-duty service. Thus, the requirement is only that the employer make retroactively the contributions that would have been made had the employee remained continuously on the job.

In some DC plans participants forfeit their rights to contributions—typically by terminating their employment in midyear—and the amounts forfeited are reallocated at year end among the remaining participants. The Committee bill would clarify that forfeited amounts that were reallocated during the servicemember's absence would not be reallocated to provide the reemployed veteran a share.

Consistency with Internal Revenue Code: Mr. President, under current law, reinstated veterans are required to be given full credit in DB plans for the period they served in the uniformed services. As discussed in the Committee report, the courts are split on the issue of whether current law requires reinstated veterans to be given full credit under DC plans, and the Committee bill would provide that protection.

Unless otherwise provided for, clarifying that rights under DC plans would be safeguarded would carry potential tax consequences. For example, required retroactive contributions to a DC plan could exceed applicable annual limits on employer-employee contributions under section 415 of the Internal Revenue Code of 1986 [IRC] or on annual salary-reduction contributions under section 402(g) of the IRC, or cause the employer's plan to violate

the nondiscrimination test applicable to salary-reduction plans under section 401(m) of the IRC.

Mr. President, any potential adverse tax consequence that could flow from clarifying the coverage of DC plans ideally should be avoided through legislation enacted together with the clarifying provisions. Unfortunately, the conforming provisions that would accomplish that goal necessarily affect the application of the IRC and would cause the bill to be seen as a revenue measure.

Mr. President, as my colleagues are aware, the Constitution requires revenue measures to originate in the House of Representatives, and I cannot envision a procedural route at this point to include conforming tax provisions in the Committee's proposed legislation without raising that issue. Thus, in order not to jeopardize the whole of the VRR bill, I will not now propose the addition of several amendments that I believe are needed to conform the bill to the legislative goal, of both Houses, that the pension plans of all servicemembers who are reemployed under the VRR law be fully reinstated, whether their pension plans are DB or DC plans. Rather, I urge the distinguished Chairman [Mr. MOYNIHAN] and Ranking Republican Member [Mr. PACKWOOD] of the Finance Committee to include appropriate provisions in an appropriate tax bill as soon as possible.

For the interim period prior to the enactment of the necessary conforming IRC amendments, it is necessary for the legislation to provide that nothing in new section 4317, regarding employee pension benefit plans, would apply to the extent that it would require any action to be taken which would cause the plan, any of its participants, or employer to suffer adverse tax or other consequences under the IRC.

OUTREACH

Mr. President, the best way to ensure timely reemployment is to provide employers and employees with accurate information regarding their rights, benefits, and obligations under the law. Thus, under new section 4332, the Committee bill would require the Secretaries of Labor, Defense, and Veterans Affairs to take the actions they determine are appropriate to inform not only persons entitled to rights and benefits under the VRR law, but also employers of their rights, benefits, and obligations.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Mr. President, the Federal Retirement Thrift Investment Board [FRTIB] is an independent agency that administers the Thrift Savings Plan. Under existing regulatory authority, the FRTIB establishes the obligations of the various employing agencies regarding Thrift Savings Plan benefits, much like OPM does in the area of the other Federal retirement programs. However, Congress made it clear in chapter 84 of title 5 of the United States Code that the FRTIB is to have independent regulatory authority with respect to its program, free from administration regulatory review or control. Moreover, also unlike OPM, the FRTIB's decisions concerning the operation of the Thrift Savings Plan are not subject to Merit Systems Protection Board review or appeal to the Federal Circuit. Rather, Congress carefully considered and included in section 8477 of title 5 separate provisions for pursuing claims involving the Thrift Savings Plan.

Given this structure, Mr. President, section 6 of the Committee bill would take into account the unique characteristics of the Thrift Savings Plan in establishing a proposed new section 8432b of title 5, United States Code, that would set out the rights and benefits of eligible employees.

COMMITTEE MODIFICATION OF THE BILL AS REPORTED

Mr. President, at this point I will discuss a provision that I am offering on behalf of the Committee as a modification of S. 843 as reported. The modification—derived from S. 1510 that I introduced with the cosponsorship of my colleagues on the Committee, Senators AKAKA and CAMPBELL—would improve the Department of Veterans Affairs Home Loan Guaranty Program by increasing the amount of guaranty made by VA to lending institutions who make VA loans to veterans.

In summary, the modification—as section 10 of the Committee bill—would increase the maximum loan guaranty from $46,000 to $50,750 and thus increase the no-downpayment VA-guaranteed home loans from the current level of $184,000 to $203,000. I would note for my colleagues that the Committee modification keeps the current VA loan guaranty formula of 25 percent of loans over $144,000.

Mr. President, as I said when I introduced S. 1510 on September 30, 1993, housing prices in certain parts of the country—such as Boston, New York, Washington, DC, San Francisco, Los Angeles, Alaska, and Hawaii—are simply out of reach for many veterans who wish to buy homes. This proposed increase in the guaranty would allow many veterans to use their entitlement.

Other housing entities have recognized the need for a similar adjustment to keep pace with housing costs. For example, on January 1, 1993, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) two federally chartered private for-profit corporations established to provide funds for residential mortgages, increased their limits to $203,150 on single-family conventional mortgages in which these companies invest.

In the past, the Government National Mortgage Association (Ginnie Mae) has increased the loan limit when VA has increased the limits on its guaranty. The Committee modification will allow veterans to participate in the housing market on parity with the conventional loan market.

I am pleased to advise Members that the Congressional Budget Office estimates that the committee modification will produce savings of $2 million in fiscal year 1994 and $14 million for the 5-year period of fiscal years 1994 through 1998. The modification, therefore, would provide the necessary cost savings to offset the direct-spending costs in this measure.

CONCLUSION

Mr. President, in closing I express my deep appreciation to the ranking Republican member of our committee, Mr. MURKOWSKI, for his excellent cooperation and assistance on this measure and to all other members of the committee for their help in the development of an action on this legislation.

I am also grateful for the contribution of the Senate Veterans' Affairs Committee staff members who have worked on this legislation—on the minority staff, Bill Tuerk and John Moseman; and on the majority staff, Chuck Lee, Bill Brew, and Jim Gottlieb—for the technical advice and expert assistance of Jim Storey, Ray Schmitt, and Carolyn Merck of the Congressional Research Service; and for the very diligent work of Charles Armstrong and Greg Scott of the Senate Legislative Counsel's Office in the crafting of the measure.

Mr. President, it is important to our men and women when they put on the uniform that we show our support and do all we can to provide them with strong and effective employment protection. Thus, I urge the Senate to give its unanimous approval to the pending measure that would clarify and strengthen the veterans' reemployment rights law.

Mr. MURKOWSKI. Mr. President, as the ranking Republican on the Senate Committee on Veterans' Affairs, I was pleased to cosponsor S. 843, a bill to recodify and update the Nation's veterans reemployment rights law when it was introduced earlier this year—and I am equally pleased to speak now to urge Senate approval of S. 843 as reported by the Veterans' Affairs Committee.

The committee's chairman, Senator JAY ROCKEFELLER, has summarized the provisions of the bill in considerable detail, so I will merely hit the high points. This bill would improve and update provisions of law which date from the World War II years, while maintaining time-tested provisions of those laws. As in the past, a veteran's right to return to his or her former workplace upon returning from service would be recognized. Employers would be required to make reasonable efforts to accommodate any disabilities that

the returning veteran may have suffered while in the service. They would be required, as well, to assist the returning veteran, whether disabled or not, in upgrading job-related skills, if necessary, in order to assist the veteran in returning to his or her former civilian workplace. It merits emphasis that these are not new mandates imposed upon employers. They are obligations which the business community has complied with for decades—and which, I am pleased to say, no business advocate even requested be removed from employers.

This legislation would also keep in force the so-called escalator principle—the legal principle which states that, for purposes of seniority, veterans returning to their former work places generally will be treated as if they had never left for service. In addition, it would apply the escalator principle to pension programs by assuring, as it has in the past, that returning veterans would maintain eligibility for more traditional defined benefit plans, and by allowing the functional equivalent of retroactive participation in increasingly common defined contribution plans when the service member returns to the workplace.

Finally, Mr. President, this bill would allow employees who have left employment for service to maintain in force rights and benefits not tied to seniority—most notably, participation in employer-sponsored health insurance programs for dependents if—and I underscore if—the employee is willing to pay for such coverage.

This bill, Mr. President, is the culmination of literally years of work, involving staff from both parties on both the Veterans' Affairs and Finance Committees, and Reagan, Bush, and Clinton administration officials from the Departments of Labor, Defense, Justice, OPM, and Treasury. I am pleased to be able to report that while similar legislation was approved by the Senate during the 102d Congress, additional hearings held by the committee on May 13, 1993, have yielded significant improvements in the legislation compared to the bill that was reported last year. To cite only one example, industry and Treasury officials suggested improvements to the highly technical pension provisions of the bill which are now incorporated into the legislation—improvements which will assist both employers and the bill's veteran beneficiaries, and which will assure that pension plans will not fall out of compliance with the Tax Code as a result of veterans reemployment rights.

The responsible approach to advocacy which has resulted in these improvements—made possible by the commitment of both employer and veterans groups to work together in a positive and constructive fashion to improve the legislation—has resulted in a bill which, despite its complexity, is, I believe, acceptable to all affected parties. I want to express my appreciation to the participants to this process—particularly to the representatives of the Association of Private Pension and Welfare Plans [APPWP], the ERISA Industry Committee [ERIC], the National Federation of Independent Business [NIFB], the American Legion, the VFW, the Disabled American Veterans, AMVETS, the National Guard Association, and the Reserve Officers Association—for their positive contributions to this legislation. I also want to acknowledge the tireless work of the prior chairman and ranking Republican member of the Veterans' Committee, Senators Cranston and SPECTER, for their invaluable and tireless work on this legislation during the 102d Congress.

Mr. President, this is a good bill. I hope that my colleagues on both sides of the aisle will support it.

BREAST AND CERVICAL CANCER AMENDMENTS ACT OF 1993

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 91, H.R. 2202, a bill relating to the preventive health measure with respect to breast and cervical cancer.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2202) to amend the Public Health Service Act to revise and extend programs of grants relating to preventive health measures with respect to breast and cervical cancer.

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. 1096

(Purpose: To provide for a substitute amendment)

Mr. FORD. Mr. President, on behalf of Senators KENNEDY and KASSEBAUM, I send a substitute amendment to the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the substitute amendment.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. KENNEDY, for himself and Mrs. KASSEBAUM, proposes an amendment numbered 1096.

Mr. FORD. Mr. President, I ask unanimous consent that 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 EARLY DETECTION AND PREVENTIVE HEALTH ACT OF 1993

Mr. KENNEDY. Mr. President, it is a privilege to present the Early Detection and Preventive Health Act of 1993. I am joined in sponsoring this legislation by Senators KASSEBAUM, MIKULSKI, HATCH, WELLSTONE, DODD, RIEGLE, and WOFFORD. It's purpose is to reauthorize vital public health programs and launch needed new preventive health initiatives.

This legislation reaffirms our strong support for the early detection and disease prevention activities of the Centers for Disease Control and Prevention. It is designed to achieve a healthier America as we move toward the twenty-first century, and it can be an important part of the work of this Congress on comprehensive health reform.

The Tuberculosis Prevention and Control Amendments of 1993 will support development of an improved diagnostic test for TB. It will upgrade the capability of TB laboratories, ensure that TB services are provided to needy populations, maintain effective TB public health, treatment compliance, follow-up and evaluation activities.

For fiscal year 1994, the bill authorizes $226 billion for TB control and research programs at the CDC, $46 million for basic research activities at NIH, $25 million to establish a project grant program for conversion and renovation of public and non-profit private facilities for the prevention and control of TB and $5 million for an FDA program on TB drug and device research program.

These authorizations represent an investment in our efforts to prevent and eliminate tuberculosis in the United States. The legislation will help state and major city health departments to identify persons with TB and those at highest risk of acquiring the disease. Programs will be better targeted for treatment and prevention, and their effectiveness will be evaluated.

The Injury Control and Violence Prevention Act of 1993 authorizes $60 million for the Injury Prevention and Control Program of the Centers for Disease Control and Prevention. This measure will support research and other programs on injuries resulting from motor vehicle accidents, falls, poisoning, burns, drownings, and causes of violence, including homicide and suicide. These funds will establish a family and personal violence prevention program and identify effective strategies to prevent violence within the family and among acquaintances.

This bill will also support a national campaign to prevent violence against women. It will build upon existing efforts by the CDC to create a comprehensive violence prevention program. This campaign will be a vital step toward reducing violence targeted

at women by demonstrating and evaluating promising intervention strategies, by conducting a nationwide education, training, and public awareness effort, and by expanding our knowledge base through data collection and research.

The Breast and Cervical Cancer Amendments of 1993 authorizes $200 million for the early detection of these diseases. The funds will enable States to provide life-saving breast and cervical cancer screening services for women at risk, particularly low-income, elderly, and minority women. In addition, this measure will establish mechanisms through which the States can monitor the quality and interpretation of screening procedures.

The Sexually Transmitted Diseases Amendments of 1993 authorizes $132 million for the CDC's Sexually Transmitted Diseases Program. It will enable the CDC to implement a new Accelerated Prevention Campaign. This measure will strengthen the quality of STD services, and allow reevaluation and innovation in STD prevention programs. It will also implement and evaluate interventions to modify sexual and health-related behaviors that increase the risk of STDs. The program will improve systems to monitor STDs and develop infrastructure to identify research needs.

Each of these measures is justified by sound public health considerations. Early detection and prevention of injury and illness can play a vital role in improving public health, especially the health of women. It cases of violence against women, injury, TB, and sexually transmitted diseases, prevention is a key component of any successful health care strategy.

The rapid rise of tuberculosis over the past 4 years has placed an enormous burden on the health care system. Over 30,000 new active cases are reported each year in the United States, with over 1,700 deaths.

In the 1950's, science thought it had TB under control. The disease rates were dropping and the available drugs were working well. America was lulled into a false sense of security. Money for basic and applied research on TB dwindled. Applications stopped for new drug research in a market that already had four successful anti-TB drugs.

Today we face an epidemic of TB now capable of resisting every drug we have, and we are armed only with the basic research knowledge of the 1950's.

The problem is exacerbated by the fact that the public health infrastructure has deteriorated in recent years because of the economic recession. Funding cutbacks at the Federal, State, and local levels have worsened the situation for the poor, the homeless, and the unemployed. These cuts have led to overcrowding in hospitals, homeless shelters, and prisons, with persons often sleeping in rooms with poor ventilation—an environment highly conducive to the transmission of TB.

Injury prevention and control is finally gaining the attention it deserves as a public health issue. Injury is the leading cause of premature death. In 1987, 2.3 million years of the life were prematurely taken by unintentional injuries. Estimated total lifetime costs of all injuries in 1985 exceeded $158 billion. In 1990, 150,000 Americans died from injuries. Millions more were incapacitated or permanently disabled, with immeasurable psychological cost for families and loved ones.

One category of injury merits special attention and special action: intentional injury. As the second leading cause of death for young adults, it is clear that violence is a public health problem we must do more to combat. Violence against women presents an especially serious challenge. The public health approach to violence is a multidisciplinary set of strategies which compliments the current criminal justice efforts.

The CDC's National Center for Injury Prevention and Control has applied a public health approach to this epidemic of violence, using prevention, acute care, and rehabilitation strategies with encouraging results. Although progress is being made in confronting the problem, more must be done. New injury prevention initiatives must spotlight domestic violence, acquaintance rape, date rape, and all other forms of violence which target women.

Breast cancer and cervical cancer present another serious public health challenge. It is estimated that 2 million American women will be diagnosed with breast or cervical cancer in the 1990's, and that half a million women will die from these cancers. Breast cancer is the second leading cause of cancer death, and the most commonly diagnosed cancer in women.

Most deaths of this kind are preventable if diagnosed in time. Screening by mammography and the Pap test are widely available for early detection of breast cancer and cervical cancer. However, these vital tools are widely underused, and they are often inaccessible in medically underserved communities.

The National Breast and Cervical Cancer Early Detection Program provides access to mammograms and Pap tests for poor women. The program is dedicated to helping States develop comprehensive early detection programs for breast and cervical cancer, as well as quality assurance, public education, training centers, and provider education. At current funding levels, only 30 States can participate in the program. As a result, at-risk women in the 20 other States who cannot afford to pay for mammograms or Pap smears, have no access to effective screening. Underprivileged women in these States are dying from cancer because the early detection that could have saved their lives is not available.

Virtually all deaths from cervical cancer—and more than 30 percent of deaths from breast cancer—can be prevented through the widespread use of mammography and Pap testing. We are making progress in reducing the economic, geographic, and other barriers that still deny too many women access to these life-saving techniques. With the Congress and administration working together, I am confident that much more rapid progress will be made in the years ahead.

Finally, sexually transmitted diseases continue to pose a grave health threat to women, adolescents and infants. The incidence of STD's in America is among the highest of any industrialized nation; 12 million Americans will acquire an STD this year, at a cost of approximately $5 billion.

Sexually transmitted diseases deserve special attention as a women's health issue. Each year, over a million women suffer serious and life-threatening complications of STD's that could have been treated if screening and treatment services were readily available. The CDC's Sexually Transmitted Disease Program provides assistance to States, local health agencies and community-based organizations to prevent the spread of STD's.

The CDC has been and continues to be the Nation's wisest disease prevention investment. With the passage of this measure, we will recognize the vital importance of prevention to the Nation's health. I urge the Senate to approve this essential bipartisan legislation.

EARLY DETECTION AND PREVENTIVE HEALTH ACT OF 1993

Mr. HATCH. Mr. President, adoption of this bill is indicative of the importance the U.S. Senate places on continuing and improving the Public Health Service Act in two very important ways: health promotion and disease prevention. I am pleased to be one of the bill's original cosponsors.

This legislation extends the program of grants for the prevention and control of tuberculosis and sexually transmitted diseases. It also revises and extends several injury control programs, and it makes important improvements in program grants relating to preventive health measures concerning breast and cervical cancer.

Let me take a moment and describe two provisions of the bill that I authored. These were not controversial additions, because they address urgent medical concerns facing our Nation. In fact, they were adopted in committee without objection.

The first is a critical issue in the United States today: the alarming upsurge in incidences of tuberculosis. The

bottom line is that an old disease, a disease we thought we had almost eradicated, a very contagious disease, is on the upsurge.

CDC's TB program is operating on a shoestring. State and local officials are scrambling for dollars. They are working hard, but it's not enough. They are looking to us here in Congress for direction and assistance. My provision increases the authorization for needed services to treat TB, and it sets up a new program for grants to renovate or retrofit existing facilities for TB treatment.

These changes are in response to urgent requests from local officials. They have told me that they are in real need of facilities to treat TB. Although I recognize that priority must be given to funding services, it is hard to provide services if there is no place to treat patients.

Another critical health issue facing us is the alarming spread of breast and cervical cancer. Earlier this year the Breast Cancer Coalition concluded that eradication of breast cancer needs to become a national priority. I couldn't agree more. And for that reason earlier this year I introduced S. 1002, the Breast and Cervical Cancer Act of 1993.

The Labor and Human Resources Committee agreed with me over the need to address this issue, and incorporated my bill into S. 1318 to require all federally supported clinics—with the exception of black lung clinics, which treat a predominantly male population—to provide culturally competent information concerning breast and cervical cancer. If appropriate, this will include information on the need for breast self-examinations and the skills for such examinations. Because of the resource constraints at many federally supported clinics, this legislation also gives clinics the discretion to determine what information they should provide.

For too long, this devastating disease has affected untold thousands of women in our Nation. This provision will allow federally funded clinics to reach a chronically underserved segment of our population with important information that can make a real difference in the detection and treatment of breast and cervical cancer.

Of course, this bill would not even exist without the hard work of many, many people. I commend my colleagues on the Labor and Human Resources Committee for their efforts on this legislation, and I especially wish to recognize the excellent contributions of the committee chairman, Senator KENNEDY, and the distinguished ranking minority member, Senator KASSEBAUM. They have exhibited tremendous leadership in seeing this bill through the committee

Mr. President, passing this legislation sends a strong signal that the Senate is committed to bipartisan health care reform. It is appropriate that we have started that process by enacting legislation that strongly supports and encourages health promotion and disease prevention.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 1096) was agreed to.

Without objection, the bill is read three times and passed.

So the bill (H.R. 2202), as amended, was deemed read three times and passed.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

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

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I move that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the chair be authorized to appoint conferees.

The motion was agreed to and the Presiding Officer appointed Mr. KENNEDY, Mr. METZENBAUM, Mr. SIMON, Mrs. KASSEBAUM and Mr. HATCH conferees on the part of the Senate.

MEASURE INDEFINITELY POSTPONED—S. 1318

Mr. FORD. Mr. President, I ask unanimous consent that any statements in relation to this measure appear at the appropriate place in the RECORD, and I ask unanimous consent that the Senate companion bill, Calendar No. 192, S. 1318, be indefinitely postponed.

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

MEASURE READ THE FIRST TIME—H.R. 334

Mr. FORD. Mr. President, I understand the Senate has received from the House, H.R. 334, Lumbee Tribe recognition. On behalf of Senator INOUYE, I ask that the bill be read for the first time.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The legislative clerk read as follows:

A bill (H.R. 334) to provide for recognition of the Lumbee Tribe of the Cheraw Indians of North Carolina, and for other purposes.

Mr. FORD. I ask that it be read a second time.

Mr. HATCH. I object.

The PRESIDING OFFICER. The bill will be read a second time on the next legislative day.

ORDERS FOR TOMORROW

Mr. FORD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. Wednesday, November 3; that following the prayer, the Journal of the proceedings be deemed approved to date, and the time for the two leaders reserved for their use later in the day; that the Senate then proceed into executive session, and that immediately thereafter, the provisions of a previous unanimous-consent agreement governing cloture and disposition of executive calendar nominations Nos. 411, 413, 414, 415 and 420 be executed.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

PROCEEDING TO THE CRIME BILL

Mr. FORD. Mr. President, the majority leader asked me to tell the Senate that upon the disposition of the executive calendar nominees just previously mentioned, he intends to go to the crime bill.

So after tomorrow, the crime bill will be the next item on the agenda.

RECESS UNTIL WEDNESDAY, NOVEMBER 3, 1993, AT 10 A.M.

Mr. FORD. If there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 10:29 p.m., recessed until Wednesday, November 3, 1993, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate November 2, 1993:

DEPARTMENT OF JUSTICE

JAMES J. MOLINARI, OF CALIFORNIA, TO BE U.S. MARSHAL FOR THE NORTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF 4 YEARS VICE GLEN E. ROBINSON.

JOE RUSSELL MULLINS, OF KENTUCKY, TO BE U.S. MARSHAL FOR THE EASTERN DISTRICT OF KENTUCKY FOR THE TERM OF 4 YEARS VICE SHERMAN L. HANSFORD.

JOHN PATRICK MCCAFFREY, OF NEW YORK, TO BE U.S. MARSHALL FOR THE WESTERN DISTRICT OF NEW YORK FOR THE TERM OF 4 YEARS VICE DANIEL B. WRIGHT.

PHYLLISS JEANETTE HENRY, OF IOWA, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF IOWA FOR THE TERM OF 4 YEARS VICE WARREN D. STUMP.

CHARLES M. ADKINS, OF WEST VIRGINIA, TO BE U.S. MARSHALL FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA FOR THE TERM OF 4 YEARS VICE JAMES P. HICKMAN.